

## Abuse of the innocent is devastating

**T**he sexual abuse of children is unique psychologically. It is traumatic, like rape or assault. It is prolonged – like being in a war or being held captive in a concentration camp.

What makes it different is the relationships involved, because child sexual abuse almost always involves the grooming of vulnerable children by predatory adults.

The abuser develops a relationship of trust with the child, using tricks and bribes to lure the child ever deeper until the child is subjected to the abuser's sexual needs.

This lays the groundwork for classical post-traumatic stress disorder, the group of symptoms normally observed in trauma survivors like soldiers, emergency rescue personnel and police officers.

The longer that the abuse continues and the more severe the sexual abuse is, the longer the victims will suffer from PTSD.

Symptoms of abuse can include anger, depression, inability to concentrate, drug and alcohol abuse, flashbacks, insomnia, suicidal fantasies and guilt.

In some cases, victims feel all of these, as well as traumatic sexualisation, which results in the victim's development becoming inappropriate and dysfunctional and ultimately identity confusion.

What follows are extracts from some reports compiled by social workers on children who have suffered sexually abuse:

He was very aggressive. He would smash the windows in the house and was very rude to his mother. (9-year-old male)

"I fight very quickly. Don't know why. I'm just angry after my stepfather did this. I even fought with another girl at school. I just got angry. I wanted to sweep the classroom and she kicked the dustbin and I lost my temper and punched her in the face with a fist. I even tried to hit my mother once." (17-year-old female)

He has become aggressive and rebellious and has had himself tattooed. (21-year-old male)

The child displayed intense anger towards the accused doll. (4-year-old female)

He no longer wants to go outside and play with the other children as he used to. He remains inside the house all the time. (6-year-old male)

She stopped socialising with children at playschool (5-year-old female)

Both children started to withdraw emotionally, showing no facial expressions or responses. (6-year-old male and 4-year-old female)

When she sits with someone, like a guy especially, it comes into her mind. She sees the picture of what happened to her. Even if she's not thinking about it, it just comes into her mind. (16-year-old female)

She thinks a lot about it. At least three times per week. When she thinks about it, she feels again the personal pain and it makes her want to cry. (16-year-old female)

She has difficulty sleeping and wakes up in the middle of the night screaming and fighting. She has lots of nightmares. (3-year-old female)

He had nightmares and would resist going to sleep. He would jump up in his sleep and would run to his parents. (6-year-old male)

She couldn't sleep. She used to hear things – like the sound of water, like a noise in her ears and then she would lie and wait for the morning. (16-year-old female)

She has lots of flashbacks. The first time after she disclosed and the accused drove past. When she saw him it was like being in that zone again. She saw things in front of her and just started crying. It also happened in school when they were discussing Life Orientation. She sees it happening to her and becomes nauseous and light-headed. Sometimes she just goes. It's as though she's dreaming. She's sees different things all the time in her head. (16-year-old female)

He cannot concentrate in class. He cannot hear



what the teacher is saying. He spends most of his time in the toilet at school. He cannot participate in class. When the other children are writing, he sits and thinks. (18-year-old male)

She has difficulty concentrating in class. The teachers reported to the victim's mother that her performance had deteriorated drastically.

She does not participate in class and does not complete her tasks. Even when teachers try to involve her in school activities, she does not respond. She has become rebellious at school. The victim said that during Life Orientation most of the topics are sex related. It reminds her of what happened. During that period she asks to be excused and goes to sit in the bathroom at school. She did well at school before the

# Rape is the biggest battleground

More crimes take place in the perpetrators home and few are reported to the police

**O**f the many battles being fought to empower victims in South Africa, without a doubt rape is the greatest battleground. Whatever some people might think, rape is not sex, but a sexualised act of humiliation and punishment. The tragedy is very few rapes are ever reported to the police.

The Medical Research Council found in 2005 that less than one in nine rape survivors reported their rape to the police.

In 1999, Nicro estimated it was only one in 20, while police themselves believed the figure was lower still – just one in 35.

There are many reasons for this.

The watershed Tshwaranang Legal Advocacy Centre, the South African Medical Research Council and the Centre for the Study of Violence and Reconciliation report this year – which studied not rape itself, but the reasons why not all rapists ever face the consequences of their acts – came up with a number of concerning discoveries.

For a start, rape is tolerated in our communities. "Rape is perpetrated by men acting on a sense of entitlement... more rapes took place in the perpetrator's home than the victim's home, with some perpetrators even falling asleep afterwards.

"Such men clearly saw no need to conceal themselves. Even if they did understand the wrongfulness of their actions, then it suggests such men feel empowered to act with a sense of apparent impunity.

"The fact that others acted to assist the perpetrator in committing abduction and rape, rather than preventing its occurrence, highlights the extent to which sexual violence is socially tolerated and supported... The criminal justice system needs to improve the investigation and prosecution of sexual crimes so that men and boys realise they cannot rape with impunity."

When rape survivors did report the rapes, the institutional difficulties they faced at the hands of police, medical staff, prosecutors and the court system itself had the effect of revictimising them, putting them through the original trauma again.

The researchers studied 11 926 reported rapes at 128 Gauteng police stations in 2003.

They found out that adult women were three times more likely to get raped by strangers than girls were, half of all adult rape survivors had been abducted, rapists of adult women were 10 times more likely to be armed than when they raped girls and less than half of cases involving the rape of an adult woman would in arrest.

Only one in seven would make it to trial. Where the rape involved adolescent girls, the researchers found almost half were raped by a friend or acquaintance and a quarter of all adolescent girls who had been raped had been raped before by the suspect.

The arrest rate of rapists of adolescent girls was slightly better with more than half being arrested, but only one in five would go to trial and only one in 10 would be convicted.

But, in the case of the rape of teenage girls, their attackers would most likely be charged with the lesser offence of sex with an underage girl.

The situation with young girls (aged 0 to 11) was even more dire. One in six young girls were the victim of repeated abuse, their at-

tackers were most likely to be people they know. In one in three cases their attackers were relatives.

Most young rape survivors suffered vaginal or anal injuries as a result of the rape.

More than half of all rapes involving young girls resulted in an arrest, but only one in ten would ever be convicted.

These figures are compounded by the fact that the rapes were not committed in isolation: in almost 10% of all rapes, there were people in the same room while the victim was being raped. In a quarter of the cases, there were people in the same building.

Almost a third were gang rapes, with the worst involving 17 rapists.

Rapists come from all walks of life, the youngest in the study was six, the oldest 76. Most suspects are first time offenders, but almost 25% have convictions for other crimes.

The system failed the victims when it came to sentencing, because even though convicted rapists are subject to minimum sentences of 10 years for a first offence only three of a total of 34 convicted rapists who should have been jailed for life actually were.

This is the one side of the scourge, the other is the incredible case load the police are under. South Africa has 234 police officers per 100 000 citizens, compared to 380 officers per 100 000 in other countries.

Our criminal justice officials are overworked: we have seven police officers and 0.14 prosecutors per murder as opposed to 158 officers and 2.6 prosecutors per murder elsewhere in the world. According to a 1996 SAPS evaluation 20 dockets is the maximum any detective should be investigating. In 2004, detectives in Cape Town townships had anything from 27 to 300 each.

The battle can be won. For a start, South Africa needs to enforce a zero tolerance approach to sex crimes. Security at home and in public needs to be stepped up, parents need to control the people who look after their children more closely and be aware of who has access to their children.

Police need to be properly trained to handle sex crimes effectively especially children and to keep proper records. Victims need to be empowered, to be handled with respect and be allowed to take part in the prosecution. Nurses and doctors need to take medical samples strictly and according to guidelines and magistrates and judges need a far wider understanding of the effects of rape not just on the victims, but also on the community as a whole.

**The criminal justice system needs to improve the investigation and prosecution of sexual crimes**



A woman takes part in a protest in solidarity with rape victims in front of the Cape High Court.

Picture: Rogan Ward

## MINIMUM SENTENCE FOR RAPISTS

- First time rapists must be jailed for a minimum of 10 years if the victim is under 16 and there has been bodily harm or the intent to cause grievously bodily harm, then the rapist must be jailed for 15 years.
- Second time rapists must be jailed for 15 years, or 20 years if the victim was under age and was injured.
- Third time rapists should be sentenced to no less than life behind bars.
- Life imprisonment is also mandatory where a person was gang raped or raped by a person who knew he was HIV positive. Courts tend to hand down substantially more severe sentences where the rape victim is under the age of 12.

## Sexual offences court enlisted in war on rape

**T**he need to turn the tide on rape was so great the Department of Justice and Constitutional Development initiated its first ever specialised sexual offences court in Wynberg in March 1993 as a pilot project.

It was revolutionary at the time, instituting a victim centred approach to everything it did.

By 1999, South Africa's second sexual offences court had been set up in Bloemfontein followed shortly afterwards by specialised courts in Durban, Parow and Grahamstown.

The aim of these courts was first and foremost to empower victims, by creating environments that would minimise the trauma the victims had already experienced, staffing the courts with officers that were specially trained to deal with the victims and cut down on the incredible delays in finalising these cases.

The courts were evaluated by Idasa in 2001, the Human Rights Commission in 2002 and then audited on request of the Minister of Justice and Constitutional Development in 2005.

The studies showed that staff at these courts were overwhelmed by the workload and the fact that there weren't permanent magistrates assigned to the courts added to the stress. Between 2001 and 2007, there were an average of 54 000 rape cases reported to the police each year.

Not all of the prosecutors had been specially trained to handle sexual offences cases, while those that were trained hadn't all been trained in the same way. To top it all, many were inexperienced and there were no facilities to support them in their work.

The HRC found that the sexual offences courts were better than normal courts which were hostile and traumatised children, and recommended that the government roll out the courts throughout the country.

In the meantime, the Sexual Offences and Community Affairs Unit (Soca), which was set up in 1999 to spearhead the fight against women and children, was drawing up a standardised blueprint for all sexual offences courts, because the courts that were being rolled out across the country were not being done uniformly.

The blueprint, issued in 2003 and updated again in 2005, called for the speedy and effective prosecution of sexual crimes, reducing the secondary victimisation of victims in the process and in such a way encourage other victims of sexual crimes to report them to the police for prosecution.

Soca's plan laid down certain minimum standards for every court: two prosecutors, a dedicated magistrate, proper intermediary facilities such as CCTV in separate rooms for witnesses and victims, victim supports services such as intermediaries and social workers, and sufficient legal aid for the accused so that the cases could be speedily wrapped up.

Where courts found that they were struggling with insufficient resources, cases involving children had to be prioritised.

The results were soon clear. Conviction rates jumped from 42% to 62% overall, while the conviction rates in the older sexual offences courts jumped to between 75% and 95%, while the time taken from arrest to conviction was slashed to less than six months.

At the beginning of this year, the Criminal Law (Sentencing) Amendment Act came into effect, boosting the Regional Courts' jurisdiction from 15 years to life sentences where these courts have convicted persons of certain serious offences carrying discretionary minimum sentences.

This allowed sexual offences victims to approach these courts too for justice, an important innovation since there are more regional courts than sexual offences court, firstly, and secondly, the regional courts are better situated geographically for victims than many of the sexual offences courts which are only in urban areas at the moment.

The problem though remains the original one, a lack of specialised facilities, prosecutors and magistrates to hear the cases, which is critically important given the nature of rape cases which are technically difficult to prosecute and emotionally wrenching for all involved, particularly in view of the specialist testimony that has to be led by psychologists, social workers and medical personnel.

Because of these conflicting demands, as well as the need to see justice done quickly and effectively for victims of sexual crimes, the Minister of Justice and Constitutional Development imposed a moratorium on the roll out of sexual offences courts and suggested instead that the 52 sexual offences courts remain but be reintegrated into the regional courts in each of the country's 366 magisterial districts.

Eventually, every magisterial district must have at least one sexual offences court that complies to the Soca blueprint.

This, it is hoped, will lead to better case load management among the court staff, while making justice accessible to all.

In a society where people overwhelmingly feel the cards are stacked in favour of the criminal, victim impact statements provide a powerful tool in the arsenal of restorative justice.

In short, they give the victim the opportunity not just to lead evidence in court, as is the normal case, but also to speak directly to the presiding officer and the accused at the same time to tell them exactly how they have been hurt.

This has the double effect of allowing the victim to feel as if they have played a real role in the justice system rather than just being overlooked as many victims often feel, as well as enabling the presiding officer to hear at first hand the effects of the crime.

It's an important factor, as one judge noted in 1997: "Rape is an experience so devastating in its consequences, that is

## SEXUAL OFFENCES VICTIMS MUST BE GIVEN A VOICE IN THE TRIAL OF THEIR ATTACKERS

rightly perceived as striking at the fundament of human, particularly female, privacy, dignity and personhood.

"Yet, I acknowledge the ability of a judicial officer such as myself to fully comprehend the kaleidoscope of emotion and experience, of both rapist and rape survivor is extremely limited."

The victim impact statement should be therapeutic and cathartic for the victim, while bringing the consequences of what she has suffered right into the middle of the court case.

There are huge debates going on at the moment as to how to formalise victim impact statements.

Those against the initiative fear victims will exaggerate the impact of the criminal act on themselves, others fear the statements, especially in cases involving the sexual abuse of children, will not properly explain to the court the future consequences of the crime on the victim.

Other concerns include the fact that victim impact statements are currently allowed in some cases, but not even offered in others, creating a totally unbalanced situation.

Most of all, far too few people even know what victim impact statements are.

To this end, the Department of Justice and Constitutional Development has recommended that prosecutors be made responsible for producing these statements in court, but that specialists like psychologists and social workers be brought in to do proper assessments of long term consequences.

Where expense is an issue, expert NGO advice should be sought or even testimony from teachers and parents on the effects of the crime on the victim.

Another recommendation is that the victim make the statement during the evidence part of the trial rather than

having to return at the sentencing phase and thereby relive the trauma of the attack all over again.

Finally, the victim will have the opportunity to make a statement in person, in writing, or through a report compiled by an expert or even the form of a televised interview with probation officer.

A pilot study in the Eastern Cape of 104 victim impact statements was found by most of the victims to have been therapeutic and cathartic.

Three of the girls even told the prosecutor on the day that they gave evidence that the victim impact statement had allowed them to order their thoughts and make sense of the abuse they had endured.