



REPORT ON THE RE-ESTABLISHMENT OF SEXUAL OFFENCES COURTS

MINISTERIAL ADVISORY TASK TEAM ON THE ADJUDICATION OF SEXUAL OFFENCE MATTERS

August 2013



the **doj** & **cd**

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA





FOREWORD

BY MINISTERIAL ADVISORY TASK TEAM ON THE ADJUDICATION OF SEXUAL OFFENCES MATTERS (MATTSO)

It is globally accepted that victims of sexual offences encompass a particularly vulnerable and marginalized group that constitutes women, children, older persons, LGBTI persons and persons with disabilities. These victims have special needs that translate into specialized infrastructural requirements that can no longer be overlooked.

Sadly to note, the scourge of sexual violence in South Africa has hyped up to inconceivable levels that inevitably placed our country in the spotlight of the international community. The frequent media reports of rape cases perpetrated- particularly against vulnerable children, elderly and lesbians continue to make a demand for the immediate and robust intervention actions that can easily filter down to the woman and child in the streets. The time for this action is now, and it is with this spirit that the Minister of Justice and Constitutional Development (the Minister) established the Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO) to investigate the viability of the re-establishment of Sexual Offences Courts in South Africa.

Almost a year has passed since the Minister mandated us (MATTSO) to look into the Sexual Offences Courts. This was a task that we took with utmost earnestness and devotion to ensure that the results are nothing, but the true reflection of our commitment to the cause of victims of sexual offences.

Under the leadership of the Department of Justice and Constitutional Development (represented by the Promotion of Rights of Vulnerable Groups Unit), in June 2012 MATTSO was established with seven (7) members drawn from the judiciary (represented by the Regional Court Presidents Forum, the National Prosecuting Authority (represented by SOCA Unit), Legal Aid of South Africa, Justice Sector Strengthening Programme (JSSP), and the Foundation for Human Rights. In the same month, the Intersectoral Consultative Reference Group- constituted by the various stakeholders in the sexual offences sector was also established to give technical support to MATTSO, where necessary.

In unpacking our mandate, we realized from the onset that it will take a number of studies and investigations to optimally deliver on it. As you will note from this report, four distinct investigations were conducted to assist us to draw up the findings and recommendations that defined our ultimate advice to the Minister.

It is indeed pleasing to learn that we conducted our investigations at a time when the international discourse around specialized sexual offence courts was gathering its momentum to seek the most possible solutions to the common scourge of sexual violence. Our global comparative analysis showed that South Africa is still universally acknowledged as the pioneer of the concept of the dedicated victim-centred courts for sexual offences cases.

As a country, we ought to be proud that we made a trend-setting mark in this area that subsequently placed us in the midst of global leadership in the intervention against sexual crimes. Therefore, we cannot afford not to retain what we created, whilst other countries are looking up to us for more solutions in this regard.



More so, the rising levels of sexual offending in our country continue to make more pressing demands to DoJ&CD to consider the resuscitation of the Sexual Offences Courts.

It must, however, be noted that since the demise of the Sexual Offences Courts, a new breed of Dedicated Sexual Offences Courts began to operate in certain selected areas of the country. These courts were established by the Regional Court Presidents and resourced by DoJ&CD to maintain the victim-centred approach in the adjudication of sexual offences cases.

As you will learn from this report, MATTSO made an unequivocal finding that South Africa still needs Sexual Offences Courts, as a matter of urgency, to improve the performance of our courts in managing cases of sexual offences. The truth is victims of sexual offences have special needs that often require specialized skills that can only be developed from dedicated court personnel operating at a specialized court fitted with specialized equipment that responds to such special needs.

Having unearthed a number of challenges that contributed to the slow demise of the Sexual Offences Courts in the past, MATTSO took the mandate to the next level and developed a Sexual Offences Courts Model that seeks to address certain flaws of the past. Although our model promotes the equal distribution of the services of these courts beyond geographical lines, it also acknowledges that not all courts can fully provide all model features. For instance, the lack of adequate space in many court buildings remains a serious challenge. In certain areas, the rate of sexual offending is fairly low to build a full daily sexual offences court roll.

It is therefore in such instances that it is recommended that the Hybrid Sexual Offences Courts be established to afford victims with the standard features of the model. The use of the term 'hybrid' is mainly drawn from the fact that, whilst giving priority to sexual offences cases, these courts will operate on a mixed or hybrid court roll to ensure the continued operation of the court after the finalization of the sexual offences cases.

This work could not be finalized without an audit report of all available and unavailable resources to implement the new court model. As you will learn from the report, MATTSO has been able to give the Minister the preliminary zero-based costing of Sexual Offences Courts, as per the new court model. We have also identified 57 courts that DoJ&CD may consider for immediate upgrading whilst looking for dedicated budget for this project.

Like in any pressure-driven exercise, the execution of this task was not always smooth sailing. This report is the result of a couple of drafts aimed at presenting an inclusive reflection of our investigations. Our shared passion for gender work and the wealth of expertise that members generously brought into this work became powerful inspirations that kept us focused and bonded together to the end. However, this report is by no means the exhaustive study of the sexual offences courts. It is what we can safely call the first impression that can adequately provide an informed advice to the Minister.

As MATTSO, we have now finally reached the end of our journey. We are truly grateful to the Minister for having afforded us this grand opportunity to explore possible measures that could lead to an improved victim-centred, prompt, sensitive and effective court system for sexual offences. Our deep gratitude further goes to the Institute for Child Witness and Training for their invaluable contributions and endless energy that brought this work to success. We are also grateful to the Institute for Women and Gender Studies



of the University of Pretoria and the Consultative Reference Group for the support they offered to the realization of this task. The same gratitude also goes to DoJ&CD for providing us with the resources needed to accomplish our mandate. Lastly, this report would not have been possible without the devoted support of all people we interviewed in and out of courts to inform our findings and recommendations.

It is truly with great honour to submit this report to the Minister. We hope that it will provide sufficient light that will lead him to an appropriate decision at a time like this when the country and the international community, is in desperate need for a lasting solution against sexual violence.

Adv. Praise Kambula
Chairperson: MATTSO



FROM LEFT TO RIGHT: Ms. Lucrecia Seafeld, Foundation for Human Rights;
Mr. Khandilizwe Nqadala, Chairperson of the Regional Courts Presidents' Forum;
Adv. Praise Kambula, Chairperson of MATTSO and Head of Promotion of Rights of
Vulnerable Groups Unit, DoJ&CD; Mr. Modibedi Djaje, Regional Court President, Gauteng;
Adv. Bronwyn Pithey, SOCA Unit, National Prosecuting Authority;
(NOT IN THE PICTURE) Adv. Michelle Odayan, Justice Sector Strengthening Programme;
Adv. Wilna Lambley, Legal Aid South Africa.





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EXECUTIVE SUMMARY





EXECUTIVE SUMMARY

Introduction

The impact of sexual abuse on victims, especially children, often has far-reaching physical, emotional, psychological and developmental effects. Insensitive and hostile treatment of victims in the criminal justice system causes secondary traumatisation, which results in victims suffering further trauma, and consequently withdrawing from the system. The complexities of working with victims of sexual violence require specialised intervention on the part of all stakeholders, and this includes the courtroom environment in which they are required to testify. To ensure that victims are treated with fairness and respect for their dignity and privacy, they require support services that are delivered with sensitivity and care.

Over the past year, Parliament has raised numerous concerns regarding the demise of the Sexual Offences Courts in South Africa. These concerns were triggered to a large extent by the media focus on the unacceptably high rate of sexual violence perpetrated against women, children, persons with disabilities, older persons, and especially against certain marginalized groups like the LGBTI community and persons with disabilities. This was exacerbated by severe criticism from the United Nations Committee on the Convention on the Elimination of Discrimination against Women in January 2011 in response to the 'closure' of the Sexual Offences Courts, since these courts had been recognised as an international best practice.

In response, the Minister of Justice and Constitutional Development (hereinafter referred to as the Minister), in his budget speech delivered in May 2012, announced his intention to establish a Task Team to investigate the feasibility of re-introducing the Sexual Offences Courts in South Africa. At the end of May 2012, the Chief Directorate: Promotion of the Rights of Vulnerable Groups (CD: PRVG) within the Court Services Branch in the Department of Justice and Constitutional Development (the

Department) was mandated to establish the Task Team, as required by the Minister. In June 2012, the Task Team was set up and named the Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO).

The mandate of the Task Team proved to be a mammoth assignment as it entailed a vast number of investigations and research studies. In January 2013, the scope of this mandate had to be extended to include the exercise of an oversight role in the implementation of approved recommendations by the Minister. This decision was taken in response to the urgent need for the prompt intervention against the mounting sexual violence in our country.

This report follows after the Preliminary Report that the Task Team submitted to the Minister at the end of August 2012. It is a report that gives a holistic account of work done by the Task Team since June 2012.

Chapter 1 of the report offers a brief overview of the in-depth research analysis of the Sexual Offences Courts which investigated the historical background to these courts to determine the cause of their demise.

Chapter 2 starts with an analysis of applicable international instruments and the South African legal framework to determine the country's obligations and the extent of its compliance therewith. It further determines whether the existing legal framework supports the concept of sexual offences courts. In this chapter, the various categories of victims of sexual offences are also identified, and their special needs explored as they engage with the court system. This was done in order to determine whether our current court system requires special courts to ensure an adequate response to the needs of these victims. It is at this point that the Task Team began to take a more intensive approach towards responding to the central question of this investigation: *Should the Sexual Offences Courts be re-established in South Africa?*



Progressing into chapter 3, the report provides findings of the field study that the Task Team conducted to determine the feasibility of the re-establishment of the Sexual Offences Courts in South Africa. This study took the form of an empirical investigation and involved interviews and on-site assessment of a sample of courts that previously operated as blueprint compliant Sexual Offences Courts, but are currently functioning as Dedicated Sexual Offences Courts.

This study experienced a major challenge as none of the regional courts still operate in full compliance with the Sexual Offences Courts Blueprint that was developed by the National Prosecuting Authority (NPA).

Chapter 3 further identifies the strengths and weaknesses of the Blueprint for Sexual Offences Courts, and explores the best possible ways of addressing the gaps of the past. A comparative study of international models was also undertaken in the course of investigating what model would best suit South Africa. Finally, the proposed Sexual Offences Courts Model is outlined with its distinctive features that seek to establish a victim-centred court system that is prompt, sensitive, responsive and effective.

Chapter 4 of the report briefly outlines the Sexual Offences Court Model to provide an overview of the specifications. The development of this Court Model took the investigation process into the next level of exploring its implementability.

Chapter 5 therefore deals with the National Regional Courts Resource Audit conducted by the Task Team against the Court Model to determine the existing physical and human resources, the status of their functionality and compliance with the Model, as well as the list of resources that will be required in the event of the Minister authorising the re-establishment of these courts. The findings of this national audit form the basis from which can be identified the number and locations of regional courts that are closely

resourced in terms of the Court Model, as well as the ones that are remotely resourced.

In chapter 6, the report gives a glimpse of what it would cost the country to re-establish these courts. A zero-based resource costing is also provided so as to indicate costs involved when establishing a Sexual Offences Court where there are nil resources in place.

The last chapter of the report enumerates the findings and recommendations made by the Task Team emanating from all the investigations undertaken. These findings have successfully established a concrete evidence-based finding from which the determination of the feasibility of the re-establishment of the Sexual Offences Courts can be easily drawn. Below, is a more detailed summary of the report that provides a broader, but focused narrative of the work done by the Task Team to achieve its mandate.

The Mandate and Structure of the MATTSO

The initial mandate of the Task Team was to investigate the viability of re-introducing Sexual Offences Courts so as to advise the Minister on the appropriate action to take. In achieving this mandate, the Task Team conducted the following investigations and studies:

- The literature research into the establishment and the functioning of the Sexual Offences Courts. This research took an analytical approach to the functionality, successes and limitations of the operation of these courts, as experienced in the past. It further examined the efficacy of the Blueprint for Sexual Offences Courts with the aim of determining the feasibility of strengthening it in areas of weakness;
- The field study involved the collection of information to determine the current status of the sampled Sexual Offences Courts, and identified current flaws and the possible intervention actions that may be undertaken;
- The development of a Sexual Offences Court Model that seeks to address the gaps identified



from the blueprint, whilst strengthening the key areas of success;

- The Resource Audit of all regional courts (including the circuit courts) to determine resources available to support the re-establishment of the Sexual Offences Courts. It is also intended to guide costing process of the re-establishment of these courts.

The work done to execute these investigations is categorized into the different chapters that build this report.

Subsequent to the submission of the preliminary report, the initial mandate of the Task Team was extended to include the oversight of the initial implementation of recommendations approved by the Minister.

The Ministerial Task Team on the Adjudication of Sexual Offences (MATTSO)

In establishing the Task Team, the Department considered the key role-players in the management of sexual offences within the value chain and set up the structure of the Team as follows: the Task Team constitutes representatives of the Department drawn from the CD: PRVG; National Prosecuting Authority (NPA), represented by Sexual Offences and Community Affairs (SOCA) Unit); Legal Aid of South Africa; and the Regional Court Presidents Forum. It also has representatives of Justice Sector Strengthening Programme (JSSP), and Foundation for Human Rights (FHR). These stakeholders were selected in view of their contractual commitment to the Department to provide support to NGO's that offer court-based victim-support services.

The Consultative Reference Group

In its activities, the Task Team consults with the relevant Departments/institutions that fall within the sexual offences sector, so as to ensure that the results of the investigation are based on the collaborative thoughts, actions and decisions

of all key stakeholders involved. Therefore, the composition of the Consultative Reference Group is as follows:

- Department of Social Development;
- Department of Health;
- South African Police Service;
- Department of Correctional Services;
- Department of Women, Children and Persons with Disabilities;
- Department of Home Affairs;
- Department of International Relations and Cooperation;
- Commission for Gender Equality;
- South African Human Rights Commission;
- Department of Basic Education; and
- Government Information and Communication Services.

The two structures work hand in hand to ensure that the mandate is delivered with optimal success. The Department of Justice and Constitutional Development (the Department) chairs and offers secretariat functions to both teams. It is however anticipated that the Department will extend the Reference Group membership to civil society when the implementation of the recommendations begins. This is to strengthen the existing intersectoral approach to the intervention process against sexual offences

The Background to Sexual Offences Courts

As indicated in Chapter 1 of this report, the first Sexual Offences Court was introduced in South Africa as an innovative measure to improve the prosecution and adjudication of sexual offences. This was a pilot project aimed at responding to and preventing the soaring figures of rape cases as well as acting as an intervention mechanism against the secondary victimisation experienced by victims when they



engage with the criminal justice system. This court was situated at Wynberg and had as its objectives, the reduction of insensitive treatment of victims in the criminal justice system by following a victim-centred approach; adopting a co-ordinated and integrated approach among the various role-players who deal with sexual offences cases; and improving the investigation and prosecution, as well as the reporting and conviction rates in sexual offences.

The pilot proved to be a huge success as it maintained a conviction rate of up to 80% over a period of a year. This became a strong motivation for the NPA to establish further Sexual Offences Courts around the country, first targeting those areas which had higher incidences of sexual violence. In 2002, a Blueprint for Sexual Offences Courts was developed by the NPA to guide the establishment and the management of these courts.

Project Oversight Committees were also established on national, provincial and local levels to facilitate the roll out process. By March 2003, 20 Sexual Offences Courts had been established, and in March 2004 this number increased to 47 courts. By the end of 2005 there were 74 courts, which resulted in more cases being finalised, an improved handling of victims, improved cycle times and improved conviction rates.

However, there were concerns over the proliferation of specialised courts that were better resourced than the mainstream courts. This was stimulated by a serious concern arising from the inequitable distribution of services to all victims of crime.

The fact that the Sexual Offences Courts were better resourced than other courts was seen as a serious violation of the constitutional right of other victims of crimes to equal protection and benefit of the law. The then Minister thus required a review to determine the impact, effectiveness and sustainability of specialised courts and a revision of the terms of reference for the establishment of Sexual Offences Courts. This was interpreted to mean that

a moratorium had been imposed on the further roll out of Sexual Offences Courts, and as a result of case flow management protocols, Sexual Offences Courts are no longer dedicated to sexual offences cases.

Two of the main achievements of the Sexual Offences Courts were an increase in conviction rates and a decrease in turnaround time from the date of report to the police up to the finalisation of the case.

Challenges experienced by the Sexual Offences Courts

The research has unearthed a number of challenges that ultimately led to the demise of the Sexual Offences Courts, and these include:

- The lack of a specific legal framework to establish these courts;
- The lack of buy-in from other stakeholders due to inadequate consultation;
- The lack of a dedicated budget, which resulted in inadequate resourcing of these courts. The NPA primarily depended on donor funding, and as a result the shortage of prosecutors, intermediaries and court preparation officers was identified as the fundamental cause that ultimately made the sustainability of optimal performance of these courts impossible;
- The lower visibility of these courts in remote areas was construed as a violation of the Constitution;
- The restricted space capacity in courts that often hindered full compliance with the blueprint. In other courts, waiting and consultation areas could not be established due to lack of space in court buildings;
- Inadequate and inconsistent provision of skills training and debriefing programmes for the court personnel. This led to many court personnel experiencing vicarious trauma from dealing with these cases; and
- The lack of monitoring and evaluation mechanism developed specifically for the management of these courts.



Should the Sexual Offences Courts be Re-Established?

The report explores the international obligations and the legal framework of South Africa, and makes a finding that our law does not only support the establishment of Sexual Offences Courts, but also demands the progressive realization of specialized services to victims, which the Sexual Offences Courts seek to achieve.

However, the need to have a specific legislative framework that expressly authorizes the establishment of these courts is still paramount.

The Task Team approached the Office of the Chief State Law Adviser for an urgent opinion on whether Sexual Offences Courts could be established by the Minister in terms of s2(1)(g) of the Magistrates' Courts Act 32 of 1944. In response, the Office of the Chief State Law Adviser has cautioned against the use of this provision for this purpose, as this will be a dangerous interpretation of this provision that might open a gateway to numerous legal adversities.

It was therefore advised that the establishment of these specialized courts be authorized by enabling legislation so as to ensure that they preside specifically over matters that are peculiar to the purpose for which they are established. The best possible option in this regard would be the amendment of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 to include an enabling provision that addresses this gap.

As previously indicated, the Sexual Offences Courts are mainly intended to address the victim's special needs, reduce and eliminate secondary traumatization of the victims and their families as they engage with the court system, as well as improve the case cycle times and the outcomes of the case. What this means therefore is that the determination of the feasibility of re-establishing these courts cannot be finalized without visiting the special needs of the victims.

This report therefore identifies the common victims of sexual violence as being women, children, elderly, sex workers, persons with disabilities, lesbians, gays, bisexuals, transgender and intersex groups (LGBTI) persons, foreign women and persons trafficked for the purpose of sexual exploitation. The report further examines their specific needs within the context of the services offered by the Sexual Offences Courts, and then makes a finding that the re-functioning of Sexual Offences Courts will certainly contribute a great deal in affording these victims the maximum and least traumatising protection that the law can provide.

The report further investigates the efficacy of the Sexual Offences Courts with particular reference to their establishment and functioning, and thereafter highlights the systemic challenges that led to their demise, including issues relating to case flow management, rotation of presiding officers, lack of facilities, interdependencies within the sexual offences value chain, inadequate resourcing, the provision of refreshments for children, poor understanding of the dynamics of vulnerable/marginalised persons, language barriers, the lack of separate spaces for state witnesses and the accused persons, and the need for an audit of the current infrastructure and human capacity of regional courts.

The field study conducted by the Task Team showed that most of the systemic challenges that led to the demise of the Sexual Offences Courts are still prevailing in the court system. For instance, the issue of lack of adequate space to accommodate the basic features of this court model has in fact grown into an insurmountable barrier in many courts. There are remote courts like Springbok where no infrastructural changes can be made to the court building since the building is proclaimed as a monument.

It is at this court where the Task Team also found the lack of vacant land in the court premises as a further hindrance to the establishment of basic infrastructural needs like the witness waiting areas, private consultation rooms and toilet facilities. In this



court, victims of sexual offences wait outside in an open corridor together with the accused persons and the general public. Five prosecutors share an office, and therefore cannot hold private consultations with the witnesses.

These are the realities that continue to threaten the successful re-establishment of Sexual Offences Courts.

In the final analysis, the report makes a clear finding that there is a need for the re-establishment of Sexual Offences Courts in South Africa. However, the Blueprint would have to address the gaps that have been identified. In view of this finding, the Department has therefore initiated the process of amending the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 to provide for an enabling provision which will allow for the re-establishment of Sexual Offences Courts.

However, to ensure prompt response to the scourge of sexual violence, the Task Team recommends that the Minister requests the Chief Justice to authorize the Regional Court Presidents Forum to designate as Sexual Offences Courts those regional courts that will be upgraded to meet the requirements of the Sexual offences Court Model should the Minister decide to re-establish these courts.

The Sexual Offences Model

Having found the need for the re-establishment of Sexual Offences Courts as still fundamental in our country, in Chapter 3 the Task Team then takes the process further by conducting a study to determine the best suitable features that define the Sexual Offences Court Model.

This study found the Blueprint most relevant in many areas, and also led to the development of a Sexual Offences Court Model. From this new Court Model, the elements that should characterize the courtroom, the testifying room and waiting areas for children, youth and adult witnesses are distinctively outlined. The Model also sets out standard specifications of the CCTV's and anatomically-correct dolls. It also

provides for national guidelines for the use of these dolls in court.

In addressing some of the infrastructural challenges that still prevail in our courts, the Model proposes the establishment of two distinct forms of Sexual Offences Courts. The first type is referred to as the Sexual Offences Court as it relates to a regional court that deals exclusively with sexual offences cases. The report identifies the establishment of these courts as the ultimate goal that the Department should strive to achieve.

However, in court buildings where the Sexual Offences Courts cannot be established due to infrastructural limitations, the Model introduces the establishment of a Hybrid Sexual Offences Court. The latter type differs from the former in that it caters for a mixed court roll, but gives priority to the prosecution and adjudication of sexual offences cases. The Task Team further recommends the development of Minimum Standards for the Court Model, as well as the National Guidelines for the implementation of such a Model.

The National Regional Court Resource Audit

The Task Team finalised the Resource Audit of all regional courts to determine the available resources that could be utilized in the implementation of the Court Model. Five hundred sixty-seven (567) Regional Courts (including circuit courts) were successfully audited. One hundred six (106) of these courts have operational closed-circuit television systems, a separate testifying room and a specific room set aside as a waiting room for children. Forty-nine (49) regional courts are resourced closest to the Court Model as they provide operational closed-circuit television systems, a functional testifying room, as well as two waiting rooms.

These are the courts that the Task Team, together with the regions which suggested a few extra courts, have identified as being suitable for immediate upgrading to progressively bring them into complete



compliance with the Model, and they include: Mpumalanga (8 courts); North West (6 courts); Limpopo (4 courts); KwaZulu Natal (5 courts); Free State (3 courts); Gauteng (5 courts); Western Cape (8 courts); Northern Cape (7 courts) and Eastern Cape (10 courts). However, it must be noted that most of these courts are currently functioning as Dedicated Sexual Offences Courts. In other words, there is a level of intervention by courts against sexual offences, which only needs improvement. The status of physical resources in these courts is generally fair with some areas requiring immediate refurbishment. The Task Team has already commenced with the appointment of a National Sexual Offences Courts Committee tasked with the implementation of the recommendations.

Preliminary Costing

Chapter 6 of this report includes a draft preliminary costing of the establishment of a Sexual Offences Court, which is based on a zero-resourced court. The basic physical assets for the Model are costed at R87,241 per court, whilst human capacity will cost R2,854,113 plus operational costs of R713,528 per court. However, the Resource Audit has found that most of the regional courts identified for upgrading have the capacity of at least one regional magistrate, prosecutor, interpreter, intermediary, and court clerk.

Findings and Recommendations

Below are the findings and recommendations based on the investigations conducted by the Task Team. This last chapter further reflects an additional list of interventions that should be undertaken as part of the effective implementation of the Sexual Offences Court Model.

1. There are sufficient grounds and a compelling need for the re-establishment of Sexual Offences Courts and these courts are in line with the ethos of the objects of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which seek to afford complainants of sexual offences the maximum and least traumatising protection.
2. The re-establishment of the Sexual Offences Courts will reinforce the establishment of a victim-centred court system that is prompt, responsive and effective. From the research studies, these courts were found to be successful in the establishment of a victim-centred criminal justice system, reduction of secondary victimisation, improvement of skills of court personnel, reduction of the cycle time in the finalization of sexual offences cases, and have generally contributed to the efficient prosecution and adjudication of these cases.
3. Internationally, South Africa is at the forefront of developments with respect to specialized sexual offences courts that adopt a victim-centred approach. It has been found that most of the specifications of the Blueprint for the Sexual Offences Courts are still recognised as an international best practice model, and therefore ought to be retained.
4. The lack of a dedicated budget for the establishment of the Sexual Offences Courts was the major contributor to the inequitable resourcing of these courts and their low visibility in rural communities. However, in certain areas it was the lack of space in the court building that led to less provision of resources, like adult witness waiting rooms, private testifying rooms and intermediary offices. In some courts, it was found that offices of the magistrates or storerooms were used interchangeably as testifying rooms.
5. The process of the establishment of the Sexual Offences Courts was inherently flawed and the implementation was not adequately structured and did not follow an all-inclusive consultative approach in certain areas.
6. The fact that there was no enabling statutory provision for the establishment of the Sexual Offences Courts discouraged uniformity in the process of their establishment and operation, and also received less or no support from other



stakeholders. This position still exists and will need to be attended to as soon as the Minister takes a decision to re-establish the Sexual Offences Courts. However, the Department has already prepared a draft amendment to address this gap.

7. Since the demise of the Sexual Offences Courts, a different breed of Dedicated Sexual Offences Courts has been in operation nationwide. These are regional courts that give priority to sexual offences cases, but operate on mixed court rolls. In other words, as soon as the sexual offences court roll collapses, these courts deal with cases of other offences. Like the Sexual Offences Courts, they are not backed by a specific legal framework, but are courts mainly based on a case flow management decision made by the Regional Court Presidents Forum. The existence of these courts represents the on-going endeavour by the Department of Justice and Constitutional Development to establish and maintain a victim-centred approach in the adjudication of sexual offences cases.
8. There are various specialized/dedicated victim support services and one-stop centres, like the NPA's Thuthuzela Care Centres, the DSD's Khuseleka One Stop Centres, and SAPS's Family Violence, Child Protection and Sexual Offences Units (FCS), which are established and managed by different government department/institutions, mainly to reduce secondary victimisation and improve services within the criminal justice system. These are some of the commendable innovations undertaken in South Africa to address the scourge of gender-based violence. However, these centres operate without a common guiding policy to ensure the coordination and sustainability of services and resources. There is a need for a policy framework that will determine how these centres must function to optimise the performance of the Sexual Offences Courts. Nevertheless, these services form part of the criminal justice process

and feed the courts. Thus these linkages reinforce the compelling need for the re-establishment of Sexual Offences Courts.

9. Most of the systemic challenges that led to the demise of the Sexual Offences Courts are still in existence, and will therefore have serious implications on the re-establishment of Sexual Offences Courts, if not addressed. These include:
 - a. The lack of adequate space in the court buildings to establish Sexual Offences Court and their facilities;
 - b. The lack of guiding procurement specifications and maintenance framework for court equipment and resources for the testifying rooms, waiting areas and other facilities;
 - c. The lack of a specialization framework for the prosecution and adjudication of sexual offences cases. Victims of sexual offences have special needs that require special services that can only be rendered by specialists in this field. There is therefore a need to consider the creation of specialist posts for sexual offences.
 - d. The existing case flow management can add tremendous value to the management of sexual offences cases in our courts if its operational gaps are addressed. For instance, the early collapse of sexual offences court rolls often leads to low court hours, which works against the expected court performance standards;
 - e. The rotation of presiding officers poses a significant challenge in that some presiding officers do not remain in these courts for any length of time. This creates enormous delays in the finalization of cases, particularly the partly-heard cases of sexual offences;
 - f. Due to lack of debriefing programmes, many court officials suffered from vicarious trauma;



- g. Limited training programmes and the lack of a dedicated budget for multi-disciplinary training initiatives contributed to the reduced performance of these courts;
 - h. There are inherent interdependencies in the criminal justice system that often cause serious delays in the finalization of these cases.
 - i. The lack of a feeding scheme for child witnesses often contributes to children not performing optimally and can sometimes lead to the postponement of cases. To circumvent this scenario, many court officials provide food for children out of their own earnings.
 - j. Inadequate support services are available for LGBTI persons and victims with disabilities.
10. The Resource Audit showed that out of 567 courts sitting as regional courts (including circuit courts), 49 courts are resourced closest to the Sexual Offences Model in that they have at least two waiting rooms available. One hundred and six (106) courts are also resourced close to the Model in that they have a waiting room specifically dedicated to child witnesses but do not necessarily have a second waiting room. The audit further revealed that many of these courts are capacitated with the required human resources, e.g. the regional magistrate, prosecutor, intermediary, interpreter, and court operations clerk.
11. The Department has identified 57 courts for the immediate upgrading to comply with the Sexual Offences Model.

Recommendations

The Task Team makes the following recommendations, namely that:

1. In view of the findings listed above, the Sexual Offences Courts must be re-established either as

the Sexual Offences Courts or the Hybrid Sexual Offences Courts. A Sexual Offences Court is defined as a regional court that deals exclusively with cases of sexual offences, while a hybrid Sexual Offences Court may be established in court buildings where space is a serious challenge. A Hybrid Sexual Offences Court is defined as a regional court dedicated for the adjudication of sexual offences cases in any specified area. It is a court that is established to give priority to sexual offences cases, whilst permitted to deal with other cases. However, it must be noted that the concept of the Hybrid Sexual Offences Courts is considered as an interim measure to ensure access to justice to all witnesses where the local court building cannot accommodate all the features of the Sexual Offences Court Model or the number of sexual offences do not justify an exclusive court roll of sexual offences. There must therefore be a progressive establishment of the Hybrid Sexual Offences Courts into Sexual Offences Courts.

2. The use of the terms, 'Specialist Sexual Offences Court' and 'Dedicated Sexual Offences Courts' should be discontinued in view of the inconsistencies in the international understanding and the use of the word 'specialized'. It is therefore recommended that the term 'Sexual Offences Court' be consistently utilized when reference is made to the sexual offences courtroom and its accompanying facilities.
3. The existing Dedicated Sexual Offences Courts must be upgraded into Sexual Offences Courts established in terms of the Sexual Offences Court Model.
4. The Department must give priority to the immediate upgrading of the 57 regional courts that have been identified as being resourced closest to the Sexual Offences Court Model. This upgrading process must be done against



available resources, and must commence in the 2013/2014 financial year. The rest of the identified regional courts must be progressively resourced into Sexual Offences Courts over a period of ten years, which will commence in April 2015.

5. The costing of the implementation of the Model must be finalized. It must be done against the available resources identified from the Resource Audit, and must also consider the operational and maintenance costs.
6. The Department is advised to secure a dedicated and adequate budget from the National Treasury to realize the speedy establishment of these courts. Furthermore, since the provision of specialized services is cost intensive, political support is required to ensure appropriate budget allocations.
7. The Department must finalize the amendment of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, to provide an enabling provision for the establishment of Sexual Offences Courts, and for matters related thereto. However, this must not delay the initial establishment of the 57 regional courts that have been identified as resourced closest to the Sexual Offences Court Model. In the interim, it is recommended that these courts be dedicated as Sexual Offences Courts by the Chief Justice in consultation with the Minister. This is to ensure that immediate relief services are brought to the victims to improve response to the rising levels of sexual violence in South Africa. As soon as the amendment of the Act is finalized, the Minister may designate these regional courts as Sexual Offences Courts in terms of the enabling provision of the amended Act.
8. The enabling legislation must make provision for the necessary Regulations to guide the designation and resourcing of sexual offences courts.
9. An investigation must be conducted to determine the feasibility of merging the various specialised/ dedicated victim support services and one-stop centres, like the Thuthuzela Care Centres, the Khuseleka One Stop Centres and the SAPS Family Violence, Child Protection and Sexual Offences Units (FCS) into a model one-stop centre that will function to optimize the performance of the Sexual Offences Courts.
10. The Sexual Offences Court Committee must be established at national, regional and local levels to ensure an all-inclusive consultation with governmental and non-governmental stakeholders in the re-establishment of the Sexual Offences Courts. This Committee must function as the sub-committee of the Directors-General Intersectoral Committee for the Management of Sexual Offences.
11. This Committee must be given limited time to upgrade the Hybrid Sexual Offences Courts into fully-fledged Sexual Offences Courts, working in conjunction with the Provincial and Local Sexual Offences Court Committees. This is to ensure that the Hybrid Courts do not become the permanent feature of the court system to encourage the inequitable distribution of services.
12. A feeding scheme for child witnesses must be investigated for possible introduction in these courts and be properly costed.
13. Case Flow Management for Sexual Offences Matters must be explored by the Regional Court Presidents Forum to address the current flaws in the system. This process must be undertaken in consultation with the relevant stakeholders.
14. An integrated monitoring and evaluation framework must be developed to ensure the effective and efficient intersectoral management of the Sexual Offences Courts. This framework must set out performance standards for the intersectoral management of sexual offences



to ensure heightened accountability amongst stakeholders. These standards must form part of the National Policy Framework for Sexual Offences. They must also determine the case cycle time from the time of reporting up to the finalisation of the case in court. The performance of each stakeholder participating in the value chain of sexual offences must be assessed against a quantitative measure of time, calculated from the time the case is received, up to the time the stakeholder function is finalised in relation to such a case. This approach will contribute in the speedy finalisation of the case.

so as to strengthen coordination and support between stakeholders. Court Personnel must also be trained on how to deal with cases involving persons with disabilities. Debriefing programmes must be regularly offered to court personnel.

15. SAQA accredited training programmes must be developed and their implementation must be ongoing. This training must include the Integrated Sexual Offences training programme

16. The creation of specialist posts for personnel in the Sexual Offences Courts must be explored in an attempt to ensure the sustainable skills capacity. An investigation into the ambit of the roles and functions of the intermediary must be undertaken to ensure the creation of permanent posts for intermediaries. This investigation must include the feasibility of extending the function of court preparation to intermediaries so as to increase the scope of their work.





Chapter 1:

THE HISTORICAL BACKGROUND TO THE SEXUAL OFFENCES COURTS IN SOUTH AFRICA





CHAPTER 1: THE HISTORICAL BACKGROUND TO THE SEXUAL OFFENCES COURTS IN SOUTH AFRICA

1.1. INTRODUCTION

The need for improved access to justice, improved court performance and the desire to address the needs of vulnerable groups resulted in the Department of Justice and Constitutional Development identifying the need for the establishment of specialist and dedicated courts. Research has shown two justifications for the creation of specialised courts in South Africa. The first relates to the fact that there are certain provisions of our law linked to particular aspects of social transformation that necessitate the creation of courts that are dedicated to the implementation of the relevant legislation.¹ The second motivation was drawn from the fact that specialisation provides an environment in which skills can be developed in the management of sexual offences cases, which will in turn mean that these cases can be processed more efficiently.²

1.2. THE WYNBERG PROJECT

The first Sexual Offences Court was introduced in South Africa as an innovative measure to improve the adjudication of sexual offences.³ In 1993 the then Attorney-General of the Western Cape initiated the establishment of the Sexual Offences Courts (SOCs) at the Wynberg Regional Court in Cape Town. This was a pilot project aimed at responding to and preventing the soaring figures of rape cases that were reported in the area at the time. It was also seen as an intervention mechanism against the secondary

victimization experienced by victims when they engaged with the criminal justice system.

The Wynberg Sexual Offences Court Project, as it became known, had three objectives:⁴

- To reduce the insensitive treatment of victims in the criminal justice system by following a victim-centred approach;
- To adopt a coordinated and integrated approach among the various role-players who deal with sexual offences; and
- To improve the investigation and prosecution, as well as the reporting and conviction rates in sexual offence cases.

The Wynberg court differed from the general regional courts in a number of ways. In this court a victim-centred approach was adopted even before the commencement of the trial. A multi-disciplinary team rendered assistance from the moment the victim reported a sexual offence. A social worker from the former Department of Welfare was appointed as a full-time support services coordinator⁵ and was tasked with the coordination and provision of intermediary, counselling and other appropriate services to victims.

Several measures were also introduced to reduce the secondary traumatising of victims. The Sexual Offences Court was moved to a more appropriate floor of the Magistrates' Court building to prevent the victim from coming into contact with the accused and other members of the public. Private, colourful and victim-friendly waiting rooms were available and two prosecutors were allocated per court. This was to enable one prosecutor to consult, guide investigations and do trial preparation while

1 Altbeker, A. 2003. *Justice through Specialisation? The case of the Specialised Commercial Crime Court*. Institute for Security Studies Monograph. Issue 76. 3.

2 Altbeker, A. 2003. *Justice through Specialisation? The case of the Specialised Commercial Crime Court*. Institute for Security Studies Monograph. Issue 76. 4.

3 Walker, S.P. 2002. *The court for sexual offences: perceptions of the parties involved*. Unpublished PhD. Department of Psychology, University of the Free State.

4 Stanton, S., Lochrenber, M and Mukasa, V. 1997. *Improved justice for survivors of sexual violence? Adult survivors' experiences of the Wynberg Sexual Offences Court and associated services*. Publisher unknown. Cape Town. 148

5 South African Human Rights Commission. 2002. *Report on the enquiry into sexual violence against children. Does the criminal justice system protect children?* Johannesburg. 28.



the other was in court. Magistrates assigned to this Sexual Offences Court worked on a rotational system by presiding in this court for one week every six weeks⁶.

The Wynberg Court project was evaluated in 1997 by Rape Crisis Cape Town and the African Gender Institute at UCT, and was found to be partially successful in establishing integration and teamwork among different role-players dealing with sexual offences, in reducing victim trauma and in improving reporting and conviction rates.⁷ This was regarded as a laudable achievement after only four years of operation.

However, the evaluation also highlighted a number of challenges that would have to be addressed. It was recommended that all court personnel receive continuous, specialised training to improve the prosecution and adjudication of sexual offence cases. It was recommended that district surgeons be available 24 hours per day and a mechanism to disseminate information to complainants be established. The Department of Justice was further called upon to draft a blueprint for Sexual Offences Courts in South Africa.⁸ This blueprint was considered imperative to provide guidelines for the roll-out of these courts.

The pilot proved to be a huge success as it maintained the conviction rate of up to 80% over a period of a year. This became a strong motivation for the NPA to establish further Sexual Offences Courts around the country with the aim of targeting first areas which had a high prevalence of sexual violence.

1.3. THE ROLL OUT OF SEXUAL OFFENCES COURTS

The NPA recognised the significant value of the Sexual Offences Courts in the intervention process, and established the National Sexual Offences Court Task Team in 1998. The objectives of this task team included the replication of the Wynberg Sexual Offences Courts model to all regional court districts in the country and the provision of specialised training to justice court personnel as well as other key role-players dealing with sexual offences.⁹

In 1999, the country saw the birth of the second court that dealt exclusively with sexual offences cases in Bloemfontein. This was established as an integrated effort by a number of organisations.¹⁰ Since there was no national blueprint available at the time, the role-players designed their own blueprint, which resembled certain aspect of the Wynberg model. From 1999, further Sexual Offences Courts were established and by 2000 these were available in Durban, Parow and Grahamstown.¹¹ During the same period, further establishments were made by the NPA in Mdantsane, EC and Soweto in Gauteng.

Further evaluations of the Sexual Offences Courts were conducted and included investigations by IDASA in 2001,¹² the South African Human Rights Commission in 2002,¹³ and an audit on Sexual Offences Courts as called for by the then Minister of Justice and Constitutional Development in 2006.¹⁴

- 6 Vivier, S. 1994. Wynberg Sexual Offences Court: impressions after a year in operation. *De Rebus*. August 320:569.
- 7 South African Human Rights Commission. 2002. **Report on the enquiry into sexual violence against children. Does the criminal justice system protect children?** Johannesburg. 29.
- 8 South African Human Rights Commission. 2002. **Report on the enquiry into sexual violence against children. Does the criminal justice system protect children?** Johannesburg. 29.

- 9 Müller, K.D. and Van der Merwe, I.A. 2004. The sexual offences prosecutor: a new specialisation. *Journal for Juridical Science*. 29 (1):135-151.
- 10 Opperman, M.E. 2003. Sexual Offences Courts. **Presentation at the Conference on the Multidisciplinary approach to child abuse**. 10 April 2003. University of the Free State. Bloemfontein.1.
- 11 Majokweni, T. Keynote address delivered by Adv Thoko Majokweni at the First National Conference of SAPSAC. 31 May – 1 June 2000. Pretoria. *Carsa* 1(2):4-7.
- 12 IDASA. 2001. **Pilot assessment: The Sexual Offences Court in Wynberg and Cape Town and related services**. Cape Town: IDASA. 1-59.
- 13 South African Human Rights Commission. 2002. **Report on enquiry into sexual violence against children. Does the criminal justice system protect children?** Johannesburg. National Prosecuting Authority. 2005. **Annual Report 2004/5**. Pretoria. C&R Business Systems Pty Ltd. 51.



The IDASA study found that staff at Sexual Offences Courts “were overloaded with cases and worked in a very stressful environment”.¹⁵ It was, therefore, recommended that debriefing and counselling services be provided to court personnel dedicated to these courts. The study also found that the lack of permanent magistrates at the Sexual Offences Courts impacted on the efficiency of the courts.

Since coordination between state departments posed problems, it was recommended that structures be implemented at provincial and national level to coordinate this. The importance of training was again stressed.

The study conducted by the South African Human Rights Commission found that the generalist court system used in dealing with child sexual violence was hostile and causing further traumatising of child victims. It recommended that there should be “an express rollout of specialised sexual offences courts”.¹⁶

Müller and Van der Merwe¹⁷ did an investigation into whether prosecutors in Sexual Offences Courts were specialists. They found that 50% of the prosecutors in these courts had not received any specialised training before appearing in Sexual Offences Courts and those who did receive training, were exposed to non-standardised training on an ad hoc basis.

As far as the selection of prosecutors for Sexual Offences Courts was concerned, they found that only some of the prosecutors were requested to be in the Sexual Offences Courts, while others were assigned to these courts without any choice.

Prosecutors indicated that poor facilities, an unfriendly environment, inadequate time for case preparation, little or no experience, lack of training, lack of access to essential material, such as case law and the lack of emotional support prevented them from achieving the desired specialisation. They indicated that they needed effective management, training, emotional support and multi-disciplinary participation to overcome these obstacles.

1.4. A BLUEPRINT FOR SEXUAL OFFENCES COURTS

In 2002, a Blueprint for Sexual Offences Courts was developed by the Sexual Offences and Community Affairs Unit (SOCA Unit) within the NPA. In February 2003, the National Strategy for the Rollout of Specialised Sexual Offences Courts was announced. This document introduced the concept of two categories of courts, which subsequently gave rise to much of the confusion relating to terminology. The differences in these two categories of courts are clearly pointed out in the strategy:

... the establishment of a Sexual Offences Court is a process that often takes several months. It is not always possible to immediately provide all the facilities required for a blueprint compliant court. The ultimate goal is to ensure that all courts comply fully with the said blueprint, but it is, however, also necessary to continue with the rollout of dedicated courts, and in the meantime to try and provide at least a minimum standard of facilities in these courts. It has therefore been decided to divide the classification of Sexual Offences Courts in two categories. The first category includes all courts that are dedicated to hearing sexual offences even though they do not yet comply with the blueprint. These courts should not be classified as a Sexual Offences Court, but should rather be referred to as dedicated courts dealing with sexual offences. Throughout that rollout phase, the NPA and DOJCD should strive to convert all dedicated courts into fully-fledged blueprint compliant courts.”¹⁸

15 IDASA. 2001. **Pilot assessment: The Sexual Offences Court in Wynberg and Cape Town and related services.** Cape Town: IDASA. 1-59.

16 South African Human Rights Commission. 2002. **Report on enquiry into sexual violence against children. Does the criminal justice system protect children?** Johannesburg. 74.

17 Müller, K.D. and Van der Merwe, I.A. 2004. *The sexual offences prosecutor: a new specialisation.* **Journal for Juridical Science.** 29(1):135 – 151.

18 NPA (National Prosecuting Authority) and DOJCD (Department of Justice and Constitutional Development) 2003. **National Strategy for the Roll-Out of Specialised Sexual Offences Courts.** 2.



In terms of the above terminology Sexual Offences Courts were blueprint compliant whereas dedicated courts were courts that dealt with sexual offences, although not blueprint compliant. Since the establishment of Sexual Offences Courts was a process that often took several months to achieve, it was not always possible to provide immediately all the facilities required for a blueprint compliant court. The blueprint compliant courts were found to be more costly and more demanding; as a result, the roll-out process produced more dedicated sexual offences courts than the desired blueprint compliant Sexual Offences Courts.

However, the ultimate goal was to ensure that all courts comply fully with the blueprint, but it was nevertheless necessary to continue with the roll-out of dedicated courts so as to ensure the provision of at least the minimum standard of the facilities in regional courts.

In terms of the blueprint, Sexual Offence Courts are regional courts dedicated exclusively to sexual offences.¹⁹ These courts have specific objectives, namely to:²⁰

- Provide for the effective prosecution and adjudication of sexual offences;
- Increase the reporting and conviction rates;
- Reduce the cycle time of cases; and
- Reduce secondary victimisation for survivors.

The paramount aim of the Sexual Offences Courts was to enhance the efficient prosecution and adjudication of sexual offences and to respond to victims' needs. The SOCA Unit thus facilitated the establishment of a written agreement between the NPA and the DOJCD in which they collectively undertook to streamline the roll-out and management of Sexual Offences Courts

countrywide. The Project Oversight Committees were established on a national, provincial and local level to facilitate the roll-out of Sexual Offences Courts.²¹

In April 2005, the blueprint was upgraded by the SOCA Unit to outline the essential requirements categorised into three sections, viz. the personnel component of the courts, the structure and equipment of the courts, and the services rendered to victims at these courts. These were delineated as follows:

Prosecutors

A minimum requirement of the blueprint was that two prosecutors must be assigned to each Sexual Offences Court. This was to ensure that prosecutors have more time to prepare cases and consult with witnesses. In addition, this was intended to ensure that the same prosecutor handles a case from the time it is put onto the court register until it is finalised.²²

Victim Assistance Services

An important aspect of the blueprint was the incorporation of victim assistance services to reduce secondary victimisation and to promote the rights of victims. In the earlier version of the blueprint, special assistance for victims at court included effective dissemination of information to the victim, counselling, assisting with protection orders, preparing the victim for court and reassuring the victim.²³

Court Preparation Officers familiarised the witness with the court and the court process, thus providing the child with information and empowering them to be more effective in the process.²⁴ Court Supporters,

19 South African Human Rights Commission. 2002. **Report on the enquiry into sexual violence against children. Does the criminal justice system protect children?** Johannesburg. 28.

20 NPA and DOJ. 2003. **National Strategy for the Roll out of Specialised Sexual Offences Courts.**

21 NPA (National Prosecution Authority) 2005. **Annual Report 2004/5. Pretoria.** C&R Business Systems Pty Ltd. 48.

22 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 78.

23 National Prosecuting Authority. 2003. **Annual Report 2002/03. Pretoria:**C&R Business Systems Pty Ltd.

24 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 84.



as their name implies, were required to provide support for the witness, although the blueprint does

not specify the tasks that were assigned to these individuals. It would seem that NGO volunteers also played an important role in offering these services at the courts, and services varied from counselling to seeing to the needs of victims, especially children. At court, the support included playing with and comforting children and providing them with meals, as well as information.²⁵

Regional Magistrates

The blueprint required that regional magistrates be specifically assigned to Sexual Offences Courts for a period of at least six months. In order to achieve the successful operation of the Sexual Offences Courts, it was necessary to have presiding officers who were dedicated, sensitised and empathic. Presiding officers assigned to these courts gained specialised experience, which resulted in improved understanding of the dynamics of these cases and greater consistency in judgements and sentencing.

Specialised Courts (Structure and Equipment)

The blueprint required that the location of the Sexual Offences Courts and associated services should ensure the prevention of contact between state witnesses, specifically victims and the accused. It further required that courts should have a victim-friendly environment, separate waiting rooms for children and adults, private consultation areas, closed-circuit television system and/or a one-way mirror system, intermediary room and the anatomically detailed dolls.

These specifications were not achieved in some courts due to a lack of space in most court buildings. Often prosecutors resorted to using unoccupied waiting rooms for consultation, since they shared offices with other prosecutors and could, therefore, not use their own offices for private consultations.²⁶

25 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 85.

26 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences**

The availability of closed-circuit television and intermediary rooms was in response to the statutory requirements in terms of s170A of the Criminal Procedure act 51 of 1977.

Intermediaries

In terms of s170A of the Criminal Procedure Act 51 of 1977, courts are required to make use of the services of intermediaries in certain circumstances. The duties of intermediaries are prescribed by the Act and guidelines for the proper appointment and use of intermediaries have been analysed in case law. The blueprint required the provision of these services.

Support Services

As a result of the trauma experienced by victims of sexual violence, the blueprint required that counselling services be provided at each Sexual Offences Court by dedicated social workers and NGOs.²⁷

Legal Aid of South Africa

An accused in a criminal matter is entitled to legal representation, but this often leads to delays as cases are postponed because the accused does not have legal representation or the arrangements for legal representation have not been finalised. It is for this reason that the blueprint required legal aid attorneys to be assigned to a Sexual Offences Court.²⁸

Local Project Oversight Committee

The National Project Oversight Committee (NPOC) was the formal integrated national structure established to deliberate and make decisions on strategic issues relating to dedicated courts and the mainstreaming process. The NPOC was composed of representatives from Justice (Court Service's Deputy Director General is chairing), SOCA (Special Director of SOCA being a member), NPS (Deputy National Director of Public

Courts: Better justice for children? *Journal for Juridical Science*. 31(2): 73-107 at 87.

27 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 91.

28 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 92.



Prosecution being a member) and the Lower Court Management Committee (LCMC) chairperson. The establishment of the NPOC was approved by the Minister of Justice and Constitutional Development in a memorandum dated 26 November 2004.

1.5. THE DECLINE OF THE SEXUAL OFFENCES COURTS

By March 2003, 20 Sexual Offences Courts had been established, and in March 2004 this number rose to 47 courts. By the end of 2005 there were 74 courts, which resulted in more cases being finalised, an improved handling of victims, improved cycle times and improved conviction rates.²⁹ It should be noted that the number of sittings of the Sexual Offences Courts often varied from month to month dependent on the number of periodic courts that sat as dedicated Sexual Offence Courts in a specific month.

On the 20th May 2005, the Minister of Justice and Constitutional Development, Ms Brigitte Mabandla, confirmed the successes of these courts in her budget speech in Parliament by stating that specialised courts had shown significant progress in comparison with other mainstream courts. However, the Minister was concerned by the proliferation of specialised courts that were better resourced than the mainstream courts.

This was stimulated by a serious concern arising from the inequitable distribution of services to all victims of crime. The fact that the Sexual Offences Courts were better resourced than other courts was seen as a serious violation of the constitutional right of other victims of crimes to equal protection and benefit of the law.

It was also seen as a serious impediment to the realization of the goals of the Service Charter for Victims of Crime in South Africa, which primarily strive for the equitable and victim-centred criminal justice system. In some areas, it was alleged that some of the Sexual Offences Courts were highly under-resourced

and therefore Blue Print non-compliant.

The regional courts dedicated to sexual offences were mainly placed at large centres in urban areas, and specially trained prosecutors were usually only located at these centres. In addition, these larger centres were the only courts that were equipped with CCTV systems, waiting rooms and consultation rooms that were conducive to the needs of victims of sexual offences.

Because some victims would have to travel longer distances to have their matters heard in a Sexual Offences Court rather than a normal Regional Court, the magistracy indicated that in order to ensure equal access to justice for all, it was better to have cases heard in areas closer to where these victims and families were based as opposed to hearing these cases only at certain larger centres.³⁰

The Minister thus required a review to determine the impact, effectiveness and sustainability of specialised courts and a revision of the terms of reference for the establishment of Sexual Offences Courts. This was interpreted to mean that a moratorium was imposed on the further roll-out of Sexual Offences Courts.³¹

The Case Flow Management Policy for lower courts also contributed to the decline of the Sexual Offences Courts. In 2006, the DOJ&CD, in collaboration with the Judiciary, the NPA, the Departments of Social Development and Correctional Services and the South African Police Service developed the Case Flow Management (CFM) Policy for lower courts. This policy calls for mechanisms to reduce case backlogs and the establishment and development of formalised processes that will ensure optimal utilisation of court hours.

In addition, the Draft Regional Court Protocol set out processes to ensure the effective screening of dockets before trial. Although both of these documents were aimed at ensuring the effective and expeditious finalisation of cases, neither of them recognised the

29 National Prosecuting Authority. *Report on Sexual Offences*. 7.

30 National Prosecuting Authority. *Report on Sexual Offences*. 16.

31 National Prosecuting Authority. *Report on Sexual Offences*. 8.



need to prioritise vulnerable victims, such as children and victims of sexual offences.³²

Unfortunately, due to the nature of the cases, the backlogs in courts dedicated to sexual offences were often bigger than those in other regional courts. This is due to the fact that sexual offences cases tend to take longer to finalise once the trial has started due to the nature of the offence, the time taken to build rapport with the victim and child complainants who take longer to testify.

As a result, some cases were often postponed for longer periods of time compared to those that dealt with non-sexual matters. In this regard, some regional court magistrates were of the opinion that this induced secondary victimisation. Accordingly, in response to the CFM Policy, several of the Sexual Offences Courts have since become Dedicated Sexual Offences Courts with mixed court rolls that give priority to sexual offences cases, and some turned into ordinary regional courts that deal with all cases.

Consequently, Sexual Offences Courts are no longer dedicated to sexual offences. Some of the remaining Sexual Offences Courts are struggling with magistrates rotating in and out of these courts for brief periods, sometimes for only two weeks at a time.

As a result of hearing matters in other courts, they bring part-heard matters with them on to the roll of the Sexual Offences Courts, which obviously has a detrimental effect on the existing outstanding sexual offences matters on the court roll.³³

1.6. ACHIEVEMENTS OF THE SEXUAL OFFENCES COURTS

Two of the main achievements of the Sexual Offences Courts were an increase in conviction rates and a decrease in turnaround time from the date of report to the police to the finalisation of the case.

32 National Prosecuting Authority. *Report on Sexual Offences*. 15.

33 National Prosecuting Authority. *Report on Sexual Offences*. 16.

In December 2003, the NPA conducted an audit of all sexual offences on all court rolls. This audit covered matters for the time period from January 2002 to November 2003 in respect of the offences of rape, attempted rape, indecent assault and statutory offences in terms of s14 (Act 23/1957). The conviction rate for rape in all regional courts was 42% whereas the conviction rate in Sexual Offences Courts was 62%.³⁴

In 2005, a study was conducted on the performance of the Wynberg Sexual Offences Courts by the SOCA Unit. This study analysed cases over the period of April 2004 to April 2005. All four courts that formed part of the study were blueprint compliant, and one of the courts (Court J) was linked to a Thuthuzela Care Centre. The study found that Court J enrolled the most cases, finalised the most cases and had the highest conviction rates. The study also reported a reduction in turnaround time from the date of report to the finalisation of the case.

The SOCA Unit also reported that the turnaround time in the finalisation of sexual offence cases at some courts had been reduced to less than 6 months.³⁵ This was attributed to the use of specialist prosecutors, case managers and victim assistance officers as well as the buy-in of relevant role-players and the principle of prosecution-led investigations.³⁶

In 2009, the SOCA Unit conducted a snapshot review of conviction rates at the Baragwanath Thuthuzela Care Centre in the Gauteng Province.

The Baragwanath TCC feeds into the Soweto Court, which had at least three courts dedicated to sexual offences that in 2005 were achieving conviction rates of between 65% and 73%. These courts closed in January to March 2008. The conviction rate for sexual offence cases in 2007 was 78% and this figure then dropped to 67% after the closure. In addition,

34 National Prosecuting Authority. *Report on Sexual Offences*. 8.

35 National Prosecuting Authority. 2003. Annual Report 2002/3. Pretoria. C&R Business Systems Pty.

36 Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 94.



the cycle times increased after the closure from 8.5 months to 13 months.³⁷

Since the closure of these courts four years ago, the sexual offences conviction rates for the Baragwanath TCC Soweto Courts have hovered between 45% and 67%. Interviews with the chief prosecutor, the control prosecutor, senior public prosecutors, medical staff and police officials have blamed this on the closure of the courts.³⁸

A further achievement of these courts was the reduction of secondary victimization since witnesses were provided with separate waiting rooms, intermediaries and CCTV facilities as well as certain victim support services. In addition, multi-disciplinary training had enhanced the skills of court personnel as well as other role-players. In this way these courts contributed significantly to the efficient prosecution and adjudication of sexual offences.³⁹

1.7. THE CHALLENGES EXPERIENCED IN SEXUAL OFFENCES COURTS

The most significant challenges that faced the continued operation of the Sexual Offences included:

- The lack of a legal framework to establish and support the establishment of these courts;
- The lack of buy-in from other stakeholders as a result of inadequate consultation. The NPOC experienced challenges, and could not deliver on its mandate.
- Inadequate resources that led to few Sexual Offences Courts being blueprint compliant with a large number being blueprint non-compliant Dedicated Sexual Offences Courts. The NPA was primarily dependent on donor funding to establish these courts;
- Less visibility of these courts in remote areas, which was construed as a violation of the Constitution;

- Inadequate human capacity to sustain the optimal performance of these courts. The lack of funds was identified as the primary cause of the shortage of prosecutors, intermediaries and court preparation officers;
- The restricted space capacity in courts that often hindered full compliance with the blueprint. In other courts, waiting and consultation areas could not be established due to lack of space in the courts;
- Inadequate and inconsistent provision of skills training and debriefing programmes for the court personnel. This led to many court personnel experiencing transferred trauma from dealing with these cases; and
- The lack of monitoring and evaluation mechanism developed specifically for the management of these courts.

1.8. THE EFFECT OF MAINSTREAMING THE SEXUAL OFFENCES COURTS

The prosecution of sexual offences requires a particular type of prosecutor, who is committed to these cases since they are often emotionally difficult to manage. It requires a skill to work with often severely traumatized victims, especially where the victim is a child, and develop a relationship of trust with the victim to ensure the best quality of evidence is presented to the court. Leading of this evidence takes time, skill and patience.

There is also new legislation on sexual offences which is complex and technical. All these factors make it essential to have prosecutors who have the necessary resources to protect these victims and prevent secondary victimisation as well as secure convictions. The Sexual Offences Court blueprint requires that all sexual offences matters are kept on a single court roll as this ensures an effective monitoring of cases, the effective collection and collation of statistical data for trends analysis and problem solving, as well as the availability of skilled and experienced court personnel to handle these

³⁷ National Prosecuting Authority. *Report on Sexual Offences*. 13.

³⁸ National Prosecuting Authority. *Report on Sexual Offences*. 13.

³⁹ Reyneke, J.M. and Kruger, H.B. 2006. **Sexual Offences Courts: Better justice for children?** *Journal for Juridical Science*. 31(2): 73-107 at 94.



matters. This in turn reduces secondary victimisation and the cycle times of cases.⁴⁰

However, the re-circulation of the sexual offences cases into the mainstream courts resulted in skills shortage of specialised sexual offences court personnel to ensure proficient service delivery to all victims. For instance, in the past, the Pretoria Regional Court had four courts that were equipped with CCTV facilities and had a total of 4 specialist prosecutors.

These courts dealt only with sexual offences and other offences perpetrated against children. With the distribution of sexual offences cases amongst all regional courts, certain child victims became exposed to inexperienced and unskilled prosecutors, thus increasing the chances of suffering from further traumatisation.

Presently, TCC matters are distributed in the same way as all other sexual offences matters to all courts, resulting in the loss of prioritisation. This has caused a decrease in the case finalisation and conviction rates, and an increase in case cycle time. The fact that these cases are now not always handled by a prosecutor with the requisite skill, training, interest and commitment has also attributed to the reduced conviction rate. The NPA alleges that this practice is found in all provinces.⁴¹

Complainants, whose cases are heard by the mainstream regional courts still have access to the services offered to all complainants, namely waiting rooms, court preparation, consultations, and CCTV, where these facilities are available, but no

longer necessarily have access to specialised court personnel.

Since the closure of the Sexual Offences Courts, it is apparent that the referral rates of cases to the prosecution have declined by at least 40%, the conviction rates have dropped by at least 20% and the cycle times have increased by at least 8 months (between 2004 – 2010).

Referral rates have declined because previously case managers at TCCs would track cases that would be heard in a dedicated Sexual Offences Court per court centre. Now that all regional courts hear sexual offences, the tracking task is more difficult to manage. This has the effect of compromising equal, effective and efficient services to all victims of sexual offences.⁴²

The prosecution-guided investigations of sexual offences cases also came to a halt due to the fact that prosecutors now deal with all matters. This has also resulted in more sub-standard investigated dockets seeping into the system.

As far as physical resources of courts are concerned, closed circuit television (CCTV's) systems have been rolled out to courts in compliance with s170A of the Criminal Procedure Act 51 of 1977. Since these form part of the infrastructure of Sexual Offences Courts, they will have a substantial impact on resources. The following is a summary of the number of CCTV's installed by the Department of Justice and Constitutional Development in the courts, as well as the number of outstanding systems:

40 National Prosecuting Authority. *Report on Sexual Offences*. 16.

41 National Prosecuting Authority. *Report on Sexual Offences*. 17.

42 National Prosecuting Authority. *Report on Sexual Offences*. 17.



PROVINCE	COURTS WITH CCTVS AND WITHOUT REQUESTS	COURTS WITH CCTVS AND ADDITIONAL REQUESTS	COURTS WITHOUT CCTVS AND WITHOUT REQUESTS	COURTS WITHOUT CCTVS WITH REQUESTS
Eastern Cape	30	19	13	13
Free State	13	3	34	7
Gauteng	16	4	4	0
KwaZulu Natal	22	3	26	5
Limpopo	11	8	8	2
Mpumalanga	12	6	9	1
North West	15	6	4	0
Northern Cape	17	3	7	2
Western Cape	15	2	12	5
TOTAL	151	54	117	35

1.9. FEASIBILITY STUDY ON THE RE-ESTABLISHMENT OF THE SEXUAL OFFENCES COURTS⁴³

MATTSO conducted an empirical research at five identified court sites. This research was conducted to inform the feasibility study looking into the re-establishment of the Sexual Offences Courts in South Africa.

The purpose of the field research was to obtain information about the historical and current functionality, successes and limitations of the operations of dedicated Sexual Offences Courts from certain identified court personnel, who included the regional magistrates, prosecutors, and intermediaries. In addition, recommendations and opinions on these courts and the possibility of their re-establishment or expansion were sought from key informants participating in the research.

The assessment was done through on-site court visits and interviews with the key informants at

five identified courts, namely Protea Magistrates' Court (Johannesburg); Wynberg Magistrates' Court (Cape Town); Durban Magistrates' Court (Durban); Mdantsane Magistrates' Court (East London); and Sibasa Magistrates' Court (Thohoyandou).

The research supported a number of findings already highlighted in this report. It confirmed the widespread mainstreaming of sexual offences cases. For instance, in Protea, it was found that none of the regional courts operated as dedicated sexual offences courts. All ten courtrooms are now operating as ordinary regional courts dealing with all cases. Sexual offences cases are dealt with on a daily basis, but are not disaggregated from other cases. There were allegations that these sexual offences cases had become contaminated by other cases on the court roll which resulted in delays in finalising the cases, thus causing witnesses to suffer undue distress.

In Durban, the research found that two Dedicated Sexual Offences Courts hear cases involving children while the remaining 14 regional courts operate with mixed rolls that include sexual offences cases

⁴³ University of Pretoria. 2012. **Feasibility Study on the (Re) Establishment of Sexual Offences Courts in South Africa.** Summary Report on Empirical Research: Interviews and on-site assessment of sample courts.



involving adult victims. Since the closure of the dedicated Sexual Offences Court in Mdantsane, approximately 30% of the court roll involves sexual offences cases. Presently sexual offences cases are spread across all 3 regional courts. According to the interviews with court personnel, the demise of the dedicated Sexual Offences Courts has seen less dedication, commitment and compassion on the part of magistrates and prosecutors when dealing with witnesses in these cases. The Sibasa Sexual Offences Court ceased to operate in June 2008, and today sexual offences cases are heard in the two regional courts, and they constitute approximately 70% of the court roll.

In Cape Town, the Wynberg Sexual Offences Courts are no longer functioning as such since their court rolls are now not entirely devoted to sexual offences matters.

In the interviews conducted with the personnel working at the courts, the following challenges were identified:

- There was a lack of on-going training on sexual offences for prosecutors and presiding officers;
- The training was too general and not sufficiently specialised;
- Some courts do not have sufficient prosecutors;
- There was a need for debriefing of prosecutors and presiding officers since sexual offences cases were often traumatic;
- There were insufficient experienced and trained interpreters to deal with sexual offences cases,

hence the need for the specialised training of interpreters;

- The rotation of magistrates was an issue that needed to be addressed;
- There is a need for more administrative staff trained on sexual offences;
- There was a lack of dedication and passion on the part of personnel;
- There is a chronic shortage of offices and space for witness consultation rooms, witness waiting areas, and testifying rooms. In some courts, it was found that they provide one waiting area for children, teenagers and adult witnesses of all crimes;
- In courts that have witness waiting areas and testifying rooms, these were sparsely furnished. In certain testifying rooms, children were sitting on old office chairs. This photograph shows the Wynberg Testifying Room which was found to be better resourced than the rest of the study courts.
- The intermediaries do not have office accommodation, as a result they wait in corridors during court adjournments;
- In some courts, the CCTV's have 19 inch LCD screens that are almost the same size as computer screens, and therefore make it difficult for the presiding magistrate to have a clear view of the child witness;
- In some courts, the physical contact of the victims with the accused persons is unavoidable because of a lack of separate facilities, like toilets. However, in Wynberg, all victims of sexual





offences wait in a private and secured place that is guarded by a security guard during all office and court hours;

- In some courts no signage was found, except in the Wynberg Court;
- At all sites, the lack of food provision to child witnesses was identified as a serious challenge that the Department must address as a matter of urgency. Currently, prosecutors, magistrates, intermediaries, NGO's and members of the public provide food for these witnesses out of their own pockets.

The study found that there was support for the (re) establishment of the Sexual Offences Courts. One of the reasons cited was that this would better support victims of sexual offences. The re-establishment would hopefully mean more dedicated court personnel to deal with these cases.

This would mean, in turn, that complainants would not be faced with a different, overworked prosecutor every time they came to court and complainants would not only be better supported, but they would also be less likely to withdraw their cases. At the Mdantsane Court, the overwhelming view emerged that the closing of the Sexual Offences Courts had been deeply regretted with a noticeable impact on the rate of finalisation of these cases.

10. SPECIALISED/DEDICATED MODELS ON THE MANAGEMENT OF SEXUAL OFFENCES IN SOUTH AFRICA

10.1. Introduction

The South African government has acknowledged the need to provide services to victims of sexual violence, and a number of interventions have been made across various departments which are aimed at providing assistance to and reducing the secondary victimisation of victims.

Although these interventions do not all form part of a special sexual offences court model, they do provide complimentary services and sometimes feed into

the sexual offences courts. A brief overview of these interventions has been included in this chapter.

1.10.2 Child Protection Units and Family Violence, Child Protection and Sexual Offences Units

In 1986, the Child Protection Units (CPUs) were established to improve the policing of crimes against children. This mandate was extended in 1995 to include family violence and sexual offences against adults, and the CPUs became Family Violence, Child Protection and Sexual Offences Units (FCS). The FCS Units took on a specialist function and were required to police crimes relating to family violence, children and sexual violence.⁴⁴

In order to ensure that the CPUs were more child-friendly, they were located away from the police stations and provided with more specialised facilities, such as child-friendly offices and interview rooms. A CPU would be set up in a particular area and service a number of police stations, thus contributing to the concept of a specialist unit. This was reinforced by specialist training that detectives in the CPUs were required to undergo.

Nevertheless, due to the distances involved, some CPU members were stationed at detective branches of local police stations and in some areas there were no CPU officers and these cases were investigated by general detectives.⁴⁵ With the introduction of the FCS Units in 1995, a certain amount of restructuring took place.

In addition, there was political attention focused on the fact that FCS Units were under-resourced, both in terms of infrastructure and human resources, and the SAPS committed to increasing their resources so that by 2006, there were 66 FCS Units with an average number of 22 members per unit.⁴⁶ With the

44 SAPS website. www.saps.gov.za/org_profiles/core_function_components/fcs/establish.htm. Accessed 13 May 2012.

45 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa. 22.

46 Waterhouse, S. 2008. **The impact of changing criminal**



conversion of the CPUs into FCS Units, there was the perception of improved services due to the increased human capacity. There were also improved relations between SAPS, NPA and medical officers as well as better referral rates and improved investigation standards.⁴⁷

In 1999, the police began to restructure their specialised units and management structures, and in 2006 they announced specific changes to services based at area level. These changes included devolving some services, including that of the FCS Units, based at area level to station level. The rationale for restructuring, according to SAPS, was to address certain factors that interfered with optimal police functioning.

Experienced staff with specialised skills were situated at area level and were not available at station level, and this also led to a duplication of functions between the area and station level. Restructuring would better utilise the resources and expertise available by making them available at station level, where they would have a direct impact on service delivery. This meant that specialised units that were previously available at area level would be moved to police stations.⁴⁸

SAPS indicated that the FCS Units would not be closed but that they were instead to be multiplied and made available at station level. Police stations were to be clustered in groups of approximately 6 police stations supervised by an accounting station.

Most clusters would have a FCS Unit based at the accounting station although some specialised detectives would be based at police stations. As part of the restructuring, uniform branch police officials would be trained to receive the crimes traditionally investigated by FCS Units while the specialised detectives would do the investigation.⁴⁹

The organisation, Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), undertook a review of the restructuring process in 2007 and found that the different provinces had interpreted the national orders on restructuring differently. Some provinces maintained the dedicated unit, locating it at the accounting stations and allowing detectives to provide services to all the police stations that fell within that cluster.

In other provinces, detectives from the FCS Units were relocated to station level. Most provinces, however, tried to incorporate both models into their service delivery, especially where rural areas

were involved.⁵⁰ The RAPCAN review showed that services had indeed been strengthened at some police stations, where previously there had been no specialist services available, but in the majority of cases the decentralisation had "led to a dilution of the quality of FCS services and even a complete lack of services in some areas."⁵¹

The restructuring of FCS Units gave rise to a number of problems, both with regard to management as well as delivery of services. Management of FCS services created difficulties since in many provinces these fell under the head of detectives at the accounting

justice responses to child victims of sexual abuse:
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 2

Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse:**
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 3.

47 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse:**
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 23.

48 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse:**
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 23.

49 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse:**
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 24.

50 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse:**
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 24.

51 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse:**
Good intentions, questionable outcomes. Open Society Foundation for South Africa. 24.



stations. FCS detectives were also expected to investigate other matters as well as the mandated sexual offences.

Resources such as cellphones and cars, which had previously been allocated to FCS Units, were at some stations reallocated to general investigations. RAPCAN found that, although detectives with the title of FCS detectives were placed at individual stations, this distinction existed in name only and specialised services were effectively unavailable to victims.⁵²

The restructuring process was not accompanied by a significant increase in resources to FCS Units. In effect, many FCS Units had been disbanded and individuals sent to police stations. The review found that in many areas untrained detectives had been placed or identified at local police stations and labeled as FCS detectives.

The RAPCAN review found that the restructuring of the FCS Units has given rise to the following challenges:⁵³

- the quality of service provided was not uniform but was dependent on individual detectives;
- since many station managers were not trained FCS detectives, they were unaware of critical differences in the approach to investigating FCS matters in comparison with other crimes, which resulted in detectives not being supported when they tried to implement the instructions for sexual offences;
- for the same reason mentioned above, station managers did not understand the emotional impact of FCS crimes on detectives and their need for support and supervision;

- the expertise which FCS detectives had gained was lost when they returned to a more general organizational culture since they were no longer working with a group of like-minded individuals which contributed to skills transfer between members; and
- specialised detectives were also expected to investigate general cases.

At a media briefing on 2 December 2011 in North West Province, the Minister of Police, Nathi Mthethwa, announced the reintroduction of the FCS Units to improve the ability of SAPS to offer specialised investigations to women and child victims of crime.⁵⁴ A new head of the National FCS Unit was appointed to roll out the FCS Units across the province.⁵⁵

10.3. Thuthuzela Care Centre

The Thuthuzela Care Centre Model (TCC) is one of the initiatives developed to address rape care management by the Inter Departmental Management Team. The model, which adopts a victim-centred approach, facilitates victim empowerment by supporting the victim through the criminal justice system with the objective of transforming him or her from a victim to a survivor.⁵⁶

The Thuthuzela model is based on the concept of comprehensive, integrated, intersectoral provision of services to victims of sexual violence. Effective implementation requires that all role-players provide services in a sensitive and efficient manner all the way from the complaint being received by the police to the final adjudication of the matter.⁵⁷

In terms of this model, health care providers play a critical role in attending to the medical, emotional

52 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa.24.

53 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa. 25.

54 <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=23750&tid=50998>. Accessed 13 May 2012.

55 <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=22261&tid=45684>. Accessed 13 May 2012.

56 National Prosecuting Authority. *Report on Sexual Offences.* 4.

57 USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault.13.



and psychological needs of victims by collecting and documenting evidence, networking and interacting with other professionals involved in the care and management of victims, as well as referral of patients for longer-term care.

All role-players must ensure that patients do not experience secondary traumatisation through the process of seeking justice and/or medical treatment.⁵⁸ The Thuthuzela Care Centre Model has the aim of both improving the care and treatment of rape victims at all points in the criminal justice system, and thereby reducing secondary victimisation, as well as ensuring the speedy, effective investigation and prosecution of sexual offences cases, thus ensuring a reduction in cycle times and an increase in conviction rates.⁵⁹

The Thuthuzela Blueprint is a four-page document that sets out the basic requirements of a Thuthuzela Care Centre and the responsibilities of the various role-players, including SAPS, Health, Justice, NPA, the Site Coordinator, Case Manager, Emergency Medical Services, NGOs, and/or the Department of Social Development. According to the Blueprint, each TCC should be based in a separate area inside a health care facility, offer services 24 hours a day, and be linked to a Sexual Offences Court.⁶⁰

Although the Blueprint does not provide detailed standards for health care delivery, it does require that the TCC have health care professionals who are specifically assigned to the centre and are responsible for forensic and clinical management. Health care professionals are required to be available 24 hours

a day and provision must be made for preventative and curative medical care.

In addition to the health care professionals, health care facilities must be staffed by a Site Coordinator, victim assistance officer and case manager, NGO or DoSD counsellors, identified referral services, trained charge officers and trained investigating officers who will be available to take statements at the facility on a 24 hour basis.⁶¹

The Blueprint also sets out the basic facilities, equipment and supplies required at each site, including a fully equipped sexual assault examination room, spare clothing and comfort items for patients, and adequate communication equipment for TCC staff.⁶²

Some of the TCCs have site-specific protocols in addition to the Blueprint, which set out the responsibilities of each role-player at the facility.⁶³ In terms of these protocols, nurses are generally responsible for providing information to the victim and assisting with intake, examination, record keeping, and protection of evidence.

Doctors and/or forensic nurses are responsible for examining the victims in accordance with established medical procedures and documenting this evidence on the J88 form. Included are various models for crisis counseling, which vary from volunteers based at the TCC to those who are available on-call.

The following outcomes are sought to be achieved by the TCC Model:

- centralisation of all rape investigations;

58 USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 5.

59 USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 5.

60 USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 13.

61 USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 14.

62 USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 14.

63 See, e.g. Protocol for the Senakekelwe Thuthuzela Care Centre (Natalspuit), June 2006; and Protocols for the Initiation of Thuthuzela Care Centre (Mannenberg), 6 July 2000.



- prompt transport of victims;
- examination and care of victims;
- increased communication between prosecutor, police and victim;
- development of best practices for speedy and sensitive investigation of cases;
- accurate data collection and analysis; and
- immediate crisis counseling for victims.

In 2007, USAID funded an evaluation of the TCCs to assess the extent to which the health care services of these facilities complied with the National Guidelines for Sexual Assault Care.⁶⁴ The study found that there were basically two models of the TCCs, a medico-legal model and a home-based model, which were characterised by different management structures and resource allocations. The medico-legal sites were usually standalone centres that provided services beyond sexual assault care.

The study identified a number of areas of concern, some of which are summarised below:⁶⁵

- Although all the sites provided voluntary counseling and testing for HIV, the quality of counseling varied from site to site.
- Patients generally did not return for follow-up and testing, and most centres did not provide support and incentives for patients to return for further counselling and repeat testing for HIV.
- Most centres were found not to have skilled personnel to deal with children and patients with special needs.
- Many doctors were not adequately trained to deal with sexual assault cases. Many doctors were not trained to complete J28 or 308 forms

and often could not calculate the PEP formula for children.

- Session and on-call doctors were generally not supervised and the perception appeared to be that services after hours were of a poorer standard than during the day.
- Although forensic nurses appeared to be adequately trained and skilled, many sites had vacancies in this category, which obviously compromised service delivery.
- Vacancies existed in many centres, which compromised the capacity for delivery of quality services.
- It was found that the design of some of the sites was not conducive for protecting patients from secondary traumatisation.
- Finally, institutional arrangements between role-players and personality traits of staff influenced the performance of the sites.

10.4. One Stop Centres (Khuseleka Model)

The Department of Social Development, funded by the European Union, has implemented a Victim Empowerment Programme. One of the components of the Programme is the development of “one-stop centres”, which offer a range of integrated services to victims of violent crime, including legal assistance, medical care, psychosocial support and shelter services.

The concept of a One-Stop Centre acknowledges the importance of making it as easy as possible for victims of crime to access relevant services by integrating them in one location. They provide a range of services, including medical and forensic assistance, counselling and court preparation to survivors of gender-based violence, specifically women and children.⁶⁶

⁶⁴ USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 5.

⁶⁵ USAID. 2007. Final Report on the Compliance Assessment of the Thuthuzela Care Centres with National Department of Health Guidelines for Managing HIV in the Context of Sexual Assault. 5.

⁶⁶ UNODC. 2011. Combating violence against women and children. Regional Office Southern Africa Newsletter. Issue 01 – November 2011. http://www.unodc.org/documents/south-gernafrica/UNODC_Southern_Africa_Newsletter_Issue_02.pdf. Accessed 14 May 2012.



The first one-stop centre, the Khuseleka One-Stop Centre, was launched on the 5th October 2011 in Limpopo. The centre provides service on a 24 hour basis and brings together a diverse number of government departments and civil society organisations which had previously operated in separate locations. It has the capacity to house up to 30 adults and 12 children for a period of up to 6

months. It provides all required services for women and children who are victims of violence such as trauma counseling and psychosocial support, health care, police services, legal assistance, and shelter services.⁶⁷ A second Khuseleka One-Stop Centre will be opened in KwaZulu Natal in the course of 2012.

Other One-Stop Centres have also been established under the Violence Against Women Project. These centres also provide a range of services to survivors of gender-based violence. Four of these centres, based in Mpumalanga, the Eastern Cape, the Western Cape and the Northern Cape, have been handed over to the South African government.

Two additional centres, one in Vryburg (North West) and one in Sunnyside (Gauteng) are currently being run by UNODC and will be handed over to the government in the course of 2012. In addition to counseling and support services, the Vryburg and Sunnyside centres provide crisis-accommodation, run awareness-raising campaigns and educational programmes in schools, as well as programmes targeting perpetrators to break the cycle of violence and to address the root causes of the violence.⁶⁸

10.5. Court preparation services

Research has shown that children have great difficulty traversing the criminal justice system as victims of violence, and this not only contributes to secondary victimisation, but it also creates an adverse

effect on the credibility of the child. To assist victims of sexual offences in this regard, court preparation services have for a number of years been offered by civil society organisations, such as RAPCAN, Greater Nelspruit Rape Intervention Programme, Childline and the Teddy Bear Clinic.

The purpose of court preparation is thus to reduce further trauma to the victim and enable the witness to provide better evidence, thus improving their efficacy as witnesses.⁶⁹

In 2006 the NPA undertook to provide court preparation services to victims of crime with a special focus on children. A court preparation programme, "Bona Lesedi" or "I see the light" was developed to help prepare witnesses to testify in court. In addition, the NPA also created a position within the system for a court preparation officer (CPO), the purpose of which was to dedicate a person to present the programme to children and other witnesses who were required to testify.⁷⁰

The 2006/7 annual report of the NPA stated that, by the end of March 2007, 137 court preparation officials would be appointed and provision had been made for a further 72 posts for CPOs as well as 5 posts for supervisors.⁷¹ Although, initially the commitment by the NPA to provide court preparation was welcomed, the Open Society Foundation's investigation on the responses of the criminal justice system to child witnesses found the NPA's plans to be fraught with conceptual and implementation problems.⁷²

Concerns related to the programme model chosen by

- 69 Müller, K. and Hollely, K. 2009. **Introducing the Child Witness**. Prinrite. Port Elizabeth. 250 – 254.
- 70 Coetzee, S., Dunn, M., Kreston, S. and Painter, M.J. 2008. **Final Report: Review, research and evaluation of the 'Ke Bona Lesedi' draft court preparation programme of the National Prosecution Authority**. 5.
- 71 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes**. Open Society Foundation for South Africa. 27.
- 72 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes**. Open Society Foundation for South Africa. 27.

67 http://www.unodc.org/documents/southernafrica/press/MEDIA_ADVISORY_-_KHUSELEKA_CENTRE_LIMPOPO.pdf. Accessed 13 May 2012.

68 http://www.unodc.org/documents/southernafrica/press/MEDIA_ADVISORY_-_KHUSELEKA_CENTRE_LIMPOPO.pdf. Accessed 13 May 2012.



the NPA, which was not selected on evidence-based practice, and the fact that the NPA did not conduct a comprehensive needs analysis nor consult with civil society stakeholders at the outset. In addition, arguments were raised that the recruitment and selection of CPOs had been flawed, and that training only took place in some instances after services

had already been delivered.⁷³ These concerns were communicated to the NPA, who undertook to address these concerns and engaged in a process of consultation with civil society organisations and other experts in 2007. The NPA undertook to develop a set of minimum standards for the delivery of court preparation services as well as appoint a team of independent consultants to evaluate the programme.⁷⁴

The evaluation found that the NPA's programme had much to recommend it, but improvements could be made in the area of training, infrastructure and multi-disciplinary coordination.⁷⁵ To avoid the duplication of service providers, the NPA undertook to appoint further CPOs only in those courts where civil society organisations were not already delivering a service.⁷⁶

11. CONCLUSION

To ensure a fair trial, victims who are brave enough to testify in court need support and sensitive treatment.⁷⁷ Consequently, a victim-centred

approach is essential for the appropriate handling of sexually abused victims. Sexual Offences Courts were created to address these challenges and it is clear from the studies quoted above that they have achieved remarkable successes.

It is conceded that these courts have faced criticism and substantial challenges, but significant improvements have been reported in these courts with respect to conviction rates, specialisation of personnel and services to victims. The subsequent decline of the Sexual Offences Courts has ground this process to a halt and created uncertainty, especially in view of the fact that there are still a number of courts operating as Sexual Offences Courts.

Although the legislative framework for addressing sexual offences is in place and a number of key interventions have been implemented, these developments have been plagued by serious problems. In practice, services are not universally available and access to services is unequal. Although infrastructure and resources in this regard have gradually been increased, this is being done very slowly and often with temporary donor funding.

These difficulties could be attributed to the fact that there is currently no dedicated government plan setting out minimum services for victims of sexual offences or minimum levels of specialisation.⁷⁸ In addition, services are fragmented between different departments and this gives rise to issues of lack of coordination of services. This lack of coordination seriously hampers the efficacy of services.

73 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa. 27.

74 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa. 27.

75 Coetzee, S., Dunn, M., Kreston, S. and Painter, M.J. 2008. **Final Report: Review, research and evaluation of the 'Ke Bona Lesedi' draft court preparation programme of the National Prosecution Authority.** 42.

76 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa. 28.

77 Müller, K.D. and Van der Merwe, I.A. 2004. *The sexual offences prosecutor: a new specialisation.* **Journal for Juridical Science.** 29(1): 135 – 151 at 136.

78 Waterhouse, S. 2008. **The impact of changing criminal justice responses to child victims of sexual abuse: Good intentions, questionable outcomes.** Open Society Foundation for South Africa. 34.





Chapter 2:

SHOULD THE SEXUAL OFFENCES COURTS BE RE-ESTABLISHED?





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2.1. INTERNATIONAL OBLIGATIONS AND LEGISLATIVE FRAMEWORK

2.1.1. Introduction

Since 1994, South Africa has signed and ratified a number of international instruments that provide the international trend in the management of sexual offences by courts. Our Parliament has also passed many progressive pieces of legislation in compliance with these international obligations and commitments.

2.1.2. The Constitutional Framework

The Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter referred to as the Constitution), while recognising the injustices of our past⁷⁹, has affirmed the democratic values of human dignity, equality and freedom.⁸⁰ The legislative framework applicable to sexual offences is first and foremost underpinned by the provisions of the Bill of Rights in the Constitution. Section 12(1)(c) states that every person has the right to be free from all forms of violence from either public or private sources.

Other applicable sections of the Bill of Rights include section 9 that provides for the equality clause; section 12 which recognises that everyone possesses an inherent dignity that must be respected and protected; and section 14 that affords every person the right to privacy. The Constitution contains a specific provision that is devoted to children's rights.⁸¹ In terms of section 28, children have the right to be protected, amongst others, from abuse.

In addition, this provision requires that a child's best interests be of paramount importance in every

matter concerning that child. It further affords every child the right to be protected from maltreatment, neglect, abuse or degradation.

2.1.3 International Obligations

The following is a summation of the most relevant and notable international instruments that have provided guidance to South Africa in developing a legislative framework that is compliant with the global trend in the intervention process against gender-based violence and sexual violence:

Article 3(1) of the United Nations Convention on the Rights of the Child 1989 lays down the general standard which courts should follow when dealing with cases involving child victims. It provides that "in all official actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration".

This echoes the provision in section 28(2) of the South African Constitution, which states that a child's best interests are of paramount importance in every matter concerning the child. The Convention on the Elimination of All Forms of Discrimination against Women 1995 requires States Parties to ensure that laws against sexual violence are accompanied by appropriate protective and support services for victims, which may be construed to include victim-centred court services.⁸²

The Beijing Declaration and Platform for Action (1995) requires signatory states to provide women who are subjected to violence with access to the mechanisms of justice, as well as just and effective remedies for the harm they have suffered.⁸³ It further requires the creation and strengthening of institutional mechanisms that provide a safe and confidential environment to victims of gender-based violence, free from the fear of penalties or retaliation.⁸⁴

79 Preamble to the Constitution.

80 S7(1).

81 S28.

82 General Recommendation No.19 Par 24(b)

83 Par 124(h).

84 Par 124(l).



Article 16 of the Convention on the Rights of Persons with Disabilities 2007 requires states parties to take all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse. It further requires South Africa, as the signatory state, to develop women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

This Article may therefore be construed as requiring the establishment and strengthening of a victim-centred criminal justice system that is fully responsive to the special needs of persons with disabilities who are victims of sexual violence. Article 13 of this Convention further requires state parties to ensure effective access to justice for persons with disabilities on an equal basis with others, through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, both at investigative and other preliminary stages.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is a resolution adopted by the UN General Assembly on 29 November 1985 (40/34) which sets out access to justice and fair treatment, restitution, compensation and assistance as the key basic principles of justice to be observed by states when dealing with victims of crime, which include victims of sexual offences.

The African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the SADC Protocol on Gender and Development are the Regional Instruments signed and ratified by South Africa to address the epidemic of gender-based violence, further call for the adoption and implementation of appropriate measures to ensure the protection of every woman's right to respect for her dignity and the protection of women from all forms of violence, particularly sexual violence.

2.1.4. The South African Legislative and Policy Framework Applicable to Sexual Offences

Since 1994 the South African Parliament has extensively legislated against forms of violence perpetrated against women, children, elderly persons, persons with disabilities and the Lesbians, Gays, Bisexual, Transgender and Intersex (LGBTI) persons.

The preamble of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (hereinafter referred to as the Act) succinctly refers to the prevalence of the commission of sexual offences in our society as a 'social phenomenon, which is reflective of deep-seated systemic dysfunctionality in our society.' It further highlights the existing legal mechanisms to address this social phenomenon as limited and reactive in nature.

Broadly, the Act is the result of a comprehensive review of all laws relating to sexual offences. Of significance to the mandate of this project, it is also an Act that promotes the provision of specialized services to victims of sexual offences, mainly to eliminate secondary traumatization.

The Criminal Procedure Act 51 of 1977 continues to provide support to victims of sexual offences in the adjudication of cases involving such victims. This Act sets out additional rules of evidence and procedures aimed at easing the plight of the victim in a courtroom environment. Amongst these are responsive provisions that allow in camera proceedings for child witnesses, mentally disabled witnesses and traumatised adult witnesses.

Section 170 A of the Act further permits child victims to testify in court with the assistance of an intermediary. To save these victims from further traumatization, the intermediary interprets the court's language into a child's language mainly for the benefit of the child. With the use of anatomically-correct dolls, the intermediary further assists the child victims to express their experiences through demonstrative means.



Further relevant pieces of legislation include the following:

- Domestic Violence Act 116 of 1998;
- Older Persons Act 13 of 2005;
- Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 4 of 2000;
- The South Africans Schools Act(SASA)84 OF 1996;
- The Employment of Educators Act;
- Correctional Services Act 111 of 1998;
- The Films and Publications Amendment Act,18 of 2004;
- Child Justice Act 75 of 2008; and
- The Children's Act of 2008 .

Finally, the Service Charter for Victims of Crime in South Africa was created with the purpose of eliminating secondary victimisation in the criminal justice system, ensuring victims remain central to the criminal justice process, and clarifying the service standards that can be expected by victims when they come into contact with the criminal justice system. In terms of the right to assistance, the court personnel must ensure that special measures are taken in the adjudication of cases of sexual offences.

The National Policy Framework, developed in terms of s62(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, further requires the progressive establishment of specialised services for victims of sexual offences at the service points within the criminal justice system to ensure that the system's response is prompt, effective and efficient.

2.1.5. Conclusion

The highlighted legal frameworks establish a set of norms, standards and values to guide, inform and give substance to responses to sexual offences. They position women, children and men as active holders of rights with entitlements and legitimate claims upon the state, rather than as the passive recipients

of discretionary benefits. This overview therefore creates the basis on which the investigation into the re-introduction of the SOC's must be conducted. It clearly gives support to specialisation in the management of sexual offences cases.

2.2. THE MEANING OF SPECIALISED SERVICES IN SEXUAL OFFENCES

The term 'specialised', when seen in the context of services provided by the courts, refers to those areas where the focus of the work conducted in those particular courts is limited to a pre-determined range of issues.

The rationale for the provision of these services is to ensure that people deemed to have the appropriate skills and attitudes could be employed in courts that have definitive social policy objectives, such as providing access to justice for vulnerable groups, the transformation of labour relations, the rehabilitation of drug offenders, to name but a few.⁸⁵ However, the terminology associated with specialisation is diverse and engenders confusion. The terms 'specialisation', 'specialist skills', 'specialists', 'specialist courts', 'dedicated courts' and 'specialist services' are used interchangeably.

Exacerbating the confusion is the fact that internationally there is no agreement on what is meant by the term 'specialisation'. For instance, some jurisdictions use the term 'specialist prosecutor' to refer to those individuals who have undergone training on child development and the dynamics of sexual assault, while others regard prosecutors who have spent a certain period of time in these courts as 'specialist prosecutors'.

Some jurisdictions define a 'specialist court' as one that has the necessary electronic equipment while others require that 'specialist courts' only hear specific types of cases. However, there seems to be a general agreement internationally

85 Altbeker, A. 2003. Justice through specialisation? *The case of the Specialised Commercial Crime Court in Court Specialisation in Theory*. Monograph No.76. January 2003.



that specialisation means more than introducing technology to assist complainants and designating special courtrooms, but also includes key systemic changes which have produced cultural change within the courtroom. The key feature that has been found to bring about this cultural change is the specialisation of personnel, namely prosecutors and judges, who have undergone specialist training.⁸⁶ At the basis of the concept of specialised services lies the philosophy of providing a holistic response to a particular social policy objective, which extends beyond the courtroom and which is presupposed upon specialised knowledge.

Since there is no agreement internationally as to the meaning of these terms, it is best to examine the types of features that have been regarded as contributing to specialisation. These features are listed below as:

- special arrangements for identifying whether a case falls within the category of sexual offences;
- case-flow management of sexual offence cases to prevent delays;
- specific legislation and reform to laws;
- specific electronic equipment to assist the process of testifying;
- special courtroom located outside the main courtroom from which complainants can testify;
- separate access to the courtroom so as to prevent contact between the accused and the complainant;
- availability of a waiting room and play area for child witnesses;
- presence of a victim support person;
- development of a core group of specialist presiding officers, who are trained on child development and the dynamics of sexual assault;
- establishment of a specialist prosecutorial unit that undergoes training on child development

and the dynamics of sexual assault;

- establishment of a specialised unit within the police that undergoes training on child development and the dynamics of sexual assault;
- on-going training for prosecutors and presiding officers;
- provision of counselling support for prosecutors and presiding officers to prevent burnout;
- use of intermediaries to translate questions from the court to the child in a developmentally-appropriate manner;
- specialist forensic report writing and assessments for court;
- research and monitoring;
- specialist witness services such as the provision of court preparation for complainants;
- the provision of pre- and post-trial counselling;
- introduction of diversion and rehabilitation programmes for offenders;
- continued monitoring of sex offenders after conviction, using sex offender registers or child protection prohibition orders; and
- data collection method for evaluating the court's effectiveness.⁸⁷

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (hereafter referred to as "the Act") states as its objectives:

"to afford complainants of sexual offences the maximum and least traumatizing protection that the law can provide; to introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act and to combat and, ultimately, eradicate the relatively high incidence of sexual offences."

It is evident from the preamble and the objects of the Act that the underlying philosophy is one of a

86 Cossins, A. Undated. *The Prosecution of Child Sex Offences: To Specialise or Not – That is the Question*.

87 Cossins, A. Undated. *The Prosecution of Child Sex Offences: To Specialise or Not – That is the Question*.



people-oriented service delivery. The Act requires effective and efficient investigation and prosecution of perpetrators of sexual offences as well as proper recognition of the needs of victims of sexual offences.⁸⁸ In order to perform the functions related to the Act's objects, all role-players are required to "concentrate on a particular area of study or activity", thereby meeting the definition of 'specialisation'.⁸⁹ It also implies that the investigation, prosecution and adjudication of sexual offences fall in a separate and distinct offence category.

Since the focus of the legislation appears to be on the provision of services, it would seem that the term 'specialisation of services' or 'specialist services' is most appropriate to the position of sexual offences in South Africa. Therefore, a tentative definition of specialisation of services for sexual offences would be "the provision of services, infrastructure, resources and training for all role-players in order to achieve expertise in the field of sexual violence with the purpose of reducing secondary traumatisation for victims and eradicating sexual offences".

2.3. SPECIALISED SERVICES FOR VICTIMS OF VIOLENCE

2.3.1 Introduction

As the focus of this investigation will be on the specialisation of services in courts in matters relating to sexual violence, it is necessary to identify the difficulties experienced by the victims of sexual offences when they access the criminal justice system.

Specialist services will have to respond to these difficulties. For purposes of this section, the special needs of certain victims that are classified under vulnerable groups are explored. These victims are identified as women, children, LGBTI persons, sex workers; victims with disabilities; foreign women;

and persons trafficked for the purpose of sexual exploitation.

In line with a victim-centred approach and to achieve the object of the Act that calls upon the state "to afford complainants of sexual offences the maximum and least traumatising protection that the law can provide", it is necessary to examine what specialised services in this context imply.

Vulnerable groups are defined as those who are likely to have additional needs and experience poorer outcomes if these needs are not met. In a human rights sense, there are certain population groups who are often exposed to discriminatory treatment or require special attention to avoid potential exploitation. These populations or groups are referred to as vulnerable groups.⁹⁰

These groups often require more attention to ensure the protection of their human rights, but this ought not to be seen to be an elevation of these groups above others, since treating people in unequal situations in the same manner as others tends to perpetuate the injustices as opposed to eradicating them.⁹¹ For these reasons, human rights advocates have emphasised the significance of vulnerable groups and the need to pay attention to their human rights.

In the context of the mandate of the Chief Directorate: Promotion of the Rights of Vulnerable Groups within DOJCD, the term 'vulnerable groups' is limited to 'women, children, elderly persons, and persons with disabilities'. A similar approach is noted at the SOCA Unit within the NPA, where the mandate of this unit is strictly limited to women and children.

2.3.2 Victims of sexual violence

Victims of sexual offences are largely viewed as a vulnerable group. When they are required to testify in cases of sexual violence, they bring with them to

88 Section 29(e)(i) – (ii). Timeous, effective and non-discriminatory investigation and prosecution are highlighted.

89 Geddes and Crosset. 2006. **English Dictionary**. 401.

90 Reichert, E. 2006. **Understanding Human Rights: An Exercise Book**. Sage Publications. 78.

91 Reichert, E. 2006. **Understanding Human Rights: An Exercise Book**. Sage Publications. 82.



the courtroom, the disturbing experience of abuse, violence or family conflict. These experiences have been labelled by the professional world as traumatic, with the result that these victims may suffer from symptoms associated with traumatising. These include symptoms of a complex post-traumatic disorder, such as fear, low self-esteem, the inability to trust, anger and hostility, depression, guilt, shame or stigmatization, dissociation and feelings of powerlessness. In addition, they have to try and cope with the stress of the impending trial, and all the complexities associated with being a witness in an accusatory court setting.

The court process has thus often been described as a form of secondary traumatising as it increases the trauma of and decreases the accuracy of a victim's testimony. A Home Office Report,⁹² based on an investigation into the criminal justice system's response to rape victims and how this could be improved, found that the majority of issues that arose in the study related to the need for more information and the need for more support services.

A further issue related to societal and professional attitudes to rape victims, which influenced everything from whether a victim reported a sexual offence to the service they received to whether or not they got a conviction. The attitudes of agencies within the criminal justice system reflected the attitudes of the general public to rape victims in that the majority appear to believe "that rapists are strangers, who break into victims' homes or attack them in public places, and who use force."⁹³

The reality is that most victims are attacked in private, usually by someone who is known to them, and that injuries tend to be uncommon. Since these attitudes affect the whole process the victim has to endure, it was felt that more training on the realities of rape and how victims respond would be useful. The study found that victims wanted to be treated with

dignity and respect and wanted to be able to access support in court.⁹⁴ An added concern expressed by the participants in the study was the inconsistency of treatment received by victims.

Children occupy a special role within human rights protection since they are perceived to require special protection because of their fragile state of development and the fact that they are very susceptible to abuse and neglect and are not in a position to defend themselves.⁹⁵ In the Convention on the Rights of the Child, the United Nations states that a child needs special safeguards and care by reason of his physical and mental maturity.

This is particularly applicable in the context of children who are victims of sexual violence. Contemporary research overwhelmingly indicates that child victims/witnesses struggle with a number of difficulties in their interaction with the criminal justice system, which has been attributed to their lack of maturity and developmental shortcomings.⁹⁶ These difficulties are exacerbated when the child is also a victim of abuse.

There has been a growing concern about the effects on children of giving evidence in an adversarial environment. Many attorneys, mental health professionals and legal commentators claim that court involvement traumatises a child victim. Psychiatrists believe that psychological damage is caused not only by the abuse that the child has experienced but also by being forced to testify in an open court in the presence of the accused.

Not only does confrontation with the accused cause trauma for the child witness, it also interferes with the accuracy of the evidence.⁹⁷ Empirical research

92 Payne, S. 2009. **Rape: The Victim Experience Review. Home Office.** 10.

93 Payne, S. 2009. **Rape: The Victim Experience Review. Home Office.** 11.

94 Payne, S. 2009. **Rape: The Victim Experience Review. Home Office.** 16.

95 Reichert, E. 2006. **Understanding Human Rights: An Exercise Book.** Sage Publications. 82.

96 Müller, K. and Van der Merwe, A. 2005. Judicial management in child abuse cases. **SACJ** (1) 42-43 list several factors indicating the uniqueness of children.

97 Müller, K. and Hollely, K.A. 2009. **Introducing the Child Witness.** Printridge. Port Elizabeth. 61.



has shown that physical confrontation with the accused damages the reliability, quality and often the very existence of the child's evidence.⁹⁸ Criminal trials are by their very nature "combative or aggressive"⁹⁹, and cross-examination is integral to this "battle", being the opportunity which the accused has to attack the credibility of the witness. Cross-examination is not only traumatic for children, but also results in inaccurate evidence. The child is questioned in a hostile environment, often about very intimate and emotionally laden events.

LGBTI Persons: There are a number of issues regarding sexual assault that are unique to the Lesbian, Gay, Bisexual, Transgender and Intersex persons and which play a role when they enter the criminal justice system as complainants of sexual violence. Survivors who are still in the closet in terms of their sexual orientation may find reporting the sexual assault difficult or impossible.

Silence is very often a response to sexual violence. The victim may fear scepticism from others, especially in small communities, and, often, the lack of awareness of same-sex sexual assault may make silence appear to be the only option. Guilt and self-blame may lead to questioning of sexual identity and sexuality, and an individual's own internalized homophobia may further complicate the complexities of the sexual assault.

The LGBTI victims therefore may be apprehensive to report and have fears of being ignored or rejected because of the stereotype that they are promiscuous and invited the assault. In addition, lesbian or bisexual women victims may face being ignored where their attacker is female since women are not seen as sexual perpetrators socially.¹⁰⁰ Myths of lesbian utopia have often silenced lesbian victims

of sexual violence and have contributed to the lack of knowledge around the existence of woman-on-woman sexual violence.¹⁰¹ Knowledge of these dynamics is essential in order to provide specialised services to this community.

Gay, lesbian and bisexual men and women are at greater risk of being sexually assaulted compared to heterosexual people. There are a number of factors that account for the higher risk, including the fact that this group is more discriminated against.¹⁰² According to a new study by School of Public Health researchers, it was found that across 75 different research reports, lesbian and bisexual women may be up to 3 times as likely as heterosexual women to report having been sexually assaulted in their lifetime, and gay men appear to be about 15 times as likely as heterosexual men to report sexual assault.¹⁰³

Since the prevalence of sexual assault against this particular group is very high, role-players who come into contact with these individuals need to be aware of the trauma associated with these assaults as well as the discrimination faced by these individuals.¹⁰⁴ Because of the discrimination faced as a result of their gender and sexual orientation, it is estimated that approximately 10% of hate crimes against members of LGBTI communities involve sexual assault.¹⁰⁵

This figure may be higher, because individuals who were assaulted may be unsure if they were targeted because of their sexual orientation. Recently, in South Africa there has been an increase in instances

98 Müller, K. and Hollely, K.A. 2009. **Introducing the Child Witness**. Prinrite. Port Elizabeth. 83.
99 Volkman-Schluk, T. 1981. Continental European criminal procedures: True or illusive model? **American Journal of Criminal Law**. 9:1.
100 <http://www.morris.umn.edu/services/ViolencePrevention/Lgbt%20sexual%20assault%20pamphlet.pdf>. Accessed 27 March 2012.

101 Girshick, L.B. 2002. **Woman-to-Woman Sexual Violence: Does she call it Rape?** Northeastern Series on Gender, Crime, and Law.
102 <http://www.bu.edu/today/2011/lesbians-gays-bisexuals-at-increased-risk-for-sexualassault/>. Accessed 27 March 2012.
103 <http://www.bu.edu/today/2011/lesbians-gays-bisexuals-at-increased-risk-for-sexualassault/>. Accessed 27 March 2012.
104 Rothman, E.F., Exner, D., Baughman, A.L. 2012. *The Prevalence of Sexual Assault Against People who identify as Gay, Lesbian or Bisexual in the United States: A Systematic Review*. **Trauma, Violence and Abuse**. Sage.
105 Lesbian, Gay, Bisexual, Transgender (LGBT) Sexual Violence. <http://www.morris.umn.edu/services/ViolencePrevention/Lgbt%20sexual%20assault%20pamphlet.pdf>. Accessed 27 March 2012.



of violent crimes such as “corrective rape” as a result of growing homophobia.

At present, the South African criminal law does not have a specific crime called “corrective rape”. The term “corrective rape” is a slang identification of the hate-driven rape that is commonly committed by heterosexual men against lesbians. It can be informally defined as a crime of rape that is unlawfully committed with the aim to “correct” the sexual orientation of the lesbian.¹⁰⁶ The recent spate of attacks has been perpetrated particularly against young black lesbian women living in townships in South Africa.

In addition, there are myths linked to LGBTI communities which exacerbate discrimination. For instance, a common myth about LGBTI individuals is that they are paedophiles, whereas several studies have reported that heterosexual adults are more likely to be a threat to children than LGBTI individuals.¹⁰⁷

International literature on hate crime consistently indicates higher levels of psychological distress of the victim as one of the reasons these crimes require unique services, legislative and policy responses, and prioritisation. Other reasons include evidence of decision-makers de-prioritising hate victimisation and service providers neglecting, and sometimes even overtly discriminating against survivors of hate crimes within the criminal justice system and health system.

This has the effect of exacerbating, rather than addressing, the vulnerability of survivors of hate victimisation. Further, limited policing and barriers to accessing the legal system exacerbate vulnerability. These social dynamics are compounded by self-

stigmatisation and the hesitancy, as a result of fear, of survivors of hate victimisation to approach service providers for support or redress.¹⁰⁸

Knowledge of these dynamics is essential in order to provide specialised services to this community. It is difficult to identify the magnitude of the problem because statistical information related to LGBTI victims of sexual offences are not captured by information management systems. However, the DOJCD has currently finalised a study into the dynamics affecting the LGBTI victims of crime when accessing justice in our courts. It is expected that the findings of this study will shed light on specialized court services required by this community.

Persons with disabilities have been defined as including those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.¹⁰⁹

In 1975, the United Nations adopted a declaration on the rights of persons with disabilities, which defines a person with a disability as any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities (para 1).

Historically, people with disabilities have been discriminated against because of their disabilities, viewed as incapable and helpless and separated from society generally. In addition, they are denied opportunities for education and other life experiences. This is exacerbated by misperceptions and stereotypes about people with disabilities, and places people with disabilities at an increased risk of being exposed to sexual assault. Since assaults are often motivated by anger and a need to be in

106 Chief Directorate: Promotion of the Rights of Vulnerable Groups. Department of Justice and Constitutional Development. 7 July 2011. Draft Position Paper on ‘Corrective Rape’.

107 Lesbian, Gay, Bisexual, Transgender (LGBT) Sexual Violence. <http://www.morris.umn.edu/services/ViolencePrevention/Lgbt%20sexual%20assault%20pamphlet.pdf>. Accessed 27 March 2012.

108 Department of Social Development. **National Policy Guidelines for Victim Empowerment**. p. 11-12.

109 Convention on the Rights of Persons with Disabilities. Article 1.



control, offenders tend to seek victims they perceive to be vulnerable.¹¹⁰

Consequently, the statistics among adults who are developmentally disabled are extremely high, with as many as 83% of the females and 32% of the males being victims of sexual assault.¹¹¹ In one study, 40% of women with physical disabilities reported being sexually assaulted.¹¹² Even more alarming is the fact that 49% of people with developmental disabilities, who are victims of sexual violence, will experience 10 or more abusive incidents.¹¹³

Research has identified that people with mental disabilities experience sexual assault at higher rates primarily because of their increased vulnerability. This is recognised in the Convention on the Rights of Persons with Disabilities, which provides “that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.”

A Sexual Offences Project in Australia¹¹⁴ found that this increased vulnerability was attributable to a number of factors. There was a general lack of knowledge and understanding about potential risks and consequences on the part of persons with mental disabilities due to their limited cognitive and adaptive skills. Since many experienced communication difficulties, they found it problematic to articulate and disclose sexual assault.¹¹⁵

Vulnerability is increased by the fact that persons with mental disabilities are very often dependent on others for basic needs, and are isolated both physically and socially. Studies have revealed that perpetrators of sexual abuse against persons with a mental disability are more likely to be known to the victim, with a high percentage of these being encountered in the environment that the victim is accessing as a result of his or her disability. Perpetrators in these situations include both other inpatients and professionals working within the mental health system.¹¹⁶

Studies have highlighted a number of issues with which persons with mental disabilities are faced when they access the criminal justice system. These victims are often not believed when they report sexual assault, and are not considered to be reliable witnesses. They are believed not to be capable of participating in the justice process, and are often removed from their homes and placed at even greater risk of further sexual assault.

Sex workers, also referred to as prostitutes, are another group that is particularly vulnerable to abuse and violence due to the fact that they are marginalised and stigmatised. The incidence of violence against sex workers is extremely high and the type of violence that is committed is often very serious. Perpetrators tend to seek out sex workers because they feel that they are less likely to be convicted of crimes against prostitutes. Despite the high levels of violence experienced by sex workers, the actual reporting of these crimes is very low.¹¹⁷

There are a number of factors that contribute to the vulnerability of sex workers in the context of sexual violence, including stigmatisation, legal restrictions and legal biases.¹¹⁸ Sex workers are often exposed to

110 Wisconsin Coalition against Sexual Assault. 2003. People with Disabilities and Sexual Assault. Information Sheet Series.

111 Johnson, I., Sigler, R. 2000. Forced Sexual Intercourse Among Intimates. **Journal of Interpersonal Violence**. 15 (1).

112 Young, M. E., Nosek, M.A., Howland, C.A., Chanpong, G., Rintala, D.H. 1997. Prevalence of Abuse of Women with Physical Disabilities. **Archives of Physical Medicine and Rehabilitation Special Issue**. Vol. 78 (12 Suppl. 5).

113 Valenti-Heim, D., Schwartz, L. 1995. **The Sexual Abuse Interview for Those with Developmental Disabilities**.

114 Goodfellow, J. and Camilleri, M. 2003. **Beyond Belief: Beyond Justice**. The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Final report of the Sexual Offences Project. Stage One. 7.

115 Turk, V. & Brown, H. 1993. The Sexual Abuse of Adults with Learning Disabilities: Results of a Two-Year Incidence Survey. **Mental Handicap Research** 6 at 3.

116 Goodfellow, J. and Camilleri, M. 2003. **Beyond Belief: Beyond Justice**. The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Final report of the Sexual Offences Project. Stage One. 20.

117 Legislative Council, Parliament of New South Wales Standing Committee on Social Issues. 1996. **Sexual Violence: Addressing the Crime**. Report Number 9.

118 Bridgett, M. and Robinson, J. September 1999. Sex Workers



discrimination since many people in society regard the sex industry as an unacceptable, even immoral, profession.

Society denies the existence of the sex industry and, therefore, does not place much value on the quality of the lives of sex workers. As a consequence, sex workers are unable to speak freely about the work they do since they fear discrimination.¹¹⁹

Because of the illegal nature of many activities surrounding the sex industry, sex workers are often isolated and tend to work in areas that are isolated. Existing laws also do not offer them much protection, which contributes to keeping this industry hidden and unsafe for people to work in. Many sex workers offer their services from the streets, which means that they are forced into areas that are “unseen” and, therefore, unsafe. They do not have time to negotiate with a prospective client since their activities are clandestine, which means that they cannot ascertain how safe they will be.¹²⁰

In addition, sex workers are reluctant to report crimes that have been committed against them since they fear that the criminal justice system will either disregard or simply trivialise their reports, or even victimise them again. Their perception is that role-players in the criminal justice system feel that they deserve to be raped or that it is part of the job they have undertaken. Those who have laid complaints of sexual assaults report that they have been unfairly treated by both the legal and the health system, and are often not believed by police.¹²¹

Because of these attitudes, sex workers are reluctant to disclose their profession to anyone, including the police. And even when they do, they often fail to achieve a successful outcome to the judicial process. This is attributed to the criminal justice process itself. As mentioned earlier, there is ample evidence that victims of sexual violence are often re-traumatised when they appear in court and are made to experience feelings of guilt and responsibility for the offence.

Foreign women and victims trafficked for the purpose of sexual exploitation have also been identified as vulnerable groups. Rape can be used to punish and humiliate women from different nationalities as a political tool of xenophobia, or it can simply be perpetrated as a crime of gender-based violence.¹²² Victims, who have been trafficked for purposes of sexual exploitation, are for a number of reasons considered to be a vulnerable group when they enter the criminal justice system.

Special training is required in order for individuals to identify cases of trafficking, and it has been found that the training provided to law enforcement and immigration officials is inadequate in this respect. There is confusion that surrounds the distinction between trafficking and smuggling, as well as the overlap that exists between the two, as in the situation where an individual begins as a willing migrant but becomes a victim of trafficking during transit or upon arrival in the destination country.¹²³

The failure to identify victims of trafficking is compounded by the fact that victims are often involved in illegal activities such as prostitution and drugs. Since the vast majority of victims have already been forced into prostitution and drug abuse by the time they reach the court process, there is the mistaken assumption that they have consented to

and Sexual Assault: The Hidden Crime. Paper presented at the **Restoration for Victims of Crime Conference**. Australian Institute of Criminology. Melbourne. 3.

119 Bridgett, M. and Robinson, J. September 1999. Sex Workers and Sexual Assault: The Hidden Crime. Paper presented at the **Restoration for Victims of Crime Conference**. Australian Institute of Criminology. Melbourne. 3.

120 Bridgett, M. and Robinson, J. September 1999. Sex Workers and Sexual Assault: The Hidden Crime. Paper presented at the **Restoration for Victims of Crime Conference**. Australian Institute of Criminology. Melbourne. 4.

121 Bridgett, M. and Robinson, J. September 1999. Sex Workers and Sexual Assault: The Hidden Crime. Paper presented at the **Restoration for Victims of Crime Conference**. Australian Institute of Criminology. Melbourne. 4.

122 Sigworth, R. 2010. **Double Jeopardy: Foreign and Female**. Published by the Heinrich-Böll-Foundation. 2.

123 Christensen, T.M. 2011. Trafficking for sexual exploitation: victim protection in international and domestic asylum law. **New Issues in Refugee Research**. Research paper No. 206. Switzerland.



their exploitation since they are engaged in activities that meet with the general disapproval of society.

It is clear from the above that victims of sexual offences encompass a particularly vulnerable group with specific needs that translate into specialised infrastructure requirements. In order to deal with these cases effectively, role-players will require special knowledge and skills. Research has shown internationally that the adversarial system is not designed to deal with the uniqueness of sexual offences, especially towards child victims and persons with mental disabilities.

In order to address these issues, it would be necessary to adopt a holistic approach to crimes of this nature by offering a specialist service that addresses the problems relating to infrastructure, resources, training and research. Ensuring that role-players undergo a paradigm shift with relation to understanding the dynamics of sexual violence is crucial, and can only be achieved by intensive and specialised training.

This is in line with the objects of the Act which aim to afford complainants of sexual offences the maximum and least traumatising protection that the law can provide; combat and eradicate the high incidence of sexual offences in South Africa; and ensure more effective and efficient investigation and prosecution of perpetrators of sexual offences.

2.4. THE FEASIBILITY OF RE-ESTABLISHING THE SEXUAL OFFENCES COURTS

As noted above, the examinations of the legal framework, the concept of specialization and the special needs of the various victims of sexual violence clearly support the dire need to provide these victims with specialized services in courts. This finding, therefore, takes our investigation to the next level of looking into the feasibility of re-establishing Sexual Offences Courts. This section, therefore, seeks to explore aspects that may assist in determining the viability of re-introducing these courts.

2.4.1. An Analysis of the Concept of Sexual Offences Courts

As Chapter 1 of this report indicates, MATTSO undertook a detailed research analysis of the historical background of the Sexual Offences Courts, and revealed the achievements and challenges experienced in the establishment and the functioning of these courts in the past. The next investigation was a field study conducted at a sample of courts, which was aimed at exploring the current status of these courts.

This investigation also unearthed the challenges that these courts still experienced. Nevertheless, in both studies, the need for the establishment of these courts to serve as specialised services to the victims of sexual offences stood out as an inevitable and unequivocal finding. However, the feasibility of the re-establishment of these courts will depend on what could be done to surmount the past and the current challenges so as to avoid repeating the mistakes of the past.

2.4.2. The Systemic Challenges to the Re-Establishment of the Sexual Offences Courts

There are a number of systemic challenges that will have implications on the re-establishment of the Sexual Offences Courts, and these include the following:

Case flow management continues to be a serious concern in the courts dealing with sexual offences cases. The early collapse of the sexual offences court rolls often leads to low court hours in the Sexual Offences Courts. This scenario continues to prevail even in the current Dedicated Sexual Offences Courts, and it works against the expected performance standards set for the judiciary.

In an attempt to remedy this situation, 'stopper cases' are placed in the roll for trial in the event that a 'trial-ready' sexual offence case does not go ahead, as planned. This decision was taken by the Regional Court Presidents Forum in an effort to circumvent



the undesired loss of court hours and the unwanted under-utilisation of the Dedicated Sexual Offences Courts.

The stopper cases are usually non-sexual offences cases and this then leads to a mixed court roll in these courts. Due to the unpredictability attached to the stopper case, cases of sexual offences that specifically involve child victims are not used as stopper cases to prevent further traumatising of the victims. The Task Team therefore recommends that there be a case flow management developed specifically for the Sexual Offences Courts to address the identified challenges.

The rotation of presiding officers is another feature of the criminal justice system that may pose challenges to the re-establishment of Sexual Offences Courts, since the current approach used by the judiciary requires presiding officers to remain in these courts for a limited period of six (6) consecutive months at a time.

Due to this periodical rotation of presiding officers, partly-heard cases often get repeatedly postponed for the presiding officer who is now busy with the court roll of another court. Even when this magistrate returns to complete these cases, the resident regional magistrate then loses court hours. This situation, therefore, subjects both magistrates to under-performance at some point.

The lack of space is a major systemic challenge. Some court buildings do not have the space to establish testifying rooms, waiting rooms or consultation rooms. In some courts, it has been reported that court personnel use testifying rooms as offices and this often inconveniences both the court and the office occupant.

In Wynberg Court, one of the testifying rooms is located opposite an open public waiting area that is also used by accused persons. This, therefore, increases the chances of physical contact between the child witness and the accused, thus exposing the child to further trauma.

The interdependencies within the sexual offences value chain often constitute a further systemic challenge. The fact that these courts cannot operate in isolation of other government departments often creates delays in the finalisation of cases.

Almost all these cases require SAPS to collect evidence; Department of Social Development to provide victim-support services and assessment reports; Department of Health to conduct physical examinations of the victims and collect DNA evidence; Department of Correctional Services to keep the convicted sex offenders in jail and rehabilitate him; etc. These are inevitable interdependencies that cannot be avoided. In essence, the successful operation of the Sexual Offences Courts depends on the successful management of the interdependencies between the stakeholders that participate in the sexual offences value chain.



The uneven distribution of resources may pose a great challenge to the re-establishment of the Sexual Offences Courts. From the studies conducted by MATTSO, many courts do not have access to waiting rooms or appropriate furniture. In Springbok court, 5 prosecutors share an office and do not have room to conduct private consultations with the witnesses. In some courts, intermediaries have no access to basic tools of the trade, like computers.

In others, testifying rooms are in the security offices, storerooms or kitchens. In certain courts, the children's waiting areas are small, cluttered and suffocating to children. Toilet facilities for children



are not available in almost all these courts. It is very clear that adequate resourcing will have to be made available to establish the Sexual Offences Courts.

The provision of refreshments for children has become the primary concern of the court officials, especially the judiciary, prosecutors, intermediaries and the NGO's based at the courts. Child witnesses often wake up in the early hours of the morning to travel long distances to court. By the time they are expected to testify, they are usually exhausted and hungry. In some courts, it is the prosecutors, the intermediaries or the magistrates who provide food for the children.

The State is therefore required to find the best possible way of addressing this challenge, as the court officials cannot be expected to spend their own money to make the justice system work. Some court personnel have suggested that the State consider providing lunch packs for child witnesses in court. This may be classified as a victim support service that may fall under the responsibility of an intermediary or victim assistance officer. However, the Task Team recommends that this issue be investigated to determine the best feasible way that the Department may use to provide food to child witnesses.

The poor understanding of the dynamics of vulnerable/ marginalized persons, particularly of persons with disabilities and the LGBTI persons, by stakeholders often contribute to the increase in unreported cases. This is also a serious issue that requires immediate intervention. There is a need for the Department to make the court building accessible and user-friendly to persons with disabilities.

Language barriers become a challenge in courts where interpretation services for the language of the witness cannot be provided. This has also been identified as a major challenge, particularly in cases involving deaf witnesses who do not understand sign language, and children where interpreters have not been trained in child language. In other courts, intermediaries who cannot speak the predominant

language are hired, e.g. an Afrikaans speaking intermediary hired to work in a Zulu speaking community.

The need for an audit of the current infrastructure and human capacity was highlighted by the Task Team. In order for the Minister to make a conclusive decision concerning the re-establishment of Sexual Offences Courts in South Africa, the Task Team finds it imperative to advise the Minister on the status of resources in all courts that operate close to the Sexual Offences Courts or the Dedicated Sexual Offences Courts.

This information will assist in ascertaining the estimated costs for the re-establishment of these courts. The Task Team is about to finalize the Resource Audit at all regional courts to determine the resources that are currently available so as to know the cost of the re-establishment of these courts.

The Resource Audit is also intended to determine where these courts should be re-established and how many of them should be introduced.

2.5. CONCLUSION

The analysis of the needs of victims of sexual violence in the criminal justice system has reinforced the need for specialised services, and the Task Team found many of the systemic challenges, listed above, as issues that could be resolved with the dedicated support of the stakeholders. There are also sufficient grounds for the re-establishment of the Sexual Offences Courts as they are in line with the ethos of the objects of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which seek to afford complainants of sexual offences the maximum and least traumatising protection that the law can provide.

The Task Team thus recommends that the Sexual Offences Courts be re-established in South Africa. The execution of this recommendation will require the development of the Sexual Offences Courts Model that will seek to address the identified gaps.



Chapter 3:

THE PROPOSED MODEL FOR THE SEXUAL OFFENCES COURTS





CHAPTER 3:

THE PROPOSED MODEL FOR THE SEXUAL OFFENCES COURTS

3.1. INTRODUCTION

When developing a model for a sexual offences court in South Africa, it is important to take into account the relevant objects of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which are to 'afford complainants of sexual offences the maximum and least traumatising protection that the law can provide' and to protect such complainants and their families from secondary victimisation and trauma by establishing a co-operative response between all government departments involved in implementing an effective, responsive and sensitive criminal justice system relating to sexual offences. What could be considered as the ultimate object of the Act is the prevention and the ultimate eradication of the relatively high incidence of sexual offences committed in South Africa.

From the objects of the Act, it is clear that the legislative vision encompasses a holistic approach to victims of sexual violence, which calls upon all stakeholders to collectively provide services aimed at preventing secondary victimisation and trauma of the victims of sexual offences together with their families. The re-establishment of Sexual Offences Courts may therefore be considered as the Department's endeavour to fulfil the objects of the Act.

3.2. FEATURES OF A SEXUAL OFFENCES COURT

As a result of an investigation conducted by the CD:PRVG on the Specialisation of Services for Victims of Sexual Violence, and the research studies done by the Task Team, a court model was developed. The adjudication of sexual offences cases, especially those involving children and persons with mental disabilities, requires a specialised approach

which includes the provision of special facilities, programmes and trained personnel. Courts offering these services must have the following features:

- A screening process to identify cases that fall within the sexual offences category and direct them to the Sexual Offences Courts;
- Case flow management that is custom-made for sexual offences;
- Case management to reduce delays and arrange pre-trial matters;
- A designated courtroom equipped with closed-circuit television and sound equipment and/or one-way glass facilities;
- A special room from which the victim will testify, which must have minimal furniture and decoration;
- A private waiting room and/or play area for victims and their families which must be informally arranged;
- Victim support services;
- A designated social worker for assessments and referral;
- Availability of intermediaries;
- Designated court clerk;
- A core group of specialist presiding officers, who have experience in criminal matters and who have undergone specified training on child development, working with mental disabilities and the dynamics of sexual offences;
- A process of rotation of specialist presiding officers to minimise burnout;
- Provision of vicarious trauma training and services to justice court personnel to reduce stress and secondary trauma;
- Specialist prosecutors who are experienced in prosecuting criminal matters and who have received specified training on child development, working with persons with mental disabilities and the dynamics of sexual abuse;



- Specialist interpreters who have received training on child development and working with persons with a mental disability;
- Availability of a Legal Aid practitioner;
- Court preparation programme for witnesses to prepare them for court and to provide debriefing after they have testified;
- Alternative models for sentencing offenders and the availability of rehabilitation programmes for sex offenders;
- Policy of monitoring of sex offenders;
- The use of expert reports for:
 - assessment of the child victim;
 - assessment of the witness who has a mental disability;
 - impact of the crime;
 - prospect of rehabilitation of offender; and
- The establishment of a data collection method to allow for the monitoring and evaluation of the court's effectiveness.

3.3 RESEARCH STUDIES CONDUCTED IN THE DEVELOPMENT OF A COURT MODEL

When developing a model for the Sexual Offences Courts, the Task Team identified features of these courts that will need to be investigated, and the testifying rooms, waiting rooms, CCTV's and the use of anatomically correct dolls became the most relevant for this purpose since the use thereof may have an impact on the results of the case. This section will cover the studies embarked upon and their findings, as well as the model for the Sexual Offences Courts that may be considered in the event of these courts being re-established.

3.3.1. TESTIFYING ROOMS

3.1.1. Introduction

The Service Charter for Victims of Crime in South Africa was developed with the purpose of

eliminating secondary victimisation in the criminal justice system, ensuring victims remain central to the criminal justice process, and clarifying the service standards that can be expected by victims when they come into contact with the criminal justice system. In terms of the right to assistance, prosecutors must ensure that special measures are taken in the case of sexual offences and, where available, such cases are heard in specialised courts.

In terms of legislation and relevant charters and frameworks, government agencies are committed to minimizing the negative impact of being a witness for both the child witness and their family. The objects of the Criminal Procedure (Sexual Offences and Related Matters) Amendment Act 32 of 2007 are, amongst others, to offer victims of sexual offences the least traumatizing protection that the law can provide and to protect complainants and their families from secondary victimisation and trauma by establishing a cooperative response between all government departments involved in implementing an effective, responsive and sensitive criminal justice system relating to sexual offences.

One method of implementing the provisions of the Charter and responding to the objects of the Sexual Offences Act is the creation of child-friendly testifying rooms which aim to reduce the stress and trauma related to testifying.

Although testifying rooms need to be child-friendly, there must be a balance between creating a child-friendly atmosphere and the gravitas that is needed to convey to the child the serious nature of the proceedings.

3.3.1.2 The International Perspective

It has been accepted that children experience distress as a result of testifying in court, and this has led to the creation of interventions to reduce secondary trauma. Statutory modifications have been introduced in a number of countries for the following reasons:

- Sexual abuse of children is widespread and rates



of convictions in these cases are low due to difficulties inherent in prosecuting these cases and obtaining evidence from children;

- The ordinary procedures adopted in courtrooms do not promote obtaining the best evidence from children; and
- Procedures in courts create further stress and secondary traumatising of children.¹²⁴

Legal interventions and protective measures have thus been introduced to alleviate the trauma experienced by children in the courtroom and create alternative ways for them to give evidence. One particular intervention is the use of alternative methods of capturing the child's evidence in court. Different countries have implemented this in different ways with some videotaping forensic interviews with children while others have made use of closed-circuit television (CCTV) or one-way mirrors which allow the child to give evidence outside the courtroom. In the latter instance, the child's image is then relayed to the courtroom so that the members of the court can view and listen to the child whilst testifying.

In practice, this means that the child testifies at a separate room from the courtroom. Internationally, this room has been referred to as the child's room, the special courtroom, remote room, the intermediary room or the testifying room. However, in South Africa, this room is commonly referred to as the intermediary room or the testifying room. The use of the term 'intermediary room' has led to certain intermediaries utilizing this room as an office during court adjournments, and therefore mystifying the very purpose of the establishment of this room. To prevent this confusion, it is recommended that this room be referred to as the testifying room in South Africa.

3.3.1.3 Statutory provisions

The use of CCTV has become standard practice in several countries and legislation has been enacted

to make this practice admissible. The legislative provisions generally refer to the use of closed-circuit television, mainly to allow the child to give evidence from the other place other than the courtroom. None of these provisions prescribe what "the other place" should look like, should contain or be called.

In New Zealand s294B(3)(a) of the Criminal Procedure Act 1986 entitles a complainant in sexual offence proceedings to give evidence from a place other than the courtroom by means of CCTV or other technology that enables communication between that place and the courtroom. Article 38.071 of the Texas Code of Criminal Procedure allows the court to order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom.

Federal legislation in the United States of America also requires that "the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television" (18 USCS § 3509). The majority of the States have adopted the wording in the federal legislation and include the phrase "in a room other than the courtroom" without furnishing any detail as to what the "other room" should contain in order to achieve its primary objective. For instance, Alaska Stat. § 12.45.046 (2012) provides that "the court may order that the testimony of the child be taken in a room other than the courtroom."

This wording is repeated in most statutes with a few requiring the child to be "outside the physical presence of the defendant" (N.Y.C.P.L.R. 65.30 (2012)). Ohio Rev. Code Ann. § 2945.481(2012) requires that the "defendant cannot be seen or heard by the child victim giving the testimony".

However, in South Africa section 170A of the Criminal Procedure Act 51 of 1977 provides a little more detail than its international counterparts. It requires that the witness give evidence at any place "(a) which is informally arranged to set that witness at ease; (b) which is so situated that any person whose presence may upset that witness, is outside

¹²⁴ New Zealand Law Commission. 1996. **The Evidence of Children and Other Vulnerable Witnesses**. Preliminary Paper 26. Wellington, New Zealand. 21.



the sight and hearing of that witness; and (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.” When considering the objectives and the specifications outlined by this provision, what should then be the standard requirements of the interior of the testifying room in South Africa?

3.3.1.4 A Child-Sensitive Court: The International Best Practice Model

In researching models for the Sexual Offences Courts, the Edelman Children’s Court in Los Angeles County offers an interesting approach. This is not a Sexual Offences Court, but rather houses 19 Dependency Courts, yet it nevertheless provides insight into the accommodations that can be made to assist children in the court process.

Dependency Courts are those which hear all cases involving abuse and/or neglect of children. The Edelman Children’s Court has been described as the most unique court of its kind anywhere and was designed and built to be a child-sensitive courthouse¹²⁵ to create an environment that reflects the recognition that children are the most important parties in the system, whilst attempting to reduce, as much as possible, the anxiety that children and their families often feel when they have to appear in court. When one enters this courthouse, there is a bright, open entrance hall with a large coloured mural of children’s art on the wall.

The public waiting areas on the floors where the courtrooms are located have views of the mountains and surrounding areas. There are no benches along the walls, and instead use has been made of upholstered chairs and couches. The floors are carpeted and there are television monitors spread

throughout the waiting areas, which are either tuned to the Disney Channel or are playing a videotape about what families can expect during their visit to the court. As part of a privately funded programme, volunteers move around the waiting areas and provide the children with crayons and other craft supplies to entertain them while they wait for their cases to be called.¹²⁶

The courtrooms in the Edelman Children’s Court were designed to create an intimate and comfortable environment. They are smaller than the normal courtroom, and the judge’s bench is lower than the norm. There are posters and decorations in the courtroom that are used to promote a child-friendly atmosphere. Each courtroom has a television monitor hanging from the wall, which is connected to a video camera in the judge’s chambers.

This is to enable a child, who is afraid of testifying in an open court, to testify from the judge’s chamber while he or she is observed on the monitor in the courtroom. There are numerous offices in the building that provide accommodation for resources that parties and caregivers can access when they leave the courtroom. These resources include a computerized data-base of drug programmes, parenting classes, counselling programmes and other programmes, as well as the facility of a Public Health Nurse. There is an organisation that provides on-site arts and crafts activities and another that provides teddy bears for all the children who come to court.

There is a children’s mental health unit on site as well as a meditation centre. There are also Court Appointed Special Advocates who provide a friendly adult face to the children coming to court and also provide important information to judicial officers. When the children have to go to court, they enter through a back corridor.

125 Nash, Judge Michael. **Children’s Court of Los Angeles: An Innovative Approach to Juvenile Justice.** <http://dcfs.co.la.ca.us/reunitingfamilies/docs/Childrens%20Court%20of%20LA-%20An%20Innovative%20Approach%20to%20Juvenile%20Justice.pdf>.

126 Nash, Judge Michael. **Children’s Court of Los Angeles: An Innovative Approach to Juvenile Justice.** <http://dcfs.co.la.ca.us/reunitingfamilies/docs/Childrens%20Court%20of%20LA-%20An%20Innovative%20Approach%20to%20Juvenile%20Justice.pdf>.



The largest and most unique part of the courthouse is the Shelter Care on the first floor which is hidden from the public. Every morning a fleet of Dependency Court vans go out to collect the children in foster care whose cases will be heard that day. On any given day, there are between 50 and 100 children at the Shelter Care.

It includes a large outdoor play area, an indoor area with arts and crafts centres, eating areas, games, big screen televisions and a library. There are both organised activities and quiet areas for the children.

There is also a visiting area for parents and children, which consists of a number of comfortable private rooms which can be used for monitored or unmonitored visits. Representation for children is provided by approximately 100 attorneys in three non-profit "law firms" which are housed on the sixth floor.

The children receive breakfast and lunch while they wait for their cases to be heard. For entertainment, there is an outdoor playground area, a basketball court and Disney sponsored activities inside. Downstairs there is a cafeteria where food is sold at very reasonable prices. According to Judge Nash of the Edelman Children's Court, there is a strong link between the design of a facility and a programme, and "combining architecture and design with program elements affects the ability of a program to accomplish its goal."¹²⁷

This courthouse stands out as the international best practice model of creating a child-friendly environment in a court building, and it has been selected because many of its features are ideal for the South African context, and therefore need to be considered when developing the Sexual Offences Court model.

3.1.5. Identifying the needs of the testifying room

As shown above, neither the international legal

framework nor the South African legal framework is prescriptive about how the interior of the testifying room should look. However, the international best practices coupled with our local experiences have laid the basis from which the standard needs of the testifying room may be outlined.

The Task Team has also developed National Guidelines that may be utilised to ensure national uniformity in the equipment, furniture and items used by all courts. The standard needs for the testifying rooms have been identified as follows:

Equipment

The equipment required for the testifying room must comply with the minimum specifications as outlined in the guidelines dealing with closed-circuit television. This is to ensure that the closed-circuit television systems used achieve the main objective of the law, which is to protect a child from secondary trauma.

Ventilation

As the child will be testifying about intimate and often embarrassing details, the testing room must provide the child with privacy to do so. This means that doors to the testifying room must be closed when the child testifies. Due to the noise factor from outside the courtroom and the fact that the members of the court have to hear what the child is saying via the sound equipment, the windows in the testifying room are usually kept shut when the child testifies.

This means that there is no ventilation in the testifying room and it is very hot and stuffy. Some magistrates have reported that they have to adjourn proceedings as the child has perspiration streaming down his or her face, and that it is almost inhumane to force the child to continue testifying under those circumstances. Other role-players have complained that the room is so hot and unventilated that the children become sleepy and lose concentration. It is, therefore, essential that the testifying room has adequate ventilation.

¹²⁷ **Child-friendly courtrooms: Items for judicial consideration.** 9. <http://www.cactx.org/public/upload/files/general/CACBenchBook-FINAL.pdf>.



Some courts have made use of free-standing fans but these have not proved to be useful due to the noise generated by the fan and the limited ventilation it provides. It is thus necessary to equip the testifying rooms with less noisy air conditioners.

Furniture

The current practice provides two sitting arrangement options.



The first option allows the child and the intermediary to sit side by side on a couch while the child is giving evidence, whilst the second option allows both parties to sit on upright chairs or a bench in front of a table on which the sound equipment has been placed. The majority of courts are equipped with two hard-backed chairs, as shown in one of the testifying rooms at Wynberg Court.

Since the child may have to spend up to 2 hours sitting on the chair, it is recommended that the chairs used in the testifying room be comfortable and suitable for children. The seats should at least be upholstered or have cushions.

The height of the chair is also very important. In some courts, the child has to make use of a bar stool-type chair, typically used by interpreters, which means that they have difficulty climbing onto and off the chair, and it is also uncomfortable to sit on these chairs for long periods as the child's legs have to dangle in the air.

As the seating will be used by many different children, it is essential that the furniture be made from durable

fabric or material that can be easily cleaned. Much of the furniture that is presently used in testifying rooms tends to be old and excess furniture items that have been allocated to the testifying room from elsewhere, and these are usually shabby and sometimes even broken.

There should also be a small table available in the testifying room on which water can be placed for the child to drink and which can also be used if the child is required to make use of anatomical dolls or anatomical drawings. Many of the testifying rooms do have tables, but these are in a bad state of repair or broken.

It is recommended that the testifying room be carpeted as children often enjoy sitting on the floor and this ought to be an acceptable choice. However, carpets can easily be stained so it is recommended that serviceable colours be identified for carpets of a brand that will be able to be cleaned easily. It must also be the practice to have the carpet vacuumed daily so as to meet hygienic requirements.

Lighting and blinds

As the child and the intermediary will be filmed in the testifying room, lighting becomes a priority. There must be good quality lighting so that images conveyed to the court are clear. Reflections from windows can interfere with the quality of the image so it is recommended that windows in the testifying room are provided with window dressings that are durable and which can be closed when a child testifies.

Some of the testifying rooms are equipped with blinds that get broken, especially when they are within children's reach. In other courts, curtains of low quality material are used, and the maintenance thereof becomes a challenge. In such cases, intermediaries or prosecutors have to carry the laundry costs when they are dirty.

The Task Team, therefore, recommends that good quality and durable window dressings that



adequately blocks light during testimony be used in the testifying room. The court manager must take responsibility for the maintenance thereof.

Colour and Paint

Since s170A of the Criminal Procedure Act 51 of 1977 requires the testifying room to be conducive to creating a comfortable environment ("informally arranged to set that witness at ease") in which children can testify, it is necessary that testifying rooms be child-friendly. This can be achieved by ensuring that the rooms are decorated in bright, child-appropriate colours.

This would be applicable both to the choice of colour for the paint on the walls as well as the fabric for the furniture and blinds. The choice of colours should contribute to creating a relaxed, friendly environment. Currently, the departmental communication policy prescribes the use of 'blue' colour for all criminal matters, and in compliance with this policy, the Task Team recommends that the primary colours for the Sexual Offences Courts must be blue and lime green.

As children are easily distracted, especially when they are faced with the unpleasant task of testifying, it is not recommended that walls of the room be decorated with murals or pictures. Testifying rooms should be calm and relaxed and should not provide distractions or entertainment for the children.

Toys and comfort items



The testifying room should not contain any toys. Toys are highly distracting, and it can be very difficult to get the child to concentrate and focus on the questions from the courtroom if toys are available for play, as depicted on the photograph on the left.

There are two exceptions to this rule, namely anatomical dolls and a comfort item. Anatomical dolls can be used in the testifying room when the child is required to demonstrate sexual body parts or show what has happened to him or her. However, these dolls should only be brought out when requested by the prosecution or the court to do so, and are not to be used as a toy.

As far as a comfort item is concerned, international research has indicated that there should be a soft toy available in the testifying room for the child to hold. This is especially useful when the child is upset, and can have a calming effect on the child. A comfort item can take the form of a teddy bear or a soft toy. When a child is afraid or nervous, holding such an item may provide comfort, security and confidence.¹²⁸

Some of the research has even likened the calming effect of the comfort item to that provided by a parent: "comforting objects ... symbolically represent a little bit of a mother's ability to soothe the child when frightened or nervous. Their presence helps children calm themselves when parents are not immediately on hand."¹²⁹

Locks

Since the testifying room contains expensive equipment, all doors must be able to lock and have keys available.

3.3.2. THE WAITING ROOMS

3.3.2.1 Introduction

Every victim of crime should be treated with care,

128 **Child-friendly courtrooms: Items for judicial consideration.** At 9. <http://www.cactx.org/public/upload/files/general/CACBenchBook-FINAL.pdf>.

129 Myers, J.E.B., Saywitz, K.J. and Goodman, G. 1996. Psychological research on children as witnesses: Practical implications for forensic interviews and courtroom testimony. **Pacific Law Journal**. 28(3): 63.



fairness and respect throughout the justice process. Every child should be treated as an individual with his or her individual needs, wishes and feelings taken into consideration.¹³⁰

All interactions with child witnesses should be conducted in a child-sensitive manner, taking into consideration the special needs of the child, his or her abilities, age, intellectual maturity and evolving capacity in a place where the child feels comfortable and secure.¹³¹

As accommodations to legal processes are so much more complex and difficult to implement, greater strides have been made to provide child-friendly assistance outside the courtroom. This has included, amongst others, services like court preparation programmes, victim support services, and the provision of private waiting rooms for victims of sexual offences. This section will investigate the use of waiting rooms for victims of sexual offences, including their purpose and impact, and will offer recommendations and guidelines for their future implementation.

3.3.2.2 The Aim of the Witness Waiting Room

The major aim of a waiting room is to provide a safe, nurturing, non-violent environment to victims of violence who are attending court. In addition, they can also be used to provide educational information to witnesses about the legal process as part of the empowerment process. As far as children are concerned, the waiting room should also provide fun, educational activities to assist in relaxing the child.

3.3.2.3 The International approach

Since legislation is not required for the introduction of waiting rooms, provision for these is usually included in Codes or Rules of Court, while others have simply

been introduced by local courts themselves. The Circuit Court of Cook County in Chicago, Illinois, for instance, has what is known as Children's Advocacy Rooms.

These are waiting rooms for children, which have been designed as friendly, child-centred sites to shield children from exposure to the stressful, emotionally charged atmosphere of a courtroom. Children are supervised in cheerfully decorated areas by trained, professional staff with assistance from volunteers and interns. Games, books, toys, arts and crafts and other appropriate materials are provided for the children. Nutritional snacks are also provided through assistance from non-governmental organisations.

It is the policy of the state, in terms of the California Government Code, that each court endeavours to provide a children's waiting room in each courthouse for children under the age of 16. The waiting room should be supervised and open during normal court hours. If a court does not have sufficient space in the courthouse for a children's waiting room, the court should create the necessary space when court facilities are reorganized or remodelled or when new facilities are constructed. The Children's Waiting Room offers children from infancy to the age of 16 a safe and secure place to wait.

The Sacramento Superior Court has provided children's playrooms at their main facilities. These playrooms provide child-centred play environments for both child witnesses and the children of people who have business in court. These playrooms are operated by court staff and community volunteers, who are trained to interact positively with the children to make them feel welcome and safe. The San Diego Family Justice Centre has specially designed waiting rooms just for children with access to colouring books, toys, videos, computer games, stuffed animals and other materials.

The Superior Court of the District of Columbia in Washington DC has a Child Care Centre, which

130 Art. 3.1. Convention on the Rights of the Child, General Assembly Resolution 44/25 of 20 November 1989 entry into force 2 September 1990 (CRC).

131 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Resolution 2005/20. The Economic and Social Council (UN Guidelines). Para 10 -14.



provides a safe, clean environment with a friendly, warm and caring atmosphere where children can “learn through play”. The Centre provides an opportunity for the children who attend to participate in creative and stimulating activities in language, arts, math, social science, social studies, music appreciation, drama and art and crafts. Kids’ Korner in the Lake County Courthouse is a bright, cheerful room filled with toys, blocks, puzzles, art supplies, books and other developmentally appropriate materials for children.

Each child visiting this waiting room chooses a book to take home as part of a programme to encourage parents to read to their children. Books are provided through donations from community organisations and individuals.

The above are a few examples of waiting rooms available in court buildings for children, and all seem to include generic items like toys and books while a few have introduced specific activities for the children. An interesting feature that emerges from the investigation is that in the various states in the USA the waiting rooms are used by both child witnesses as well as the children of adult witnesses who will be testifying in other cases.

In addition, a lot of emphasis is placed on security and some courts require that children be signed in and out of the waiting rooms.

In the United Kingdom, the Witness Charter, which sets out the standards of care for witnesses in the criminal justice system, requires at a minimum that all witness waiting rooms:

- are well maintained and clean;
- are secure;
- offer privacy (have blinds on windows, for instance);
- have reading materials
- contain suitable toys and reading matter for children of different ages;

- have a means of summoning assistance or making enquiries; and
- have a courtroom lay-out plan on display.

From this Charter, the display of the courtroom lay-out plan stands out as a unique visual tool that serves to familiarize children with the courtroom environment.

3.3.2.4 The purpose of creating child-friendly waiting rooms

The Service Charter for Victims of Crime in South Africa was developed with the purpose of eliminating secondary victimisation in the criminal justice system, ensuring victims remain central to the criminal justice process, and clarifying the service standards that can be expected by victims when they come into contact with the criminal justice system.

In terms of the right to assistance, courts must ensure that special measures are taken to respond to the special needs of the victims. In terms of legislation and relevant charters and frameworks, government agencies are committed to minimizing the negative impact of being a witness for both the child witness and their family.

The objects of the Criminal Procedure (Sexual Offences and Related Matters) Amendment Act 32 of 2007 are, amongst others, to offer victims of sexual offences the least traumatising protection that the law can provide and to protect complainants and their families from secondary victimisation and trauma by establishing a cooperative response between all government departments involved in implementing an effective, responsive and sensitive criminal justice system relating to sexual offences.

One method of implementing the provisions of the Charter and responding to the objects of the Sexual Offences Act is the creation of child-friendly waiting rooms which aim to reduce the stress and trauma related to testifying.



3.3.2.5 Identifying the needs of the waiting room for children

The purpose of creating specific waiting rooms for child witnesses is to contribute to victim empowerment and prevent secondary traumatising. It has been, and in some courts still is, the norm for child victims to wait in the passages outside the relevant court until they are called to testify.

This has resulted in the child coming into close contact with the alleged perpetrator, which has increased the child's fear and trauma, which, in turn, has an effect on the quality of their evidence when they finally testify. This scenario exists in Springbok Court where all witnesses, including children, wait in an open corridor outside together with the accused persons and members of the public. This is due to the lack of space within the building to establish a witness waiting area. What makes this challenge almost insurmountable in this court is the fact that the court building was declared a national monument, thus restricting certain infrastructural changes. More so, the exterior premises do not offer any vacant land or space to expand.

Many witnesses have to travel long distances of up to 150 km to get to this court, and the lack of public transport in certain remote areas has made it imperative for SAPS to transport witnesses to court a day before court date. The court, therefore, has the responsibility to organise night accommodation for these witnesses. In addition, children are often forced to wait outside for long periods of time with nothing to occupy them.

Waiting rooms were introduced to address the above concerns. They are intended to provide a safe environment where the witnesses can relax until they are required to testify.

3.3.3 CHILDREN'S WAITING ROOM

The Task Team recommends that Child Waiting Rooms be for children under the age of 18, which means it will have to accommodate pre-school children, children between the ages of 7 and 12, as

well as teenagers not older than 18 years. This is in line with the South African legislative framework that defines a child as any person below the age of 18 years. In order to achieve the above objectives, the following specifications need to be adhered to when establishing a Children's Waiting Area:

3.3.3.1 Safety

As the waiting room is supposed to provide a safe place for the child to wait, it is essential that the accused does not have access to the waiting room. This implies that there must be a specific room set aside as a waiting room to which only the child and his or her parent or guardian have access. The Wynberg Court serves as a perfect example where entry to the sexual offences children's waiting room is restricted not only to the accused person and the general public, but also to the attorneys, court orderlies and interpreters.

3.3.3.2 Paint and Decor

The waiting room is meant to provide a place where the child can relax and feel comfortable, and be entertained while he or she waits, sometimes for long periods of time. To create this atmosphere, the walls should be painted in child-friendly colours that contribute to making the child feel relaxed. As the waiting room is meant to keep the children entertained while they wait, murals and pictures are often recommended.



However, it should be noted that the room will also be used by teenagers, who may not appreciate the murals and regard them as childish. For this reason, any murals or paintings should probably be restricted to colours and patterns, like blocks or stripes rather than murals of characters. As is the case with the testifying room, the standard colours that must be used are blue and lime green.



3.3.3.3 Furniture for child waiting rooms

As children spend long periods of time in the waiting room, they play, eat and often sleep there. The waiting room should function to make them feel safe and secure and to provide entertainment that will serve to keep them relaxed and distracted from the court process.

The furniture in the waiting room must be comfortable and attractive to children so that it contributes to creating a relaxing atmosphere. The furniture must also be appropriate to younger children as well as teenagers.

The Task Team recommends that National Guidelines for Witness Waiting Areas should be developed that will also set out guiding factors to be considered when selecting furniture and these guidelines should be made available to all courts.

3.3.3.4 Safety

As the room will be in constant use by young children, it must be child-friendly. Young children tend to move around a lot and are rarely very still. They tend to run, jump, and climb, and furniture should, therefore, be child-friendly so that children do not hurt themselves. For this reason, steel furniture with sharp corners and any items that could be harmful to children should be avoided. Soft and durable furniture is recommended.

3.3.3.5 Practicality and cleanliness

Children tend to play around on the floors, often dirty their hands, and also climb onto the furniture with their shoes. They eat in the waiting room and often mess food or spill drinks. Some of the younger children may even wet their pants. All of the above contribute to making the furniture dirty and smelly. It is, therefore, vital for long-term sustainability, that furniture be made from a fabric that can easily be cleaned and which will not perish easily. It is recommended that furniture be covered in a fabric that can easily be wiped clean.

3.3.3.6 Type of furniture

As the room will be used by both young children

and teenagers, it should accommodate both groups. There needs to be comfortable armchairs and couches as well as seating for the younger children. Modular furniture that includes different sized cubes is recommended as the younger children can sit, climb or even lie on these.

Prosecutors have identified that younger children often have a nap when they are waiting, and waiting rooms do not cater for this. It is recommended that a fold-out couch be included in the furniture – one of the armchairs could, for instance, be designed to be a fold-out couch – which can be opened out if a child needs to sleep.

The furniture should be brightly coloured to ensure a pleasant, relaxing atmosphere for those waiting. It is recommended that soft, lightweight, frameless furniture be used as it helps to absorb noise.

The furniture should be made out of high density foam and covered in durable vinyl which resists wetness and can be easily cleaned.

3.3.3.7 Carpeting

Younger children tend to play on the floor, so it is necessary that the floor be carpeted. Carpeting assists in absorbing sound so it reduces noise. It cushions accidental falls, and contributes to creating a warm and comforting atmosphere. The floor should be carpeted in a serviceable colour and should be stain protected so that it can be easily cleaned.

A tidy waiting room is both inviting and calming. Toys and books should be kept neat, which means that there should be some storage available in the waiting room. This could take the form of a cupboard where the toys, magazines and books can be packed. If there is no space in the waiting room for a cupboard, then a toy box can be used for storage. This could also be used as a coffee table where space is limited.

An Information Screen/TV set is a useful addition to a waiting room as it assists in keeping children educated and entertained while they are waiting. Some prosecutors have found that full-length



movies are problematic, especially for the younger children, as they do not want to go if they are called to testify in the middle of the movie. They want to finish watching the movie and often cry if they are removed. However, prosecutors did add that shorter programmes were very useful as they distracted the children and kept them entertained.

In the research conducted on international models, the court in Los Angeles has received sponsorship from Disney and has been provided with free access to the Disney channel in the children's waiting room. This is also a possibility that can be investigated with service providers in South Africa.

However, the Department of Justice and Constitutional Development has initiated a process of providing Information Screens for Witness Waiting Areas that are intended to convert the room into an educational environment, but also a fun place for children. In partnership with GCIS, the Department is now developing scripts which aim to educate witnesses with the court process as they are waiting.

The current audio-visual information will include Witness Court Preparation Programmes and information about other services that are offered by the Department. The aim is to empower witnesses so that they can be more self-confident. For children, animated educational stories and dramas will form part of the package.

Information screens for teenagers can be extremely useful if they provide easy-to-learn information about the court process that can be of assistance to them.

3.3.3.8 Curtains and blinds

Although curtains and blinds are not essential features of a waiting room, they do contribute to creating a warm and comforting atmosphere. There are advantages and disadvantages to both the blinds and the curtains. Curtains tend to become soiled more easily, although blinds also require regular cleaning. Curtains last longer, although they can

fade faster, but blinds break more easily, and children in particular tend to fiddle with them or pull at them.

3.3.3.9 Ventilation

The waiting room should have adequate ventilation, especially as the children often require fresh air. It is recommended that waiting rooms have less noisy air conditioners as windows often pose a danger, especially where the waiting room is not on the ground floor. Children can lean out of open windows and this does pose a serious risk.

3.3.3.10 Toys

As this room is aimed at providing a space for children to wait until they are called to testify, it is necessary that they be offered something to do to keep them occupied. Toys are very useful for entertaining children and can include dolls, cars, blocks, educational games as well as tools for drawing and colouring. For older children, books and magazines can be made available.

3.3.3.11 Restrooms

Children must have access to toilets, and these should be close to the courtroom so that the children do not have to wander around the court building and risk confronting the accused in the passages. In Wynberg Court, for instance, the private children's waiting area has an inner door that leads to a private toilet used exclusively by all victims of sexual offences.

This is a good example of ensuring the safety of child-witnesses. However, when the Task Team visited this court, it recommended that one of the toilets be made suitable for children.





3.3.3.12 Locks

As the waiting room contains equipment that can be stolen, it is essential that security measures be put in place.

3.3.4 ADULT WITNESS WAITING ROOMS

The purpose of creating specific waiting rooms for adult witnesses, who have been victims of sexual violence, is to contribute to victim empowerment and prevent secondary traumatisation. Rape and sexual assault are particularly distressing crimes for the victims and the effects can last for a long time. The effects of sexual violence can be devastating and victims experience feelings of fear, guilt, powerlessness, anger, shame and depression.

They feel that they have lost control over their lives and lose self-esteem. The majority of victims find it very difficult to deal with the intimate aspects of the crime, especially when they have to talk to other people about what has happened.

Therefore, when these victims have to come to court, they experience a number of very distressing emotions. It is important that they be provided with a place to wait which makes them feel secure and where they can relax until they are called to testify.

In creating waiting rooms for adults, the following should be taken into account:

3.3.4.1 Safety and privacy

As the waiting room is supposed to provide a safe place for the adult witness to wait, it is essential that the room be private and that the accused does not have access to the waiting room. This implies that there must be a specific room set aside as a waiting room to which only specified witnesses have access.

3.3.4.2 Paint and Decor

The waiting room is meant to provide a place where the witness can relax and feel comfortable while they wait. The paint and décor of the room can be used to create a warm, soothing and comforting environment. It is, therefore, recommended that

the room be painted in a pastel shade of blue to introduce a calm space with touches of green to brighten it.

As indicated above, the use of 'blue' colour is suggested in compliance with the Departmental Policy of Communications, which requires the use of a 'blue' colour in all matters relating to the crime. No mural decor should be done on the walls as it may send noisy signals to a traumatised adult victim.

3.3.4.3 Furniture

As witnesses are often required to wait for an unpredictable period of time in the waiting room, the furniture should be comfortable, attractive, clean and relaxing. Adequate seating for witnesses must be provided. Furniture should include armchairs, couches and wooden benches which are comfortable and durable.

Although many waiting rooms make use of steel chairs to ensure durability, it should be borne in mind that these chairs are not comfortable. They also do not contribute to creating a warm, comforting environment. There should also be a coffee table on which magazines and court information material can be placed.

3.3.4.4 Practicality and Cleanliness

As the room will be used by a large number of witnesses on a constant basis, the furniture must be constructed from a fabric or material that can be easily wiped cleaned and which will not perish easily to ensure long-term sustainability.

3.3.4.5 Flooring

Carpeting assists in absorbing sound so it reduces noise. It contributes to creating a warm and comforting atmosphere, and is therefore recommended as a floor covering. The floor may be carpeted in a serviceable colour and should be stain protected so that it can be easily cleaned. A tiled floor is also appropriate since it has a low maintenance demand, although it can be very cold in winter.

3.3.4.6 Information Screen

An information screen is more preferred above a TV



set as it becomes a useful addition to a waiting room since it will assist in keeping witnesses educated about the court system and their role as witnesses when they are waiting.

It serves to distract them and can help pass time, especially when they are stressed and tense. As indicated above, the Department is in a process of developing audio-visual educational material that will also cater for persons with disabilities.

3.3.4.7 Curtains and blinds

Although curtains and blinds are not essential features of a waiting room, they do contribute to creating a warm and comforting atmosphere. Please refer to the section dealing with children's waiting rooms above.

3.3.4.8 Ventilation

The waiting room should have adequate ventilation for hygienic reasons. It is recommended that they be equipped with less noisy air conditioners to contribute to the comfort of the room.

3.3.4.9 Magazines and Information Material

It is important to provide adult witnesses with reading material or an educational audio-visual to keep busy or else they can become very frustrated and irritated, especially as they are already very emotional about having to tell in court what happened to them. Information material must be made available to assist them to learn about the court process, particularly regarding their role as witnesses in court.

3.3.4.10 Restrooms

Witnesses must have access to toilets, and these should be close to the courtroom or waiting room so that they do not have to wander around the court building and risk confronting the accused in the passages.

3.3.4.11 Locks

As the waiting room contains equipment that can be stolen, it is essential that security measures be put in place.

3.3.4.12 Witnesses with more special needs

It must be noted that both waiting areas must be accessible to all victims of sexual offences, including persons with disabilities, the elderly and LGBTI persons. Ramps, brailled material, audio-visual material with sign language insets, and other necessary provisions should be made available in these waiting areas.

3.3.4.13 Signage

A standardized signage system for Sexual Offence Courts must be introduced to ensure that witnesses are able to find their way in the court building without subjecting themselves to possible humiliation when asking for directions. The requirement for a uniform signage system also applies to child witness waiting areas.

3.3.5. CLOSED-CIRCUIT TELEVISION SYSTEMS

3.3.5.1. Introduction

Closed circuit television (CCTV) is a secured video system in which signals are transmitted from a video camera to specific television monitors. In terms of various statutes, both internationally and nationally, children are entitled to testify via closed circuit television where a finding has been made that the child would be traumatised by appearing in the main courtroom. Closed circuit television thus allows the child witness to testify in a separate room, and contemporaneously transmits his or her testimony to the courtroom.

There are several configurations of CCTV that exist. One-way or two-way CCTV systems are traditionally used in courts where children have to testify. One-way CCTV has one camera and one monitor. The monitor is in the courtroom and everybody in the court can view the child on the monitor. The camera is in the separate room where the child is and films the child. The two-way CCTV configuration has two cameras and two monitors.

Here there is a monitor and a camera in both the courtroom and the separate room. The camera in the courtroom records what is happening in the



courtroom and transmits it to the monitor in the separate room so that the child can see what is happening in the courtroom.

There have, however, been a number of concerns raised about the difficulties experienced in the practical implementation of closed circuit television systems, and these will be addressed in this document, as well as recommendations for minimum specifications for these systems.

3.5.2. National and international statutory provisions

Internationally, there are many statutes that make provision for the use of closed circuit television systems for children who have to testify in cases of sexual violence, but they do not address what closed circuit television systems entail other than what image should be transmitted and whereto.

The Alabama Code (§ 15-25-3) gives the court the discretion to allow a child under the age of 16 to testify via closed-circuit television in certain circumstances. The Code requires only that the child be in a separate room, that the video feed of the child be transmitted to the court so that the accused can see the child and that electronic means of communication be available between the court and the separate room. It would appear from the statute that an operator is in the room with the child and controls the camera.

The Alaska Code has a similar provision (§ 12.45.046) with regards to an operator being present in the separate room and requires the operator to be as unobtrusive as possible. In Arizona, where closed circuit television for children has been introduced by Ariz.Rev.Stat § 13-4253, the person operating the equipment must be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the minor while testifying but does not permit the minor to see them.

The Californian Penal Code (§ 1347) provides further clarification regarding the equipment and states that the "equipment available for use of closed-

circuit television would accurately communicate the image and demeanour of the minor to the judge, jury, defendant or defendants, and attorneys." Massachusetts refers specifically to the fact that there must be a visual and an aural transmission and defines simultaneous electronic means as "any device capable of projecting a live visual and aural transmission such as closed-circuit television". The Massachusetts General Laws (ch.278 § 16D) are among few statutes that stipulate certain minimum requirements for the use of closed circuit television equipment.

Subsection 7 mandates the court to ensure that (a) the recording or transmitting equipment is capable of making an accurate recording or transmission and is operated by a competent operator; (b) the recording transmission is in colour and the witness is visible at all times; (c) every voice on the recording or transmission is audible and identified; and (d) the courtroom is equipped with monitors which permit the jury and others present in the courtroom to see and hear the recording or transmission.

The New York Code – Civil Practice Laws and Rules (chapter 65.30) provides that when an order has been made that a child will testify via closed circuit television, "the testimony of the vulnerable child witness shall be taken in the testimonial room and the image and voice of the vulnerable witness, as well as the image of all other persons other than the operator present in the testimonial room, shall be transmitted live by means of closed-circuit television to the courtroom."

This provision requires that everybody in the testimonial room must be filmed, which will have implications for the choice of camera. As far as the monitors are concerned, they must be "sufficient to permit the judge, jury, defendant and attorneys to observe the demeanour of the vulnerable child witness during his or her testimony." By implication, the monitors will have to be large enough for the people in the court to see the face of the child clearly since they must be able to observe the child's



demeanour. Further, there is also provision for the recording of the child's evidence which requires that, when the child's evidence is transmitted from the testimonial room into the courtroom, the court stenographer must record the child's evidence in the same manner as if the child had testified in the courtroom. This means that the sound equipment must be clear enough for the stenographer in the courtroom to record what the child says.

The Ohio Code (§ 2945.481) requires that, should the judge hear the child's evidence by electronic means from outside the courtroom, the judge must be provided with monitors on which he or she can see each person in the separate room and with an electronic means of communication with each person in that room.

Each person in the separate room must have access to a monitor on which that person can see and be able to communicate electronically with the judge. The West Virginia Code (W.Va.Code Ann. § 62-6B-4) requires, in addition, that the view of the child witness available to those persons in the courtroom must include a full body view.

Pennsylvania has introduced legislation to enable children to testify from outside the courtroom (42 Pa.Cons.Stat.Ann. § 5982) but does not limit it to closed-circuit television and instead refers to it as "contemporaneous alternative method".

This has been defined as any method of capturing the visual images, oral communications and other information presented during a prosecution involving a child victim or child witness and transmitting and receiving such images, communications and other information at, or about the time of their creation, including, but not limited to, closed-circuit television, streaming image sent via the internet or an intranet and any other devices or systems used to accomplish such ends.

The most comprehensive statutory provisions regarding closed circuit television systems are found

in the legislative code of the Virgin Islands. The room from which the child testifies is referred to as the testimonial room. The requirements in the statute are as follows (V.I. Code Ann.Tit. 5, § 3510):

- The video camera and cameraman shall be separated from the testimonial room by means of a one-way mirror which would allow the videotaping of the child's testimony.
- The courtroom must be equipped with monitors which have the capacity to present images and sound with clarity.
- No bright lights are to be used in the testimonial room.
- Colour images may be projected to the courtroom by the video camera.
- The video camera may be equipped with zoom lens to be used only on notice to counsel.
- The face of the witness must be visible on the courtroom monitors at all times.
- There must be an audio system connecting the judge with the testimonial room.

In South Africa, section 170A (3) of the Criminal Procedure Act 51 of 1977 requires simply that the witness give evidence at any place "(a) which is informally arranged to set that witness at ease; (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony." This section requires that the child not be able to see or hear anybody who may upset him or her, and that the court must be able to see and hear the child and the intermediary using some form of electronic means.

3.3.5.3 Meaning of closed circuit systems

Closed circuit television systems are used in a variety of ways for a variety of purposes. For instance, they



have been installed in open public areas, retail premises, security-sensitive workplaces and in private places. The purpose for which these systems are used will obviously determine the type of system and the specifications as well as the location.

CCTV systems consist of cameras, monitors, recorders, interconnecting hardware and support infrastructure. Images may be transmitted via wired or wireless technologies in digital or analogue form. In the courtroom, CCTV systems are used in one of three ways:

- the CCTV system is integrated into the infrastructure of the building at the time that the building is designed and constructed;
- the CCTV is fitted into the building retrospectively; or
- a portable system is brought in as needed.

Since the introduction of CCTV systems in the courts in 1993, there have been a number of advances in technology which have led to improved systems and decreased costs. The user friendliness has also increased and there are now mobile or portable systems available which means that these systems could be used anywhere in the country.

There has been some disagreement about the terminology to be used for closed circuit television systems, and some countries prefer the term closed circuit video.¹³² It is argued that the term 'television' implies actual broadcasting, whereas the child is being videoed and the image transmitted to the court.

There is no broadcasting that takes place. In England they have opted to use the term 'video-link' or 'live link' to describe this technology. In a closed circuit system coaxial cables connect monitors and cameras in the courtroom with monitors and cameras in a

separate room somewhere in the court building. This is the 'closed circuit'.

As mentioned above, there are many variations of a closed circuit system, but there are certain features which are necessary for the courtroom setup in the South African context:

- the witness must testify from another room;
- everyone in the courtroom must be able to see and hear the witness on the monitor;
- the child must not hear or see the accused; and
- the court must be able to view anybody else in the separate room with the child.

3.3.5.4 Problems encountered in court with closed circuit systems

Closed circuit television was first introduced in the courts in 1993 and a number of difficulties have been identified with their use:

Cameras

- The cameras in the separate court room are stationary, which means that they cannot capture the child's image if the child moves out of the camera range. This means that the child is forced to sit in one spot for long periods, which is particularly difficult with young children.
- In some courtrooms the cameras have not been positioned correctly and have been placed quite high up on the wall. This means that the child is forced to sit in an awkward position with his or her neck bent to be able to be seen on the monitor in the courtroom.
- The cameras do not have the capacity to provide a clear image of the child's face.



132 Cunningham, A. and Hurley, P. 2007. "A full and candid account." **Using Special Accommodations and Testimonial Aids to Facilitate the Testimony of Children. Book 2: Testimony outside the Courtroom.** London Family Court Clinic. 5.



- When cameras break down, there are no back up cameras available and it takes a long period of time for these to be fixed.

Monitors

- There is only one monitor in the courtroom. As the monitor has to be seen by all the role-players in the courtroom, and especially the accused and his defence, it is positioned in such a way that the magistrate often has to strain to be able to see the screen.
- The monitor is too small to be able to see the face of the child clearly. Magistrates have stressed that they cannot even see when the child is crying and depend on the intermediary to inform them if the child is upset. This photograph gives a perfect example of a small screen that is positioned far from the bench and facing an opposite direction that will require the magistrate to stretch his body in order to have a clear view.
- As with the cameras, maintenance of monitors is also problematic. It takes a long time for them to be repaired or replaced.

Sound

- The quality of the sound is problematic. Magistrates have complained that they cannot hear the child clearly and often request the child to repeat his or her responses.
- The quality of the microphone used by the child is not very high and it does not always pick up the pitch of children's voices.
- Lapel microphones have also proved to be ineffective with young children as they tend to move their head away from the microphone and then part of their response cannot be heard in the courtroom.

Lighting

- The lighting in the separate room is not always sufficient for the transmission of the image to the courtroom, which makes it more difficult for those in the courtroom to observe the demeanour of the child.

Maintenance

- Maintenance of the equipment is problematic as maintenance has to be outsourced and this can take days if not weeks to be rectified. It is recommended that the Department establish a mechanism that is prompt, cost-efficient and effective for the maintenance of all court equipment, including the CCTV's.

Identification

- As the closed circuit system is a one way system, the child will nevertheless have to go into the courtroom to identify the accused, which would seem to defeat the purpose of keeping the child removed from the accused.

The Proposed Closed Circuit System

Although courtroom equipment varies greatly depending on local resources and available space, equipment for the courtroom includes, at a minimum, microphones, a camera and one monitor and the necessary cables and cords.

Monitors

Although many courts are equipped with only one television monitor, there should be at least two monitors in the courtroom. Because of the configuration of the courtroom, it is difficult to position one monitor so that it can be seen clearly by all parties. This usually results in the monitor being at an angle to the presiding officer, which makes it difficult to observe the image on the screen.

The availability of two monitors will circumvent this problem as the presiding officer can have a monitor on which he or she can observe the witness and the other monitor can be turned to face the other people in the courtroom. Plasma screens are used in a number of courts internationally.

It goes without saying that the bigger the monitor, the better. In Canada, a 27 inch (68.5cm) monitor is recommended as a minimum size in order to be able to see the child's facial expressions and demeanour



clearly. In South Africa, a 42 inch monitor that is mounted on the court wall is recommended for the courtroom while a smaller monitor is recommended for the exclusive use of the presiding officer.

Cameras

If the system is a one-way system, then there has to be a camera in the testifying room to record the child as he or she testifies. The people in the courtroom must be able to see the face of the witness, although internationally it is a requirement that the presiding officer be able to see everybody else in the testifying room as well.

Some jurisdictions have introduced cameras that can be controlled by the presiding officer. The camera has a zoom lens and the presiding officer is able to control this from the courtroom, so that he or she can zoom in or out if it is necessary to observe something. This will enable the presiding officer to see what is happening in the testifying room as well as honing in on the child's face when necessary to observe demeanour. This system is also useful if the child moves around in the testifying room.

Where courts have a two-way system, there is also a camera in the courtroom that records what is happening so that the child can observe what is happening in the courtroom on a monitor in the separate room. This system is not applicable to South Africa as s170A of the Criminal Procedure Act 51 of 1977 requires that the child testify outside "the sight and hearing" of any person that may upset the witness. However, this system has been used effectively where the child is required to identify the accused.

Normally, the child is required to go into the courtroom to identify the accused, which seems to defeat the whole purpose of keeping the child out of the courtroom. When used for purposes of identification, the two-way system is set up so that it can be switched off while the child testifies and it then operates as a one-way system. When the child

is required to identify the accused, the camera in the courtroom is turned on and the child can see everyone in the courtroom and identify the accused on his or her monitor in the testifying room.

The camera must be positioned so that the child, and especially his or her face, can be captured on the monitor without the child being forced to sit in an uncomfortable position or strain to be seen.

Microphones

A high quality microphone is necessary for the child witness and the intermediary. Many courts use lapel microphones which are attached to the clothing of the child. However, these have been found not to be very effective as the children have difficulty sitting still and their movement causes interference on the microphone. Also, the children often turn their head away when they answer questions and then the microphone has difficulty picking up the child's voice.

The quality of the microphone must be high enough to register the fact that children tend to speak very softly and use a higher than normal pitch. It has been suggested that, with the advancement in technology, it would be possible to have a free standing microphone in front of the child that would be able to pick up even a whisper. The microphone would also be able to pick up anything that the intermediary said as well.

The intermediary is linked to the courtroom via earphones. It is also important that these be of high enough quality for him or her to hear clearly what is being asked in the courtroom.

Portable systems

An important consideration to be taken into account is that South Africa is a large country with many rural areas that have to be serviced by the administration of justice. This is accomplished by periodical court teams which travel to the remote areas on a regular basis. Portable systems have been introduced which periodical court teams can take with when



they visit these areas. Portable systems consist of an entire closed circuit system in a case that can be transported to any location.

3.3.6. ONE WAY MIRRORS

Some courts have made use of one-way mirrors or screens which permanently screen off a section of the court or connect the room next to the court to the courtroom. This private area accommodates the child witness and the intermediary. It is a one-way system, which means that the people in the courtroom can see the child and the intermediary but the child and the intermediary cannot see anyone in the courtroom. The testifying room and the courtroom are linked by an audio system so that the intermediary can hear the questions on her earphones and the court can hear the child's responses.

An advantage of this system is that there are no delays relating to broken cameras or monitors. However, this option is only really practical when building a new courtroom so that the mirror and the separate room can be installed and built or where there is sufficient space for such a configuration.

In addition, magistrates have complained that they have difficulty observing the child through the one way mirror as they cannot see the child's face close up. A further problem relates to the lighting in the courtroom, which sometimes reflects off the mirror and makes it very difficult to observe the child.

3.7. ANATOMICAL DOLLS

3.3.7.1 Introduction

Internationally child sexual abuse is recognised as a social problem and the statistics support the high number of children who annually become victims of sexual abuse. Since the eighties, this has meant that a large number of witnesses passing through criminal justice systems are children. This has created a number of problems for legal systems since children are not equipped, either cognitively or emotionally, to deal with the demands of a trial. Children, especially very young children, have a limited ability

to verbalise their experiences and this hampers their ability to disclose the details of sexual abuse.

In addition, they exhibit feelings of shame, embarrassment, guilt and fear, which further compromise their ability and willingness to reveal what was done to them. Faced with these difficulties and the fear that children may be further traumatised by the investigative processes, professionals began to research methods of interviewing children that would elicit more accurate information while at the same time being compatible with legal requirements.

There was a need for reliable investigative tools to assist with interviewing children in cases of sexual abuse, and anatomical drawings and anatomical dolls were introduced into the interviewing process. Anatomical dolls were found to be useful in obtaining evidence from children who had been sexually abused, especially children who were younger or who suffered from a mental disability and did not have the terminology necessary to describe the sexual abuse.¹³³

These dolls were seen as providing an indirect method of acquiring information that was more comfortable to the child and allowed the child to communicate more accurately. An anatomical doll, also known as an anatomically detailed or anatomically correct doll, is a doll which exhibits some of the primary and secondary sex characteristics of a human.

They are usually soft, cotton or plastic dolls that are intended to be a replica of the human body, complete with sexual body parts.¹³⁴ The dolls at minimum usually include a set of adult male and female dolls and a set of child male and female dolls. They often

come in families and include a mother, father, son, daughter, grandfather and grandmother.

133 Shamroy, J.A. 1987. Interviewing the sexually abused child with anatomically correct dolls. **Social Work**. 32(2). 165 – 166 at 165.

134 Hollely, K. 2011. *Interviewing Aids: The Use of Anatomical Dolls* in Müller, K.D. **Prosecuting the Child Sex Offender**. Prinrite: Port Elizabeth. 77.



They also come in different colours, body shapes and sizes. The male dolls have a penis and testicles while the female dolls have a vaginal opening. The male and female dolls have relevant oral, anal and genital openings. The adult female dolls have developed breasts and both the adult male and adult female dolls have pubic hair.

3.3.7.2 International legislation on anatomical dolls

A number of states in the United States of America have legislation permitting the use of anatomical dolls and there is even a section in the Code of Laws of the United States, a compilation and codification of the general and permanent federal laws of the United States, which deals specifically with anatomical dolls. This provision is included in Title 18 section 3509(l), which states:

(l) Testimonial aids. The court may permit a child to use anatomical puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

The Alabama Code has devoted a section to the use of dolls or mannequins (s15-25-5) and provides that in any criminal proceeding and juvenile cases where the defendant is alleged to have had unlawful sexual contact or penetration with or on a child, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim or witness who is under the age of 10 in testifying on direct and cross-examination at trial or in a videotaped deposition.

This section is more limited than the provision contained in the Code and is only applicable to children under the age of 10 where the case is a sexual matter.

The position in Connecticut is governed by section 54-86g of the Connecticut General Statute and permits the use of anatomically correct dolls by the child in criminal cases involving assault, sexual

assault or abuse of a child twelve years of age or younger. Michigan (MCLS s600.2163a) has extended the use of anatomically correct dolls or mannequins to children under the age of 16 and persons over the age of 16 who have a mental disability.

New Jersey also has legislation requiring the court to permit the use of anatomically correct dolls where the complainant is under the age of 16 (N.J.Stat.§2A:84A-16.1). Whereas the court is required to make use of the dolls in New Jersey, this provision is discretionary in New York, where any person under the age of 16 may, at the discretion of the court and where helpful and appropriate, use an anatomically correct doll to testify in criminal cases involving sexual offences (NY CLS CPL §60.44).

In Missouri, provision is made for the admissibility of the recording of a non-verbal statement of a child, and a non-verbal statement is defined as "any demonstration of the child by his or her actions, facial expressions, demonstrations with a doll or other visual aid whether or not this demonstration is accompanied by words (R.S.Mo. § 492.304).

The Rules of the New Hampshire Superior Court, District Court and Family Court all contain provisions permitting the use of anatomically correct drawings and/or dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying in sex-related offences. Puerto Rico, Pennsylvania and West Virginia have similar provisions although the West Virginia provision limits the use of dolls to children aged 11 or less.

Wyoming allows for the use of anatomical dolls in the course of videotaped depositions. Wyo. Stat. § 7-11-408 states that "children unable to articulate what was done to them will be permitted to demonstrate the sexual act or acts committed against them with the aid of anatomically correct dolls. Such demonstrations will be under the supervision of the court and shall be videotaped to be viewed at trial, and shall be received into evidence as demonstrative evidence."



As far as case law is concerned, the American courts have shown support for the use of anatomical dolls to assist children. In *United States v Archdale* 229 F 3d 861 (2000), the court referred to the Code as a basis for allowing the child witness to use an anatomical diagram and chart when giving evidence.

The courts have also allowed expert testimony based on interviews conducted with anatomical dolls. In *North Dakota v Kevin Messner* 583 N.W.2d 109 (1998) the Supreme Court of North Dakota affirmed the conviction of the defendant, finding that the trial court did not err in allowing the evidence of a social worker who used drawings and anatomical dolls to obtain statements from a 5 year old child.

3.3.7.3 Specifications of dolls

Anatomical dolls are intended to be a general replica of the human body and include sexual body parts. The use of the dolls depends on the presence of certain features, and these have been summarised below from the APSAC Practice Guidelines¹³⁵ and the research of Boat and Everson.¹³⁶

Adult dolls must be larger than the dolls depicting children. This must be clear enough so that the children using the dolls can distinguish between the adult dolls and the child dolls. The child doll should reach below the shoulder of the adult doll. The adult doll should be approximately 50 cm in length as the children may have difficulty manipulating a doll that is too large.

It is important that the hair and facial features correlate to the sex of the doll so that the child can easily identify the gender of the dolls. Since the dolls

are going to be used by young children, they should be made out of fabric that is durable, washable and well-sewn to withstand being handled often

and undressed frequently. Most professionals also prefer the dolls to be soft so that the bodies can be manipulated by the child. Fingers must be clearly separated so that the child can insert them into oral, anal or genital openings, if necessary.

Sets of dolls should include, at a minimum, an adult male, an adult female, a male child and a female child. Some sets also include grandparents. An issue that has not yet been resolved is the impact of the racial features and skin colour of the dolls on the children.

There is at present no empirical evaluation of the impact of the dolls' racial features and skin colour on the child's response, but the preferred practice is to match the dolls with the race of the child. If the race of the alleged perpetrator is different from that of the child, the professional should consider presenting dolls of both races or a set of non-specific dolls with neutral skin tones.¹³⁷

The facial features of the dolls should be reasonably attractive and appealing with a neutral expression. It is essential that the dolls do not express negative emotions, such as fear or anxiety, as this may be construed as suggestible in the information gathering process.

The clothes of the dolls should be easily removable and it has been suggested that Velcro be used for all closings as young children generally have difficulty with dressing and undressing dolls. Clothing, especially pants and underwear, should slip off easily and should be appropriate to the represented age and gender of the doll.

Since, from a forensic perspective, the sexual features of the doll are critical, it is important that all sexual features be in correct proportion to the size of the dolls because there may be allegations of

suggestibility if the genitals are too large. The sexual features must also be appropriate to the gender and age of the given doll.

135 APSAC: American Professional Society on the Abuse of Children. 1995. **Practice Guidelines: Use of Anatomical Dolls in Child Sexual Abuse Assessments**. Chicago.

136 Boat, B.W. and Everson, M.C. 1986. **Using anatomical dolls: Guidelines for interviewing young children in sexual abuse investigations**. University of North Carolina: North Carolina.

137 Müller, K.D. 2011. **Prosecuting the Child Sex Offender**. Prinrite. Port Elizabeth.



Male adult doll: The penis must be firmly attached, stiff and slightly erect and narrow enough to insert into other doll openings. Genital hair must be included, although hair on the doll's chest and underarms is optional. The nipples and navel must be marked. Anal and oral openings must be included but the tongue in the doll's mouth can be optional.¹³⁸

Male child doll: The genitalia must be proportionate and appropriate to the intended age of the doll. Most child dolls are prepubescent and, therefore, genital development must be relative. The anal and oral openings must be big enough to accommodate the male adult's penis. The navel and the nipples must be marked.

Female adult doll: The breasts and nipples of the doll should be as natural looking as possible. Pubic hair must be included and the navel defined. Vaginal, anal and oral openings must be big enough to accommodate the penis of the adult male.

Female child doll: The genitalia must be proportionate and appropriate to the intended age of the doll. The nipples and navel must be marked and the vaginal, anal and oral openings must be big enough to accommodate the penis of the adult male doll.

3.4 TESTING OF THE IMPLEMENTABILITY OF THE PROPOSED COURT MODEL

The Task Team has selected 3 court sites where the sexual offences court model will be piloted to

¹³⁸ Müller, K.D. 2011. *Prosecuting the Child Sex Offender*. Printrite. Port Elizabeth.

determine whether the model can be implemented. The sites that have been chosen include: Wynberg Court, Western Cape; Springbok Court, Northern Cape and Palm Ridge Court, Gauteng.

The Wynberg court has been selected to determine if the court model would apply in a court that previously operated as the Sexual Offences Court, where the old infrastructure still exists.

Springbok represents courts that are remote, rural and seriously challenged in terms of space. This is to determine if the proposed model can be implemented in such instances.

The Palm Ridge Court is an example of a newly constructed court, which has never operated as a Sexual Offences Court and which has more than enough space. The model will be established in this court to determine the feasibility of its success in an environment where no restrictions are envisaged.

To date, all 3 pilot sites have been visited by MATTSO members to assess the current resources available at these sites and determine what resources need to be procured to ensure the courts comply with the sexual offences court model.

3.5 CONCLUSION

The above is a summary of the research undertaken by MATTSO to determine the resources that should define the functioning of the Sexual Offences Courts. It provides the reasoning for the decisions made in determining the minimum standards for Sexual Offences Courts.





Chapter 4:

THE SEXUAL OFFENCES COURT MODEL





CHAPTER 4:

THE SEXUAL OFFENCES COURT MODEL

4.1. INTRODUCTION

This chapter provides the minimum requirements necessary for the establishment of a Sexual Offences Court. It must, however, be noted that this model is not final as it still has to be taken through the consultation and adoption process with the stakeholders of the JCPS Cluster and other relevant role-players. This document must be read with Chapter 3, which provides a detailed account of the Proposed Sexual Offences Court Model.

4.2. INFRASTRUCTURE

Dedicated Sexual Offences Courts will consist of a main courtroom and a testifying room and will be equipped with closed-circuit television systems. The court will also have access to a separate waiting room for adults and children, who have to testify. It is an important principle of a Sexual Offences Court that direct contact between a child and a victim or witness and the accused be avoided at any point in the justice process.

4.3. COURT ROOM

The Task Team recommends that the Sexual Offences courtroom must be equipped as follows:

- A two-way closed circuit television system to enable the child to identify the accused from the testifying room, when required to do so;
- A separate monitor for the presiding officer to ensure increased visibility of the image and control of the system;
- A large screen monitor for the other members of the court, as prescribed by the national guidelines of the CCTV and other related court equipment;
- A monitor in the testifying room for purposes of allowing the victim to identify the accused, when required to do so;

- A camera in the testifying room which is positioned so that the child can be clearly seen on the monitor in the courtroom;
- The camera must provide the resolution prescribed by the national guidelines to ensure a close-up image of the child's face;
- A camera in the courtroom for purposes of identification;
- A prescribed quality microphone in the testifying room. Reference to the National Guidelines must be made;
- The prescribed quality microphones for use in the courtroom;
- A set of earphones for use by the intermediary to facilitate direct communication between the intermediary and the court personnel;
- Portable closed circuit television system should be made available to periodical courts so that children can have access to these services even in remote rural areas.
- All technical equipment must comply with minimum specifications as set out by the Departmental Guidelines.

4.4. TESTIFYING ROOM

- Walls must be painted in child-friendly colours. However, murals or pictures must be avoided;
- The room must have window dressings that successfully block unwanted light for the purposes of ensuring that the court receives clear images from the screen;
- The lighting must be suitable for the filming of the child;
- The room must have a less noisy air-conditioner;
- The room must be carpeted in a serviceable colour;
- The furniture must be suitable for children, and may include:
 - a couch that is upholstered in a durable fabric that can be easily serviced or wiped off;



- two chairs that provide a comfortable seating and appropriate size for children; and
- a table that is suitable for children
- There should be no toys available in the testifying room, with the exception of a soft toy that can be used as a comfort item. The anatomical dolls must be kept away, and taken out only when the use thereof is requested by the court;
- All doors to the testifying room must be able to be locked;
- All closed-circuit equipment must comply with the minimum specifications required by the Department of Justice and Constitutional Development.

4.5. WAITING ROOM FOR CHILDREN

The waiting room should contain the following furniture that is suitable for children:

- Armchairs/couches. The couch must be upholstered in a durable fabric that can be easily serviced. It is recommended that furniture be made from high density foam covered in vinyl;
- Comfortable seating for children;
- Children's tables. The number required will depend on the prevalence of the crime in each district;
- Storage for toys;
- Plastic tables and chairs for toddlers and very young children;
- The chairs must offer comfortable seating and be an appropriate size for children;
- An information screen would be very useful to educate and entertain the children;
- There should be toys available for the children to play with. These can include dolls, blocks, and educational games;
- Walls must be painted in child-friendly and standard colours of soft blue and green. Murals and paintings are recommended;

- The room must be carpeted in a serviceable colour;
- All doors to the waiting room must be able to be locked;
- Feeding scheme must be provided to children.

4.6. WAITING ROOMS FOR ADULTS

- Walls must be painted in soothing colours. The colours in the waiting rooms should be pastel blue and green. No murals;
- The room may have window dressing where necessary, e.g. blinds or curtains that are fully operational;
- The lighting must be bright and suitable for comfortable reading;
- The room must contain an air-conditioner;
- The room must be carpeted in a serviceable colour;
- The following furniture must be provided:
 - chairs
 - a couch that is made of a durable and serviceable material
 - a coffee table, where possible
- Educational material must be made available in the waiting rooms;
- Information screens must be made available;
- All doors to the waiting room must be able to be locked.

4.7 ANATOMICALLY DETAILED DOLLS

Each Sexual Offences Court must have a set of anatomical dolls. Anatomical dolls are a scientific tool and they have to comply with certain minimum specifications.¹³⁹ These specifications are set out below:

¹³⁹ APSAC: American Professional Society on the Abuse of Children. 1995. **Practice Guidelines: Use of Anatomical Dolls in Child Sexual Abuse Assessments**. Chicago; and Boat, B.W. and Everson, M.C. 1986. **Using anatomical dolls: Guidelines for interviewing young children in sexual abuse investigations**. University of North Carolina: North Carolina.



General

- Anatomical dolls must be a general replica of the human body and include sexual body parts.
- Fingers must be clearly separated so that the child can insert them into oral, anal or genital openings if necessary.

Size

Adult dolls must be larger than the dolls depicting children. This must be clear enough so that the children using the dolls can distinguish between the adult dolls and the child dolls. The child doll should reach below the shoulder of the adult doll.

- The adult doll should be approximately 50 cm in length as the children may have difficulty manipulating a doll that is too large.

Facial features

- The hair and facial features of the dolls must correlate to the sex of the doll so that the child can easily identify the gender of the dolls.
- The facial features of the dolls should be reasonably attractive and appealing with a neutral expression. It is essential that the dolls do not express negative emotions, such as fear or anxiety, as this may be construed as suggestible in the information gathering process.

Material

- The dolls should be made out of fabric that is durable, washable and well-sewn to withstand being handled often and undressed frequently.
- Dolls should preferably be soft so that the bodies can be manipulated by the child

Number of dolls

- Sets of dolls should include, at a minimum, an adult male, an adult female, a male child and a female child. If possible, sets should also include an older male and female doll to represent grandparents.
- There should preferably be one set of dolls with a neutral skin tone as children do not see colour.

Clothing of dolls

- The clothes of the dolls should be easily removable and it has been suggested that Velcro be used for all closings. Clothing, especially pants and underwear, should slip off easily and should be appropriate to the represented age and gender of the doll.

Sexual features

It is important that all sexual features be in correct proportion to the size of the dolls because there may be allegations of suggestibility if the genitals are too large.

The sexual features must also be appropriate to the gender and age of the given doll.

- **Male adult doll:** The penis must be firmly attached, stiff and slightly erect and narrow enough to insert into other doll openings. Genital hair must be included, although hair on the doll's chest and underarms is optional. The nipples and navel must be marked. Anal and oral openings must be included but the tongue in the doll's mouth can be optional.
- **Male child doll:** The genitalia must be proportionate and appropriate to the intended age of the doll. Most child dolls are prepubescent and, therefore, genital development must be relative. The anal and oral openings must be big enough to accommodate the male adult's penis. The navel and the nipples must be marked.
- **Female adult doll:** The breasts and nipples of the doll should be as natural looking as possible. Pubic hair must be included and the navel defined. Vaginal, anal and oral openings must be big enough to accommodate the penis of the adult male.
- **Female child doll:** The genitalia must be proportionate and appropriate to the intended age of the doll. The nipples and navel must be marked and the vaginal, anal and oral openings must be big enough to accommodate the penis of the adult male doll.



4.8 PERSONNEL

The personnel requirements for each Sexual Offences Court include:

- Presiding officer
- 2 Prosecutors
- Intermediary
- Interpreter
- Designated court clerk
- Designated social worker
- Legal aid practitioner
- Court preparation/victim support officer

4.9 TRAINING

- Ongoing training of all court personnel on sexual offences is mandatory.
- At a minimum, training must include the following topics:
 - Provisions of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, its National Policy Framework and the Victim's Charter
 - Trauma experienced by victims of sexual violence
 - The effects of testifying
 - Communicating with Children
 - Child Development
 - Disclosure of Abuse

- Working with persons with mental disabilities
- Sex Offenders
- Individual role-players must receive profession-specific training which will provide them with the skills necessary to perform their roles and functions.

4.10 SERVICES

- Victims of sexual offences must have access to the following services:
 - Court preparation programme
 - Information material that take form of text, audio-visual and Braille.
 - Victim support services
 - A feeding scheme for children
- Vicarious trauma programmes must be available for all personnel working with sexual offences cases, e.g. debriefing programme
- There must be a case flow management and screening policy in place to identify cases that fall within the sex offences category and to direct these to the Dedicated Sexual Offences Courts.

4.11 MONITORING AND EVALUATION

A data collection method must be established to allow for the monitoring and evaluation of the court's effectiveness which must make provision for input from victims who have gone through the criminal justice system.







Chapter 5:

NATIONAL RESOURCE AUDIT IN REGIONAL COURTS





CHAPTER 5:

NATIONAL RESOURCE AUDIT IN REGIONAL COURTS

5.1 INTRODUCTION

The Minister of Justice and Constitutional Development (the Minister) announced in his 2012/2013 budget speech, his intention to establish a Multi-Disciplinary Task Team to investigate the feasibility of re-introducing the Sexual Offences Courts and advise him on the appropriate action to take.

The establishment of the Task Team was initiated in June 2012, and it resulted in the constitution of the Ministerial Advisory Task Team on Sexual Offences Courts (MATTSO). The mandate of the MATTSO is twofold, namely, to investigate the feasibility of re-introducing the Sexual Offences Courts and advise the Minister accordingly, and to provide recommendations arising from the investigation.

The MATTSO recommended in its report that there are sufficient grounds for the re-establishment of Sexual Offences Courts. However, it required that an audit be undertaken to determine the status of existing physical and human resources in the Regional Courts so that the re-establishment of these courts can be costed.

It is also part of the mandate of the MATTSO to finalise a Model for Sexual Offences Courts, which would comprise a set of minimum standards for these courts. The finalisation of the Model requires a number of investigations relating to the infrastructure, personnel and training.

5.2 METHODOLOGY

A number of methodologies were used to conduct the national audit of Regional Courts for the MATTSO. These methodologies included:

5.2.1 Development of a questionnaire

In response to the request from the MATTSO for an

audit of all Regional Courts, a draft questionnaire was developed which was aimed at determining what physical and human resources were available in each Regional Court in South Africa, with specific emphasis on resources available for hearing sexual offences cases. The questionnaire comprised of two main sections, namely Part A: Physical Resources and Part B: Human Resources.

5.2.1.1 Part A: Physical Resources

This section of the questionnaire focused on an assessment of the existing equipment and other resources specifically required for sexual offences cases as per the Model for Sexual Offences Courts, and included the following key issues:

- The availability, condition and maintenance of CCTV systems;
- The availability and description of one-way mirror systems;
- The furniture that is in the testifying room and the condition thereof;
- The status of the ventilation in the testifying room;
- Whether or not there are any toys in the testifying room;
- The availability, number, description and condition of Anatomically Detailed Dolls;
- Whether a feeding scheme for child witnesses is available and how it is provided and sustained;
- The availability, description and condition of the waiting room for child witnesses;
- The availability, description and condition of the waiting room for adult witnesses;
- The availability and format of signage for sexual offences courts in the court building;
- The availability of toilet facilities for children located at an area that restricts access to the accused; and
- The availability of toilet facilities for adult victims located at an area that restricts contact with the accused.



5.2.1.2 Part B: Human Resources

This section of the questionnaire focused on an assessment of the number of court officials available in each Regional Court, whether there was a dedicated magistrate and prosecutor allocated to each court and what, if any, NGO (Non-governmental Organisation) representation was available at each Regional Court. It focused on the following areas:

- The capacity of the court to accommodate the office needs of the various court officials;
- The number of court officials available to each court;
- The languages spoken by the intermediaries;
- Whether the prosecutor and magistrate are dedicated to a specific court; and
- The availability of the services of non-governmental organisations

5.2.2 Presentation of draft questionnaire to MATTSO

Once the draft questionnaire was developed, it was presented to the MATTSO for input. The questionnaire was discussed at a MATTSO meeting and members made contributions, requesting that further questions be included in the questionnaire. These inputs included:

- Whether the court has access to a DVD player
- The size of the television screen (if available) in the main courtroom
- The quality of the sound between the testifying room and the main courtroom
- Who is responsible for the maintenance of the equipment
- What ventilation is available in the testifying room
- Whether there is a place for the child witness to sleep
- The availability of restrooms for witnesses

The dissemination of questionnaires was also a

crucial issue due to the urgency with which the audit had to be conducted. It was necessary that the questionnaire be completed by somebody in the courtroom and that this individual could be mandated to complete the questionnaire by a superior.

For purposes of accuracy it was necessary to ensure that the same role-player in each court be responsible for the completion of the questionnaire. After detailed discussions, the MATTSO decided that the prosecution would take responsibility for the completion of the questionnaires.

The questionnaires would have to be forwarded to the prosecutors in each court due to the urgency of the audit, and these would then be verified by the magistrate and court manager. As such, the questionnaire included spaces for the names, signatures and date of verification for all three (3) role-players.

The draft questionnaire was amended to include these requirements.

5.2.3 Memoranda to relevant stakeholders

Once the questionnaires were ready for dissemination, memoranda were issued by the NPA and DoJ&CD to the Regions informing the prosecution, magistrates and court managers of the audit. In these memoranda, it was stated that the relevant prosecutor in each Regional Court would be notified and sent, via fax or email, a detailed questionnaire that would require urgent completion and verification.

5.2.4 Identification of Regional Courts

In order to identify the prosecutors responsible for completing the questionnaire in each court, it was necessary to access a complete list of Regional Courts in South Africa. A list of courts and the crimes heard by each court was obtained from NOC at DoJ&CD.

Although it was indicated that this list was of Regional Courts, it was soon established that district



courts were also represented on this list and the list, itself, did not accurately represent the Regional Courts.

This, however, was used as a point of departure in terms of which it identified the core centres where courts were located and contact numbers for these centres.

At the same time, the MATTSO availed a list of and contact details for all Chief Prosecutors. Both lists were combined to ensure all Regional Courts were included.

Each Chief Prosecutor was individually contacted and requested to verify the list of Regional Courts in their cluster. They were then sent the questionnaire for dissemination to the prosecutors in each Regional Court within their cluster. Sometime thereafter, NOC provided the MATTSO with another list of Regional Courts in South Africa.

However, it was established that this list was inaccurate as the number of Regional Courts only totalled 436 whereas the list developed as a result of combining the NOC information and the information provided by the Chief Prosecutors totalled 567 Regional Courts in South Africa. Commercial Crime Courts were not included in the audit, but periodical Regional Courts were included.

5.2.5 Dissemination of questionnaires to the prosecutors

Questionnaires were emailed and/or faxed to the prosecutors, usually via the Chief Prosecutor or Senior Public Prosecutor. The questionnaires were disseminated once the memoranda had been completed, namely after the 22nd November 2012.

5.2.6 Receipt of completed questionnaires

The final completed questionnaire was received on Tuesday the 5th February 2013. The final count of Regional Courts on receipt of this questionnaire was 567. Although the prosecution was exemplary in completing and returning the questionnaires, it took

over two (2) months for all 567 courts to be received. However, it should be noted that this period fell over the Christmas holiday period, which would have contributed to the delay.

5.2.7 Capturing and analysis of data

Once the questionnaires had been received, the information on the 11 page questionnaire had to be captured onto tables. The information, provided in both narrative and numerical data format, was captured onto 14 different tables, which have been included in the report.

5.2.8 Verification of information

In capturing the information onto the tables, a number of queries were raised where the information had been omitted from the questionnaire or where the information did not appear to make sense in terms of the responses provided to other questions. This involved following up with individual courts by telephone to verify the information that had been received. In certain cases the researchers undertook visits to the sites to verify data that had been submitted by prosecutors.

It also became clear that the information received with respect to intermediaries and court preparation officers was inaccurate. This could be due to the fact that prosecutors did not know the answers, or assumed to know, but did not check with these specific officers. For this reason, these questions relating to the number of intermediaries and court preparation officers have not been taken into account in this audit. Instead, lists of these officers were obtained from DoJ&CD and NPA.

5.2.9 Analysis of information

When all the data had been captured and the queries resolved, an analysis of the data was undertaken, and this is presented in the attached tables.

5.3. CHALLENGES

The biggest challenge in conducting the audit was the limited timeframe in which this audit had to be performed. The audit had to be completed



within two months, which fell within the Christmas holiday period when most of the Regional Courts were operating with skeleton staff and many staff members were not available as they were on leave.

It must, however, be noted that, despite this timeframe challenge, the relevant court officials involved in assisting with this audit achieved meritorious results in that all information for the audit was captured for 567 Regional Courts over the Christmas and New Year period.

In addition to the holiday interruption, the DoJ&CD server was off-line for approximately two weeks, which made the dissemination and receipt of questionnaires extremely difficult. It also contributed to a lot of confusion since there was no control over what questionnaires had been received or not.

Consequently this resulted in follow-up calls to determine whether prosecutors had in fact received the necessary questionnaires. Another significant challenge related to the fact that there was no accurate, complete or uniform list of Regional Courts available for the Institute to use as a baseline for the dissemination of questionnaires.

The initial stages of the audit, therefore, were delayed because there was a need to develop a comprehensive list of Regional Courts before the prosecutors could be contacted and the questionnaires disseminated. The most comprehensive list provided was from the NPA's National Overview of Regional Courts Data Sheet, but this had to be verified and updated.

Finally, the audit results were hampered by inaccurate and/or incomplete questionnaires submitted by a number of courts. This meant that courts had to be individually contacted to verify certain information.

5.4. FINDINGS

The findings of the audit are presented in a series of working tables, which have been summarised in narrative form below.

5.4.1 Number of regional courts identified

Having used the list provided by NOC from DoJ&CD and the list given by the NPA as a baseline, 567 regional courts were identified as presently operating in South Africa. This number does not include the Commercial Crimes Courts but does include periodical courts.

5.4.2 Number of courts with no closed circuit television systems

Of the 567 courts identified in the audit, 218 courts do not have any form of closed-circuit television system. However, 176 of these courts hear cases involving sexual offences committed against adult victims while 65 of these courts hear cases involving sexual offences committed against child victims.

5.4.3 Number of courts with fully operational closed circuit television systems

Of the 567 courts identified in the audit, there are 349 courts equipped with closed circuit television systems. Of the 349 courts equipped with closed circuit television systems, 51 systems are not operational. The reasons for non-operation relate to the fact that some televisions are broken, that equipment has been stolen, that equipment has not been connected or has been damaged by rain.

Consequently there are 298 courts that have closed circuit television systems which are fully operational. Although these systems are operational, a number of questionnaire responses reported that the quality of the systems was not of the best. Some complained that the sound was not very good while others had concerns about the clarity of the picture on the television screen.

Some systems are very old with one court still having a black and white television set, while the Palmridge Court reported that the camera was positioned incorrectly so that only the top of the child's head is visible on the screen. Two courts reported that they did not use the closed circuit television systems in their courts, namely Wolseley PC and Fort Beaufort PC. Fort Beaufort did not hear any matters involving



children as they were unable to keep the child separate from the accused before the trial so these cases were transferred to Grahamstown.

5.4.4 Number of televisions operational

Of the 298 courts that have operational closed-circuit television systems, only 23 courts have televisions that comply with the Sexual Offences Court Model, namely that the screen must be at least 42 inches in size. The television screens in 247 of the 298 courts do not comply with these minimum specifications. 28 of the courts did not provide a size for their television screens.

5.4.5 State of testifying rooms

As part of the closed-circuit television system, it is necessary for the court to have access to a testifying room, which is the room from which the child testifies. Although the 349 courts equipped with closed-circuit television systems do have access to a testifying room, in a number of instances these testifying rooms are makeshift and tend to use other available offices.

In a number of courts, the testifying room is the magistrate's office (Schweizer-Reneke PC, Musina RC B, Uniondale PC, Sekhukhune PC, Zastron PC, Aberdeen PC, Fochville PC and Bloemhof PC) which means that the magistrate has to wait in court until the child has vacated the testifying room before he or she can leave the courtroom.

The prosecutor's office is also often used as a testifying room (Upington PC, Humansdorp PC, Ixopo RC 2 Backlog, Port Shepstone RC, Umzimkhulu PC, Eliot PC and Malmesbury PC). In Steytlerville PC, the testifying room is in the security guard's office which also serves as a storeroom and contains old typewriters and heaters.

Some courts simply use an office (Motherwell RC 67, Upington, Ganyesa PC and Eshowe RC B) while other courts make use of the intermediary's office (Sutherland PC and Bloemfontein RC 27), the social worker's office (Lehurutshe PC), the court interpreter's

office (Mount Fletcher PC) and the liaison officer's office (Vredenburg PC and Rustenburg RC 1). The magistrates' tearoom is also used as a testifying room (Ladysmith PC and Bloemfontein RC 29) whereas some courts use the testifying room as a waiting room as well.

5.4.6 Number of Regional Courts with operational closed-circuit television systems having witness waiting rooms

Of the 298 courts that have operational closed-circuit television systems, 137 of these courts have access to at least 1 waiting room for witnesses. The majority of these waiting rooms are shared with adult and child witnesses and the general public. Some of the waiting rooms have multiple functions.

The Motherwell Court in Port Elizabeth uses the waiting room as a storage facility; Roodepoort RC F uses the court preparation officer's office as a waiting room; Kempton Park RC 1 and 2 use the testifying room as the waiting room; Sasolburg has a wendy hut for a waiting room and Pietermaritzburg RC 13, 10 and 7 use a prefabricated room; Mbombela uses the consultation room and Potchefstroom RC 1 uses the intermediary's office.

Of the 298 courts that have operational closed-circuit television systems, only 49 have at least two waiting rooms available for adults and children.

Of the 298 courts that have operational closed-circuit television systems, 106 courts have access to waiting rooms specifically for children. The majority of the waiting rooms have some form of decoration and have furniture that has either been donated by NGOs or old furniture taken from offices in the Department of Justice. Many have requested that the furniture be replaced or that more child-friendly furniture be provided.

5.4.7 Access to Anatomical Dolls

Of the 567 Regional Courts identified in the audit, 190 have some form of access to anatomical dolls. The dolls are either shared amongst courts or owned



by the courts themselves or by NGOS such as the Teddy Bear Clinic. The dolls are not standardized, many are broken or very old, some do not even have genital parts and the majority of the courts only have access to 2 dolls, namely a male and a female.

Some courts report that the some of the dolls are scary and that they upset the children. There are also dolls that have the genitals and pubic hair drawn onto the dolls. 73 courts described the dolls as being in a good condition or as new.

In terms of the Sexual Offences Model, courts should have access to a set of six dolls that comply with certain minimum requirements relating to gender and age of the dolls. The set must comprise a male and female child, a male and female adult and an older male and female adult. Only 30 courts have access to full sets of dolls.

5.4.8 Feeding scheme available for child witnesses

There is no official feeding scheme available for children in any of the courts. However, a number of courts have made their own internal arrangements to provide the children with something to eat and drink. Forty-three (43) courts provide the children with some form of nourishment while they wait at court.

The children are given either water, juice, tea or soda to drink and food includes bread, noodles, cereal, pies, burgers, biscuits, chips, fruit or sweets. The food is provided by prosecutors, court preparation officers, intermediaries and other court officials who donate money. In some courts the witness fees are made available to the parents early so that food can be purchased and the court preparation officer oversees this process.

Some private companies, like Spar, Wimpy, Bokomo, Pick n Pay and other private donors donate food for the children and NGOS, like RAPCAN and Teddy Bear Clinic also provide food for the children. The Welkom courts highlighted that this was a particularly difficult

task as they were not allowed to bring food into the court building and had to get special permission to do so.

5.4.9 Restrooms available

Since all the courts have public toilets available, the children have access to these. However, the prosecutors have pointed out that the majority of these toilets are not in a state fit for children. For that reason, some prosecutors have organised for the children to make use of the staff toilets. Only 48 courts (of the 567 Regional Courts) have a specific toilet that has been designated for the use of the child. Twenty-seven (27) of these toilets are described as being in a poor or bad state, 9 are satisfactory while only 12 have been described as being in a good state.

5.4.10 One Way Mirrors

Seventy-three (73) courts are equipped with one-way mirrors. One of these mirror systems is inoperable as the sound system has not been installed (Sekgosese RC) while 2 others are problematic in that the mirror is totally see-through (Harrismith RC and De Aar RC) and is not soundproof.

5.4.11 Access to DVD machines

Of the 567 Regional Courts that took part in the audit, only 45 have access to a DVD machine. Of this number, 1 is broken, 1 has never been connected and 2 share with another court. In one instance, the prosecutor reported that the investigating officer brought a DVD player to court if they needed one.

5.4.12 Maintenance of CCTV equipment

The maintenance of the CCTV equipment in the courts was clearly an area of concern. Of the 349 courts equipped with closed circuit television systems, 123 courts experienced problems with the maintenance thereof.

Sixty-seven (67) Courts noted that it took too long for repairs to be effected and that there were long delays in obtaining assistance. Krugersdorp RC 2 reported that the court sits for weeks and sometimes even



months without equipment being repaired. Ixopo RC in Port Shepstone also reported that their problems were not attended to for months. The Vanderbijlpark RC highlighted the problem by explaining that the relevant company does not repair the equipment without a purchase order, which must be issued by the regional office. It can take up to 3 weeks to issue the purchase order which results in severe delays.

Temba RC F at Odi complained that suppliers were approved on the quotes supplied which meant that different suppliers were used who did not have a history of the faulty equipment or the repairs already conducted and there was an instance where one supplier refused to maintain the equipment of another supplier.

Eighteen (18) Courts complained that there was no regular maintenance of equipment. In fact, only 4 courts reported that their equipment was regularly maintained. Pretoria RC said that their equipment was regularly maintained and that they experienced no problems; Polokwane RC B said that the equipment was checked on a weekly basis and they experienced no problems; Scottsburgh RC had their equipment serviced every 6 months and Elliot RC in Queenstown remarked that they received excellent service.

5.4.13 Who maintains CCTV equipment?

There was clearly very little knowledge on the part of the court role-players as to who was responsible for maintaining the CCTV equipment. Of the 298 courts that have operational closed-circuit television systems, the following statistics emerged:

- 5 said nobody maintained the equipment;
- 49 did not know who maintained the equipment;
- 100 responded that DOJ was responsible;
- 21 said that the Help Desk was responsible;
- 36 said that externally appointed consultants were responsible;
- 1 replied that it was the responsibility of Public Works;

- 53 said that the court or office manager was responsible;
- 22 gave this responsibility to the clerk of the court; and
- 11 said that technicians were responsible but did not elucidate as to whom these technicians belonged.

5.4.14 Description of chairs available for child in testifying room

The respondents were asked to describe the chair that the child used in the testifying room. This question was included in the audit since there had been many complaints that the children were expected to sit on uncomfortable, adult-sized chairs when they testified. Three hundred eighteen (318) of the 349 courts equipped with closed circuit television systems described the chair which the child used in the testifying room. Only 36 courts have child-sized or child-friendly chairs (35 small plastic chairs and 1 beanbag). The chairs were described as follows:

- | | |
|--|-----|
| • Wooden benches: | 8 |
| • Normal office chairs: | 190 |
| • Interpreter high chair: | 2 |
| • Sofa or couch: | 44 |
| • Wood or metal chairs: | 5 |
| • Option of either a chair or a couch: | 1 |
| • Normal plastic chair: | 6 |
| • Sleeper couch: | 4 |
| • No chairs: | 2 |
| • Soft, cushioned armchair: | 20 |

5.4.15 Furniture available in testifying room

Three hundred twenty-six (326) Courts provided feedback on the furnishing available in the testifying room. Two hundred thirty-four (234) courts reported that they had some kind of child-friendly furniture in the testifying room, although sometimes this only amounted to a few toys or a plastic table. Forty-two (42) courts simply had office furniture in them, and



this makes sense in view of the fact that in a number of courts, offices were used as testifying rooms. Fifty (50) courts reported that there was no furniture in the testifying room except for the chairs on which the child and the intermediary sat.

5.4.16 Ventilation of testifying room

One of the concerns raised about the present testifying rooms in earlier discussions and at site visits was the need for adequate ventilation in these rooms. As a result, this was included in the questionnaire. From the audit findings, it is clear that adequate ventilation is a concern with only 107 of the 327 courts having access to air conditioners, 13 of which are broken. This means that only 94 testifying rooms have operational air conditioners.

One hundred fourteen (114) testifying rooms have only windows for ventilation but the majority of these cannot open the windows, either because they are too high or because the noise is too great when the child is testifying. Ninety-nine (99) testifying rooms have no ventilation at all while 7 have access to portable fans. The situation in Welkom RC P was so dire that a defence attorney sponsored a fan after a child fainted during evidence. Unfortunately, this fan was subsequently stolen.

5.4.17 Child-friendly décor in testifying room

One hundred sixty-one (161) testifying rooms have some form of child-friendly décor. This could be in the form of paintings on the walls, murals, pleasant colours or furniture. Many, however, have complained that the décor is very old and needs to be replaced. One hundred sixty-six (166) testifying rooms have no child-friendly décor at all.

5.4.18 Toys in testifying room

One hundred fifty-five (155) courts reported that there were toys in the testifying rooms while 184 reported that there were no toys in the testifying rooms since these tended to distract the child.

5.4.19 Waiting rooms for children

One hundred thirty-four (134) courts have waiting

rooms specifically for children, although a severe limitation here is that many courts allow adults to use these waiting rooms if the need arises. Eighty-eight (88) waiting rooms have some form of child-friendly décor, although prosecutors have pointed out that this décor is very outdated and needs to be replaced. Forty-six (46) of these courts do not have any décor at all.

Some courts have made innovative attempts to assist children by using a wendy hut as a waiting room and Odi Regional Courts make use of a caravan where the children can sleep, play and watch television. This room has a mini fridge, a bunker bed with an old mattress, a couch, microwave, plastic chairs and tables.

5.4.20 Place for child to sleep

Of the 567 regional courts that took part in the audit, 493 do not have any place for the child to sleep. There are sofas available in 49 courts, mattresses in 10, 5 have beds and 8 courts reported that the children sleep on the floor. One court said that there was a spare office in which the child could sleep and in another, the child used the intermediary's office.

5.4.21 Adult waiting rooms

One hundred twenty-six (126) courts have access to adult waiting rooms, although the vast majority of these are public waiting rooms and are not specifically allocated to victims of sexual offences. Of the 126 adult waiting rooms available, 116 have no specific décor for adults. Sixty-six (66) have some chairs or couches while 49 only have wooden benches.

5.4.22 Signage indicating Sexual Offences Courts

Only 34 courts have signage available indicating directions to and/or directions on court doors for the Sexual Offences Courts.

5.4.23 Offices available for prosecutors

Three hundred fifteen (315) prosecutors have access to their own office while 257 either share an office or do not have access to any office. For instance, many prosecutors use the courtroom as their office and



consult with the witnesses in the courtroom (Port Alfred PC, Aberdeen, Schweizer-Reneke, Standerton etc.) while others use the testifying room as an office (Ekangala PC, Praktiseer PC, Bedford PC, Kathu PC etc.). In Frankfort PC, Villiers PC and Vrede PC the prosecutor sits in the cash hall. Some prosecutors share offices with up to 6 prosecutors at a time.

5.4.24 Computers available for prosecutors

Two hundred seventy-three (273) prosecutors have access to their own computers, while 232 do not. Sixty-seven (67) prosecutors share computers or have access to someone else's computer. Of the 273 prosecutors who do have access to computers, 14 are broken while 5 reported that they did not have connections or access to the internet. Prosecutors who do not have their own computer share with other court staff or they use their personal laptops.

5.4.25 Offices available for intermediaries

Ninety-two (92) of the regional courts that took part in the audit have offices available for intermediaries. Those intermediaries who do not have offices available use the waiting room, the consultation room, the testifying room, share with the court preparation officer or simply wait in the passage.

5.4.26 Computers available for intermediaries

Fifty-six (56) intermediaries have access to their own computers while 58 share with another court official.

5.4.27 Offices available for court preparation officers

One hundred ninety-nine (199) courts have offices available for court preparation officers while others use waiting rooms, courtrooms, the office of the prosecutor and even the kitchen (Bloemhof PC).

5.4.28 Computers available for court preparation officers

One hundred seventeen (117) court preparation officers have access to computers, although 9 of these are broken, while 49 share a computer with another official.

5.4.29 Human Resources available

Of the 567 Regional Courts, 563 courts have access to magistrates, prosecutors and interpreters. Only 4 courts do not have access to these personnel.

5.4.29.1 Magistrates

Each regional court has access to a magistrate except for 6 courts. These are:

- Pretoria RC 13
- Mdantsane RC 3
- Tembisa RC 1
- Pretoria RC 17
- Johannesburg RC 21
- Mqanduli PC.

5.4.29.2 Prosecutors

One hundred forty-eight (148) courts have access to 2 prosecutors. However, these are not 2 prosecutors dedicated to sexual offences as required by the Sexual Offences Court Model. These are either relief prosecutors or circuit prosecutors or those used to fill existing vacancies. The movement of prosecutors is fluid with prosecutors being moved to where they are needed.

5.4.29.3 Interpreters

Each court has access to an interpreter except in the following courts, according to the information supplied by the prosecutors:

- Pretoria RC 13
- Goodwood RC 5 Parow
- Goodwood RC 3
- Mdantsane RC 3
- Tembisa RC 1
- Pretoria RC 17
- Brakpan PC
- Johannesburg RC 21
- Paarl RC PSB
- Mqanduli PC.



5.4.29.4 Dedicated court clerks

Eighty-five (85) courts do not have access to dedicated court clerks, but rather share clerks with other courts.

5.4.29.5 Social workers

One hundred eighty-seven (187) courts have access to social workers.

5.4.29.6 Non-Governmental Organisations

Only 75 courts have access to the services of NGOs.

5.4.29.7 Legal Aid officers

All courts have access to legal aid officers. There

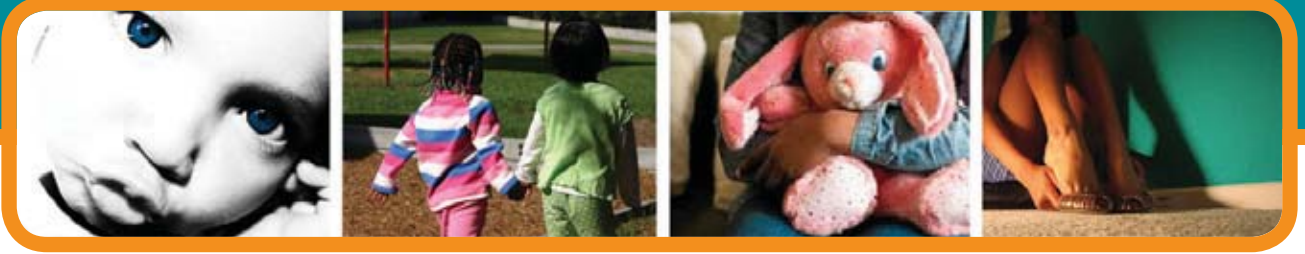
may not necessarily be a particular legal aid officer dedicated to each court since in the smaller centres legal aid officers are available on certain days of the week.

Where legal aid officers are not available in the smaller towns, Legal Aid makes use of attorneys in those towns so all courts have access to Legal Aid.

5.5.CONCLUSION

The above is a summarised version of the data collected from the audit. The report contains the individual tables for each question posed in the questionnaire.







Chapter 6:

THE PRELIMINARY COSTING OF THE SEXUAL OFFENCES COURTS





CHAPTER 6:

THE PRELIMINARY COSTING OF THE SEXUAL OFFENCES COURTS

6.1 THE PRELIMINARY COSTING OF A ZERO-RESOURCED SEXUAL OFFENCES COURTROOM AND ITS FACILITIES

The Chief Directorate: Legislative Costing conducted the preliminary costing of the proposed Sexual Offences Courts model based on a zero resourced court, and provided the following:

Sexual Offences Courts: Draft Cost Per Courtroom

Two-way closed circuit TV
Monitor
Large screen monitor
Monitor - testifying room
Camera - testifying room
Camera - court room
Microphone - testifying room
Microphones

TOTAL 34,841

Testifying room

Couch 5800
Chairs (3) 2700
Table 1500
Blinds 3000

Children's waiting room

Armchairs (2) 5000
Seating for children 7900
Table 1500
Couch 5800
Toys 2000

Adults waiting room

Blinds 3000
Couch 5800
Arm chairs (2) 5000
Table 1500
Anatomical dolls 1900

TOTAL ASSET COST 87,241

Human Resources

Presiding officer (Magistrate) 639,256
2 x Prosecutors 936,414
Intermediary 177,241
Interpreter 117,101
Designated court clerk 117,101
Designated social worker 221,552
Legal aid practitioner 468,207
Court preparation/
victim support officer 177,241

TOTAL ANNUAL HUMAN RESOURCE COST 2,854,113

SEXUAL OFFENCES COURTS - DRAFT COSTING COST PER COURTROOM

ITEM	YEAR 1	YEAR 2	YEAR 3
Assets	87,241	0	0
Human Capacity	2,854,113	2,999,673	3,146,657
Operational Costs	713,528	749,918	786,664
Total cost	3,654,883	3,749,591	3,933,321

It must, however, be noted that this is a preliminary costing that is based on a courtroom that has zero resources. The Resource Audit has shown thus far that many regional court courts do have adequate human resource capacity that could assist in the Sexual Offences Courts.

It has also been found that most of the regional courts that have been audited do have the CCTV systems, intermediaries, furniture and toys that could be used when re-establishing the Sexual Offences Courts.



Chapter 7:

FINDINGS AND RECOMMENDATIONS





CHAPTER 7:

FINDINGS AND RECOMMENDATIONS

7.1 FINDINGS

The MATTSO, after numerous deliberations and an analysis of the available research indicated above and in the report, made the following findings:

1. There are sufficient grounds and a compelling need for the re-establishment of the Sexual Offences Courts and these courts are in line with the ethos of the objects of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which seek to afford complainants of sexual offences the maximum and least traumatising protection.
2. The re-establishment of the Sexual Offences Courts will reinforce the establishment of a victim-centred court system that is prompt, responsive and effective. From the research studies, these courts were found to be successful in the establishment of a victim-centred criminal justice system, reduction of secondary victimisation, improvement of skills of court personnel, reduction of the cycle time in the finalisation of sexual offences cases, and have generally contributed to the efficient prosecution and adjudication of these cases.
3. Internationally, South Africa is at the forefront of developments with respect to specialized sexual offences courts that adopt a victim-centred approach. It has been found that most of the specifications of the Blueprint for Sexual Offences Courts are still recognised as an international best practice model, and therefore ought to be retained.
4. The lack of a dedicated budget for the establishment of the Sexual Offences Courts was the major contributor to the inequitable resourcing of these courts and their low visibility in rural communities. However, in certain areas, it was the lack of space in the court building that led to less provision of resources like adult witness waiting rooms, private testifying rooms and intermediary offices. In some courts, it was found that offices of the magistrates or storerooms were used interchangeably as testifying rooms.
5. The process of the establishment of the Sexual Offences Courts was inherently flawed and the implementation was not adequately structured and did not follow an all-inclusive consultative approach in certain areas.
6. The fact that there was no enabling statutory provision for the establishment of the Sexual Offences Courts discouraged uniformity in the process of their establishment and operation, and also received less or no support from other stakeholders. This position still exists and will need to be attended to as soon as the Minister takes a decision to re-establish the Sexual Offences Courts. However, the Department has already prepared a draft amendment to address this gap.
7. Since the demise of the Sexual Offences Courts, a different breed of Dedicated Sexual Offences Courts has been in operation nationwide. These are regional courts that give priority to sexual offences cases, but operate on mixed court rolls. In other words, as soon as the sexual offences court roll collapses, these courts deal with cases of other offences. Like the Sexual Offences Courts, they are not backed by a specific legal framework, but are courts mainly based on a case flow management decision made by the Regional Court Presidents Forum. The existence of these courts represents the on-going endeavour by the Department of Justice and Constitutional Development to establish and maintain a victim-centred approach in the adjudication of sexual offences cases.
8. There are various specialized/ dedicated victim support services and one-stop centres, like the



NPA's Thuthuzela Care Centres, the DSD's Khuseleka One Stop Centres, and SAPS Family Violence, Child Protection and Sexual Offences Units (FCS), which are established and managed by different government department/institutions, mainly to reduce secondary victimisation and improve services within the criminal justice system.

These are some of the commendable innovations undertaken in South Africa to address the scourge of gender-based violence. However, these centres operate without a common guiding policy to ensure the coordination and sustainability of services and resources; hence some are currently in a brink of closing down. There is a need of a policy framework that will determine how these centres must function to optimise the performance of the Sexual Offences Courts. However, these services form part of the criminal justice process and feed the courts. Thus these linkages reinforce the compelling need for the re-establishment of the Sexual Offences Courts.

9. Most of the systemic challenges that led to the demise of the Sexual Offences Courts are still in existence, and will therefore have serious implications on the re-establishment of the Sexual Offences Courts, if not addressed. These include:
 - a. Lack of adequate space in the court buildings to establish the Sexual Offences Courts and their facilities;
 - b. Lack of guiding procurement specifications and maintenance framework for court equipment and resources for the testifying rooms, waiting areas and other facilities;
 - c. Lack of a specialisation framework for the prosecution and adjudication of sexual offences cases. Victims of sexual offences have special needs that require special services that can only be rendered by specialists in this field. There is, therefore, a need to consider the creation of specialist

posts for sexual offences.

- d. The existing case flow management can add tremendous value to the management of sexual offences cases in our courts if its operational gaps are addressed. For instance, the early collapse of sexual offences court rolls often leads to low court hours, which works against the expected court performance standards;
 - e. The rotation of presiding officers poses a significant challenge in that some presiding officers do not remain in these courts for any length of time. This creates enormous delays in the finalisation of cases, particularly the partly-heard cases of sexual offences;
 - f. Due to a lack of debriefing programmes, many court officials suffered from vicarious trauma¹⁴⁰;
 - g. Limited training programmes and lack of a dedicated budget for multi-disciplinary training initiatives contributed to the reduced performance of these courts;
 - h. There are inherent interdependencies in the criminal justice system that often cause serious delays in the finalisation of these cases.
 - i. The lack of a feeding scheme for child witnesses often contributes to children not performing optimally and can sometimes lead to the postponement of cases. To circumvent this scenario, many court officials provide food for children out of their own earnings.
 - j. Inadequate support services are available for LGBTI persons and victims with disabilities.
10. The Resource Audit showed that out of 567 courts sitting as regional courts (including circuit courts),

¹⁴⁰ Vicarious trauma is the trauma suffered indirectly from having to be involved in dealing with the trauma of another. In the case of presiding officers, it refers to the trauma that they would experience from having to hear the details of the crime and the emotions of the people involved.



49 courts are resourced closest to the Sexual Offences Model in that they have at least two waiting rooms available. One hundred six (106) courts are also resourced close to the Model in that they have a waiting room specifically dedicated to child witnesses but do not necessarily have a second waiting room. The audit further revealed that many of these courts are capacitated with the required human resources, e.g. the regional magistrate, prosecutor, intermediary, interpreter, and court operations clerk.

11. The Department has identified 57 courts for the immediate upgrading to comply with the Sexual Offences Model.

7.2 RECOMMENDATIONS

From the series of investigations conducted, the Task Team acknowledges the need for the re-establishment of the Sexual Offences Courts, although there are still a number of investigations and processes that need to be undertaken. However, this should not be seen as a factor delaying the implementation of the Sexual Offences Courts, as they may be established parallel to further investigations. With this in mind, the Task Team makes the following recommendations THAT:

1. In view of the findings listed above, the Sexual Offences Courts must be re-established either as Sexual Offences Courts or Hybrid Sexual Offences Courts. A Sexual Offences Court is defined as a regional court that deals exclusively with cases of sexual offences, while a hybrid Sexual Offences Court may be established in court buildings where space is a serious challenge. The Hybrid Sexual Offences Court is defined as a regional court dedicated for the adjudication of sexual offences cases in any specified area. It is a court that is established to give priority to sexual offences cases, whilst permitted to deal with other cases. However, it must be noted that the concept of the Hybrid Sexual Offences Courts is considered as an interim measure to ensure access to justice to all witnesses where the local court building cannot accommodate all the features of the Sexual Offences Court Model or the number of sexual offences do not justify an exclusive court roll of sexual offences. There must, therefore, be a progressive establishment of the Hybrid Sexual Offences Courts into Sexual Offences Courts.
2. The use of the terms, 'Specialist Sexual Offences Court' and 'Dedicated Sexual Offences Courts' should be discontinued in view of the inconsistencies in the international understanding and the use of the word 'specialised'. It is therefore recommended that the term 'Sexual Offences Court' be consistently utilised when reference is made to the sexual offences courtroom and its accompanying facilities.
3. The existing Dedicated Sexual Offences Courts must be upgraded into Sexual Offences Courts established in terms of the Sexual Offences Court Model.
4. The Department must give priority to the immediate upgrading of the 57 regional courts that have been identified as being resourced closest to the Sexual Offences Court Model. This upgrading process must be done against available resources, and must commence in the 2013/2014 financial year. The rest of the identified regional courts must be progressively resourced into Sexual Offences Courts over a period of ten years, which will commence in April 2015.
5. The costing of the implementation of the Model must be finalized. It must be done against the available resources identified from the Resource Audit, and must also consider the operational and maintenance costs.
6. The Department is advised to secure a dedicated and adequate budget from the National Treasury to realise the speedy establishment of these courts. Furthermore, since the provision of



specialized services is cost intensive, political support is required to ensure appropriate budget allocations.

7. The Department must finalise the amendment of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, to provide an enabling provision for the establishment of Sexual Offences Courts, and for matters related thereto. However, this must not delay the initial establishment of the 57 regional courts that have been identified as resourced closest to the Sexual Offences Court Model. In the interim, it is recommended that these courts be dedicated as Sexual Offences Courts by the Chief Justice in consultation with the Minister. This is to ensure that immediate relief services are brought to the victims to improve response to the rising levels of sexual violence in South Africa. As soon as the amendment of the Act is finalised, the Minister may designate these regional courts as Sexual Offences Courts in terms of the enabling provision of the amended Act.
8. The enabling legislation must make provision for the necessary Regulations to guide the designation and resourcing of the sexual offences courts.
9. An investigation must be conducted to determine the feasibility of merging the various specialised/ dedicated victim support services and one-stop centres, like the Thuthuzela Care Centres, the Khuseleka One Stop Centres and SAPS Family Violence, Child Protection and Sexual Offences Units (FCS) centres into a model one-stop centre that will function to optimize the performance of the Sexual Offences Courts.
10. The Sexual Offences Court Committee must be established at national, regional and local levels to ensure an all-inclusive consultation with governmental and non-governmental stakeholders in the re-establishment of the Sexual Offences Courts. This Committee must function as the sub-committee of the Directors-General Intersectoral Committee for the Management of Sexual Offences.
11. This Committee must be given limited time to upgrade the Hybrid Sexual Offences Courts into fully-fledged Sexual Offences Courts, working in conjunction with the Provincial and Local Sexual Offences Court Committees. This is to ensure that the Hybrid Courts do not become the permanent feature of the court system to encourage the inequitable distribution of services.
12. A feeding scheme for child witnesses must be investigated for possible introduction in these courts and be properly costed.
13. Case Flow Management for Sexual Offences Matters must be explored by the Regional Court Presidents Forum to address the current flaws in the system. This process must be undertaken in consultation with the relevant stakeholders.
14. An integrated monitoring and evaluation framework must be developed to ensure the effective and efficient intersectoral management of the Sexual Offences Courts. This framework must set out performance standards for the intersectoral management of sexual offences to ensure heightened accountability amongst stakeholders. These standards must form part of the National Policy Framework for Sexual Offences. They must also determine the case cycle time from the time of reporting up to the finalisation of the case in court. The performance of each stakeholder participating in the value chain of sexual offences must be assessed against a quantitative measure of time calculated from the time the case is received up to the time the stakeholder function is finalised in relation to such a case. This approach will contribute in the speedy finalization of the case.
15. A SAQA accredited training programme must be developed and its implementation must



be ongoing. This training must include the Integrated Sexual Offences training programme so as to strengthen coordination and support between stakeholders. Court Personnel must also be trained on how to deal with cases involving persons with disabilities. Debriefing programmes must be regularly offered to court personnel.

16. The creation of specialist posts for personnel in the Sexual Offences Courts must be explored in an attempt to ensure the sustainable skills capacity. An investigation into the ambit of the roles and functions of the intermediary must be undertaken to ensure the creation of permanent posts for intermediaries. This investigation must include the feasibility of extending the function of court preparation to intermediaries so as to increase the scope of their work.

7.3 CONCLUDING REMARKS

Even though the report recommends the re-introduction of the Sexual Offences Courts in South Africa, more investigations still need to be

undertaken to ensure that what did not work in the past is not repeated. The Task Team found the NPA Blueprint for the Establishment of Sexual Offences Courts still relevant and globally-competitive in many areas. This finding therefore clearly indicates that the major challenges that contributed to the demise of the Sexual Offences Courts could not be considerably linked to the model per se, but were as a result of a flawed implementation process.

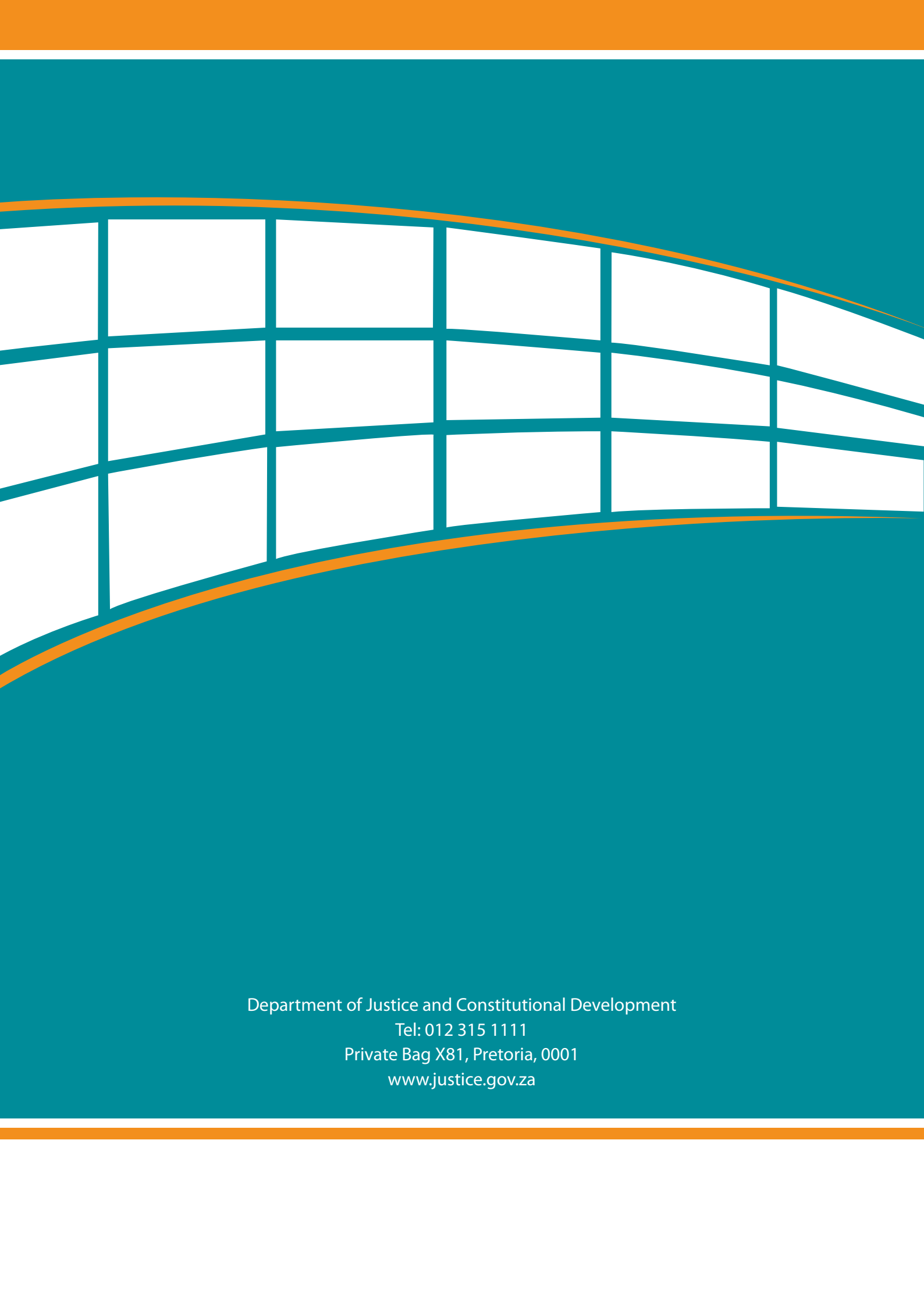
The fact that many of the barriers that derailed the implementation process are still a feature of the court system highlights the need for extra caution, exhaustive investigation and incontrovertible planning before the process of re-establishment commences.

This is to ensure that the gaps of the past are adequately addressed to circumvent the replication of failure. However, the experiences of the existing Dedicated Sexual Offences Courts ought to be seen as a valuable guide to the upgrading process, and will certainly ease pressure on resources to a certain extent.



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Department of Justice and Constitutional Development
Tel: 012 315 1111
Private Bag X81, Pretoria, 0001
www.justice.gov.za