

Child suggestibility in the Namibian justice system

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The issue of credibility of child testimony has vexed courts all over the world for many years and continues to do so. In general there are two different schools of thought. On the one hand, there are those who believe that children are innocent, honest and always truthful in what they report. On the other, there are those who argue that children are so untrustworthy that their testimonies must not be allowed to stand up in courts of law.

Although there is some substance to both positions, each misses the point. Whether children's testimonies are accurate or not largely depends on intervening variables, for instance, what happens between experiencing and witnessing an incident and reporting it. Some intervening variables enhance accurate recall of the incident whilst others promote inaccurate recall.

Suggestibility has been identified as one such intervening variable. While it is not easy to reach a generally agreed definition of suggestibility, it does have some easily identifiable characteristics. These include the extent to which certain cognitive, social and developmental factors influence the individual's ability to encode, store, retrieve and report an event;¹ changes or distortions in one's memory that are a product of the suggested information/misinformation about an event;² and that it is an external idea presented to someone in a form that causes suggestion and is then internalised or accepted as the individual's own idea.

While suggestion/suggestibility can occur with anybody, there are certain groups that are more vulnerable. Researchers have identified children under the age of 10 years as being particularly vulnerable to suggestibility. Younger children have also been found to be more prone to suggestibility when compared to older children. Cohen and Hernick, concurring with Coxon and Valentine, noted that children aged between 3-4 years are more suggestible than older children, who are in turn more suggestible than adults.³

Researchers in the discipline of psychology have conducted many studies to illuminate the dynamics of suggestibility in children. Below is a short synopsis of the relevant literature on child suggestibility.

1 See Ceci & Bruck (1994).

2 Reed (1996).

3 Cohen & Hernick (1980); Coxon & Valentine (1997).

It is recognised in neuropsychology that the prefrontal cortex of brain, which is heavily involved in problem-solving and goal-directed thinking, matures at a slower pace compared to other parts of the brain. The pre-frontal cortex only reaches maximum development in young adulthood. The immaturity of the pre-frontal cortex might negatively affect the amount and quality of information that the child encodes at the scene of the crime.⁴ Children, especially younger ones, do show deficits in attentional linguistic and labelling skills which in turn affect the reports they give about events.

Attention difficulties affect the ability to encode event information accurately and the ability to understand questions that may be put to children during interrogation and cross examination.

Social learning theorists, including Albert Bandura, argue that children learn by imitation. They also tend to imitate adults that they respect and idolise, i.e. role models. In general children view adults as credible and competent, hence they presume that adults' affirmations are more reliable than their own or those of their peers.⁵

In the criminal justice system, interviewers and interrogators are always powerful adults, such as social workers, policeman, lawyers and judges. Children are often wary of contradicting such powerful figures.

There is controversy on whether suggestibility is a mere expression of memory gaps, as was suggested by Alfred Binet in 1900. Lipmann⁶ observed that children do not have less memory in comparison to adults but they remember things differently because they pay more attention to certain details in a situation and overlook others.⁷

The role of age in mediating suggestibility is well documented. Other mediating variables are as follows:

- **Negative life events:** Individuals who have experienced negative life events are more vulnerable compared to those who have not.⁸ This is probably because such individuals are more prone to feelings of uncertainty and since they are uncertain about themselves they are more likely to allow the interviewer to lead and direct them.
- **Event centrality:** Research shows that children offer more resistance to suggestion when they are asked questions that are central rather than peripheral to the event. Frequently investigators ask peripheral questions to children in an effort to contextualise an incident. While this practice has good intentions it may inadvertently increase the likelihood of suggestibility.

4 Muller & Chiroro (2005).

5 Ceci & Bruck (1994).

6 Lipmann (1911).

7 Gulota & Resoling (2004).

8 Goodman (2007).

- **Level of witness participation:** Children who participate actively in an event are more likely to accurately recall the information in comparison to those who passively observed the event.⁹
- **Warning:** According to Saywitz and Moan-Hardie, when children receive some warning of an event that they witnessed or experienced and are asked to recall it they are likely to be resistant to suggestion. In cases of sexual abuse there is usually no opportunity for such warning because the abuse is usually perpetrated cunningly.¹⁰
- **Prestige source:** Suggestions from those in prestigious positions have more damaging effects on the accuracy of reports when compared to suggestions from a person equal or lower in status to the child. In the legal system interviewers are invariably of a higher status than the child.¹¹
- **Power:** Interviewers like judges or lawyers, carry trappings of power, unlike children, and they usually wear uniforms – like those of the police, which can alienate children.
- **Retention interval length:** Witness accuracy tends to decline when there is a delay between the event and the time of recall later where there may have been exposure to misleading information. In the case of child sexual abuse the disclosure may often happen several weeks or months after the traumatic event. Also because the wheels of justice often turn slowly it is not unusual for the child to appear in court a year or two after the event has happened.
- **Nature of questions:** Questions are powerful tools. On the one hand, they can serve to convey new information and, on the other hand, they can influence answers. Suggestive questions may contain inferences. Children rarely answer “I don’t know” or “I don’t remember”. They believe that because the question is asked it is their obligation to answer. Children think in a manner which is qualitatively different to that of adults.

Anecdotes

Below we present two cases that occurred in real life, one in a courtroom (with grave consequences for the people involved) and the second in a laboratory experiment. Both show how children can be easily suggestible. The case of Kelly Michael and the Sam Stone study are good examples of how suggestibility may manifest itself in real life and in laboratory settings.

The Kelly Michael case

In September 1984 Margaret Kelly Michael was employed by the We Care Day Care Nursery in the United States of America as a pre-school teacher. On 26 April 1985, a mother of a four-year-old child from Kelly’s class noticed while waking her child from a nap that he was covered with spots. She took the child to the paediatrician and

9 Rudy & Goodman (1991).

10 Saywitz & Moan-Hardie (1994).

11 Nicholaas & Moan (1991).

while the nurse was taking his temperature rectally, the child said, "This is what my teacher does to me at nap time at school." He said Kelly was the one who took the temperature and that she did it daily. The mother asked the boy more questions when they returned home and he said, while rubbing his genitals, "Kelly uses white jean stuff". The mother reported a case of the alleged abuse of her son to the authorities and other children in the same class and their parents were also interviewed. Because of the 'suggestive' questioning style, most children reported that Kelly was abusing them. Kelly was convicted on 115 counts of abuse. She was sentenced to

47 years in prison. An appeal based on the quality of the interviews by concerned scientists showed that the interviews were filled with suggestions. Kelly was released from prison after serving seven years. The interviewers of the children had been following one hypothesis in their questioning, namely that Kelly had abused the children.

This case highlights the importance for interviewers to follow different lines of questioning and alternative hypotheses rather than a single one. The pursuit of a single hypothesis causes a lot of bias on the part of the interviewer. These biases are revealed when interviewers persistently maintain one line of inquiry (through the use of repeated leading questions, bribes and threats) even when children consistently replied that the questioned events never occurred. Biases are also revealed in their failure to follow-up on some of the children's inconsistent or bizarre statements, for doing so might not confirm the primary hypothesis of the interviewers. The following dialogue illustrates how an interviewer (Q) engaged one child (A) during one of the initial investigations of the Kelly Michael case:¹²

Q: Do you think that Kelly was not good when she was hurting you all?

A: Wasn't hurting me. I like her

Q: I can't hear you; you got to look at me when you talk to me. Now when Kelly was bothering kids in the music room

A: I got socks off

Q: Did she make anybody else take their clothes off in the music room?

A: No

Q: Yes

A: No

Q: Did you ever see Kelly have blood in her vagina?

A: This is blood

Q: Kelly had blood in her vagina

A: Yeah

Q: She did? Did you ever get any of that blood on your penis?

A: No. Green blood

Q: Did you ever see any of your friends get blood on their penis from her vagina?

A: Not green blood but red blood

12 Committee of Concerned Social Scientists [n.d.].

Q: Tell me something, tell me about the piss box. The piss box that's in the music room?

A: No, up there. All the way up there

Q: Is the piss box the bench at the piano? When you open up the bench: is that the piss box?

A: Yeah

Q: It is?

A: Yeah

Q: And what happened, she would open it up?

A: And, popped it up

A: She popped it up and then what would you do?

A: Jump in it?

Q: Jump in it?

A: Yeah

Q: And would you have to pee in it?

AL? Yeah (about 10 questions later, the topic comes up again)

Q: So the pee-pee box is the bench at the piano and you flip it open?

A: No

Q: What is the pee-pee box?

A: This is the pee-pee box

Q: That's not a pee-pee box. That's a crayon box

Q: Did Kelly ever make you kiss her on the butt?

A: No

Q: Did Kelly ever say--I'll tell you want. When did Kelly say these words? Piss, shit, sugar?

A: Piss, shit sugar?

Q: Yeah, when did she say that, what did you have to do in order for her to say that?

A: I didn't say that.

Q: I know, she said it, but what did you have to do?

(In this section, the child is asked to use anatomically detailed dolls and different utensils)

Q: Okay, I really need your help on this. Did you have to do anything to her with this stuff?

A: Okay. Where's the big knife at. Show me where's the big knife at.

Q: Pretend this is the big knife because we don't have a big knife

A: This is a big one

Q: Okay, what did you have to do with that? What did you have to...

A: No..take the peanut-put the peanut butter

Q: You put what's that, what did you put there?

A: I put jelly right here

Q: Jelly

A: And I put jelly on her mouth and on the eyes

Q: You put jelly on her eyes and her vagina and her mouth

A: On her back, on her socks

Q: And did you have to put anything else down there?

A: Right there, right here and right here and here

Q: You put peanut butter all over? And where else did you put the peanut butter?

A: And jelly

Q: And jelly?

A: And we squeezed orange on her.

Q: And you had to squeeze an orange on her?

A: Put orange juice on her

Q: And did anybody--how did everybody take it off? How did she make you take it off?

A: No. Lick her all up, eat her all up and lick her all up

Q: You had to lick her all up?

A: And eat her all up

Q: Yeah? What did it taste like?

A: Yucky

Q: So she made you eat the peanut butter and jelly and the orange juice off of the vagina too?

Q: Was that scary or funny?

A: Funny, funny and scary.

This interview is one of many that show how interviewers did not seriously consider any evidence that was contrary to their primary beliefs. Thus when children's responses contained discrepancies, inconsistencies, incomprehensible responses or no information, the investigators only considered these responses to be consistent with the fact that abuse had taken place or else they chose to ignore these statements. The children were never asked common sense questions such as: "Did this happen to you or are you just pretending that it happened to you?" or "Did you see this happen or did someone tell you that it happened?" Children were never challenged about their statements, "Are you sure that this happened or are you telling me a joke?" Competent investigative interviewers would have used such techniques in order to understand how the alleged acts could actually be carried out in a short period of time in a very public place.

The Sam Stone study

In this study, researchers made a series of untruthful statements to 3-6 year old children and, eventually, got many of the children to adopt these statements as being true. First, researchers told the children that a fictitious character by the name of Sam Stone really existed and that he was "very clumsy" and "always broke things that did not belong to him". The children were further deceived when "Sam Stone" visited their school for two minutes while the children were engaged in a story telling session. During the visit, "Sam Stone" did not break anything or otherwise behave clumsily. However, the following day, the children were shown a "ripped book and a soiled teddy bear". At this time, few of the children blamed Stone for the damage but 25% surmised he may have been responsible. Over the course of the next ten weeks, the children were interviewed once every two weeks for two minutes. During each session, the children were asked two questions which researchers Ceci and Bruck describe as "leading questions". These questions included "I wonder whether Sam Stone was wearing long pants or short pants when he ripped the book?" or "I wonder if Sam Stone got the teddy bear dirty on purpose or by accident?" It should be noted, however, that these are not leading questions that merely suggest the desired answer. These questions give the answer and do not allow the children the opportunity to reject the suggestion. In each of these 'questions', the child is told that Sam Stone is responsible for the damage and is simply asked to speculate on why he did it or what he may have been wearing when he damaged the property. At the end of the ten-week period, the children were interviewed by someone who

claimed not to be present the day “Sam Stone” visited the school. When asked, 72% of the 3- and 4-year-olds said Sam Stone had ruined at least one of the items and 45% of the 3- and 4-year-olds actually claimed to have witnessed the events. Despite weeks of explicit deception, however, only 11% of the 5- and 6-year-olds claimed to have actually observed Sam Stone damage the items. According to Ceci and Bruck, —¹³

... these results indicate that not only do young children form stereotypes but that stereotype formation interacts with suggestive questioning to a greater extent for younger than older children.

The use of anatomically correct dolls

Most child sexual abuse centres make use of anatomically correct dolls during investigations of alleged sexual abuse. In Namibia anatomically correct dolls are also used at Women and Child Protection Units during forensic interviews. Although dolls allow interviewers to extract information from children, there are pros and cons of using such dolls in forensic interviews. One might wonder why the use of anatomically correct dolls may be a human rights issue when it may help to prosecute the perpetrator. The fact of the matter is that these dolls are very good tools provided they are used properly but can be very destructive if used unprofessionally.

It is, therefore, important at this point to look at when one can use these dolls and the pros and cons of using them without infringing the rights of the child. There are two important pre-requisites in the use of anatomically correct dolls. Firstly, both the interviewer and the child must be capable of using these dolls correctly.¹⁴ For the interviewer it means that he/she should have the necessary training to use the dolls including reading relevant research, hands on practice and adherence to professional guidelines. For the child, it means being able to make a representational shift, i.e. having the cognitive ability to understand that the doll is going to represent him/her or another actual person and is not an instrument for play.

Secondly dolls should not be exclusively used without verbal statements to make findings that the child was sexually abused. This will be considered a diagnostic test and is an inappropriate use of dolls. The child’s demonstration with dolls should be a part of the forensic interview just as the forensic interview is part of the investigation. The child’s affect, words, and corroborating evidence should all determine the outcome of an investigation.

According to Everton and Boat,¹⁵ the memory stimulus, diagnostic screen and anatomical models using dolls assumes that the dolls are ‘suggestive’ in that they encourage, stimulate, disinhibit and provide an easy vehicle for children to reveal their sexual

13 Ceci & Bruck (1993:416–417).

14 Holmes (2000).

15 Everton & Boat (1993).

knowledge during the evaluation process. The interviewer should not, however, infer from the sexual behaviour of the child as he/she plays with the doll that sexual abuse occurred. The behaviour of the child with a doll should encourage the interviewer to follow up with some verbal statements to establish the source of the child's knowledge. Dolls should be introduced only after partial or full disclosure. If they are introduced before disclosure one runs the risk of 'suggesting' to the child through manipulation of the doll that indeed abuse has happened.

There is literature, however, which shows that anatomically correct dolls are less suggestive when compared to regular dolls or no dolls at all during forensic interviews. Goodman and Aman¹⁶ found that three groups (aged 3–5 years) of non-abused children who were interviewed with anatomically correct dolls, regular dolls and no dolls made the same number of errors (which were statistically significant) during suggestive questioning. Realmuto et al.¹⁷ as well as Tredoux et al.¹⁸ found out contrary to the findings of Goodman that dolls may cause suggestibility or inaccurate reports in children.¹⁹ They found out that children aged seven or younger where the interviewer used anatomically correct dolls only correctly identified cases of non-abuse 67% of the time. Even more alarmingly only 33% categorised abuse correctly, meaning they predicted abuse in the majority of the cases where there was none. Tredoux et al. concluded that the use of dolls is a poor source of information on its own as it results in an overestimation of abuse.²⁰

Anatomically correct dolls have been assumed to cause sexualised play in children which in turn encourages inferences from the interviewer that abuse happened. Researchers observed that only 2% of children who are not suspected of having been sexually abused enacted apparent sexual intercourse between a doll and themselves.²¹ This provides substantial evidence that dolls do not induce young, non-abused, sexually naive children to engage in explicit sexual play. So when then can these dolls be used?

Dolls can be used for clarification purposes. This happens when a child will be making statements which are not clear regarding the sexual act. The child may be able to demonstrate this very well by showing on the dolls how the sexual abuse happened.

Dolls are used to demonstrate consistency in the child's statements. One challenge of forensic interviews is the demonstration of consistency in children's statements. It is easy to make false allegations by simply saying, for example, "Daddy touched my pee." This can, however, be verified by asking the child to demonstrate on the doll what happened. One has to be careful not to ask, for example, "Show me how daddy touched your pee." This will suggest that the daddy in fact touched the child and what is left is to be shown how he touched.

16 Goodman & Aman (1990).

17 Realmuto et al. (1990)

18 Tredoux et al. (2005).

19 Goodman (2001).

20 Tredoux et al. (2005).

21 Everton & Boat (1993).

Dolls are used to allow the child to have distance from his or her own body. If you ask a child to show you where the man put his penis, the child will undress to show you her vagina, or anus which is not in the best interests of the dignity of the child. One would rather tell the child that there are dolls which have got sexual organs like the child and he/she may use them to demonstrate what happened.

The other reason for the use of the dolls is to allow the child to communicate what he/she cannot say. Children may clam up when the forensic interview becomes too intense. The interviewer may then introduce anatomical dolls as a different form of communication to allow the child to open up.

The following are aspects which users of anatomical dolls should be take note of in order to get the best out of them:

- Do not use the dolls if the child cannot make a representational shift (understand that the doll represents them or another person).
- Do not use the dolls if you do not need to. They should always be used in conjunction with other forms of assessment.
- Dolls should be introduced after the child has made the verbal disclosure, whether partial or full.
- The child should be told specifically that the dolls are not toys and that they are meant to assist the child to articulate what happened.
- The doll should be presented to the child clothed so that the child can demonstrate what happened from the start.
- The interviewer must check whether it is appropriate to use only one doll or more. Using more than one doll may be particularly difficult for pre-school children. The interviewer may use two dolls to check for representational shift.
- Choose anatomical dolls that are reputable. Professionally developed dolls are designed to withstand frequent use and are available in different skin tones, various developmental levels (infant, toddler, child, adolescent, adult and grandparents).
- Use anatomical dolls that have the appropriate skin colour. It may be confusing to check for representational shift in a 'black' Namibian child using a 'white' doll.

In conclusion, dolls are very good tools to use when assessing children who are allegedly sexually abused. Caution should, however, be taken so that the dolls will not end up suggesting an abuse which did not happen. Dolls should be used by trained professionals in an environment that is conducive to getting the best use out of them.

Suggestibility, self-esteem and negative life events

There is a close connection between maltreatment and memory recall.²² Although it is controversial, many researchers believe that clinically relevant factors such as a history

22 Goodman et al. (2001).

of abuse or trauma are important influences on memory. One reason for this kind of thinking is that abuse is associated with adverse emotional reactions and delays in cognitive and language abilities. Abused children generally perform more poorly than non-abused children on standardised tests of short term memory for events and verbal skills. Poor memory for events and poor performance on intelligence tests are linked to increased suggestibility in adults and children.²³ Compared to non-abused children, maltreated children may not have accurate memories of actual events, and they may be more suggestible about fictitious events. Some forms of abuse such as witnessing a sexual assault on the mother, violent kidnapping or having suffered abuse themselves may cause disorders like post traumatic stress disorder, severe anxiety or dissociation. Such psychological sequelae may be associated with impairment of the ability to properly encode and retrieve subsequent information.²⁴ Abused children probably find the suggestions of an abuse contained in questions more plausible than would non-abused children. They are also more likely to acquiesce to misleading abuse-related suggestions. Measures of general psychopathology and intelligence are significantly related to the children's accuracy of recall.

Drake et al.²⁵ found out in their study that people who reported a greater number of negative life events produced significantly higher scores on the Gudjonson suggestibility scale. These findings have important implications in that children who have experienced high number of negative life events are more likely to accept any misleading information put forward to them. They are more prone to shifting their initial answers in response to interviewing pressure. Negative life events such as sexual abuse lower the self-confidence and self-esteem of the victims. This again exposes them to suggestibility.

The above observations and conclusions are cause for concern in this country where rates of sexual abuse are significantly high. The scourge of HIV and AIDS has caused a lot of children to be orphaned. Orphans are more exposed to abuse because of the lack of parental protection. The loss of parents is a severe negative life event and is potentially traumatic. Given that there are many children in Namibia who have experienced negative life events, it is vital to have mechanisms in the legal justice system to detect such children and protect them from suggestibility. If children are not properly assessed for their vulnerability to suggestibility, the administration of justice may be compromised. In most cases courts require assessment for the establishment of diagnostic psychopathologies not the non diagnostic psychological problems such as negative life events and low self-esteem. If the rights of children are to be protected, they have to be protected wholly. We must realise that vulnerable children who have experienced negative life events may be suggestible to allegations that they were sexually abused when they were not, or to agree to the suggestion that they were not abused and yet indeed the abuse could have happened. There is need for interdisciplinary collaboration between social scientists and

23 See above.

24 (ibid.).

25 Drake et al. (2008).

legal practitioners in order to address this silent scourge of child suggestibility in the legal justice system.

Assessment of witness suggestibility

Children are a special population. They are special in the sense that they are not yet psychologically and physiologically mature to be able to deal with life demands as adults would. Cognitively, children below the age of 10 years do not have the capacity to think abstractly i.e. form hypotheses about life issues. Similarly children below the age of 10 years are more suggestible than older ones and adults. While the age group below 10 years is more prone to suggestibility, there are some within this age group who are more suggestible than others; hence the need for assessment for suggestibility.

The assessment of individual suggestibility can either be done by means of standardised psychological tests or in the course of the assessment interview by asking suggestive questions. The latter method uses “suggestive probes” which are directed at peripheral aspects of an event. By trying to get unrealistic descriptions a witness’s vulnerability, to suggestibility is then established. This method should, however, be used with caution because everybody can be tricked if their memory is uncertain and the technique is subtle enough. On the other hand, very suggestible witnesses may be able to resist some misleading questions because they detect some impossibility in the suggested questions.²⁶

For the purposes of standardised assessment of suggestibility, several psychometric tests have been developed. Examples of such tests are The Bonn Test of Statement Suggestibility, and the Gudjonson Suggestibility Scale. The key issue here is that these tests were developed outside Namibia and hence they are not standardised for this country and they do not have local norms. Although these tests are used for detecting suggestibility in children, they should always be used with support of other assessment methods, e.g. clinical interview. The ideal situation for the effective use of such tests would be to standardise or develop

norms for Namibia so that suggestible children can be detected and be protected during legal proceedings in Namibia.

Witness credibility

In the courtrooms, whether or not someone is telling the truth is usually assessed on the basis of the general credibility of the witness. This is premised on the idea that honest people tend to be honest in different situations and at different times. Endres²⁷ rejected this premise noting that knowing a person’s previous behaviour in different circumstances is not sufficient to accept their current (or future) testimonies as truthful.

26 Endres (1997).

27 (ibid.).

Endres further noted that when people's most vital interests are at stake many people tend to give untruthful accounts.²⁸

In view of the foregoing discussions it can be concluded that general credibility on its own is not sufficient to ensure that witnesses give truthful and accurate testimonies in courtrooms. More needs to be done including giving serious attention to the concept of suggestibility. Over many years courts have tended to rely heavily on medical/physiological examinations to determine whether or not sexual abuse has taken place. This practice seems

to be prudent but it also has certain limitations. First, some forms of child sexual abuse do not leave behind physical markers e.g. kissing and fondling or making the child play with genitalia of an adult. Second, there are incidents in which sexual abuse has actually taken place but no abnormalities are picked up on physical examination. Kreston²⁹ cited a case in which a 12-year-old girl was found to be normal on genital examinations but showed positive on a pregnancy test. Kreston noted that in 28–49% cases physical examination shows no abnormalities when in fact sexual abuse would have actually taken place.

The interview, therefore, plays a very important role in gathering information regarding whether child (sexual) abuse has taken place or not. Children undergoing forensic interviews are vulnerable to suggestibility, hence the importance of sensitising stakeholders in the justice system to this concept and its implications. Muller expresses the view that judicial officers will benefit by learning more about child psychology.³⁰ To quote her, "If we are to see justice being done, the courtroom will have to become more a place of learning for judicial officers".³¹

Retractions of earlier disclosures by victims of sexual abuse are a common problem. There are many reasons for this phenomenon including lack of support and societal pressure. Collings noted that a substantial percentage of retractions occur during therapy or forensic interviewing.³² This is probably because therapy sessions and forensic interviews are laced with suggestibility.

In the case of child sexual abuse, disclosures are often made first to mothers or caregivers. One would wonder to what extent mothers and caregivers may introduce suggestion in their interviews. It is commonplace that children are beaten or threatened in order that they name the person responsible for the abuse. It is conceivable that such pressure may force a child to give untruthful accounts.

28 (ibid.).

29 Kreston (1997).

30 Muller (2003).

31 (ibid.).

32 Collings (2006).

The Namibian scenario

In the report entitled *Towards victim-friendly sexual offences courts in Namibia*,³³ the United Nations Educational, Scientific and Cultural Organisation (UNESCO) estimated that at least one act of rape takes place every hour of the day in Namibia. The report emanated from the Victim-friendly Sexual Offences Court Project, which ran from 1999 to 2000. One of the key conclusions of this project was that forensic interviewers had to show sensitivity towards and have an understanding of the psychology and cognitive development of the children that they interviewed.

Because more and more children are falling victims to child (sexual) abuse, increasing numbers of children are expected to end up giving testimonies in criminal proceedings. These children needed to be protected from interviewing styles that might introduce suggestion.

It is of great concern to note that Namibia was ranked 1st on the incidence of child sexual abuse cases in a study of nine Sub-Sahara African countries.³⁴

In response to the shocking rape statistics in this country, the government enacted the Combating of Rape Act.³⁵ The Act prescribes stiff sentences to convicted sexual offenders. It also makes special provisions to reduce traumatising by legal processes of vulnerable witnesses such as children. Following the promulgation of the Rape Act witnesses under the age of 10 are no longer required to give an oath of affirmation before giving evidence; while witnesses under the age of 14 may be cross-examined only through the presiding officer or an intermediary. Information given by children under the age of 14 prior to the trial such as statements to the social workers or police officers can be considered at trial, subject to certain safeguards.

The Draft Child Care and Protection Act of 2009 also provides for the establishment of children's courts with the aim of reducing traumatising of children during legal processes. While these developments are welcome there is still an issue on whether judicial officers and social workers, policemen etc. are adequately trained to identify, detect and manage suggestibility.

Suggestibility is a highly sensitive, elusive and technical concept. Many people tend to overestimate their ability to detect it and control it. Child witnesses often present a double bind for those conducting forensic interviews. On the one hand, children produce higher percentage of accurate and relevant information in free recall situations where they are merely asked to tell in their own words everything they remember without prompts, cues or suggestions. On the other hand, younger children (pre-school and below) produce little or no information at all when simply asked to "tell us what you remember". The

33 UNESCO (2001).

34 *International Herald Tribune* (2006).

35 No. 8 of 2000.

interviewer is forced to be more directive which in the same vein increases the chances of introducing suggestibility into the interview processing.

The mantra that justice must not just be done but must be seen to be done is very true. Suggestibility has the potential of negatively influencing the equitable, fair and just administration of justice. The effect of suggestibility may potentially lead to false convictions of innocent people (false positive) and it may also result in the acquittal of guilty offenders (false negative) where children's testimonies are discredited. The interviewing styles of judicial officers and other stakeholders are responsible to a large extent for inaccuracies that creep into the reports of children. As a result of the introduction of suggestibility, interviewers either deliberately or inadvertently turn children into liars or non-credible witnesses.

In conclusion children are not miniature adults. The lack of cognitive sophistication is a true reflection of the immaturity of their brains. It is incumbent upon judicial officers to recognise the vulnerability of children and take ameliorative action. The fact that, for example, children tend to fill in gaps or to acquiesce to adult figures must not be taken to mean that they are not credible witnesses. The onus is upon adult interviewers to tap into information that children can provide in a manner that preserves the accuracy and integrity of that information. To evaluate the testimonies of children using adult standards is harmful and dangerous.

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