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## Research article

# Social workers' views on pre-trial therapy in cases of child sexual abuse in South Africa



Ansie Fouché<sup>a,\*</sup>, Liana (M.P.) le Roux<sup>b</sup>

<sup>a</sup> *Social Work Subject Group, Optentia, North-West University, South Africa*

<sup>b</sup> *Department of Social Work and Criminology, University of Pretoria, South Africa*

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## ABSTRACT

This study sought to explore anecdotal reports that social workers in South Africa are often advised to postpone therapy with child complainants of sexual abuse until after the child's testimony, based on concerns of legal professionals that therapeutic interventions could influence the child's testimony. Applying purposive sampling and a qualitative research study, individual and focus group interviews were conducted with 18 social workers and one psychologist that provide therapeutic services to child complainants of sexual abuse in the Gauteng province. Interviews were audio-recorded, transcribed and independently analyzed by both researchers, performing thematic analysis. Emerging themes include a lack of directives in terms of the provision of pre-trial therapy for child victims of sexual abuse, current practices and challenges in this regard. Recommendations for the way forward are presented. Limitations and future research will be discussed.

## 1. Introduction

Globally, researchers argue that it is difficult to determine an accurate figure of child sexual abuse (CSA) since this social problem is an underreported phenomenon. The world-wide prevalence of CSA among boys is estimated to be between 3% and 17%, and for girls between 8% and 31% (Barth, Bermetz, Heim, Trelle, & Tonia, 2012). A recent systematic review of meta-analyses on the incidence of child maltreatment indicated a global prevalence in self-reports of CSA of 18% in girls and 7.6% in boys (Stoltenborgh, Bakermans-Kranenburg, Alink, & van Ijzendoorn, 2015). The first national representative survey on the incidence of CSA in South Africa found that self-reports among a sample of 9730 adolescents between the ages of 15 and 17 years, stratified between households and schools, indicated that one in three young people reported a sexually abusive experience in their lifetime (Artz et al., 2016).

In South Africa, it is mandatory to report knowledge or suspicion of CSA to the relevant authorities (RSA, *Sexual Offences and Related Matters Amendment Act 32 of 2007*). Once a case has been reported to the South African Police Services (SAPS) an investigative process follows, which includes taking statements from the child complainant and other witnesses as well as a medical examination. A state prosecutor will ultimately decide whether sufficient evidence exists to enroll the case, and must prove his/her case beyond reasonable doubt (Fouché & Fouché, 2015). Child complainants, including victims of sexual abuse, are expected to testify in person in criminal trials, and are consequently subjected to cross-examination of which the main aim is to test the credibility of the witness' evidence. In 1996, the South African Criminal Justice System adopted special measures to protect child witnesses, namely the intermediary system (Matthias & Zaai, 2011). This system entails that children may testify, when deemed necessary, by means of close circuit television and assisted by a professional who would relay the general purport of the questions to the child witness.

\* Corresponding author.

E-mail address: [ansie.fouche@nwu.ac.za](mailto:ansie.fouche@nwu.ac.za) (A. Fouché).

However, the child witness still has to testify regarding the traumatic ordeal and could face harsh cross-examination (Fouché & Le Roux, 2014; Matthias & Zaal, 2011).

CSA typically occurs in secrecy without any eye witnesses, and the child is therefore often the only witness. In South Africa, trial courts approach the testimony of children and single witnesses with caution due to cautionary rules that apply in such cases (Bellengère et al., 2013). These cautionary rules are applied due to the fact that in the past child witnesses and single witnesses were perceived to be less reliable; consequently, their evidence is approached with caution (Bellengère et al., 2013). The purpose of this judicial practice is to assist presiding officers, when evaluating evidence, in upholding the principle that guilt should be proven beyond reasonable doubt (Van Der Merwe, 2009). Maintaining the credibility of the child's testimony is thus of vital importance for the court to deliver a fair verdict (Meintjies, 2000). Any possible tainting or contamination of the child's version of events prior to testimony should therefore be avoided at all costs. One source of contamination is perceived to be the rendering of pre-trial therapy, a term commonly referred to when therapy is provided to a child victim of sexual abuse while the criminal justice process is ongoing and there is a possibility that the child has to testify in court (Branaman & Gottlieb, 2013; Fouché & Le Roux, 2014; Jenkins, Muccio, & Paris, 2015; Maxwell, 2003). For this study, the authors will use the terms *therapy* and *pre-trial therapy* interchangeably.

In South Africa, several authoritative documents exist that prescribe how cases of CSA should be dealt with, including the provision of support to victims. In one such document, The National Policy Framework on the Management of Sexual Offences Matters (Department of Justice and Constitutional Development, 2012), it is described that child complainants of sexual abuse should be referred for psycho-social services to the relevant helping professionals such as social workers, directly after the case has been reported. Although not explicitly specified, these psycho-social services would typically include therapeutic services. However, anecdotal reports from practice indicate that parents, social workers and other mental health professionals are often advised to postpone any therapeutic intervention until after the child has testified in court. This practice, aimed at preventing contamination of the child's testimony, poses the ethical dilemma that the child is being deprived of healing to take place, since the legal process can take up to two or more years to be concluded (Fouché & Le Roux, 2014). In addition, Artz et al. (2016) reported that many of such criminal cases in South Africa are withdrawn or other actions taken (e.g. mediation or diversion) during the ongoing criminal proceedings. As such, children may be deprived of therapy pending the ongoing criminal proceedings, with the potential of the case not even being prosecuted.

The practice of delaying therapy until the child has given evidence in court is not unique to South Africa (Fouché & Le Roux, 2014). The occurrence hereof has been reported and debated in literature for more than a decade among researchers in the United States of America (USA), Australia, and the United Kingdom (UK) (Brannaman & Gottlieb, 2013; Crawford & Bull, 2006; Jenkins et al., 2015; Maxwell, 2003). In South Africa, little has been done to address this practice problem. In 2001, Müller called for directives in this regard. Hereafter there was a paucity of literature until recently when Fouché & Le Roux (2014) investigated anecdotal reports about this practice by exploring the views of 15 legal professionals with experience in working with cases of CSA in a legal context in the Gauteng Province. In this study, it was reported that the participants did not object to therapeutic intervention with child complainants of sexual abuse. However, the timing thereof was a contentious issue due to a perception that therapy could contaminate the child's recollection and version of the events and consequently negatively impact on the credibility of the child's evidence. The participants however highlighted that the existence of such perceived practice rule would not be in the best interests of children.

The Constitution of the Republic of South Africa clearly states in Section 28, that the best interests of the child is paramount in all matters concerning the child (Bellengère et al., 2013). Subsequently social workers are mandated by the *Children's Act 38 of 2005 (RSA)* to advance the constitutional rights of the most vulnerable in society, namely children in need of care and protection. Due to the findings in the study by Fouché & Le Roux (2014) and continuous anecdotal reports from social work practice that point to the tendency of postponing therapy until after the child complainant's testimony, the aim of this study was to conduct a qualitative study on perceptions of providers of pre-trial therapy. Social workers confronted with the dilemma on a daily basis should be granted the opportunity of voicing their views and experiences on this contentious issue whereby the healing process of sexually abused children who are potential witnesses in criminal trials are often curtailed. By giving social workers a collective voice, policy makers and legislatures responsible for respecting and protecting the constitutional rights of, amongst others, child victims of sexual abuse, can be alerted to such unfounded prevailing culture in South Africa.

In doing so, we will firstly contextualize pre-trial therapy for child complainants of sexual abuse. Hereafter, the research methodology will be discussed, followed by the findings of the study and a discussion of implications for practice.

### 1.1. Contextualizing pre-trial therapy for child complainants of sexual abuse

Internationally no consensus has been reached regarding the definition of CSA (Artz et al., 2016). In South Africa, the *Children's Act 38 of 2005 (RSA)* defines sexual abuse in relation to a child as follows: "(a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted; (b) encouraging, inducing, or forcing a child to be used for the sexual gratification of another person; (c) using a child or deliberately exposing a child to sexual activities or pornography; or (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child." However, according to the *Sexual Offences and Related Matters Amendment Act 32 of 2007 (RSA)* a person in South Africa cannot be criminally charged with "child sexual abuse" but with amongst others, rape, sexual assault, sexual exploitation and child pornography.

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