



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



**Submission to the
Department of Justice
and Constitutional Development**

on the

**The Criminal Law (Sexual Offences And
Related Matters) Amendment Act 32 Of 2007
Regulations Relating To Sexual Offences Courts**

30 October 2015

1. Introduction

The Southern African Catholic Bishops' Conference welcomes the opportunity to comment on these Regulations. The witnesses in sexual offences cases are a particularly vulnerable group given the nature of these crimes. In addition, the reporting of sexual offences is low and so is the number of cases which come before the courts and are successfully prosecuted. This means that everything possible must be done to facilitate the comfort of witnesses so as to avoid secondary victimization and to reduce the trauma associated with appearing in court and confronting the accused. These Regulations play an essential role in this process, and strict adherence to them is critical. The unacceptably high levels of sexual violence in South Africa need to be addressed and the successful prosecution of such crimes sends a clear message that sexual violence has severe consequences. This would do much to curb such violence, while at the same time encouraging other victims to come forward and report crimes. However, while these regulations are in the main welcome, we have some concerns.

2. Designated Courts

Failure to comply with the requirements for designated courts compromises the security of the witness, and psychologically result in less coherent testimony. The court preparation officers should do their utmost to ensure that the provisions in the Regulations are implemented. They should anticipate problem areas, and it is incumbent on them to do their best to make contingency arrangements. Witnesses with special needs, including children, older persons and those with disability, have to be accommodated. The physical care and emotional support of witnesses is a priority.

It should be remembered that the trial might require multiple appearances in court, and a lack of adequate facilities will discourage witnesses from attending court. While mention is made of witness fees for transport and food for witnesses, there is no costing procedure and no responsibility of the court to arrange appropriate transport for people with special needs. Experience shows that it is very difficult for people with disabilities, especially in the rural areas, to access the courts. Court delays and postponements are common, and hearings are often set down for the same time, so waiting time may be considerable. This is particularly difficult for children. Witnesses may find such deficits too onerous and this may result in the charges being withdrawn. The witness must be briefed about how the court works and what is expected from her or him. It is vital that witnesses, especially child witnesses, are addressed in a language that they can

understand. This must include sign language. Arrangements must be made for translation from languages which are not indigenous to South Africa. This may be especially necessary in cases involving human trafficking.

How the equipment to be used during court appearances operates must be clearly explained. There must be sensitivity to the age, maturity and state of development of the witness. The cultural and religious values of the witness should also be taken into account. The anatomically correct dolls used while giving evidence should have no expression at all. We note that such dolls are locked away when they are not in use. This distinguishes them from being seen as toys when they are in fact court equipment.

Lastly on the question of courts, we are concerned about the differences in requirements for courts being designated as those with ‘basic requirements’; ‘general requirements’; and ‘advanced requirements’. This seems to reflect a degree of inequality, as those courts with ‘advanced requirements’ are likely to provide witnesses with much better services, which may in turn result in more successful prosecutions.

3. Counselling

While the provision of trauma counselling at school is to be welcomed in cases where sexual abuse and trauma is concerned, it is very important that a child is not singled out for attention. If this matter is not managed carefully it might lead to secondary victimization; violate the privacy of the victim; or compromise the confidentiality which these regulations seek to defend.

The same intermediary should assist the same witness throughout the trial. It would be very disruptive if the witness were to be assisted by a different intermediary at each hearing.

While the use of volunteers is often very positive in mentoring and support programmes, cases of sexual abuse require particular specialization and training. The recruitment and training of forensic social workers should be seen as a priority. The role of probation officers also needs further development. Social work has been classified as a scarce skill, and the increasing need for their services constitutes a crisis. The establishment of Thuthuzela Care Centres is to be welcomed as they provide accessible services for those who have experienced gender-based violence, and can help in court preparation programmes and offer support during the court process. Court officials should inform victims of gender-based violence of the services available to them. These services could be advertised in poster and/or leaflet form.

4. Police

We welcome the specialized training for members of the Family Violence, Child Protection and Sexual Offences Unit. The report from SAPS to the Parliamentary Portfolio Committee on Police earlier this year indicated that incidents of domestic violence and gender-based violence were responded to very poorly, on occasions were not recorded in the required manner, and that witness statements were taken down inadequately. We note that such witness statements must be taken down by a member of the Family Violence, Child Protection and Sexual Offences Unit who has been trained and is stationed at the police station serving the designated court. The provision for counselling for both the staff and judicial officers of the court is to be welcomed, as there is some reluctance to work in specialist courts due to the exposure to severe trauma, as in the instance of courts dealing with sexual offences.

5. Conclusion

We look forward to speedy implementation of these Regulations, and we are confident that they will do much to protect vulnerable witnesses.

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