
South Africa: Attempt to Change Rape Law

Three children's rights organisations in South Africa are trying to get rules governing how raped children must testify in court struck from the law books. At present, they say, the adversarial system, founded in the Criminal Procedure Act, which forces children to confront their attackers in court and be cross-examined, "has a profound impact on a child's life". This is in direct conflict with the constitution which dictates that the interests of children must be paramount.

The probe has been called for by Pretoria High Court Judge Eberhard Bertelsmann, who raised the general inquiry while presiding over the sentencing of two men, both convicted in lower courts of raping children. At the time, the judge commented that the rules of evidence required confrontation between the child witness of the accused and his or her legal adviser. Applying the procedure, particularly to child victims of violent crime, was questionable and might not be in the best interests of the child, he said.

Dangers of no conviction

The judge also raised concerns about the effect on the child if the high court did not confirm the conviction of the accused. This meant the case would either be sent back to the lower court and the child would be called on to testify again or that the child would have to testify in the high court.

He then called for submissions from interested parties to be admitted as *amicus curiae* (friends of the court) and directed that the order be sent specifically to the ministers of justice and constitutional development, education, safety and security, health, police, social development,

correctional services and various academic institutions and non-governmental organisations.

Among those who have responded and been accepted by the court are Durban-based organisations Operation Bobbi Bear, which rescues and upholds the rights of sexually abused children, and the children's rights group Children First, as well as the Cape Town-based Rapcan (Resources Aimed at the Prevention of Child Abuse and Neglect) - all represented by Durban's Legal Resources Centre.

'Extreme anxiety'

The three organisations argue that children face pressures as a result of reporting the crimes against them, including physical, psychological and emotional trauma, particularly at having to meet the perpetrator in court, being questioned and cross-examined, all exacerbated if the accused is unrepresented and directly questioned the child. This results in extreme anxiety.

Children also get confused by the "semantics and linguistic agility of adult questioners", resulting in the truth being hidden from the court. She said their submissions would be bolstered by a case undertaken by Children First, which examined the "secondary abuse" experience of two young rape victims from Weenen, in Northern KwaZulu-Natal. The case took more than four years - and 20 court appearances - to conclude.

All interested parties have until the end of this month to make submissions and the hearing will be held in November. Should the judge find the relevant sections of the Criminal Procedure Act to be unconstitutional, the matter will be referred to the Constitutional Court for determination.

[Source: Independent Online, South Africa <http://www.int.iol.co.za/>]

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