

THE MERCURY

NEWS

CALL FOR CHANGE IN RULES OF EVIDENCE

Bid to change child-rape law

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THREE children's rights organisations - two of which are Durban-based - are leading the charge against present rules governing how raped children must testify in court, aiming to have them deemed unconstitutional and 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, in any circumstances.

The probe has been called for by Pretoria High Court Judge Elisabeth Betsalmsman, 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 were premised upon confrontation by the child witness of the accused and his or her legal adviser.

Applying the procedure, particularly to child victims of violent crime, was "quite horrible and might not be in the best interests of the child".

The judge also raised a concern about the effect on the child if the high court did not acquiesce. 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 th-



JUDGE GERTELMANN

received that the order be sent specifically to the ministers of justice and constitutional development, education, safety and security, health, police, social development, occupational 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 Rapean (Resources Aimed at the Prevention of Child Abuse and Neglect) - all represented by Durban's legal Resources Centre.

In a preliminary summons to the court, Samahtha Vaidhousen of Rapean said the issues raised involved the rights and interests of child victims who testified against their abusers in court.

The three organisations would argue that the children faced a number of 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 was unrepresented and directly questioned the child. This resulted in extreme anxiety.

Children also often got 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 study undertaken by Children First, which examined the "secondary abuse" experience of two young rape victims from the Western Cape. The girls, Natali and Anthea, were 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.