

**The Impact of the Namibian Judiciary System on the
Child Witness**

Veronica Rose Theron

THE IMPACT OF THE NAMIBIAN JUDICIARY SYSTEM ON THE CHILD WITNESS

by

VERONICA ROSE THERON

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the degree of

**MASTER OF DIACONIOLOGY
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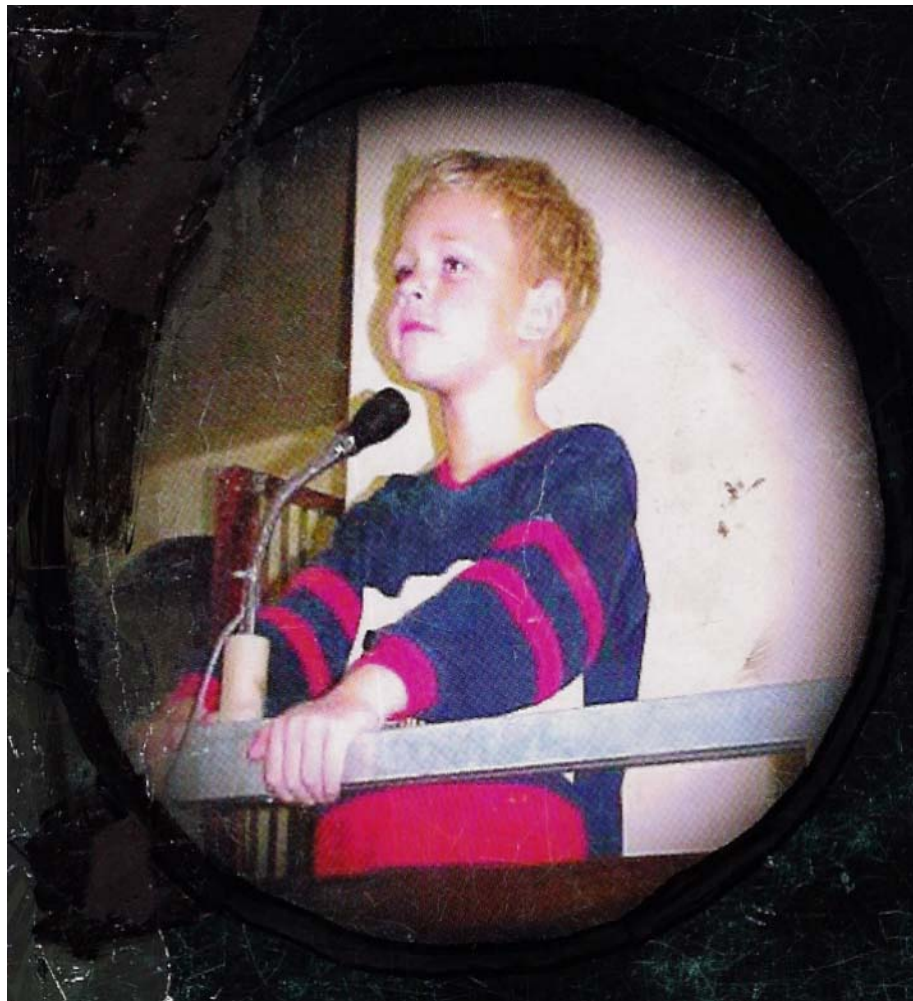
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SUPERVISOR: DR J P SCHOEMAN

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This study is dedicated to all children who have suffered in the bizarre world of child sexual abuse and still had the courage to tell their stories in court.



Student number: 3493-513-4

I declare that *The Impact of the Namibian Judiciary System on the Child Witness* is my own original work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

.....

SIGNATURE

(Ms V R Theron)

.....

DATE

I declare that the use of the pronoun him and himself in the context of this study is used to refer to both male and female and not to discriminate against females.

.....

SIGNATURE

(Ms V R Theron)

.....

DATE

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All honour and praise to our Heavenly Father for His guidance, mercy and grace and for giving me the love and interest to work with the wounded.

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Summary

The Impact of the Namibian Judiciary System on the Child Witness

By

Veronica Rose Theron

Master of Diaconiology

Direction: Play Therapy

University of South Africa

In this study focus is placed on the Impact of the Namibian judiciary system on the sexually-abused child witness and recommendations were made to criminal justice professionals.

A literature study was undertaken to establish a grounded theoretical perspective. A single case study was done to evaluate how the Gestalt Play Therapy Process can be applied to mitigate some of the negative effects the judicial system has on the child witness.

An empirical study was done and a qualitative approach was utilised. Semi-structured interviews were conducted with children, their parents and criminal justice professionals. Major findings of this study are that the Namibian criminal justice system leads to further traumatization of the sexually-abused child witness and that the Gestalt Play Therapy approach can be applied to make the court proceedings less traumatic and even therapeutic for the child witness.

Recommendations were formulated for criminal justice professionals.

Opsomming
Die Impak van die Namibiese Regstelsel op die kindergetuie
deur
Veronica Rose Theron
Magister Diaconiologiae
Speltherapie
Universiteit van Suid-Afrika
Studieleier: Dr. J.P. Schoeman

In hierdie verhandeling is gefokus op die impak van die Namibiese regstelsel op die seksueel-misbruikte kindergetuie en daar word aanbevelings gedoen aan professionele persone in die kriminele regstelsel.

'n Literatuurstudie is gedoen om 'n grondige toeretiese perspektief daar te stel. 'n Enkele gevallestudie is uitgevoer om te evalueer hoe die Gestalt Speltherapieproses toegepas kan word om die hofverrigtinge vir die kind minder traumaties te maak.

'n Empiriese studie is gedoen en 'n kwalitatiewe benadering is gebruik. Semi-gestruktureerde onderhoude is gevoer met kinders, hulle ouers en professionele persone wat met seksueel-misbruikte kindergetuies werk. In die studie is bevind dat die Namibiese regstelsel addisionele trauma veroorsaak vir die kindergetuie en dat die Gestaltspeltherapiebenadering gebruik kan word om die hofervaring minder traumaties en selfs terapeuties te kan maak vir die kindergetuie.

Aanbevelings is gedoen aan professionele persone wat met kindergetuies werk.

Key terms

Child

Witness

Child witness

Sexual abuse

Child sexual abuse

Criminal justice system

Judiciary

Impact

Sleutelwoorde

Kind

Getuie

Kindergetuie

Seksuele misbruik

Kinder seksuele misbruik

Strafregstelsel

Regstelsel

Impak

Declaration	i
Declaration.....	ii
Acknowledgements	iii
Summary/Abstract	iv
Opsomming	v
Keyterms	vi
Sleutelwoorde	vii

Table of Contents

CHAPTER 1

	Page
Introduction	
1.1 Introduction.....	1
1.2 Motivation for the choice of subject.....	1
1.3 Problem formulation.....	3
1.4 Aim and objectives	4
1.4.1 Aim.....	4
1.4.2 Objectives.....	5
1.5 Research question.....	5
1.6 Research approach.....	5
1.7 Type of research.....	6
1.8 Research strategy.....	8
1.9 Research and work procedure/methodology.....	8
1.9.1 Methods of data collection.....	8
1.9.2 Methods of data analysis.....	10
1.9.3 Viability of study.....	11
1.9.4 Literature review.....	11
1.9.5 Consultation with experts.....	11
1.9.6 Pilot study.....	15
1.9.7 Testing of questionnaires.....	15
1.10 Description of population, universe, sample and sampling technique	16
1.10.1 Population.....	16
1.10.2 Universum.....	16
1.10.3 Sampling.....	16
1.11 Ethical aspects.....	17
1.12 Definitions of terms and key concepts.....	18
1.12.1 Child.....	19
1.12.2 Witness.....	19
1.12.3 Child abuse.....	20

1.12.4 Sexual abuse.....	20
1.12.5 Child sexual abuse.....	21
1.12.6 Criminal justice system.....	21
1.12.7 Judiciary.....	22
1.12.8 Impact.....	22
1.13 Research report layout.....	23
1.14 Summary.....	24

CHAPTER 2

The child as a witness

2.1 Introduction.....	25
2.2 The Child witness.....	26
2.2.1 Child development and its implications on child witnessing.....	26
2.2.1.1Cognitive development of children ages three to five.....	26
2.2.1.2Cognitive development of children ages five to seven.....	27
2.2.1.3Cognitive development of children ages seven to twelve.....	29
2.3 Microsystems affecting the child witness.....	29
2.3.1 Child development.....	29
2.3.2 Competence.....	29
2.3.3 Children's perceptions.....	30
2.3.4 Credibility.....	30
2.3.5 Environment.....	31
2.3.6 Personnel.....	31
2.4 Crucial questions to consider when the witness is a child.....	32
2.5 Child sexual abuse.....	32
2.5.1 The definition of child sexual abuse.....	34
2.5.2 The varieties of abuse.....	35
2.5.3 The circumstances of child sexual abuse.....	35
2.5.4 Reporting child sexual abuse.....	36
2.5.5 Perpetrators/abusers.....	36
2.5.6 Harmful effects of child sexual abuse.....	37
2.5.6.1 Short-term effects of child sexual abuse.....	38
2.5.6.2 Long-term effects of child sexual abuse.....	39
2.5.6.3 Symptoms of child sexual abuse.....	41
2.6 Summary.....	42

CHAPTER 3

The legal framework in Namibia and the Gestalt Play Therapy Approach

3.1 Introduction.....	43
3.2 The legal framework in Namibia.....	43

3.2.1	The Namibian Constitution.....	43
3.2.2	The UN Convention on the elimination of all forms of discrimination against women.....	44
3.2.3	The Beijing declaration and platform of action.....	44
3.2.4	The SADC declaration on gender and development.....	45
3.2.5	The National Gender Policy.....	45
3.2.6	The Combating of Rape Act 2000 (Act 8 of 2000).....	46
3.2.7	The Criminal Procedures Act (Act 51 of 1977).....	46
3.3	The criminal justice system.....	47
3.3.1	The adversarial legal system	47
3.3.2	The Namibian legal system.....	48
3.3.3	Namibian institutions dealing with violence against women and children.....	48
3.3.4	Procedural and practical problems in the criminal justice system.....	48
3.4	Children and the legal system.....	49
3.4.1	Children's perceptions of court procedures.....	49
3.4.2	The impact of the accusatorial system.....	50
3.4.2.1	The effects of the accusatorial system on children.....	51
3.4.3	Court-related matters that are stressful for children.....	52
3.4.4	Face-to-face contact with the accused.....	52
3.4.5	Effect of cross-examination.....	53
3.4.6	Court delays.....	54
3.4.7	Continuances.....	54
3.4.8	Docket priority.....	54
3.4.9	Multiple interviews.....	54
3.4.10	Difficulties when testifying in an accusatorial system of justice.....	55
3.4.11	Legal professionals' bias towards child witnesses.....	56
3.5	Advantages of testifying for children.....	57
3.6	Summary.....	58

CHAPTER 4

The Gestalt Play Therapy Approach

4.1	Introduction.....	59
4.2	The definition of play.....	59
4.3	The meaning of play.....	59
4.4	The Gestalt therapy process.....	60
4.4.1	A therapeutic relationship.....	60
4.4.1.1	The main aims of a therapeutic relationship.....	60
4.4.2	Sensory modalities/sensory contact making.....	61
4.4.3	The child's process.....	61
4.4.4	Forms of play.....	61
4.4.4.1	Relaxation play.....	61
4.4.4.2	Assessment play.....	61

4.4.2.3Dramatic play.....	61
4.4.2.4Creative play.....	62
4.4.2.5Biblio play.....	62
4.4.5 Own projections.....	62
4.4.6 Alternatives.....	62
4.4.7 Clarification.....	62
4.4.8 Empowering.....	62
4.4.9 Self-nurturing.....	62
4.4.10 Evaluation.....	63
4.4.11 Safe place.....	63
4.4.12 Confluence.....	63
4.4.13 Polarities.....	63
4.4 Summary.....	64

CHAPTER 5

Research findings-The impact of the Namibian judiciary system on the sexually-abused child witness

5.1 Introduction	65
Table 1: Key demographics of children.....	66

Section 1

5.2 Child witnesses and their parents.....	67
5.2.1 Reporting of abuse.....	67
5.2.2 Initial contact with the criminal justice system.....	68
5.2.3 Court delays and postponements.....	69
5.2.4 Waiting to give evidence.....	70
5.2.5 Confronting the accused.....	70
5.2.6 Cross-examination.....	71
5.2.7 Court preparations.....	72
5.2.8 Impact on children	73
5.2.9 Parents' views on services rendered.....	74
5.2.9.1Police.....	74
5.2.9.2Social workers and psychologists.....	74
5.2.9.3Medical doctors.....	75
5.2.9.4Court officials.....	75
5.2.10 Victim-friendly courts.....	76
5.2.11 After-court follow-up.....	76
5.2.12 Children's suggestions for reform.....	76

Section 2

5.3 Case study – Sahara.....	77
5.3.1 Introduction.....	77
5.3.2 Background information.....	79
5.3.3 Table 2: Session 3 - building sense of self.....	79
Session 4 - Sahara's emotional expression.....	80
Session 5 - Sahara's emotional expression.....	81
Session 6 - Sahara's emotional expression.....	82
Session 7 - self-support and self-nurturing.....	83

Session 8 – Termination.....	84
5.3.4 The court experience from Sahara's perspective.....	85
5.3.5 Conclusion.....	86

Section 3

5.4 Criminal justice professionals.....	87
5.4.1 Introduction.....	87
Table 3: Key demographics of professionals.....	88
5.4.2 Figure 5.1: Professionals' opinion when asked if they would allow their children in the criminal justice system.....	89
5.4.3 Figure 5.2: Advantages for children in the criminal justice system.....	90
5.4.4 Figure 5.3: The most stressful factors for children in the criminal justice system.....	91
5.4.5 Figure 5.4: The criminal justice system causes more harm to children...	91
5.4.6 Figure 5.5: The need for training for criminal justice professionals.....	92
5.4.7 Figure 5.6: Views of professionals on court preparation programs.....	93
5.4.8 Table 4: Professionals' comments on delays and postponements.....	94
5.4.9 Figure 5.7: Criminal justice professionals' understanding of the dynamics of child sexual abuse	95
5.4.10 Criminal justice professionals' knowledge of the vulnerable witnesses legislation.....	95
5.5 Summary.....	96

CHAPTER 6

Evaluation, Conclusions and Recommendations to criminal justice professionals

6.1 Introduction.....	97
6.2 Evaluation of aims and objectives.....	97
6.2.1 Objectives.....	97
6.3 Research question.....	99
6.3.1 Harmful effects of criminal justice system.....	99
6.3.2 Advantages of criminal justice system for child witnesses.....	101
6.3.3 The need for court preparation programmes.....	101
6.3.4 The need for child-friendly courts and separate waiting-rooms.....	102
6.3.5 The usefulness of Gestalt Play Therapy Techniques.....	103
6.3.6 Principles for reform.....	103
6.4 Recommendations.....	104
6.4.1 Introduction.....	104
6.4.2 Recommendations for all criminal justice professionals.....	105
6.4.2.1 Specific recommendations for prosecutors' offices.....	105
6.4.2.2 Specific recommendations for magistrates and judges	106
6.4.2.3 Specific recommendations for law enforcement agencies.....	107
6.4.2.4 Specific recommendations for social workers and psychologists.....	108

6.5	Special precautions for children.....	108
6.5.1	Court preparation programmes.....	109
6.5.2	Waiting-area for child witnesses.....	109
6.5.3	Guardian Ad Litem.....	109
6.5.4	Delays and postponements.....	109
6.5.5	Screens and close circuit televisions.....	109
6.5.6	Hearsay testimonies.....	109
6.5.7	Conclusion.....	110
7.	Bibliography.....	111

List of Tables

	Page
Table 1: Key demographics of children.....	66
Table 2: Case study- Sahara.....	72
Session 3 Building sense of self -The rosebush.....	79
Session 4 Sahara's emotional expression- The sandtray.....	80
Session 5 Sahara's emotional expression- The monster.....	81
Session 6 Sahara's emotional expression- The dream.....	82
Session 7 Self support and self nurturing-The empty chair.....	83
Session 8 Termination- Clay and drawings.....	84
Table 3: Key demographics of professionals.....	88
Table 4: Professional's comments on delays and postponements.....	94

List of Graphs

	Page
Figure 5.1 Professional's opinions when asked if they would allow their own child to go through the criminal justice system.....	89
Figure 5.2 Advantages for children in the criminal justice system.....	90
Figure 5.3 The most stressful factors for children in the criminal justice system	91
Figure 5.4 The criminal justice system causes more harm to children.....	91
Figure 5.5 The need for training for criminal justice professionals.....	92
Figure 5.6 Views of professionals on court preparation programmes.....	93
Figure 5.7 Criminal justice professional's understanding of the dynamics of child sexual abuse.....	94

List of Appendices

	Page
Appendix 1 Written consent.....	120
Bylae 1 Skriftelike toestemming.....	121
Appendix 2 Semi-structured interviews for children and parents.....	122
Appendix 3 Semi-structured interviews for professionals.....	125

CHAPTER 1

1.1 INTRODUCTION

In this study focus is placed on the impact of the Namibian judiciary system on the sexually-abused child witness. The sexually-abused child forms part of this study, although it is not specified in the research title.

It is very stressful for any child to give evidence in court, but even more so for the sexually-abused child. Child survivors of sexual abuse bring with them a multitude of possible behavioural and cognitive outcomes which play a role not only in their ability to function as individuals, but also to overcome the trauma of testifying. This experience can impact negatively on the child's development, behaviour and perception of the environment. Such experiences have been labelled by the professional world as traumatic.

In this study detailed data from the perspective of sexually-abused child witnesses and their parents on their experiences in the criminal justice system are provided. Data have also been gathered from a wide range of professionals dealing with the sexually-abused child witness. The researcher highlighted some of the problems which need to be addressed in order to make the court proceedings less traumatic for children. The results of this study enabled the researcher to make recommendations to criminal justice professionals on how to make the court experience less traumatic for the child.

1.2 MOTIVATION FOR THE CHOICE OF SUBJECT

The researcher worked at the Women and Child Protection Unit in Windhoek for nine years. In this setting, she formed part of a multidisciplinary team who worked with sexually-abused child witnesses on a daily basis. The researcher experienced how children who had suffered sexual abuse appeared as witnesses, only to find themselves under attack yet again.

Also, the involvement of the researcher in child advocacy, law reform and in child and family welfare programmes, serves as a precursor to the interest in working with the sexually-abused child witness.

Goodman, (in Müller 2000:76), found that the children who had gone to court showed greater disturbance, and that court appearances resulted in much stress and tension for them. It has been widely accepted that child survivors of sexual abuse experience a variety of psychological problems, including depression, low self-esteem, somatic complaints, guilt, phobias, nightmares, promiscuity and self-destructive and suicidal behaviour (Müller, 2000:76 & Eastwood, C. 1998:15).

The researcher found that concern around sexually-abused child witnesses is a neglected area. Until now it has not specifically been the focus of researchers or writers in Namibia. People in general are aware of the negative psychological impact on the sexually-abused child witness, but not enough is being done to make the court experience less traumatic for children (UNESCO 2001:9 & Australian Institute of Criminology, 1998:2). This is part of the researcher's motivation to investigate the impact of the Namibian judiciary system on the child witness, also to make recommendations on how to improve the criminal justice system. For this reason one child was therapeutically intervened. The intervention was not the main aim of the research but was done to make justifiable recommendations from the viewpoint of a play therapist.

Bjerregaard, (in Müller 2000:76), states that there has been a growing concern about the effects on children who have to give evidence in an adversarial environment. Social workers, police officers, magistrates, attorneys, mental health professionals and legal commentators state that court involvement traumatises a child witness. A study by the Australia Institute of Criminology has revealed that many sexually abused children are twice victims: once by the perpetrators and then by the criminal justice system (Australian Institute of Criminology, 1998:2). Psychiatrists believe that psychological damage is caused not only by the sexual abuse, but also by being forced to testify in an open court in the presence of the accused. So far the child witness has not been a focus for Namibian researchers and writers (Müller, 2000:76 & Australian Institute of Criminology, 1998:3).

The researcher, as part of her duties as a social worker, testifies in child sexual abuse cases, and also prepares children for court proceedings. Children's perceptions of court procedures and court officers have an impact on how they give evidence. For example, if children's perceptions are negative, they will tend to be stressed, and this could interfere with their testimony (UNESCO 2001:11 & Müller, 2000:280).

The accusatorial legal system that exists in Namibia has considerable implications for child witnesses. Children are clearly traumatised by their perceptions of the legal set-up. Not understanding the judicial process also leads to fear and stress (UNESCO 2001:12-13; Müller, 2000:113; Perry and Wrightsman, 1991:85 & Eastwood, 1996:16).

1.3 PROBLEM FORMULATION

Strydom and Delport (2002:327) describe problem formulation as the researcher's broad conceptualisation of the problem that should be redefined.

According to Bless and Higson-Smith (1995:29) the formulation of a problem introduces the necessity of defining clearly all the concepts used and of determining the variables and their relationships.

The alarming rate of child sexual abuse in Namibia is presenting a challenge to researchers. Reports of such abuse have become commonplace in daily newspapers and television reports. These children are increasingly being called upon to testify in court (Perry and Wrightsman, 1991:1).

Perry and Wrightsman (1991:85) argue that many children who are called upon to give testimony have been traumatized to some degree, often severely.

Testifying in court is stressful for witnesses, and even more so for children. The stress is induced not only by having to give evidence in court but also by the fact that the child will be called upon to reveal very intimate details (Müller, 2000:44; Eastwood, Patton and Stacey, 1999:17 & UNESCO, 2001:11).

Poor administration of Justice results in delay of criminal cases and sexual offenders being released on easy bail terms within hours of being arrested. Such offenders, on

their release, then interfere with state witnesses and harass victims. This undermines the administration of justice, humiliates victims who is in many cases minor children who then lose faith in the judicial system (Law Reform and Development Commission report, 1999:59).

When child witnesses offer evidence, it may be necessary to use novel procedures. In some cases the adversarial process played out in the standard way is either too confusing or too intimidating for the young witness. It is necessary for the Namibian judiciary system to have understanding of the child witness' state of mind, anxiety and paralysing fear before any reconciliation is to be achieved (Law Reform and Development Commission report, 1999:79 & Perry and Wrightsman, 1991:156).

Despite the strong legal framework as well as some procedural, structural and attitudinal changes in the Namibian criminal justice system, many children who have been sexually abused continue to suffer further unnecessary trauma during the court proceedings (UNESCO 2001:13 & Müller, 2000:75).

Therefore the problem formulated should be the problem that needs to be investigated. In this study the researcher investigated the impact of the Namibian judiciary system on the sexually -abused child witness from the perspectives of the children, the parents and key criminal justice professionals, the use of Gestalt Therapy techniques to evaluate how it can help to make the court experience less traumatic for children and lastly to make recommendations to criminal justice professionals on how to make the court more child- friendly.

1.4 AIM AND OBJECTIVES

1.4.1 Aim

Webster (in Fouché, 2002:107) defines 'aim' as the end towards which effort or ambition is directed. He sees aim as a "dream".

The aim of the study was to investigate the impact of the Namibian judiciary system on the sexually-abused child witness.

1.4.2 Objectives

According to Hart (1998:207-208), objectives are specific, clear and succinct statements of intended outcomes of one's research such as, the search for and review of the literature and assessment of a particular debate. Fouché (2002:107) states that objectives denote the more concretely measurable and more speedily attainable conceptions of the end towards which effort or ambition is directed. Fouché (2002:107-108) continues that the objective is the steps one has to take, realistically and at grassroots level, within a certain time span, in order to attain the dream.

The researcher sees objectives as goals for implementing the study. These goals help the reader to understand what the researcher wants to achieve. The objectives of this study, therefore, were

- **1.4.2.1** to do a thorough literature review on child sexual abuse, child witnesses and the Namibian criminal justice system.
- **1.4.2.2** to document the impact of the Namibian criminal justice system on the sexually-abused child witness.
- **1.4.2.3** to investigate the need for court preparation, child-friendly courts and waiting facilities.
- **1.4.2.4** to use the Gestalt Play Therapy approach and therapeutically intervene for eight sessions to see how this approach can be applied to help the child witness. This intervention is one way of data collection in the investigation
- **1.4.2.5** to draw conclusions and make recommendations to criminal justice professionals on how to make the system more child-friendly and less traumatic for the sexually-abused child witness.

1.5 RESEARCH QUESTION

Strydom and Delport (2002:327) explain that a research question is the formulation of vague thoughts in specific questions about a particular subject. All questions should be related to the goals, objectives and hypotheses of the investigation.

The researcher's understanding of a research question is that the results of the study should answer the research question.

The research question for this study is:

What is the impact of the Namibian judiciary system on the sexually-abused child witness?

1.6 RESEARCH APPROACH

According to Fouché and Delport (2002:81), the purpose of the qualitative approach is to construct detailed descriptions of social reality. The descriptive approach seeks to understand phenomena.

Creswell (in Fouché 2002:106) offers the following reasons for undertaking a qualitative study:

- The nature of the research question relates to “how” or “what”.
- A topic needs to be explored.
- There is a need to present a detailed view of that topic.
- It involves a study of individuals in their natural setting.
- The researcher has a preference for writing in a literary style and to bring himself into the study.
- Sufficient time and resources are available to spend on data-collection and analysis.
- Audiences are receptive to the qualitative approach.
- The researcher can tell the story from the point of view of the participants rather than as an expert who passes judgement on participants (Fouché, 2002:107).

Reid and Smith (in Fouché, 2002:80) add the following characteristics of the qualitative approach:

- The researcher attempts to gain first-hand, holistic understanding of phenomena of interest, by means of a flexible strategy of problem formulation and data-collection.
- This takes shape as the investigation proceeds.
- Methods such as semi-structured interviews will be used to acquire in-depth knowledge which ought to guide further study.
- Qualitative methodology thus rests on the assumption that valid understanding can be gained through accumulated knowledge acquired, first-hand, by a single researcher (Fouché, 2002:80).

The qualitative approach allowed the researcher to make use of semi-structured interviews, and the respondents could express themselves in their own words rather than in the words of the researcher. The researcher also made use of content analysis of existing documents, such as existing legislation, evaluation reports, booklets and other relevant materials.

In this research the qualitative paradigm dominates, but the researcher also presented some numerical data in Chapter 5 in figures from page 89-95. This data is quantitative in nature. Creswell (in De Vos, 2002:366) describes this model as dominant-less-dominant. The qualitative approach emphasises the respondent's point of view and describes the problem studied as experienced by the respondents (De Vos, 2002:366).

1.7 TYPE OF RESEARCH

The type of research adhered to for this study is applied research that is descriptive in nature. According to Fouché (2002:108-109), applied research most often is the scientific planning of induced change in a troublesome situation. Fouché also explains that applied research is aimed at solving specific policy problems or helping practitioners to accomplish tasks. It focuses on solving problems.

Neuman (in Fouché 2002:109) notes that descriptive research presents a picture of the specific details of a situation, social setting or relationship, and focuses on how and why questions.

According to Hart (1998:46), applied research seeks to produce recommendations on or solutions for some problem faced by a specific group of people in a particular situation. The aim is to apply theoretical insights to real-world situations.

According to the researcher, applied research that is descriptive in nature is research that could present a clear picture of what needs to be addressed and how it ought to be addressed – the change which is required and how it should be applied (Fouché, 2002:108).

In this study the researcher facilitated the advancement of knowledge and provides recommendations on how the problem could be solved, as described by Fouché (2002:108).

1.8 RESEARCH STRATEGY

The researcher made use of a case study as a research strategy. Cresswell (in Fouché 2002:275) views a case study as an exploration or an in-depth analysis of a “bounded system” or a single or multiple case, over a period of time. In this study analysis was done over eight therapeutic sessions.

According to Cresswell (in Fouché, 2002: 275), the case being studied can refer to a process, an activity, an event, a programme, an individual or multiple individuals. It might even refer to a period of time rather than to a particular group of people. In this study multiple individuals in three categories were included.

Rubin and Babbie (in Fouché, 2002:109) argue that description is more likely to refer to a more intensive examination of phenomena and their deeper meanings, thus leading to a thorough description, and that a research strategy such as the case study would, therefore, be applicable.

The researcher, through the use of a single case study, constructed a detailed description of the impact of the Namibian judiciary system on the child witness.

1.9 RESEARCH AND WORK PROCEDURE/METHODOLOGY

According to Erlandson et al (in De Vos 2002:341), a qualitative study involves an inseparable relationship between data collection and data analysis. Erlandson et al. argues that as data are gathered, they are analysed (De Vos 2002:341).

1.9.1 Methods of data collection

The primary data-gathering mechanisms for this study were document analyses and semi-structured interviews for sexually-abused child witnesses, their parents,

professionals working with the sexually-abused child witness and notes from therapeutic sessions with one respondent.

The researcher made use of the records of child abuse cases of the Women and Child Protection Unit in Windhoek. All the reported cases were finalised between 1 January 2005 and May 2005. Parents or guardians of the selected children were also interviewed. A list with contact details of children who went through court proceedings from 1 January 2005 till May 2005 was obtained from the Women and Child Protection Unit in Windhoek. All the children and parents who agreed to be part of the study during the above-mentioned period were selected. Age, gender and race were not taken into consideration.

Professionals in Windhoek who worked with sexually-abused children from January till May 2005 who were willing to participate in the study, were selected. More than 10 professionals who were approached were not willing to participate. Professionals in the following disciplines were selected:

- Three police officers from the Namibian Police Force.
- A social worker from Social Welfare Services working at Women and Child Protection Unit.
- An advocate at the High Court.
- A magistrate at the Regional Court.
- A prosecutor at the Lower Court.
- Two social workers in private practice.
- Two social workers from Church Benevolent Board.

According to Bless and Higson-Smith (1995:102), the data collected by questionnaires, in a descriptive study, will be mostly qualitative.

De Vos (2002:39) notes that qualitative research covers a spectrum of techniques, the focal points of which are observation, interviewing and documentary analysis. The researcher mainly used semi-structured interviews and documentary analysis as data collection techniques.

According to De Vos (2002:341): “By observing something from different angles or viewpoints, they get a fix on its true location.”

Data was gathered in the following ways:

- From children meeting the specific criteria.
- From the parents of the children.
- From a therapeutic process with one child.
- From criminal justice professionals.
- From relevant documents.

Triangulation was incorporated to make sure that the different respondents gave viewpoints that focused on the same issues. In all four situations the researcher aimed to get multiple data of the same phenomena but from multiple angles or viewpoints.

Triangulation created the opportunity to make valuable recommendations. Mouton and Marais (in De Vos 2002:365) describe triangulation as the use of multiple methods of data collection or the use of multiple sources with a view to increasing the reliability of observation (De Vos, 2002:365).

1.9.2 Methods of data analysis

According to De Vos (2002:339-340), data analysis is the process of bringing order, structure and meaning to a mass of collected data. Qualitative data analysis is a search for general statements about relationships among categories of data, and it constructs a theory.

The researcher analysed the results of this study manually. Steps that were followed, and which De Vos (2002:340) supports, are:

- collecting and recording data
- managing data
- reading and memo-writing
- describing, classifying, interpreting
- representing and visualising

The following steps were followed:

- Collecting and recording data
- Managing data
- Transcribing data verbatim
- Classifying and coding (using tables)

1.9.3 Viability of study

This research was viable. The researcher studied all possible limitations, and it was decided to use a sample size that would allow for the full utilisation of time, money and effort to produce better quality research and more in-depth information.

Lincoln & Guba (in De Vos, 2002:351) reflect four constructs to reflect the assumptions of a qualitative paradigm.

Credibility: The problem in this study is identified and described according to the need. Boundaries around this study were firmly applied.

Transferability: Although the generalisability of this study could take place, research referred back to the original framework.

Dependability: The fact that it is the child's own experience of the criminal justice system.

Conformability: Other children in the same situation can confirm the findings of the study. This leads to the implications and makes suggestions more appropriate.

1.9.4 Literature review

According to Marshall and Rossman (in Fouché & Delport 2002:266-267), a proper literature review – compiled early in the process – should serve the following functions in qualitative studies:

- To demonstrate the underlying assumptions behind the general research question
- To demonstrate that the researcher is thoroughly knowledgeable about related research and the intellectual traditions that surround and support the study
- To show that the researcher identified some gaps in previous research, and that the proposed study will fill a demonstrated need
- To refine and redefine the research questions, by embedding such questions in larger empirical traditions.

Rubin and Babbie (in Fouché & Delport 2002: 267) pose the following question:

What better way to ensure that your study will be valued as part of a cumulative knowledge-building effort regarding that problem ... (than a literature study)?

The researcher studied documents, reviewed legislation and made use of secondary analysis. Strydom and Delport (2002:321) describe secondary analysis as the analysis of any written material that contains information about the phenomenon being researched.

Official or non-personal documents were read by the researcher, as advised by Bailey (in Strydom and Delport, 2002:323-324) since these documents are compiled and maintained on a continuous basis by large organisations, such as government institutions. Such documents are more formal and structured than personal documents. The researcher should be fully up to date with existing knowledge on the topic (Strydom 2002: 210).

The internet was used extensively by the researcher, and all relevant literature was gathered. According to Fouché and Delport (2002:268) theory may be used to guide the study in an explanatory way, or employed towards the end of the study, as a means of comparing and contrasting it with the developed theoretical model. Leedy (in Fouché & Delport, 2002:268) adds that literature can be used to make comparisons, build theory or propose generalisations.

1.9.5 Consultation with experts

Strydom and Delport (2002:337) propose that the interviewing of experts is important in qualitative research, for the purpose of identifying themes for further investigation in order to do a valid literature review.

The researcher held consultations with the following experts and professionals:

- Commissioner VH Hifindaka
Crime Investigation Department of the Namibian Police
Marie Neef Building
Windhoek
Consultation: February 2004

The researcher met with Commissioner Hifindaka, as head of all Women and Child Protection Units (WCPU) in Namibia, to inform him of the proposed study, and to get his

permission to use records and other confidential information from the Women and Child Protection Unit in Windhoek. She also requested his permission to do her practicals at the unit. Such permission was granted.

- Magistrate Gladys Vries
Commissioner of Child Welfare
Katutura Magistrate's Court
Private Bag 13181
Windhoek
Consultation: February 2005

The researcher consulted Magistrate Vries in order to obtain a list of children who went through the court system in the period January 2005 – May 2005. A written request was sent to the Office of the Prosecutor General. Magistrate Vries informed the researcher of prosecutors, magistrates and police officers who could be used as respondents in the study.

- Inspector Johanna Araes
Unit Commander of the Women and Child Protection Unit
Windhoek
Consultation date: January 2004

Inspector Araes, as Commanding Officer of the Windhoek WCPU, was consulted in order to seek permission for the researcher to make use of the office facilities for individual counselling and group work. She also provided the researcher with names of children who still had to serve as witnesses in court proceedings, and who would need to be prepared for this purpose. Inspector Araes granted permission that her staff could be used to participate in the study.

- Ms Petronella Masabane
Deputy Director – Developmental Social Welfare Services
Private Bag 13198
Windhoek
Consultation: February 2004

Ms Masabane is the Deputy Director and immediate Head of the researcher. The researcher's position is at management level, and special arrangements were made for her to interview children every Friday afternoon. Study leave arrangements were also discussed with Ms Masabane.

- Ms Dianne Hubbard
Law Reform Commission
Legal Assistance Centre
Windhoek
Consultation date: January 2004

Ms Hubbard was consulted because of her vast experience in legislation protecting women and children, and her expertise with regard to law reform. She informed the researcher about the latest publications and made available copies of relevant laws.

- Ms Rianne Selle
Ministry of Information and Broadcasting
Multi-Media Campaign on Violence against Women and Children
Windhoek

Ms Selle was a valuable source of information, because of her contact with experts on the subject of women and child abuse, nationally and internationally. She informed the researcher of previous studies undertaken and where existing materials on the research topic could be located.

- Dr Debie LeBeau
Researcher and Lecturer
University of Namibia
Windhoek
Consultation: March 2004

Dr LeBeau gave technical advice and assistance on data analysis and the empirical study.

1.9.6 Pilot study

A pilot study, according to Strydom (2002:211), is a small study conducted prior to a larger piece of research, to determine whether the methodology, sampling, instruments and analysis are adequate and appropriate.

Strydom and Delport (2002:337) state that the pilot study in qualitative research allows the researcher to focus on specific areas that might have been unclear previously. It also serves to test certain questions by testing the nature of the questions in an interviewing schedule, or for focus groups in the pilot study. The qualitative researcher is, therefore, able to make modifications with a view to qualify interviewing during the main investigation.

The researcher's understanding of a pilot study is the testing of one's research with a selected small group.

1.9.7 Testing of questionnaires

Strydom (2002:211) describes pre-testing as the testing of one or more aspects of the subject for example the questionnaire or the programme for the analysis of the data.

The researcher tested the actual semi-structured questionnaire on a sample of two sexually-abused children, two parents and two professionals from September 2004 till December 2004. The pilot testing identified difficulties and vagueness with the questions, and served to investigate the accuracy and appropriateness of the questions. It also allowed the researcher to determine the participants' likely responses to the actual questionnaire.

The researcher distributed copies of semi-structured questionnaires to experts, researchers and colleagues for their comments, before doing the actual interviews with respondents.

1.10 POPULATION, UNIVERSE AND SAMPLING TECHNIQUES

1.10.1 Population

'Universe', according to Arkava and Lane (in Strydom and Venter (2002:198), refers to all potential subjects who possess the attributes in which the researcher is interested. 'Population' refers to individuals in the universe who possess specific characteristics. It is the total set from which the individuals or units for the study are chosen. (Strydom and Venter, 2002:198).

In this research the population included all sexually-abused children who reported at the Women and Child Protection Unit and who went through court proceedings at the Windhoek Regional Court from January till May 2005.

1.10.2 Universum

The researcher targeted the sexually-abused children (aged 2 – 18 years) who were subjected to the criminal justice system in Windhoek. Names and particulars of children were selected from records at the Women and Child Protection Unit in Windhoek and records at the Regional Court in Windhoek. All children who agreed to partake in the study were selected from the list. Age, gender and race were not considered.

1.10.3 Sampling

Seaberg (in Strydom & Venter, 2002:199) defines a sample as a small portion of the total set of objects, events or persons that together comprise the subject or study (Strydom & Venter, 2002:199).

A sample comprises the demands of the population considered for actual inclusion in the study, according to Arkava and Lane (in Strydom & Venter 2002:199).

For this study, a sample was selected from the records of the WCPU and the Regional Court in Windhoek. Because of the sensitivity of the study, only children who agreed to participate were selected.

The researcher identified key informants/professionals as mentioned under point 9, who deal with sexually-abused child witnesses. All the professionals working with sexually-abused children who were willing to participate were included.

The researcher thus used the non-probability and specifically the accidental sampling. All the children who reported at the Women and Child Protection Unit who went through court proceedings from January till May 2005 and were willing to participate were selected.

The same procedure was followed with the criminal justice professionals. All the professionals who were involved with the sexually-abused child witness and who were willing to participate in the time between 1 January and 1 May 2005 were selected. The same sampling methods applied here namely non-probability (sampling) and accidental sampling.

The single case sample was selected in the same way, namely probability and accidental. The very first child who met the criteria was selected for the case study. The criteria had to meet the following: The first child who report at the Woman and child Protection Unit who went through the court proceedings from January till May 2005 and who was willing to participate was selected.

1.11 ETHICAL ASPECTS

Strydom (2002:69) states that the entire research project must run its course in an ethically correct manner. Ethical guidelines serve as standards and as the basis on which each researcher ought to evaluate his own conduct. Ethical principles should thus be internalised in the personality of the researcher to such an extent that ethically-guided decision-making becomes part of his total lifestyle (Strydom, 2002: 63).

The researcher was aware that this study would invade the respondents' privacy. Respondents were not subjected to the research unless they agreed to it. Participation was voluntary, and people could refuse to divulge certain information about themselves. Direct written consent for participation was obtained from all respondents. Respondents were asked to sign a letter of consent (Appendix 1) and had the opportunity to withdraw from the study at any time. The parents of minor children signed the letters of consent on behalf of their children.

The consent was informed. Respondents were informed of the positive and negative aspects of the research, for example that the research might cause stress, discomfort or harm (Bless and Higson–Smith 1995:103). Informed consent becomes a necessary condition rather than a luxury or an impediment, according to Hakim (2000:143).

Anonymity and confidentiality were considered as far as possible. Names of respondents were changed to protect their identity. Information received was treated with confidentiality at all times. Data were only used for the purpose of this study. All possible means of protecting the privacy of respondents were applied, according to Strydom (2002:69).

Strydom (2002: 69) argues that researchers are ethically obliged to ensure that they are competent and adequately skilled to undertake the proposed investigation. When sensitive investigations are involved, this requirement is even more important.

The researcher was competent and skilled to undertake this study. She is a qualified social worker who specialised in child sexual abuse for more than nine years. The researcher did debriefing immediately after the interview in order to discuss the feelings and experiences of the respondent and also to minimise emotional harm. Termination and withdrawal were options for all participants, and referrals were done where necessary.

1.12 DEFINITION OF TERMS AND KEY CONCEPTS

For the qualitative researcher, concepts and constructs are meaningful words that can be analysed in their own right to gain a greater depth of understanding of a given concept (De Vos, 2002:31).

De Vos (2002:28) defines a concept as a category of perceptions or experiences. Concepts are labelled with words, and this allows the researcher to think about them and transfer them to other people. This is called the process of categorising and labelling conceptualisation. De Vos explains that a concept expresses an abstraction formed by generalisation from particulars that are usually similarities (De Vos, 2002:30).

Babbie and Mouton (2002:111) define” concept “ as a family of conceptions. A concept is a construct.

The researcher sees concepts as words that can stand on their own and still have meaning. One links the concepts with past experiences and knowledge.

1.12.1 Child

The definition of a **child** used by the United Nations Convention on the Rights of a Child (1989) describes a child as a person under the age of eighteen (18). The Namibian courts also adhere to this definition.

A child is a person under the age of 18 years, in terms of the Children’s Act, 1960 (Act 33 of 1960).

The researcher sees a **child** as a young person not older than 18 years of age, who needs the care and protection of an adult.

1.12.2 Witness

A witness is a person who comes to court and swears under oath to give truthful evidence. It is one who is sworn or affirmed, according to law. It is someone who deposes his knowledge of facts in issue between the parties in a case (Electronic Law Library).

One who furnishes evidence or proof; to give testimony; to testify to somebody who has direct cognisance of an event?

One who is called on to testify before a court (Meriam-Webster Dictionary of Law, 1996).

One who testifies in a case or gives evidence before a judicial tribunal (Webster’s Dictionary, 1996).

Someone who sees an event and states what happened (WordNet, 1997).

The researcher defines a **witness** as someone who saw or experienced something, and who must give detailed information on what happened, in a court of law.

1.12.3 Child abuse

The term **child abuse** refers to the violence, mistreatment or neglect that a child or an adolescent may experience while in the care of someone they either trust or depend on, such as a parent, a sibling, another relative, a care-giver or a guardian. Abuse may take place anywhere and may occur, for example, within the child's home or that of someone known to the child (Fact Sheet of Department of Justice, 2003:2).

The researcher is of the opinion that child abuse could be physical, emotional and psychological or neglect. It is when an adult in a caring position deliberately fails to meet the basic needs of a minor child.

1.12.4 Sexual abuse

The protocol document developed by the Institute for Child and Family Development and the Western Cape Child Abuse and Neglect Forum (1996:5) briefly outlines the working definition of sexual abuse as follows:

Sexual abuse is any act or acts which result in the exploitation of a child or young person, whether with their consent or not, for the purpose of sexual or erotic gratification. Adults, other children or young persons may perpetrate this. Sexual abuse may include, but is not restricted to, the following behaviour:

Sexual abuse and exploitation involves using a child for sexual purposes. Examples of child sexual abuse include fondling, inviting a child to touch or be touched sexually, intercourse, rape, incest, sodomy, exhibitionism, or involving a child in prostitution or pornography (Fact Sheet of Department of Justice, 2003:2).

Non-contact abuse: exhibitionism (flashing), voyeurism (peeping), suggestive behaviour or comments, exposure to pornographic materials, or producing visual depictions of such conduct.

Contact abuse: Genital/anal fondling, masturbation, oral sex, object or finger penetration of the anus/vagina, penile penetration of the anus/vagina, encouraging the child/young person to perform such acts on the perpetrator.

1.12.5 Child sexual abuse

Child sexual abuse is unique in its definition, as a traumatic experience in that a subtle process is often involved, which does not necessarily involve violent coercion, according to Lewis, (in Müller, 2000:115). The abuser uses tricks or bribes to lure the child into a sexual experience. Thus, the interaction between the adult and the child may seem innocent at first, with little physical contact. Once the abuser has developed this 'trusting' relationship with the child, the events may take on a more sexualised nature, with sexual intercourse being the final stage. This grooming process often confuses the child's feelings of having experienced an abusive event. Such confusion sets the foundation for what has been identified in research as the most complex reaction to a traumatic experience, according to Lewis (in Müller, 2000:114).

Child sexual abuse is defined as the involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not truly comprehend, and to which they are unable to give informed consent, which violate the social taboos of family roles (Glaser & Frosh, 1988:5).

The researcher's understanding of child sexual abuse entails an adult or peer who uses a child (boy or a girl) to satisfy his/her sexual needs. It could be non-contact or contact abuse. It can include fondling, masturbation, anal intercourse, vaginal penetration, pornography and exposure.

1.12.6 Criminal justice system

This refers to the entire network of government agencies charged with law enforcement, prosecution, trial and the punishment and supervision of those arrested for and/or convicted of having violated the criminal law (Electronic Law library).

The researcher defines the criminal justice system as the system dealing with all criminal offences, according to specific laws.

1.12.7 Judiciary

A system of courts of law for the administration of justice (Electronic Law library).

It is that branch of government in which judicial power is vested: the system of courts of justice (American Heritage Dictionary, 2000).

1.12 .8 Impact

- The effect of one thing on another
- Having an effect on or influencing strongly
- A forceful consequence (American Heritage Dictionary, 2000).

'Impact', as used in this study, and for the researcher, means effects on or the consequence it holds for the child witness.

1.13 RESEARCH REPORT LAYOUT

The Research Report was written in the following 6 chapters:

Chapter 1 Introduction	This chapter is a brief description of the subject of the study, the motivation for the choice of the study, problem formulation, the Specific research question, the research approach and research strategy. The researcher also offers the methodology that will address the research question and the aims and objectives of the study.
Chapter 2 The child as a witness	This chapter is a summary of the literature review that maps out the following main issues: <ul style="list-style-type: none">▪ The child witness.▪ Child development and its implications.▪ Microsystems affecting the child witness.▪ Crucial questions to consider when the witness is a child.▪ The dynamics of child sexual abuse.
Chapter 3 Namibia's legal framework	This chapter is a description of : <ul style="list-style-type: none">▪ The policy framework in Namibia▪ The criminal justice system.▪ Children and the legal system.▪ Advantages of testifying for children.
Chapter 4 The Gestalt Play Therapy Approach	This chapter outlines the Gestalt Therapy approach according to the Schoeman model. The term play was defined and the meaning of play was also discussed.

<p>Chapter 5 The research findings- The impact of the Namibian judiciary system on the sexually-abused child witness</p>	<p>This chapter is a description of the research methodology utilised by the researcher. It includes the description of the participants, the research design, the sampling plan and the data collection procedures. The data collection procedures are also presented</p> <p>This chapter also consists of the findings, including the analysis and interpretation of the data in tables and other forms of display. The researcher compares the findings of the study with the literature.</p>
<p>Chapter 6 Evaluation of aims and objectives, conclusions and recommendations for criminal justice professionals</p>	<p>This chapter presents the evaluation of the aims and objectives and a summary of the conclusions. Recommendations are made for criminal justice professionals on how to make court proceedings less traumatic for the sexually-abused child witness.</p>

1.14 SUMMARY

In this chapter the researcher included the description of the research that has been undertaken, a professional and personal motivation to justify this study.

A specific research question, the research approach and research strategy with the goal and objectives for this study were formulated to address the problem.

The viability of the study was discussed and motivated. The population, universe and sampling techniques were discussed. The researcher ended the chapter with the ethical aspects and definitions of the key concepts.

In order to have a better understanding of the child as a witness in the criminal process the researcher will focus on different interacting factors in the next chapter. Focus is placed on child development and its implications, the dynamics of child sexual abuse and Microsystems affecting the child witness.

CHAPTER 2

THE CHILD AS A WITNESS

2.1 INTRODUCTION

A child who has to testify in court as a witness to a criminal act brings with him an unpleasant experience be it of abuse, witnessing violence against another person, or family conflict. This experience can impact negatively on the child's development, behaviour and perception of his environment. These experiences have been labelled by the professional world as traumatic (Compare Müller, 2000:75; Hollely, 2000:113; & UNESCO, 2001:11).

When a witness is called upon to testify in court, his function is to provide the court with certain information that will enable it to come to a decision on the matter before it. A witness in the accusatorial system will be viewed as a source of information (Müller, 2000: 81).

Müller (2000:75) states that giving evidence in court is a stressful experience for a witness. He will have to give evidence in the presence of a group of people, previously unknown to him, often about embarrassing and intimate details. If he is the complainant in the matter, he has the further arduous task of having to give evidence in the presence of the accused. He is then cross-examined by the accuser's representative, or even worse, by the accused himself. The cross-examination is often hostile, is used as a tool to trip up the witness, even confuses him at times, and is finally employed to suggest to the court that the witness has some other motive to implicate the accused falsely. The setting of the courtroom is itself alien with the key figures wearing long black gowns. A procedure is followed that is not understood by the ordinary lay person and the language used is formalistic, at times archaic and much specialised.

There has been a growing concern about the effects on children of giving evidence in an adversarial environment. Many attorneys, mental health professionals and legal commentators claim that court involvement traumatises a child victim. Psychiatrists believe that psychological damage is caused not only by the abuse but also by being

forced to testify in an open court in the presence of the accused (compare Müller 2000:76; UNESCO, 2001:11).

2.2 THE CHILD WITNESS

2.2.1 Child development and its implications on child witnessing

It is important that those who work with child witnesses are familiar with the cognitive aspects of child development, and how these have bearing on the way children will give testimony. These aspects include the way in which children understand the concepts of time and distance, how they understand their emotions, and how they understand their relations to others at different ages. When obtaining evidence from a child witness of any age, therefore, it is crucial to take into account the following aspects of their cognitive development: (Compare UNESCO 2001:7 & Müller, 2000:181)

2.2.1.1 Cognitive development of children aged three to five

- The way children between the ages of three and five think is characterised as egocentric; that is, they are unable to understand another's viewpoint and, therefore, cannot explain how others view the same situation. For this reason, the interviewer should instead explain to the child that one needs to know what happened because one was not there.
- Children in this age group assume you know what they know. They will, for example, refer to people and places without explaining who or where they are.
- These children cannot answer "Why" questions and they will give illogical explanations.
- They see events as occurring one after the other, without any causative link between the events. For example, the child may relate the following events without seeing that one event led to the next: (Child) "I touched his penis." --- (Interviewer) "Then what happened?" --- (Child) "It got big."

- Children in this age group tend to fuse separate events. They might, therefore, relate different abusive incidents as one incident.
- They are unable to understand all types of relationships, e.g. that their grandmother is simultaneously their father's mother.
- They may confuse words such as he, her, him and me.
- They do not tend to tell a story sequentially, i.e. from beginning to end. The child might also begin the story in the middle of the sequence of events. The interviewer will, therefore, need to prompt the child with questions like "And what happened next?" (UNESCO 2001:8)

2.2.1.2 Cognitive development of children aged five to seven

- The thinking of children in this age group is still egocentric. They also assume the listener knows what they know.
- They are unable to distinguish between what they think and what they experience. They also assume the listener knows the difference.
- They are unable to understand "Why" or "How" questions.
- They are unable to recognise that the question "Who do you sleep with?" and "Who sleeps with you?" means the same thing.
- Children in this age group are unable to focus on or understand more than one question at a time.
- They will focus on certain parts of a question to the exclusion of others. For example, in the question "What did you see and hear?" the child may focus on the colour of a cup in the event but not the sound of the perpetrator's voice.
- Children in this age group cannot reason from the present to the future or from the present to the past (UNESCO 2001:8).

2.2.1.3 Cognitive development of children aged seven to twelve

- Because these children are capable of thinking logically, they can understand that because hurting someone is bad, people who hurt others are bad.
- They can understand that actions have consequences, e.g. “If I tell the police, my mother will go to jail.”
- These children also begin to understand how the kinship system works for example my grandmother = my father’s mother.
- Children in this age group begin to understand how long an hour, day or week is, but do not estimate time accurately.
- They begin to understand the serialisation of events and are able to list places or events, but they may require prompting to do so.
- Their communication is more organised and predictable: their stories will now have a beginning, middle and an end.

The above information shows that, if one asks a child a question that does not match his or her cognitive ability at the stage of development concerned, it may wrongly lead to the child being discredited as a witness and consequently, the acquittal of the perpetrator of the crime (UNESCO, 2001:9).

2.3 MICRO-SYSTEMS AFFECTING THE CHILD WITNESS

2.3.1 Child development

In the course of development children change physically, emotionally and intellectually as they progress through different stages. Child development is viewed as a progression through generally accepted milestones. It is, therefore, necessary to know what the developmental milestones are and to understand the general characteristics of each age period in order to determine a child's ability to supply information about events they have witnessed or experienced. As Gabarino and Stott (in Müller, 2000:201) explain, the more the knowledge one has of child development, the better prepared one is to identify effective ways of communicating with children.

2.3.2 Competence

A child's ability to provide accurate information depends on his ability to perceive, remember and communicate. In order to determine a child's competence, one will have to understand the basic processes of cognitive and language development Gabarino and Stott (in Müller, 2000:204). This will include an investigation into the development and accuracy of memory in children, including the ability to store a memory and retrieve it at a later stage. It is important as well to understand the development of language in children, so that questions can be framed in a manner understandable to the child. For instance, children develop the ability at a certain stage to understand concepts of time and place. In questioning a child, one needs to be aware of these stages so that question is not posed in a manner that is incomprehensible to the child.

The researcher is of the opinion that professionals must have adequate knowledge of the developmental needs of children to work effectively with child witnesses.

2.3.3 Children's perceptions

A child's ability to provide accurate information will depend on his feelings about being competent and how he reacts towards adults. Issues of self-esteem and coping may influence the way he communicates. A child may act in a particular way in an effort to cope with stress rather than to reflect what he is really feeling as quoted by Gabarino and Stott (in Müller, 2000: 256). A child who has a good sense of self will be in a better position to testify in court.

A child's perceptions of court proceedings and court personnel will have an effect on the child's ability to give effective evidence. Research has shown that children find a court appearance stressful. One of the sources of this stress has been traced to their lack of understanding of the trial procedure and what their role as a witness in this particular procedure would entail according to Flin et al (in Müller, 2000:286).

2.3.4 Credibility

The manner in which people and court personnel in particular, perceive the abilities of children can have a dramatic effect on a child's evidence. Evidence of these perceptions can be found in laws governing the testimony of children. The most obvious example of this would be the cautionary rule, which requires a presiding officer to warn himself against the dangers of convicting on the evidence of a child. Children have been viewed as inept and even described as "the most dangerous of all witnesses" Goodman (in Müller, 2000:281). Children have been accused of lying, not being able to distinguish between fact and fantasy and of being highly suggestible. An investigation of relevant research will have to be undertaken to determine whether children do tell lies more frequently than adults, whether they have the ability to distinguish between fantasy and reality, and whether they are more suggestible than adults.

2.3.5 Environment

A child witness has to give evidence in a particular court environment. It is possible for a child to give evidence in an open court or via closed-circuit television. In certain instances a court appearance is avoided and replaced with a videotaped deposition. (This has never happened in Namibia.) The various options available will have to be investigated to determine which setting will enable the child witness to give evidence effectively while at the same time protecting the accused. A further issue to be addressed is whether proceedings involving child witnesses should be open to the public or whether they should be held in camera. In Namibia all cases involving sexual abuse, are held in camera and are not open for the public.

2.3.6 Personnel

According to Gabarino and Stott (in Müller, 2000:257) a child witness is forced to come into contact with a number of personnel involved in the criminal justice system. These include police, prosecutors, defence attorneys and judges. The professional role as well as the motives, attitudes and expectations of personnel will have a great influence on the nature of the information obtained from the child. For instance, if an adult has a preconceived idea of what he is looking for, he will 'find' evidence that confirms his own bias.

Personnel involved in the criminal justice systems must be trained in appropriate techniques of eliciting evidence from children. An obvious example would be the training of police in interviewing techniques that are appropriate to children and which, at the same time, are legally acceptable Gabarino and Stott (in Müller,2000:257).

2.4 CRUCIAL QUESTIONS TO CONSIDER WHEN THE WITNESS IS A CHILD

Müller (2000:183) states: Where the witness is a child, a number of crucial questions arise:

- Do children have the ability to remember and relate an event accurately?
- Are children prone to suggestion and fantasy?
- What effect, if any, does the court environment have on a child's ability to convey information?
- What perceptions do children have about the legal process, and how do these perceptions affect their ability to testify?
- Do adults influence the information which children impart by the techniques they employ to obtain such information.

2.5 CHILD SEXUAL ABUSE

Sexual abuse is a particularly brutal form of domestic violence. It involves sexual assault, rape, attempted rape, sodomy and genital mutilation. These acts take place against the will and without the consent of the survivor (LeBeau, 1997:11). Typical acts of sexual abuse are reported as being forced to have sexual intercourse and excessive demands.

Sexual abuse is any act or acts which result in the exploitation of a child or young person whether with consent or not, for the purposes of sexual or erotic gratification. This may be perpetrated by adults or other children or young persons (Hollely, 2000: 155).

Sexual abuse is not limited merely to sexual penetration, but constitutes acts such as exposing a child to pornographic material, teaching the child to masturbate, touching a child or forcing a child to touch the abuser's sexual parts with the intent of arousing his sexual desires, exhibitionism, making suggestive sexual remarks to a child, fondling a

child's body or private parts and anal, oral or vaginal intercourse (rape) (Gschend-Bosch, 2000: 185).

Sexual abuse involves any sexual activity with a child where consent is not or cannot be given. This includes sexual contact that is accomplished by force or threat of force, regardless of the age of the participants, and all sexual contact between an adult and a child, regardless of whether there is deception or the child understands the sexual nature of the activity (Buchanan, [Sa]: 5).

Rape is a crime of violence. The new Combating of Rape Act, Act 8 of 2000, for the first time in Namibia recognises that boys and men can also be raped. Rape occurs in a variety of situations. According to law there are two different types of rape, forcible rape and statutory rape. Forcible rape is where one person uses force or the threat of force to attempt or to have sex with another person against his or her will. Statutory rape is where an individual has sex with someone who is under the legal age of consent. Only forcible rape will be addressed due to its high incidence rates in Namibia and the associated violence implied. Rape is commonly believed to be a common problem in Namibia, and the most underreported form of violence against women (LeBeau, 1997:18).

Adding to the problem of rape in Namibia is the increase in reported cases of the rape of children, some as young as seventeen (17) months of age. Many of the victims know and trust the perpetrator (or perpetrators) prior to the rape. The most common perpetrators of child rape are family members such as fathers, uncles and brothers. "Sometimes it happens between the father and his own daughter because he says he is not raising all his girls for other men." (LeBeau, 1997:17).

Family friends, trusted by the family and known to the child, are also guilty of rape (Le Beau, 1997:18). In the majority of child rape cases, violence or the threat of violence is ever present.

Child rape is a disturbing fact of contemporary Namibian life and it seems as though there has been an increasing number of cases in recent years. The age and circumstances of child rape survivors vary considerably. Most child rapes have the aspect of violence and/or threats of violence.

2.5.1 The Definition of Child Sexual Abuse

Kempe and Kempe (in Hollely, 2000:115) see child sexual abuse as the involvement of dependent, developmentally immature children and adolescents in sexual activities which they do not fully comprehend, are unable to give informed consent to and that violate social taboos of family roles.

Child sexual abuse includes sexual activity ranging from non-violent, non-forcible and touching offences such as fondling and intercourse. Sexual abuse often starts with a long process where harmless touching gradually crosses the line to sexual touching (Lown, 2001:2).

Child sexual abuse is a sexual act imposed on a child who lacks emotional, maturational and cognitive development. The ability to lure a child into a sexual relationship is based upon the all-powerful and dominant position of the adult or older adolescent perpetrator, which is in sharp contrast to the child's age, dependency and subordinate position. Authority and power enable the perpetrator, implicitly or directly, to coerce the child into sexual compliance according to Calder (in Bottoms and Goodman, 1996:89).

Child sexual abuse is unique in its definition as a traumatic experience in that there is often a subtle process involved that does not necessarily involve violent coercion. The abuser uses tricks or bribes to lure the child into a sexual experience. The interaction between the adult and the child may seem innocent at first with little physical contact (Hollely, 2000:114).

Hollely (2000:114) continues that this grooming process often confuses the child's feelings of having experienced an abusive event. This confusion sets the foundation for what research has identified as the most complex reaction to a traumatic experience.

World Health Organisation's definition of sexual violence (2002) is that child sexual abuse encompasses a range of acts including coerced sex, incest, date rape, virginity

testing, forced marriage, sexual harassment and involvement in prostitution and pornography.

Buchanan ([Sa]: 5) state, "A child (anyone under 16 years) is sexually abused when another person, who is sexually mature, involves the child in any activity which the other person expects to lead to their sexual arousal. This might involve intercourse, touching, exposure of the sexual organs, showing pornographic material or talking about abuse in an erotic way."

2.5.2 The varieties of abuse according to Buchanan ([Sa]: 5)

- Touching, fondling or licking of genitals or breasts.
- Masturbation of child by adult, or adult by child; or of adult by himself in the presence of the child.
- Body contact with the adult's genitals, including rubbing or simulated intercourse by the adult against or between thighs, buttocks or elsewhere.
- Heterosexual or homosexual intercourse with actual or attempted vaginal, anal or oral penetration.
- Exhibitionism (the display of genitals).
- Involvement in prostitution, male or female.
- Other varieties of sexual exploitation. (For example, a man punished his daughter for a trivial offence by beating her bare bottom with a slipper, then turned her over and looked at her genitals.)

2.5.3 Circumstances of child sexual abuse

The most common groups of sexual abusers of children are male relatives, boyfriends and acquaintances and people in a position of power, notably teachers. Stranger rape is recognised but much less common. Sexual harassment in schools by teachers and fellow-learners has been recognised as an important problem throughout the region. Date rape is undoubtedly the most common form of severe sexual violence experienced by girls, in particular high levels of forced sexual initiation (fifteen to thirty percent) have been reported (LeBeau, 1997:18).

Abuse can take place in the following circumstances or places:

- Intra-familial abuse, by a relative, step-parent or cohabitee.
- Abuse by someone outside the family circle but known to the child:
- In or near the home (neighbour, acquaintance, lodger, baby-sitter, friend of mother or father).
- Away from the home. Someone met through school, church or other activities, including perhaps doctor or youth leader.
- Stranger abuse, by someone not previously known to the child (Buchanan, [Sa]: 6).

2.5.4 Reporting child sexual abuse

Much child sexual abuse is not reported to adults or the authorities according to LeBeau (1997:18). Barriers include fear of not being believed, of being blamed, shame, fear of the legal processes, of revictimisation or of the abuser, anticipated futility of court action. Many professionals are reluctant to get involved.

2.5.5 Perpetrators / abusers

According to Buchanan ([Sa]: 6) most abusers are males. Only a small proportion, perhaps five percent, is female. In most instances, roughly seventy-five of male offenders are relatives, cohabitees of the child's mother or persons known to the child. Male relatives are commonly fathers, stepfathers, grandfathers, uncles or brothers. Abusers can be any age, from children under 10 years up to the eighties. They are present in all social classes.

Rapists are mostly known to the survivors. The rapist can be an acquaintance, ex-boyfriend, father, uncle, teacher, doctor or husband. Rape often happens in the dating situation. Many children are raped in incest by some relative before they reach the age of 15. Of late there has also been an increase of women in Namibia being raped by strangers (LeBeau, 1997:18).

2.5.6 Harmful effects of Child Sexual Abuse

Sexual abuse has immediate short-term effects as well as long-term effects that may last into adulthood. Not all sexually-abused children show outward symptoms of harm or distress, but the majority do manifest symptoms.

The experience of sexual abuse can be analysed in terms of four trauma-causing factors, or what are called traumagenic dynamics – traumatic sexualisation, betrayal, powerlessness and stigmatisation.

The conjunction of these four dynamics in one set of circumstances is what makes the trauma of sexual abuse unique.

These dynamics alter the child's cognitive and emotional orientation to the world, and create trauma by distorting a child's self-concept, worldview and affective capacities. For example, the dynamic of stigmatisation distorts children's sense of their own value and worth. The dynamic of powerlessness distorts children's sense of their ability to control their lives.

Traumatic sexualisation refers to a process in which a child's sexuality (including both sexual feelings and sexual attitudes) is shaped in a developmentally inappropriate and interpersonally dysfunctional fashion as a result of the sexual abuse.

Betrayal refers to the dynamic in which children discover that someone on whom they are vitally dependent has caused them harm.

Powerlessness – or what might also be called “disempowerment”, the dynamic of rendering the victim powerless – refers to the process in which the child's will, desires, and sense of efficacy are continually contravened.

Stigmatisation, the final dynamic, refers to the negative connotations, e.g. badness, shame and guilt, that are communicated to the child about his experiences and that then become incorporated in his self-image. These negative meanings are communicated in many ways. They can come directly from the abuser, who may blame

the victim for the activity, demean the victim, or furtively convey a sense of shame about the behaviour.

Understanding these dynamics – traumatic sexualisation, betrayal, powerlessness and stigmatisation – helps to understand why sexual abuse has such a powerful negative effect on many children.

2.5.6.1 Short-term effects of sexual abuse

The immediate or short-term effects of sexual abuse vary from child to child, although certain symptoms are seen in many victims.

Anxiety. Anxiety is a state of heightened emotional arousal. The child's anxiety leads to many of the symptoms described below.

Fear. Men who sexually abuse children often threaten them too. Every threat you can imagine has been made to keep children quiet. The fear induced by threats is responsible for much of the child's anxiety.

Nightmares and sleep problems. Many sexually abused children have nightmares. Sometimes the nightmares are terrifying re-enactments of the abuse.

Acting out and general misbehaviour. All children misbehave, of course, but many sexually-abused children are seriously distressed and their unhappiness can lead to acting out and misbehaviour at home and school.

Withdrawal. Whereas some children act out, others withdraw into a shell. A seven-year-old who is normally happy-go-lucky and outgoing may become withdrawn and sullen.

Regression. It is called regression when a child reverts to an earlier stage of development.

Poor self-concept. Many abused children think the abuse was their fault and that they are bad, dirty, worthless or "damaged goods".

Depression. Sexual abuse makes children sad. Clinical depression, however, goes beyond transitory sadness and is a serious psychiatric problem.

Inappropriate sexual behaviour. Sexually-abused children have experienced inappropriate sexual acts – “traumatic sexualisation”. It is not surprising that some sexually-abused children demonstrate developmentally inappropriate sexual behaviour with other children or adults.

Post-traumatic stress disorder. Roughly half of all sexually-abused children develop some or all of the symptoms of post-traumatic stress disorder (PTSD).

Child sexual abuse causes short-term psychological symptoms in many children. Symptoms vary from child to child, depending on the kind of abuse, the child’s coping style, and the presence or absence of maternal support. Symptoms may last days, months or years. Moreover, symptoms may abate temporarily only to reappear later on. Whatever the child’s reaction, and even if the child seems fine, it is recommended that parents obtain professional mental health services for their child. Therapy is discussed later in this chapter.

2.5.6.2 Long-term effects of child sexual abuse

According to Holder (1999:3), sexual abuse has a significant impact both on individual children and on the overall safety and well-being of communities.

Holder (1999:3) continues that children who are victims of sexual abuse are at an increased risk for delinquency, adult criminality and violent behaviour. It also places children at significant risk for substance abuse, mental illness and suicide. Intervening in the lives of victimised children before negative patterns of behaviour, low self-esteem and damaged character are established, may be the only real opportunity to prevent future violence in our streets and in our homes.

Physical signs according to Buchanan ([Sa]: 10) are:

Injury: vulval or anal soreness, laceration, bruising, bleeding or discharge.

Infection: sexually transmitted diseases such as gonorrhoea (of throat or genitals), public lice, thrush, trichomonas infection, genital warts, herpes or syphilis. Even AIDS is not impossible.

Pregnancy

Other disorders: recurring urinary infection, faecal soiling or relapse of enuresis. (Be careful about suspecting sex abuse because of one of these on its own.)

Signs of failure to thrive, neglect, deprivation or physical injury may be found because other cruelties can co-exist with sex abuse.

Behavioural signs (especially changes in behaviour)

- Insecurity.
- Fear of men.
- Sleep disorders.
- Mood changes, tantrums, aggression at home.
- Anxiety, despair, withdrawal, secretiveness.
- Poor peer relationships.
- Lies, stealing, arson.
- School failure.
- Eating disorders: anorexia, compulsive over-eating.
- Running away, truancy.
- Suicide attempts, self-poisoning, self-mutilation.
- Abuse of drugs, solvents, alcohol.
- Unexplained money.

Sexualised behaviour:

- Drawings with a sexual content.
- Knowledge of adult sexual behaviour shown in speech, play or drawing
- Apparent sexual approaches.
- Promiscuity (Buchanan, [Sa]: 10).

Effects on the feelings of the child

Guilt, shame and anger with the abuser and with whoever failed to protect the child. There is a feeling of being abandoned, helpless and entrapped by the inability to tell or escape the abuse. Poor self-esteem and a sense of worthlessness are common. The ability to trust and to find pleasure in ordinary living is impaired and it can be hard for victims to develop good relationships with people, especially men. Their sexuality is often damaged, leading to inhibited responses or sometimes to promiscuity (Buchanan, [Sa]: 11).

2.5.6.3 Symptoms of child sexual abuse

Sexual abuse is a very traumatic experience. Children who have been sexually abused will, therefore, show symptoms of that trauma. It is important for those who work or interact with such children to recognise these symptoms (UNESCO, 2001:11).

Sexually-abused children have low self-esteem and see themselves as defenceless, worthless, and guilty, at risk and threatened. Since sexual abuse is an act of power over a vulnerable victim, these children become powerless to fight the abuse and remain trapped: unable to say, do or think of anything to stop the abuse. They show extreme anger and hostility to those who are nice or close to them – instead of to the offender. This is because they are rarely able to express their anger towards the offender; the anger is often misplaced and becomes evident in other relationships or behaviour (Compare UNESCO, 2001:11 & Hollely, 2000; 115).

Due to their inability to express appropriate feelings about the abuse these children may become depressed, showing signs of emotional constriction and bland behaviour. They often experience intense feelings of guilt and shame, since they blame themselves for the abuse. They also experience an extreme fear of separation, of abandonment and of physical hurt. Because they have been betrayed by an adult, these children have a limited ability to trust others. They may shut themselves off from contact with others in order to try and deal with the situation. This dissociation often leads to a fragmented self-concept, periods of amnesia, multiple personality disorder or borderline psychosis. They may even act out inappropriate sexualised behaviour by repeating the actions on themselves or on others, either as an attempt to show others what they know or to undo their own sense of helplessness. If they do not get appropriate help these children

project their angry feelings onto themselves by behaviour such as self-mutilation, substance abuse, promiscuity and attempts at suicide (UNESCO, 2001:11).

Those abused by a close family member tend to take on the responsibilities of adults within their home in an attempt to protect others. They might also find it difficult to relate to their peers because they may either have regressed in development, or developed beyond their years (UNESCO, 2001:11).

2.6 SUMMARY

It is impossible to view the child witness in isolation. All the systems are interlinked and a holistic approach is needed to understand the child as a participant in the criminal process. The researcher described child development, child sexual abuse and other Microsystems in this chapter as factors influencing the child as a witness.

The researcher will give an overview of the legal framework and the criminal justice system in Namibia.

CHAPTER 3

THE LEGAL FRAMEWORK IN NAMIBIA

3.1 INTRODUCTION

In this chapter focus will be placed on the legal framework in Namibia, the criminal justice system, the child and the legal system, advantages of testifying for children.

3.2 LEGAL FRAMEWORK IN NAMIBIA

3.2.1 The Namibian Constitution

The Namibian Constitution enshrines the fundamental human rights and freedoms of the individual and protects the individual from discrimination on the basis of sex. It also guarantees a fair trial, equality of all persons before the law and the respect for human dignity during judicial procedures.

In addition, Article 144 of the Constitution states clearly that international agreements binding upon Namibia shall form part of the law of Namibia. To date the Namibian Government has ratified several agreements and conventions pertaining to gender equality, the elimination of violence against women and the protection of the rights of children. These protocols include

- the United Nations (UN) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),
- the UN Convention on the Rights of the Child,
- the Beijing Declaration and Platform of Action, and
- the Southern African Development Community (SADC) Gender and Development Declaration (UNESCO,2001:3).

3.2.2 The UN Convention on the Elimination of all Forms of Discrimination against Women

CEDAW requires the State to undertake to amend or abolish any existing laws, regulations, customs and practices which are discriminatory to women. It also calls for the State to repeal all national penal provisions that discriminate against women (UNESCO, 2001:3).

3.2.3 The Beijing Declaration and Platform of Action

In 1995 in Beijing, China, delegates at the Fourth World Conference on Women identified violence against women as one of the ten critical areas of concern. The delegates therefore drew up and the majority adopted a Platform of Action, which requires the enactment and reinforcement of domestic legislation to punish and redress violence against women and girls in the home, at the workplace, in the community or in society at large. In addition, it recommends the regular review and analysis of domestic legislation in order to ensure that women and girls who are victims of violence are and continue to be effectively protected, and that they have access to the justice system, with effective remedies such as compensation, indemnification, healing therapies and with information on their rights in seeking redress. It also calls for the creation of a safe and confidential environment where women and girls can report and file charges of violence against them without fear of retaliation (UNESCO, 2001:4).

The Platform of Action also requires that measures be taken to increase knowledge and understanding of the causes, nature, consequences and mechanisms of gender-based violence. Such measures, e.g. in the form of projects or programmes, are required to be funded, developed, implemented and constantly improved. The target group for these measures are judicial, legal, medical, social, educational, law-enforcement and immigration office personnel. The aim is to sensitise the target groups as regards the nature of gender-based violence, in order to ensure that the women victims of violence are not subjected to gender-insensitive laws or judicial or enforcement practices (UNESCO, 2001:4).

3.2.4 The SADC declaration on gender and development

By signing the SADC Declaration on Gender and Development in Mauritius in 1998, which included an addendum on the prevention and eradication of violence against women and children, SADC Heads of State committed themselves to the prevention and eradication of such violence. The addendum to the SADC Declaration contains a resolution by Heads of State to enact legislation pertaining to, for example, sexual offences and domestic violence. Such laws are intended to clearly define various forms of violence against women as crimes, and are to provide clear measures for associated penalties, punishment and other enforcement mechanisms (UNESCO.2001:4).

The relevant addendum also commits SADC Heads of State to review all criminal laws and procedures applicable to cases of sexual offences in order to eliminate gender bias and ensure justice and fairness to both the victim and the accused. The committed parties further resolved to ensure that the legal and administrative mechanisms to protect women and children subjected to violence were implemented, and that effective access to counselling, restitution, reparation and other forms of dispute resolution was available to them (UNESCO.2001:4).

The addendum also commits the signatories to ensure accessible, effective and responsive police, prosecutorial, health, social welfare and legal services to establish specialised units to redress cases of violence against women and children and to introduce and promote gender sensitisation and training of all service providers engaged in the administration of justice, such as judicial officers, prosecutors, police officers, welfare officers and prison and health officials (UNESCO, 2001: 4).

3.2.5 The National Gender Policy

In 1997 the Namibian Government launched the National Gender Policy. This policy outlines the framework of, and sets out the principles for, implementing, coordinating and monitoring gender-sensitive issues. Amongst other things, the policy identifies violence against women and children as an area of concern and outlines strategies to address such violence (UNESCO, 2001:5).

3.2.6 The Combating of Rape Act (Act 8 of 2000)

The Combating of Rape Act, which came into effect in Namibia in June 2000, treats rape as a serious crime. The act provides for the victim to be consulted and informed about the perpetrator's bail application so that the complainant can provide any further relevant information for the bail application proceedings. The law also provides for increased privacy for the rape victim, and prevents the complainant's sexual reputation, conduct or experience from being used as evidence or during questioning in court.

3.2.7 The Criminal Procedures Amendments Act (Act 51 of 1977)

Section 158A of Act 51 of 1977, Special Arrangements for Vulnerable Witnesses (UNESCO, 2001:5).

Recent amendments were made to the Criminal Procedures Act, 51 of 1977, so as to provide for the making of special arrangements for vulnerable witnesses. The following provisions are now available for vulnerable witnesses:

- The relocation of the trial to another location while the evidence of the vulnerable witness is being heard. Alternative venues can be used for trials, so that they can be held in environments which are less intimidating than courtrooms.
- The rearrangement of the furniture in a courtroom or the removal or addition of furniture or objects from or to the courtroom, or a direction that certain persons sit or stand at certain locations in the courtroom.
- The granting of permission to any person who is fit to accompany the witness while he or she is giving evidence (a support person).
- The granting of permission to the witness to give evidence behind a screen or in another room which is connected to the courtroom by means of closed-circuit television, a one-way mirror or any other device or method.

- The taking of any other steps that in the opinion of the court are expedient and desirable in order to facilitate the giving of evidence by the vulnerable witness concerned.
- There are strict limitations on the use of irrelevant cross-examination to badger witnesses.
- Cross-examination should be through the presiding officer or an intermediary, to make sure that lawyers do not try to intimidate or confuse the vulnerable witness.
- There are more possibilities for using information given by a young child prior to the trial, such as statements to social workers or police officers, to avoid the necessity of asking the child to repeatedly recount the details of a traumatic experience. (Criminal Procedures Amendments Act, No. 51 of 1977) Amendment No. 24).

3.3 THE CRIMINAL JUSTICE SYSTEM

The criminal justice system plays an important role in protecting children from sexual abuse.

3.3.1 The adversarial legal system

In the adversary system, the two sides of a lawsuit – plaintiff and defendant – are legal adversaries who “fight it out” in court. The theory of the adversary system is that the best way to arrive at the truth is to provide each party an opportunity to give its version of the facts – its side of the story – to an impartial judge or jury (Compare UNESCO, 2001:5 & Müller, 2000:2).

Many parents, psychologists, social workers and doctors are a bit put off by the

adversary system. “Aren’t there less hostile and adversarial ways to resolve disagreements, particularly disagreements involving children?” (UNESCO, 2001:5).

3.3.2 The Namibian Legal System

The Namibian court system is based on an accusatorial system, which means that the process is based on confrontation between two parties: the complainant and the accused. The two parties state their case before a neutral judge or presiding officer, who makes a judgement based on the evidence presented by the parties when they give evidence or during cross-examination. The judge also ensures that the two parties adhere to the rules and procedures of the court (UNESCO, 2001:5).

In Namibia, the victim of a sexual offence is expected to give evidence in court and to be cross-examined. The two parties confront each other and their witnesses during the trial. This means that the victim comes face-to-face with the accused, i.e. shares the same courtroom with the accused. This practice can be construed as intimidating for the victim (UNESCO, 2001:5).

3.3.3 The Namibian institutions dealing with violence against women and children

Women and Child Protection Units in Namibia

The Government in Namibia has taken various steps to reduce the stress on child witnesses in the course of an investigation of crimes against children. Since several professionals and agencies may need to participate in the investigation of the offence, a child may be subjected to repeated questioning by many different officials.

In an effort to reduce or eliminate the need for multiple interviews, the Women and Child Protection Units were established. Currently, there are fifteen such units in all thirteen regions in Namibia. These units are child-friendly facilities that bring together a variety of services for child witnesses and coordinate investigations of abuse between agencies. (UNESCO, 2001:6).

3.3.4 Procedural and practical problems in the criminal justice system

Some aspects of the criminal justice system are widely acknowledged to lead to further victimisation of children who have been sexually abused. The Law Reform Commission has dealt with many of these aspects. However, there is still no guarantee that these

reforms will be effectively implemented (Compare UNESCO, 2001:6 & the Law Reform and Development Commission Report, 1997:79).

Law reform is an idealised concept which relies on the role-players and processes of implementation in the criminal justice system to be effective. The problems with the present system must not be allowed to perpetuate into whatever new system is developed as this would nullify the value of the law reform process. We need to ensure a systematic change of work method and ethics in order to ensure a criminal justice culture that is sensitive to child victims of sexual abuse (Compare Law Reform and Development Commission Report, 1997:78 & UNESCO, 2001:6).

The Namibian Police Services, the National Prosecuting Authority, social welfare services, medico-legal services and civil society need to be coordinated in a manner that will lead to the proper and expeditious management of the investigation and prosecution of child sexual offences. Policy documents, protocols and guidelines are currently available, but none of these are consistently implemented. One of the main reasons for this is that these documents are not legally enforceable and there is no accountability for non-implementation. A coherent, multidisciplinary system needs to be established with clearly enforceable guidelines or protocols governing the management of child victims of sexual abuse and the prosecution of offenders (UNESCO, 2001:6).

Our system is currently adversarial, with little or no involvement in the case by presiding officers. It is arguable that greater powers of intervention by a presiding officer can afford victims, especially children, greater means of protection than the present 'hands-off' approach that our adversarial system offers (UNESCO, 2001:6).

3.4 CHILDREN AND THE LEGAL SYSTEM

3.4.1 Children's perceptions of court procedures

Children's perceptions about court procedures and court officials have an impact on how they give evidence: If children's perceptions are negative, they will tend to be stressed and this could interfere with their testimony. Not understanding the judicial process also leads to fear and stress. Research has shown that stress in children causes them to recall things incorrectly, confuse events and details, forget essential

information, and be less motivated to remember details and, consequently, lose credibility in court (UNESCO, 2001:11). Müller (2000:44) are also stating that children find the court process traumatic and do not produce accurate evidence. According to Perry and Wrightsman (1991:156) the truthful testimony of a child witness is influenced by the threatening appearance of the courtroom.

Research also shows that children know very little about court procedures and have very negative perceptions about courts (Compare Müller, 2000:293 & UNESCO, 2001:11).

3.4.2 The impact of the accusatorial system on children

The accusatorial legal system that pertains to Namibia and Southern Africa in general has considerable implications for child witnesses. Children are clearly traumatised by their perceptions of the legal set-up. Giving oral evidence in court traumatises children and leads to their giving inaccurate information. By the time a child comes to court to give evidence, several people (the social worker, the therapist, the public prosecutor, and the police) would already have interviewed him or her. This alone can cause stress in the child, besides leading to his committing new information to memory (for example new vocabulary). It could also cause children to become uncooperative and unmotivated because they have repeated their story so many times (Compare UNESCO, 2001:12 & Müller, 2000:2).

The accusatorial system requires that the trial be public, and that both the accused and the complainant be present. This means that the victim comes face-to-face with the accused. Having to give evidence in the presence of the accused means that children are stressed and thus they provide less accurate information.

Moreover, this type of legal system is characterised by court delays between the event and the trial. Delays cause children to forget facts, thereby decreasing the quality of their evidence. The delays also mean that the child does not receive therapy (if this is only provided after evidence has been given) or it may interfere with evidence.

The accusatorial system uses cross-examination as a means of questioning, which involves complex language and many leading questions. Because children do not

understand leading questions, cross-questioning is likely to let them give inaccurate information.

Cross-examination also causes stress, making children confused and unwilling to cooperate (UNESCO, 2001:13;Müller, 2000:42 and Perry and Wrightsman, 1991:181).

3.4.2.1 The effects of the accusatorial system on the child witness

According to Müller (2000:75) the traditional courtroom procedures act against eliciting complete evidence from children. The accusatorial system of procedure gives rise to two serious problems if the witness is a child. Firstly, this system of procedure results in trauma for children and secondly, it affects the accuracy of a child's evidence.

It has always been a basic principle of the South African criminal procedure (also used in Namibia), that accusations had to be made face-to-face. This principle is contained in Section 158 of the Criminal Procedure Amendments Act, No. 51 of 1977.

The right of an accused to confrontation has the implication that any child, who testifies against such an accused, must do so in the presence of the accused. This creates immense difficulties for children who will, in most cases, be forced to testify in the very presence of those persons who assaulted them. In addition to the stress induced by the physical confrontation, children will also be required to relate their evidence in a formal courtroom which will be to anything they have experienced thus far (Müller, 2000:76).

Children find it upsetting to talk about traumatic events. As they talk about it, children may "relive" the abuse and feel the associated emotions again. This is particularly true of younger children. Professionals should be sensitive to the potential impact of this "re-emergence" into the details of the crime. This "re-living" of the abuse may intensify the victim's trauma and generate behaviour that poses additional barriers to successful investigation and prosecution.

3.4.3 Court-related matters that are stressful for children

- Multiple interviews and not using developmentally appropriate language.
- Delays and continuations.
- Testifying more than once.
- Lack of communication between professionals.
- Fear of public exposure.
- Lack of understanding of complex legal procedures.
- Face-to-face contact with the defendant.
- Practices that are insensitive to developmental need.
- Harsh cross-examination.
- Lack of adequate support and victim services.
- Sequestration of witnesses who may be supportive to the child.
- Placement that exposes the child to intimidation, pressure, or continued abuse.
- Inadequate preparation for testifying.
- Lack of evidence other than the testimony of the child (Holder, 1999:8).

3.4.4 Face-to-face contact with the accused

Since the accused is entitled to be present in court at his trial, the traditional approach has been to let child witnesses give evidence in court in the presence of the accused (SA Law Commission 1989:4). This has created untold difficulties for the child who has, in most cases, to be faced with the very person who assaulted him or whom he witnessed assaulting another. In addition to this, the child has to tell his story in a formal courtroom which will be alien to anything he has thus far experienced (Müller, 2000:65).

Key (in Müller, 2000:43) refers to a case where a twelve-year-old boy had been sodomised by his father over a protracted period of time. As far as confrontation was concerned, Key had the following to say:

“Throughout the hearing the boy demonstrated signs of severe anxiety. He held his hand against his face to blinker out the sight of his father. When asked why he was so upset he said that his father had, on numerous occasions, produced a knife and threatened to kill him if he ever told anyone about what his father had done to him.”

In 1989 the SA Law Commission produced a working paper, entitled *Protection of the Child Witness*, which focused on the position of the abused child as a witness in court. The Commission (1989:3) accepted that courtrooms are alien and severe in appearance, thereby creating a forbidding experience for witnesses. They further accepted that the juxtaposition of the presiding officer, the accused and his legal representative as well as the prosecutor in the courtroom clad in black robes, caused a child to become “afraid, uncertain and confused” (SA Law Commission, 1989:14).

3.4.5 Effects of cross-examination

Key (in Müller, 2000:42) Perhaps the most serious complaint that can be levelled against the accusatorial system is the importance accorded to cross-examination, and the inability of children to deal with it (Müller,2000:42).

Hammond and Hammond (in Müller, 2000:42) state in their report on research carried out on child witnesses, emphasise that in the course of their work they “heard time and again from people who have been called to court in their professional capacities (policeman, paediatricians, social workers and others), of the horrors of observing a child witness under cross-examination”. They are of the opinion that the child’s credibility is deliberately broken down in the course of cross-examination which is designed to confuse and upset.

Cross-examination is stressful for witnesses, and even more so for children. The stress is induced not only by having to give evidence in court but also by the fact that the child will be called upon to reveal very intimate details. It is also alleged that cross-examination, in so far as child witnesses are concerned, does not produce accurate evidence. The medium of exchange in the courtroom is a particular form of language so steeped in legal traditional that it falls outside the normal language repertoire of adults and, even more so, of children (Müller, 2000:44 & Perry and Wrigthsman, 1991:152).

In addition, a number of techniques employed in cross-examination give rise to serious difficulties with comprehension for the child witness (Müller, 2000:44). These would include the use of leading questions, hypothetical questions, age-inappropriate vocabulary, complex syntax, general ambiguity and a focus on peripheral detail. Many children, therefore, experience difficulties with communication.

3.4.6 Court delays

According to Müller (2000:90) the insistence that a witness must give oral evidence at the trial has the practical effect that there will be a long delay between the event and the trial. The existence of these delays is well documented in most countries. In Namibia delays of up to eight years can occur.

This long delay between the event and the trial raises two major issues for child witnesses: firstly, there is the question whether the child should be allowed to receive therapy in the intervening period, and, secondly, there is the danger that the child's memory may be affected by the long delay (Müller, 2000:91).

3.4.7 Continuances

The court shall grant the delay or continuance only for substantial reasons, and the court shall consider and give weight to the adverse impact the delay or continuance may have on the well-being of the child (Müller, 2000:91).

3.4.8 Docket priority

The court shall give docket priority to any criminal case involving a child victim. The court and the prosecutor shall take appropriate steps to ensure a speedy trial in order to minimise the length of time that the child must endure the stress of involvement in the proceedings (Müller, 2000:91).

3.4.9 Multiple interviews

Müller (2000:101) states that the procedures adopted in the criminal justice system require that a complainant will have to undergo multiple interviews before finally testifying in court.

Undergoing multiple interviews has the following effects:

- The child is forced to repeat the details of very intimate and embarrassing experiences to strangers again and again, thereby increasing the stress he is already experiencing.
- Since a memory of an event is not static and can be affected every time the event is discussed, there is the danger that multiple interviews will have an effect on the original account.
- The danger of suggestion increases with every interview.
- Where a child has been forced to repeat his story again and again, the evidence begins to sound rehearsed and he acquires the terminology of his interviewers. This creates the impression in court that the child has been coached.
- A further danger pointed out by Müller (2000: 103) is that repeated interviews can diminish the child's motivation and co-operation.

3.4.10 Difficulties when testifying in an accusatorial system of justice.

Child witnesses experience a number of difficulties with testifying in the Namibian accusatorial system of justice. Hollely (2000:324) summarise these difficulties as follows:

- The highly specialised nature of the language used in court, coupled with age-inappropriate vocabulary and complex syntax, limits the child's ability to respond with an adequate testimony.
- The child witness's limited ability to use memory strategies necessitates preparation to equip him with retrieval skills to enhance the accuracy of his evidence.
- A child's performance in court is closely linked to fears experienced by that individual child regarding giving evidence and any related traumatic symptomologies.

- Child witnesses seldom understand the procedures involved in giving evidence, the roles of the court personnel and the child's own role within this legal framework (Müller , 2000:78).

3.4.11 Legal professionals' bias towards child witnesses

The perceptions of presiding officers and prosecutors with regard to children's credibility as witnesses influence the evaluation of evidence given by children (Compare UNESCO, 2001:13 & Müller, 2000:264).

If these legal practitioners believe children are untrustworthy and unreliable, they will either withdraw the case or put less store by a child's testimony. Research shows that, when it comes to formulating judgments, less weight is given to a child's testimony, despite its being credible, than to an adult's (Compare UNESCO, 2001:14 & Perry and Wrigthsman, 1991: 107).

It is imperative that professionals who work with sexually-abused children are appropriately trained, particularly with regard to their attitudes towards victims of sexual abuse and their understanding of what these victims go through and how they may behave. Legal professionals need to be trained how to interview children of different ages and at different stages of development (UNESCO, 2001:15).

The credibility of children as witnesses is directly related to the perceptions held by those persons who come into contact with them. If presiding officers perceive children as unreliable and untrustworthy, then this perception will have a major influence when they evaluate a particular child's credibility. If they believe that children are untrustworthy as witnesses, then they will not accord due weight to their evidence. If prosecutors believe that children are not capable witnesses, they will withdraw cases. It is therefore important to determine what perceptions are held by those officials who work with children and whether these accord with the available research. (Müller, 2000: 251).

3.5 ADVANTAGES OF TESTIFYING FOR CHILDREN

In contrast to the possible harmful effects of legal proceedings, it has been argued by some that the same procedure can be beneficial. Pynoos and Eth (in Müller, 2000:78) argue that open discussion and exploration of trauma can be beneficial to children. Testifying can serve as a coping strategy and can provide the child with a sense of psychological closure to a traumatic experience (Müller, 2000:78).

Testifying can be very therapeutic and some children report feeling empowered by their participation in the process. Levett (in Müller, 2000:79) agrees that legal procedures and outcome of the court case may be vindicating for the child since it offers him an opportunity to be heard, but these cases are the minority (Müller, 2000:79).

It is submitted that the trial may be able to offer a child an opportunity for “seeing that justice is done”, but this will only happen where there has been a successful prosecution of the offender and the child has been treated well in the court process and received support (Müller, 2000:79).

The advantages of testifying for children (Müller, 2000:80) are the following:

- The child is identified as the complainant, the person who has been wronged.
- The child is usually afforded an opportunity to be provided with skilled assistance of a legal and psychological nature.
- The child has an opportunity to explain how he feels about what has happened.
- The child is afforded an opportunity to hear expert opinion which contextualises, validates and responds to the trauma.
- The child can see that the responsibility of dealing with the accused is taken over by competent and powerful adults.
- In psychological terms, the court appearance provides a ritual whereby the child ceases to be a victim and a pseudo-adult and returns once more to childhood.
- It provides the family with an effective yet positive outlet for showing their disapproval of what the offender has done and their desire to protect their child (Müller, 2000:80).

3.6 SUMMARY

The Namibian Government has ratified several agreements and conventions that form part of the law of Namibia. All these protocols and conventions were discussed in this chapter. Focus was also placed on the Namibian court system that is based on the adversarial system and the procedural and practical problems in an accusatorial criminal justice system were presented. Children's perceptions about court procedures and court officials have a definite impact on how they give evidence. The researcher also described possible advantages of testifying for children in this chapter.

CHAPTER 4

THE GESTALT PLAY THERAPY APPROACH

4.1 INTRODUCTION

According to Yontef (1989:323) the goal of Gestalt therapy is for clients to become aware of what they are doing, how they are doing it, and how they can change themselves, and at the same time to learn to accept and value themselves.

Gestalt therapy focuses more on process (what is happening) than on content (what is discussed). The emphasis is on what is being done, thought and felt at the moment rather than on what was, might be, could be, or should be (Yontef, 1989:323).

4.2 THE DEFINITION OF PLAY

Playing is how children try out and learn about their world. Play is therefore essential for healthy development. For children play is a serious, purposeful business through which they develop mentally, physically and socially. Play is the child's form of self-therapy through which confusions, anxieties and conflict are often worked through. Through the safety of play children can try out their own new way of being. Play performs a vital function for the child. It is far more than just the frivolous, light-hearted, pleasurable activity that adults usually make of it. Play also serves as a symbolic language. Children experience much that they cannot as yet express in language, and so they use play to formulate and assimilate what they experience (Oaklander, 1988:160).

4.3 THE MEANING OF PLAY

Play according to Winnicott (in Cattanach, 1992:29) is the central experience for the child in helping him to make sense of the world around him, and his place in that world. Play is the child's life and the means by which he comes to understand the world he lives in. As the child grows and develops, he makes meaning about himself and the physical and social world around him, and it is through the medium of play that the child discovers self.

Jung (in Cattanach, 1992: 30) states that play is of vital importance as a way in which we learn to value ourselves. Through playing one can imagine other possibilities and ways of being. These imaginings develop the capacity to be creative.

Piaget (in Cattanach, 1992:33) examines play as part of the whole intellectual development of the child and relates it to the process of assimilation and accommodation. Piaget regards it as an assimilation of a new experience (Cattanach, 1992:33).

4.4 THE GESTALT THERAPY PROCESS

The Gestalt therapy process according to the Schoeman model as in the Advance training manual (2002:9) of the Centre for Play therapy and training:

4.4.1 A therapeutic relationship

The gestalt therapy process can only be completed when there is a relationship between the child and the therapist. Therefore it is important for the therapist to establish a relationship with the child (Schoeman, 1996:28).

4.4.1.1 The main aims of a therapeutic relationship according to Schoeman (1996:29):

- It is necessary to know what caused the problem that led the parent to bring the child for play therapy.
- The child must be helped to fulfil his own needs through play therapy. He must also know if he is realistic in his expectations.
- The child must know that there will be situations that may be painful, but necessary for his recovery.
- The child will also have to know that he will have to make choices and take responsibility for his own life.
- The child must be willing to relate to his environment and other people and accommodate his influence in the world.
- The therapist will have to make a study of the child's process. In other words how does the child deal with his situation in the world? The child's self-regulatory system will have to be studied.
- The therapist will have to empower the child so that he can assume responsibility for his own life.

4.4.2 Sensory modalities/sensory contact-making

The therapist must make sure that the child is in sensory contact with all his modalities. It refers to the contact functions which include the use of the senses (touching, seeing, hearing, smelling and tasting). The therapist uses the different senses during this model application to enhance the child's awareness. Different techniques can be applied (Schoeman, 2002:10).

4.4.3 The child's process

The therapist must explore the child's process and concentrate on the way he organises his whole world (programme). The therapist must also consider the child's cognitive developmental stage (Schoeman, 2002:10).

4.4.4 Forms of play

Decide on a form of play that can be creative, dramatised or biblioplay. Decide on a medium which can be used for role play, clay or sand work or drawings. Use different techniques for example dream rosebush, Oaklander's model, monster, the empty chair, or Schoeman's model by following the steps of the preferred technique.

The different forms of play

Van der Merwe (in Schoeman and Van der Merwe, 1996:12) describe the following forms of play:

4.4.4.1 Relaxation play aims at reducing the child's tension to open him up to therapy and the building of a therapeutic relationship.

4.4.4.2 Assessment play is used to examine the child client's skills, phase of development, feeling language and other verbal skills, and his mastering of the environment

4.4.4.3 Dramatic play has various functions, such as the remodelling of family life, expression of aggression or regression, playing out of feelings concerning gender, replay or working through traumatic situations, and preparation for anticipated difficulties.

4.4.4.4 Creative play is aimed at ventilation of feelings

4.3.4.5 Biblio-play leads to the development of insight and working through of feelings.

4.4.5 Own projection

The child can make a projection. The projection can be open (anything they like) or closed (specific situation). The child must then describe his projection and be guided to own the projection. The child must be the part (the age) when the incident took place (Schoeman, 2002:11).

4.4.6 Alternatives

Discuss alternatives in terms of: The past (what has been done)

The present (what can be done). Work in the here and now.

The future (what the child is planning to do).

The child must make choices (Schoeman, 2002:11).

The child must take responsibility and must own and express emotions.

The therapist must sometimes work in polarities.

4.4.7 Clarification

The therapist must clarify or summarises to help the child to understand issues and needs through what has been said or felt and by so doing the child will develop a sense of security. It is important to give security (Schoeman, 2002:11).

4.4.8 Empowering

Empower the child with something real (Schoeman, 2002:11).

4.4.9 Self-nurturing

Guide the child to find something with which he can nurture himself if he is faced with difficult situations. The child will then experience integration (Schoeman, 2002:11).

4.4.10 Evaluation

Evaluate the whole process of the therapy. This can help the therapist to plan effectively for the next session (Schoeman, 2002:11).

4.4.11 Safe place

Help the child to find a safe place to go when feeling scared or alone (Schoeman, 2002:11).

4.4.12 Confluence

The therapist must work in confluence if necessary. Try to go along with the child, not against him (Schoeman, 2002:11).

4.4.13 Polarities

Work in polarities. A child fears contradiction in his life and in the lives of those he loves. It confuses a child when he experiences feelings of love and hate for the same person. A child experiences part he does not like as very difficult. It is important for a child to experience (Schoeman, 2002:11).

If the model is correctly used the following results can be achieved:

- A good relationship
- Sensory stimulation
- Empowering of the self-esteem
- Emotional expression
- Self-nurturing (Schoeman: 2002:11).

(Advance training manual of Centre for Play therapy and Training, Huegenot College)

4.5 SUMMARY

The researcher discussed the Gestalt Play therapy approach according to the Shoeman model. The definition of play, the meaning of play and the main aims of the therapeutic relationship were highlighted. The different forms of play were also discussed.

In the next chapter the researcher will focus on the research findings of the empirical study from the perspectives of the children, their parents and professionals in the criminal justice system.

CHAPTER 5

RESEARCH FINDINGS-THE IMPACT OF THE NAMIBIAN JUDICIARY SYSTEM ON THE SEXUALLY-ABUSED CHILD WITNESS.

5.1 INTRODUCTION

In this section the researcher will detail the qualitative data gathered from seven (7) sexually-abused children, their parents and twelve (12) criminal justice professionals. The data will be presented in three different sections. In section 1 focus will be placed on the data gathered from the children and their parents. In section 2 the researcher will present the findings of a case study done with one of the children over eight therapeutic sessions. In section 3 focus will be placed on the data gathered from the twelve (12) criminal justice professionals.

Semi-structured in-depth interviews were used. The main focus of data collected is on the experiences of the children who were complainants of sexual abuse. In this section the researcher will contribute to a deeper understanding of the problems faced by child witnesses in the criminal justice system. In the third section the researcher will present the data gathered from professionals.

The data collected during this study will be compared to existing literature and later used in chapter 5 to draw conclusions and to make recommendations for criminal justice professionals.

In the table below the researcher depicts the children's age at the time of the abuse, the age at the time of the interview, gender, grade, the relationship between the abuser and the child, the period from report to trial and lastly the outcome of the case (See table 1).

Section 1- Table 1: Key demographics of children

Respondent	Age of Child When Abused	Age of Child at Interview	Gender of Child	Grade of Child	Period from Report to Trial	Relationship of Child to Accused	Conviction/ Sentence
1	12 years	13 years	Girl	7	12 months	3 strangers	Guilty – 12 years imprisonment
2	6 years – 1 st incident 7 years – 2 nd incident	9 years	Girl	2	2 years and 2 months Case still pending	- Stranger - Neighbour	Guilty -15 years- imprisonment Sent for psychiatric evaluation
3	2 years and 10 months	4 years	Girl	Day care	1 year and 5 months	Family friend	5 years imprisonment
4	10 years	18 years	Boy	Dropped out of school after abuse	8 years – not finalised yet	Boarding master at school where boy was schooling	Escaped while on bail
5	9 years	12 years	Girl	6	3 years	Biological father	Guilty - 6 months imprisonment
6	8 years	10 years	Boy	4	2 years	Son of neighbour	Guilty - 5 years imprisonment
7	14 years	16 years	Girl	10	1 year and 8 months	Uncle – mother’s brother	Guilty - 3 years imprisonment

Section 1

5.2 CHILD WITNESSES AND THEIR PARENTS

The data will be presented in the following categories: reporting of abuse, initial contact with the criminal justice system, court delays and postponements, waiting to give evidence, confronting the accused, cross-examination, impact on children, parents' views on services rendered, after-court follow-up and children's suggestions for reform.

Most of the children who were contacted were reluctant to participate due to the sensitivity of the cases. One parent refused blatantly and expressed the desire "just to go on with their lives and not to relive the nightmare again".

5.2.1 Reporting of abuse

All the children were asked if they would report again if they were subjected to sexual abuse in future. One of the most significant findings of the study concerns the finding that six of the seven children said that they would report it again and would recommend to other children to report sexual abuse. Only child 4 will not report again.

Child 4 expressed strongly that "it was not worth it". This finding reiterates the literature that maintains that the criminal justice system itself acts as a deterrent to reporting. His guardian observed: "... the legal system disappointed us deeply — after all the trauma and trouble, the accused that was on bail ran away. Why then bother to report?" The case of this specific child was postponed several times. The accused was found guilty of sexual abuse of six boys and was referred to psychiatry for evaluation to see if he was fit to stand trial. The accused escaped and was never sentenced. The majority of the parents said that reporting sexual abuse was the right thing to do in order to stop the abuse and so that the accused could be punished.

5.2.2 Initial contact with the criminal justice system

Initial contact with the criminal justice process for the majority of the children in this study was the police.

The parent of child 2 felt his child was asked age-inappropriate questions. He said: "It was very disturbing and difficult for such a young child to understand the questions". The father had to put the questions in language that the child could understand. The child was crying and it was difficult to get the necessary information to finalise the statement.

The parent of child 4 said, "Considerable harm can be done to children if the police are not properly trained." Questioning children is said to be a specialised field (Müller 2000:6). Interviewers need thorough training in developmental psychology and communication with children as stated in (Müller 2000:5). It is further stated that children under 12 have difficulties with concepts of time and dates.

The parent of child 2 complained about the language barriers saying that the police officers are mostly conversant in English and have difficulty to communicate with the children.

In this study it was found that the police and other professionals are not adequately trained in the developmental needs of children. Both the parents and the children expressed the desire to be kept better informed by the police on the progress of the case.

Prompt arrest can alleviate the initial fear. Parents and children reported that police are not doing enough to arrest the accused shortly after the report. The parents of children 2 and 3 commented on how they were intimidated by the accused and how they made use of other assistance to arrest him. The parent of child 2 asked for the assistance of Rescue 911 who arrested the accused and took him to Katutura Police Station. The parent of child 3 and his brother went to the house of the accused and kept him till the police arrived.

“When I tried to phone, they were always out and it was useless to leave messages to return my call...” (Father of child 3). The frustration of being kept uninformed by the investigating officer adds to the stress on the parents who are usually already under enormous pressure.

In the majority of these cases five (5) disclosures were made to their mothers. One child disclosed to a teacher who reported the matter to the authorities. One child told her niece who later informed the mother of the child.

5.2.3 Court delays and postponements

Müller (2000:90) states that at a crucial stage of their emotional, social and cognitive development the waiting and delays had significant consequences for the children’s psychological well-being. (See 3.4.6).

Five of the parents expressed the delays and waiting as the most stressful of the whole process. The length of time between reporting and trial in this study ranged from 12 months to 8 years. The parent of child 5 said it was difficult to get off from work so often and her employers did not understand at all. The parent of child 4 commented that it took so long that her child could no longer remember the details to go and give evidence.

Child 7 commented that she could not go on with her life, knowing that this thing was hanging over her head; the parents of children 2 and 5 described how the children were subjected to adjournments and how it affected them negatively.

The delays prevented children and parents to move on. It also impacted on the children’s ability to be effective witnesses. Children have to recount bad experiences in detail long after the abuse happened. Children are adversely affected, because they are forced to remember things that they desperately want to forget. (Müller, 2000:275) states how the re-emergence and reliving of the abuse may intensify the child’s trauma.

5.2.4 Waiting to give evidence

All the children except child 7 had to wait in front of the courtroom in the corridors with the accused and his relatives on the same bench. Children reported that they had to walk past the accused to go to the toilets. Parents reported that there were no waiting-rooms or child-friendly facilities. All the children except child 7 experienced lengthy waits and they described becoming nervous, tired and hungry while waiting. One parent complained that there were no games, videos or other activities to keep the children busy. Only child 7 did not wait in the corridors. She waited in the juvenile court and was called when it was her turn to give evidence.

5.2.5 Confronting the accused

LeBaue (1997:18) and (Buchanan, [Sa]:) states that most perpetrators of sexual abuse are known to the child. The current study finds that a high percentage of children knew the accused. The offenders were family members, a father, an uncle, family friends and neighbours and a hostel father. The betrayal of trust that occurs when the child knows the abuser only compounds the effects of abuse. The implications for the study are that most of the children were required to give evidence – against a family member or someone known to them, further adding to their stress.

All the children in this study had to give evidence in the presence of the accused. This created immense difficulties for the children. Child 4 ran out of the court when he saw the accused. Screens were only used in one case, but only after child 5 had refused twice to talk in the presence of the accused. Court officials then decided to have the whole proceedings at the Women and Child Protection Unit and that court officials should not wear black gowns. Müller (2000:49) also states that the way officials dress can cause children to become afraid, uncertain and confused. Child 2 had to stand on a chair because she was too short, and that made her feel more exposed. None of the children were permitted the use of the child-friendly court. Some parents did not even know of such a facility.

The children experienced all kinds of anxieties and fears, and some parents indicated the negative effects it had on chil

dren to face the accused. Child 7 recounted, "I was given dirty looks all the time and was scared to death." Child 1 said the accused was staring and smiling to confuse her.

5.2.6 Cross-examination

In this study it was found that cross-examination and facing the accused created the greatest difficulties for children. Children 1, 2, 4 and 5 reported cross-examination as the most stressful for them. Some children found the friendliness of the prosecutor encouraging. Only child 7 had thorough court preparation and it definitely contributed to her knowledge of what to expect from the cross-examination. She was the only one who gave positive feedback with comments such as, "It went OK. I am glad I had a chance to say my say. I wanted to put this behind me and after that day I could go on with my life." Müller (2000:78) states the advantages of testifying for children. (See section 3.5).

The parent of child 5 found the cross-examination "ridiculous". "The types of questions they ask and the language that is even too difficult for adults to understand." The parent of child 5 said, "Cross-examination is child abuse in itself." None of the children in this study were asked about their sexual history or the way they were dressed. Three children, 1, 6, and 7 commented that the lawyers made them feel like liars. Child 2 said: "The uncle asked one question many times and wanted to know dates that I could not remember." All children except child 7 commented on their experience as a negative encounter.

All the parents experienced the cross-examination as bad and traumatic. The parent of child 5 reported that her child had nightmares the evening after the court hearing. She said her child was very upset and emotional. The parent commented "*It was terrible.*" The parent of child 7, who was prepared for the proceedings, was excited. According to her the lawyer could not "corner" the child. She answered, "*I answered that question already,*" and that made the lawyer give up.

Müller (2000:44) states that lawyers endeavour to confuse the children through a variety of tactics, including repetitive questioning, demanding unrealistic, specific times and details. The repeated questioning causes more trauma for child witnesses. The fear of

not being believed is one of the children's greatest fears. In view of the legislation and legal professionals' responses, there is ample basis for prohibiting this kind of intimidatory and insulting cross-examination.

The researcher investigated the significant procedures in the criminal justice process, which impact upon sexually-abused children. The researcher seeks to understand the procedures and its effect from the perspective of the children themselves, their parents and criminal justice professionals.

5.2.7 Court Preparations

Only child 7 was properly prepared for the court proceedings over a period of time for eight sessions. Most of the children were only seen by the prosecutor for ten minutes before the proceedings.

The accuracy and credibility of the children's testimony can be increased by helping them understand the legal proceedings and the roles played by each actor in the system (Müller , 2000:251).

It is unfair to expect children to testify in a court of law without adequate preparation. All child witnesses require court preparation that informs them about the court process and prepares them for their roles as witnesses. In addition, many children, due to their pronounced fears and anxieties, require stress management techniques to help them cope with what is usually an ordeal. Advocating for modifications to court procedures for anxious, traumatised child victims, demanding increased sensitivity to child victims on the part of crown attorneys and police officers, and ensuring support for children to help them deal with the disclosure aftermath and their involvement with the criminal justice system are a necessary part of any child witness protocol.

5.2.8 Impact on children

The parents reported on the effects that the court proceedings had on their children.

The parent of child 7 phoned the researcher shortly after the court case. She was excited and said, "I could not believe it was my daughter testifying in court, she was so strong." The child experienced the court proceedings positively. She was glad that she was given an opportunity to tell the truth. She found the facial expressions of both the prosecutor and the magistrate comforting. She used the opportunity to take back the control she had lost after the sexual assault. She saw it as a day to move on with her life. She was even willing to talk to other victims of abuse to encourage them.

In this case the researcher realised that the court proceedings can be beneficial. It provided this child the chance to symbolically put an end to the abuse.

Müller (2000:78) states that the court appearance can have a positive, therapeutic effect on children if the court process is conducted in a manner sensitive to the needs of the child. (See 3.5)

The parents of children 1,2 4 and 5 commented on negative effects like crying, bed-wetting, nightmares, sleeping-problems, fear of going to bed alone and many more. Some children were confused, humiliated, embarrassed, because they felt they had done something wrong. Child 4 whose abuser escaped before sentencing, lost trust in adults and in the whole justice system. He asked, "What's then the use of reporting?" He was expelled from the hostel because of bad conduct and inappropriate sexual behaviour towards other learners and later dropped out of school. Three parents reacted about the negative effects that the process had on the children's education. Child 7 failed for the first time in her school career. The parents of children 2, 5 and 7 responded specifically about the impact of the judiciary system on the family and included family division and conflict between family members. Children 2 and 5 were removed from the family or the parent. It is evident that the procedures were traumatic for most of the children who took part in the study.

In this study it was found that children and parents feeling angry, frustrated and disappointed. Issues still of concern include the lack of counselling and after-care

services, changes needed in the justice system and lack of specialised training of all professionals.

Another significant finding in this study was that the child who was properly prepared for the court proceedings and who received therapeutic intervention, experienced the court proceedings as less traumatic and even in a positive light.

5.2.9 Parents' views on services rendered

5.2.9.1 Police

All seven cases were first reported to the police after the children had disclosed what had happened to their parents, a teacher and a niece. The parent of child 3 was disappointed in the way his two-year-old child was interrogated. It was questions not appropriate to the child's age. The father had to rephrase the questions for the child to understand. The child started to cry and it was difficult to finalise the statement. The parent of child 2 recounted how she had to ask the assistance of Medrescue to arrest the accused that lived in an old car wreck. The parent of child 3 commented that the police expected of you as the parent to arrest the accused and then phone them to come and take him to the cells. The parent of child 4 said the police are not doing enough to look for the accused and if it is a stranger most of the cases are not attended to. The parent of child 3 complained that the police did not keep him informed of the progress. He commented, "When I tried to phone, they were always out and they never returned my calls." Three parents were positive about the services rendered by the police. The parent of child 1 recounted how friendly the police officer was and how his daughter was referred to a psychologist and even admitted to hospital. (Also see 5.2.2)

5.2.9.2 Social workers and psychologists

Children 1 and 7 received ongoing counselling and after-care services by social workers and psychologists. Children 2,3,4,5 and 6 were seen shortly after the abuse was reported, but most were only seen once by the social worker. Child 3 received no counselling or debriefing at all. The father was not even aware of the availability of such services. It was also clear that only the children received counselling and parents were

left to cope on their own. Three parents expressed the desire to see a social worker or admitted that they had difficulties or issues of their own to deal with.

5.2.9.3 Medical doctors

Most of the parents expressed problems they had with medical doctors. Children 2 and 3 were very young and not examined under anaesthetics. They found the medical examination very painful and traumatic. The majority of the parents commented on the long hours that they had to wait for the doctor to come.

The parent of child 3 was positive about the services rendered by the medical doctor. The doctor was friendly and very helpful. The parent stated “Although we had to wait long, the doctor did a good job; I could see he knew what he was doing.” The doctor referred the child to the state psychologist after she was admitted to the psychiatric hospital.

5.2.9.4 Court officials

Only child 7 and her mother were positive about all the court officials. The parent of child 4 said, “drastic changes are needed”. The parents of children 2 and 6 were satisfied with the prosecutor who took the children through their statements and was friendly when they enquired about the cases. All the parents were surprised to hear that there are child-friendly facilities, but that they are not used. All the parents experienced the defence lawyers as hostile. One guardian said, “Wait till it is his daughter.”

All 7 the children indicated that they met the prosecutor on the morning of the court proceedings, even if only for a while. The prosecutor took them through the statements and in short told them what was going to happen. The children commented that they felt more comfortable after meeting the prosecutor.

5.2.10 Victim-friendly courts

The use of the victim-friendly courts is discretionary and is not automatically available to every child. All seven children had to testify in an ordinary courtroom. Child 5 had difficulties to face her father and cried throughout the court case. Only then did the officials decide to alter the courtroom. According to Müller (2000:75) the characteristics of the courtroom interfere with the ability of a child to give evidence and increase the stress experienced by the child. The section on vulnerable witnesses in the Criminal Procedures Act (Act 51 Of 1977) states that there is a need to develop innovative methods for modifying standard courtroom procedures when children give evidence.

5.2.11 After-court follow-up

The lack of follow-up after court proceedings appeared to be a problem. Only children 5 and 7 were debriefed and counselled after the court proceedings. The majority of the children did not receive follow-up counselling after the initial report.

5.2.12 Children's suggestions for reform

Children and their parents were asked what changes they would like to see in the criminal justice system. Children 2,4,5,6 and 7 said that cases should be finalised quicker and that they should not be forced to face the accused. Child 1 said the defence lawyer must not ask the same question repeatedly. Children 2 and 5 mentioned that they did not want to wait in the same place as the accused.

The parents wanted to be better informed about available services and said that service providers should receive specialised training to deal better with children. The parent of child 2 asked that the child-friendly court be utilised to protect children better. The parent of child 6 wanted cases of children to get priority attention to shorten the waiting period.

In this section the experiences of the children and their parents were depicted. A single case study of one of the children is presented next.

Section 2

5.3 Case Study - Sahara

5.3.1 Introduction

The results of the case study are discussed in this section.

A single case study was done with one of the children who was referred by the Women and Child Protection Unit for court preparation. During assessment the researcher realised that the child needed therapeutic intervention. The Gestalt Play Therapy Approach was used.

This section describes Sahara's experiences. Sahara is only a fake name to protect the identity of the child. Sahara was sexually abused and had to testify in court about the incident. The data for this section were gathered from the child's mother, the investigating officer, the regional prosecutor and eight therapeutic sessions with the child. Sahara's story synthesises difficulties faced by the sexually-abused child witness in an adversarial criminal justice system, but also highlights the benefits of testifying after therapeutic intervention and court preparation.

The purpose of the intervention was to bring awareness and to bring the child into contact with her feelings. The focus was on self-support and coping strategies to handle her situation and also future situations. The child was also prepared for the court proceedings.

Sahara was very emotional and shy during the first session. Her biological mother did most of the talking and gave all the background information. Sahara's mother was worried that she would not be able to testify in court.

Sahara's mother informed the researcher of the following effects that the sexual abuse had on Sahara:

Bedwetting, nightmares, fears, deterioration in school results, she even failed a subject for the first time in her life, anger attacks with siblings and mother, isolating herself for long periods in her room, mood swings, taking baths all the time.

During the assessment the most overwhelming feeling for Sahara was the fear to face her uncle in court and that people would not believe her, because her uncle is very influential. It came out that Sahara had a desire to improve her relationship with her mother and siblings. She realised that they just wanted to help. According to Sahara their family is very close, but she was not comfortable to be with people after the abuse. She wanted to be alone and needed distance, even from her friends at school. Sahara was willing to take self-responsibility and to work on her relationships.

The following six sessions will be discussed in tables:

Case study: Sahara

5.3.2 Background Information

Sahara is 16 years old and a Grade 10 learner. She was sexually abused by her mother's brother (her uncle) during September 2003. She was summoned to testify in court during April 2005, one year and six months after the incident. Sahara showed definite signs of trauma and was terrified to face the abuser in court.

5.3.3 Table 2: Building sense of self

Session	Medium/Technique	Task	Emotional Expressions	Growth/Resistance shown
3	Rosebush (Schoeman,2002)	<p>Sahara draws a rosebush in a big garden with one big tree in the middle and other smaller trees. The bush has many colourful roses, but one rose is broken and hanging.</p> <p>The whole garden is in the shadow of the big tree.</p>	<p>Sahara explains the big garden as their home, the smaller trees as her mother and grandmother. The biggest tree is the uncle who sexually molested her and this tree brought pain for the whole family (the shadow). The colourful roses are her siblings.</p> <ul style="list-style-type: none"> - The broken rose is Sahara. - Safe place: mother and grandmother 	<p>Sahara is overwhelmed with emotions of fear, anxiety, and feels to commit suicide. (showed by the hanging rose)</p> <p>She has no inner strength to face her uncle in court. She is not sure if she will be able to overcome the trauma.</p> <p>The researcher normalises her feelings and tells her how brave it was to talk about such intense feelings.</p>

Sahara's Emotional Expressions

Session	Medium/Technique	Task	Emotional Expressions	Growth/Resistance shown
4	Sandtray (Schoeman,2002)	Sahara is asked to make a scene in a sandtray that will portray her fears and emotions. She uses a castle and covers the castle's door with many objects. In one corner of the castle she places a little doll.	<p>The little doll is Sahara in her room. She is scared that the uncle can enter her room any time. That is why she sometimes put cupboards and heavy objects against the door: to prevent her uncle to enter.</p> <p>Sahara explains how she experiences nightmares, flashbacks and even wets the bed a few times when she had nightmares.</p> <p>Safe place: To sleep with her mother with the light on.</p>	<p>Sahara fears that her uncle can come and hurt her because she laid charges against him. The uncle and family are angry and want her mother to withdraw the criminal charges.</p> <p>Sahara also expresses fears to go to court. "<i>Will the people believe me?</i>" "<i>My uncle has lots of money and can influence people,</i>" are some of her remarks.</p> <p>The researcher starts explaining the court proceedings and the role of the different court officials, e.g. what Sahara can expect from cross-examination, etc. The researcher teaches Sahara some relaxation techniques as in (Muller, 2000:335).</p>

Sahara's Emotional expressions

Session	Medium/Technique	Task	Emotional Expressions	Growth/Resistance shown
5	Monster Technique (Schoeman,2002)	<p>Sahara can draw any monster in her life.</p> <p>She draws a huge human figure behind her bed while she is asleep. The figure whispers to her, "I'll be back."</p>	<p>Sahara explains that this monster is following her everywhere. She can hear his voice, even if she is awake.</p> <p>She experiences feelings of powerlessness and wants to get rid of this monster.</p> <p>Self-nurturing Positive self-talk – "He will not control my life any more."</p>	<p>Sahara is in good contact with her emotions. She can draw on her inner strength and is not as overwhelmed by her emotions as in previous sessions. She is willing to take control. Sahara feels prepared to face her uncle in court and wishes the courtcase was over.</p> <p>Another relaxation technique is done. "Fantasy flight to a safe place"</p>

Sahara's Emotional expressions

Session	Medium/Technique	Task	Emotional Expressions	Growth/Resistance shown
6	The Dream Technique (Schoemna,2002)	Sahara can make a drawing of a dream she had. Sahara makes a drawing of the courtroom. Her uncle is laughing because he has been found not guilty. Sahara is crying and disappointed in the outcome of the court case.	Sahara experiences feelings of disappointment and anger. She wants the dream to end where she is believed and her uncle admits that he is guilty and asks her for forgiveness. She wants the uncle to promise he will not do it to other kids. Safe place: That her relationship with the uncle and the rest of the family is restored.	Sahara does not trust the judgement of the court officials. She is afraid that they will not believe her. After taking Sahara to meet the Regional Prosecutor and view the courtroom, the researcher explains the importance of telling the truth and not to concentrate on the outcome of the case. Sahara starts to realise what is expected of her as a witness and is willing to face her uncle.

Sahara's self support and self nurturing (Session the day before the court proceedings)

Session	Medium/Technique	Task	Emotional Expressions	Growth/Resistance shown
7	The Empty Chair (Schoemn,2002)	Sahara puts her uncle (a big teddy bear) in the empty chair and talks to him.	<p>Sahara cannot face her uncle (the teddy bear):</p> <p>She turns her back and takes quite some time before she talks. She is very emotional. She asks her uncle why he did it, why he chose her, she tells the uncle that she trusted him and looked up to him. She cries and continues to tell the uncle that she will not withdraw charges, that he must stop this bad behaviour and not hurt other children. Now she is very angry and faces her uncle.</p> <p>Sahara has been allowed to express her anger.</p>	<p>Sahara is still very emotional, but also shows anger towards her uncle.</p> <p>The researcher explains to Sahara that she can avoid eye contact with her uncle in court and that she can face the prosecutor or magistrate.</p> <p>“squeezing a ball”.</p> <p>The researcher will accompany Sahara to court the next day.</p>

Sahara-termination

Session	Medium/Technique	Task	Emotional Expressions	Growth/Resistance shown
8	Clay and Drawings	<p>Sahara can make anything with clay. She makes a few human figures holding hands in a circle.</p> <p>Sahara also draws a paper full of flowers and hearts with a colourful border.</p>	<p>Sahara explains that the circle portrays herself and her family and school friends.</p> <p>The circle was broken after the sexual abuse, because she withdrew and was anti-social. Now she has started to reach out and tries to rebuild relationships with her friends and siblings.</p> <p>Sahara admits that she did not enjoy contact and always tried to keep a distance. It was difficult for her friends to understand.</p> <p>- Safe place - To be back in the circle again.</p>	<p>Sahara shows awareness of how the sexual abuse and court experience changed her behaviour.</p> <p>She feels relieved and positive about her future. She has confidence in herself and feels in control of her life again.</p> <p>"I can now go on with my life."</p> <p>"I did my part."</p> <p>Sahara reports good school progress.</p> <p>She gives the picture with flowers and hearts to the researcher with her signature to say thanks.</p>

5.3.4 The court experience from Sahara's perspective

Sahara experienced the court proceedings in a positive light. These were her comments on how she experienced the whole proceedings. “I am proud I had a chance to say my say – I did my part, now I can move on with my life.”

The waiting for the case to be heard was the most stressful for her and the fact that her uncle was out on bail. “I always dream that he is in my room to hurt me.”

The fact that the abuser was her uncle, that she trusted him and that he was part of the family, made it more traumatic for Sahara. “Now my mother and the family are not talking, they wanted her to withdraw the police case.” Sahara felt she broke the family ties.

Sahara commented on the cross-examination. “It was quite ok, the lawyer was a bit rude, he wanted to confuse me and treated me as if I was lying. He also asked one question many times and when I told him that I have answered the question already, he got upset. When I told him my rights were violated, he asked me who taught me that, and I told him I learned it at school. I only faced what was coming and answered the questions.”

Sahara experienced the magistrate and prosecutor as friendly. “Their facial expressions were encouraging. I felt they were on my side. The prosecutor even postponed the case to get more evidence – for the psychologist to come and testify.”

Sahara was taken to the juvenile courtroom to wait in order to avoid contact with the accused. He waited in front of the courtroom with many of the relatives to support him. “He was staring and smiling at me in court to confuse me, but I ignored him and looked at the prosecutor and magistrate.”

Sahara’s case was heard in an ordinary courtroom. When the prosecutor was asked why not the child-friendly court, she replied, “We'll see how it goes and if it is too difficult for her, we can use the victim-friendly court.” The prosecutor also mentioned that the audio materials in the child-friendly court had been out of order for quite some time.

Sahara commented that it was worthwhile to report and that it had the following benefits for her: "I received counselling from Ms Nangolo, the psychologist and you (referring to the researcher), without it I would not be able to tell my part in court. I can move on with my life and now people can see that I was not lying. My uncle is punished, that is not really how I wanted it to be, but I leave everything to God."

Sahara showed tremendous growth over the eight sessions. She is in contact with her feelings and willing to take charge of her life again – Sahara offered to talk to other children in similar situations.

5.3.5 Conclusion

In this study it was found that the court proceedings can have a positive, therapeutic effect on children. In Sahara's case it serves as a sense of closure to the traumatic experience and as a coping strategy (Muller, 2000:79).

This researcher also found that the Gestalt Play Therapy approach and techniques can be use effectively with the sexually-abused child witness to mitigate anxiety and to make the court experience less traumatic for children.

In this section the researcher stressed the need for proper court preparation programmes and how it can help the child witness are stressed.

In the next session the researcher will describe the data gathered from criminal justice professionals.

Section 3

5.4 CRIMINAL JUSTICE PROFESSIONALS

5.4.1 Introduction

In this section data gathered from semi-structured interviews with a wide range of professionals is presented. The data were gathered from twelve professionals including High Court advocates, magistrates, prosecutors, police officers attached to the Women and Child Protection Unit, psychologists, social workers in private practice and in government service. All the professionals were experienced in dealing with sexually-abused children. Findings are presented in categories that emerged from the interviews. Different graphs and tables are used to present the findings.

The twelve criminal justice professionals who were selected for this study were social workers, police officers, a clinical psychologist, prosecutors, magistrates and an advocate. The following table depicts the categories of the professionals.

Table 3: Key Demographics of professionals

Respondent	Age	Gender	Profession	Position	Ministry/Organisation
1	60 years	Woman	Social Worker	Private Social Worker	Private Practice
2	46 years	Man	Social Worker	Social Worker	Ministry of Health and Social Services WCPU
3	Unknown	Woman	Social Worker	Social Worker	Church Benevolence Board
4	Unknown	Woman	Social Worker	Social Worker	Church Benevolence Board
5	43 years	Man	Psychologist	Clinical Psychologist	Private Practice
6	32 years	Man	Police Officer	Sergeant	Ministry of Safety and Security WCPU
7	40 years	Woman	Police Officer	Constable	Ministry of Safety and Security WCPU
8	27 years	Woman	Police Officer	Constable	Ministry of Safety and Security WCPU
9	38 years	Woman	Legal	Advocate – High Court	Ministry of Justice
10	30 years	Woman	Legal	Commissioner of Child Welfare	Ministry of Justice
11	35 years	Woman	Legal	Public Prosecutor-Lower courts	Ministry of Justice
12	37 years	Woman	Social Worker	Social Worker	Private Practice

5.4.2 Professionals' opinions when asked if they would allow their own child to go through the criminal justice system

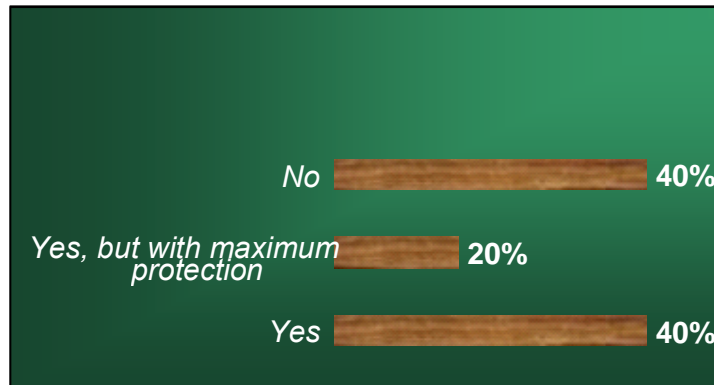


Figure 5.1

All service providers were asked if they would allow their own child to go through the criminal justice system should the child disclose sexual abuse. A social worker said, "I shudder at the thought of it, but if need be, I will insist that the case be in the victim-friendly court and that she gets all the support she needs."

Another social worker said he will definitely want his child to go through the system, despite knowing that the system has its weaknesses. He feels it is important that the accused is punished. Two more service providers said yes.

Another social worker answered, "Not the Namibian Criminal Justice System." Three more professionals said no.

A prosecutor said she knows it is the right thing to do but he will only do it if the child receives counselling and proper preparation as stipulated in the Vulnerable Witnesses Article. She added, "It also depends on the child's age and the evidence at hand, but if possible I will spare her the experience." A police officer gave a similar response.

Most of the professionals found it hard to answer this question. The ones who said they would want their child in the system had specific conditions to give the children maximum protection.

One of the police officers said “Not really” because the current system does not make provision for the proper protection of child victims and it turns out to be very traumatic.

An advocate commented she would only report if it is a very serious matter, but not for a less serious assault (indecent assault).

5.4.3 Advantages for children in the criminal justice system

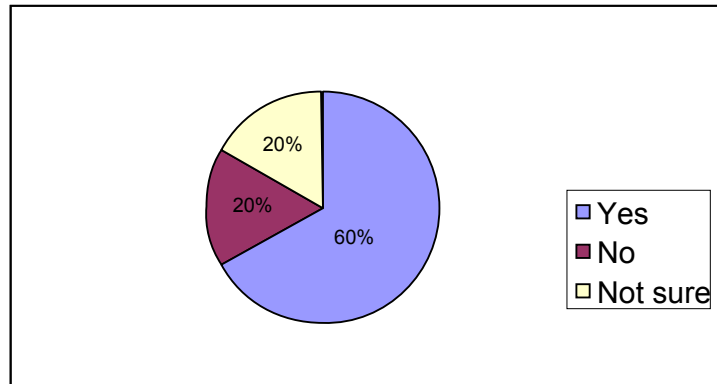


Figure 5.2

Professionals were asked if there are advantages for children in the criminal justice system. Sixty of the professionals thought there were benefits for children and they mentioned the following advantages:

- Child feels assured and cared for.
- The abuse will stop.
- Other children are protected.
- Abuser is punished - Justice is done.
- Child gets professional help.
- Other abusers will get the message to stop.

Twenty percent of the professionals said there were no advantages for children in the criminal justice system and the other twenty percent were not sure. (See 3.5)

5.4.4 The most stressful factors for children in the criminal justice system

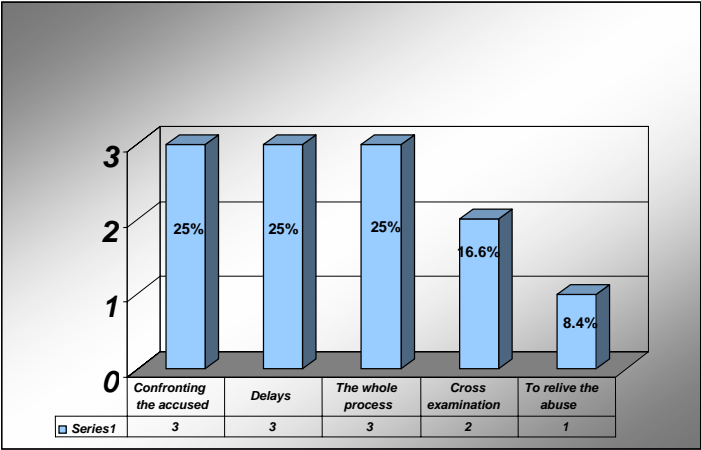


Figure 5.3

Figure 5.3 depicts the professionals' views on the most stressful factors for children in the criminal justice system.

5.4.5 The criminal justice system causes more harm to children

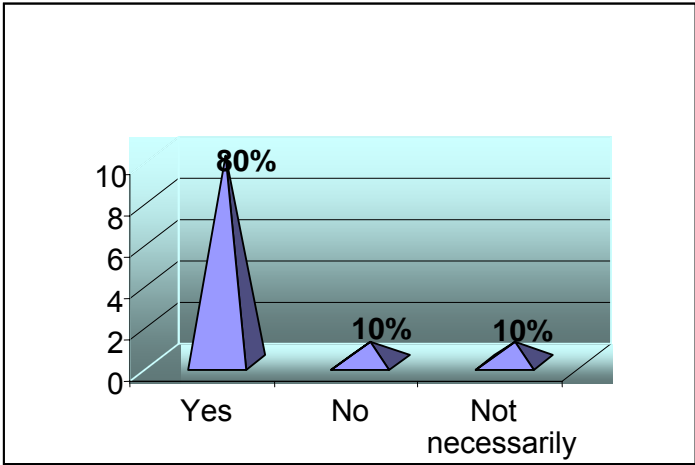


Figure 5.4

Professionals were asked if the criminal justice system causes more harm to already traumatised children. Eighty percent of the professionals were of the opinion that the criminal justice system causes more trauma, while another ten percent said no. A study

by the Australian Institute of Criminology also found that the criminal justice process reiterates many of the emotional and psychological characteristics of the sexual abuse experience, and fails to meet the needs of the young sexually abused witness (Australian Institute of Criminology, 1998:2). Ten percent of the professionals said it depends on the way professionals conduct the procedures and how sensitive they are to the developmental needs of the child. This is also stated in the literature (Müller 2000:78).

5.4.6 The need for training for criminal justice professionals

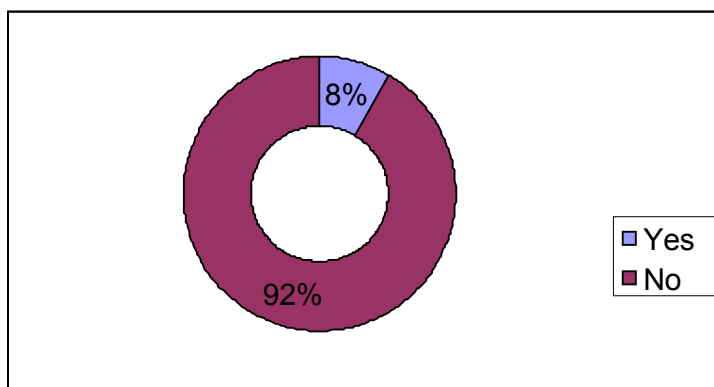


Figure 5.5

Professionals were asked if criminal justice professionals were adequately trained. Ninety-two percent felt they were not adequately trained while only two percent said professionals were trained. The literature states that working with child witnesses is a specialised field and that professionals need thorough training in the developmental needs of children and on the dynamics of child sexual abuse (Müller 2000:6 and Australian Institute of Criminology, 1998:2). Professionals stressed the need for changes to police processes, including better communication with complainants and their families and the providing of child development training to all professionals dealing with child witnesses.

5.4.7 Views of professionals on court preparation programmes.

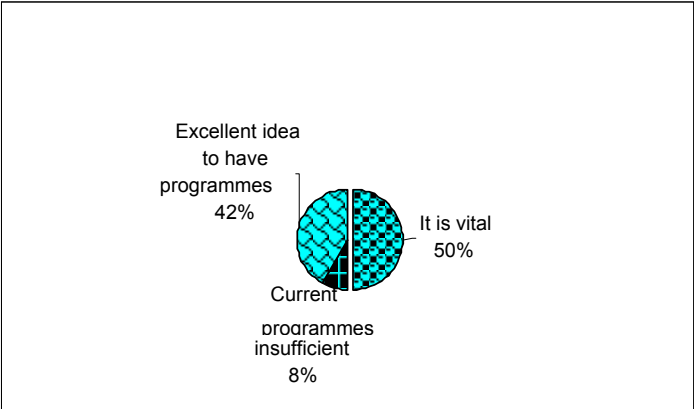


Figure 5.6

Professionals were asked what they thought of court preparation for child witnesses. Figure 5.6 shows that fifty percent thought it was vitally important to prepare children for court proceedings. Forty-two percent of the professionals thought it was an excellent idea and could help to reduce stress for child witnesses. Eight percent of the professionals commented on the shortcomings of current court preparation programmes. Preparations are only done a few minutes before the court proceedings start. It is not sufficient and thorough.

This study found that there is a big need for court preparation programmes. Literature also states the benefits and importance of court preparation programmes (Müller 2000:279).

5.4.8

In the table below professionals comment on what they think are the reasons for delays and postponements.

Professionals' comments on delays and postponements
Heavy caseloads/full caseloads
Lack of evidence
Incompetence of service providers
Ill-disciplined staff
Inexperienced staff
Police investigations
Forensic laboratory results
Legal aid applications
Shortage of staff
Limited resources
Postponements for expert witnesses
Children's cases are not prioritised

Table 4

This table shows that delays and postponements put more strain on the child witness and may result in psychological dysfunction as is also states in the literature (Müller, 2000:90)

The researcher found that the lengthy court process had a harmful impact on the child witnesses and who were at a crucial stage in their development and already in a vulnerable position. (Compare paper by Australian Institute of Criminology, 1998:3).

5.4.9 Criminal justice professionals' understanding of the dynamics of child sexual abuse.

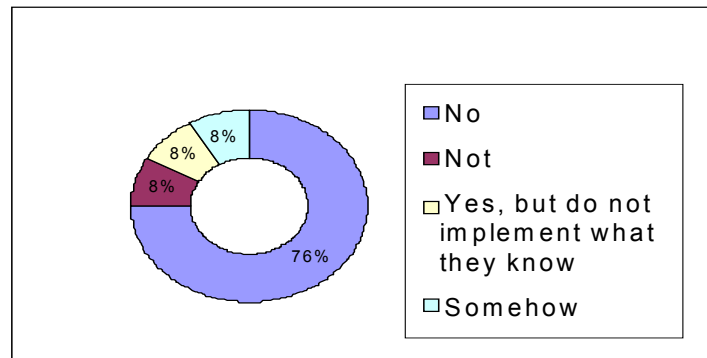


Figure 5.7

Criminal justice professionals were asked if they understood the dynamics of child sexual abuse.

Seventy six percent reported that they were not knowledgeable about the dynamics of child sexual abuse. Eight percent were not sure. Another eight percent answered "somehow" and the last eight percent responded yes, but professionals do not implement what they know. In the literature it is stressed how untrained staff can cause considerable harm to child witnesses (Eastwood, Patton and Stacey, 1998: 21).

5.4.10 Criminal justice professionals' knowledge of the vulnerable witness legislation

Professionals were asked how familiar they were with the new legislation on vulnerable witnesses. Three of the twelve professionals had never heard of it before. Five were not familiar with the legislation and only four were trained on the amendments of the specific section on vulnerable witnesses in the Criminals Procedures Act No. 24.

5.5 SUMMARY

Despite some changes in the criminal justice system, many children who have been sexually abused continue to suffer further unnecessary trauma during the criminal justice process.

In this study the researcher found that the criminal justice process itself reiterates many of the emotional and psychological characteristics of the sexual abuse experience.

Unless service providers are trained to provide for the developmental needs of the child, the child continues to experience considerable harm.

The court process abuses children and denies them the care and support to which every child is entitled.

In this study it was also found that the criminal justice system causes more trauma to child witnesses who are already traumatised, but sixty percent of the professionals feel that there are advantages for children in the criminal justice system.

The researcher also identified a big need for interagency and multi-sectoral cooperation as well as willingness on the part of all professionals to implement legislation and to be accountable in this study.

In the next chapter the researcher will evaluate the aims and objectives and the main conclusions will be discussed. Recommendations will be made to all criminal justice professionals on how to make the court proceedings less traumatic for children.

Chapter 6

Evaluation, Conclusions and Recommendations

6.1 INTRODUCTION

The study was done to investigate the impact of the Namibian judiciary system on the sexually-abused child witness from the perspective of the children themselves, their parents and key criminal justice professionals. In this chapter the aim and objectives of the study will be evaluated. Conclusions and recommendations will be discussed.

6.2 EVALUATION OF THE AIMS AND OBJECTIVES

The aim of this study was to investigate the impact of the Namibian judiciary system on the sexually-abused child witness. This was done by making use of triangulation, by observing the impact of the judiciary system from different angles, information from multiple positions and multiple sources. The different perspectives reduce the limitations of data. The aim of the study was reached within the objectives of this study.

6.2.1 The objectives of the study were as follows:

- to do a thorough literature review on child sexual abuse, child witnesses and the Namibian criminal justice system.

A thorough literature study was made of relevant national and international literature documents and legislation to get a good theoretical perspective. The researcher was able to reach this objective.

- to document the impact of the Namibian judiciary system on the sexually-abused child witness.

Through thorough document analysis, legislation reviews and semi-structured interviews completed by children, their parents and key criminal justice professionals, gaps in the criminal justice system were identified. This objective was reached.

- to investigate the need for court preparation, child-friendly courts and waiting facilities.

Through literature reviews, document analysis, observation during therapeutic sessions, case study and semi-structured interviews the need for court preparations and victim-friendly courts was affirmed. This objective was also reached.

- to draw conclusions and make recommendations to criminal justice professionals on how to make the system more child-friendly and less traumatic for the sexually-abused child witness. The conclusions were drawn under point 4.5 and the recommendations will be made under point 5.4
- to evaluate how the Gestalt Play Therapy Approach can be applied to help the child witness.

The Gestalt Play Therapy Approach was used over eight sessions and the effects of the intervention were observed. The researcher was able to reach the objective and make recommendations on how to make the system more child-friendly and less traumatic for the sexually-abused child witness.

All the above objectives were reached through the use of semi-structured interviews with children, their parents and key criminal justice professionals. The effect of therapeutic intervention was observed in a single case study over eight sessions.

- to identify respondents by means of non-probability purposive sampling to participate in qualitative semi-structured interviews to get their perspectives on the impact of the criminal justice system.

Seven children and their parents and twelve key criminal justice professionals were identified by means of non-probability purposive sampling and participated in semi-structured interviews. This objective was reached. Respondents gave their views on the impact of the criminal justice system.

- to identify one child to participate in a single case study over eight therapeutic sessions. To use the Gestalt Play Therapy Approach to encourage self-support and coping strategies for the child's situation.

6.3 RESEARCH QUESTION.

What is the impact of the Namibian judiciary system on the sexually-abused child witness?

The researcher came to the conclusion that the Namibian judiciary system has similar gaps as was mentioned by authors from other countries. The theory in this chapter is used as motivation to proof the findings in this study and not to add new information.

The impact of the Namibian judiciary system on the sexually-abused child witness drawn from this study and will be described under the following headings:

6.3.1 Harmful effects of the Namibian criminal justice system

The Namibian criminal justice system is not designed to accommodate the special developmental needs of children. Many police officers, attorneys, judges and other criminal justice professionals find it difficult to work with children. Many children find the criminal justice system intimidating, particularly the courtroom experience. Under these circumstances, the child can be a poor witness, providing weak testimony and contributing less information than needed to make or win the case. Also, the lengthy process of navigating the formal and adversarial criminal and civil justice systems can affect the child's psychological development in significant and long-lasting ways. Listed below are a number of court-related factors that have been identified as stressful for child victims and witnesses:

- Not using developmentally appropriate language.
- Delays and postponements.
- Face-to-face contact with the accused.
- Practices that are insensitive to developmental needs of children.
- Harsh cross-examination.
- Inadequate preparation for testifying.
- No separate waiting-rooms or victim-friendly procedures.

- Lack of knowledge of new legislation (Holder, 1999:8).

In this study it was found that the Namibian judiciary system has a negative impact on sexually-abused child witnesses and their parents. Ten out of twelve professionals are of the opinion that the criminal justice system causes more trauma for already traumatised children.

Giving evidence in court is a stressful experience for a child witness. The study finds the following to be the most stressful for child witnesses:

Cross-examination, confronting the accused, delays and postponements.

Cross-examination is designed to confuse and upset children. It is stressful for witnesses, and even more so for children, as was also stated by Hammond and Hammond (1987:10) and Müller (2000:75).

The appearance of officials can also induce stress on children. Court officials in black robes cause a child to become afraid, uncertain and confused. Müller (2000:75) states that key figures in long black gowns are alien to children.

The criminal justice system in general has considerable implications for the child witness. The procedures result in trauma and this affects the accuracy of the child's evidence. The system requires that the child must testify in the presence of the accused. This study finds how anxious and painful it is for children to face the accused, (Müller, 2000:49) especially if it is somebody known to them. Handling intrafamilial abuse in the criminal justice system is particularly difficult. These cases require extra support and added sensitivity for the victim and the family. For these child victims, the personal cost of testifying is the greatest, and every effort must be put into reducing the child's emotional pain and strengthening the mother-child bond as a protective factor. This difficulty is also mentioned in the literature (Müller 2000:103).

Delays and postponement cause children to forget facts, as is stated by Müller (2000:90). Parents in this study reported how difficult it was for their child to remember all the details. Delays decrease the quality of children's evidence. Child witnesses have a short attention span and find it difficult to wait for extended periods of time. Lengthy postponements and delays prolong their anxiety and can cause them to forget important facts and details (Müller, 2000:49).

6.3.2 Advantages of the criminal justice system for the child witness

In this study it is being revealed that the criminal justice procedures can also be beneficial for children as is stated in Müller (2000:80). Child 7 in this study, who received therapeutic intervention and proper court preparations, experienced the court proceedings as beneficial. The experience provided the child with a sense of psychological closure to her traumatic experience. The criminal justice professionals in this study mentioned the following benefits of the criminal justice system:

Testifying in court can be therapeutic and children can feel empowered and in control. The abusers are punished and are prevented from continuing to abuse other children.

6.3.3 The need for court preparation programmes

In this study it is being proofed that the child witness needs some preparation prior to testifying. To bring a child into the complex and often stressful process of testifying in court without careful preparation is unthinkable. A child who knows what to expect and is prepared for his role will provide more credible testimony. Child victims and witnesses require extra time and special effort to prepare for court. Individual preparation is best handled by the case prosecutor and a victim advocate. It should be tailored to the specific age and needs of the child. Specific case issues are covered in this type of preparation. Many prosecutors will take the child witness to an empty courtroom to familiarise him with the setting.

Programmes designed to prepare children for court proceedings serve the interest of justice and are encouraged by all participants in this study. Professionals expressed the vital importance of such programmes and recommended that it should be done over a period of time and not only on the morning before the proceedings. The two children who were prepared for the proceedings found the experiences less traumatic and even positive.

Children understand little about the legal system — its players, its rules, and its procedures. Most of the children in this study had a complete lack of knowledge about

the legal personnel and procedures. Court preparations are vital: the more preparation the child can be given, the better. This is also stated in (Müller, 2000:325).

Child 7 went through the same procedures as the other children, her case was also heard in an ordinary courtroom, but she knew the prosecutor, she was familiar with the courtroom setting and knew what to expect of the cross-examination. She was allowed to wait in a separate courtroom and did not have to face the accused in the corridors. The child was informed of her role as a witness and the roles of all other court officials. The child reported afterwards that she was satisfied and felt good about herself, and relieved that she could continue with her life. She was full of confidence and offered to help other sexually-abused children.

Programmes designed to prepare children to testify serve the interest of justice and are encouraged. Judges are encouraged to participate in court preparation programmes, and judicial participation in such programmes is not a ground for refusal or disqualification. Judges should make their courtroom and staff available for court preparation programmes. These provisions are made in section 158 of the Criminal Procedures Amendments Act 51 of 1977.

6.3.4 The need for child-friendly courts and separate waiting-rooms

Participants in this study were not aware of the existence of such a facility. All cases were heard in the ordinary courtroom. These facilities are used on the discretionary powers of the prosecutor and are not automatically available for all child witnesses. The courtroom was only altered in one of the seven cases when court officials were convinced that the child would never be able to testify in an ordinary courtroom. The child was exposed to an ordinary courtroom twice and broke down emotionally.

The researcher is of the opinion that the threatening appearance of the courtroom is very intimidating for children. In the cases where the courtroom was rearranged and where screens were used, children found it easier to testify.

The court should provide a waiting-area for children that are separate from waiting-areas used by other persons. The child's waiting-area should be furnished so as to

make the child feel comfortable. Courts are encouraged to create special waiting-areas for the child witness.

6.3.5 The usefulness of Gestalt Play Therapy techniques

The Gestalt Play Therapy techniques could easily be applied in this research study to bring child 7 into contact with her feelings, fears and anxieties.

Through the use of the rosebush, the sandtray, the monster technique, the empty chair, clay work and the dream technique, the child could come into contact with her inner feelings in order to get control over them later. The child expressed feelings of fear, powerlessness, not being in control and anger.

Through these techniques the child was empowered to be self-supportive and could take self-responsibility and control of her situation. The child was able to move out of the impasse layer to the explosive layer of the personality. Through the Gestalt Play Therapy Approach, the child could come to the place where she could accept the things over which she had no control (like the sentencing of the uncle) and to move on with her life.

In this study it was found that the Gestalt Play Therapy Approach can be used effectively to make the court experience less traumatic for the child witness.

6.3.6 Principles for reform

The following principles are presented which, on the basis of the current study, should be considered the minimum basis for reform.

- Every child and parent should be kept well informed on the progress of their case.
- Every child should be provided with dedicated and comprehensive court support from the time of reporting, and with child-friendly facilities prior to giving evidence.
- Every child should give evidence once only — for the purposes of trial.

- Every child should be protected from seeing the accused in all stages of the process.
- Every child should be protected under all circumstances from aggressive cross-examination.
- Every child should be entitled to after-court counselling and debriefing.
- Every child should be treated with dignity, respect, care and humanity.

6.4 RECOMMENDATIONS

The following recommendations and conclusions are made according to the study done:

6.4.1 Introduction

In this chapter focus was placed on the recommendations for criminal justice professionals. Children suffer abuse at the hands of their parents and caretakers; they are victimised by strangers. Children have a limited capacity to understand the violence they experience and almost no capacity to protect themselves. They need to be treated with compassion and professionalism by criminal justice personnel from the first response to the crime and throughout the prosecution process. Effective, age-appropriate interaction and practices adapted to the child can reduce the trauma that child victims and child witnesses experience and minimise their long-term physical, emotional and social problems. The researcher offers recommendations and sample practices that can improve the response of criminal justice personnel to children who are victims of and witnesses to crime. Child victims and child witnesses provide our society and our judicial system with a huge challenge.

6.4.2 The following recommendations are offered to all criminal justice professionals and are in line with section 158 A of the Criminal Procedures Act 51 of 1977 (special arrangements for vulnerable witnesses)

Recommendations for all criminal justice professionals

All professionals should have more in-depth training in forensic interviewing, child development, the dynamics of child sexual abuse, the emotional and psychological impact of abuse and legal issues related to child witnesses.

The court should take steps to provide for the comfort and support of child witnesses and to protect them from coercion, intimidation, unnecessary psychological stress and undue influence.

Professionals should work in close collaboration with other agencies and should use a multidisciplinary team approach when handling cases involving child witnesses.

Professionals should adapt their practices to recognise the developmental stages and needs of child witnesses to ensure that they are sensitively treated throughout the process. Professionals should prepare children for court in a manner that is developmentally appropriate and sensitive to the child's mental health needs.

Criminal justice professionals should be trained in the Gestalt Play Therapy Approach and court preparation programmes.

6.4.2.1 Specific recommendation for prosecutors' offices

- The prosecution authority should do everything in its power to obtain an early date for the trial.
- Chief prosecutors should ensure that cases involving child victims and witnesses receive priority and are handled as expeditiously as possible, minimising unnecessary delays. They should ensure that child victims and witnesses receive support services as they go through the criminal justice process.
- Prosecutors should be specially assigned to handle cases involving child victims and witnesses, receiving in-depth training on issues related to victimisation of children, including medical and legal issues.

- Prosecutors should ensure that child victims and witnesses are adequately and appropriately prepared for the court process and for testifying.
- Prosecutors should work in collaboration with medical and mental health providers, child protective services agencies and victim assistance providers.

6.4.2.2 Specific recommendations for magistrates and judges

- Judges should ensure that cases involving children as victims and witnesses receive high priority and are handled as expeditiously as possible, minimising unnecessary delays and continuances.
- Judges who handle cases involving child victimisation should receive adequate training in the dynamics of child maltreatment as well as in the impact of victimisation and witnessing violence on children and child development.

Recent amendments were made to the Criminal Procedures Amendments Act 51 of 1977 to provide for the making of special arrangements for vulnerable witnesses. The following provisions are made for vulnerable witnesses and should be implemented by all criminal justice professionals:

- The relocation of the trial to another location while the evidence of the vulnerable witness is being heard. Alternative venues can be used for trials, so that they can be held in environments which are less intimidating than courtrooms.
- The rearrangement of the furniture in a courtroom or the removal or addition of furniture or objects from or to the courtroom, or a direction that certain persons sit or stand at certain locations in the courtroom.
- The granting of permission to any person who is fit to accompany the witness while he or she is giving evidence (a support person).

- The granting of permission to the witness to give evidence behind a screen or in another room which is connected to the courtroom by means of closed-circuit television, a one-way mirror or by any other device or method.
- The taking of any other steps that in the opinion of the court are expedient and desirable in order to facilitate the giving of evidence by the vulnerable witness concerned.
- There are strict limitations on the use of irrelevant cross-examination to badger witnesses.
- Cross-examination should be through the presiding officer or an intermediary to make sure that lawyers do not try to intimidate or confuse the vulnerable witness.
- There are more possibilities for using information given by a young child prior to the trial, such as statements to social workers or police officers, to avoid the necessity of asking the child to repeatedly recount the details of a traumatic experience. (Criminal Procedures Act, No. 51 of 1977).

6.4.2.3 Specific recommendations for law enforcement agencies

- All officers should have at least basic training in recognising and responding to children who have been abused, neglected or exposed to violence.
- Agency heads should specially assign officers to handle cases involving child victims and witnesses, ensuring these officers receive in-depth training in interviewing children, identifying injury, child development and understanding the impact of victimisation and witnessing violence on children.
- Police agencies should have written child abuse policies that provide sufficient guidance for making important decisions, such as whether to arrest a suspected perpetrator, whether to place a child in protective custody, and how to deal with unusual or difficult situations.

- Law enforcement investigators should work in collaboration with medical and mental health providers, child protective services agencies, and victim assistance providers.

6.4.2.4 Specific recommendations for social workers and psychologists

- A social worker should be appointed to represent the child and the child's interests as soon as possible. Social workers and psychologists should be more involved in court preparation programmes and should undergo specialised training to work with the sexually-abused child witness. Videotapes of the discussions between the child and the social worker during the investigation should be admissible evidence and should be made available to the accused before the hearing.
- A clinical psychologist should question the child, and he should be entitled to express an opinion on the reliability of the child's evidence. The questions put by the psychologist should be subjected to consultation with the accused, the prosecution and the judicial officer. After-court follow-ups and counselling are vital for child witnesses and should be given to all child witnesses. Social workers and psychologists should be trained in court preparation programmes, the Gestalt Play Therapy process and after-court follow-up counselling.

6.5 SPECIAL PRECAUTIONS FOR THE CHILD WITNESS

In this study it is being shown that the number of difficulties experienced by child witnesses testifying in the accusatorial environment must be addressed. Demystification of the court process through education and empowerment skills is a proactive intervention that will reduce levels of anxiety experienced by children while at the same time enhancing the quality of their evidence. It is therefore essential that all child witnesses be carefully prepared for court (Hollely, 2000:352).

The court shall take steps to provide for the comfort and support of child witnesses and to protect children from coercion, intimidation, unnecessary psychological stress and undue influence.

The (young) child witness should give evidence in a playroom environment. The demeanour of the child can be observed by the judicial officer, by the accused, and by the other parties in the proceedings through one-way glass.

6.5.1 Court preparation programmes

Programmes designed to prepare children to testify serve the interest of justice and are encouraged. Judges are encouraged to participate in court preparation programmes, and judicial participation in such programmes is not a ground for refusal or disqualification. Judges should make their courtroom and staff available for court preparation programmes.

6.5.2 Waiting-area for the child witness

- The court shall provide a waiting-area for children that are separate from waiting-areas used by other persons. The child's waiting-area should be furnished so as to make the child feel comfortable.
- Courts are encouraged to create special waiting-areas for child witnesses.

6.5.3 Guardian Ad Litem

- The court shall appoint a guardian ad litem for a child who was a victim of, or a witness to, a crime to protect the best interests of the child.
- Duties of a guardian ad litem. A guardian ad litem:
 - may attend all interviews, depositions, hearings and trial proceedings in which a child participates.
 - shall remain with the child in the courthouse or other location while he waits to testify.
 - may make recommendations to the court concerning the welfare of the child.

- may have access to all reports, evaluations and records, except the attorney's work product, necessary to effectively advocate for the child.
- may interview witnesses.
- shall marshal and coordinate the delivery of resources and special services to the child.
- may request additional examinations by medical or mental health professionals if there is a compelling need for it.
- shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which he is involved.
- shall, to the extent desired by the child and the child's family, assist him in coping with the emotional effects of crime and subsequent criminal or civil proceedings in which he is involved.

6.5.4 Delays and postponements

All sexual abuse cases involving child victims must be expedited. Lengthy delays are unbearable for children and can have a deleterious effect on a child witness's testimony at trial.

6.5.5 The need for the screen or closed-circuit television

Expert testimony on issues related to the psychological symptoms of abused children, recantation, delayed disclosure, the need for the screen or closed-circuit presentation, suggestibility, and memory in children should be offered as much as possible to the court as part of the prosecutor's case against an accused.

Testimonial aids such as the screen or closed-circuit television should be readily available to children who are not able to testify in front of an accused in court. The child should be allowed to sit in a witness-only waiting-room, with a segregated area of the courtroom specially designated for child/victim witnesses.

6.5.6 Hearsay testimonies

Hearsay testimony by individuals who have received a sexual abuse disclosure from a child should be admissible in court and weighed for its probative value.

All the gaps that were identified in this study and the recommendations made will be helpful for the sexually-abused child witness, but follow-up research on the efficient implementation of the recommendations will be needed.

6.5.7 Conclusion

In conclusion, child sexual abuse victims involved in the Namibian criminal justice system require coordination among prosecutors, police, child protective service workers, and, when available, victim/witness assistance programme staff to ensure that cases are dealt with in an integrated and child-focused manner from the moment of disclosure through sentencing and beyond.

In parallel with this, there should be an increased awareness among criminal justice professionals, medical and welfare groups that children do have rights, including the right to be heard in court

If the Namibian criminal justice system does not take victimisation of children seriously, it is unrealistic to expect our communities to view crimes against children as a serious problem. Children need to know that their lives and well-being are critically important to our society. Perpetrators need to know that their actions will have severe consequences.

Children are strong and resilient and with proper support and preparation most of them will be empowered and able to cope with testifying and to ultimately move on with their lives.

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Appendix 1

Written Consent

I, Veronica Rose Theron, am an enrolled student at the University of South Africa, currently doing the M.DIAC (Play Therapy) course. Dr J.P. Schoeman is my supervisor.

I am doing my research on the Impact of the Namibian Judiciary System on the Child Witness and intend to make recommendations to all professionals dealing with the sexually-abused child witness.

I hereby request you to participate in my research study as a respondent in answering a semi-structured interview.

Hereby I, Veronica Rose Theron, declare that all information supplied will be treated with confidentiality and will be used only for the content of my thesis as partial completion of the M.DIAC (Play Therapy) course.

Bylae 1

SKRIFTELIKE TOESTEMMING

Ek, Veronica Rose Theron, is tans 'n ingeskrewe student aan die Universiteit van Suid-Afrika, besig met die kursus M.DIAC (Spel terapie). Dr. J.P. Schoeman is my studieleier.

Die navorsingstudie waarmee ek tans besig is, is daarop gemik om vir die berader van die Impak van die Namibiese Regstelsel op die seksueel-gemolesteerde kindergetuie te ondersoek en aanbevelings te maak vir professionele mense wat met hulle werk.

Ek versoek hiermee dat u as respondent aan my navorsingstudie sal deelneem deur die beantwoording van 'n semi-gestruktureerde onderhoud.

Hiermee bevestig ek, Veronica Rose Theron, dat alle inligting aan my verskaf deur

(Anoniem)

te alle tye vertroulik hanteer sal word en slegs gebruik sal word vir die inhoud van my tesis as gedeeltelike voltooiing van die M.DIAC (Spel terapie) kursus.

**Semi-structured Interviews
Children and Parents**

Age :
Gender :
Grade :
Occupation :

Respondent No.:

1. Who was the accused?
.....
2. When did the abuse take place?
.....
3. Whom did you tell first?
.....
4. When did you report?
.....
5. When was the case finalised in court?
.....
.....
6. What was the outcome?
.....
.....
.....
7. How did you experience the cross- examination?
.....
.....
8. How did the delays affect you?
.....
.....
.....
9. How did you experience the waiting to testify on the day of the court hearing?

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.....
.....
.....
.....

10. Were waiting-room facilities available?

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.....
.....
.....

11. Was your case heard in a victim-friendly court?

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.....
.....
.....

12. What was the most stressful for you?

.....
.....
.....
.....

13. What were your biggest fears?

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.....
.....
.....

14. Were there any benefits/advantages in the whole criminal justice system?

.....
.....
.....
.....

15. How did you feel after testifying?

.....
.....

16. What do you think of the services rendered by:

the police

.....
.....

the social worker/psychologist.....

.....
.....

the medical doctor

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.....

the court officials

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17. What services did you receive after the finalisation of the courtcase?

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18. What could have been better?

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19. What do you think of the whole process?

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20. Would you report again if sexual abuse occurred?

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21. What would you suggest should change?

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**SEMI-STRUCTURED INTERVIEWS
PROFESSIONALS**

AGE :
GENDER :
PROFESSION :
MINISTRY/ORGANISATION:

1. Who are the perpetrators in the majority of the cases?
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2. More or less how long does it take for a case to be finalised?
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3. Do you think the criminal justice system causes more trauma for a child?
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4. What do you think are the effects of the criminal justice process on child witnesses?
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5. Are service providers knowledgeable about the age and developmental considerations of the child witness?
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6. Do you think the legal personnel understand the dynamics of child sexual abuse?
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7. What would you like to do to improve support to child witnesses?

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8. Do service providers have enough training and are they knowledgeable about the procedures to be followed?

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9. What is your opinion about the services rendered to child witnesses by

Social workers

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Police

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Medical doctors

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Psychologists

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Court personnel

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10. In your opinion, what could be done to make the experience less traumatic for child witnesses?

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11. What do you think of the cooperation among all stakeholders/role-players?

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12. What is your view on the use of technology like CCTV, etc.?

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13. In your view, how are child witnesses treated during cross-examination?

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14. In your opinion, do children lie about sexual abuse?

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15. If your child were a victim of sexual abuse, would you want him/her to go through the criminal justice system?

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16. Are there any advantages/benefits for a child witness?

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17. What do you think of language/terms used during court proceedings?

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18. Why the long delays in the whole criminal justice system?

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19. In your opinion, what is the most stressful when dealing with child witnesses?

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20. What is the most stressful for child witnesses and their parents?

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21. What is the impact of the criminal justice system on child witnesses?

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22. Do you think there are adequate court facilities for child witnesses?

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23. What do you think of victim-friendly courtrooms?

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24. How often is it used?

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25. What do you think of court preparation for child witnesses?

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26. Who should do it?

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27. What are the waiting facilities or arrangements for child witnesses?

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28. How familiar are you with the amendments on vulnerable witnesses?

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29. What are your suggestions for reform?

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