

DEPARTMENT OF COMMUNITY SAFETY

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A preliminary report of the laws on child killings



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A survivor in crossfire

Picture provided by Red Cross Children's Hospital

Phase 1: A preliminary report of the laws on child killings

Valencia Farmer – A true story

In the early hours of June 27, 1999, Valencia Farmer, 14, was forced to accompany her attackers to a derelict house near a shebeen in Beverly Park, Eerste River where she was gang-raped, stabbed 53 times, 40 times in the back and had her throat slit before she was left for dead. In her bid for survival she managed to crawl towards the front of the house where she was spotted early the same morning. She sadly and emotionally died at 3 am on Monday, 28 June 2003 after bravely being her own witness in the case as she lived long enough to be able to identify her attackers by nodding to the names and identifying them.

Initially, the police sought six criminal “Naughty Boys” gang members but four suspects were charged. One was acquitted of the charges against him and the other three convicted of murdering and raping Valencia. The convicted three, Glenville Faro, 18, Franklin Roberts, 19 and a youth, 16 tried to convince the court that they did not intend to stab her, but later Faro implicated them by saying the reason they stabbed her was to kill. The 16-year-old youth who became a gang member at the age of 10 blamed the other accused, Faro for being involved, while Faro in turn also blamed another party, Maasdorp. As they continued to blame one another for the death of Farmer, they further stated that the motive behind the killing was that they had been under pressure from Maasdorp, 26, against whom the charges were dropped, to take part in killing the girl.

The offences conducted by the gang members were Schedule Six charges, which are considered to be extremely serious and include gang rapes, rape of victims below the age of 16 and the murder of the raped victim. Prosecutor Louis van Niekerk called for double life-sentences for all three of the convicts, asking for the youth to be treated as an adult. The Judge indicated his reluctance to impose the heaviest possible sentence on the youth.

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1. BACKGROUND

South Africa is one of a few countries with a constitution that enshrines the rights of its children, including shelter and safety. However, despite the efforts to safeguard their rights, adults still rape, abuse and kill innocent children. Senseless fights between rival gangs leave a lot of little dead bodies killed in crossfire.

Child killing is not limited to a specific group of the population, nor is it restricted to only one form of killing. Children from all cultural backgrounds, race and creed are subjected to both accidental and non-accidental deaths on a daily basis. Strangers, traffickers, parents and close relatives to mention a few, sexually and physically abuse many children each day and as a result, many of them die from the injuries. Some traditional healers even use limbs from children, especially their sex organs, which are said to be the most potent in the making of muti (I was forced to kill my baby, 2002:1).

The emotional trauma to those who have to be exposed to such killings remains a lifetime torture. Parents and communities have to endure the pain left behind, whilst the South African law, which is meant to regulate the senseless killings of the children is greatly undermined, especially by the gang communities. The Department of Community Safety in conjunction with many other government departments and various non-governmental organisations, have done an excellent job in an attempt to protect children of the Western Cape. Projects such as the Hands Off Our Children (HOOC) and the department of Education's Safe Schools Programme are one of a few projects that have been implemented. According to the HOOC business plan the campaign is the initiative of the Minister of Community Safety, Leonard Ramatlakane. The Minister's first reference to this vision was at a rally he addressed in Scottsdale, Kraaifontein, when angry residents, bereaved by the tragedy of a young rape victim, gathered to vent their anger. This approach focuses on partnerships formed between Government Departments from all three spheres, i.e. the national, provincial and local departments, incorporated together with the private sector, service providers, the community, and the NGO sectors (Hanekom, 2001:3).

The Minister of Community Safety, Leonard Ramatlakane, raised his concerns that despite all that was being done by the department to prevent harm towards children in policy programmes and campaigns such as the Hands Off Our Children (HOOC) and Bamabani Against Crime, children are still being killed. Bamabani Against Crime, at a grassroots level, encapsulates the notions of direct democracy where it mobilises the public to express their opinions, grievances, and needs. It creates a bridge where the community has a chance to raise and address shortcomings of both the South African Police Service (SAPS) and the Department of Community Safety in relation to both SAPS and the department's service delivery via its social and policing crime prevention initiatives and programmes. Bamabani speaks to the crimes occurring in those communities and adopts a proactive and responsive methodology in responding to community needs and problems (Bamabani Against Crime, 2003:1).

2. INTRODUCTION

The development of this paper is as a direct result of the Deputy President, Jacob Zuma's address in an anti-crime meeting in Bonteheuwel on 3 June 2003. He, along with other government officials, were visiting the area as part of the government's moral regeneration campaign. A least ten parents related their incidents on how their children had been caught in crossfire between rival gangs (Smetherham, 2003:1). The community also complained of the perpetrators who were not being punished by the law but reintegrated into the same communities.

The preliminary review of the laws on the killing of children aims to provide the communities with a platform for peace and stability, as well as seeks to find answers through different avenues. There are four phases attached to the study and these are as follow:

Phase 1

The first phase will focus on the theoretical aspect of the research, including the literature review. This phase is further divided into four parts, which are partitioned as follow:

- The first part focuses on the background information of the constitutional development and outlines the introduction to the problem and the preliminary review of the laws, which are elaborated further in the problem statement. The problem statement also looks at the lack of legislation and compares the international instrument, particularly the UN Convention on the rights of the child with current national legislation.
- The second part focuses on how the information has been gathered through various methods and mechanisms. It relates to the likeliness of the project to be reviewed by the relevant law reform organisations for further scrutiny and research.
- The third part deals with the review of related and relevant literature as well as work previously done on the issue. It covers an overview from the policing background, an overview of the statistics, an analysis of causes, the identification of the perpetrators and finally the laws on the rights of the child as well as on firearms.
- The final part of the preliminary review looks at the significance of the research and recommendations. This part aspires to exhibit the likeliness of the review in curbing deaths amongst children caught in crossfire from rival gangs.

Phase 2:

In phase 2, it is envisaged that a workshop will be conducted in order to develop a holistic prevention strategy that will act as an over-arching framework for the establishment of operational projects. This will be conducted in partnership with the parents and/or family members of crossfire victims, missing children and the community role-players. The workshop will document stories of the affected siblings and victims from their perspective in order to obtain a first hand understanding of the aftermath experiences regarding support structures and the status of the cases with the South African Police Service (SAPS). In addition to the prevention project, the Hands Off Our

Children (HOOC) and the Truancy Reduction Programme (TRP) will create a child safety awareness-raising in mobilising the communities in Bonteheuwel and Gugulethu.

As part of this phase, four inter-related approaches will unfold as follows:

- Two workshops – one in Bonteheuwel, including community members from Gugulethu and the second will be conducted in May 2004. It will include families from Elsie's River, Eerste River as well as other remaining communities.
- A database with the names and contact families of those maimed and killed in crossfire will be developed and maintained.
- The initiation of an awareness and mobilising pilot project will be implemented by the HOOC campaign in conjunction with TRP and the Learner Support Officers (LSO) of the Department of Community Safety.
- Information and projects regarding the safety of children in both non-governmental organisations as well as the national and provincial governments will be gathered.

Phase 3:

In phase 3, a docket analysis of those killed or maimed in cross fire will be conducted. The aim is to gauge the level of service delivery provision from SAPS and make recommendations that will speak to the role of SAPS and other governmental departments.

Phase 4:

The fourth phase will deal with the development of a prevention strategy that will operationalise in the form of an Optional Protocol (as a research outcome) and an operational plan (as a project outcome) that involves community and governmental role players.

3. PROBLEM STATEMENT

Many children's rights organisations feel there is a lack of proper legislation to deal with sexual abuse and exploitation of children. They feel the proposed legislation on the Children's Bill – meant to replace the Child Care Act of 1983, fails to adequately provide for the prosecution of sexual offenders due to the fragmented nature of existing legal provisions. Removed, amongst others, was a national policy framework mechanism aimed at promoting co-operation between government departments on the needs of children (SAPA, 2003:1). This clearly indicates that the law and government is out of step with the child rights advocacy, child protection and also the United Nations on the issue of protecting children against criminals.

This gap in legislation is underpinned by the belief that children should enjoy their inherent right to life as is also indicated within the UN Convention on the rights of the child. Seemingly, this right is only exercised in criminals' civil rights to life against a death penalty. The Constitution, when stipulating that everyone has a right to life, is used by perpetrators against the death penalty to protect themselves but disregard it when killing the children. Therefore, the government of the country must reform the law dealing with the child protection system to focus on child murders and the right of the

child to inherent life. Currently it is evident that the Constitution does not seem to be compatible or comply with the provisions made in the UN Convention nor with the Children's Charter. This is with reference to the following articles of the UN Convention on the Rights of the Child as well as the Children's Charter:

- Article 6, which states, "a child has an inherent right to life."
- Article 19 (1) which further states that the government shall "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse...or exploitation...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".
- Article 5, part 2 section 1, of the Children's Charter states that all children have the right to be protected from all types of violence including gangs.

It then can be deduced that the South African law does not provide adequate protection of its children against the senseless crimes and killings in compliance with the UN Convention, nor is this international instrument's provision of the child's right to life included in the Constitution. Their right to be protected from gangs, according to the Children's Charter is similarly disregarded. Appropriate legislative measures, according to Article 19, are not taken to prosecute and remove child murderers and gangs away from the communities.

It is on this premise that research needs to be conducted to identify the loopholes that create a conducive environment for perpetrators to commit crime against children. The purpose of this preliminary review is thus to start the process of developing an Optional Protocol that will deal with child deaths and the proper prosecution of perpetrators.

4. METHODOLOGY

4.1 Information Gathering

The gathering of data was established through networking with relevant parties from different backgrounds at conferences and meetings. Personal interviews on personal views regarding the law on child killings were conducted. E-mail enquiries and visits to relevant resource centers were made. The media review and internet also played a role in the data gathering.

The first method followed in the research focused on the findings on the life of one of the children who died in gang crossfire. The background information of the constitutional development is used as it produces the inductive logic that informs the study. The lack of proper legislation compared to the international instrument, particularly the UN Convention on the rights of the child with current national legislation has also been used as another method of conducting the research.

Another dimension used measured relevant literature as well as work previously done on the issue. It covers an overview from the policing background, an overview of the

statistics, an analysis of causes, the identification of the perpetrators and finally the laws on the rights of the child as well as on firearms.

Another method focuses on relating to the likeliness of the project to be reviewed by the relevant law reform organisations for further scrutiny. Based on the nature and complexity of the proposed research, it has been hypothesised that its success lies within the expertise of many law reform organisations working in collaboration with children's rights organisations. These include organisations such as The UCT's Children's Institute, The South African Law Reform Commission, the Community Law Centre and Molo Songololo, Rapcan amongst others.

5. LITERATURE REVIEW

5.1 Firearms and the death of children

The plight of child killings centres itself around various modes and methods of use, such as firearms, knives and other objects. Of these, firearms have caused more deaths than any other method of use in killings. In a study conducted by the Children's Institute, previously known as the Child Health Policy Institute, Wigton (1998:6) showed that between 1992 and 1996 a total of 1736 persons were victims of firearm related incidents in Cape Town alone, where 322 of those died. 76 % of these incidents occurred outside their homes and 15% at their homes. During this time, most of those who died of gunshot wounds were Coloured boys between ages of 15 and 19.

Results based on mortuary data also indicated that homicide is the most important cause of non-natural deaths amongst persons aged 0-18 years in Cape Town. Wigton (1998:7) further states that fire-arm homicides have been within the top four leading causes of death within this age group for the period from 1994 to 1996 and that the recent trend appears to show that more younger children are being and also likely to be shot in Cape Town alone.

In the recent spate of child killings, most perpetrators were children themselves who were in the forefront of many offences. The killings are carried out mostly by this choice of weapon (guns), which have almost always been the problem since the country's political transition to democracy. Although it is alleged that the number of the actual people killed since 1994 has declined, the number of those killed by guns has increased annually from 42% in 1994 to 49% in 2000 as articulated by the Gun Control Alliance (2000:1).

Although child deaths decreased from 2216 to 1458 between the years 1996 and 2000, as indicated by South Africa Survey (2002/2003:437), the killing of children by means of guns is increasing at an alarming rate with perpetrators becoming younger with age.

As in the Valencia Farmer case, the gap within the judicial system that gang members find viable to conduct their criminal activities is, using the youth, as it is not easy to prosecute and sentence them under SA law. In the gang circle an increasing number of

children as young as 11 years are recruited to become the hitmen because if they get caught, “they are unlikely to go to jail” (Mail & Guardian, 2002:1of 8).

In a study conducted in six cities regarding unnatural deaths amongst children under the age of 14 years, van der Hyde (2001:1) also discovered that firearms caused most deaths (29%). 78% Of the African population comprised of 66% male deaths, mostly between the ages of 5 to 13 years. Johannesburg seemed to have the highest rates of deaths caused by firearms followed by Cape Town.

It has also recently been discovered that more than 200 000 guns are still registered to dead people and almost 10 000 of those were in the names of people living in Cape Town (Schronen, 2003:5).

5.2 Gangs and the death of children

Currently there are more than 100 000 gang members in 137 gangs in the Cape Peninsula, including older gangs such as the Americans, Hard Livings and Mongrels. Between 40% and 60% of all violence in the Cape Peninsula is gang related. In a study conducted at the Red Cross Children’s Hospital (Van As, Hutt, du Toit, Fieggen, Millar & Rode, 2003:40) it is noted that there has been an increase in firearm related injuries to children in the past ten years. They discovered that nearly 50% of children treated with gunshot wounds had been shot at their own homes and following that were children shot on the road and pavement. Apart from being directly shot by gangsters, by another child while playing with a gun or deliberately by an adult, Van As, et. al. (2003:40) also revealed that cases where children were caught in cross fire were the highest.

167 Shooting incidents that occurred in the year 2002, according to the Safe Schools Call Centre, have occurred and affected children in and around the school vicinities. These shots were fired on the school grounds, near the schools and at learners on their way to and from school. (Majors, 2003:)

In March 2003, Miquela Appolis¹ was the second child to die during a gang shoot out in a week. During the same weekend, three other children were also caught in the crossfire of gang fights (Contreras, 2003:1). As it is the usual phenomenon to those who live in gang-infested areas, the murderers of Miquela live and still mingle in the communities. Since then until now, no successful programmes have been developed to put an end to the crossfire of gangs, in fact, there is still no law in place to deal with the protection of children caught in crossfire, neither is there proper prosecution of those perpetrators. The Western Cape Department of Education (WCED) however, has policies that it implements to protect children inside the school premises against gang crossfire. This policy does not cover learners outside the school premises and the onus is then placed on the parents of those children to protect them.

¹ Miquela Appolis was 9 years old when she died in Symphony Street, Steenberg during a gang crossfire on March 11, 2003.

The gang warfare normally takes place when rivals fight for turfs. A release of gang members from prisons normally ends up in those crossfire fights as they settle old scores with the rival gangs. Their aim to gain control of lost turfs and new areas in order to have a bigger market for incoming drug shipments (Joseph, 2003:3), cost the lives of many innocent children.

Usually, behind these deaths is an intricate web of gang activities spread across the Cape Flats communities, revolving around control of turfs for the local drug trade and shebeen ownership (Mail & Guardian, 2003:1). They have taken over the control of government and local authorities. The Mail and Guardian further states that they are increasingly filling up the vacuum left by the lack of jobs, social services and recreational facilities. The Western Cape jails are marked by the numbers gangs' own dominant social system, each reflecting a state with its own parliament, legal system and army. Outside jails, they are said to organise everything for community members, from school fees, rent money to a free taxi ride to the hospital.

Gun Free South Africa has however, attempted to implement programmes that deal with gang related shootings at schools but the programmes do not deal directly with gangs. Thus they are not directed at the perpetrators of the crimes.

Two members of Pagad, who were arrested for the killing of Christelle Abrahams², who was caught in crossfire, were contesting against their re-arrest on the eve of Eid Mubarak. Initially after the killing they were sentenced to community service in 2001 but later were sentenced to 15 years' imprisonment after an outcry from the community organisations. After failed appeals on their rights, it was alleged that the organisation was upset that the men were re-arrested on a day before the celebrations, as this would cause the killers to miss the celebrations. They have accused the justice system to be unjust, as the secretary had pointed out that prisoners also have rights (Joseph & Bailey, 2003:11).

The above is a clear indication of how the human rights are abused on a daily basis, especially when it comes to perpetrators of crime. The offenders normally hide behind the strong walls of the constitution.

5.3 The Current Laws On Children's Rights

5.3.1 The Children's Charter (1992)

In 1992, over 200 children from all over South Africa gathered in Somerset West, Cape Town and drew up the Children's Charter of South Africa (Molo Songololo, 20th Anniversary), in which Molo Songololo was responsible for producing the full document thereof. The Children's Charter realised that children are entitled to protection as they develop and grow. It also acknowledged that they were not given the attention that they deserve, including the urgent need to improve their lives and protecting their rights, particularly those regions that have been subjected to violence. This charter also notes

² Christelle Abrahams of Ocean View died at the age of 7 in crossfire during a warfare between Pagad and gangsters in November 1998.

that children continue to be abused by the people of this country including gangs. Article 5, part 2 section 1 states that all children have the right to be protected from all types of violence including gangs.

5.3.2 *The Constitution of RSA (1996)*

In 1994, South Africa, in its transformation from a previously democratically oppressed country made a break through in terms of entrenching children's basic and fundamental rights in its establishment of the Bill of Rights. "Keeping in mind a past where children were deprived of their fundamental rights to education, health care, food, sanitation and were tortured and detained without a trial; the drafters of the Constitution included a children's rights clause in Section 28 within the Bill of Rights of the Constitution to ensure that children are protected and prioritised in the new democracy" (Children's Institute, 2003:1). The children's right clause within the Bill of Rights deals with the following:

Section 28. (1) Every child has the right:

- a. to a name and a nationality from birth;
- b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
- c. to basic nutrition, shelter, basic health care services and social services;
- d. to be protected from maltreatment, neglect, abuse or degradation;
- e. to be protected from exploitative labour practices;
- f. not to be required or permitted to perform work or provide services that
 - i. are inappropriate for a person of that child's age; or
 - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
 - i. kept separately from detained persons over the age of 18 years; and
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;
- h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- i. not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

These Rights under Section 28, which directly deals with children does not mention the children's right to life, as also provided in the UN Convention.

The Bill of Rights deals with the right to life but not specifically to children but everyone, including child killers.

In order to realize this inherent right to life, and bring those taking the lives of children to book, certain policies and laws have to be reformed.

5.3.3 The UN Convention on the Rights of the child

The UN Convention on the Rights of the child states in Article 6 “every child has the inherent right to life.” Article 19 (1) further states that “State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse...or exploitation...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

This Convention also spells out, without discrimination, basic human rights that children have in the ratified countries. These are as follow:

- to survival;
- to develop to the fullest;
- to protection from harmful influences, abuse and exploitation;
- to participate fully in family, cultural and social life.

5.3.4 The African Charter on the Rights and Welfare of the Child

Again, according to Article 5 of the African Charter, it is stipulated that every child has an inherent right to life. It is further said that law shall protect this right.

Article 20 stipulates that parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child.

The South African legislation does not state what would happen to the parents who continue to harm or otherwise murder their own children.

5.3.5 The Children’s Bill (Child Care Act of 1983 and Amendment Act of 1991)

Paula Proudlock, a child rights programme manager at the Children’s Institute of UCT expressed concerns regarding the Draft Children’s Bill, which is to be tabled in parliament. At the Child Accident Prevention Foundation of South Africa (CAPFSA) conference she articulated that the legislation has been stripped of important provisions. Out of 20 rights originally listed, only 5 remain. She says that the current form of legislation has been severely diluted by the Department of Social Development and the Cabinet, due to cost and a lack of political will to commit more resources.

Conversely, the Child Care Act and the Draft Children’s Bill still does not cater for safety, security and protection measures in the killing of children. The current Act of 1991 and the proposed Bill are directed towards the health department about placing

children in safe homes based on best practices in the UK, but does not cater for the lives of children, nor provides a focus on children in South Africa.

In the SA law administration the protection of children in emergencies is not practiced. No measures are taken by the administration to deal with the children at schools and at homes during emergency gang wars, as is also stipulated in the aforementioned legislation.

5.4 The South African Law On Firearms

It is envisaged that the new law regulating gun licensing does not play a very good interventionary role. This is with reference to the published case where a 16 and 18-year-old shot and killed a 9 year old from a .38 calibre handgun and many others that have occurred after the amended act (Kemp, 2003:3). The programme to disarm gangsters on the Cape Flats seems to be a fruitless exercise, as firearms continue to be freely available among gangs in the communities.

It can thus be concluded that one factor alone (regulating gun licensing) cannot be the only factor in preventing child killings, especially those perpetrated by crossfire. Many factors are contributing, such as the sentencing and prosecution of criminals, amongst others.

The SAPS have now embarked on a new manner of controlling the circulation of illegal firearms, which is termed the “destruction ritual” of guns. This is seen to show better results as it is being decentralised to respective provinces for the destruction of illegal firearms (Schronen, 2003:5).

5.5 Prevention Of Organised Crime Act No. 121 Of 1988

The Criminal gangs

The Organised Crime Act (1988) aspires to introduce measures to combat organised crime and criminal activities. It also aims to criminalise certain activities associated with gangs, amongst others organised criminal acts. The Organised Crime Act stipulates that criminal gang activities, collectively and individually, present a danger to public order and safety, and have the potential to inflict social damage. It continues to state that the pervasive presence of criminal gangs in many communities is harmful to the well being of those communities.

The Organised Crime Act (1988) is enacted where organised crime and criminal gang activities infringe on the rights of the people as enshrined in the Bill of Rights (1994). It further stipulates clearly that it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activities of violent gangs and individuals.

Chapter 4 addresses the offences relating to criminal gang activities. It specifies that any person who actively participates in or is a member of a criminal gang shall be guilty of an offence and will be liable to a fine or imprisonment.

The manner in which the gang problem is handled should be more appropriate and should be in accordance with the Prevention of Organised Crime Act of 1988. In prisons or under community corrections, Van Niekerk (2003:6) has recognised that only a few programmes are available. She also urges the problem that parole is often given to the offenders without proper assessment of their risk to the community, or without programmes being put in place for their support and rehabilitation on their return to the community. Most importantly is that the victims and parents of the deceased are often not told of the release of these offenders.

However, prevention is a tricky word, as Pelser and Louw (2002:1) have established. They further define that, to prevent something means that you have the ability to predict its occurrence and then to intervene and stop it from occurring, thus they say that predicting a criminal activity is complex and depends on contested theories. In the Western Cape, predicting a rival gang shoot-out should not be a difficult matter, thus less complex. As the series of events are analysed and the outcome based on the previous events have been carefully assessed, one is then able to predict a time when a gang shoot-out is likely to take place, for example, in cases where there will be a release of prison gangs who are likely to retaliate.

5.6 The Policing Background

In a study conducted by the Department of Community Safety on the SAPS internal climate polls, the perception of police about their work environment was that they felt the current Constitution of RSA (1996) is possibly offering too much protection for suspects and the accused (KPMG, 2003:42). It has become apparent that the criminals are hiding behind the Constitution in protecting their rights. This could be due to the Constitution not clearly stating the difference between the rights of criminals or public offenders and ordinary citizens. There is no law that legalises proper incarceration of those who kill children.

Currently in SAPS, there is no coding within the Crime Information Analysis Centre (CIAC) for recording the statistics and other information of child killings or missing children. All killings are coded under murders without specifying child deaths from the deceased.

Missing children and their abduction should be a focal area, emphasis to be on a particular geographical area and an early warning system should be developed to counter-act these horrid crimes against children.

For the police service, “it has been a source of concern that it carries the blame for the crime wave in the country” (SAPS, 1998:9). The lack of understanding by the general community of the relationship between the causes of crime and its manifestation, with the

role that the police play is still taking prevalence and creates an indefensible situation for them.

There is still a lack of proper sustainable policing strategy that will deal with gang related crimes. However, despite the dissolution of the Western Cape gang investigation unit in the past, the newly appointed Provincial Commissioner Petros is doing a sterling job in assuring that the dominating figures of the gang world are brought to book.

5.6.1 The Family Violence, Child Abuse and Sexual Offences Unit

Certain improvements are evident within the SAPS's child protection units. Initially, their services were directed at providing counseling to the child victim, then called the Child Protection Unit (CPF). Currently they have extended their mandate to include the family violence and sexual offences issues, thus the name change to Family Violence, Child Abuse and Sexual Offences Unit (FCS). However, this is only operational in certain policing areas of the Western Cape where further resources have been allocated.

Initially there was no scientific investigation done within the child abuse arena and reliance was only on the police, i.e. no services from the social workers or the psychologists. Today lecturers from universities, educational psychologists, social welfare workers, lawyers for human rights members and family advocates present the police with lectures ranging from specific investigation skills to emphasis on the children's rights.

Although it is not totally possible to prevent inhumane acts against children or protect them against being caught in rival gang fights, the FSC unit has embarked on a more proactive manner of dealing with children's needs than has been practiced before.

6. SIGNIFICANCE OF THE RESEARCH

The vision guiding this project is to emphasise that "when a child is killed, it is not only the family members of the child who grieve but the community as a whole" (Geldenhuys, 2003:17). It is cases such as these where the community, from receiving no restorative justice, resort to forming vigilante groups and taking the law into their hands. The family of the child may receive counselling to deal with the trauma but the rest of the community is left in fear of wondering whether their children would be the next victims of senseless killings. It is envisaged that through the successful fruition of this project, there is a greater opportunity to create a safer and orderly environment for the child victims in the country.

The SA Crime Quarterly states that it is unrealistic to believe that the heavier sentence for convicted child offenders will stem the tide of child abuse. Minimum sentencing legislation has been in place for several years in South Africa and yet reports of child (sexual) abuse continue to rise. This asserts then that it is clear that most (sexual)

offenders will never be held accountable for their abusive behaviour (Van Niekerk, 2003:15). Blame factors such as guns, alcohol and negligence from mothers should be seen as secondary to the main perpetrator of crime and proper incarceration be implemented to those breaking the law.

The SA government attempted to curb violent crimes, especially when dealing with children's livelihood. This has been highlighted from problems dealt with in the use of illegal firearms in gun related deaths, the conviction of offenders by increasing the effectiveness of the courts and by building of more prisons due to jail overcrowding. Some legal civil servants still believe that the problem lies within the communities regarding the killing of children. However, in all these cases, little has been done by the state to deal directly with perpetrators of child killings in crossfire or gang related shootings. The state does not have any set of protocols in place for the incarceration of those killing the children or protecting the lives of the children against gangs. It is thus on this note that the development of the Optional Protocol be created in the country for the rights of children to life and a proper sentence or standard be established for the child murderers, not necessarily a heavier sentence, but ensuring that this violence will stop.

7. CONCLUSION

In phase 1, this report has focused on the first phase of the envisaged project. It has focused on the different Acts in the child rights arena. It has compared the current national legislation to different international instruments, particularly the UN Convention on the rights of the child. The report should be seen as a preliminary investigation into child killings and the law. At this stage it is felt that "gaps" in the legislation contribute to child killings and should be addressed adequately. This should be done in innovative ways to curb child killings, especially from the gang perspective and to reform the law into removing the child killers from the communities, hence, the state does not have any set of protocols in place for the incarceration of those killing the children or protecting the lives of the children against gangs. The solution to the problem is likely to be found in the future implementation of a prevention strategy and a development of the proposed Optional Protocol, which will protect the legislative rights of the child to life.

Phase 2 envisages conducting workshops in order to develop a holistic prevention strategy that will act as an over-arching framework for the establishment of operational projects. The workshops aim at getting the affected parties to participate in defining the phenomena that gives way to crossfire killings. As part of this phase, four inter-related approaches were also mentioned.

Phase 3, will conduct a docket analysis of those killed or maimed in cross fire with the aim of gauging the level of service delivery provision from SAPS and make recommendations that will speak to the role of SAPS and other governmental departments.

The fourth phase will deal with the development of a prevention strategy that will operationalise in the form of an Optional Protocol (as a research outcome) and an operational plan (as a project outcome) that involves community and governmental role players.

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