Improving Case Outcomes for Sexual Offences Cases Project

Pilot Study on the Sexual Offences Courts

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This research has been made possible with the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of the Gender Health and Justice Research Unit and do not necessarily reflect the views of USAID or the United States Government.

Suggested citation: Heath, A., Artz, L., Odayan, M. and Gihwala, H. (2018) Improving Case Outcomes for Sexual Offences Cases Project: Pilot Study on Sexual Offences Courts. Cape Town, South Africa. Gender Health and Justice Research Unit

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CONTENTS

CONTENTS / LIST OF FIGURES / LIST OF TABLES

LIST OF FIGURES

LIST OF TABLES	

ACKNOWLEDGMENTS

This study would also have not been possible without the assistance and hospitality of the court personnel at the sexual offences courts we visited. The court personnel and their supervisors in all three of our pilot provinces gave generously of their time, patience and knowledge during our study and for that we are humbly grateful. In addition, many thanks to the staff and supervisors in the three Thuthuzela Care Centres for their time and expertise. To all the prosecutors, magistrates, court preparation officers, court intermediaries, court managers, court clerks, interpreters, forensic doctors and nurses, social workers, counsellors, victim support officers, case managers and site co-ordinators as well as the NGO court support staff at the five courts we thank you; you have breathed your own words and experiences into this report and brought it to life.

We are indebted to the inputs of stakeholders who we consulted from the conceptualisation to finalisation of this first part of our three-year study and who provided invaluable inputs. From the Department of Justice and Constitutional Development we would like to thank: Advocate Praise Kambula, Advocate Ooshara Sewpaul, Ms Shirley Magona, Mr Vezi Nhlanhla, Ms Mmaphuti Moelfe, Advocate Matsebe, and Mr Malema. We also wish to thank Advocate Thoko Majokweni, Advocate Pierre Smith and Advocate Joey Mabote from the Sexual Offences and Community Affairs (SOCA) unit of the National Prosecuting Authority (NPA SOCA). In addition, we are most grateful to the support and participation of the Regional Court Presidents Forum with particular reference to Regional President of Limpopo, Ms Jakkie Wessels; Regional President of Kwa Zulu Natal, Mr Eric Nzimande; Regional President of Gauteng, Mr Modibedi Djaje and Regional President of Mpumalanga, Ms Naomi Engelbrecht.

We acknowledge the important contribution of the following colleagues in collecting data for this study: Hayley Galgut, Zamantungwa Khumalo, Leanne Bailey, Adam Kirschner and Tarryn Husband. We acknowledge the contribution of our colleagues who assisted with the editing and reviewing of the report: Assoc. Prof Alex Muller, Kristen Daskilewicz, Talia Meer, Ruth Eliot. Thanks also to Lauren Baerecke from NACOSA who assisted with editing and writing our executive summary.

Special thanks to our Advisory panel who peer reviewed this report which included representatives from: The Women's Legal Centre, Institute for Child Witness Research and Training, Childline Western Cape, Dr Genine Josias, Legal Resources Centre, The Triangle Project, Joy Watson, Cape Mental Health, Rape Crisis Cape Town Trust and NACOSA.

We extend special thanks to the Deputy Minister of Justice, Mr John Jeffery, who has been supportive of this project and has assisted us greatly in finalising this report.

EXECUTIVE SUMMARY

The Gender Health and Justice Research Unit (GHJRU) at the University of Cape Town (UCT) was contracted by the United States Agency for International Development (USAID) in partnership with the Department of Justice and Constitutional Development (DoJ&CD) to conduct a pilot project to pursue the overarching objective of improving case outcomes for sexual offence cases in piloted sexual offences courts and catchment areas.

High levels of sexual violence against women and children in South Africa pose significant risks to the health and well-being of its citizens and have far-reaching consequences at a socio-political and economic level. The South African Government, with assistance from the United States Government, has made considerable efforts to address gender-based violence through legislative reform and the establishment of dedicated judicial instruments to investigate and prosecute sexual offences cases. However, many studies conducted over the last decade have highlighted that the implementation of the laws to deal with sexual offences has remained a challenge.

Hence, the Improving Case Outcomes for Sexual Offences Cases Pilot Project (ICOP) aims to identify evidence-based best practices to improving the functioning of the pilot Sexual Offences Courts, improve case flow management, and provide justice sector officials in the pilot courts with the necessary knowledge and skills for improving justice services to sexual offences survivors, particularly for vulnerable groups and LGBTI persons. Through effective governance mechanisms and intersectoral collaborations supported by this project, it is envisaged that these evidence-based best practices could be replicated by the Justice Cluster stakeholders in other SOCs beyond this project.

Purpose and Objectives

ICOP recognises that local realities, social dynamics and institutional arrangements must be considered for interventions to succeed. The purpose of the baseline survey was to ensure a context-relevant, responsive, and pragmatic approach to the proposed project interventions to improve the management of pilot sexual offences courts at each project site. Specifically, the objectives of the baseline study were

- To determine the current, average turnaround time for sexual offences cases from reporting to judgment and sentencing; [1]
- To identify 'bottlenecks' in the process, locate delays in case flow and the reason for such delays; and
- To make recommendations for addressing 'bottlenecks' through interventions to enhance case flow and thereby improve the turnaround time of cases together with conviction rates

While the findings from the baseline provide a basis for analysing the efficacy of the sexual offences courts and support strategies for determining appropriate case management, simply streamlining case-flow systems will not guarantee improved conviction rates. Other capacity and knowledge-building exercises must be employed to enhance service provision and survivor outcomes.

References

1 The project terms of reference refers to "turnaround times" from reporting to judgment/ disposal but does not define what the term "reporting" refers to or suggest methodology for obtaining such information. The chpater on methodology clearly defines the dates from which reporting to judgment is measured.

Methodology

The baseline made use of a purposive sampling method. The table below outlines the three primary sites that were assigned to the GHJRU for the ICOP project by the DoJ&CD, along with two additional subsidiary sites identified through an initial project court mapping exercise[2].

Province	District	Court, location	Subsidiary sites	TCC
Gauteng	City of Johannesburg	1. Protea Magistrates Court, Soweto	-	Nthabiseng TCC, Chris Hani Barag-wanath Hospital
KwaZulu-Natal	eThekwini	2. Durban Magistrates Court, Durban	3. Umlazi Magis-trates Court	Umlazi TCC, Prince Mshiyeni Memorial Hospital
Mpumalanga	Ehlanzeni	4. Tonga Magistrates Court, Nkomazi	5. Boschfontein Magistrates Court	Tonga TCC, Tonga Hospital

The **baseline study** was conducted over a four-week period in August and September 2016 across the five sites and was informed by three key sources of data.

(i) ***Statistical analysis:*** Quantitative case flow data was collected through a retrospective case file review of finalised sexual offences cases with the use of a case data collection tool developed for the project. Over 400 case files were analysed to collect data on average turnaround times from the date of arrest to the date of the final judgment, reasons for postponements, the relationship between types of charges and sentencing, the reasons for withdrawals or convictions and various other factors that influence the life cycle of the sexual offence case.

(ii) ***Qualitative analysis:*** Experienced researchers conducted *in*-depth qualitative interviews with high-level provincial stakeholders and court actors, using semi-structured interview guides developed to reflect the conceptual framework of the ICOP ToR. Key questions were asked across all interview schedules and additional questions addressed specific themes for each court actor or stakeholder. All court staff interviewed were part of a proposed and approved schedule of interview respondents but all interviews were arranged on site depending on availability of court personnel and the court roll. In total, the team interviewed 53 stakeholders and court actors including high-level stakeholders (5 national and 8 provincial), regional magistrates (7), prosecutors (7), intermediaries (5), interpreters (5), court preparation officers (4), social workers, and other staff from TCCs (12). The interviews resulted in over 200 hours of audio recordings and 1190 pages of interview transcripts that were coded and analysed by theme. The data was then analysed for commonality and differences in descriptive topics, and central ideas across interviews

(iii) ***Court observation:*** Permission was obtained from senior court personnel and court managers for the research team to conduct an observation of sexual offences cases that were being heard. This researcher observed the proceedings, completed an observation checklist sheet to observe certain aspects of the trial and took additional observational notes for each sitting.

(iv) ***Meta-analysis and systematic review of existing research:*** The data collected at the sites was supplemented by a meta-analysis of existing data available on SOCs, research reports and current indicators used by DoJ&CD and NPA relating to the SOCs. In addition, the team conducted a systematic desktop analysis and audit of existing statistics on sexual offences from each stakeholder.

The UCT Faculty of Health Science Human Research Ethics Committee approved the research protocol and tools and the research team adhered to all necessary consent and ethical considerations during the research process.

Findings

1. Turnaround times and successful outcomes of sexual offences cases

> "Let's not make this about numbers, especially when it comes to sexual offences, let's make it about the actual victims that you deal with." [Senior Stakeholder from NPA]

Traditional indicators of success in the criminal justice system in the form of conviction rates and finalisation rates do not give a true reflection of the work involved in sexual offences cases,[3] the way it has been dealt with at court or the experiences of complainants with regards to service provisions and their overall satisfaction with the outcomes of their cases. The prosecution and the judiciary expressed discontent at being held accountable to these traditional indicators and commented on the pressure it puts on them to finalise or withdraw cases.

This was supplemented by quantitative findings. Of the case files examined as part of the baseline study,

- The turnaround time from arrest to judgment/sentencing ranged between 1 month and 64 months, with an average of 9.1 months. However, of those cases finalised within the average of 9.1 months, 65.2% were struck off the roll or withdrawn. [4]
- The convictions obtained within 0-9 month were mostly from cases where the accused plead guilty where swift convictions are easy to obtain.
- Most cases (90.5%) were finalised within 18 months.
- Importantly, a total of 91.8% of those cases that ended in convictions were finalised within 18 months, with 34,5% of convictions taking place for cases that take between 10 and 18 months to finalise.

When taken in isolation, statistics can tell a story about good conviction rates and swift finalisation – as standard indicators of measurement – but fail to reveal other dimensions of case finalisation.

Court actors are generally succeeding to finalise child cases quickly so as not to traumatise the child through prolonged cases.

- Of those cases when the complainant was 0-8 years old, 45% were finalised in 0-9 months with a further 37.5% of the cases being finalised by the 18-month mark.
- Of those cases where the complainant was 8-12 years old, 35.7% of cases were finalised within 9 months with an additional 42.9% of cases finalised at 13 – 18 months.
- Of those cases where the complainant was 13-18 years old, the finalisation rates at 9 months was only 13.3% but the largest proportion of cases are finalised at 13-18 months (33.3%).
- A large proportion of child cases are also being finalised in 13 – 18 months, and currently fall outside the NPA's recommended 9-month turnaround time.

References

2 It must be noted that the pilot courts chosen by the DoJ&CD for the ICOP project are not reflective of the various structures and contexts that the SOCs across the country are currently situated and therefore do not allow the recommendations that evolve from these findings to be applicable to diverse court structures and settings across provinces, districts and localities.

3 The current target is 70 – 90%.

4 The current target is 9 months.

Guilty pleas result in a quicker case finalisations but are not considered when assessing the performance of prosecutors.

- 80% of those cases where a plea of guilty was entered were finalised in 0-9 months, with 84.9% of the cases where the plea was not-guilty taking greater than 9 months to be finalised, with 33.3% of the cases being finalised within 18 months.

There are currently no means and methods to break down the turnaround times by stakeholders to calculate how much of that case turnaround time is attributable to prosecutors, social workers, court preparation, prosecutor consultations, reinvestigations and bench hours as the data needed to calculate this is not recorded by actors in that manner and is impossible to decipher rom case files and other records. What this analysis shows is that even if one had the data which could breakdown a time period by actor, it would not give an accurate picture of time spent on individual cases as well as composite cases. The research shows that alternative indicators need to be considered to measure the success of a case outcome beyond turnaround times and conviction rates. The respondents interviewed gave suggestions for alternative indicators and more useful ways of measuring the outcomes of cases rather than focusing performance measurement on inputs only, such as timeframes of a case, hours spent on a case, detailed reasons for postponements and so on.

2. Bottlenecks in the justice system

> "I think my responsibility is to ensure that cases that are placed on the roll are finalised as speedily as possible. But we depend on other stakeholders to ensure that that goal is achieved [...] it takes forever, too long to investigate sexual offences matters." [High-level national stakeholder]

Cases analysed had between 4 and 40 appearances of the accused, with an average of 13 appearances, and between 1 and 34 postponements, with an average of 10 postponements per case. The specific reasons for postponements, withdrawals, acquittals, and cases being struck off the roll vary widely. Analysis of case files show that the human elements contribute greatly to the reasons. While some of these variables cannot be controlled by individual actors in some instances postponements or removing cases can be attributed to the individual personalities and unequal distribution of power amongst court actors.

Many of the challenges and bottlenecks that were identified in the MATTSO report still exist and show little sign of improvement. These include:

- Lack of buy-in from other stakeholders due to inadequate consultation.
- Lack of dedicated budget, which results in inadequate resourcing and infrastructure of the courts, particularly with regards to equipment and maintenance of CCTV.
- Human resource challenges including a shortage of prosecutors, intermediaries, court preparation officers and dedicated forensic doctors and nurses.
- Restricted space capacity in courts that often hinder full compliance with the blueprint.
- Lack of monitoring and evaluation mechanism for the management of SOCs.
- Lack of guiding procurement specifications and maintenance framework for court equipment and resources for the testifying rooms, waiting areas and other facilities.
- Inherent interdependence in the criminal justice system that often cause serious delays in the finalisation of cases.
- Lack of a feeding scheme for child witnesses that contributed to children not performing optimally and to the postponement of cases.
- Inadequate support services available for LGBTI persons and victims with disabilities and poor psychosocial support services.

3. Caseloads

> "Sexual offences, we only have two courts that are for sexual offences, those are the courts that you find with high workload." [Senior Magistrate]

The caseloads at all of the SOCs visited were high and added to the pressure on staff for prompt finalisations and convictions:

- Estimated caseloads were between prosecutors averaged at about 120 pending cases a month with some cases going up to 200 a month.
- Two of the three TCCs estimated that they had 50- 60 open cases a month, with the smaller averaging 15-20 cases a month.
- All TCCs estimated that child cases are up to 80% of their cases and some prosecutors indicated up to 85% of their caseload were currently child cases. On average, roughly 3% are boys, and 10% are children with intellectual disabilities.
- Court preparation officers reported seeing 15 to 20 clients a week in larger courts.
- Some court preparation officers and prosecutors stimated that they were preparingup to 40-45 witnesses a week in larger court.
- Part-heard cases make up a large proportion of cases on one courts roll. At this court, the RCM indicated that they have up to 54 cases on the roll a month of which at the time of the research 26 were part heard.
- One courtroom had the largest roll with almost 355 pending cases of which 25 are on backlog roll
- On average, the courts get 25-30 new cases a month, with the smaller rural courts averaging 15-20, which is still high, compared to more resourced and bigger courts.
- Estimates from case managers and prosecutors were that there was an average of 1-2% cases with LGBTI complainants, with one court claiming to not have had any such cases at all.
- Those prosecutors and RCMs that operate in mixed roll courts estimated that sexual offences make up to 60% of their pending caseloads.

The high caseloads and the shortage of prosecutors, intermediaries, Court Preparation officers (CPOs), and courtrooms wre key challenges for all actors. Due to these heavy workloads, prosecutors explained that they do not have adequate time to conduct in-depth victim consults. The courts are trying various strategies to give more preparation and admin time in between cases, such as rotating prosecutors between court and administration from week to week. However, this affects turnaround times as cases take longer to finalise with only one prosecutor hearing cases. Another strategy is the careful screening of cases to "weed out" weaker cases with a low chance of successful convictions, including vulnerable witnesses such as those with intellectual disabilities, while ensuring only strong or "winnable" cases proceed to court.

4. Vulnerable Groups

> "I haven't received the training. Although I am not sure but I don't think it would be that different because rape is rape." [Court Preparation Officer]

The specific vulnerability of the complainant can affect turnaround time of a sexual offences case and justice officials require a specific skill and knowledge set to improve case outcomes for vulnerable groups. Most court actors report having received social context or sensitisation training but 20% stated they had not received such training. In addition, those that had undergone the training struggled to practically apply this knowledge to cases and 80% reported a desire for more training on vulnerable witnesses and the preparation needed to proceed with such cases.

(i) **LGBTI**: Statistics on LGBTI survivors of sexual offences are difficult to obtain as the current incident forms do not record sexual orientation or gender identity. Court actors estimated that LGBTI survivors made up at most 1-3% of their caseload, and others were not aware of LGBTI cases in their community. Cases with LGBTI survivors are generally approached in the same way that all cases of rape are approached ('rape is rape' ethos). Prosecutors and judiciary felt a survivor's sexual orientation or gender identity did not affect the nature of injuries or consequences of the attack. This could render survivors who were targeted because of their sexual orientation or gender identity (bias-motivated sexual offences) invisible and it ignores that LGBTI survivors might have specific needs in the criminal justice process.

(ii) **Children:** On average the cases involving children constituted about 80-85% of the total caseload of the courts in the baseline study. All the courts visited during fieldwork had been refurbished to some extent to be more child-friendly, which is essential to the effective participation of the child in the court process and the minimisation of secondary trauma. The overall impression regarding facilities for children is that the facilities are there to be compliant with the model, but that they are not frequently used. Although all the court personnel at the pilot courts had received some basic form of training on communicating with and preparing child witnesses, it was reported that some prosecutors do not proceed with cases due to the limited evidence or difficult circumstances surrounding child witnesses such as mental disability or inability to express themselves in court.

(iii) **People with disabilities:** On average prosecutors and Regional Court magistrates estimated that children and adults with disabilities (with an emphasis on adults and children with mental and intellectual disabilities) comprised 10-15% of their cases, with a notable increase in such cases over the last 5 years. While specific statistics on complainants with intellectual disabilities are not available, most of the court actors had not received specific training on consulting with or preparing persons with intellectual disabilities. Senior stakeholders confirmed that many of these cases are not making it to trial and corroborates the statements of some prosecutors that these types of cases get screened carefully and withdrawn early.

(iv) **Older persons:** The number of older persons presenting at the courts was generally reported to be low, with most court actors reporting a caseload of 1-3% being persons over 60 years of age. Though there are very few cases of sexual offences reported against older persons, those that they have seen have been as traumatic as child cases. None of the respondents indicated that they had had specialised training for this particular vulnerable group and were not aware of any specific protocols when dealing with older sexual offences survivors.

5. Intersectoral collaboration

> "You can put people in one room and they will never be integrated if they do not have a common goal." [High-level national stakeholder]

The DoJ&CD, NPA, and the Judiciary collect different statistics that are dificult to accurately compare. Whilst individually the statistics from all the departments look at various aspects of the sexual offences cases, there is nota composite picture of the current state of sexual offences within the justice cluster as a whole. The research team struggled to identify who is responsible for the overall M&E of the SOCs as there is not agreement amongst the three key stakeholders– DoJ&CD, Judiciary, or NPA – on whether the responsibility is a collective one or designated to one of the three stakeholders.

One of the most important intersectoral platforms at the local levels of the SOCs, the intersectoral forum, only operate effectively, if at all, in some courts. Generally, these intersectoral forums were poorly attended and attendance of all departments at one sitting was rare. Key stakeholders, such as the judiciary, do not always attend as they are seen are ineffective and a "waste of time". The efficient running of the system often depends on the personalities and drive of the individual actors involved despite guidelines and protocols governing the timeframes and methods of interaction for each department.

The way in which performance is monitored and managed is a key challenge to the efficient intersectoral integration of all parties. To date there is no comprehensive or overarching M&E system for the courts although all court actors and stakeholders in the baseline study agreed that they must work together towards the common goal of successful case outcomes.

6. Training

> "Training is very critical. It is what will change the attitudes of people [...] and it's what will sharpen the way in which they are dealing with these cases [High-level National Stakeholder]

Although MATTSO is very clear in its recommendations that the model relies upon specialisation, not every stakeholder agrees with the specialisation of its staff. Nonetheless, all the stakeholders offer training specifically on sexual offences and the various legislation that informs the specialised courts. The baseline study included a needs assessment of each court actors training needs with regards to the scope of their existing knowledge, gaps in training and suggested ways in which the skills of themselves or their colleagues could be improved.

Concerning the content of training, court actors identified the following needs:

- Debriefing and training of senior staff on how to conduct regular debriefing with junior staff;
- Evaluating and presenting forensic evidence;
- Communications and communicating with those who were not able to speak clearly for themselves, including consultations with child witnesses;
- Communicating and consulting with complainants who have intellectual, physical or mental disabilities; and
- Refresher courses on the SORMA of 2007 and related judgements.

Concerning the nature and manner of training, court actors generally perceived the quality of specialised training positively. In addition, SAJEI, the NPA, and DoJ&CD are constantly adapting their materials to respond to the changing nature of different sexual offence survivor's needs and the evolving SOC model. However, the effectiveness and impact of training cannot be easily measured. Budgetary constraints make it financially difficult to conduct and there is no collective responsibility to provide the training to the SOC court staff. Training should include a more practical application of the legislation as demonstrated through case law and use of examples. There is a need for training that is more regular and an opportunity to meet with other actors across the country to share challenges, ideas, and concerns on a national level. However, it is understood that it is difficult to conduct training with court personnel as taking them from court to attend training will delay court rolls that are already under pressure from human resource shortages.

These findings will be key to informing the suggested training and skills development materials/workshops and seminars that the project team will develop for the second phase of the ICOP project.

7. Caseflow Management Practice within the Sexual Offences Courts

Case flow management in the Regional Courts is located within a web of complex institutional relationships. The practical implementation of the 2010 Case Flow Management (CFM) Practice Guidelines remains an emergent process subject to much contestation from the myriad stakeholders involved in the criminal justice system.

While the guidelines present a composite picture of the desired functional competencies that are required of each stakeholder, aimed at fulfilling the constitutional imperative of the right to a fair trial and the timely disposition of cases, case flow management practice within the dedicated SOCs varies from court to court.

Cases of sexual offences make up the bulk of Regional Court cases in most provinces, and there is much concern about the overall effectiveness and efficiency of case flow management in these dedicated courts. The following challenges were identified that require urgent redress to ensure further case flow management improvements in the SOCs.

- Judicial officers, prosecutors and defence lawyers all tend to point at one another as the source of problems. A major concern of Regional Court magistrates and prosecutors is that defence lawyers often use the defendant's constitutional right to silence as a basis for refusing to discuss any issues in a case before it is set for trial that impedes adequate pre-trial preparation for all parties and proper roll planning of the courts.

- Multiple postponement requests: Based on the existing data, these might be due to delays in assembling evidence and witnesses by both state and defence; or a shortage of interpreters, court preparation officers and intermediaries.
- Incomplete investigations by SAPS and lack of forensic analysis capacity;
- Unavailability of legal representation on trial dates.
- Suboptimal utilisation of court time, often due to challenges in coordination and planning amongst all court stakeholders.
- While all the Regional Courts have general practice directives that set minimum time amongst other important steps for effective CFM, in practice many of these principles are difficult to implement due to different performance measures set for various court functionaries such as clerks of court and court managers over whom the Regional Court magistrates have little control over.
- Limited ability for court level stakeholders to provide feedback to Regional Court magistrates for quick redress.
- Limited human capacity to deal with the large number of backlog cases and the increasing enrolment of new cases.

Recommendations

The recommendations from the baseline study findings reaffirm those made by MATTSO in 2013. Based on an analysis of the rich baseline data, bottlenecks, challenges and best practices at the five pilot sites, the report identifies four areas that are key in improving case outcomes for sexual offences survivors at the sexual offences courts.

1. Improving the turnaround time in the finalisation of sexual offences cases from reporting to judgment/sentencing, by:

(i) Revising recommended sexual offence case finalisation timeframes to a more realistic timeframe of 18 months. Case turnaround times should be reviewed to reduce pressure to rush cases through the system at the expense of survivors whose cases may be screened out at an early stage through withdrawals or being struck off the roll.

(ii) Developing alternative and new indicators of success and performance measures and revising current policy directives accordingly to reduce the focus on conviction statistics and reflect the holistic factors that determine case outcomes. This should include consideration of indicators relating to the number of consultations conducted by prosecutors with a complainant and length of time before trial, the complex nature of multiple victim/multiple accused cases, other complex cases involving vulnerable groups, the taking of victim impact statements, and complainant satisfaction with services.

(iii) Customising the sexual offences case flow management model through

- Revising and customising the Department of Justice and Constitutional Development Case Flow Management Guidelines of 2010 to reflect the specific case guidelines that should govern sexual offences and consider the various developments that have occurred within the system since 2010.[5]
- Working with the Regional Court Presidents to explore the validity and usefulness of revising the current Criminal Practice Directives for the Regional Courts in South Africa (2016) to incorporate specific directives for the management of sexual offences .

References

5 Prior to this revision, consultations will take place with the Regional Court magistrates and Regional Court Presidents to discuss how they run sexual offences cases differently and if indeed specific directives would be useful to them in improving case outcomes and assisting with improve performance measures.

2. *Improving specialised services at the Sexual Offences Courts for sexual offences survivors by:*

(i) Increasing specialised staff in all courts particularly in the specialised prosecutors' positions for current and phase 2 courts, as well as foreign language interpreters and foreign language intermediaries.

(ii) Providing for greater time and preparation between prosecutors and complainants during the pre-trial period.

(iii) In the absence of a feeding scheme, the DoJ&CD need to approach treasury again to increase witness fees from R20 to R50.

(iv) The urgent establishment of a Sexual Offences Ombudsperson to provide strong and consistent oversight across all departments and act as a much-needed interface between the justice system and the public.

3. *Addressing human resources challenges and enhancing specialisation of staff through training by:*

(i) Reconceptualising training for court actors to be outcomes-based and incentivised. This will allow for measurement of the impact of the training on direct service provision and provide for more practical applications of the protocols and laws. It is recommended that the attendance at training modules be incentivised to encourage participation and be linked to performance indicators.

(ii) Devising a form of integrated sexual offences training for the SOCs, like the integrated training model developed by the NPA for the Thuthuzela Care Centres, to allow court actors to share ideas, challenges and concerns. A more integrated focus on sexual offences training may also help facilitate synchronicity and foster better working relationships - educating all involved regarding their role in the SOCs.

(iii) Increasing access to case law research resources and expert witnesses for prosecutors to assist them to finalise cases more swiftly and as such improve case outcomes and turnaround times.

4. *Improving the emotional and mental wellbeing of specialised staff by:*

(i) Designing stress management policies and supportive practices to respond to the distinct needs of different types of staff in the SOCs and the type of caseload they are managing. A 'one size fits all' approach to staff well-being is not advisable.

(ii) Ensuring that wellness programmes promote a culture of stress awareness and a supportive response to staff concerns about stress. Staff must be assured that asking for psychosocial support will not act against their chances for career advancement by being an indication of susceptibility to emotional trauma.

(iii) Introducing a strategy for reducing risks to each individual staff member at the SOCs. As a start, this should address safety and security risks, physical health risks, risk of exposure to trauma and more routine sources of occupational stress. On a practical level, a specific 'mental health or wellness allowance' should be allocated to each employee to use for this type of support on a yearly basis so that they can discreetly and confidentially employ the services of a counsellor or support service of their choice. This approach promotes a self-care ethos which would negate need to request counselling through official challenges which is currently acting as a deterrent to those staff accessing current wellness programmes or debriefing support.

(iv) Offering voluntary rotation to court actors who specialise in sexual offences cases, particularly presiding officers and prosecutors. Although Regional Court magistrates and prosecutors may prefer working with specialised staff that do not rotate, in the absence of increased human resources and adequate emotional and mental health support, rotation is a short to medium term solution to the mental exhaustion.

ACRONYMS AND ABBREVIATIONS

CCTV	Closed-Circuit Television
CFM	Case Flow Management
CJA	Child Justice Act
CJS	Criminal Justice System
CMH	Cape Mental Health
COP	Chief of Party
CPO	Court Preparation Officer
CSO	Court Support Officer (Friend of the Court)
DCM	Differentiated Case Management
DCOP	Deputy Chief of Party
DCS	Department of Correctional Services
DDG	Deputy Director General
DDPP	Deputy Director of Public Prosecutions
DG	Director General
DG ISC SO	Directors-General Inter-sectoral Committee for Sexual Offences
DNDPP	Deputy National Director of Public Prosecutions
DoH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DoW	Department of Women
DPME	Department of Planning, Monitoring and Evaluation
DPP	Director of Public Prosecutions
DSD	Department of Social Development
DWCPD	Department of Women, Children and People with Disabilities
FCS Units	Family Violence, Child Protection and Sexual Offences Unit
FPD	Foundation for Professional Development
GBV	Gender-Based Violence
GHJRU	Gender Health and Justice Research Unit
ICMS	Integrated Case Management System
IO	Investigating officer
IPID	Independent Police Investigative Directorate
ISC	Inter-sectoral Committee
JCM	Judicial Case Management
JCPSC	Justice, Crime Prevention and Security Cluster
JMAB	Judicial Matters Amendment Bill 2015
KPI	Key Performance Indicator

LASA	Legal Aid South Africa
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
LRC	Legal Resources Centre
MATTSO	Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters
NACOSA	Networking HIV/AIDS Community of South Africa
NCPR	National Child Protection Register
NCSC	National Centre for State Courts
NGO	Non-Governmental Organisation
NHTL	National House of Traditional Leaders
NOC	National Operations Centre
NPA	National Prosecuting Authority
NPF	National Policy Framework
NRSO	National Register for Sex Offenders
NWG	National Working Group
OCJ	Office of the Chief Justice
OECD	Organisation for Economic Cooperation and Development
OPS ISC SO	National Operational Inter-sectoral Committee for Sexual Offences
PEC	Public Education and Communications
PEP	Post-exposure prophylaxis
PFMA	Public Finance Management Act
PGI	Prosecutor Guided Investigations
PI	Preliminary Inquiry
PIRS	Project Indicator Reference Sheets
PMP	Performance Management Plan
PTSD	Post-Traumatic Stress Disorder
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
RCM	Regional Court Magistrate
RCP	Regional Court President
RFA	Request for Application
AALRC	South African Law Reform Commission
SAPS	South African Police Service
SAQA	South African Qualifications Authority
SGBV	Sexual and gender-based violence
SO	Sexual Offences
SOC	Sexual Offence Court

ACRONYMS AND ABBREVIATIONS

SOCA	Sexual Offences and Community Affairs
SORMA	Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)
SPP	Senior Public Prosecutor
SPSS	Statistical Package for the Social Sciences
SWEAT	Sex Workers Education and Advocacy Taskforce
TA	Technical Application
TCC	Thuthuzela Care Centre
TOC	Theory of Change
ToR	Terms of Reference
UCT	University of Cape Town
UNICEF	United Nations Children's Emergency Fund
USAID	United States Agency for International Development
VAO	Victim Assistance Officer
VC	Victims' Charter
VFRs	Victim Friendly Rooms
VIS	Victim Impact Statement
WJEI	Women's Justice and Empowerment Initiative
WLC	Women's Legal Centre

CHAPTER 1:

INTRODUCTION TO ICOP and CONCEPTUAL FRAMEWORK FOR THE BASELINE

CHAPTER **1**:

INTRODUCTION TO ICOP AND CONCEPTUAL FRAMEWORK FOR THE BASELINE

The Gender Health and Justice Research Unit (GHJRU) at the University of Cape Town (UCT) was contracted by the United States Agency for International Development (USAID) in partnership with the Department of Justice and Constitutional Development (DoJ&CD) to conduct a pilot project to pursue the overarching objective of improving case outcomes for sexual offence cases in piloted sexual offences courts and catchment areas.

The terms of reference for the project stated that the core objective was to "pursue the overarching objective of improving case outcomes for sexual offence cases in piloted Sexual Offences Courts (SOCs) and catchment areas". The project development hypothesis is that:

> If pilot Sexual Offences Court stakeholders, including prosecutors, judicial officers, and court management identify and implement best practices and prosecutors, test legal strategies using the full-range of South Africa's legal framework, then outcomes for gender based violence (GBV) cases in piloted SOCs and catchment areas will improve (RFA, 2015:4)

1.1 Purpose of the Study

High levels of sexual violence against women and children in South Africa pose significant risks to the health and well-being of its citizens and have far-reaching consequences at both the socio-political and economic levels. [6] Studies in developing countries have concluded that the health impact of GBV on women is one of the leading causes of injury; consequences are especially serious in the area of reproductive health [7]. For example, Morrison and Orlando (2004) explain that economic costs can be seen in the impact of GBV on earnings due to (i) death and lost productivity, (ii) job loss, (iii) lost productivity of the abuser due to incarceration, and (iv) loss of tax revenues due to death and incarceration. The cost to the state is also high, as illustrated in Thorpe's (2014) research on governmental budgets spent on SGBV. Thorpe reported that the sub-total of spending by the DoJ&CD and the South African Police Service (SAPS) for the 2013/2014 fiscal year was R147 460 811, for example. We acknowledge the considerable efforts made by the South African Government, with assistance from the United States Government, to address GBV, and sexual violence in particular, through legislative reform and the establishment of dedicated judicial instruments to investigate and prosecute sexual offences cases. However, many studies conducted over the last decade have highlighted that the implementation of these has remained a challenge.[8] Hence, the key objective of this project is to improve case outcomes for sexual offences cases in five pilot SOCs and catchment areas. Recognising the unique and complex South African context, it was felt that this can best be achieved by

References

6 Thorpe, J. (2014) *Financial Year Estimates for Spending on Gender-Based Violence by the South African Government.* Parliament of the Republic of South Africa.

7 Morrison, A. and Orlando, M. (2004) *The costs and impacts of gender-based violence in developing countries: Methodological considerations and new evidence.* http://siteresources.worldbank.org/INTGENDER/Resources/costsandimpactsofgbv.pdf.

8 See (i) Galgut, H., Artz, L., (2016) If You Don't Stand-Up and Demand, Then They Will Not Listen: Sexual Offences Law and Community Justice. Gender, Health and Justice Research Unit, University of Cape Town, Cape Town, South Africa; (ii) Shukumisa Campaign, (N.D). *Monitoring The Implementation of Sexual Offences Legislation and Policies Findings of The Monitoring Conducted In 2013/2014.* Shukumisa Campaign, Cape Town, South Africa; (iii) Shukumisa Campaign, (2012) *Monitoring The Implementation of Sexual Offences Legislation and Policies Findings of The Monitoring Conducted In 2011/2012.* Shukumisa Campaign, Cape Town, South Africa; (iv) Artz, L., Moult, K. (2011) *Monitoring the new Sexual offences Act*. Open Society Foundation.

employing a consultative and integrated approach that recognises and compliments internationally developed mechanisms and knowledge - whilst also acknowledging local experiences, research and knowledge - as being fundamental to the application of our proposed models and methods. Recognising the pilot approach of this project, we identify evidence-based best practices to improving the functioning of the pilot SOCs, and provide justice sector officials in the pilot courts with the necessary knowledge and skills for improving justice services to sexual offences survivors. Through effective governance mechanisms and intersectoral collaborations supported by this project, these evidence-based best practices could be replicated in other SOCs beyond this project.

1.2 Aims and Objectives

The overall aims of the project include: (i) Improving case flow management in the pilot SOCs; (ii) Building capacity for improved services at the pilot SOCs, especially for vulnerable groups including Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons; and (iii) Creating evidence-based best practices for improved case outcomes. The specific objectives are:

Objective 1: Improve the Management of Pilot SOCs

Result 1.1: National and provincial management structure (reference groups) identified and strengthened.

Result 1.2: Data from baseline study on turnaround time in the finalisation of sexual offences cases from reporting to judgment/ sentencing.

Result 1.3: Intersectoral monitoring and evaluation (M&E) strategy for court process mapping developed and linkages between all stakeholders improved.

Result 1.4: Cases at the pilot sexual offences courts proceed through the system efficiently.

Objective 2: Improve Justice Services to Sexual Offence Survivors in Pilot SOCs

Result 2.1: Effective collaboration on the content and standards of training curriculum for training of stakeholders in management of sexual violence cases involving vulnerable groups, including LGBTI persons and persons with disabilities.

Result 2.2: Existing justice sector training curricula for GBV and vulnerable groups' issues are enhanced.

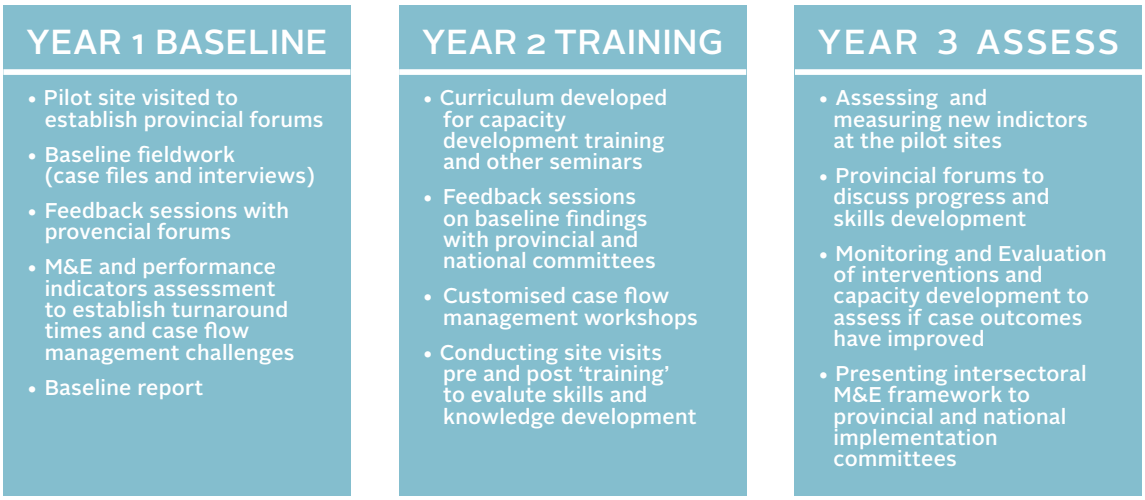
Result 2.3: Officials engaged in the investigation and prosecution of sexual offences are skilled, knowledgeable and sensitive to survivor trauma and vulnerable groups' issues.

Result 2.4: Officials engaged in the supervision of justice sector officials who manage sexual offences are competent to conduct debriefing sessions.

Result 2.5: *I*mproved case outcomes for sexual offences, especially LGBTI-related offences.

The implementation period for each of the research actions and interventions is outlined in the diagram below.

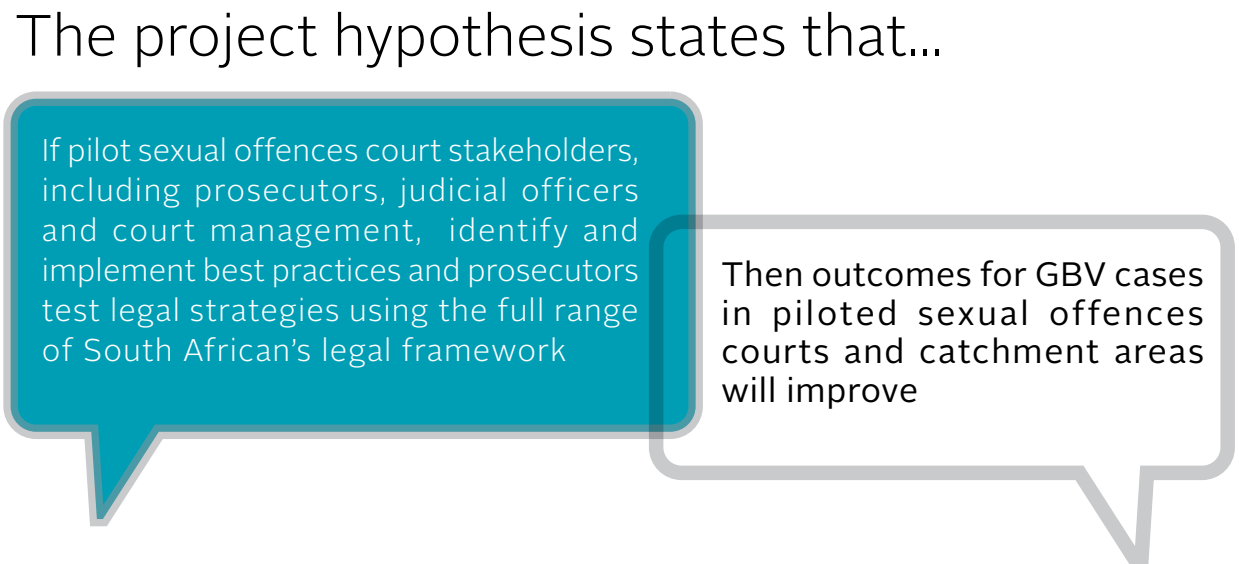
Figure 1: Project objective outline year 1, 2, 3



On an empirical level, the results of the baseline survey on case flow and bottlenecks in the SOCs – and the challenges therein – are used to ensure a context-relevant, responsive and pragmatic approach to our proposed interventions at each project site. This project recognises that local realities, social dynamics and institutional arrangements must be taken into account for interventions to succeed. Despite our objective of ensuring continuity in service and a national approach to the management of sexual offences, only certain aspects of our approach may be applicable to all five sites. The success of any institutional reform project must therefore rely on local relationships and partnerships and an understanding of the challenges faced by service providers and government agencies. Details of the objectives are outlined on next page.

Figure 2: ICOP project hypothesis

Objective 1: Improve the Management of Pilot SOCs



(i) Data from baseline study on turnaround time in the finalisation of sexual offences cases from reporting to judgment/ sentencing. The baseline study determines the current average turnaround time for sexual offences cases from reporting to judgment and sentencing in the five pilot courts, and identifies:

- The average turnaround time for sexual offences cases in each of the five pilot courts and catchment areas, from reporting to judgment/ sentencing [9] and the outcome of those cases;
- 'Bottlenecks' in the process: location of delays in case flow and the reasons for such delays; and
- Recommendations for addressing 'bottlenecks': interventions to enhance case flow and thereby improve the turn around time of cases together with conviction rates, where possible.

Findings from the baseline provide a basis for analysing the efficacy of the SOCs and support strategies for determining appropriate case management, as well as for the development of the customised case flow management system. We wish to specify that simply streamlining case-flow systems will not guarantee improved conviction rates or improved outcomes for sexual offense survivors. Other capacity and knowledge-building exercises should be employed to enhance service provision and survivor outcomes.

(ii) Intersectoral M&E model for Sexual Offences Courts Developed. Based on research done by the GHJRU and the experience of our project partner, Networking HIV/AIDS Community of South Africa (NACOSA) in the establishment of the integrated Thuthuzela Care Centres (TCCs), an intersectoral, survivor-centreed approach is of key importance to the effective management of sexual offences cases. Working collaboratively with all relevant stakeholders will be crucial to ensure the sustainability of an M&E framework and instruments to implement suggested solutions through the justice sector and their civil society/community-based partners' own resources, channels and hierarchies. The management framework will include considerations relating resource allocation and infrastructure, communication within and between relevant stakeholders and meaningful cooperation between the various government departments, justice stakeholders and civil society.

(iii) Cases at the pilot sexual offences courts proceed through the system efficiently. A well-established and functioning case flow management system is a crucial component to ensure the effective handling of cases. Timely case management is one of the factors that contribute to the minimisation of survivor re-traumatisation. Recognising the existing expertise on case flow management from the USAID-funded project the Justice Sector Strengthening Project (JSSPP), we employed the expertise of a case flow management consultant to customise a model which would be most effective for the efficient handling of sexual offences cases. The human interface of any system is the key component of its effectiveness and success. The case flow management expert will train court personnel of the pilot sexual offences courts in the use and management of the customised case flow management system.

References

9 The project terms of reference refers to "turnaround times" from reporting to judgement/ disposal but does not define what the term "reporting" refers to or suggest methodology for obtaining such information. The GHJRU/UCT Proposal refers to the collection of data from reporting to judgement, with a specific reference to the review of case files/court dockets at each pilot court. As the ToRs did not feature the South African Police Service, it was assumed and therefore designed, to work with case files at the courts (which would include an arrest date). The methodology clearly states that our entry point for data collection is at the five courts chosen by the DoJ&CD. The turnaround times were thus calculated from the arrest dates on the J15 to the finalisation date, whether that be the date of withdrawal, SOR, judgment or sentencing.

Objective 2: Improve Justice Services to Sexual Offence Survivors in Pilot SOCs

(i) Effective collaboration on the content and standards of training curriculum for training of stakeholders in management of sexual violence cases involving vulnerable groups, including LGBTI persons and persons with disabilities. Given the wide range of approaches to, methodologies and delivery of training across justice sector stakeholders, as well as existing initiatives within civil society to conduct such trainings, efforts aimed at enhancing the curriculum need to be coordinated and consultative. A collaborative approach will ensure buy-in from all key stakeholders, guarantee usefulness with reference to individual stakeholder needs, ensure ongoing relevance and encourage sustainable implementation. The GHJRU has convened a curriculum working group to facilitate this collaboration in Year 2.

(ii) Existing justice sector training curricula for GBV and vulnerable group issues are enhanced. Inclusive and comprehensive training curricula ensure a sustainable approach to training justice sector officials and other service providers regarding GBV and LGBTI-related issues.

(iii) Officials engaged in the investigation and prosecution of sexual offences are skilled, knowledgeable and sensitive to survivor trauma and vulnerable person's issues. Recognising that knowledge of the changed training curricula might not reach the justice personnel and other service providers already working in, or providing auxiliary psychosocial support services in respect of the pilot SOCs, the GHJRU developed and conducted training for justice personnel at the pilot SOCs in September 2017 which aimed at up-scaling their knowledge, sensitivity and skills required for working with survivors.

(iv) Officials engaged in the supervision of justice sector officials who manage sexual offences are competent to conduct debriefing sessions. Recognising that providing services to sexual offence survivors can be traumatic and emotionally demanding for justice personnel and civil-society representatives, providing adequate support for these service providers is a crucial step to avoid burnout and ensure on-going empathetic engagement with sexual offence survivors.

(v) Improved case outcomes for sexual offences. Improving case outcomes involves seeking to ensure a sense of justice for survivors. The GHJRU, in consultation with all relevant justice stakeholders and civil society role-players, will develop a framework for understanding the range of components of which 'justice' may, both objectively and subjectively, be comprised and the various factors that would evidence improved case outcomes from various role-player perspectives.

CHAPTER 2:

BASELINE STUDY METHODOLOGY

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BASELINE STUDY METHODOLOGY

2.1 Baseline Study Design

The pilot sites for the ICOP baseline study were chosen by the project co-ordinators at the DoJ&CD. Table 1 below outlines the primary sites that were assigned to the GHJRU for the pilot study. Initially, the DoJ&CD assigned three courts to the project. However, an initial court mapping exercise revealed that the child sexual offences cases in Tonga are not heard at Tonga Magistrates court. These child cases are heard at Boschfontein Court, which was also refurbished to comply with MATTSO (2013) recommendations and officially designated a SOC in March 2017. In addition, when we visited Durban Magistrates Court, the Regional Court President and Chief Magistrate recommended that we also include Umlazi Court in the study due to its high caseload of sexual offences, its connection to a TCC and to see the recent refurbishments in its sexual offences courtrooms (which complied fully with MATTSO (2013) recommendations). We therefore included five courts in the project.

Table 1: Pilot sites selected for the ICOP project

Province	District	Court, location	Subsidiary sites	TCC
Gauteng	City of Johannesburg	1.Protea Magistrates Court, Soweto		Nthabiseng TCC Chris Hani Baragwanath Hospital
KwaZulu-Natal	eThekwini	2. Durban Magistrates Court, Durban	3. Umlazi Magistrates	Umlazi TCC Prince Mshiyeni Memorial Hospital
Mpumalanga	Ehlanzeni	4. Tonga Magistrates Court, Nkomazi	5. Boschfontein Magistrates Court	Tonga TCC Tonga Hospital

The GHJRU recommended that the pilot courts chosen for the ICOP project be reflective of the various structures and contexts that the SOCs across the country are currently situated. This would have allowed the recommendations that evolve from these findings to be applicable to diverse court structures and settings across provinces, districts and localities and to be mindful of the different stages of development of these courts.

The scope of this project prevents the number of courts from being statistically representative. For example, there are, at the time of writing this report, 57 Sexual Offences Courtrooms operating across South Africa. If we wanted a 95% confidence level with a 10% confidence interval, we would have had to have a representative sample of 15 courts for the study. As the terms of reference for the ICOP project only allowed for three sites (although it was eventually agreed to locate the project in five sites), the criterion used to determine suitable sites must be defined in a more purposive, qualitative and ethnographic manner. The GHJRU recommended that by allowing a significant variation among the sites, the triangulation of data for analysis could be more usefully employed. For example, comparison of the services offered in a peri-urban site with that of a rural site, or comparing case outcomes in sites with a well-established Thuthuzela Care Centre and sites without. This allows for deeper comparative data and has the potential to increase the scope of the baseline data findings. The GHJRU recommended to the DoJ&CD that they be mindful of the following variables when deciding on the pilot sites:

Variable 1: When the court was established

- Pre – 2013 when the 'project' for the re-establishment of sexual offences courts commenced
- Post – 2013 when the re-establishment of sexual offences courts commenced:A newly established court preferably from 2014 or 2015

Variable 2: Services offered at the site

- A site with a well-established TCC
- A site that does not have a TCC
- A site that has recently established a TCC – perhaps one of the newer, post-2013, TCCs

Variable 3: Location of courts

- An urban site
- A peri-urban site
- A rural site

In total the following data was collected over a 6-week period in total over the five sites, the details will be discussed in the sections below:

(i) Over 400 individual cases were analysed for turnaround times, postponements, bottlenecks and to assess missing data.

(ii) 50 interviews were conducted with court staff - clerks, interpreters, managers, intermediaries, prosecutors, magistrates, court preparation officers, TCC co-ordinators, forensic nurses and doctors, social workers, HIV counsellors.

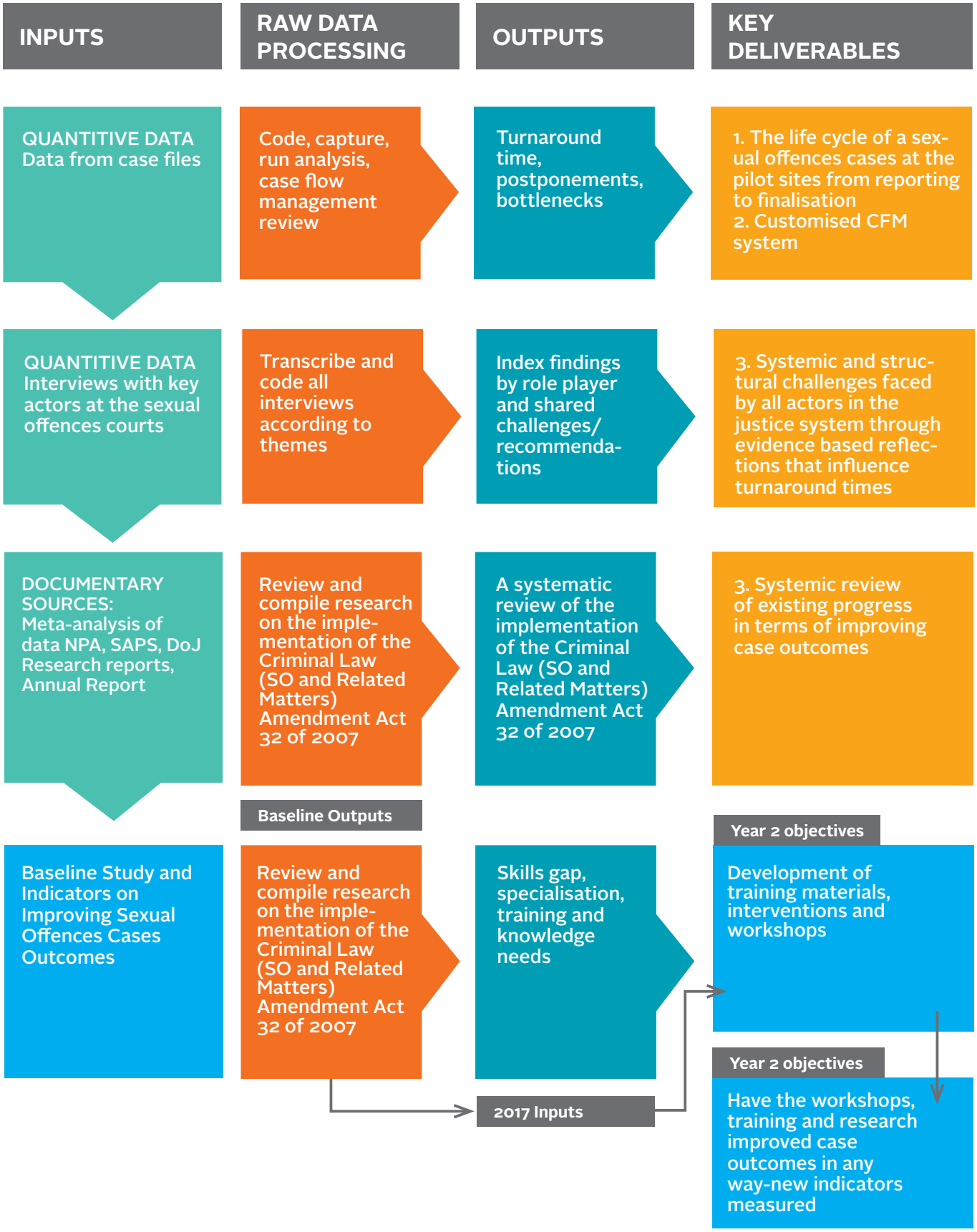
(iii) 200 hours of audio recordings were made and 1190 pages of interview transcripts analysed.

(iv) Meta-analysis of existing data available on SOCs and current indicators used by DoJ and NPA relating to the SOCs.

(v) Systematic desktop analysis and auditing of existing statistics on sexual offences from each stakeholder.

Figure 3 on the next page illustrates the study design in relation to the conceptual framework. It depicts the cycle of data collection and analysis and how it feeds into the core objectives of the project with each step of analysis linked to the overall outcomes in relation to improving case outcomes at the SOCs.

Figure 3: Study Design for ICOP project



2.2 Population and sampling

The project made use of a purposive sampling method. People under the age of 18, and people with a compromised ability to consent due to mental and psychological disability were not eligible to participate and therefore did not form part of our research population. The researchers did not interview any survivors of crime or violence, due to the distress the interview process might pose to them, as well as the researchers' belief that doing so was not necessary for the efficacy of the study. Previous GHJRU research has shown that service provider staff are able to relay their clients' experiences to researchers sufficiently well that the need to talk directly to survivors is to some extent negated.Interviewing service provider staff rather than survivors avoids unnecessary 're-victimisation' of survivors, who often do not want to 'relive' their negative experiences unless necessary.[10] The victims' rights to confidentiality and privacy must also be considered, in relation / contrast to/ in tension with the central research question about court turn-around times and bottlenecks against these rights.

At the courts, the sample size was dependent on availability of court personnel. Given that the court roll could not be disrupted, the research team could only have access to interview court staff before 9:00am in the morning and between 3:00pm-4:00pm in the afternoon. In between these times, case files were reviewed and follow-up interviews were scheduled. Whilst at the courts, contact was made with the court personnel to arrange one-on-one interviews with them. Once the word had spread about the research being undertaken by the research them, court staff made themselves readily available and sought out the researchers to be interviewed.[11] Overall, the staff at all the courts were accommodating, friendly, open and willing to participate in the research.

2.3 Data Collection

In the Durban and Tonga sites the fieldwork was divided between two courts. In Durban, the fieldwork process was divided between Durban and Umlazi courts. In addition to the qualitative interviews, the ICOP team also collected sexual offences case-related data by examining casefiles[12] at each site and recording relevant information from them onto casefile data collection sheets. Other interviews with high-level provincial stakeholders were also conducted, including the Regional Court President in each province and stakeholders from the NPA and the Department of Health.

The project team was unable to secure interviews with SAPS Family Violence, Child Protection and Sexual Offences (FCS) co-ordinators due to the delayed memo from the Director General, which was only received on the 15th of August 2016. In addition, when we approached SAPS to obtain permission to examine occurrence books to gather dates of reporting from their dockets, we were informed by the then head of the FCS on the NT ISC SO/OPS ISC SO committee that we did not have permission to do so as they were currently undertaking a project with another research body on turnaround times and analysis of rape cases, which we learned subsequently was the MRC report .

The key court staff that were proposed for interview in the project plan were successfully interviewed. Those who were on annual leave, or unable to attend the appointed interview time, were (re)scheduled for follow-up interviews with the research team. The courts welcomed the research team at every site and were eager to engage with the aims of the project.

References

10 Gender Health and Justice Research Unit (2014). An Evaluation of the Victim Empowerment Programme. Commissioned By the Western Cape Department of Social Development. http://www.ghjru.uct.ac.za/ghjru/publications/recent-research

11 Machisa, M., Jina, R., Labuschagne, G., Vetten, L. Loots, L., Swemmer, S., Meyersfeld, B., Jewkes, R. (2017). Rape Justice in South Africa: A Retrospective Study Of The Investigation, Prosecution And Adjudication Of Reported Rape Cases From 2012. Pretoria, South Africa. Gender and Health Research Unit, South African Medical Research Council.

Table 2: List of Respondents Interviewed

Respondent Designation	Number of Respondents
High Level Stakeholders (National)(DoJ&CD, NPA, Judiciary)	4
High Level Stakeholders (Provincial) (DoH, DoJ&CD, NPA, Judiciary)	7
Regional Magistrates	7
Prosecutors	7
Intermediaries	5
Interpreters	4
Court preparation and court support officers (NPA and NGO)	4
Social Workers (DSD and NGO)	3
TCC Staff (Site-co-ordinators, Victim Assistance Officers, Case Managers, Forensic Nurses, Forensic doctors)	9
TOTAL	**50**

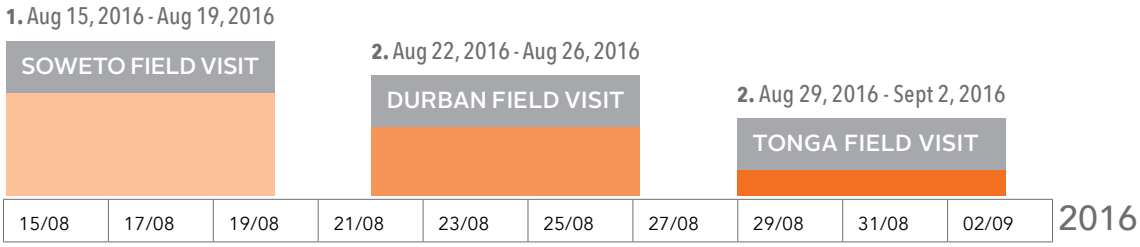
The intensive fieldwork for the Baseline Study took place over four weeks in August and September 2017. The team spent eight days at each site and were tasked with interviewing various groups of stakeholders based on their areas of expertise (outlined on next page in Figure 4).

References

12 Also referred to as a case 'docket' by some court personnel

13 The Advisory Committee for the project is an independent body of experts that the GHJRU consulted with on the project to ensure that the project was transparent, following the expectations of the ToRs and was reflective of the issues in the field of sexual offences research. The advisory panel includes members from NGOs representing LGBTI survivors, people with mental and intellectual disabilities, child support services, rape crisis counselling services, parliamentary researchers on SGBV and other SGBV sector experts. It is a voluntary position and did not form part of the project deliverables. The advisory committee was established as a measure of sound research and ethical research practice. It was also a key feature of the ethics protocol.

Figure 4: Phase 2 fieldwork dates



On arrival to each court, the research team was met by a pre-arranged central contact – in all instances the Court Manager – who in turn facilitated a court tour and introduced the research team to the relevant operational stakeholders to arrange for interview appointments. Attempts were made to make appointments prior to our arrival; however, this approach was not always successful. Therefore, arranging times with Regional magistrates, prosecutors, interpreters, intermediaries and court preparation officers on site was the most effective way of ensuring that all relevant court staff were interviewed. Once word had spread around the courts about the research process, court staff began seeking out the research team to be interviewed for the project. All of these court staff were part of the proposed and approved schedule of interview respondents.

2.4 Sources and Tools

Quantitative Data: Case File Review and case data collection tool

On average, it took approximately 30 minutes to review each case file due to missing information, indecipherable handwriting and the general state that the case files were in. In some instances, the case files were given reluctantly and were in a somewhat disordered state, as demonstrated in Table 3 below. This is despite communicating with the court managers both verbally and electronically weeks and days before the fieldwork visit, to ensure that the cases were ready for the researchers to review. Only one court had prepared cases in advance for the research team to go through in the manner that was requested.

At this court, the Court Clerk and Court Manager not only organised boxes of all finalised sexual offences cases between 2014 and 2016 in a separate room for the esearch team to sort through, they also recorded the arrest date, length of trial, charge and finalisation outcome of every case. Given the extra lengths that the court went to, these cases were entered into the database, as it was already prepared.

We aimed to review 100 cases per site at the end of fieldwork. These targets were undershot in some sites. The figure of 100 cases per site was not representative and therefore cannot viewed as indicative of the situation at the courts. Importantly, the casefile data gathered gives a snapshot of key issues. Given the high rate of missing information, the data from the case files provides other important information beyond the average turnaround times, including reasons for postponements, the relationship between types of charges and sentencing, the reasons for withdrawals or convictions and various other factors that influence the life cycle of the sexual offence case, in addition to the turnaround time from the date of arrest to the date of the final judgment.

The key findings in relation to the integrity of the case files and the state of the data available at the courts were as follows:

(i) Illegibility: The case files are difficult to read and at times, the information recorded within the files is difficult to make out. Further, each appearance is captured on a different appearance form. This means that to gather information about postponements and the reasons for postponements, when the accused is remanded into custody and when he/she is not, one should look through and count each individual appearance form. This is made impossible when the handwriting is illegible.

(ii) Inconsistency and non-uniformity: There is inconsistency across courts and departments as to how data is recorded and what indicators are reported upon. The way in which data is recorded, and the type of data that is recorded, differs between each court and even between files at the same courts.

(iii) Proportionate sample: The figure of 100 cases per court is not fully representative, compared to overall cases reported over the same period.

(iv) Time constraints: The length of time it took to review case files exceeded what we had anticipated – this was due to missing documents, indecipherable handwriting, missing information and difficulty getting access to files, as outlined below. For example, in some case files, documents such as witness statements had missing pages. Table 3 highlights the common documents that were missing in the case envelopes and the information on the charge sheets that were missing.

Table 3. Missing documentation and information in case files

J88 Included in case file	YES	7.8 %
Witness statement included in case file	YES	11.1 %
Sentencing information included on J15	YES	71.4 %
Name of the complainant on J15	YES	50.0 %
Gender of the complainant on J15 or Charge sheets	YES	72.2 %
Decipherable Information/ Handwriting in file	YES	15.5 %
	Somewhat	11.3 %

Qualitative Data: Interviews and interview guides

The interview guides were developed by the GHJRU team to reflect the conceptual framework within the ICOP ToRs and key themes and were carefully crafted for each individual court actor and other important stakeholders. Key questions were asked across all interview schedules and then specific questions were added according to each different position within the court or stakeholder role. The Advisory Committee reviewed the interview guides.[13]

Observation and observation checklist

At each court, permission was obtained from senior court personnel and the court manager to observe sexual offences cases that were being heard at the SOCs during our field visits. To avoid the presence of a multitude of observers – and most importantly, to protect the privacy of both complainants and accused persons, only one researcher was assigned from the project team to undertake these observations. This researcher observed the proceedings, completed an observation sheet to certain aspects of the trial and took additional observational notes for each sitting.

2.5 Ethical Considerations

Interview participants were provided with a participant information form, which explained the purpose and objectives of the project. A consent form for their signature was provided, as well as the ethics approval letter from UCT's Faculty of Health Science Human Research Ethics Committee. The participant information form and consent form also explained what was expected of the interviewee in the interview. These forms were also read out to the interviewee, after which they were asked to sign a consent form. In addition to this, the following ethical research practices were undertaken:

(i) Data collection was conducted in spaces that guaranteed the participant's privacy (i.e. separate offices at organisations). All interviews were conducted face-to-face.

(ii) All transcripts of the interviews were made anonymous and stored on an external hard drive that was kept in a locked office.

(iii) No data collection processes or interviews took identifying information beyond basic demographic characteristics. Should names be used in the interview, they were replaced with pseudonyms in the transcription.

(iv) The principal researcher kept all contact information (from the telephonic interview process) on an external hard drive that is kept in a locked office.

(v) All recordings and transcripts were kept in a separate password protected external hard drive, separate from the participant's contact information.

In terms of the way the data was collected, the following protocols were followed:

(i) Each interviewee received a consent form, which was signed and accompanied by the letter from the UCT ethics committee approving the research.

(ii) The protocol concerning the use of the data, storage of confidential materials and use of pseudonyms was explained to each interviewee, prior to the interview commencing. This also formed part of the informed consent process.

(iii) Each interview was recorded on a digital recorder and the interviewer took notes during the interview.

(iv) Photographs were taken of the structures and facilities at the court, for which permission was obtained from the Court Manager at each site. However, **no** photos were taken of any of the members of the public or interviewees, complainants or accused persons, court proceedings, or any subject matter that would be considered outside of the public view or domain. Photos included those of court signage and other publicly viewable spaces.

2.6 Data Management and Analysis

Data recorded on the completed interview schedules was compiled, compared, coded and analysed by theme. Themes were developed after an initial reading of the material, to include the range of relevant issues discussed by the participants. The data was then analysed for commonality (similarities) and differences in descriptive topics, and central ideas that arose in the interviews. This process was expedited by virtue of the fact that some data is 'pre-coded' through concepts set out in the ToRs for the ICOP project. The case file data was analysed using Statistical Package for the Social Sciences (SPSS). The data was captured from the Case File Data Collection Tools onto Excel and then exported into SPSS statistical software to be analysed.

2.7 Limitations and Challenges

The various challenges and limitations encountered have been detailed throughout the report and are summarised below as:

(i) The various layers of committees and regulatory bodies within DoJ&CD regarding the sexual offence courts coupled with different bodies for each vulnerable group has meant that sharing of information between colleagues has been an extreme challenge.

(ii) Obtaining permissions from various stakeholders took an inordinate amount of time and mapping of communications (and indeed protocols about communications) was difficult.

(iii) Accessing the pilot sites without the DGs memo and engaging provincial stakeholders without any communiques from national level, meant that the fieldwork was delayed and that some stakeholders could not be interviewed.

(iv) There were various views from each of the stakeholders on the Steering Committee about which courts should be approached for inclusion in the study and the reasons for inclusion differed. The Steering Committee members therefore changed the

CHAPTER 3:

CONSOLIDATED FINDINGS

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The general findings section of this report looks in detail at the progression of the sexual offences cases through the justice system in the pilot courts and what the average turnaround times are for sexual offences cases within these sites, based on the sample assessed during fieldwork. The quantitative data gathered allows us to calculate the average turnaround times of the cases reviewed at the courts from arrest date to judgment date. However, this quantitative data does not accurately display the systemic challenges and bottlenecks that impact turnaround times of sexual offences cases. An exploration of these additional variables allows one to look at why turnaround times can vary from one case to the next. By identifying these bottlenecks and systemic challenges that are present within the SOCs, we can look at how these gaps can be filled or how the blockages can be relieved to improve the turnaround times and case outcomes for sexual offences survivors in the long term. The interviews conducted with court personnel highlighted the non-quantitative elements that affect turnaround times and provided details as to why delays occur. More specifically, this qualitative narrative data illustrates how measurements of these delays can be distorted and lead to unrealistic expectations of turnaround time and performance pressures.

Before we began to probe the court personnel on the reasons for long turnaround times or identification of bottlenecks, it was essential to discuss the concept of the SOC model and how the recommendations of the MATTSO report informed the re-establishment of the SOCs. An exploration of the court personnel's perceptions of the SOCs and its relevance to improving case outcomes for sexual offences survivors is an important first step to exploring the intricacies of turnaround times. In addition, we went on to look in detail at the issue of specialisation and how specialised services should, according to the MATTSO model, improve turnaround times, convictions rates and case outcomes. With a clear understanding of the court personnel's comprehension of the SOCs and specialised court services, this section proceeds to explore the turnaround time data gathered within the case files. It then continues with the findings on bottlenecks, systemic challenges and case flow issues present in the SOCs, which also influence turnaround times, convictions rates and case outcomes such as infrastructural challenges, training needs and skills development. The section concludes with an exploration of the case flow management issues that contribute towards the turnaround time's delays and how a customised management system for SOCs may alleviate the pressures on case finalisation times.

3.1 Sexual Offences Courts and the MATTSO (2013) Blueprint: Context to the Importance of Turnaround Times

> "We were not consulted properly with the blueprint because it was done in a rush, despite our objections it went forward, MATTSO (2013) is no more." [Senior Judicial Officer]

The starting point for any investigation into the turnaround times at the SOCs must begin with an exploration of the MATTSO report and the guidelines contained therein which have informed the re-establishment of the SOCs. Appendix 1 (titled 'Oversight, Implementation and Accountability: A Critical Analysis and Literature Review of the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007) outlines in detail the events and policy changes that informed the reestablishment of the SOCs and the various challenges the were posed to the implementation of the new Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. It also outlines the various recommendations and regulations that inform the model for the SOCs as outlined in the MATTSo report.

The MATTSO report outlines the various indicators that inform the baseline study in addition to the criteria that one expects to find in a SOC, which again highlights the importance of beginning the report with a thorough exploration of the SOC model. Whilst most of the senior court personnel at the pilot sites were familiar with the concept of the SOCs, it was concerning that, many of the other court personnel had never read the report or heard of the MATTSO (2013) committee investigation into the reestablishment of the SOCs. Amongst those who were familiar with the report and

the SOC model, the consensus was that the MATTSO (2013) model is dated and did not address some of the key issues affecting court personnel. This prompts the question of what the court personnel perceive to be the key problems with the MATTSO (2013), and more so, what has improved at the courts since the publication of MATTSO (2013). During the data collection, we asked the stakeholders to reflect on the MATTSO (2013) report and to give their opinions on whether they felt that the model should be adapted. Part of this inquiry was to establish whether it would make sense to have 'advanced' or 'basic' versions of the MATTSO (2013) model. The motivation behind this was born out of the obvious differences in the structures of the SOCs and whether the less well-resourced courts would benefit from an incremental approach to the implementation of MATTSO (2013).

The most common understanding of the SOC model related to the physical infrastructure and facilities that the specialised courts require. This was foremost in the minds of court personnel when they discussed the challenges they were facing at the courts. The recommended model requires many resources to meet the various recommendations such that the DoJ&CD has had to adapt the physical courthouses to fit within their budgetary constraints (as outlined in their annual reports since 2014) .[14] The audit of all the courts conducted in 2014 by the DoJ&CD, showed which courts closest to having the necessary physical infrastructure to be adapted quickly to transition to a sexual offences specialised court. However, the decision to rollout 47 courts within one year was excessively ambitious. There were a wide variety of opinions at the courts as to whether this has been successful, whether the refurbishments have been finished, and if their courts are fully compliant SOCs. As a judicial officer explained, the blueprint as it stands now is resource and budget heavy:

> I don't have any ideal solution to that but if you look at the load for instance that individual prosecutors are carrying with the police it calls for more infrastructure, like the courts. The main objection to the blueprint model is the availability of facilities. For us to maintain that kind of blueprint we might have to have about three times the number of courts we have if we are to dedicate some courts. [Regional Court Magistrate]

As outlined in the literature review in Appendix 1, the general confusion over terminology such as 'courts' or 'courtrooms' illustrates, at a base level, the confusion that exists around the concept. Of all the courts visited within this study, none of them considers themselves to be 'exclusive' SOCs, with mixed rolls of sexual and non-sexual offences cases operating in all of them. As a prosecutor at one of the hybrid courts explained, "When this project was launched, my court was identified as a sexual offences court, but we still do everything." Despite refurbishments and the structural requirements being met, there were still some obvious gaps in the infrastructure but as well as in the implementation of the MATTSO (2013) recommendations at the courts and in relation to basic compliance with the MATTSO SOC model. (Appendix 2 outlines a comparative table, which sets out the MATTSO (2013) checklist for the SOCs and indicates if the pilot courts fit the requirements.) That said, at the time of writing this report, there is a draft document on the minimum standards required to designate a courtroom a sexual offences courtroom that is not as resource-heavy as the MATTSO (2013) model. However, this has resulted from the realisation that having an exclusive sexual offences court is unrealistic given the capacity constraints at the courts and at best sexual offences courtrooms can be established on a resource continuum with some courts being more adaptable than others are. Another area of confusion regards the number of courtrooms that are officially recognised as being SOCs. The other two courts are not fully compliant with the model yet due to

References

14 (i)Department of Justice and Constitutional Development, (2014) *Report On The Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2013 To 31 March 2014*. Department of Justice and Constitutional Development, South Africa.

(ii) Department of Justice and Constitutional Development, (2015) *Report On The Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2014 To 31 March 2015*. Department of Justice and Constitutional Development, South Africa.

(iii) Department of Justice And Constitutional Development, (N.D). *The Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: Annual Report 2015/2016*. Department of Justice and Constitutional Development, South Africa.

budgetary constraints, they take the overflow of cases from the designated SOCs. As a Regional Court magistrate at this court explained when discussing the hybrid nature of his court:

> This court cannot be a sexual offences court. The only time that we can talk of [court name] having a sexual offences court is when we can have a proper structure built then I can say, yes [...] You can make conversions, chop and change, but you'll never achieve a sexual offences court or even a hybrid court here [...] what the Department has done here is loaded this court with lots and lots of responsibilities without even capacitating this court with personnel. [Regional Court Magistrate]

This could have implications for public perceptions and opinions also. The public follow signs to the SOCs when they are attending the same court for another (non-sexual offences) matter, which can lead to embarrassment for those not sitting for a sexual offence case. For example, the designated courts at one of the pilot courts are labelled as SOCs yet members of the public are making their way to those courts for cases that are not sexual offense cases as they are hybrid courts. As the Regional Court magistrate at this court explained:

> Once you have passed the desk, immediately to your left there is a sign that indicates that you are about to enter a passageway that houses courts 10 and 11 – the board describes these as sexual offences courts. However, as we were told, and as we soon found out, these are not exclusively sexual offences courts. They are in fact hybrid courts. [Regional Court Magistrate]

The frustration felt by the personnel at the courts concerning the lack of structural and human capacity to deal with the huge caseloads for sexual offences was palpable at each court. In one court, the research team was pointedly informed that the stakeholders had made repeated requests to the DoJ&CD for what was referred to by one of the Regional Court magistrates interviewed as "a mega court structure". Such requests have not been met with any substantive engagement despite that court's personnel having repeatedly asked to participate in research about improving the court system. This was a view shared by many of the research respondents who feared that the research was less about contributing to improvements in the system and more about an evaluation of their ability to comply with the MATTSO (2013) blueprint and an evaluation of their effectiveness in improving conviction rates and case flow of sexual offences cases at the SOCs. The fear of being evaluated was expressed by many of those interviewed despite the team assuring them that their individual performance was not the subject of the research. A judicial officer explained that courts are being adapted to comply with the MATTSO (2013) model; however, these courts are not capable of compliance due to their structures and need to be completely rebuilt to capacitate the requirements of the SOC model. The respondent explained that:

> When they talk about an ideal sexual offences court looking at the structure of this court here one would immediately realise that this structure is far from being a hybrid court, […] let alone a proper sexual offences court, because it does not meet any standard. In fact, as you can see this building was never meant to be a court […] you can walk through the passages, you meet members of the public standing all over. Imagine a situation where children were to come into this court as rape survivors and so forth, and they are going to be coming across many people sitting next to each and every corner. By the time they walk into court they will be devastated. [Regional Court Magistrate]

At three out of the five sites, these sentiments were echoed. Personnel appealed for improved human and physical infrastructure and "more haste, less speed" when it comes to rolling out SOCs at courts that are not capacitated to take on extra sexual offences cases. As a prosecutor from one of the courts commented, "we just have to get a new court. Unfortunately, it's, it's been a matter that has been postponed and postponed and postponed, I think per week we handle more than 6000 people coming in and out of this court […] you just have to handle what you can handle per day and then look at far away dates. It's just not fair."

A central flaw in the oversight model is its failure to maintain SOC-compliant courts once they have been successfully upgraded from Regional Courts systems and structures are put in place to merely comply with the bare minimum of what the MATTSO model outlines; however, the feedback from the courts and court managers was that they are not maintained and fall into disrepair. Frequently, equipment and fixtures are not replaced when necessary or maintained properly. A related issue concerns remit. Who is responsible for such maintenance? As one case manager explained:

Figure 5: Old and broken CCTV Cameras in a Rural Court

> I think the TCC, in terms of services rendered, somebody managing the cases is very important you know, like, who maintains the building and who checks that it's done. Comfort packs, who checks them, whose responsibility and who makes sure who checks and that people don't people just can't say, uh, you know, Where does it start with the NPO, where does it stop because everything can't be the NPA, you know and things get done, to me there's a lot that gets done and then nothing gets done, termites are eating the TCC. [Case Manager]

The issues regarding maintenance of the newly refurbished courtrooms, and the capacity issues that affect the efficient running of them in accordance with MATTSO (2013) recommendations, point to a need to clarify who is responsible for the maintenance and monitoring of the newly established SOCs.

Mst importantly, there needs to be clarity on how a SOC is defined (a court or a courtroom) in addition to how a court is earmarked for refurbishment and who decides whether a court or courtroom is to be added to the list. Given the myriad of departments and stakeholders involved in the blueprint, there is a surprising lack of transparency and clear understanding as to how a SOC is operationalised when the court roll is mixed and the court has reached beyond its reasonable capacity of human resources, caseload and infrastructure. A worrying finding at one of the courts relates to this issue. Adult sexual offences cases were being tried in a 'normal' Regional Court to allow child cases to be accommodated at the designated and equipped SOCs. As the Senior Public Prosecutor (hereafter referred to as the SPP) explained:

> "What has happened was, in light of the MATTSO report, we began the process of centralising all sexual offences in these two courts. Now, looking at best practices, or what seem to be best practices in other courts in the province, a decision's been taken, although it is contrary to the MATTSO report and I have pointed this out, to take the adult victims, and put them in the general Regional Court, so they won't be prosecuted by specialist prosecutors, they will be prosecuted by Regional Court prosecutors".

This is an important issue to take note of and it will be discussed further in the next section. Specialisation of court staff for these courts is central to the MATTSO (2013) recommendations; however, the shortage of specialised prosecutors coupled with the judiciary's reluctance to specialise leads to uncertain levels of compliance with the blueprint. Structurally, courts might well comply with the model but neglect the need for specialisation and skills. As an SPP explained, "We established Sexual Offences Court, as the terminology correctly indicates, but it's just physical. We had the new equipment, we have the monitor in the intermediary room for the child to identify the accused, we have all the paraphernalia, but you don't have the specialisation".

The pursuit of a "less resourced" SOC model as outlined in the 2015-2016 report by the DoJ&CD (which is in draft form at present) shows an acknowledgement of the difficulties of applying the blueprint to all courts. However, it needs to go further to consider the human resources issues, the distance travelled by complainants to these courts, the caseloads and physical infrastructure. The draft also considers some basic requirements of the MATTSO model to be advanced 'nice to have' requirements, which is a central flaw of the draft regulations. Again, this highlights the need to consider the applicability of the MATTSO (2013) recommendations considering the continued obstacles at court level regarding resources, infrastructure and most of all human resources to equip 'exclusive' courts or courtrooms. There needs to be an emphasis on carefully planned and executed future roll-outs of SOCs that ensure the existing courtroom within hybrid courts are fully capacitated and maintained first before putting more resources into the next phase of the roll-out. The findings of this research show that the reasons for the first failed establishment are still key challenges at existing courts. This is an issue that needs immediate consideration due to the effect it will have not only on court staff but also more importantly on the final outcome for the sexual offences survivor.

Figure 6: Testifying room for vulnerable witness and the intermediary.

Extract from field observation on the infrastructure and structural challenges at one of the pilot courts:

(i) It is interesting to note that the prosecutors' and RCMs' offices are not access controlled, or behind gates. Therefore, besides having locks on them, there is no real extra security that is provided for these offices.

(ii) There were water coolers in the child and adult waiting areas for both courts; however, they were all empty and the water tank belonging to the water cooler in the adult waiting area for one of the courts was missing.

(iii) The court does not have a feeding scheme. The court has however arranged with the privately owned tuckshop that operates outside the court so that children can purchase a healthy meal at a reduced rate – the funding for this comes from witness fees.

(iv) The court manager informs us that the intermediaries and prosecutors also often end up providing child witnesses with food.

(v) The court also uses some of its own budget to purchase certain essentials for the witnesses, such as sanitary pads for the female witnesses.

(vi) The court preparation officers (CPOs) do not have their own offices – one of the CPOs uses the room just off the waiting room as a consult area and an office. The court is hoping to change a broom cupboard into an office and consult room for the second CPO.

3.2 Specialisation, Specialised Services and its Impact on Turnaround Times

> The MATTSO report as you know, we were not in favour of the blueprint. Because, take for instance a rural court, how would you survive with that kind of court. Let's say that have 12 cases in that court and if they have to deal with only those cases, then the rest of the cases would not have attention. That is basically our point. Because our Regional Court magistrates or judicial officers are not specialised. They are doing everything, just like judges do. That is our objection. If we confine these courts to only doing those cases then we need more posts created. Whatever post is created for this court, will have limited strength in terms of the volume of work. [Senior Judicial Officer]

The quote above was the response of a stakeholder in the judiciary when asked for an opinion on the SOC model and the effectiveness of the new process of re-establishing the SOCs. This was a sentiment shared amongst most of the presiding officers that were interviewed and it points to the disjuncture that is present amongst key stakeholders regarding the specialised role of SOCs. The issue of specialisation is a complex one and it has a direct impact on not only our perceptions of acceptable turnaround times but also the way cases proceed through the courts as specialisation is deemed to be an essential component of improving turnaround times and services at the SOCs. There needs to be a clear distinction between (i) the provision of specialised services, (ii) the use of specialised skills within the courts and (iii) the exclusivity of court rolls in designated SOCs.

The use of terms such as specialisation are loaded terms and the difference between specialised services at the courts and the designation of court rolls to exclusively deal with sexual offences cases should be noted. The SOA of 2007, after the amendment by the Judicial Matters Second Amendment Act 43 of 2013 [16] , made provision (section 55A) for the designation of SOCs exclusively for purposes of the trial of any person or other proceedings arising out of sexual offences in terms of the common law, the Sexual Offences Act or any offence in terms of the SORMA of 2007. This amendment gives effect to the recommendations of the MATTSO as described at the beginning of this section. Section 37 of the Judicial Matters Amendment Bill 14 of 2016 now seeks to amend section 55A of SORMA. The most significant aspect of the proposed amendment is the removal of the word "exclusively" which would in effect be in direct conflict with the recommendations of the MATTSO (2013). The removal of the word "exclusively" could give rise to hybrid SOCS. As stated above, this runs contrary to the recommendations of the report. The reasons for recommending the incremental shift from hybrid sexual offences courts to SOCs compliant with the SOC model are based on the knowledge that, although the intention is to prioritise sexual offences on a mixed court roll, the fact that some SOCs can hear other matters could compromise the objectives of a SOC and the victim-centred approach which is central to them.

The judiciary and regional presidents have voiced concerns regarding the use of the expression "exclusively" as it gives rise to problems of interpretation. The concern is that it does not empower the Minister to designate a court room but only a court. Recently two civil society groups, Rape Crisis Cape Town and The Women's Legal Centre, [17] submitted memorandums to parliament that illustrate how current formulation of the section can be rectified to avoid this problem by adopting the proposed amendment without the removal of the word 'exclusively". [18] Their concern is that:

References

16 See http://pmg-assets.s3-website-eu-west-1.amazonaws.com/161019b14_-_2016_judicial_matters.pdf

17 Dey, K., Pithey, B. and Bodenstein, J. (2017) Written Submission to the Portfolio Committee on Justice And Correctional Services: Judicial Matters Amendment Bill [B14-2016] 15 March 2017. http://wlce.co.za/wp-content/uploads/2017/05/Submission-on-JMAB-2016-Rape-Crisis-and-WLC.pdf

18 Davies, M. (2017) 'There's Been A Great Victory For Rape Survivors In The Sexual Offences Court Discussions' *Huffington Post*, June 6, 2017

19 Dey, K., Pithey, B. and Bodenstein, J. (2017) Written Submission to the Portfolio Committee on Justice and Correctional Services: Judicial Matters Amendment Bill [B14-2016] 15 March 2017. Page 10-11

Practically, if a court has both sexual offences and non-sexual offences (either enrolled on that court roll because there are not enough sexual offences to justify a full court roll, or a matter is drawn from another court when the court roll of the sexual offences court is completed for the day) many of these non-sexual offences cases will become part heard. These part heard non-sexual offences cases must be heard at some stage; the mere fact that the non- sexual offence matter is being heard means that a sexual offence matter is not on the roll for that day. While it is supported that facilities and court time must be maximised, it is submitted that the proper implementation of case flow management will militate against wasted court time. Sufficient provision must be made to ensure that court rolls run effectively, negating the need for sexual offence courts to draw matters from other court rolls. If there are insufficient sexual offences matters to justify a full court roll, it is submitted that a sexual offences court may be established for certain weeks of the month, or days of the week. The court may then be used to hear non- sexual offences matters on the remaining days. This will ensure maximisation of court facilities and court time. [19]

The MATTSO report gives clear guidelines and recommendations as to how the SOCs should operate, and the levels of specialisation that every actor within the courts should operate at. However, it fails to take into account the measures that are needed to affect such specialisation and the resources (both human and financial) that are needed to make this recommendation effective. The MATTSO report does not interrogate the mechanisms such as training agencies, criteria and qualifications to create 'specialised' court personnel and how this translates in real terms across courts, stakeholders, skills and existing structures.

Overall, those interviewed agree that specialised staff who are sensitised to the needs of the sexual offence survivors is conducive to cultivating a 'good witness' and that "specialist staff does make a difference. Not everyone knows how to handle or to consult with a complainant who is sexually... you need someone who is sensitive about that" [Magistrate]. Another court actor commented that the specialised approach is important to the complainant not only in terms of how the case is handled, but also in terms of how they are treated by the prosecutors and Regional Court magistrates. Providing specialised care to survivors as they navigate the court process encourages their feeling more confident in the efficacy of the justice system as a whole. As one of the interpreters explained:

> ... all Prosecutors can prosecute in any case, but with sexual offence it needs someone who will be bold enough to fight for you in court to make you get at least some of your dignity back [...] it must be someone who has the patience who is willing to go that extra mile and listen and make sure that that person understands you and believe in you and what you are saying. [Interpreter]

Many of the stakeholders interviewed voiced similar arguments against the need for specialisation, an area that proved one of the most contentious regarding the SOC blueprint. The central objections related to the need for increased human resources so that replacement personnel are available to facilitate rotation if court personnel are 'forced' to specialise. This was said in the context of the judiciary feeling that specialisation for sexual offences is not necessarily 'a good thing'. The judiciary voiced a practical concern: that dedicated courts and courtrooms that operate a fixed sexual offences roll would compromise bench hours and thus jeopardise the efficiency of the system. For example, if child cases are only heard in the morning then the court might sit empty in the afternoon, resulting in magistrates being unable to report sufficient bench hours at those courts. It is also difficult at courts where there are few presiding officers and the options to rotate are more difficult. As one prosecutor commented:

> You know, I believe it, it can work [referring to the SOCs], but my concern is that ... with the prosecutors it can work because then you can have two prosecutors who can change, but with the presiding officers, that will only be one, and some of them they just don't want to be listening to sexual offences only, which I believe is one of the reasons why those courts were disbanded, is because of people saying that, you know what, emotionally I cannot take this, or whatever. [Prosecutor]

As well as the practical concern, many court personnel were concerned about the impact on career advancement that specialising might hold, fearing they would be putting themselves in a box, rather than being 'all-rounders'; a fate suffered by forensic staff who are sometimes referred to as "rape doctors" [DoH stakeholder]. The concern about specialisation was also motivated by an awareness of the fear of the emotional and mental weight of specialising in this area, particularly in light of the inadequate levels of support (in the form of debriefing or counselling for the effects of vicarious trauma) that are offered to those working in the SOCs and the TCCs. Prosecutors and Regional Court magistrates also commented on the right to better salaries for specialised positions which they felt was appropriate given the levels of experience and expertise needed for these positions in the SOCs, and this would have significant budgetary implications.

Performance indicators, such as the NPA's merit system or the judiciary's bench hours, should be reconsidered and adapted for specialised staff. The current indicators do not consider the specialised nature of sexual offences cases and the specific elements of sexual offences cases, which are beyond the prosecutors or the presiding officers' control and affect turnaround times and finalisations rates. This includes, for instance, failure of the accused to appear in court if the accused is out on bail, delays with witnesses not appearing at court, delays with the processing of DNA and forensic evidence and illness of interpreters, intermediaries or court personnel in general. Particularly in child sexual offences cases, the case can be heard in a short period. As child cases are heard in the morning and tend to adjourn before lunch, if a witness fails to appear or an interpreter is unavailable, that case will have to postponed. Considering the high caseload of child sexual offences cases operating in the pilot courts, the scheduling of cases is difficult and the roll is full many months in advance, which makes postponements difficult to schedule.

Another challenge of specialisation is the location of these SOCs. Designating courts as having specialised sexual offences case services in certain areas, particularly in rural areas, means that survivors should travel long distances to be able to appear in the specialised SOC. This adds to the secondary victimisation and unnecessary expense and stress on survivors to travel far to get to the courts, as one RCP explained "So why should my sexual offences victims in [town name] now have to go through to [town name] that is about 200 kilometres. They have to take like two buses and three taxis to get there and then drive back those kids have to be on the bus or the taxi at three o'clock in the morning". The respondent went on to suggest that if every Regional Court had basic facilities such as CCTV and intermediaries they could process child sexual offences cases and reduce the amount of travel involved to these courts.

While the notion of 'specialising' in sexual offences cases is generally supported, and indeed goes some way towards ensuring that sexual offences complainants are provided with the best overall outcome for their cases as a result of the unique set of victim support and case management skills that court personnel possess, further interrogation is required to avoid these difficulties. For example, the various court actors – whether they are interpreters, intermediaries, prosecutors or magistrates – should be provided with a clear description of what 'being specialised' constitutes in their respective fields. This could be denoted by the number of bench hours on sexual offences cases, the taking up of certain courses/course hours, minimum requirements for job recruitment or promotions in specialised positions as well as other professional development opportunities offered by the DoJ&CD or the NPA. The opportunity to rotate courts or to work on other, non-sexual offences matters is also an important consideration to ensure longevity, continuity of personnel and to reduce the risk of burnout in specialised court personnel.

3.3 Turnaround Times of Sexual Offence Cases

> Let's not make this about numbers, especially when it comes to sexual offences, let's make it about the actual victims that you deal with. [Senior Stakeholder from NPA]

> ...if you compare a sexual offence to a robbery, you'll find out that, you know, a robbery can be started and done within 9 months and you finish, but a sexual offence, it will take maybe two to three years to finalise. Although there are some that are finalised quicker, but it's very rare to find that a case has started and been finalised within for 9 months or 6 months, if it's a sexual offence. [Prosecutor]

> (IRO conviction rates) I think that they look at it as an indicator but as an indicator for success personally I think that it is not quite proper to measure success by a conviction because you should look at how one achieved that conviction. You are not dealing with objects here you are dealing with people. You see, so then there are a lot of considerations that one needs to put out there before one could say that you can get a conviction. If it must be a conviction it could also encourage that corruption that we see in other countries where they do everything possible and even cook evidence because they want a conviction. So it's a bad way of measuring success because it opens the door ways to a number of issues that might influence bad practices into the system and that's not what we want. [High level stakeholder DoJ&CD]

The quotes from the above illustrate an acknowledgement and awareness that traditional indicators of success (as performance measures in the criminal justice system) in the form of *conviction rates* and finalisation rates do not give a true reflection of the work involved in sexual offences cases. Despite awareness of the need to adapt these indicators and the limitations they placed on court actors, the persistent use of conviction rates and case finalisation times, coupled with bench hours and court hours, as ways of assessing each court and department's success at serving swift and efficient justice within allocated timeframes, has not been reconsidered. Both the prosecution and the judiciary expressed discontent at being held accountable to these traditional indicators and commented on the pressure it puts on them to finalise or withdraw cases. Those interviewed intimated that in the absence of such pressures they could proceed with more cases than they currently do.

As a judicial officer explained, the emphasis on statistics compromises the hard work that is being done at a court level to assist the complainant. The focus on convictions in particular creates expectations amongst the public and survivors that a conviction is the ultimate form of justice. In fact, both state and NGO stakeholders commented that 'justice' is not necessarily achieved through securing convictions but rather rests on survivors' being believed, supported, kept safe by the system and informed about the progress of their case. These all rest on basic values incorporated into the *Service Charter for Victims of Crime in South Africa* (2005).

In addition to ensuring swift turnaround times and efficient use of bench hours, the specialised nature of SOCs requires specialised indicators that consider the various other factors that might prolong a case. For example, due to the need for specialised prosecutors, intermediaries and court preparation officers in child sexual offences cases, one Regional Court magistrate stated that child cases are very difficult to manage when it comes to performance based on case flow

management. He explained that "the child sex cases take longer to finalise" due to the specialised services and facilities that they need, the timing of cases to accommodate schooling or access to intermediaries or equipment for testifying, the number of complaints and witnesses and accused persons that may be involved, the readiness of the child or adult complainants to testify, the number of years a child has been abused, whether a plea bargain is made and so on.

At the time of this research, the recommended timeframe for the life cycle of a sexual offence from reporting to finalisation or judgment was nine months (which is an NPA guideline). Conviction rates are targeted to between 70-90%, with some sexual offences courts boasting a 71% conviction rate. [20] However, when we interrogate those statistics and look at the variables that affect turnaround times, one can see that these indicators actually tell us very little about the extent to which justice is served or the complainants are satisfied with the service they have been provided or the outcome of their case The NPA reports annually on its traditional indicators and, according to its recent annual report 2015-2016, the Sexual Offences Courts have been central to the improved conviction rates and speedy finalisation of sexual offences cases. These performance indicators are problematic on several levels, however an unabated success the SOCs may seem to be on the surface. In their 2015-2016 annual report they claim to have "achieved a conviction rate of 70.1% in respect of sexual offences cases with 7 098 cases being finalised. This is the highest conviction rate in relation to sexual offences over the last 16 years". [21] In 2000, SOCA commissioned an independent research study by the Monitor Group, at which stage the conviction rate was sexual offences was 48%. [22]

According to the same report "the conviction rate regard to cases referred with to the Thuthuzela Care Centres (TCCs) is measured separately to assess their effectiveness in managing sexual offences cases". The conviction rate achieved regarding such cases is reported to be 71.8% in 2015[23] (compared to 68.4% in the previous year), with 2 340 cases being finalised in respect of matters reported to the TCCs. The number of matters reported at the TCCs increased by 2 384 (+7.8%), from 30 402 to 32 786 during the same time period. They also reported an increase in life sentences by 16% on the previous year (an increase from 209 to 236 cases). However, this amounts to only 3.3% of finalised cases. Finalisation here includes withdrawals, SOR and diversions not only convictions and the term 'finalised' cases is misleading.

These traditional indicators are two-dimensional and only measure a period of time between two points in the system rather than accounting for the other variables, which influence the life cycle of a case. To fully appreciate the complexity of turnaround times one must look at other factors such as the age of complainant, the pleas of the accused, the outcomes of finalisation, as well as the sentencing that follows those convictions. One must ask whether a nine-month turnaround time on a case is a 'good' outcome for a complainant if this turnaround time has meant an acquittal, a plea bargain, a complainant that was not 'trial-ready' or a case that did not proceed to trial at all. The analysis of the sexual offences cases below considers all these factors and illustrates the multifaceted dimensions to case turnaround times. It highlights the need to move away from measuring successful case outcomes with traditional indicators.

References

20 See (i) National Director of Public Prosecutions, (2015) *Annual Report 2014/2015 In Terms of the NPA Act 32 of 1998.* National Prosecuting Authority, South Africa. (ii) National Director of Public Prosecutions, (2016) *Annual Report 2015/16 In Terms of the NPA Act 32 of 1998.* National Prosecuting Authority, South Africa.

21 National Director of Public Prosecutions, (2016) *Annual Report 2015/16 In Terms of the NPA Act 32 of 1998.* National Prosecuting Authority, South Africa. Page. 10

22 Ibid. Page. 11

23 Validated by Artz, L., Ward, C., Burton, P. Heath, A., Leoschut, L., and Le Mottee, C . (2017) UBS Optimus Child Abuse Cases Tracking Study. Cape Town: Gender, Health and Justice Research Institute, University of Cape Town and Centre for Justice and Crime Prevention.

Table 4. Types of sexual offences recorded in sample

Types of Sexual Offences		
	Frequency	**Valid Percent**
Attempted rape	6	1.3 %
Gang rape	1	.2 %
Not recorded	3	.7 %
"Penetration"	1	.2 %
Rape	**410**	**91.7 %**
Sexual assault	23	5.1 %
Statutory rape	2	.4 %
Was rape then reduced to sexual assault	1	.2 %
Total	447	100.0 %

Table 4 shows the frequencies of the types of sexual offences that were recorded on the case files under review. Unsurprisingly, the highest percentages of sexual offences were rape (91.7%) with sexual assault making up only 5.1% of the recorded offences. In the case files there were also secondary charges such as kidnapping and assault with attempt to do grievous bodily harm (GBH).

On a basic descriptive level, the analyses show some interesting findings relating to ages of victims and accused persons, bail amounts and turnaround times. In Table 5 below, the average age of the victim was 16 years with a minimum age of 3 years. This validates the qualitative feedback received from court personnel regarding the high proportion of child victim cases in the SOCs. Equally important to note is the age of the accused, with an average of 31 years. Concerning is the minimum age of 13 years, which points to the need to consider how young offenders are figured into the SOC model.

Table 5. Averages across cases in sample

Descriptive Statistics				
	N	**Minimum**	**Maximum**	**Mean**
Turnaround Time from arrest to Judgment	401	1 month	64 months	9.1 months
Age of victim	84	3 yrs.	63 yrs.	16 yrs.
Age of the accused	98	13 yrs.	65 yrs.	31 yrs.
Amount of Bail	45	R 500	R 5,000	R 1,602
Number of court appearances	78	1	40	13
Number of postponements	79	1	34	10
Sentences given to those found guilty	18	2yrs	20 yrs.	9.14 yrs.

The minimum and maximum values show us that sexual offences complainants' cases can have up to 40 appearances and as many as 34 postponements, which is unacceptable when it comes to case outcomes. However, the figure for turnaround times is most interesting. The mean (average) turnaround time is 9.1 months for a case to run its course, as illustrated in Table 5 above. This would appear on a surface level to corroborate the current nine-month guideline for finalisation of cases and as such would indicate that the system is working effectively and those targets are attainable. However, as shown in Table 6 below, the nature of those cases that are finalised in nine months must be more thoroughly interrogated to illustrate that statistics can be dangerous when not placed in context.

Table 6. Recorded outcomes of cases in sample

FINALISATION - Outcomes of cases		
	N	**Valid Percent**
Struck off Roll	106	24.4 %
Withdrawn	177	40.8 %
Conviction	64	14.7 %
Acquittal	87	20.0 %
Total	**434**	**100.0 %**

In order to evaluate the cases that were finalised within 9.1 months, we need to investigate what the outcomes of those cases, the age of the complainant and the type of plea submitted. Table 6 above illustrates that those cases that were struck off the roll (SOR) and withdrawn made up 65.2% of the cases reviewed. To see if these two outcomes skewed the 9.1 month average we should look at them in conjunction with the detailed turnaround times. For the purposes of this analysis we banded the times from arrest date to judgment date as shown below in Table 7, 65.2% of the cases were finalised within 0-9 months, with a further 25.3% being finalised before 18 months. Table 7 clearly shows that the perception that most cases take between 2-3 years to be finalised is inaccurate. As shown by this particular sample, most cases are finalised within 18-24 months.

Table 7. Turnaround time from arrest date to judgment/ finalisation date of cases in sample

Categories of time from arrest date to judgment date		
Months	**Frequency**	**Valid Percent**
0-5 months	148	37.1 %
6-9 months	112	28.1 %
10-12 months	57	14.3 %
13-18 months	44	11.0 %
19-24 months	17	4.3 %
25 - 30 months	14	3.5 %
31 - 36 months	5	1.3 %
3 yrs. and over	2	.5 %

Table 8. Cross-tabulation of the outcomes of cases with the turnaround time bands from arrest date to judgment/ finalisation

Turnaround Time Category * Finalisation Cross tabulation					
	SOR Roll	**Withdrawn**	**Conviction**	**Acquittal**	**Total**
0 - 5 months	30.1%	41.1%	11.0%	17.8%	100.0%
6 - 9 months	17.1%	45.9%	17.1%	19.8%	100.0%
10 - 12 months	38.6%	24.6%	15.8%	21.1%	100.0%
13 - 18 months	18.6%	32.6%	27.9%	20. 9%	100.0%
19 - 24 months	18.8%	50.0%	12.5%	18.8%	100.0%
25 - 30 months	21.4%	14.3%	14.3%	50.0%	100.0%
31 - 36 months	25.0%	25.0%	0.0%	50.0%	100.0%
3 yrs. and over	50.0%	0.0%	50.0%	0.0%	100.0%
Total	**25.7%**	**38.2%**	**15.5%**	**20.6%**	**100.0%**

When we compare through a cross tabulation the outcomes variables against the turnaround times bands, one can see in Table 8 above, that 41.1% of those cases finalised in 0-5 months were withdrawn and a further 45.9% of those cases finalised between 6-9 months were also withdrawn. In total 71.2 % of those cases finalised in 0-5 months were SOR or withdrawn, and 63% of the 6-9 months were SOR or withdrawn. However, when you examine those cases that made it to conviction, they were in the 13-18-month category, which illustrates that in those cases that made it to conviction, the 9-month target was surpassed as they were in the 13-18-month category. If one looks at it in from another angle and takes the percentages of each outcomes with turnaround times, Table 9 below then shows that of those SOR cases reviewed 65.4% (43.6% + 18.8%) were finalised in 0-9 months. Equally, 74 % (40% + 34%) of those cases withdrawn fell into the 0-9 month's category.

Table 9. Outcomes of cases % in turnaround time bands

FINALISATION * Turnaround Time Category Cross tabulation									
Turnaround Time Category (months)								**Total**	
	0-5	**6-9**	**10-12**	**13-18**	**19-24**	**25 - 30**	**31 - 36**	**3 yrs. plus**	
SOR	43.6%	18.8%	21.8%	7.9%	3.0%	3.0%	1.0%	1.0%	100.0%
Withdrawn	40.0%	34.0%	9.3%	9.3%	5.3%	1.3%	0.7%	0.0%	100.0%
Conviction	26.2%	31.1%	14.8%	19.7%	3.3%	3.3%	0.0%	1.6%	100.0%
Acquittal	32.1%	27.2%	14.8%	11.1%	3.7%	8.6%	2.5%	0.0%	100.0%
Total	**37.2%**	**28.2%**	**14.5%**	**10.9%**	**4.1%**	**3.6%**	**1.0%**	**0.5%**	**100.0%**

In terms of convictions, as shown in Table 9, the 0-9-month range is within the NPAs conviction target at 58.3% (26.2% + 31.1%). However, these convictions were mostly from cases where the accused plead guilty, and in those cases, swift convictions are easy to obtain. Importantly, the figures for convictions stay at reasonable levels up to 18 months and then drop with 91.8% of those cases that ended in convictions being finalised within 18 months. This is a positive finding and points to the recommendation from this analysis that the target for finalisation of cases could reasonably be increased from 9 to 18 months.

Another interesting angle to look at this from is through court level data. Table 10 below looks at case outcomes by court. As you can see Court A has a low percentage SOR (16.7%) but a high percentage of acquittals (38.9%), which results in

Court A having the lowest percentage of convictions (11.1%). Court B overall has the highest conviction levels (50% of the cases reviewed from Court B), has no SOR's, and has the lowest percentages of cases withdrawn (18.8%), yet its acquittals are high (31.3%). Again, this illustrates the way in which isolated statistics can tell a story about 'good convictions' –a standard measurement – but fail to reveal other dimensions of case finalisations, such as high acquittals.

Court C has a worryingly high number of cases resulting in SOR and withdrawals (68.9% in total). However, its conviction rates (13.2%) are average compared to the other courts in the study, and its acquittals (17.9%) are low. Court D similarly has high levels of SOR and withdrawals (64%) but a respectable conviction rate (20% - despite it being well below the advertised and reported national average of 71%) and the lowest percentage of acquittals (16%).

Table 10. Outcomes recorded on cases in sample by court

Court		A	B	C	D	Total
FINALISATION	Struck off Roll	16.7%	0.0%	26.3%	24.0%	24.4%
	Withdrawn	33.3%	18.8%	42.6%	40.0%	40.8%
	Conviction	11.1%	50.0%	13.2%	20.0%	14.7%
	Acquittal	38.9%	31.3%	17.9%	16.0%	20.0%
Total		**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	

Regarding the turnaround times from arrest to finalisation date, the courts reflected the suppositions mentioned above with much of the cases being finalised within 18 months from arrest date. As Table 11 shows, Court A finalised 40% of cases between 0-9 months and 69.8% in Court C, however in Court B and D, between 16.7% and 27.3% were finalised in the recommended 0-9 months. Once again when we look at finalisation bands across the courts one can see that more cases are finalised at the 13-18-month mark, further validating the 18-month turnaround time recommendation. Another key variable, which can affect turnaround times, is the age of the complainant. As we learned from the respondents, they aim to finalise child cases 'quicker' so as not to traumatise the child even further by prolonging the process, and to mitigate the problem of childrens' memories being more changeable and liable to fade. As the green boxes indicate, up to the age of 18 years, the finalisation rates are reasonable, according to NPA targets, up to 9 months, with 75% of those cases finalised in 6 - 9 months being for complainants between the ages of 0 and 8 years. Again, the 18-month mark (orange squares) show higher numbers of cases finalised within 18 months, which begin to drop dramatically after 18 months.

Table 11. Turnaround times from arrest date to judgment/finalisation by court

Court	A	B	C	D	Total
0-5 months	20.0%	0.0%	40.2%	18.2%	37.1%
6-9 months	20.0%	16.7%	29.6%	9.1%	28.1%
10-12 months	8.0%	16.7%	15.1%	0.0%	14.3%
13-18 months	24.0%	33.3%	9.4%	9.1%	11.0%
19-24 months	12.0%	8.3%	3.1%	18.2%	4.3%
25 - 30 months	8.0%	8.3%	2.0%	36.4%	3.5%
31 - 36 months	4.0%	16.7%	0.6%	0.0%	1.3%
3 yrs. and over	4.0%	0.0%	0.0%	9.1%	0.5%

Table 12. Cross tabulation of the age of the complainant with the turnaround times from arrest date to judgment to finalisation of cases in sample

Months	0-8	8-12	12-18	18-25	25-35	35-60	51 yrs. +	Total
0-5	40.0%	20.0%	0.0%	20.0%	0.0%	20.0%	0.0%	100.0%
6-9	25.0%	50.0%	25.0%	0.0%	0.0%	0.0%	0.0%	100.0%
10-12	0.0%	40.0%	20.0%	40.0%	0.0%	0.0%	0.0%	100.0%
13-18	21.4%	42.9%	35.7%	0.0%	0.0%	0.0%	0.0%	100.0%
19-24	0.0%	0.0%	66.7%	33.3%	0.0%	0.0%	0.0%	100.0%
25-30	0.0%	0.0%	28.6%	42.9%	0.0%	14.3%	14.3%	100.0%
31-36	50.0%	0.0%	50.0%	0.0%	0.0%	0.0%	0.0%	100.0%
3yrs plus	0.0%	50.0%	0.0%	0.0%	50.0%	0.0%	0.0%	100.0%
Total	16.3%	28.6%	30.6%	16.3%	2.0%	4.1%	2.0%	100.0%

Taken from a different perspective, when we look at the percentages of outcomes across each age category, as depicted in Table 13 below, one can see that of those cases when the complainant was 0-8 years old, 45% (20% + 25%) were finalised in 0-9 months with 37.5% of the cases being finalised by the 18-month mark. The 8-12 years and 12-18 years categories (highlighted in green) also had high finalisation rates within the 18-month mark at 42.9% and 33.3% respectively.

Table 13. Cross tabulation of age and turnaround time bands from arrest date to judgment /finalisation date

VICTIM AGE CATEGORY		Turnaround Time Category (months)							
		0-5	6-9	10-12	13-18	19-24	25 - 30	31 - 36	37 plus
YEARS OF AGE	0-8	25%	25.0%	0.0%	37.5%	0.0%	0.0%	12.5%	0.0%
	8-12	7.1%	28.6%	14.3%	42.9%	0.0%	0.0%	0.0%	7.1%
	12-18	0.0%	13.3%	6.7%	33.3%	26.7%	13.3%	6.7%	0.0%
	18-25	12%	0.0%	25.0%	0.0%	25.0%	37.5%	0.0%	0.0%
	25-35	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100%
	35-60	50%	0.0%	0.0%	0.0%	0.0%	50.0%	0.0%	0.0%
	51 +	0.0%	0.0%	0.0%	0.0%	0.0%	100%	0.0%	0.0%
Total	**10%**	**16.3%**	**10.2%**	**28.6%**	**12.2%**	**14.3%**	**4.1%**	**4.1%**	

The final variable that we can look at in relation to the turnaround time indicator is the effect that a plea has on the turnaround times of a case. It may seem obvious that a guilty plea results in a quicker case. However, this is not considered when conviction rates and turnaround times are reported and monitored. Prosecutors are all measured according to the same indicators whether the accused in their case pleads guilty or not. Average turnaround times are all that are considered and the reporting of conviction rates does not differentiate between guilty and not guilty pleas. As Table 14 below illustrates, 80% (30% + 50%) of those cases where a plea of guilty was entered were finalised in 0-9 months, with 84.9% of the cases where the plea was 'not guilty' taking greater than 9 months to be finalised, with 33.3% of the cases being finalised within 18 months.

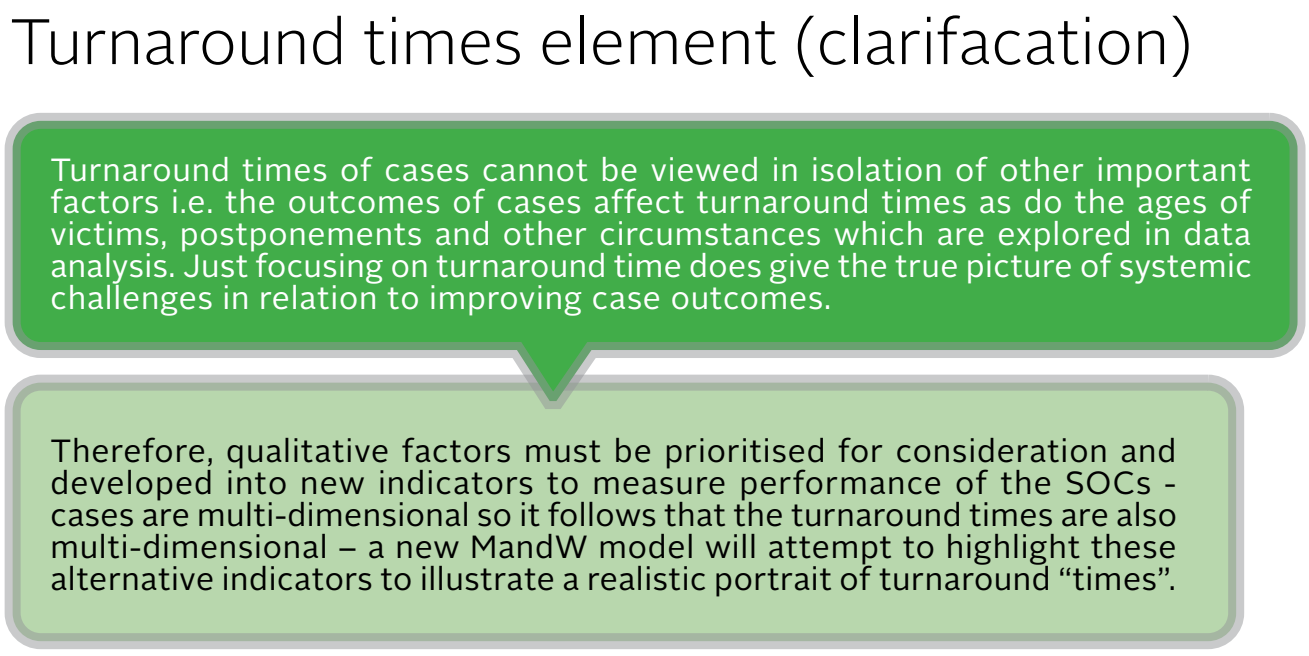
Table 14. Turnaround time from arrest date to judgment/finalisation by plea recorded in cases in sample

	Turnaround Time Category (months)							
	0-5	6-9	10-12	13-18	19-24	25 - 30	31-36	3 yrs. +
Not recorded	41.2%	29.8%	14.6%	8.5%	3.2%	2.0%	0.6%	0.0%
Guilty	30.0%	50.0%	0.0%	20.0%	0.0%	0.0%	0.0%	0.0%
Not guilty	6.1%	9.1%	15.2%	33.3%	9.1%	18.2%	6.1%	3.0%
TOTAL	%	**28.6%**	**14.3%**	**10.9%**	**3.6%**	**3.4%**	**1.0%**	**0.3%**

The above data points to one central finding: data on turnaround times tells us very little about the substance of the case. A swift case is not necessarily a case that has had a 'good outcome' for a complainant. Convictions made within 9 months cannot by their timing alone be seen as successful without accounting for all the other variables involved. More importantly, there are currently no means or methods in place to break down the turnaround times to calculate how much of that case turnaround time is attributable to prosecutors, social workers, court preparation, consultations, reinvestigations or bench hours. The data needed to calculate this is not recorded by actors in this manner and is therefore impossible to decipher. What this analysis shows is that even if one had the data which could breakdown a time period by actor, it would not give an accurate picture of time spent on individual cases as well as composite cases.

One would have to take too many variables into account to give an accurate picture of time spent per court actor, including: whether there are multiple accused, multiple survivors, if there are many witnesses, if there is a guilty plea, if there is sufficient evidence, if expert reports are submitted on time and so forth. Each actor would have to give timeframes on a case-by-case basis, as the amount of time spent on each aspect of a case will differ depending on the nature of the case. Figure 7 below summarises the importance of reimagining the concept of turnaround times to encompass the numerous variables that affect them. The factors to consider include but are not limited to the numbers of victims, numbers of accused, if it is a child case or adult, if it is a case with a complainant who has an intellectual or psychosocial disability, if it is multiple accused or multiple offences.

Figure 7: Turnaround times clarification



What is a successful outcome for a sexual offence case?

What the charts and statistics above point to is a need to look at performance indicators that consider the multifaceted nature of sexual offences cases and ultimately measure what a 'good court experience' is rather than limited perceptions of success based on bench hours, numbers of finalised cases and convictions with life sentences.

One of the central questions posed to each respondent was, "How do you define a successful case outcome?" In other words, what are the key elements of a case that make it a success? How would they define success in their job, beyond a successful conviction? Unsurprisingly, many stakeholders did not point to convictions as being the only definition of success, acknowledging that swift and efficient convictions can be difficult to obtain. The extract below is a compilation of answers that respondents gave and speak to the way the complainant is treated; whether they have had the chance to tell their story in court, whether they have been listened to and believed, and whether they have received specialised services (such as counselling and psychological support).

Question: What is a successful case outcome?

How do you define a successful outcome for a survivor?

A good outcome... The mere fact that a witness was given a chance to be heard. ... regardless of the sentence, whether the accused was found guilty or not guilty, for the mere fact that you managed to stand and say something, that means a lot [...] at the end, I will tell myself that it doesn't matter the outcome, it doesn't matter the sentence, what matters most is that my witness was able to stand, and at least is working towards a recovery. [Court Preparation Officer]

You cannot always get a conviction but when the victim feels like they've been given the opportunity and they were truly listened to, but because of how the law works and you get a Judge special enough to explain it, which is what the Judge did. [Prosecutor]

You only need for somebody to believe in you and the fact that we paste the case on the roll is because we felt there was a merit to that case and it means we believe in you". [Deputy Director of Public Prosecution]

You give them the opportunity to speak out. Opportunity to tell what happened, that to me is very successful. Whether at the end of the day the person is convicted or not but just to be given a chance to tell it all that is a major success when it comes to these cases. [Regional Court Magistrate]

It really frustrates because to me it doesn't matter whether the person is convicted or not, to me I have applied my mind and I am doing justice. If justice means that person must go out, so be it. I don't understand and I often ask "why do they determine your performance by the number of convictions you have? [Regional Court Magistrate]

You must also look at how those victims were treated throughout. It's very important. Remember you have to afford them dignity, they must be treated with respect and not, they must not be treated in an inhumane fashion so you must insure you must look at those things because those are the things that will make your witness a good witness. [Case Manager]

If one had to measure that then you would say that the entry point is the most critical because that is where we develop attitudes, you see. So if then the entry point has been good then you have a relaxed victim. [DoJ&CD Stakeholder]

I would say it's very difficult because for us, we work with the TCC objective victim centred, court directed and reducing secondary victimisation. We wearing that hat, three in one, we want the victim to be channelled, to be healed, receive the treatment, make sure that they did not fall pregnant, they did not have STI's, they did not contract HIV and AIDS, they are okay. After they have received counselling, but what is usually the challenge is we want to get them to court while they are still able to tell their stories with still those feelings that anger that they have in court. But what is blocking that is what she was saying that the case happens in 2014 and which it will only be finalised in 2019. [TCC Victim Assistance Officer]

As far as all these services have been handled in, how do I say this, as long as the victims comes out being satisfied of whatever services that has, what has been provided to them? I am thinking even if that victim has lost the case at court I would think the TCC is working. Even if they can lose the case at court because at court somehow things are not going as planned as they are, as long as the victims feel that I have been provided services satisfactorily, that is what I will be happy about the service. [Case Manager]

I did a case one year when I was still in another region, not here at all, where the lady was raped by her stepfather but he only started when she was 18, about a few years and then stopped, she had a baby. It was a big case, nobody wanted to touch the case the case was on a roll for four years by the time I got it and I did it and we got a conviction and then at the end of the day she just said to me, what was most important for her was that I believed her .Obviously the conviction was good and the sentence was good but that I believed her and the way we dealt with her, so in terms of that if we deal properly with our victims, if we reduce secondary victimisation that should already be a successful case but obviously in terms of courts and stats you need to know.[TCC Case Manager]

With my perspective it comes to issue of survivor being helped to the fullest. I would be happy if the victims comes out being survivor, which means getting them help, medical examination help, getting counselling and also the investigation by the police are done properly because sometimes they will say the police they don't want to tell us about what is happening with our cases, so they used to come to up to this TCC and say please tell us what is happening with our case because we don't get information from the police. So I will be happy if the victims they will be helped us they come out being survivors from the day they come to this door till the last date of the case being finalised. So as [inaudible section 00:17:23] I will be satisfied with this [inaudible section 00:17:27] my work actually. [TCC Site Co-ordinator]

What these quotes illustrate is that court actors are aware of how they can measure success in alternative ways and it is a key recommendation of this study that stakeholders look at other ways to measure performance in relation to sexual offences cases. Examples of such indicators come from the actors themselves such as:

- Measuring how many consultations a complainant has before a case goes to trial
- Measuring the length of time that is allocated to consultations coupled with some form of evaluation of these consultations to determine the 'readiness' of the complainant
- The ability of a complainant to finish a recommended course of counselling before the trial with the social worker and follow-up counselling services.
- Evaluations of trauma counselling or post-trial debriefing.
- The satisfaction of complainants with the specialised services and the way they are treated in court
- The ability of a complainant to be allowed to voice their story no matter what their mental or intellectual capacity

The qualitative data gives rise to many such indicators that could be quantified. The recommendations of this report will look at how this can be achieved and through what mechanisms these indicators can be incorporated into a realistic measurement of success of specialised staff and services at the SOCs. A key deliverable of the ICOP project will be to develop alternative indicators in the final year of the project following various trainings and interventions to culminate in a Monitoring and Evaluation Framework with performance indicators and success criteria tailored specifically for the SOCs.

3.4 Bottlenecks in the Justice System and its Impact on Turnaround Times

> "I think my responsibility is to ensure that cases that are placed on the roll are finalised as speedily as possible. But we depend on other stakeholders to ensure that that goal is achieved [...] it takes forever, too long to investigate sexual offences matters. For example, rape matters. They delay in getting things like DNA results. It prolongs investigations [...] the accused has been in custody for almost, let's say ten months or so. Then after ten months the DNA result comes back and the result is that they cannot link the accused with the DNA samples and so forth, [...] the victim thought that justice would be achieved at the end of the day, because an impression has been created that look here, this person who raped you is in custody and very soon the matter is going to be prosecuted. To the shock and surprise of the victim after eleven months or so the prosecutor goes to court and then said I am withdrawing this matter against the accused as there is no sufficient information that links the accused with the commission of the crime. Now in the eyes of the public when that happens, you know, the public never said, "no, you see, the prosecutor has withdrawn the charges".
>
> They will always say "the magistrate decided to withdraw the charges against the accused, the man who actually raped me". [High Level National Stakeholder]

The quote above highlights the disjuncture between public perceptions of the process of achieving justice and the realities at the court level in a case. The complex nature of SOCs lends themselves to even more procedures and processes within the justice system than non- SOCs.

The MATTSO (2013) report pointed to several bottlenecks and challenges that the previously established SOCs faced and their recommendations for the reestablishment set down that these bottlenecks and challenges had to be addressed within the new SOC model for them to succeed. The findings of this research are that many of those challenges and bottlenecks, if not all of them, still exist and show no signs of improvement. Table 15 below compares the challenges outlined by MATTSO and the challenges/bottlenecks that we identified in the system

Table 15. Comparison between MATTSO (2013) report recommendations and the ICOP study findings

MATTSO REPORT		ICOP STUDY FINDINGS		
Challenge		Worsened	Same	Improved
1.	Lack of a specific legal framework to establish these courts			✖
2.	Lack of buy-in from other stakeholders due to inadequate consultation		✖	
3.	Lack of a dedicated budget, which resulted in inadequate resourcing of these courts		✖	
4.	Shortage of prosecutors, intermediaries and CPOs	✖		
5.	Low visibility of SOCs in remote areas			✖
6.	Restricted space capacity in courts that often-hindered full compliance with the blueprint.		✖	
7.	In other courts, waiting and consultation areas could not be established due to lack of space in court buildings		✖	

MATTSO REPORT		ICOP STUDY FINDINGS		
8.	Inadequate and inconsistent provision of skills training and debriefing programmes for the court personnel.			x
9.	Lack of monitoring and evaluation mechanism developed specifically for the management of these courts		x	
10.	Lack of guiding procurement specifications and maintenance framework for court equipment and resources for the testifying rooms, waiting areas and other facilities		x	
11.	Rotation of presiding officers means that some presiding officers do not remain in these courts for any length of time causing delays in the finalisation of cases, particularly the partly-heard cases of sexual offences		x	
12.	Inherent interdependencies in the criminal justice system that often cause serious delays in the finalisation of these cases		x	
13.	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.		x	
14.	Inadequate support services are available for LGBTI persons and victims with disabilities		x	

The MATTSO report stated, in relation to its 2014 findings, that "most of the systemic challenges that led to the demise of the SOCs are still in existence and will therefore have serious implications on the re-establishment of SOCs, if not addressed" [26] . As Table 15 illustrates, our analysis of the data shows that only three of these situations/issues have improved and one has worsened, with many challenges remaining the same post-MATTSO in 2016. The provision of specialised training has improved with evidence of more training programmes being offered to all court actors on sexual offences; however, according to those interviewed, they are not conducted often enough. The Sexual Offences Court Regulations [27] are now in draft form awaiting comment, which points to some improvement in relation to legislative backing for the SOCs. Finally, the representation of the SOCs in rural areas has improved since 2014, though not significantly. Provisions for transport for persons in rural areas to these courts also remain a challenge. Our research supports what is intuitive: that providing 'justice for the survivor' includes the provision of holistic care and practical support, including reliable transportation to and from court, available interpreters to facilitate effective communication, relevant experts on hand to attend to those with intellectual and/or physical disabilities and readily available childcare assistance

> They pay for their transport they give them refreshments because when you have asked for an old lady to be on the station at 07h00 that means that person has not taken something to eat so when they come here I must have refreshments I must promise them that don't worry transport will be paid for you if you didn't pitch there the taxi if you come with another taxi you will be paid your money back. [Prosecutor]

References

26 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, 2013. *Report On The Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Page. 17

27 For a full review of the Draft Sexual Offences Courts Regulation see http://pmg-assets.s3-website-eu-west-1.amazonaws.com/150930SXOAmendmentAct2015.pdf

The freeze on NPA appointments has made the already existing shortage of prosecutors even more acute. [28] All the courts included in this study indicated that intermediary and court preparation officer shortages are also significant challenges to the SOC model, especially in respect of those with multiple language skills and sign language skills. The other challenges and bottlenecks included in Table 15 above that were identified within the MATTSO (2013) report [29] - including poor infrastructure, lack of space for staff, no feeding schemes, lack of maintenance funds for broken SOC equipment, lack of access to experts for complainants with disabilities and rotation of presiding officers - were still very much evident at the courts and have shown little to no signs of change since 2014. Some of the structural and technical problems conveyed to us which cause postponements are, in order of most significant first: CCTV cameras difficulties, sound issues with intermediary room and no electricity or water at come courts, A Regional Court magistrate, when asked what his biggest challenge at his court was, said:

> The infrastructure problems. We don't have water, electricity. You know all of those things influence the progress the outcome of our cases. The prisoner lifts and all problems regarding prisoners being brought to court. [...] Then we have to postpone the matter. Some people get fed up with the system. As the Magistrate, you are the last person to tell the person that the matter is postponed. And they look at you like it is your fault. [Regional Court Magistrate]

All five courts also reported problems with equipment and maintenance of CCTV and audio equipment in testifying rooms. CCTVs were a recurrent issue. In one of the pilot courts, the CCTV camera was not operational. As a result, the intermediary had to take the child into the court to identify the perpetrator. One of the prosecutors explained that the procedures for maintenance and repair were inefficient she explained:

> The service provider, the company which is doing the, which was installing these CCTVs, cause we, we used to call, I remember I even said, "I'll get the numbers of the person who must come and do it," and then they called and said, "That person will be coming from... we'll contact an office in Cape Town." So I just asked myself, even though I'm from [area name], I said how possible is it that people in [area name] will contact someone from, from Cape Town to come and assist with something here. They've got a regional office, so it doesn't make sense to me". [Intermediary]

References

28 National Director of Public Prosecutions, (2016) *Annual Report 2015/16 In Terms of the NPA Act 32 of 1998.* National Prosecuting Authority, South Africa. Pages 69-70

29 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report on the Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Pages 25-29

Another presiding officer commented that:

> The infrastructure, it is a problem. I don't even want to deal with that. Just recently, we didn't have lifts working. What frustrates me even more is having to share those lifts with members of the public. Sometimes you get into a lift and you just want to move backwards and get into another one. If there is an accused person in that lift who is coming appear before your court or maybe you are coming to pronounce judgment on him that day, it's not safe. More especially it is the safety of the Magistrates that is very lacking. I don't know what they have to do I don't know when they will do what they are expected to do but it is not a guaranteed thing. No one can stand up and say that Magistrates are safe. [Regional Court Magistrate]

With regard to human resources, the shortages of intermediaries, prosecutors, CPOs, social workers and interpreters is evident in each court. This remains a key concern given the budgetary constraints this financial year in the DoJ&CD and the NPA, which saw a freeze on appointments of these positions at courts. This begs the question as to how Phase 2 of the SOC roll-out plan can proceed whilst staff shortages persist at existing SOCs. The staff at court level understand the budgetary constraints despite the affect it has on the turnaround times and delays in cases, as another of the presiding officers interviewed explained:

> Money is the bottom line. DSD doesn't have money to appoint social worker to sit here and assess the children and prepare them and now it takes too long. It takes 6-8 weeks to get the child trial ready if I can say. Then only once that has happened can we postpone the case for trial two months or more down the line, if not for other reasons". [Regional Court Magistrate]

Equally, the shortage of dedicated forensic doctors and nurses at TCCs is another key human resources issue that leads to compromised DNA evidence or a lack of DNA evidence, which also prolongs and delays cases. One of the TCC site co-ordinators explained to us that oftentimes complainants have to report to the Emergency Room after hours as the TCC is closed between 4pm and 8am and on weekends. Consequently, when general medical staff at the emergency rooms that are not trained in recording forensic medicine examine victims of sexual offences, there is a possibility that forensic evidence can be compromised or not collected accurately. This was also a key finding in the recently published report auditing the TCCS by the Foundation for Professional Development (FPD), which highlighted that in some TCCs there is not a full complement of forensic staff that can operate over a 24-hour period at the TCCs. [30] They report that, "just over 50% of TCCs have at least one DoH staff member dedicated to them, but mainly during the day. The TCC is dependent on casualty staff after hours and during weekends. EMS personnel are not adequately sensitised to work with victims of GBV and do not prioritise victims."[31] Similar anecdotes and challenges relating to human resources are outlined in the catalogue of personnel, Section 4.7 of this report, where TCC site-co-ordinators, Victim Assistance Officers and forensic staff discuss in detail the bottlenecks and challenges they experience within the TCCs.

The lack of a feeding scheme at the courts causes delays with child cases. Child cases by their nature are difficult in that they should be scheduled carefully and children have specific needs and short or limited concentration spans. By providing them with food and a drink early in the morning, the court has a better chance of having a coherent and attentive child. It was reported that if they are hungry they can fall asleep or get confused. As the judicial officer interviewed explained:

References

30 Foundation for Professional Development (2016) Thuthuzela Care Centre Compliance Audit and Gap Analysis 2016. Foundation for Professional Development. Pg.16, 78, 144

31 Ibid. Pg. 16

> You must know that our children go to school from 8 till 12. And they have to sit all day and have to come back another day. So that is too much for the child. It is up to us as Magistrates to be sensitive about that situation. My intermediaries know that as soon as child starts to yawn, they say "Your worship can I bring it to your attention that child is yawning "then I know okay "are you okay? Are you hungry? Do you want us to take a break?" And if they say "I am tired" we stop then and there because sometimes they don't even say or don't even acknowledge that they are tired but you can tell that they are bored because they keep saying "yes". Then you know she isn't even concentrating". [Regional Court Magistrate]

It is generally agreed amongst those involved in the justice sector, that child sexual offences cases are very difficult cases, need specific attentions and involve many actors within the courts and beyond, in terms of psychosocial services. The scale of court personnel and service providers involved in any single child case has implications for the length of time it takes to finalise and process the case as well as having to coordinate many different departments, services and stages that are involved in such cases. Section 3.5 of this report explores these details of child sexual offences cases in more detail.

In addition to these bottlenecks, there are many other factors that lead to postponements. As the quantitative data presented earlier in the report showed, cases can have as little as four postponements or as many as 40, with an average in our sample of 13 postponements per case. During our observations at court, in one sitting, the four cases to be heard that day were all postponed. The reasons were that the Swati interpreter did not show up at court, the private defence attorney requested additional evidence from the Investigating Officer (IO) who was not able to be present; the witnesses did not arrive at court; and the defence attorney did not appear at court. Some postponements and bottlenecks occur at Regional Court because the case has not been dealt with correctly at district level during bail hearings and so forth. Sometimes, by the time the case makes its way to Regional Court then the prosecutor will discover that "ABCD has not been dealt with properly and that case ends up being withdrawn due to errors made at district court". Table 16 below summarises the reasons for postponements that we gathered from the case files we reviewed at the courts, as well as withdrawals, acquittals and SORs, which are often as a result of the lengthy postponements.

Table 16. Postponements, withdrawals, acquittals and SOR reasons from case files

Postponements	Case Withdrawn	Case Acquitted	Case Struck Off the Roll
Forensic evidence delay	Accused absconded or missing	Magistrate cautious with such cases	Accused absconded
Accused does not appear in court (reason not stated or decipherable)	Accused murdered	Complainant not fit to testify	Witness lost interest in case
Mental assessment needed for accused	Accused not fit to stand trail	Complainant good witness but was compromised by defence evidence	No reason recorded
Complainant / witnesses failed to appear	Child complainant contradicted what was said in her police statement	The Regional Court magistrate found that it was the word of complainant against the word of accused	Accused hospitalised after being determined unfit to stand trial
More investigations required	Complainant not traceable	Identity issue	Charges withdrawn

Postponements	Case Withdrawn	Case Acquitted	Case Struck Off the Roll
Intermediary unavailable/ on leave/ sick	Contradictions between trail and first interview with Public Prosecutor (PP)	Court was faced with two mutually destructive versions and both were not good witnesses	Illegible
Investigating Officer unavailable/ Sick/ On leave	Complainant withdrew charges	Evidence too weak	Accused not fit to stand trial, mental assessment
SAPS failed to bring accused to court	Further investigation not completed and state application for post-ponement was refused	Magistrate found that the identity of accused was not proven, however identity was not disputed	Witness failed to appear before court
Accused sitting exams (young offenders)	State president patient	Witness deemed not reliable by Magistrate	
Complainants/ witnesses sitting school exams	Parents would not allow 7 yr. old to come to court	Child witness could not return to court, traumatised	
Medical expert unavailable	State decided to withdraw not enough evidence	SPP stopped prosecution. No witnesses traceable	

What the extracts from case files above show, is that the human element contributes greatly to postponements and these are variables that cannot be controlled by individual actors. In cases where attorneys are replaced, or intermediaries are unavailable, or presiding officers rotate, the cases get postponed and prolonged. Unfortunately, focusing on turnaround times in isolation of these factors is a precarious endeavour as it does not do justice to the complexities of having 'trial-ready' sexual offences cases at the court level. The human element affects cases in many ways beyond postponements, including the reasons for withdrawals and even acquittals. The feedback we received on the challenges with postponements were attributed to individual personalities at courts and the unequal distribution of power amongst court actors when it comes to proceeding, postponing or removing a case from the roll.

Personalities and individual issues with Regional Court magistrates can also delay cases. One court in particular had 80% of cases on backlog due to one Regional Court magistrate's alleged inefficiencies. In this case, the prosecution had to shift resources to that court to help clear the backlog, which in turn delayed the allocation of new cases onto the roll. A prosecutor explained that:

> For instance, in another court, [court name], it's also a female magistrate. We've heard complaints that she… if you ask for postponement for assessment of the victim, it's the second time, and she'll strike the case off the roll. "No, the State had ample time! I'm not granting your further postponement." I'm thinking, like, but this is a rape case, it is a child matter. [Prosecutor]

Equally, some prosecutors described situations where inexperienced colleagues who were not specialised sexual offences prosecutor's affected case outcomes due to their lack of skill, they explained:

> You'll pick it up in the passages. Prosecutors might say so. I've got a colleague who isn't here at the moment, they have transferred him but I don't allocate any rape matters to him because he acquitted so many that something was obviously wrong. [Prosecutor]

Delays that are caused by the witnesses themselves should also be considered. One TCC staff member explained that it could get frustrating when they are trying to 'get justice' for a victim, but victims can change their minds or do not want to proceed because they have been paid to retract their statements. She explained that when a victim decides not to proceed:

> Now you've wasted your time, you've wasted your energy, you've wasted your resources. You have done all that you could and they come back and tell you that I don't want a case because he gave me 5000 and I forgive him, that's discouraging because you are trying that guide to the court process its complicated with the words that I have and you must try now because you are sitting with someone who has absolutely no education. You need to take your brain to the same position that they are in so that they understand, the court process, the legal process. So, it's quite tiresome but you make way to make sure that above all, and I always say this, [...] But I would love for each person that is sitting here today and the days before after and all of that, they get holistic treatment. Even when a case does go to court, they are able to say their story and say it loud, because immediately their story is not said well. [TCC Victim Assistance Officer]

3.5 Cases Involving Vulnerable Groups and its Impact on Turnaround Times

One of the factors that can influence the turnaround time and length of a sexual offence case is the specific vulnerability of the complainant and any accommodation that the complainant might need. For example, a child sexual offence case could be said to, on a very basic level, take longer to prosecute than a case with an adult complainant, given the various extra assessments, consultations and services needed to enable the child to testify. While not all cases that are classified as 'vulnerable groups' cases do indeed take longer, justice officials require a specific skill and knowledge set to improve case outcomes for vulnerable group complainants.

Regarding vulnerable group survivors of sexual offences, the study found that most of the court staff had received some basic social context training and/or sensitisation training on assisting vulnerable witnesses, namely children, persons with intellectual or psychosocial disabilities, persons with physical disabilities, LGBTI persons, asylum seeking and refugee women and children, older persons and sex workers. However, 20 percent of court personnel stated that they had not received training on how to prepare cases for vulnerable groups, exemplified in a startling admission by one of the prosecutors interviewed who said that, "there's no special training (on consultation for vulnerable witnesses). From my entire career, nothing of this nature has been initiated by anyone." Despite the existence of vulnerable groups' access to justice sensitisation training across all the stakeholders' materials, we appreciate that perhaps not all staff have attended the trainings, given that they are largely voluntary.

The content and depth of this training was probed during the interviews and formed an important part of training needs assessment questions. In relation to the challenges court personnel experienced when assisting vulnerable witnesses, our study found that despite having received theoretical training on vulnerable groups, the court personnel had difficulties with appreciating the practical application of this knowledge to the cases they proceed with in court. In addition, 80% of those prosecutors interviewed expressed a desire to have more training on how to adapt their existing theoretical knowledge of vulnerable witnesses to suit the preparation needed to proceed with cases involving vulnerable witnesses. This was coupled with the perception that cases involving vulnerable groups, in particular children and witnesses with intellectual and psychosocial disabilities, are "unwinnable"' and difficult to finalise (as discussed on page 89 of this report).

Regarding vulnerable groups, we asked each respondent to give us

(i) an estimate of what percentage of their cases and complainants were identified as LGBTI persons, children and so forth

(ii) what training they had had on issues and protocols specific to each group;

(iii) how the services at the court addressed the particular needs of these vulnerable witnesses; and

(iv) what challenges have they experienced with cases involving vulnerable witnesses

We have discussed the findings per group in relation to these questions below.

LGBTI persons

In general, statistics on LGBTI survivors of sexual offences are difficult to obtain. This seems to be due to the current incident forms, which do not record sexual orientation or gender identity of the survivor. [32] Thus, any recorded cases where the survivor identifies as LGBTI are reliant on voluntary disclosure of the survivor's sexual orientation and/ or gender identity during the initial report at SAPS, or during subsequent interactions with the criminal justice system. The court actors interviewed also voiced concern regarding statistics about survivors who identified as LGBTI, or cases of bias-motivated sexual offences. Court actors explained that it is difficult to find such cases, as general statistics are not disaggregated by sexual orientation or gender identity of the survivor, nor do they record any potential bias motivation of the perpetrator. A senior prosecutor confirmed this: "LGBTI is really difficult, cause I was part of a, was it, like a focus group or something, some years ago, that I was part of and they wanted to try and get a stat (sic) on LGBTI and that, we don't keep separate stats. That's the problem". Most of the interviewed court actors estimated that LGBTI survivors made up at most 1 - 3% of their caseload, and some thought that "we don't get those cases around here" or "it's not a problem in our community".

The text box on the following page contains a sample of responses that we received when we asked about cases involving an LGBTI survivor, and the way such cases are dealt with. Both the prosecution and the judiciary said they approached cases with LGBTI survivors in the same way that they approached all cases of rape ('rape is rape'), and felt a survivor's sexual orientation or gender identity did not affect the nature of injuries or consequences of the attack. While this approach reflects the commendable principle of non-discrimination, it could render survivors who were targeted because of their sexual orientation or gender identity (bias-motivated sexual offences) invisible. It also ignores that LGBTI survivors might have specific needs in the criminal justice process [33]. Those interviewed explained that they rely on the complainant to volunteer information about their sexual orientation and/or gender identity, as well as a potential bias-motivation of the offence during consultation or questioning. However, as outlined in the literature (see p.48), due to pervasive heteronormativity – the view that all people are heterosexual - in society, including in the criminal justice system, LGBTI people may feel alienated or silenced, and may even be afraid to disclose their sexual orientation or gender identity because of fear of discrimination.

The court personnel interviewed explained to us that the social context training they had received covered "how to address an LGBTI person" and the basic social contexts within which homosexual, transgender and intersex people exist. However, the opinions of many of the court personnel revealed that they felt that they lacked practical knowledge about how to link the sexual orientation, gender identity or gender expression of a complainant to the case as an aggravating factor, or how to prove the bias motivation of sexual offences committed against LGBTI persons. They also felt unsure about the specific needs of an LGBTI survivor who is being prepared as a vulnerable witness, and did not fully understand the specific or additional trauma that homophobic, transphobic or other bias-motivated crimes may entail. Three prosecutors indicated that they have cases where the survivor felt that they were targeted because of their sexual orientation. In these cases, the prosecutors advised the clients not to enter this information into evidence; for fear that, it would influence the case outcome negatively. This feeds back into the 'rape is rape' ethos that was prevalent across many of the interviews, particularly with the judiciary, which could disadvantage minority groups and hamper the development and implementation of a hate crime framework.

References

32 See OUT LGBT Well-being (2016). *Hate Crimes against Lesbian, Gay, Bisexual and Transgender (LGBT) people in South Africa*, Pretoria: Love Not Hate (LNH) Campaign, U.S. Department of State

33 These issues and needs are explored in detail in our LGBTI Access to Justice sub-study which accompanies this report.

Children

On average, the cases involving children constituted about 80-85% of the total caseload of the courts in the study, according to court staff. Therefore, the provision of child-friendly accommodations, services and procedures should be at the forefront of any discussion on improving case outcomes at the SOCs. Whilst many of the child cases involved female complainants, we did ask the respondents to give an estimate of how many involved male complainants. A senior prosecutor explained that it was not common, with an average of 2.5-3% of cases with male complainants, "At least we have one or two of them within a month" which was similar across all five courts.

Figure 8: Photo of a children's waiting area with broken toys and dilapidated facilities in one of the pilot sites for the ICOP project

Making the justice system more child-friendly is a central component of the MATTSO model and the SORMA of 2007. The MATTSO report recommended that courtrooms become more child orientated through the implementation of both environmental and procedural accommodations, including child-appropriate waiting areas, the implementation of feeding schemes for children at court, the provision of toys and books, access to testifying rooms, and the use of intermediaries. The creation of a child-friendly environment and court-process is essential to the effective participation of the child in the court process, and the minimisation of secondary trauma. In addition to the structural issues to accommodate children, the court personnel should be experienced with children and sensitised on child development and how children experience trauma and how to assist them with being as comfortable as possible within the court environment. An intermediary explained:

Figure9: Cramped small child waiting area at a Pilot Court

> It's when the child comes into court and then he is being intimidated after having experiencing the rape, the abuse... so when they come here we make sure that the child is very comfortable, calm them down because when they come into court they've got this different perspective about court so even the parents some of them they panicking how their kids are going to deal with it and sometimes you find that when they first come into court for the first time the anxiety some of them they can't even concentrate but after seeing the court seeing the environment, seeing the intermediary room they become a little bit relaxed.[Intermediary]

All the courts visited during fieldwork had been refurbished to some extent to be more child-friendly. Three out of the five courts had the standard "MATTSO furniture", as a court manager at one of the pilot courts referred to it as, in the waiting areas and testifying rooms. This includes CCTV cameras in the dedicated sexual offences courtrooms and two of the courts had two-way mirrors between the child testimony room and the court. One of the courts did not have a child waiting area as they only hear adult sexual offences cases. In the courts that had the MATTSO model furniture and facilities, some were unfortunately in disrepair or were infrequently used. In one court, the furnishings required by the model were not suited to the small space provided or available within the court building, resulting in a rather cramped space.

This court also did not have any toys, books or DVDs available for children. The refrigerator was still in its packaging and one court official explained that they had just put all the furniture in place prior to our visit. Only one of the five courts had a full complement of equipment as recommended in the MATTSO model, which includes braille books in waiting areas, toys, books. Three of the five courts in the study had children's waiting rooms with old furniture, filing cabinets, scant toys or books and no DVDs for entertainment. In addition, two of the courts had MATTSO compliant furniture piled up unused in them. The overall impression regarding facilities for children, in some courts, is that the facilities are there to be complaint with the model but that they are not frequently used.

Figure 10: MATTSO compliant child-friendly furniture at a pilot site

One of the magistrates interviewed reported to us that the children's room at one court was used so little that the clerks used it as a space to take naps. One Magistrate explained:

> "The prosecutors know that they exist but for children they obviously as you say, you need toys, you need play stuff that could have been put in that room. And I also think, before it slips my mind – our issue, I don't feel safe as well. I go out here and into the bathrooms which are filthy. You meet with the accused on the passages. So [courtroom name] is generally not conducive. It's not". [Magistrate]

Given that the purpose of the child-friendly emphasis is to ensure children and their guardians are comfortable and feel respected, small things such as dirty toilets do not speak to the aims of treating all sexual offences survivors with dignity and respect.

This was also a problem among NGO service providers at courts. During a visit to one of the NGOs that prepares children for court researchers observed a sign reading "For display only – Do Not Touch" (see Figure 11) on a shelf of toys in the children's waiting area. When we asked the NGO and court personnel as to why the waiting areas did not have toys and books for children to use, they expressed concern that they did not have the funds to replace these goods if they became used or broken. The lack of a maintenance plan or consistent funding to maintain and replace resources for the children facilities is a key challenge at all the courts visited.

Figure 11: Toy display at a Pilot Court

This extended to the technical infrastructure. For example, the maintenance and replacement of CCTV facilities is an ongoing issue at the courts. At one court, the intermediary explained that due to a CCTV system that had been broken for some months, she has had to take child witnesses into the back of the court to identify their perpetrator. This is a contravention of the SORMA of 2007.

All the court personnel at the courts we visited had received some basic form of training on communicating with and preparing child witnesses. All the prosecutors we encountered agreed that specific training on how to consult with a child and how to proceed with preparing child cases has improved the success rates when it comes to child sexual offences cases. The MATTSO model also requires psychosocial services for children on site and intermediaries to assist with the cases. At each court, we met with those social workers and NGOs working with children and discussed their experiences with them. The lasting impression was both how dedicated the staff were and how much their work affected the children. Those that dealt directly with children seemed traumatised and burnt-out by vicarious trauma. Consistent debriefing for intermediaries, CPOs, prosecutors, interpreters and Regional Court magistrates working on child cases at the court is important and necessary to enable court actors to cope with the stresses of their work, and to continue to perform well at their jobs.

Psychological support services for children are essential and important to aide their healing and prepare them for court. When discussing ways of limiting the trauma a child experiences in court, one SPP pointed to the need for psychosocial services to be made available to the child before they meet with court preparation officers and after. The respondent explained that:

> I think the one thing that is, is lacking at the court is, is psychosocial service. Because our court preps are not, they're there to comfort and to talk about bumblebees, yeah, they do their court prep. Intermediaries are not allowed to interact with the child other than in court. Our prosecutors are not trained to do it, and would probably make a mess of anyway, there's nobody here to help the child. Absolutely nobody, so I think it would be, I think if you had, whether it be an NGO or whatever, but someone, so that if the child is upset after testifying, you don't just send them home. You could actually do some debriefing, do some work with them. I think that, that would go a long way to, to assisting. [Senior Public Prosecutor]

In instances where child witnesses are not ready to testify, counselling to determine a later date on which they could testify is necessary before their case is put on the roll. Unfortunately, this is not the norm and many of the prosecutors we interviewed indicated that they currently do not proceed with many cases due to the limited evidence or difficult circumstances surrounding the child witness, such as mental disability or inability to express themselves in court. Such cases are referred to frequently amongst those interviewed as 'weak cases' and are viewed as, 'unwinnable'. Cases can be removed from the roll when a child is deemed unready to testify due to emotional distress. Children should then be referred for more counselling and the case can be placed back on the roll if the witness is ready, as one intermediary explained:

> A prosecutor for that matter if they realise that's no, no, this child through consultation they just breaking down there is no way I'm going to run a trial with this child… this child is still lacking and then they postpone their cases and then they say we referring this child back maybe after six months or maybe after so long we going to re-visit it and see maybe provisionally withdrawing they go to that extent provisionally withdrawing the cases because we need to make this child right first so those systems are there. [Intermediary]

Regarding training, the majority of those interviewed described having had some training on dealing with child witnesses in terms of child development, consulting with children, preparing children for the courtroom and how to interact with children in the court setting. The roles of the court preparation officer and the intermediary are central to the child's experience at court and consequently the MATTSO (2013) report recommends that they receive extensive training on communicating with and assisting child witnesses. [34] The roll-out of the SOCs has seen a concerted effort on behalf of all stakeholders to train their staff on the specialised nature of handing child sexual offences cases, as outlined in their annual reports. [35] As an SPP explained:

References

[34] Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report on The Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Pages 34-39

[35] See (i) Department of Justice and Constitutional Development, (2016) *The Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: Annual Report 2015/2016.* Department of Justice and Constitutional Development, South Africa. Page 36-40 (ii) National Director of Public Prosecutions, (2015) *Annual Report 2014/2015 In Terms of The NPA Act 32 of 1998.* National Prosecuting Authority, South Africa. Page 29

> Training on children. Oh no, it's marked. It's a marked difference. I mean, if I just remember the very first cases we did to get your witnesses, our success rate then was really, especially with small children, was very little. And I mean, the training also offered, like over 20 years, was non-existent, but what we had when I was a tutor, for example, they gave us a training in the, it was still the old Sexual Offences Act, but at least you had more as to how to handle children. I don't have children, so that was fantastic training at the time, even though, and I think the success rate and the idea that Ngcuka started was quite visionary already then. [Senior Public Prosecutor]

Figure 12: Anatomically Correct Dolls at the SOCs for vulnerable Witnesses to assist when testifying

However, we did identify gaps in the way in which court actors' training on sexual offences addresses the issue of child witnesses. Almost all of those interviewed felt that they had not received sufficient training on children with intellectual disabilities. Interviewees suggested that cases involving complainants with intellectual disabilities are becoming more prevalent at the SOCs. In addition, the court actors felt ill-equipped to access experts to give expert evidence in child sexual offences cases, particularly when it comes to testifying about forensic evidence and injuries to children during sexual offences. The central complaint was that they did not have the resources to pay expert witnesses for their time, coupled with a hesitance as to under what circumstances they could contact expert witnesses. When we asked the prosecutors what additional training they would like on child witnesses, 75% of them indicated that they would like more training on preparing children for testifying and the practical elements of early consultations with children.

Intellectual, Psychosocial and Physical Disability

The one vulnerable group where increases in cases were reported to the team by the respondents was those of children and adults with disabilities, with an emphasis on adults and children with mental and intellectual disabilities. The SORMA of 2007 defines a person with a 'mental disability' as:

> "a person affected by any mental disability, including any disorder or disability of the mind, to the extent that he or she, at the time of the alleged commission of the offence in question, was- (i) unable to appreciate the nature and reasonably foreseeable consequences of a sexual act; (ii) able to appreciate the nature and reasonably foreseeable consequences of such an act, but unable to act in accordance with that appreciation; (iii) unable to resist the commission of any such act; or (iv) unable to communicate his or her unwillingness to participate in any such act".

In addition, Section 57 is relevant:

> "Inability of children under 12 years and persons who are mentally disabled to consent to sexual acts, (i) Notwithstanding anything to the contrary in any law contained, a male or female person under the age of 12 years is incapable of consenting to a sexual act. (ii) Notwithstanding anything to the contrary in any law contained, a person who is mentally disabled is incapable of consenting to a sexual act."

On average, the prosecutors and Regional Court magistrates estimated that this vulnerable group comprised 10-15% of their cases, with a notable increase in such cases over the last 5 years. Similar to the issue of statistics with LGBTI persons, the respondents explained that they do not currently keep specific statistics on those clients that they see that have intellectual disabilities. At best, they can source statistics on how many adult complainants they have sent for an assessment of 'mental age' when there is a concern about or knowledge of a witness' mental disability. As a CPO explained,

> Yes we do receive those kind of people but their cases up to so far they do not have statistics because we only depend on the reports from the doctor how that particular person can do in court. If that person cannot go that much that is the whole test part that we are having in court. In those cases when we receive cases like people who are mentally disturbed, those cases I haven't won a single case of that. No, because they cannot talk their part even if you can see that something might have happened but because this person cannot speak what really happened and there is no DNA [...] and when that person asks when looking at their levels you find that a 27 and a 29 year old is acting like a four year old and you ending up losing that case well. [Court Preparation Officer]

All of the prosecutors that we interviewed commented on the increase in cases of survivors with intellectual disabilities. One prosecutor commented that, "It's mental, yes. I've had a number. And, and we actually remarked on it the other day that they were such a... It just felt, in comparison to what we're getting, that out of every ten, at least one or two has got a mental problem". What is interesting is the disjuncture between the responses from case managers, prosecutors and Regional Court magistrates when it comes to prevalence of survivors with intellectual disabilities. Whilst case managers, TCC co-ordinators and prosecutors pointed to an increase in such cases presenting themselves in recent years, Regional Court magistrates reported la lower number of those cases appearing in their courts.

With regard to training, the majority of those interviewed indicated that they had not received specific training on consulting with or preparing persons, including children, with intellectual disabilities. Particularly when it came to communicating with such persons, presenting their evidence in a way that the court could understand them and have their evidence best represented. A particular concern for adult complainants with intellectual disabilities was the presence of DNA evidence indicating sexual activity between the complainant and perpetrator and the defence that the sex was consensual, despite the law indicating that a person with reduced mental capacity cannot consent.

One of the prosecutors recounted a particularly difficult case where the perpetrator and the survivor both had intellectual disabilities and were unable to communicate the details of the offence clearly. In addition, the crime was reported more than 72 hours after the offence was committed. The prosecutor explained that she felt unequipped to deal with the case

and had no means of accessing expert witnesses who could assist. This leads to the issue of services that are provided at the courts for those with intellectual disabilities. Interviewees reported struggling to access experts who can conduct mental age assessments, with some prosecutors reporting waiting up to 4 months for an assessment report. Moreover, if the complainant or perpetrator is deaf, the pilot courts do not have dedicated resources to facilitate communication for these clients in consultations and during testifying. Communication in sign language was a central challenge that many of the prosecutors pointed to when asked about services at the courts.

Regarding deaf complainants, a senior judicial officer explained, "If we can have that type of a situation where you have somebody who is deaf and so forth, then we are going to sit with a problem. You'll find that that case will stay on the roll for quite a long time because we don't have immediate people who can assist in that field. We don't have. So, it talks more about the capacitation of our courts because we are lacking in that particular field." A court preparation officer recounted an occasion where she requested a sign language interpreter and was denied it due to costs, subsequently they could not proceed with the case. The respondent explained, "It happened in one of our courts, I don't know which, and I think it's [courtroom name]. There was no sign language interpreter and the victim's statement has never been obtained and she was raped. What do you do? When I had a docket, I went to one of the interpreters, the senior interpreters, I said, "This is my position." The first thing he said to me, "Who is going to pay for?" So, from that side, they didn't, could not do anything and the matter just got struck off the roll."

Another anecdote from a case manager discussed a rape of a young woman who had a communication disability and could not be understood by court actors. The prosecutors recommended that the woman be sent to a "special school to learn sign language" so that she could come back to court at a later stage to give a statement. However, the young woman also had an intellectual disability that prevented her from learning sign language. Consequently, her case was withdrawn despite a long list of sexual offences claims brought against her caregiver. Worryingly, the lack of specialised training and services for those with intellectual disabilities at the SOCs results in many of these cases not making it to trial or resulting in acquittals, withdrawals and SORs.

Senior stakeholders confirmed that many of these cases with people with disabilities are not making it to trial. This corroborates the statements of some prosecutors that such cases are screened carefully and withdrawn early if it is deemed that they are difficult cases, and has "weak witnesses" because of their disability or particular vulnerability. As one Regional Court magistrate commented, "Apparently people who can give you better stats on that are our prosecutors. They are the people who assign these cases. But I deal with them as they come through as trials or as cases ready for trial. Not a lot when it comes to mental. Maybe last year we dealt with about three or four". This Regional Court magistrate was positioned at one of the courts where the prosecution indicated a significant rise in complainants with intellectual disabilities, which adds credence to the claim that these cases are not making it to the courts where this Regional Court magistrate presides.

When speaking about survivors that are unable to testify or whose testimony is deemed inadequate, one prosecutor said that 50% of her cases that are withdrawn are due to the system's inability to handle witnesses with intellectual disabilities. The respondent explained that their testimonies are weak due to their "mental status, most of the time". She went on to say:

> Normally, the mental victims, normally most of the cases you don't find… We don't necessarily call them to court, […] because you can't put a mentally ill… I understand it depends on the, as they say, degree, or something, but then most of them you can't call them to court, cause surely they'll break or they will say something to affect the case terribly. So that is why I'm saying, that's where really you need the DNA and a further investigation, I would say, from the police. Sometimes it helps just to talk to them, to hear what's going on, cause even though they are not fit to talk in court, but they can just tell you something and then it might be something… [Prosecutor]

It is, however, important to note that in the Western Cape, the Cape Mental Health Society has a programme for assisting survivors with intellectual disabilities through the criminal justice system, and this programme has achieved very high conviction rates. This demonstrates that with the appropriate accommodations and an enabling environment, persons with intellectual disabilities can testify and be very robust witnesses.[36]

Older persons

The number of older persons presenting at the courts was generally reported to be low, with most court actors reporting a caseload of 1-3% being persons over 60 years of age. A social worker commented that cases of older persons tends to go up and down over periods of time. The respondent explained, "I mostly have children, but sometimes I get a granny. During 2000 I had many grannies". Some of the respondents indicated that though there are very few cases of sexual offences perpetrated against older persons, those that they have seen have been very traumatic and they equate the cases to be as traumatic as child cases. This is important to note given the current debate within the DoJ&CD to extend the use of intermediaries to older persons appearing in court. When we questioned respondents as to the nature of older person's cases, they explained that often those survivors do not want to proceed with criminal charges against their perpetrator, as it is often the case that a family member assaulted them. The social workers at one of the TCCs explained that all the cases involving older persons she had personally encountered involved family members and that the survivor wished to access medical and psychosocial services but did not want to proceed with opening a case against the perpetrator. When asked if they had received any training specific to older persons, none of the respondents indicated that they had specialised training for this vulnerable group and were not aware of any specific protocols when dealing with older sexual offences survivors.

3.6 Intersectoral Collaboration and its Impact on Turnaround Times Data

> The SOC Model is dependent on everyone working together to achieve a common goal [High-level National DoJ&CD Stakeholder]

> I am nothing without that person's commitment. [Regional Court Magistrate]

As outlined in the introductory section, there are many departments that comprise the 'justice cluster' that participate in several committees, forums and meetings on national, provincial and local levels to 'manage' and oversee the SOCs. This requires an immense effort from all parties involved to work together and communicate with each other about the everyday running of the courts in addition to key issues like budgets, human resources, infrastructure and protocols. The efficient running of the court relies upon efficient communications and collaborations between all the departments and their ability to come together to provide one overall service for their common client – the sexual offence survivor.

As the opening quote illustrates, on a surface level everyone agrees that for the successful case outcomes to be obtained, all the cogs in the machine of criminal justice must be well-oiled and working smoothly together must work together and aim for the same outcome and output – successful case outcome. The blueprint that informs the intersectoral machine that is the SOC is carefully outlined in the MATTSO report. It is overseen by the DG ISC SO and the OPS ISC SO on national and provincial levels, coupled with case management intersectoral forums at a local court level where all departments come together to discuss issues relating to SOCs. There are also other side bodies such as the RCP Forum, the Directors

References

36 Dickman, B., Roux, A., Manson, S., Douglas, G. and Shabalala, N., *'How could she possibly manage in court? 'An intervention programme assisting complainants with intellectual disability in sexual offences cases in the Western Cape.* In Watermeyer, B. (Ed), (2006). *Disability and social change: A South African agenda*. HSRC Press. Page 116.

Legal Forum, and other justice cluster committees who are also involved in oversight. Given all these various layers of oversight and involvement, one understands why confusion arises regarding who is responsible for which duties. However, given the very different roles and outputs coupled with resources that each department has, it is difficult to envisage a truly integrated space when each department measures performance, success or outputs differently. As a high-level stakeholder explained,

> You can put people in one room and they will never be integrated if they do not have a common goal. So, with ours it's the Magistrates and we have our indicator, which is the court hours that is also the first impediment to integration is the fact that the indicators are different [...] remember that the performance of these courts it doesn't rest with the DOJ it rests with the NPA working together with the judiciary. [High-level DoJ&CD National Stakeholder]

Standardising / homogenising the way in which performance is monitored and managed is a key challenge to the efficient intersectoral integration of all parties. This is illustrated in simple terms when comparing performance indicators for SOCs to that of normal courts or hybrids, as shown in the DoJ&CD's annual reports. **37**

One of the key findings of this study, one that was also a MATTSO recommendation, is the need for a consistent and fully integrated monitoring and evaluation model, which looks at performance measures and justice indicators across all relevant departments. This is quite a complicated task given the vastly differing indicators that each department currently responds to. One of the very first obstacles to the operationalisation of such a model is trying to decipher who is responsible for the overall M&E of the SOCs. It appears that the cluster cannot agree amongst themselves if the responsibility is collective or designated to one of the three key stakeholders – DoJ&CD, judiciary or NPA. At the start of the project, it was stated that the M&E of the SOCs lay with the DoJ&CD as stated in their 2013-2014 implementation reports and the MATTSO. To date there is no comprehensive or overarching M&E system for the courts. In the 2015-2016 annual report on implementation, it states that the M&E of the SOCs has been passed over to the NPA. However, when the researchers queried this with the NPA, they were also unsure as to what this entailed and if indeed it was their official remit. This leads to a lot of confusion, miscommunications and competition between departments who are vying for good performance measurements and holding each other to task with statistics and 'results'. In a contested terrain such as the SOCs, when conviction rates are low and cases are not finalised efficiently, reference is made to the statistics and measurements for departments, which then appears to pitch the actors against each other rather than measuring the court system as one entity.

The way statistics are gathered for the SOCs is illustrative of this. Currently, the statistics that are gathered by each department are not consistent with each other and cannot be integrated to get a coherent view of the situation. Each stakeholder records data differently, aggregates them differently and interprets their statistics differently. As part of the study we sought to do a meta-analysis to compare sexual offences statistics collected by the DoJ&CD, NPA and the judiciary to see if they were reporting similar statistics relating to numbers of cases, types of cases, gender or age of complainants and other factors. What we found was that the figures are very different and almost impossible to compare.

The tables below (Tables 17-19) illustrate the various ways in which the data from the SOCs is recorded and how sexual offences are reported within the various departments' annual reports. The integrated M&E framework that forms a key deliverable of this project will aim to consolidate this data and suggest a common system for data collection.

References

37 See (i) Department of Justice and Constitutional Development, (2015) *Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2014 to 31 March 2015.* Department of Justice and Constitutional Development, South Africa. Pages 69-76

Table 17. DoJ&CD Statistics on Sexual Offences Cases

	New cases	Guilty	Not Guilty	Finalised	Withdrawn	Struck From Roll	Outstanding
2012/13	10 806	4 698	3 276	255	6 568	1 993	11 217
2013/14	10 875	4 401	2 990	200	5 478	1 794	10 750
2014/15	8 457	3 887	2 278	100	4 892	1 609	6 195
[Source: DoJ&CD, 2013 – 2016] [38]							

The Annual Report for 2015/2016 (Table 17) for the Implementation of the Sexual Offences Act of 2007 puts its conviction rate for SOCs in a section that measures the effectiveness of all prosecutorial services. The data shows that in 2014/2015 the conviction rate for sexual offences was 69% (5084) and the planned target in 2015/2016 for conviction rate in sexual offences, which was 68% (5614). The DoJ&CD statistics for sexual offence cases are those, which are registered, disposed of, dedicated and outstanding. These statistics are broken down further into regional categories.

Table 18. NPA Statistics on sexual offences

	Cases on the Roll	Conviction rate	TCC Cases	TCC conviction rate	Withdrawn	SOR	Outstanding
2013/14	Not recorded	67.1%	2 357	65.9%	Not recorded	Not recorded	Not recorded
2014/15	Not recorded	69.0%	2 285	68.4%	Not recorded	Not recorded	Not recorded
2015/16	Not recorded	70.1%	2 340	71.8%	Not recorded	Not recorded	Not recorded
[Source: NPA Annual Reports, 2013 – 2016]							

The 2015 and 2016 NPA reports [39] (Table 18) show the total number of cases on the roll, withdrawn cases, cases struck off the roll, and outstanding cases. The reports for 2015/2016 gave the number of cases (7098) and conviction rate for sexual offences cases (70.1%) as well as the number of cases (2340) and conviction rate (71.8%) for cases referred to TCCs. In addition to yearly conviction rate, sexual offence conviction rate is also broken down into quarters. This report also focused on the different periods of sentences for sexual offence convictions. Each cluster reports specific figures on sexual offences cases withdrawn, finalised, diverted, convicted etc and the average rate for the cluster is reported monthly with reasons for postponements, withdrawals and delays. However, these statistics and reports are not readily available to the public.

References

38 (i) Department of Justice and Constitutional Development, (2014) *Annual Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa. (ii) Department of Justice and Constitutional Development, (2015) *Annual 2014/2015 Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa. (iii) Department of Justice and Constitutional Development, (2016) *Annual 2015/2016 Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa.

39 National Director of Public Prosecutions (2015) *Annual Report In Terms of the NPA Act 32 of 1998.* Pretoria: National Prosecuting Authority.

Table 19. SAPS Statistics on sexual offences

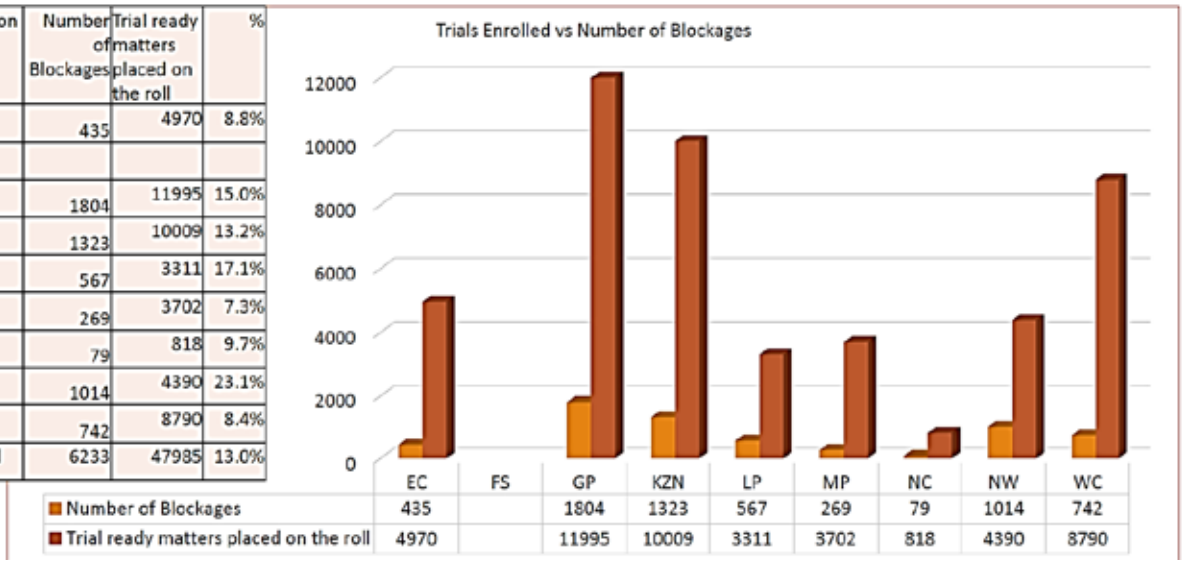
	Sexual Offences Arrests	Child Abuse Arrests
2013/14	47 064	
2014/15	31 964	1 378
2015/16	33 613	1 344
[Source: SAPS, 2013 – 2016]		

The SAPS offences statistics (Table 19) details the number of arrests, which provinces those arrests took place, and whether they were child abuse-related. The statistics from the judiciary (Figure 13) focus on the number of trials, withdrawals, days and court hours without mentioning sexual offences courts specifically. In addition, they report on backlog cases and part-heard cases in each court and cluster. As the judiciary is responsible for case flow within the courts, they also report on blockages in the case flow by province and by court.

Figure 13: Statistics on case blockages from Regional Court Presidents Forum presentation January to April 2016

ENROLLED CASES VS NR BLOCKAGES

Region	Number of Blockages	Trial ready matters placed on the roll	%
EC	435	4970	8.8%
FS			
GP	1804	11995	15.0%
KZN	1323	10009	13.2%
LP	567	3311	17.1%
MP	269	3702	7.3%
NC	79	818	9.7%
NW	1014	4390	23.1%
WC	742	8790	8.4%
Total	6233	47985	13.0%



[Source: Regional Court Presidents Forum, 2016]

Whilst individually the statistics from all of the departments look at various aspects of the sexual offences cases, it is very difficult to create a composite picture of the current state of sexual offences within the justice cluster as a whole. To assess the true effects of the SOCs on case outcomes there must be an overarching system to monitor a consolidated and combined picture of performance and measures of success across all stakeholders. As a DoJ&CD stakeholder explained, the DoJ&CD can often find themselves stuck between the NPA and Judiciary, *"you have this issue of we cannot divorce our performance from the legislation and you have that judicial independence, you have the NPA that is also claiming their independence then you have DOJ who is there. That you will find sometimes being in the middle of these two stakeholders you see. So, it's something that is historic that is such a bad thing that now I think it's the, if you look if you want to look at the culprit go [to] the legislation".*

In their Annual Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 200, the DoJ&CD stated that they were, "considering statistics compiled by DoJ&CD on sexual offences cases, and commissioned the establishment of a Task Team constituted by DoJ&CD, NPA and SAPS to seek ways of addressing gaps identified from the statistics". [40] This Task Team was established in November 2014, and is, *"now looking at the alignment of the different statistical variables with the aim of achieving consensus between figures"* . [41] In addition, it explained that the OPS ISC SO had considered the causes for *"discrepancies in the statistics for sexual offences collected by NPA and SAPS, and recommended that the NPA and the SAPS should align its data collection tools to ensure synergies in the indicators used in statistical reporting".* [42]

The intersectoral forums that operate at the local levels of the SOCs are an important platform for court actors to speak to each other across departments and to address issues that are affecting the SOCs. Our observations are that these forums only operate effectively, if at all, in some courts. Generally, these intersectoral forums were poorly attended and attendance of all departments at one sitting is rare. In addition, the key stakeholders, such as the judiciary, do not attend. In two of the five courts, the senior judicial officers told us very clearly that they do not attend these forums as they feel they are ineffective and a ***"waste of time"***. As one of the prosecutors explained, "Magistrate [name] used to go to these meetings. He is so frustrated he decided that he is not going. He said it's just not worth it because of the attitudes". Another prosecutor interviewed commented:

> You know, there are so many structures, which are doing the same thing because there will be this stakeholders meeting here, and whatever, and at the end of the day, you're looking at all the stakeholders, they're doing the same thing. The judiciary is not very much into monitoring of cases and whatever, not even in the case flow management, you will not see the Regional Court there they, just don't report to anybody as far as I know in terms of cases and whatever. They don't have targets for nothing, so, if they were at work and maybe they set 4 hours or whatever. I think that's the only thing that is expected of them. Whether cases are finalised or not finalised, it's not part of their duty and something like that. [Senior Public Prosecutor]

This points to a lack of understanding regarding the different indicators that each stakeholder must report on and a tension between the judiciary and the prosecution regarding their targets and evaluation of one another's performance. These court-based forums are important in order to address local problems at an everyday level within the court. However, they are reliant on the willing and equal participation of all parties. As a case manager explained:

> We do have the Sexual Offences Forum, but then [the] judiciary is not in that. It will be attorneys –not attorneys, attorneys are not there – it's only stakeholders that from the prosecution side, it will be your intermediary, your court preparation officer, your police, your NGOs and everything. It's just to sit, talk about issues that we are, we are facing and how to resolve some of those issues and the services that have been provided for the victims, and how it can be bettered or be implemented in a better way for us to get a positive outcome of cases that are coming through her. [Case Manager]

References

40 Department of Justice and Constitutional Development, (2015) *Annual Report 2014/2015 on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa, Page. 18

41 Ibid

.

42 Op. cit Page 23

In addition, the intermediaries and interpreters that were interviewed explained that they are often not represented and feel voiceless and 'homeless' in these intersectoral case management forums. Given that all of the court actors expressed a sense of detachment from provincial and national forums and oversight bodies, the role of the local forums becomes even more essential to the smooth running of the SOCs.

The efficient running of the system often depends on the personalities and drive of the individual actors involved despite guidelines and protocols governing the timeframes and methods of interaction for each department. As one stakeholder mentioned, if people are doing their jobs well then things happen quickly and efficiently. The respondent explained that:

> You get people who are prepared, instead of taking six weeks, this thing they would do it in two weeks, they will go, so long as you give them the proper addresses, they will go, they will interview this family. [...] People like to pull [...] That's where we are saying, guys we are a team, please do your part, remember we are not serving ourselves here, we are serving that person. [...] let's share our challenges, this are the challenges that we have [...] how can we collectively take resolutions and tackle those challenges [...] I think sometimes we do benefit if we all sit down, Ja the only time that we find to be more also helpful is when we have our staff meeting, multidisciplinary. [Senior Public Prosecutor]

This quote suggests the case manager is a useful focal point for a discussion on intersectoral collaboration and interdepartmental co-operation. The case manager from the TCCs is employed by the NPA and reports court updates and procedures to the complainants who are referred by the TCCs. They act as an intermediary between the courts and the service providers. Unfortunately, this is only for those cases that proceed through the TCC. Nevertheless, it serves as a best practice example of how good communication between the courts and the clients is a key element of improving case outcomes for survivors. In those TCCS that do not have a case manager, getting feedback in a consolidated manner on your case is difficult, as you are relying on feedback from prosecutors, court preparation officers or psychosocial service providers. As one TCC site coordinator with no case manager explained, "There is a serious gap between Thuthuzela and the court."

The TCC blueprint itself has come under fire for years for the lack of buy-in from stakeholders to work collaboratively and effectively. Many of the challenges of the TCC model have stemmed from the difficulties with intersectoral cooperation, budgetary constraints and oversight issues.[43] This has been explored by many other studies and will not be dealt with here, except to say that when we look at the intersectoral nature of the SOC model, perhaps we ought to reflect on the challenges of the TCCs to determine how to develop intersectoral coordination at the SOCs. What can we learn from the mistakes of the TCC? The models of 'one stops shops' have many flaws as outlined in these various other studies on TCCs , and similar issues arise with the intersectoral elements of the SOC courts. Perhaps, then, there may be some merit in tasking the NPA with giving substantial input on the M&E framework given their experience of trying to measure performance at the TCCs. [44] Equally, attendance at these forums could be developed into a performance indicator which would encourage participation and attendance, across all departments.

References

43 See (i) Foundation for Professional Development. 2016. Thuthuzela Care Centre Compliance Audit and Gap Analysis and (ii) Vetten L. (2015). *"It sucks/it's A Wonderful Service": Post-Rape Care and the Micro-Politics of Institutions.* Johannesburg: Shukumisa Campaign and ActionAid South Africa.

44 An important observation was made whilst interviewing TCC staff regarding research studies on the TCCs. Those we interviewed explained that they had research fatigue I for being "over studied" and were tired of participating in studies when they could not see any results from their participation or were not made aware of the results of such research. Therefore, it was very important that we committed to giving the staff we met consistent and constant feedback the progress of the research, the findings and include them in the training outputs.

3.7 High Caseloads and the Impact on Turnaround Times

The numbers of reported sexual offences cases appear to be increasing. As such, it is no surprise that the caseloads at all of the SOCs visited were high and taking their toll on the staff. The SOCs are a direct response to the call for specialised courts that could hopefully move SOCs through the system more efficiently and in a manner satisfactory to the survivor. However, as we have seen, the complex nature of sexual offences crimes makes it difficult to determine if specialisation is making cases more successful or timelier Nonetheless, the high caseloads at the courts and the pressure to finalise cases within tight periods puts court actors under immense pressure.

The text box below shows some of the caseload statistics we gathered whilst in the field from SPP reports, anecdotes and questioning each court actor on their average caseloads. The problem with getting accurate information on caseloads is that court actors are not recording their numbers individually and are just reporting collectively as a cluster or court. In addition, beyond just numbers of cases, prosecutors or other support staff do not record the hours that are put into preparing the case and getting it court ready, so that when we look at one case we need to consider the hundreds of hours that one case (might) represents. The high caseloads and the shortage of prosecutors, intermediaries, CPOs and courtrooms was a key challenge for all actors, with prosecutors and CPOs being particularly affected.

The prosecutors are currently dealing with such heavy workloads that they do not always have time for witness consultations. One of the prosecutors stated that the "biggest problem is time" in that there is little to no time to consult with witnesses/ complainants. It was explained that two days of the week are meant to be spent on consultations and docket management and three days are meant to be spent in court. Realistically however, with the caseload that prosecutors have, there is no time for witness consultations so most complainants are only consulted on the morning of their trials.

When we asked the SPPs to describe their current caseload in terms of numbers, types of offences and profile of complainants, their numbers and descriptions were very similar at each court and are summarised in the text box below. However, accurate figures were hard to obtain as mentioned above.

The SPP explained:

> It's difficult to say the case load per prosecutor, because we've got a new system of allocating cases to prosecutors and once that's really kicked in properly I'll be able to tell you. But basically, the court rolls, and this is give or take a few because I'm going by memory, and these are the outstanding cases, in other words that, that we've still got to, that have either started and are part heard, or we've still got the start them. So, the one court is [courtroom name] and the other court is [courtroom name]. [Senior Public Prosecutor]

There is a disjuncture between the statistics that are being reported at national level and the reality of caseloads at the Regional Courts, as one high-level judicial officer explained, "at our last Regional Court presidents' forum meeting, the Deputy Minister was there and he actually came with some presentation, according to which the crime statistics had reduced, and so it was now no longer necessary for additional courts or back log courts and I said "oh no it hasn't". Because I have just got one sexual offences court which was now going over 200 [cases] and hitting the ceiling of 300 [cases]". The differing opinions on caseload were evident at the court level also. At the time of our fieldwork, there were 80 cases on the roll for one SOC and the prosecutor expressed frustration at that caseload. The respondent suggested that it is high compared to other courts. However, the RCP in the same court had a different view on caseloads, stating "in respect of sexual offences, we only have two courts that are for sexual offences, those are the courts that you find with high workload, it's not beyond 80, just under 80 so it is not much".

Observations on Caseloads summary:

(i) Two of the three TCCs estimated that 50- 60 open cases a month, with the smaller averaging 15-20 open cases a month, which is proportionate.

(ii) Caseloads between prosecutors averaged at about 120 pending cases a month with some cases going up to 200 pending cases a month.

(iii) All TCCs estimated that child cases are up to 80% of their cases and some prosecutors saying up to 85% of their caseload are currently child cases.

(iv) Court prep officers see **15 to 20 clients** a week in larger courts.

(v) In terms of witness preparation some court preparation officers and prosecutors are preparing 40-45 witnesses a week in larger court. (In one court the court preparation officers and intermediaries share their time with another court nearby so this is 45 between two courts of which about 25 are from the pilot site court).

(vi) The **smallest court** included in the study has only one court preparation officer who can see up to **20 cases** a week.

(vii) **Part-heard cases** make up the **bulk of cases on one courts roll**, with the RCM at the court indicting that they have up to 54 cases on the roll a month of which at the time of our fieldwork 26 were part heard

(viii) On average, the courts get **25-30 new cases a month**, with the smaller rural courts averaging 15-20, which is still high, compared to more resourced and bigger courts.

(ix) Overall, across all courts and TCCs, the personnel estimated that children make up to 80% of cases, of which average of 3% boys, 10% intellectual disabilities

(x) Indications from case managers and prosecutors were that there was an estimate of 1-2% cases with LGBTI complainants, with one court claiming to not have had any such cases at all.

(xi) Those prosecutors and RCMs that operate in **mixed roll courts** stimated that **sexual offences** make up to 60% of their caseload.

(xii) One courtroom eported to have the **largest roll with almost 355 pending cases** of which 25 are on backlog roll

The problem with reporting statistics on cases is that courts are counted in their clusters and the statistics do not show a true picture of the challenges that are encountered at each court in terms of resources, staff, infrastructure and the socio-economic issues in the area. They do not consider the rural or urban location of the courts, or look at the comparative nature of offences and vulnerable groups across clusters, that is, comparing cases with children, persons with disabilities, LGBTI survivors or elderly people across clusters. This has given rise to a form of competitiveness between the court clusters, particularly amongst prosecutors, who are compared to their peers on finalisation and convictions rates. As a SPP explained, this competitiveness between clusters results in a reluctance to share best practices:

> There are other divisions, or other clusters that are doing well regarding their sexual offences. It's unfortunate that they, they also treat this as guarded secrets, they, they're not like say if they have a special level of expertise, or, or anything different they are doing that they would want to, to, to share with other clusters, because of, as I said, it is now a game of numbers. If say Cluster A is doing well, they want to, to maintain a certain position within the clusters. If you are position one, you want to remain position one when it comes to finalisation. Now that, as I say, then becomes a matter of competition and it takes us 20 years back where you, you, you want... winner keeps the secret recipe. Instead of sharing the best practices [Senior Public Prosecutor]

To manage the turnaround times and caseloads the courts are trying various strategies such as rotating prosecutors between court and administration from week to week to give more administration time between cases. However, this affects turnaround times as those cases take longer to finalise with only one prosecutor hearing cases, whilst the other prepares witnesses and works on administrative tasks. In order for this strategy to improve case outcomes for survivors and increase court efficiency, increased numbers of prosecutors at the courts is needed.

Another strategy for dealing with high caseloads is the careful screening of cases by case managers and senior prosecutors to 'weed out' weaker cases with low chances of successful convictions. Whilst both the prosecutors and Regional Court magistrates agreed this was a good practice, in reality it means that witnesses who are especially vulnerable, such as complainants with intellectual disabilities, never have the opportunity for their cases to be heard in court, or their perpetrators be convicted. We had many of the prosecutors confirming this on record. Case managers may not have the expertise needed to determine the capacity of a complainant to give evidence. In the case of people with intellectual disabilities for example, given a supportive, conducive environment, and appropriate accommodations, intellectually disabled witnesses can explain what has happened to them. Such a preliminary screening may unfairly and needlessly rule out such cases.

3.8 Training, skills development and its Impact on Turnaround Times

> If we do not master training, training is very critical. It is what will change the attitudes of people, it is what will make them to understand who they are dealing with and it's what will sharpen the way in which they are dealing with these cases and help us then to succeed you know against sexual violence in our country. [High-level DoJ&CD National Stakeholder]

SOCs require specialised training for all staff practicing at the courts, as recommended by the MATTSO report. MATTSO is very clear in its recommendations that the model relies upon specialisation to provide the optimum service to sexual offence survivors. It details specialisation across all departments, from specialist forensic doctors and nurses collecting evidence to specialised prosecutors, Regional Court magistrates and court support services. However, as discussed in the earlier section on specialisation (see section 3.2), not every stakeholder agrees with the specialisation of its staff and the arguments for and against have been outlined above. Nonetheless, specialised training for those actors in SOCs has been developed and all the stakeholders include the additional training for sexual offences cases as a specialised course covering various levels from basic to advanced training across all professions in the SOCs. Whilst the SORMA of 2007 and

the MATTSO clearly state that training is a priority (as confirmed in the opening quote by a senior DoJ&CD stakeholder) the content of the training differs across stakeholders. The limited availability and frequency of the training is a key issue for those respondents we spoke with.

A key element of our research was a needs assessment of each court actor's training needs concerning the scope of their existing knowledge, gaps in previous training and any additional training they would like to have. This is central to the suggested training and skills development materials/workshops and seminars that we will develop with each stakeholder in the second phase of the project. All the stakeholders offer training specifically on sexual offences and the various legislation that informs the specialised courts. However, training materials quickly become outdated and require constant updating. In addition, court actors need continual training in the form of both refresher and emergent issues workshops. Table 20 below summarises the various types of training and topics that actors expressed a desire for more training on.

In addition to asking the court actors themselves, we also asked their colleagues to suggest ways in which the skills and knowledge of their colleagues could be improved. This helped to negate the false positive present when asking participants to express opinions on their current knowledge to discover where they need additional knowledge or skills that they themselves are not aware of. For example, whilst magistrates indicated that they had sufficient knowledge of the social contexts of sexual offences survivors, the prosecution repeatedly pointed to the need for greater social context training for the judiciary. Equally, the judiciary pointed to pre-trial consultation skills for prosecutors as needing greater attention to ensure cases are evaluated and prepared properly in advance of the trial. Thus, our list below takes into consideration needs identified by the category themselves and their colleagues within the justice system.

Table 20. Training needs assessment

Prosecutors	SORMA of 2007 refreshers (some have not had training on the SORMA since 2007)
	Litigation strategies esp. for vulnerable groups (LGBTI, children, disabilities)
	How to question medical and mental health experts
	Pre-trial consultations with children
	Best practices for victim impact statements usage and compiling them
	Debriefing
Regional Court Magistrates	Evaluating forensic evidence and expert witness statements/testimony
	Forensic evidence refreshers and practical demonstration of evidence kits and methods
	Child sexual offence injuries
	Child witnesses training
	Debriefing
	Recent case law developments (esp. on child sexual offence survivors and sentencing)
Interpreters	"Language of the law"
	An advanced sexual offences course (previously available but now discontinued)
	Child witnesses and children with mental or intellectual disabilities
	Forensic evidence terms and definitions of rape
	Debriefing
Intermediaries	Child witnesses (esp. children with mental or intellectual disabilities)
	Forensic evidence terms and definitions of rape
	Legal terminology
	Processes and procedures of trials
	Debriefing

Court Preparation Officers	Child witnesses and consultations with children
	Legal terminology
	Forensic evidence.
	Debriefing
	Case flow management
Court Managers	Debriefing
Case Managers (TCC)	Litigation strategies
	Forensic evidence
	Child witness consultations
	Case flow management
	Debriefing
Site Co-ordinators (TCC)	Sexual offences legislation and regulations (refresher)
	Legal terminology
	Debriefing
Forensic Doctor and Forensic Nurse	Legal language vs medical language
	Sexual offences legislation and regulations
	Giving expert testimonies
	Debriefing
	Providing competent services for GBTI survivors
Social Workers	Sexual offences legislation and regulations (refresher)
	Debriefing
	Legal terminology
	Providing competent services for LGBTI survivors

Common needs identified in the interviews included:

(i) debriefing and training of senior staff on how to conduct regular debriefing with junior staff;

(ii) evaluating and presenting forensic evidence;

(iii) consultations with child witnesses;

(iv) communicating and consulting with complainants who have intellectual and mental disabilities;

(v) refresher courses on the SORMA (32 of 2007); and

(vi) a change in the way training is conducted to include a more practical application of the legislation as demonstrated through case law and practical examples.

Overall, the feedback on the quality of training by their employers was very positive with each actor giving a detailed description of the various types of training they had received and commenting on the specialised nature of the sexual offences training. However, as the following quotes by one of the forensic nurses illustrates, the effectiveness and impact of training cannot be taken for granted:

> We are trained for that (sexual offences cases) because you must even attend separately other special courses. Like the week before last we were attending training because we don't just get heterosexual complainants. We have got gays too. So, to another person, doing anal sex is a normal thing, to us you can think maybe it is rape. It is not rape it is a normal thing, so normally we attend such a seminars and workshops. It is special courses like the one, men sleeping with men because if I get a victim like that, I mean a sexual survivor who is like that and he is already a gay and he is sleeping with another man, how can I tell those injuries are from the very, very sexual offence or injuries that he sustained maybe during normal consensual sex. So we are exposed to different courses. [Forensic Nurse]

This quote demonstrates that despite the fact that training attendees might praise a training, its actual effectiveness is not easily measured. In this case, the sensitisation training for forensic staff did not alter the nurse's prejudicial perception of who can and cannot be raped, as evidenced by the opinion that gay men and trans women cannot be victims of sexual offences as they already engage in anal sexual intercourse. In such instances, it is possible that LGBTI persons experiencing these views from professionals in the criminal justice system may not access services for sexual offences due to fear of discrimination or because of actual discrimination and may experience secondary victimisation due to scepticism about their rape. Especially where a client's or patient's case might be deemed questionable by service providers because of their own values and beliefs, content training is usually not sufficient to address value-based decisions in service provision. **45**

Most respondents expressed a need for training that is more regular and an opportunity to meet with other colleagues from across the country at SOCs to share challenges, ideas, and concerns on a national level. As part of this project, we convened two provincial forums at each site and presented the findings from the other courts to them. The overall response was that the attendees were reassured and validated by shared challenges and experiences from other courts because they were provided with a platform through the project through which to communicate with their colleagues in the other pilot sites.

One area that was consistently raised as requiring additional training was communication, especially with those unable to speak clearly for themselves, that is children and people with intellectual, mental or physical disabilities. All of the stakeholders referred to the increase in complainants with intellectual disabilities in their courts and expressed concern over the courts inability to provide services to cater for their needs. One example is the need for intermediaries or interpreters who can do sign language. When asked what needed additional training was required to improve services to complainants with disabilities, an intermediary explained, "One thing that I need training on is dealing with... I want training on sign language. You know what, I once had a witness who was deaf ... unfortunately, I couldn't communicate with that person because he was [also] unable to write".

Some of the intermediaries and court preparation officers expressed frustration at the limitations on their roles and wanted more training on how to help a child heal during their time with them. They said that despite good initial training, they no longer receive specialised advanced training and this has led to a feeling of demotivation. As one explained "When we first came here we were so fired up when we came because we had so many ideas from where we studied and the people who trained us will always like must always look for loopholes this is what you must do so I think they have done a pretty good job because we came here we were ready to change the world. But then to get motivated it's like no there's no budget".

References

45 Müller, A., Röhrs, S., Hoffman-Wanderer, Y. and Moult, K., (2016) "You have to make a judgment call".–Morals, judgments and the provision of quality sexual and reproductive health services for adolescents in South Africa. *Social Science and Medicine*, 148, Pages 71-78.

The issue of training is central to the success of the SOCs as it puts specialised services at the heart of its mandate. Those stakeholders who conduct training such as SAJEI, the NPA and DoJ&CD are constantly adapting their materials to respond to both the changing nature of different sexual offence survivors' needs and the SOC model as it evolves. When we discussed the issue of training with high-level stakeholders in the DoJ&CD, they explained that they had just conducted an extensive needs assessment of intermediaries. This arose out of a concern that the training for the intermediaries on sexual offences was not sufficient. The respondent explained, "with intermediaries training we have a committee for intermediaries that, with the lack of the better word right now, that rejected the training that was offered by Justice College for the intermediaries to say that it needs to be beefed up. So, for the whole of last year then it was an agenda item and it's still there".

She went on to explain that the DoJ&CD, in conjunction with Justice College, was currently adapting training materials to respond to the needs assessment. In addition, the stakeholder commented on the need to look closely at the methods of training rather than just the materials and content. The respondent reiterated the importance of the right training to provide the best service. She noted that a focus measure of the practical application of training must form part of any attempt to measure the overall performance of the SOCs through the actors' abilities to provide the best service because of good and in-depth training.

> With the issue of training right now the issue the reason that I am saying that I am going to include it in the agenda of our own meeting is because the legislation recognises the importance of our training and there are provisions there that said that police you need to do this, NPA you need to do that. I mean why are we not recognising that? We might say that okay they have got training programmes and all that but those training programmes - who is evaluating them to see that they are producing results. [High-level DoJ&CD National Stakeholder]

She went on to explain that:

> Good results - we need them to ensure that we have a training programme that is outcome based. I think that is very important and this training it should not be only for our officials but all stakeholders [...] we need to operate like a unit when we are dealing with this victim and not like look at this victim in different ways. You see, so we need to have that kind of a training programme which I think that it is non-existent right now. I know that NPA use to deliver that kind of training. I am not sure to whether they are still continuing with it because the challenge with integrated training is that who is going to pay. [High-level DoJ&CD National Stakeholder]

This points to a common theme when discussing training with any stakeholder – the budgetary constraints that make training financially difficult to conduct. There is also no collective responsibility to provide the training to the SOC court staff. It would be a recommendation of this study that stakeholders should consider a joint budget to provide the integrated training to all court staff that is currently provided at TCCs by the NPA and roll it out to all SOC staff. An integrated training programme tailored specifically for the SOCs would bring all the stakeholders together to consolidate their materials and pool their resources to improve training at the courts and ultimately the outcomes for the survivors.

In addition to more training and integrated training, the stakeholders need to think about how they can reimagine their training methods. One of the key pieces of feedback we got from respondents was that they preferred practical training, that is, workshops or training that focuses on how to apply the legislation in real cases, how to problem solve in complex cases and that uses real examples to demonstrate the application of knowledge. The respondents had some suggestions as to how their training could be enhanced. Some of the prosecutors explained that due to their high caseloads they are unable to spend as much time as they would like to conduct research on current case law and up-to-date academic articles on sexual offences. As an SPP explained:

> The prosecutors are currently dealing with such heavy workloads that they do not have time to have victim consults, let alone to research literature and case law that are relevant to their cases. They are therefore unable to keep up to date will all the recent developments in the law, or new thinking in academic literature. It is these new cases and literature that could provide a form of training and understanding in and of itself. It could allow prosecutors to be better equipped to deal with the 'grey cases.' [Senior Public Prosecutor]

The respondent suggested that something akin to a research workshop or quarterly lectures on current case law would assist them in this regard, as they do not have the kind of access to researchers and assistants that the high courts have. Another training idea was proposed in our interviews by a senior NPA stakeholder, who discussed a mentoring system she was piloting in her court cluster. Given that the NPA have placed a moratorium on hiring new prosecutors for this financial year, it is even more important that training continue for existing prosecutors on sexual offences as inexperienced or unspecialised prosecutors will have to take up posts in the next phase of SOCs roll-outs. In one court with specialised prosecutors, prosecutors rotate so that prosecutors that are more senior can mentor newer inexperienced prosecutors on sexual offences whilst on rotation. This enables prosecutors to have a break whilst sharing skills. As the NPA stakeholder at that court explained, "once in a while it happens to give them a break, let them train the others who are not experienced. Sometimes you will, just you know pay somebody else, she\s maybe just sitting there to supervise and encourage the new one. Until the new one is comfortable enough then you start rotating them. So, they mentor each other."

3.9 Case Flow Management Practice within the SOCs and its Impact on Turnaround Times

The main objective for this component of the baseline study was to assess the current case flow management practices within the pilot SOCs only and if a customised system for the SOCs would assist turnaround times and case outcomes positively. In other words, how are current case management systems affecting the life cycle of the sexual offences cases at the courts. The following limitations were encountered in the process:

(i) The was no opportunity for engagement with the SAPS and with custodians of the integrated case management system (ICMS) at the DoJ&CD;

(ii) Reliable data, based on comprehensive statistical information, was limited at each court, as prosecution and case managers at TCCs kept individual and diverse sets of information;

(iii) There was limited written information from Regional Court Presidents as to what the accountability structures for case flow management of the SOCs are; and

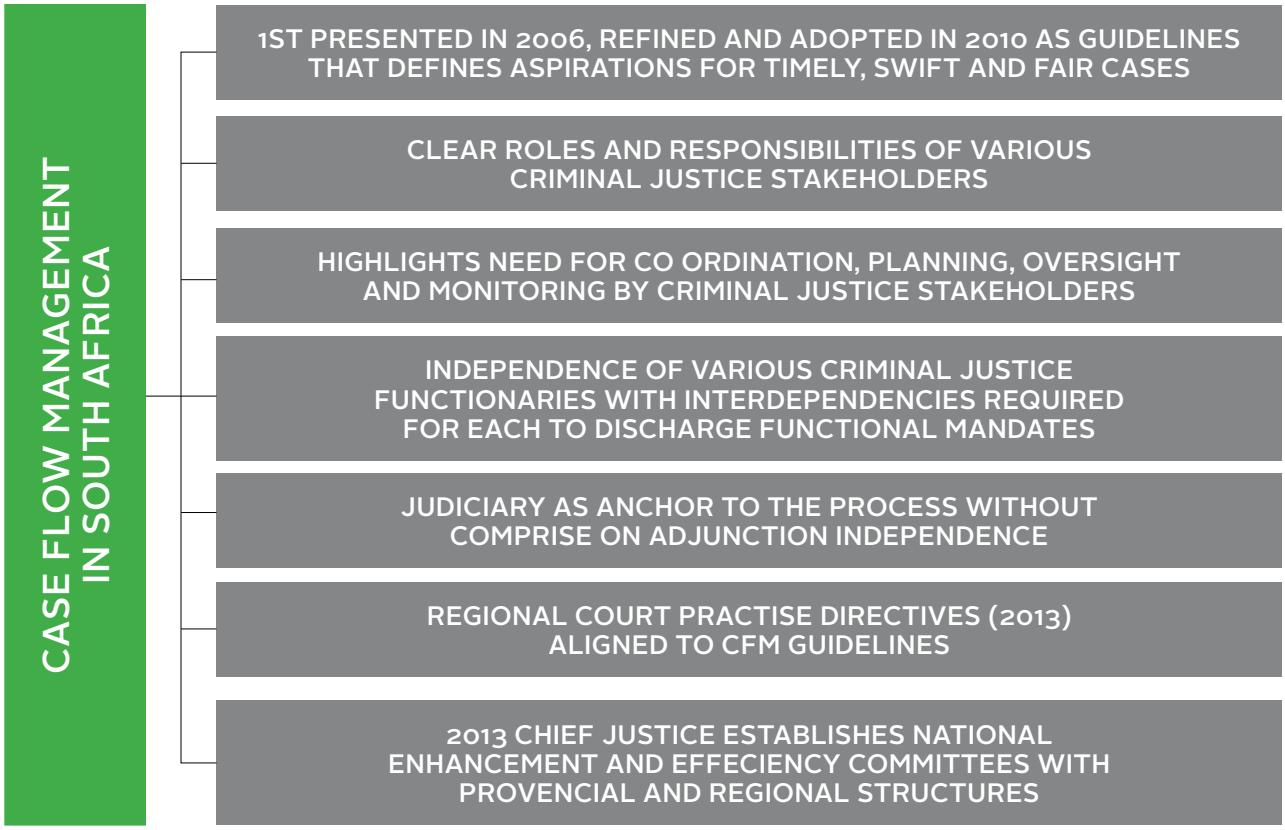
(iv) There was a lack of consistent planning and review of sexual offences matters at national, provincial or regional level as per the 2010 case flow management guidelines.

Overview of Case Flow Management

The Criminal Justice System[46] in South Africa is located within a network of complex institutional relationships. To have an effective and efficient criminal justice system, many independent functions must work together at all levels of operations and oversight. To measure progress, an interdependent practice model needs to consider such collaborations and collective efforts. With these complexities in mind, case flow management in South Africa is still an emergent process, and subject to continuous discussion, refinement, contestation, learning from notable successes and challenges encountered over the past decade.

The Case Flow Management (CFM) Practice Guidelines[47], as published in 2010 is an instructive, interdependent framework for the efficient and effective management of criminal court cases (see Figure 14 below). They have widely been agreed to by key criminal justice system stakeholders within the Justice and Crime Prevention clusters. The guidelines present a composite picture of the desired functional competencies that are required of each stakeholder, aimed at fulfilling the Constitutional imperative of the right to a fair trial and the timely disposition of cases. Central to this is the constitutional obligation of the Courts to take appropriate action to ensure that there is no breach of these obligations. [48]

Figure 14: Development of case flow management guidelines in South Africa



References

46 Comprises NPA, SAPS, Health, Social Development, Correctional Services, TCCs and contracted civil society organisations.

47 Department of Justice and Constitutional Development, *Case Flow Management Guidelines 2010*.

48 Department of Justice and Constitutional Development, *Case Flow Management Guidelines 2010*, Foreword, Pius Langa Page 5

Regional Court Practice Directives

The guide suggests specific ways in which the Regional Courts must adhere to and comply with CFM (Case Flow Management) at all levels of the regional division. In 2013, the Regional Courts adopted the revised version of the Criminal Practice Directives which are aligned to key requirements of case flow management principles. The directives are intended to 'improve uniformity, promote best practices, assist with court and case flow management, and inform stakeholders and all those who participate or take an interest in the court system at Regional Court level. These practice directives are binding as a Regional Court President's Forum directives and have legal force.' The directives set forth a number of components that are critical to establish a well-functioning case flow process, such as:

- Court availability and court sessions that highlight support needs for the cases to be allocated to various courts, commencement time and court information to be recorded for adjournments;
- Case allocations and appearances;
- Communication process with Regional Court magistrates;
- Case readiness, enrolments and trial set downs, continuous rolls and minimum of 3 cases for each court day;
- Court and Trial Management in which 4.5 hours is considered to be the minimum average court sitting per day;
- Drawing of cases suggests that cases at a specific seat are the responsibility of ALL courts at that seat and not only the court to which the case was originally allocated to, with the expectation that a court which has finished its work for the day and a court which will probably not be sitting normal court hours for that day to draw a case from another court subject to further guidelines;
- Delegation of duties by the Regional Court President to Regional Court Magistrate in relation to the management of the Regional Courts .

The CFM guidelines and its purpose for the enhancement of the efficiency and effectiveness of the functioning of the courts applies equally to the SOCs. These fall under the jurisdiction of the Regional Courts.

Case flow management practice within the dedicated SOCs varies from court to court. The variance is informed by many factors, some of which have been elaborated on in section 3.3 of this report. Cases of sexual offences make up the bulk of Regional Court cases in most provinces, and there are serious concerns about the overall effectiveness and efficiency of case flow management in these dedicated courts. Based on the review of limited available case data and Case Flow Management reports , observations made during ICOP meetings and formal interviews with justice officials, several challenges were identified that call for further case flow management improvements in the SOCs.

Those challenges are summarised below:

- Judicial officers, prosecutors and defense lawyers all tend to point at one another as the source of problems. A major concern of Regional Court magistrates and prosecutors is that defense lawyers often use the defendant's constitutional right to silence as a basis for refusing to discuss any issues in a case before it is set for trial that impedes adequate pre-trial preparation for all parties and proper roll planning of the courts;
- Multiple postponement requests: Based on the existing data, these might be due to delays in assembling evidence and witnesses both by state and defense; or a shortage of interpreters, court preparation officers and intermediaries.
- Incomplete investigations by SAPS and lack of forensic analysis capacity;
- Unavailability of legal representation on trial dates;
- Suboptimal utilisation of court time, often due to challenges in coordination and planning amongst all court stakeholders;
- While all the Regional Courts have general practice directives that set minimum time amongst other important steps for effective CFM, in practice many of these principles are difficult to implement due to different performance measures set for various court functionaries such as clerks of court and court managers over whom the Regional Court magistrates have little control over;

- Limited ability for court level stakeholders to provide feedback to Regional Court magistrates for quick redress;
- Limited human capacity to deal with the large number of backlog cases (see Tables 21 and 22 below) and enrollment of new cases.

Table 21. Incidence of backlog sexual offences cases for the pilot sites as at April 2016.

BACKLOG MATTERS - AS AT A SPECIFIC DATE – Broken down into time frames (Sexual offence matters)									
	Office	Total Outstanding	Sexual Offence	9 - 12 Months	1- 2 Years	2- 3 Years	3-4 Years	4- 5 Years	5 Years Plus
Apr-16	Durban	1086	89	18	38	15	12	5	1
	Emlazi	181	65	5	24	25	4	3	4
	Nkomazi	251	50	6	11	13	13	6	1
	Soweto	781	126	23	87	12	4		
May-16	Durban	1168	99	26	40	13	14	5	1
	Emlazi	186	68	7	24	26	4	3	4
	Nkomazi	273	54	7	14	13	13	6	1
	Soweto	883	140	30	89	17	4		
Jun-16	Durban	1224	105	26	42	16	15	5	1
	Emlazi	196	71	8	26	26	4	3	4
	Nkomazi	306	62	14	14	10	16	4	4
	Soweto	997	157	37	96	16	8		
Jul-16	Durban	1300	122	33	49	19	12	7	2
	Emlazi	221	82	17	27	25	5	4	4
	Nkomazi	320	66	16	16	9	17	4	4
	Soweto	1106	173	47	100	18	8		

Table 22. Summary of the case flow management practice, its successes and limitations for each court.

Key aspects of CFM	Soweto	Durban	Mpumalanga
Leadership	RCP commitment to CFM principles Delegated authority for court level CFM to court level Regional Court magistrates.	RCP commitment to CFM principles Concerns about how Regional Court magistrates are discipline for non-compliance to minimum standards of performance.	RCP commitment to CFM principles Close oversight by Regional Magistrate in SOCs
Integrated Planning	No case flow management plan for SOCs. Integrated Sexual Offences forum meets monthly in Durban although without Regional Court magistrates' participation. Little evidence of a planning and measurement framework that guides performance expectations. Unclear link between DOJ and CD and courts in collective monitoring for efficient problem solving on human resources and material support for effective administrative functioning of the courts.		
Oversight Structures	Monthly case flow management meetings are held although with no specific emphasis on Sexual Offences. Unable to determine extent of influence of each stakeholder on oversight of SOCs performance from enrollment to the disposition of cases.		No court level case flow management committee.

Key aspects of CFM	Soweto	Durban	Mpumalanga
Monitoring	Each court functionary has different performance measures upon which they are assessed, therefore no evidence of integrated process and system for monitoring performance of SOCs. Regional court magistrates and prosecutors in court have very different performance expectations in practice.		
Statistical Information	Automated ICMS with monthly statistics, although not easily accessible for SOCs. Unclear of the extent of collective decision making based on reliable information. Limited evidence of assessment of the statistical data to identify problem areas.		Manual collection of monthly statistics, not regularly compiled or easily accessible.
Performance	No clear and agreed-upon court level performance measures aligned to CFM guidelines. Prosecution performance measures very different from "time utilisation" approach of Regional Court magistrates. Each has different accountability structures and is deemed to be strictly independent. Regional court magistrates and prosecutors have no control or influence on the performance of other criminal justice stakeholders. No clearly articulated set of court performance measures for SOCs.		
Education and Training	Limited ongoing training and education activities for all criminal justice stakeholders. Regional court magistrates conduct own training on CFM from time to time.		
Community Communication	No evidence of a communication plan for community education about CFM guidelines, practice directives, Victim Empowerment guidelines, TCC support and other general court issues. Unclear how courts receive feedback on the efficacy of the implementation of the Victim Empowerment Principles or any other public concerns, and if received the process for how they are responded to.		
Relationships	Where relationships are healthy amongst court level functionaries, one observes higher levels of case disposition and overall better performance of the sexual offence courts. The informal willingness and commitment of Regional Court magistrates and prosecutors to go beyond minimum standards is a rare encounter.		

The result of this investigation into the current case flow systems and possible ways in which they can be customised for the SOCs, will culminate on a set of specific directives or recommendations that will be explored with the inputs of the Regional Court Presidents in Year 2 and 3 of the ICOP project.

CHAPTER 4:

CATALOGUE OF FINDINGS PER COURT ACTOR CATEGORY

CHAPTER 4

CATALOGUE OF FINDINGS PER COURT ACTOR CATEGORY

The following section presents a catalogue of the perceptions and views of each individual court actor on the various challenges they experience and bottlenecks they can identify within the SOCs that affect turnaround time of sexual offences cases. The in-depth descriptive context of the court personnel's perceptions are key to understanding the qualitative factors and variables that impact turnaround times, case outcomes and the ultimately, the success of the SOC model as envisaged in MATTSO (2013). This section is largely and purposefully descriptive to allow the voices of the court personnel to 'speak for themselves'. However, it is placed within the context of getting the individual court actors perspective on how successful outcomes for sexual offences survivors can be improved through offering better and more specialised services to the survivor at their courts. Furthermore, recommendations from court personnel are offered from their own perspective on how turnaround times and case outcomes could be improved. These recommendations are reflections of their experiences at the courts. In the final chapter of this report, more detailed and overarching recommendations will be outlined. The catalogue of court personnel's perspectives ends by positioning the shared opinions, perceptions and needs of the court personnel and how these can be useful to intersectoral stakeholders going forward regarding monitoring the performance of the SOCs and, more importantly, how to begin to determine more effective and realistic measures of success that reach beyond turnaround times and conviction rates.

4.1 The Judiciary

For the purposes of this project, we interviewed Regional Court magistrates and Regional Court Presidents (hereafter referred to as RCPs) in the five pilot sites at the five courts. In addition to the provincial representative of the DoJ&CD, the NPA and other justice cluster stakeholders, we also interviewed members of the judiciary who members of national committees and conduct training with regional magistrates, as well as those members of the judiciary who were on the MATTSO committee. The members of the judiciary had various concerns about the models used in SOCs and the role of the judiciary in improving case outcomes for sexual offences survivors. Discussions around the SOCs gave rise to debates on specialisation on sexual offences and the need for rotation of presiding officers as well as the need for specialised support services for those presiding officers (hereafter referred to as POs) working on sexual offences cases. The POs have a unique vantage point over the justice system, in that they can identify some of the bottlenecks and challenges that occurred from the beginning of a case which may have resulted in delays, postponements, withdrawals and cases being removed from the roll. This is an important perspective because it highlights issue that have impacted the 'readiness' of cases before they reach the court roll.

SOCs and Specialisations

Of all of those interviewed for this study, the Regional Court magistrates and RCPs were most familiar with the MATTSO report and its recommendations in relation to sexual offences cases and the SOCs model. Overall, they agreed that it was beneficial to the complainant to have a specialised court system to deal with sexual offences and that it was easier to work with prosecutors that were also specialised. However, the issue of specialisation of POs was not reach the same level of consensus. Half of respondents favoured specialisation. Others felt that specialisation could be harmful and could conceivably influence sentencing. As one Regional Court magistrate explained:

References

49 The number of courts was not recorded so as to remove identifying information from the quote to protect the respondent's anonymity.

50 The number of courts has been omitted in order to remove identifying information so as to protect the anonymity of the respondent.

> It's necessary for magistrates and prosecutors to receive special training for sexual offences so it might be necessary that a special prosecutor is appointed, but I think it is detrimental to use a PO to do just sex dedicated offences [cases]. As I have said earlier on, you become completely imbalanced. You either end up sentencing too leniently because you are fed up psychologically for whatever silly reason with the type of matter. Or, you sentence too harshly because you feel that it is too prevalent or whatever the case may be. I feel presiding officers have to do everything to stay balanced or stay objective. You cannot just do sexual offences; it is going to drive you crazy. You will need psychological help, make no mistake. [Regional Court Magistrate]

Those Regional Court magistrates presiding over the sexual offences courtrooms generally considered themselves to be 'specialised' sexual offences magistrates. When asked if she would describe herself as a dedicated sexual offences magistrate, one replied:

> Yes at the moment I am...My role only relates to sexual offences, both adults, and children, but primarily children. We...I have been on training on how to deal with child witnesses and have had some training on medical terms and, relating to sexual offences [...]I did training through SAJEI, yes. For me, a dedicated sexual offences magistrate means someone who focuses solely on those crimes. The only time we deal with anything else is where we have a case with multiple accounts; where there are a robbery and rape or a kidnap and a rape. [Regional Court Magistrate]

This PO explained that it is difficult to rotate in her court as it is smaller than other courts:

> Because it's only [number] **49** Regional Courts here **50** and two of which are dedicated to sexual offences, it's not as easy to rotate as it would be in a bigger office [...] I have to say that I do enjoy working within the sexual offences court, but I do think that it might be good to have a break every now and then, even if it is for a month or two; just to take a step back and gather yourself [...] Having said all that- I do enjoy my court- I do think that it would be good just to have that...even if it's just a month, just a couple of weeks out, so you don't lose your skills in the other areas, you know. [Regional Court Magistrate]

Some magistrates felt that specialisation could improve case turnaround times and in turn the outcome for the victim, "I personally say it is good, but people say that "why do we have some specialisation?" I always say that, and I will tell you why it is good, because as soon as you mix them because people don't like them, they shy away from them and these cases get postponed for a long time because people don't want to deal with it. Yet when I am sitting there, I have nowhere to run. I have to do them on a daily basis. So, if you must spread them all over the place, and in six-month time must bring them back, many of them will come back untouched". Unlike NPA specialised sexual offences prosecutors, within judiciary the term 'specialised magistrate' is not assigned to Regional Court magistrates. "I deal with it daily, but I am not designated. Basically, because I have the facilities-CCTV and a children's room here and that is why I deal with it."

Forensic staff members at the TCCs felt that Regional Court magistrates do not like to specialise. One forensic doctor explained:

> Just looking at it from the outside I think it (the sexual offences court model) does make a difference. When you talk about sexual offence matters in court…Those guys, the magistrates don't want to do sexual offences. […] So, we need to also give those courts some recognition as well and support for those magistrates that sit there. Because it's not everybody's cup of tea. However, certainly, I have seen things that they have improved in the sexual offences courts, because of these structural changes that they've had. And having the implementation meetings is a means of airing issues and talking about things and improving things. [Regional Court Magistrate]

Moreover, the RCPs interviewed all agreed that specialisation was not something they wanted to promote within the judiciary and that they had objected to this aspect of the MATTSO report when it was first gazetted. One senior magistrate explained that concerning specialised POs:

> It is not viable. I've experienced that when I was a trial magistrate, a colleague had opted to do sexual offences. We used to rotate magistrates in those courts. You will also find that prosecutors also want to identify with certain magistrates. So, when somebody opts to deal with those cases only. There is burn out which creeps in as time goes on and disrupts the whole planning because that person will come back to me and say look, I want out of this court. Practically speaking, it will not work for judicial officers to be specialised in that court or in any court for that matter. Ja, well I can't say…in this court for more than twenty years it has been having these dedicated sexual offences courts and it has never had problems. They can work out at some places, but we don't want magistrates to be specialised, they can rotate [Regional Court Magistrate]

In addition to the large caseload at the SOCs, the nature of presiding over sexual offences cases all the time can affect the manner in which POs deal with cases. One of the Regional Court magistrates discussed how the particularly traumatic and intricate nature of rape cases sometimes prompts POs to rush a case. He recounted a situation where he had hastily sentenced and finalised a case. When it was placed on appeal, what he had done was exposed, which was a difficult experience for him. He suspects, however, that rushing cases is common among his colleagues. He said, *"I made a fool of myself. It was in winter, I had the flu and I was on flu medication. I was so anxious to finish the case, I didn't want to postpone the case, and I shouldn't have so I proceeded and gave judgment and spoke a lot of nonsense. I made a horrible mistake but that happens."*

One of the prosecutors recounted her experience of the court before the SOCs came into being. She explained that oftentimes POs would put child rape cases last, as they did not want to deal with them. When she pushed for a dedicated court, the respondent met resistance from the Regional Court magistrates: *"We set up [courtroom name] as the first dedicated court here in [province name]* [51]*, with a lot of resistance from the magistrates. There's still a few.. if you call.. they have to call it a dedicated court because of the proclamation and all that type of thing, but they were anti what they called specialisation. Very, very anti."*

References

51 The name of the province has been purposefully omitted to protect the identity of the respondent

Despite the fact that Regional Court magistrates are not officially designated as specialised presiding officers, many of those POs we interviewed explained that they have been allocated those courts due to their gender. They explained that there was a belief that female Regional Court magistrates are more equipped to deal with child sexual offences cases. As a result, 5 of the 7 regional magistrates interviewed expressed that they felt pigeonholed and confined in terms of career prospects and not being able to rotate. The belief that female Regional Court magistrates make better SOC presiding officers was also pervasive among the prosecution. One DPP stated that a "good male SOC magistrate is surprising". The respondent explained that one magistrate she dealt with as a prosecutor was very good with children but it was not the norm in her experience: "You know what kept me going in that case, was that I had such a good Judge, to sit in that case. You're going to be shocked, he's male and because he had so many experiences with sexual offences cases from the magistrate's court, he was so patient."

One of the possible solutions that the judiciary are trying to employ to facilitate SOC experience, but also a more well-rounded exposure to the justice system for Regional Court magistrates, is rotation. Rotation plays an important role in preventing the deskilling and burnout of POs in the SOCs. By rotating every year or two, Regional Court magistrates have an opportunity to work on something different from sexual offences. This is a way to alleviate traumatic burnout and allow more skills to be developed. Given that some cases can take up to 36 months to be finalised, it is advisable that rotation does not take place less than every 18- 24 months, to ensure as little disruption to a case. Having multiple presiding officers and prosecutors working on one case can lead to delays and postponements. In addition, the presence of numerous personnel in a case can lead to the complainant losing confidence in the process as they have built up a rapport with the prosecutor with whom they had their early consultations. Changes in representation can also lead to secondary trauma and victimisation.

Respondents were divided in their opinions about rotation. The RCPs were generally in favour of rotation to ensure fairer sentencing:

> We should rotate so that you don't do the same thing repeatedly. ...I do so many, my view of the prevalence of the offence is not objective. It might not be as bad as I see it and I might end up imposing too severe sentences and not having them very balanced. That's not so much of a problem because for child rape we impose imprisonment for life, finish, and klaar. We will seldom deviate from that if we convict [inaudible]. So, it's not too much of a problem, but it does actually affect your objectivity I'd say. [Regional Court President]

Conversely, some were concerned that rotation may be disruptive to productivity. One case manager said that, "Our big fear is that they will rotate her". Moreover, the respondent explained that the Regional Court magistrate in question was held in high regard as being fair, hardworking and specialised, she went on to explain that, "She's passionate, she's dedicated, she works hard and by that I'm not saying another magistrate does not but we are used to her in that court. She works very hard".

Challenges

The POs named the following issues as being significant challenges in the sexual offences courts:

(i) high caseloads and the pressure that this puts on the court rolls and case flow management;

(ii) poor infrastructure and lack of facilities;

(iii) rotation, specialisation and the need for debriefing for those Regional Court magistrates operating in dedicated SOCs; and

(iv) bottlenecks and delays out of their control, such as witness delays, lack of forensic evidence in sexual offences cases and understaffing at the courts. Other court actors highlighted judicial discretion and the reasons for postponements as being challenges that they encounter with regard to presiding officers.

Caseloads and Court Rolls

The caseloads of those interviewed varied between 60-200 cases per month including part-heard cases. On average, the part-heard cases comprised almost 75-80% of their cases. One of the Regional Court magistrates interviewed was stationed in another court purely to assist with part-heard cases and was not authorised to take on any new cases until she has helped to move cases from the other SOC in her court. She felt this case load is difficult for one Regional Court magistrate to manage per court, particularly for sexual offences cases which may be longer due to the many factors that can lead to postponements. Here, one Regional Court magistrate describes her caseload at length:

> You plan your roll according to your prosecutor and yourself and attorneys. You do have public defenders on a daily basis but on a Friday, I do not have a public defender. So, you know the people you are working with. So obviously you will take that into account. If you have a slow or lazy prosecutor, you cannot work at the same pace. I am planning my own court roll...say for instance my judgments I want to get rid of as soon as possible; for now, I have one judgment that I have postponed. So, a children's case basically I will put as a preference for the day whether it is the first time the child will appear or not. If it will not proceed, I will place two other matters on the roll which is a robbery or a murder case because you don't want the kiddies to come back, the trauma for them. Then you will have partly heard matters; on a daily basis, like today I think I have 6 matters. Sometimes you have 10 matters, sometimes you have 4 matters but we never have less than 4 matters on a roll because you cannot rely on the police to have your witness here, you cannot rely on the prosecution to proceed with their cases or to get their witnesses or their house in order. So, you have to balance it. It is not like in the high court where you know the Investigating officer will be at court and your prosecutor will make sure that they are ready for that. They will come to all kinds of stories about why they cannot proceed. So, you have a backup on a daily basis. I can't say that I have this children's case; these witnesses have [inaudible] times. I am only going to place this matter.... you must have your house in order, we are going to proceed. If you don't have anything to proceed, then nothing will proceed the whole day. [Regional Court Magistrate]

The POs also explained that increased caseloads are putting more pressure on Regional Courts due to the increased powers recently transferred to Regional Courts. As a result, more cases are passed down to Regional Court that would normally have been High Court and this can cause delays for the Regional roll. As one high-level stakeholder commented, "we find ourselves in this situation because of the increased jurisdiction that they gave to the Regional Court. Because the minute the Minister gave us that increased jurisdiction, they filtered all the cases down from the High Court. So,, what was supposed to be there is now here." One of the RCPs commented that despite reports that crime statistics are decreasing, the caseloads at sexual offences courts are rising dramatically. As the RCP explained, "the Deputy Minister was at a meeting and he actually came with some presentation according to which the crime statistics had reduced and so it was now no longer necessary for additional courts or backlog courts and I said oh no it hasn't. Because I have just got one sexual offences court which was now going over 200 and hitting the ceiling of 300."

The management of sexual offences cases can be complicated and Regional Court magistrates are trained on case management specifically for these cases. Factors such as scheduling children in the morning due to their concentration spans or during school holidays or the need to postpone a case so the accused can sit exams if he/she is a young offender were all named as issues to be considered. One stakeholder described the importance of expediting cases when possible:

> You need to sensitise judicial officers when you do a training to raise issues sharply with them, such as the turnaround times of cases for example, that they need to know that certain cases must be dealt with as swiftly as possible so that we can reduce the time that they always take to finalise matters. And of course, as you know the finalisation of cases also depends on the roles and the responsibilities of other stakeholders because if those stakeholders are not on board you can train as much, but then you won't achieve anything because [indistinct] stakeholders are pulling you down. [High-level DoJ&CD Stakeholder]

This hints at the underlying tensions between the prosecution and judiciary that have resulted from the POs taking over the allocation of cases on the court roll which had traditional been a prosecutorial task. The issues of which cases are put on the rolls, the bench hours that judges sit for and the individual preferences of presiding officers for certain types of cases is something that was raised amongst all the prosecutors interviewed. According to the prosecutors, personal preferences about working on child sexual offences cases may influence scheduling, and therefore delays. When discussing the scheduling of sexual offences cases and the reasons why postponements occur at times, one prosecutor disclosed that a magistrate at their court does not like to do child rape cases so he tends to put those cases on the roll when he is not in court. He explained:

> Now you find that a certain magistrate is not properly trained to…or a certain magistrate, from a personal point of view, will just say, "I don't what to do sexual offences," or "I don't want to do sexual offences where children are involved." Now if a prosecutor takes a certain matter to a certain magistrate, he will, because they are responsible for the case, case flow management, he will look and say, "March, I will not be here, I'll be on leave," and postpone and slot that matter in March. So now, you'll find that between February, January, February, you'll have the time or specific dates that will remain open because he preferred to set the matter down for when he is not here. [Prosecutor]

In addition to caseload numbers, POs felt pressure due to being evaluated by bench hours and statistics on part-heard and backlogged cases. As one respondent indicated, bench hours do not include the hours that re spent at home preparing for cases, which may cause one to appear less productive than their colleagues. As one Regional Court magistrate explained:

> By the time you come up for the rotation you think I have got close to 50 part-heard. Because every 15 minutes in the day of, you can quickly plea, you take the plea. Then it is tapped onto your part-heard. And then you are asked, I mean you have to, what's going on with your court or why are they 50. You say because they are all been rolled and you look at your colleague our president sends us the consolidated stats kindly so that we can see then you see goodness, if you look at my court hours and her court hours and mine are not inflated, those are the actual hours and you look at your finalisation and you still feel you are drowning because what the influx is impossible to finalise. [Regional Court Magistrate]

As the PO explains here, the performance indicator of bench hours cannot be realistically compared across courts where the crimes attended to differ. For example, the bench hours and finalisation rates for those cases where the accused pleads guilty may not be comparable to a colleague whose cases are not so easily finalised due to a myriad of factors. These factors include the type of cases, the number of accused, the number of victims, the numbers of witnesses whose evidence should be heard, the presence of expert witnesses or if any further assessments should be done with witnesses,

such as mental competency for persons with intellectual disabilities. During our fieldwork we encountered a case during our field review where the accused claimed during the trial that he was suffering from a mental illness. Consequently, the accused had to be sent to be assessed by a psychiatrist at a state hospital. It took three months for a full assessment and when he next appeared in court, his family claimed that he had developed a dangerous heart condition as a result of the stress and trauma of the case. The PO had to postpone again for medical assessment. This is just a small example of the many ways in which magistrates postpone trials due to external variables.

All the POs interviewed (N=7) agreed that bench hours may not be the most accurate way of measuring performance rates. When asked how they would measure their performance, they pointed to the need for more diversified and specialised indicators of success and performance may be needed in SOCs. The suggestions mentioned by those interviewed included (i) survivor satisfaction with the way they were treated by the magistrate, (ii) if the complainant was given what they felt was adequate time to tell their story and be treated justly, and (iii) the satisfaction of fellow court personnel with the regional magistrate's handling of a case and court roll.

Rotation can also affect the performance of cases in courts and finalisation rates when cases move to the part-heard section of a court roll and are taken up by rotating Regional Court magistrates who are trying to finalise those cases to reach performance targets on case management. The Regional Court magistrate quoted above goes on to state that rotation puts additional pressure on performance indicators compared to colleagues who do not have to rotate. The respondent explained, "Just when you think I want to be rotated I want to run because I can't carry on like this you then realise, then you think I don't want to let this court go, I know the chaos as it is and we have got a plan in place, we are doing as much as we can, as is possibly humanly possible. So, it is difficult, I just feel that some are working harder and what happens is often, if you are effective and you, you are probably given more work, you are punished for being diligent."

Another PO described indicators of performance and bench hours as a constant battle to achieve targets. He explained:

> I would be very loath to comment on the convictions rate because it is not one of our pointers, what we planning or what we are interested in is to make sure that we use the commodity which is the court, I mean fruitfully, this means we should put more hours into court so that we are able to deal with workload. But due to the challenges that we experience on a daily basis we don't achieve as much as we can with court hours because that's all that we are focusing on for starters because up until we can do that we will not be able to move to the next item, so we must master the court hours. [Regional Court Magistrate]

This is related to how case management is defined within different departments and how the judiciary handles case flow management. Finalisation also has different meanings and for judiciary, finalisation means judgment. As one explained "the way I keep my stats, finalisation means where you have given judgments. Guilty or not guilty I don't take into account withdrawals and that kind of thing." This is reflected in the judiciary's statistics, whereas the DoJ&CD and NPA report finalisation similarly as being inclusive of SORs and withdrawals.

Five out of the seven Regional Court magistrates interviewed mentioned that the changeover of responsibility of setting the court rolls from the prosecution to the judiciary was also a source of tension within the court system. As one of the POs explained:

> The problem is that there was a change in the approach, the system, in the past everything revolved around prosecutors, they controlled the courts in the sense that they would decide as to when a case would be heard and how many cases to be placed on the roll, when that changed to where we are now and we were expected as the judiciary to control the courts [...] there is a lot of stakeholders monitoring one and the same things which is the performance of the courts but we are approaching that from different perspectives". [Regional Court Magistrate]

Presiding officers under the new system are now tasked with assigning cases to the court rolls whilst taking in account the specific needs of the complainants, such as school times for child witnesses or examination dates for learners. [52] As a Regional Court magistrate explained:

> What I do, if it's a child, let's say younger than 10, so from 7 to 10, I normally book my kids during the school holidays, so psychologically I feel it prepares them, you know, there's no school day tomorrow, so they come to court to kind of, you know, this is their day in court, and to come and tell the court what has happened to them, so they don't have all this unnecessary pressures, but most of my cases is set down for the school holidays [...] That's just to eliminate the unnecessary pressure that these little ones go through. [Regional Court Magistrate]

Rotation and Debriefing:

The need for rotation (between sexual offences courtrooms and other courtrooms) and debriefing after traumatic cases arose in every discussion with court actors involved in the SOCs. One of the Regional Court magistrates highlighted that rotation and debriefing are not always implemented effectively, stating, "Our support services are not good; in fact, we don't have a support services". No one interviewed could give any details of the wellness programme that is available to the judiciary and did not know how to access counselling or debriefing support. One Regional Court magistrate explained that Regional Court magistrate wellness is not always prioritised: "I just want to emphasise just how demotivated magistrates are these days. I think [magistrate name] is only here because he should go on pension one of these days, [...] everybody wants to be happy. In addition, the Minister must be happy but it's not for us, it's for the community. I mean if you've got a magistrate that is tired, that is irritated. Will you be able to do your best under the circumstances?"

Three of the POs interviewed recalled having participated in a debriefing programme in the past, which was a group debriefing; however, they explained that was many years ago and it was not a regular occurrence. Regarding the intermittent debriefing that was offered, the Regional Court magistrates pointed to the need to reconsider how it is done and how it is made available. One magistrate described a wellness active that s/he did not find effective: "I do know that they did do a debriefing session through SAJEI and, it becomes a waste of time; all they had us doing was just a dance around and clapping hands. So I, I try to do my own things outside of court, you know, at home, I've sort of taken up I go paint and do other things. I do think that there are some cases that get to you more than others, that there should be a facility that we can call upon and say I need to talk to someone..." Another Regional Court magistrate commented that if specialisation will be required, then issues such as debriefing, wellness support and monetary compensation for trauma should be in place first. The respondent added that:

References

52 The directives for the management of cases are contained in *The Criminal Practice Directives for the Regional Courts in South Africa, 2013 revision.* See http://www.lssa.org.za/upload/documents/RC%20Criminal%20Practice%20Directives%20August%202013%20revised.pdf.

> It's not easy for a magistrate doing sexual offences every day in day out and magistrates will feel that it is unfair because they will say, "I get exactly the same salary and why should I deal with it." As it is we are not happy. I am the only court and [Magistrate Name] and [Magistrate Name] [53] that is dealing with these matters. We feel it's unfair, it's not right and we don't have the resources in the first place and at the end of the day we have all been appointed as Regional Court Magistrates and we should all be dealing with the same case log. It's a more difficult log if you are dealing with sexual offences but if you do have the resources for it and you do have the passion for it but your support of managers to say the training that you need, the prosecutors and the police work with the prosecutors then it might be something different. Then there is the training of doctors, then it might be something else. I worked as one with Karina in Johannesburg. We were the only ones dealing with that and at some stage, I went to my senior prosecutors and said that "you need to take me out of that". I cannot deal with this anymore. You need that break also. [Regional Court Magistrate]

POs had differing opinions about how support should be provided. As one judicial officer explained, generational differences may need to be considered:

> I come from an era where you know it if you go for any kind of counselling then you seem to like to be a weak link and we can't be seen to be the weak links in the system we supposed to be the best strong tough people so we don't go for debriefing. And as much as advanced and in terms of it being a social drawback then and we are now in a stage where you know what everybody goes you know what it's no longer a bad thing it's you find magistrates problem. If we are saying debriefing and you get a massage and spa, then that's okay we will go to that but don't send is for debriefing like we need to go and see a doctor and spill out our hearts those things we are not going to do. [Regional Court Magistrate]

The fear that counselling or asking for emotional support would make one appear weak, and possibly affect promotions, was a widespread concern amongst POs. Rotation may be an alternative to counselling; however, it can lead to disruptions in cases, causing frustration from prosecutors who prefer dealing with the same presiding officer for the duration of a case. Further, in two of the courts visited, the prosecutors and the Regional Court magistrates were not in support of rotation. They agreed that they have good working relationships and that specialisation in sexual offences makes their jobs easier and moves cases more efficiently through the system. One Regional Court magistrate felt the prosecutors in their court are very passionate about sexual offences and that s/he was reluctant to rotate to other courts with inexperienced prosecutors, explaining that: "In my sexual offences court you cannot put someone (a prosecutor) who is inexperienced, [...] Fortunately, I have had an opportunity to work with one of them (an experienced prosecutor) more than the other (an inexperienced prosecutor). But I know it's a matter of, you know, what their level of experience is and that pushes that court to a different level." The respondent went on to express the wish to not rotate and work on other cases, although s/he understood for her own mental well-being rotation was important. As an RCP explained, "I would have them to rotate because we are not doing any other kind of debriefing other than to remove you from for a while." The Regional Court magistrate resisted rotation due to feelings of loyalty to the prosecutors and obligations to the complainants and the accused, yet was aware of this negatively impacting wellbeing. The respondent explained:

References

53 The magistrate's name was removed to protect the respondent's anonymity.

> It's just you work so hard then because you have got this passion and my president said you are going to crash and burn because I am patient and I am excited then she said you have to look after yourself as well. Then you try but you know you can't steal from your time with your children, you can't steal from your job so you compromise yourself. You get zero exercise and you think, I can't carry on like this and then tomorrow you wake up and then you have all these faces looking at you for justice and this and that and you just keep running again. [Regional Court Magistrate]

Overall, rotation had positive and negative aspects to consider depending on the Regional Court magistrate.

Infrastructure

Perspectives on infrastructure and structural challenges were mixed. The regional magistrates expressed a mixture at frustrations. Four of the regional magistrates and 80 percent of the senior judicial officers expressed frustration at the upgrades that aimed to make the court compliant to the in the MATTSO report which had to occur before the courts could be dedicated SOCs. Some of these quotes are contained in the text box below. In addition, they explained that there are courts operating as dedicated sexual offences courtrooms that have not been upgraded or earmarked for upgraded facilities to provide better services for child offenders and vulnerable witnesses. Whilst we were in the area of one of our pilot courts we were invited to meet with the regional magistrates at another court in the jurisdiction that had two dedicated sexual offences courtrooms, however they are not listed as 'official' dedicated courtrooms by the DoJ&CD. As one magistrate explained, "The new SOC blueprint, apparently It means you know we have got to get a new building so it means we have to get new buildings and there is no money and they are cutting costs then the new blue print is an actually waste. There where it's possible you know go ahead but then continue recognising the old ones and they don't recognise the old ones at all period."

At those courts that have been officially acknowledged by the DoJ&CD as dedicated exclusive SOCs, there are structural barriers to completing the building upgrades. Such barriers include lack of administrative support, inadequate facilities in the magistrate's chambers and security issues with Regional Court magistrates walking through the public (and therefore past accused or witnesses) to order to access their chambers. In one court, the Regional Court magistrates, prosecutors, witnesses and accused share a lift. No security measures were made to restrict access to magistrate's chambers. We could walk freely between the offices of the magistrates, prosecutor offices or witness waiting areas, as these did not have access control restrictions on the doors.

The promises of upgrades at the courts have long since passed, with one of the pilot courts being promised a new bigger structure since early 2001. In two of the larger courts we visited there are more courts operating as SOCs than are recognised by the DoJ&CD within the same court building (as explained in section 3.4 of this report). This is due to the overflow and lack of capacity in the 'designated courts'. One Regional Court magistrate believed that allowing courts to operate as SOCs when they are not designated as such affects court performance and ultimately the outcomes for the survivors. "The size of our court is impeding performance in [courtroom number] drastically. I gave you an example of [court name], they have the ideal infrastructure, they have best court facilities and, and of course that, that will have a huge impact on, on. If you have 13 courts and then you dedicate 4 to, to sexual offences, will improve your performance and, and shorten your, your turnaround circle on how long cases are being handled and, of course, it will impact on your, on your case flow management." The textbox below is a selection of extracts from the interviews with Regional Court magistrates regarding outdated infrastructure.

Regional Court Magistrates' views on infrastructure challenges at the SOCs

Infrastructure is a problem. You see a building that we have here is anything but adequate. It is ridiculous. It was an old convent; they should have built a new court house here years ago.[Regional Court Magistrate]

There is probably enough work for three full-time courts content, not probably, definitely enough work for three full-time sexual offences court. We are going to crash and burn soon and if one gets sick, we are going to have a big problem. [Regional Court Magistrate]

The infrastructure problems. We don't have water, electricity. You know all of those things influence the progress the outcome of our cases. The prisoner lifts and all problems regarding prisoners being brought to court. Sometimes you find that the accused is in custody and the poor mother and child come to court and he realises that those people were in court last time and "no I am not coming" and they don't respond to their names when they are being called in prison. Then we have to postpone the matter. Some people get fed up with the system. As the Magistrate you are the last person to tell the person that the matter is postponed. And they look at you like it is your fault. [Regional Court Magistrate]

Coming to the infrastructure, it is a problem. I don't even want to deal with that. Just recently, we didn't have lifts working. What frustrates me, even more, is having to share those lifts with members of the public. Sometimes you get into a lift and you just want to move backward and get into another one. If there is an accused person in that lift who is coming appear before your court or maybe you are coming to pronounce judgment on him that day, it's not safe. More especially it is the safety of the Regional Court magistrates, which is very lacking. I don't know what they have to do I don't know when they will do what they are expected to do but it is not a guaranteed thing. No one can stand up and say that Magistrates are safe. [Regional Court Magistrate]

Look, the workload here has increased. Initially, this court did not have any civil jurisdiction. It has now. Maintenance matters have flooded this court a lot, and because this court is closer to the people everybody is flocking here and they require that a particular service must be delivered to them, but they are not coping. They are not coping. You can go outside and look how long people stand in the queue here since morning and they are not getting assisted. Now in this area, for example, in Soweto, there is a lot of sexual offences matters, lots of them. There are a lot of sexual offences matters but look at the kind of capacity that we have, this infrastructure that we have here. It does not talk to the needs of the people. [Regional Court President]

Judicial Discretion

Feedback from prosecutors, court preparation officers and TCC case managers suggested that judicial discretion may require more governance and oversight. Some believe that outcomes may be influenced by the magistrate's own prejudices and knowledge. As a result, one court's prosecutors refused to take cases presided by a particular magistrate who was known for giving lenient sentences, acquittals and suspended sentences, particularly in child cases. One prosecutor gave an example of an acquittal where consent to sex was clearly not given:

> We had another crazy acquittal where this woman said, "I'm a lesbian," because the guy was saying you'd consented to have sex with him, she said, "Listen, ever since whenever I've been lesbian. I will not have sex with a man, so there's no way that I consented to have sex with you." Okay, the trial goes on [...] she is adamant that she was raped. In the end, the magistrate finds [...] him, not guilty of rape, but guilty of statutory rape. The woman has said, "I would never have consented to have sex with you!" How can you.... It's crazy. [Prosecutor]

The prosecutors explained that their superiors at NPA understand that postponements are beyond their control. One SPP explained that their DPP said to them, "You guys, everything that's happening outside the court room is, is ideal. You're doing everything you're supposed to do, but it's when you go into the court room the wheels fall off." In addition, it was explained to the DPP that these postponements were mostly occurring in only one court: "I've done an analysis where I've been able to show the finalisation rate and the conviction rate in that court have been significantly lower than in the other court, and there have been changes of magistrates in the other court and you can see it! It's been sent to the Regional President, but nothing gets done, unfortunately."

Despite the need for oversight, many prosecutors expressed fear about reporting a Regional Court magistrate. They were particularly concerned about ramifications should the Regional Court magistrate not be removed, and how they would be received in court by the reported Regional Court magistrate and his/her colleagues. One RCP said that from her experience prosecutors would not call a magistrate to the commission due to the consequences. The respondent stated, "No-no they won't even dare do that. They are not even going to go there because now tomorrow I must go back and work with her and [the magistrate] remembers it was you who went to complain to the Regional Court President so you know what, I am not touching this issue. So, nobody wants to say anything, it's worse than being raped or it's as good as being raped." Prosecutors were cautious to report abuses of power or "bad magistrates" because of the consequences, as one case manager explained, "You see but you have to be prepared to actually, you must remember, some of them are scared to report because they don't want to be victimised in court."

60 percent of the Regional Court magistrates interviewed, explained that concern about governance arises when they are trying to find the balance between interpreting the law and delivering justice, when the definition of justice varies from the perpetrator to complainant and from prosecutor to attorney. They explained that judges do not want to be perceived as being 'convictors'. As one of the Regional Court magistrates explained:

> There are literally dockets meters high standing waiting to be placed on the roll that they are battling to fast track to place on the roll in one and three. And reasonably up there is about 5% in the district court that's awaiting transferral. So, our court is probably a true reflection of what the rolls are, the others are probably higher than what they believe because those matters aren't on the roll yet. And we, the backlog is terrible and I and there are days and I think to look at my conviction rate, many months it's just, its 100% and then you think, you have a look at it, you think, I mean you don't want to be, perceived to be a 'convictor'. [Regional Court Magistrate]

Another Regional Court magistrate went on to explain that in relation to sentencing also, perceptions of the Regional Court magistrates' leniency or otherwise is important to consider, the magistrate explained that:

> If you get a Magistrate who consistently has to impose a minimum sentence of ten years and ends up imposing two years suspended sentence and they realise that there is something seriously wrong there, they might then just investigate the magistrate and see if he has or whether he is not paedophile who has not come out of the cupboard himself or something like that or he has some psychological reason for doing what he does or something like that. If they realise that, they go into the matter. Then they have the jurisdiction to do so. But otherwise, you have what we call the hanging judges and hanging magistrates. Certain Magistrates impose stiffer sentences than others. We have it here too. They will tell you, don't go to [magistrate's name] court, those sentences are too light rather go to [Magistrate name] **54** court – he's going to get that guy. [Regional Court Magistrate]

Several respondents all cited the same Regional Court magistrate in one of the pilot courts as giving acquittals in child sexual offence cases, suspended sentences and too many SORs. Respondents shared that complaints had been made against the magistrate in the children's sexual offences court in respect of he magistrates pattern of acquittals. **55** As a result, respondents who are required to appear before this magistrate expressed feeling immensely frustrated and disheartened by seeing so many cases acquitted for what they consider to be lacking grounds. They explained that "the magistrate in [court name] acquits many of our cases, many, many of our cases. And, so, if there's a case where there's, where it looks as if there's, where it's 50/50, we will never put it before her because it'll be an acquittal. Straight. I will show you some reports of reasons for acquittals. I will print them for you and give them to you because you will be shocked."

There were also problems reported with Regional Court magistrates who are slow to finalise cases and give judgments. In one court there was a significant problem with one PO, as the SPP explained,

> So, what has, what has happened is that we don't get finalisation in our matters? I've done a little bit of a, just on, when we did this presentation for the DPP, I actually worked through all the cases on the roll and my backlog rate at the moment here is standing at 80%. Now, just a simple example is a case that is , we've done the trial, it's done for judgment, I'm not ready, I'm not ready, my third postponement, now remember, it's a month, it's three months later, now I'm ready for judgment. So, I'll give judgment, but we won't sentence because I'm not ready, I'm not ready, I'm not ready. So, [...] to getting it finalised, that matter can sit for six months before I've got a judgment and sentence [...]so my backlog rate at this stage is sitting at 80%. Out of the 46 cases on that roll, 37 is on backlog, so it's practically the whole roll is older than nine months. [Senior Public Prosecutor]

References

54 Names have been removed to protect the respondents anonymity

55 We cannot disclose any further information for the purpose of protecting the anonymity of the respondent and the magistrate in question.

Training

Overall, when asked which areas they felt they needed additional training, overall the judicial officers indicated that they had received sufficient training on sexual offences legislation and attended regular training with SAJEI. Whilst one of the Regional Court magistrates wished some of the courses run by Justice College were reinstated, much of Regional Court magistrates welcomed the new training methods being employed by SAJEI and commented on the advantages of having practical training on case law and practical lessons on writing judgments and evaluating evidence.

No one reported a lack of training. One Regional Court magistrate commented, "When you come out of training you say that you have gained so much but when you do the practical aspect of it that is when you begin to say "what is this now?" You understand, so you can never say you've been trained enough or trained far too less. You get to know more as you are practicing." This was confirmed by the majority of Regional Court magistrates, who felt they would like continual training on sexual offence case law and refresher courses on dealing with child witnesses and evaluating expert evidence. In addition to child witnesses, some of the Regional Court magistrates commented that they had noticed an increase in the number of complainants with intellectual and psychosocial disabilities appearing in court and as a response to that they would like additional training or refresher training on adults and children in particular with intellectual disabilities.

Another area identified for additional training was forensic evidence and evaluating expert evidence given by forensic doctors and nurses. As one Regional Court magistrate explained:

> Handling of, of, of medical evidence. You know, the aspects of, of, and of DNA, the terms, and type of technology that doctors are using when they're examining our victims. You'll find that, say, for, for say, a doctor would say sexual penetration with a... including blunt trauma, then it get misinterpreted by, by the bench for lack of, say, training on the specific aspects. I asked them to see a crime kit then for the first time I saw how many swabs they actually take, they have amazing booklets attached, and we are not given a crime kit. [Regional Court Magistrate]

The level of knowledge that the judicial officers have on forensic methods and how to evaluate forensic evidence was a topic that was also brought up in discussions with prosecutors and forensic doctors. One prosecutor explained that a particular problem they have is that often Regional Court magistrates interpret evidence very differently. As one of the prosecutors explained, "The problem is that the judges don't agree. I mean, you get some judges who say that the fact that there were no injuries is a substantial and compelling factor; my view is "no, rape is rape". If there were injuries then they should have been charged with rape involving grievous bodily harm. So, jah...that's another topic we could talk about." This issue also arose in relation to consistent sentencing practices with one prosecutor commenting that sentencing may be influenced by personalities. They explained that what one judge may deem to be mitigating may not be seen as such by another, hence a workshop on sentencing would be beneficial to the Regional Court magistrates. When this suggestion was put to one of the Regional Court magistrates they responded, "I think that that would be very beneficial because our High Court, there is such conflicting cases coming through; one judge will find certain factors to be substantial and compelling and another judge will find them not, and it really just depends on which case you read as to which way you can go. I think that a sentence workshop would be very good..."

These challenges and issues expressed by the judiciary, illustrate how performance measures such as bench hours and numbers of finalised cases do not adequately reflect the various other variables that affect the turnaround times of their cases and the ability to finalise cases under very different circumstances. The concept of rotation, for example, would appear to address the problem of emotional burnout; however, it could lead to further delays and postponements in a case when presiding officer's move between part-heard cases, as illustrated in the quotes above. In addition, the presiding officers have the mammoth task of assigning cases to the roll in such a way that they should be cognizant of the need for certain cases to be finalised as swiftly as possible, child sexual offences cases being a prime example. However, despite their desire to set these cases down on the rolls quickly at the top of the roll each day, the specialised services required to proceed with these cases means that the presiding officer may have to still postpone if there are insufficient intermediaries available, or interpreters or expert witnesses. Therefore, this again highlights the need for a multifaceted approach to measuring the amount of time that the judiciary adds to a sexual offence case, which considers all these varying factors, beyond bench hours and court appearances.

Recommendations

When asked what would be needed to improve case outcomes for sexual offences survivors, the Regional Court magistrates all pointed to increased staffing at the courts; increased psychosocial services for complainants before and more importantly after the trial; improved infrastructure at the courts and improved administrative support for the judiciary at court; more training sexual offences survivors with intellectual and psychosocial disabilities; and for better investigations to have taken place before the witness appears in court. Some of these recommendations are encapsulated in the quotes below from the Regional Court magistrates themselves.

Regional Court Magistrates' suggestions for improving case outcomes

> Can I start with the second one? Better investigation of cases always helps. If cases are properly investigated, DNA analysis is done, and results are submitted to the state and witnesses are available if any, which would help that, would help a great deal. That would help a great deal. Whether at the end of the day there is a conviction or not, it is not for me as Magistrate to say I would prefer this over that one, mine is to dispense justice. Everything is put in place and placed before the court it would make the case easy to... [Regional Court Magistrate]

> More time to deal with these children, with the survivors More time, give them more time. Don't rush them through the process. And as far as we are concerned as the magistrate, infrastructure – when I say infrastructure include everything, stationary, the buildings – you know I told you already how I feel about this building and how the victims are affected. [Regional Court Magistrate]

> I have spoken to so many people and the Chief as well as the SPP about the training of the Doctors. For children's cases, it is extremely important the medical evidence. They don't know the difference between legal penetration and medical penetration. That is such important information. So, I asked them whether we can arrange training for the doctors. Then they've got medical professionals like nurses who exam these children, they go for training for three days somewhere and it is horrific to listen to the evidence in court. [Regional Court Magistrate]

Our recommendations for Regional Court magistrates, based on the evidence and observations outlined above are as follows:

- Access to debriefing support and wellness programmes that extend beyond counselling or trauma debriefing. This should include a nominal amount to spend on medical providers and service providers of their own choice. The process of appointing counselling or mental health service providers to supply the debriefing and counselling through government channels is protracted and has resulted in ongoing delays with making the wellness programme accessible to Regional Court magistrates. By allowing Regional Court magistrates to access their own service providers, it allows them to be discreet and consequently, they do not have to be concerned about it affecting their chances of career advancement.
- Continual training and refresher courses on child development and evaluating the evidence of child witnesses. Emphasis must be on the evidence of those children with intellectual and psychosocial disabilities.
- Workshops and training on how to customise case flow management for sexual offences courts. This should include examining the role of rotation and how delays or bottlenecks can be avoided in courts where rotation is routine. This would also involve looking at the various factors that should be considered when placing a sexual offence case on the roll and how the nature of the case, the age of complainant and other circumstances should be considered.

4.2 The Prosecution

For the purposes of this study, we include the case managers from the NPA stationed at TCCs as part of our analysis of the prosecution, as they are all former prosecutors and operate as the main liaison between the courts and the TCCs. In addition to case managers, we interviewed the senior prosecutors at each site, all the prosecutors from the sexual offences courtrooms and, where possible, the DPPs and DDPPs of the provinces where the pilot sites were situated. The prosecution had conflicting views regarding the effectiveness of specialised prosecutors at the SOCs and this influenced the nature of the data gathered from the prosecution concerning turnaround times, caseloads and the pressure that is put upon the prosecution by the NPA and other stakeholders to finalise cases swiftly and increase conviction rates. Given that the central objective of the SOCs was to increase convictions for sexual offences cases, their role is at the heart of the SOC project. All stakeholders involved see conviction rates as the ultimate measure of success. A detailed exploration of the challenges the prosecution face is central to any discussion regarding turnaround times and successful case outcomes.

This section will look at the issue of specialisation and its challenges and advantages. In addition, we describe how the process of having successful case outcomes is a complex combination of good witness preparation, good communication between stakeholders, getting sufficient evidence through good investigations and choosing to run with a 'good' case that has optimum chances of resulting in a conviction.

SOCs and Specialisations

The NPA is the only stakeholder that has officially titled those employees working in the SOCS as 'specialised' sexual offences prosecutors. These experienced SOC prosecutors receive intensive training on sexual offences and are 'dedicated' sexual offences prosecutors. This illustrates that NPA commitment to the concept of specialisation at these courts and as such emphasise the importance of specialisation when it comes to increasing conviction rates within those courts. The DDPs and Senior Public Prosecutors or Control Prosecutors (hereafter referred to as SPPs) emphasised in the interviews that, in theory, specialisation was necessary to ensure that those prosecuting sexual offences cases were experienced and capable.

One DDPP explained that it was important to cultivate specialised prosecutors and put energy and resources into identifying those who are passionate about sexual offences and encourage them to specialise. The respondent explained that "we have taken some identified people who are passionate even about sexual offences, because if they are passionate about it, you know, you do everything within your power, legally so, to try and convince the magistrate that, you know, this is a good case and this person deserves to be convicted and whatever." Equally, Regional Court magistrates agreed that they preferred experienced and dedicated sexual offences prosecutors in their courts, particularly given the high load of child cases. As one magistrate commented, "my two prosecutors are dedicated sexual offences prosecutors, they've been on training, they can relate to the children". Another SPP went on to state that they are against "all-rounders" and prefer not to give prosecutors full exposure to different types of cases. In this respondent's opinion, only prosecutors trained

specifically in dealing with sexual offences cases should work on those cases and others should not be able to "try out" sexual offences. The respondent explained that there are mixed responses to specialisation from within the profession:

> A lot of the challenges I got from my own colleagues were: "No, but then those prosecutors are being limited, they're not being given, given exposure to other cases and other prosecutors are not being given exposure." And my argument to that is: "Screw exposure, you're dealing with somebody's life! You're dealing with somebody who has gone through the worst thing that, that could ever have happened to them, and you want me to put another prosecutor in there just so that this person gets exposure to dealing with sexual offences? This is somebody's life. I'm not prepared to use it as a training tool! We've got to have dedicated prosecutors to make sure that the job gets done properly!" And, and you'll find in the NPA and the judiciary, this idea of exposure. You must have exposure and you must get a chance to deal with different cases. It's bull. When it comes to sexual offences it's absolute rubbish. It just, it irritates me intensely. Sorry. [Senior Public Prosecutor]

However, some of those interviewed explained that the model can only operate effectively if all aspects are adhered to and if there is consistency across all stakeholders in relation to specialisation. As one SPP commented:

> If you have dedicated sexual offences courts, if you go according to the MATTSO model, which we haven't, you should have dedicated trained magistrates, dedicated trained prosecutors and all the necessary auxiliary services that tie into that sexual offences court. So, I, I think it's very important to give people, the only control I have is over prosecutors so I'm going to say, prosecutors, always give them the option to get out of it. If they feel it is becoming too much they can get out, they can get someone else in. But dedicated courts to me imply dedicated staff, which I think can only have a positive outcome. [Senior Public Prosecutor]

Rotation was a recurrent theme with the prosecutors, and 80 percent of the respondents expressed a desire to have the option to rotate or take a break from sexual offences courts when needed for emotional health. This sentiment was echoed by a DDPP who commented that for dedicated sexual offences prosecutors, "You can't have one person fixed. Yes, you need people who are experienced, but you need a couple of them and don't keep them stuck in sexual offences forever. I would not, because firstly, emotionally, you're killing them. Two, in terms of career wise then they lose experience with other things." It is the emotionally exhaustive nature of these offences that can dissuade prosecutors from wanting to pursue a career in prosecuting sexual offences. By only training those who are passionate about sexual offences to be dedicated prosecutors, a shortage of sexual offences prosecutors may result. As one SPP explained, "not a lot of people wants to do sexual offences [...] you must understand it is emotionally taxing on an individual. So, sexual offences courts, if they only are going to sexual offences matters, I think the emotional wellbeing of those people should be prioritised, because this is going to affect this person for, for their everyday life."

If a prosecutor is not specialised or does not like to work on sexual offences, rape and sexual offences cases in hybrid courts may be deprioritised. Prosecutors explained that they prefer cases where convictions are easier to obtain in less complicated non-sexual offences cases:

> If it is a hybrid court, you find out that the prosecutor in that court really doesn't want to do sexual offences, so what is going to happen is that they are going to be pushed aside so that they will not be verdicts anytime soon in that, which is one the problems that we are facing here in [courtroom name]. We've got [number] Regional Courts [56], and all of them are doing sexual offences, but if you go to a court, if there are a robbery and a rape or an assault, a sexual offence, the prosecutor will be quick to say, "Let's do this robbery," and then later on, "Oh no, we don't have time." Crowded out the rape matter". [Senior Public Prosecutor]

Specialised dedicated prosecutors may help to avoid the problem of deprioritising sexual offences cases. As one SPP explained the process in her court:

> The system I implemented was one week you're in court, one week you're out of court. The week you're out of court, you do your interviews. I also started a system where from day one, if the new case lands on our desk, we allocate a prosecutor, so you will get the new case and it will be your baby till it dies. So, you get it, the first appearance, you read it, you query it, so the police can attend to it. Then it comes back to you, they finish it. At that stage, the docket is still on the District Court roll. So, they will investigate it while, as we normally have a turnaround of about six months there, that they have time to finalise all the investigation, and also while it's still there, we try to stick to the 21-day rule of interviewing the complainant as well as the first report, while it's still there. So, that by the time we decide its trial ready, it comes with my roll and all of that is done. [Senior Public Prosecutor]

This ability of a prosecutor to focus on the entirety of a sexual offence case allows more time for further investigations consultations and consistency for a case. The shortage of specialised prosecutors was described by all of the prosecutors interviewed as being a great challenge at the SOCs. Given current budgetary cuts and a freeze of new appointments, as outlined in the NPA annual report in 2015 to 2016 [57], the situation may worsen as non-specialised, inexperienced prosecutors are assigned to these specialised courts. As one magistrate commented, "we have a terrible shortage of prosecutors now; so, we sit with people in the Regional Court with people who don't have the experience to prosecute in the Regional Court. My prosecutor, with all due respect, should be in the district court still. He simply doesn't have good experience. He buggers up the case-sorry to put it like that."

Additionally, there are specific indicators for cases in the SOCs, such as conviction and finalisation rates. The MATTSO model and all discussions regarding specialisation revolve around the concept that dedicated courts and staff will result in increased convictions. However, the data from the interviews suggest that conviction rates and turnaround times cannot be viewed in isolation. The specialised nature of sexual offences can entail longer turnaround times, more consultations and careful, slow processes compared to other cases in other courts. One SPP explained that measuring success by statistics can result in the dedicated courts appearing to be underperforming when compared to their non-dedicated counterparts. The respondent explained that dedicated sexual offences courts could mean that conviction rates are lower overall than in a mixed court:

References

56 Number omitted to protect the identity of the respondent.

57 National Director of Public Prosecutions, N.D. Annual Report 2015/16 In Terms of the NPA Act 32 of 1998. National Prosecuting Authority, South Africa. Pages. 65-68

> Look, in my view, dedicated sexual offences courts are necessary, for adults and children. That's my view. But if you take what I'm being measured against, which is the numbers, and you look at what's happening in other areas where they don't have… Or where the adult rape victims are dealt with in, in every court, their numbers are better. So, it's similar to the question you asked earlier on about justice, or what's a victim-centred approach, that kind of thing. We are being hammered for not producing numbers. I'm saying dedicated sexual offences courts for adults and children is the way to go. I'm being told that they're doing different over there and their numbers are better, therefore you have to do it that way because you have to get your numbers up. [Senior Public Prosecutor]

This pressure to be well perceived through statistics will be discussed in more detail in the next section on challenges. The NPA statistics include numbers of cases withdrawn, diverted, finalised and convictions, with an emphasis on low withdrawal rates and high conviction numbers. These indicators reflect on the way the courts and their prosecutors' performances are measured. This is problematic given that cases proceed in different manner dependent on the type of crime, the numbers of accused, number of survivors, number of witnesses and many more factors which also need to be considered and measured, as was discussed in the findings section on turnaround times. One of the key indicators that may need to be that of convictions and finalisations. One prosecutor explained that the stakeholders were considering 'un-dedicating' the court due to the low conviction rate at the SOC, which was bringing down the court's overall statistics. The respondent explained that the SPP was under pressure to increase sexual offences convictions to increase the cluster's overall statistics and said:

> So, at the end of each month our SPP can then determine how many cases were withdrawn, how many cases were struck off the roll, how many matters were finalised, with convictions and non-convictions. So, we have now implemented that system and it's running now for 3 months [..] we had a meeting and in our meeting, it was said that this thing is not working out, people should just start doing normal cases, let's do away with this dedicated sexual offences prosecutors thing, and half of our colleagues then, the Chief Prosecutor said, "No, it's too soon." Because our conviction rate was very low". [Senior Public Prosecutor]

This demonstrates a need to consider SOC statistics separately from general statistics, as comparing them can mask the complexity of sexual offences cases which require more time.

Challenges

The following challenges in sexual offence courts were highlighted by respondents: (i) the pressure to secure convictions and carefully screen cases to proceed with cases that have a higher probability for convictions; (ii) the high caseloads and staff shortages resulting in limited time for consultations and court preparation of witnesses; (iii) the problems with obtaining and using victim impact statements; and (iv) the need for mental and emotional support for specialised prosecutors in the form of debriefing and rotation to other courts.

Caseloads, Turnaround Times and Outcomes

In an attempt to increase conviction rates and improve finalisation rates within SOCs, the prosecution and their case managers employ a system of using prosecutorial discretion to screen cases and filter out those cases that have little chance of successful convictions. As a good practice method, this allows the prosecution and case managers to assess the case and the evidence, and to look carefully at the investigation and the witnesses to determine if the witness and

the evidence are strong enough to process. According to a senior prosecutor, this is an advantage when the complainant is too traumatised to testify, despite counselling and court preparation and the case is removed from the roll and set aside until the witness is strong enough. It also allows those cases where evidence is weak to be placed aside and further investigations conducted. This prevents the survivors from proceeding through the trauma of a court case where the prosecution knows a conviction is slim and saves scarce resources for more 'winnable' cases. One of the case managers explained why using prosecutorial discretion to proceed with a case through careful screening was important. They said:

> The reason why we screen cases before they go to court is to see if we have a prima facie case at that stage that we can take to court in order to prosecute that case. It is for that purpose that you screen dockets. It is for purposes as well of ensuring that you give guidance to the investigation where need be. For example, … you might read a docket and find out that there are certain things that you are not sure about or that are not there for example, that we'll need you to make follow up on. So, it is in that spirit that you, therefore, read the docket, screen and give instructions to the investigator officer to follow up on what you think that it's lacking at that stage in that docket, so yes. [Case Manager]

Another prosecutor went on to explain:

> Remember we must ensure that we are fast, like them, secondly I screen dockets, screening dockets simply means reading through them, give instructions, ensure that investigations are being done and I also conduct consultations with the witnesses, be it be a witness who is a police officer, be it be a victim themselves but we are ensuring that we consult with them so that we know that we have a case in court because one of the reasons why consultation is important is to actually determine if we have a strong case to take to court or not otherwise we don't want to take cases to court only to find that they are not fit enough to be prosecuted and you can imagine if we proceed to the case of that nature. [Prosecutor]

An extract from a pilot site cluster report, states that this screening is a direct response to a call to increase conviction rates. The report stated that, "we are continuing to screen all trail ready dockets so that we can weed out weak cases and prosecutors are withdrawing them at early stages." The report also documents meetings with FCS in the cluster to consult on those cases with 'no potential for success' before they reach the court. According to the report, some cases were 'not being properly screened,' and that the 'grey cases' with potentially uncertain convictions were not being removed. This brought down conviction rates when these cases were placed in dedicated SOCs.

However, screening is not a fail proof approach. A survivor of a sexual offence may see a successful case as one where s/he can make their voice heard. By screening cases, some survivors will not have an opportunity to voice their story in court. However, the NPA protocols and performance indicators measure success differently, based on conviction rate. One prosecutor recounted a case in 2015 where a client had been raped repeatedly by her husband. Despite the children being witnesses they did not proceed with the case because is was seen as 'unwinnable'. The respondent explained:

> My first case of marital rape, and it's, it's, you know, it's a case where after the rape she consented, and then she didn't consent, so where do you draw the line now? Because remember these people are living together, they in a relationship, they're husband and wife. Obviously, you know what… People… You know when I spoke to colleagues and we tried to see whether we will secure a conviction, both of them said, "No, you will never secure a conviction (I: Even with dedicated courts?) Yes, because we had cases on the roll that was not properly screened […] and then, at the end of the day we don't proceed. Those are the type of cases that doesn't go ahead, they are not supposed to be on the roll. [Prosecutor]

The concept of unwinnable cases is prevalent throughout every discussion with the prosecution and case managers and it influences every aspect of the screening and preparation process. This has consequences for cases that are complicated or for vulnerable groups of survivors whose cases need more preparation because survivors have intellectual, psychosocial or physical disabilities, or are very young. These groups are most at risk for not securing justice when the screening process is implemented. Many of those prosecutors we interviewed agreed that they would be more likely to proceed with child cases and cases of survivors with intellectual and psychosocial disabilities than they do at present if it was not for the pressure to increase convictions. One senior prosecutor explained, "I can only say there's screening, that we're doing and putting more winnable cases on the roll. I know there's victims that, which are left behind, but it's just to get that little bit of success rate and try and get our conviction rate a bit better." These vulnerable groups are labelled as being 'difficult cases to convict' and are filtered out of the system at a very early stage by case managers, senior prosecutors and prosecutors under pressure to increase conviction rates.

The NPA's directives on withdrawing cases and the criteria for not proceeding with a case are not specific enough as to how to make this decision. The Policy Directives states that, "Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction, a prosecution should normally follow, unless public interest demands otherwise. There is no rule in law stating that all the provable cases brought to the attention of the NPA must be prosecuted. On the contrary, any such rule would be too harsh and impose an impossible burden on the prosecutor and on a society interested in the fair administration of justice." [58]

According to prosecutors, screening is also used to place difficult cases before those Regional Court magistrates they deem to be more capable of dealing with sexual offences than others. In one particular court, the prosecution had an ongoing problem with a magistrate who was known for acquitting too easily. Therefore, the prosecution did not want to put cases before this magistrate that had anything less than a strong chance of winning. They explained, "Basically, it's a matter of knowing the magistrate. The magistrate in [courtroom name] acquits many of our cases, many, many of our cases. And, so, if there's a case where there's, where it looks as if there's, where it's 50/50, we will never put it before [him/her] because it'll be an acquittal. Straight. I will show you some reports of reasons for acquittals. I will print them for you and give them to you because you will be shocked."

When we discussed the screening process with the Regional Court magistrates, they agreed screening was important to avoid unsuccessful cases on the roll, as they also do not want to be seen to be acquitting too easily. One prosecutor described one court where the:

References

58 It also states: "In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued. This assessment may be difficult, because it is never certain whether or not a prosecution will succeed. In borderline cases, prosecutors should probe deeper than the surface of written statements. Where the prospects of success are difficult to assess, prosecutors must consult with prospective witnesses in order to evaluate their reliability. The version or the defence of an accused person must also be considered, before a decision is made. This test of a reasonable prospect must be applied objectively after careful deliberation, to avoid an unjustified prosecution. However, prosecutors should not make unfounded assumptions about the potential credibility of witnesses. (Section A page 5) National Director of Public Prosecutions. 92014) Policy Directives (Final as Revised in June 2013. 27 Nov. 2014)

> Magistrate does not accept the state's argument that the rape of a child can occur when there is no medical evidence of rape". The prosecutor goes on to explain that the "prosecutors in [courtroom name] are instructed to call the doctor who completed the J88 form in all cases, even when there are no injuries. This allows the medical expert to explain that the fact that the absence of injuries does not mean that the rape did not occur. Unfortunately, the [courtroom name] Magistrate does not accept this so acquits those cases. [Prosecutor]

According to this prosecutor, there appears to be a common objective to reduce acquittals by not putting weaker cases on the roll for trial amongst the judiciary as well as the prosecution. Two of the magistrates interviewed explained that they agree with the practice of screening cases to avoid putting cases that may end in acquittals on the roll:

> My experience, with all due respect, is that the prosecutors do not prepare the dockets as well as they should. They don't read it properly enough. So, what happens is we land with cases on our roll that shouldn't have been there. They should have declined to prosecute. Then we sit with a stupid case that ends in one way only- it ends in an acquittal or an s174 discharge and that looks bad for the state. Then you get acquittals that you shouldn't have gotten because they didn't properly sift the cases in the beginning. When they placed the case on the roll, they shouldn't have. We often get cases where the complainant wants to withdraw the case, especially where the boyfriend has involved or the husband or whatever. Some of them, the prosecutors cannot withdraw them, that's not their fault. It's just too serious and the SPP refuses to withdraw the case and the complainant come to court and deliberately lies to keep the rubbish off the hook and it ends up in an acquittal. That's a bit of a problem. [Magistrate]

Another magistrate commented, in relation to prosecutors choosing cases carefully, "I think that there must be a chance for…a reasonable prospect of conviction, I mean that's the test. If on paper you've got no chance of getting a conviction then I don't believe that that case should be brought to court…then in that case you would go through the rounds of civil actions …"

The prosecutors felt that screening is driven by the NPA performance system. The performance system does not consider the nature of the crime and other causes for delays in sexual offences cases (as we have repeatedly listed in other sections of the report). It does not consider those cases with guilty pleas versus the not guilty for example, which as we demonstrated in section 3.3 of this report, imply quicker finalisations. The prosecutors felt that the performance system is demoralising and they feel disillusioned by the statistics which reduce all their work into conviction rates. To quote one prosecutor at length:

> You know, there's a merit system every year and, correct me guys if I'm wrong, but if we don't meet our target… You never going to get. You're not going to be a candidate. Now you can say to us in our section… […] Yeah, I could work so hard and yet I don't, I don't meet the target of, what? 16 finalised matters a month? You're not going to get merit, but you can work very hard, but that is what this… So, if you've got a magistrate who keeps postponing, or you've got something that's beyond your control that's postponing, that affects your ability to move forward in your career. Some people will get merit because they're in a court and… There were pleas. That court performs well, they get a lot of pleas that is they will get a conviction rate. Yeah, some magistrates are known to be more convicting than others. Some get a lot

> of pleas. You're a prosecutor in that court, you'll probably get merit, although that person doesn't necessarily, that system should be scrapped. That can be demoralising. But you know, if, like, yeah, if it can be scrapped, because, you know, it's unfair. You work very hard, but you say, "Ah, people are getting merits, why should I bother? Maybe just go and do whatever and then go home." Why bother? "I didn't get merit, she/he got a merit. They don't do any work, why [indistinct 1:04:45]. You know, recently the, when I left, before I came to Family Section, there is change there because initially, a person was being merited for the number of convictions, regardless of whether those are the matters with evidence or without evidence. Whether it's a plea. Tabled guilty pleas or whatever, yeah. And then we are stuck with a trial, whatever the trial could be maybe challenging. That's not taken into consideration, only the finalisation rates. "She/he, wow they had ten convictions this month! Wow, you get a gold star! [Senior Public Prosecutor]

According to prosecutors, they are trained to believe that success is equated with swift convictions ending in maximum sentences. As whilst a guilty verdict with a long prison sentence is generally perceived to be the ultimate goal of the justice system, by those internal and external to the justice system, when an offence has been committed and the accused found guilty, there are other factors that determine success (as outlined in section 3.3 of this report) where success is defined in many other terms beyond convictions and sentences. There appears amongst those we interviewed, to be a consensus that indicators of success need to be reconceptualised with 90% of those magistrates and prosecutors interviewed expressing their unhappiness with current indicators. As one high-level judicial officer illustrated:

> When I was still in the magistrate court, even when I was still a junior and a senior, when you deal with these matters, if you began not guilty, it's a big thing, because you're dropping the performance but you know sometimes it's not always about getting the conviction, yes there is a hard pressure, there is a lot of pressure, you know, hopefully maybe the government and the NPA can sit down and not really make this about numbers, you know [...] Even though I understand doing justice doesn't necessarily mean taking a person to jail, but you know, in rape cases, the only thing we are trained to fight for is imprisonment. You can't rape and then the next thing you'll get a suspended sentence, you know? Getting a higher imprisonment term, it's the outcomes they are looking for. [Regional Court President]

Consultations

Prosecutors, in addition to many others interviewed, identified the lack of time for consultations between prosecutors and witnesses pre-trial and during a trial as a challenge. According to the directives issued in terms of section 66(2)(a) and (c) of the Criminal Law (Sexual Offences and related matters) Amendment Act, 2007 (Act 32 of 2007) for prosecutors of sexual offences cases,

A thorough and comprehensive consultation should be held with the complainant as soon as possible (preferably within 21 days of receipt of the docket). Initial decisions concerning further investigation, referrals and withdrawals with the possibility of later reinstatement, (pending the outcome of investigations / referrals) should be made immediately following this consultation. **59**

However, respondents reported that pre-trial consultations tended to happen on the morning of the trial. The directives are not specific enough regarding the amount of time the consultations should take or the number of consultations needed. Whilst it is understood that every case differs in terms of the type of preparation needed, there should be a minimum set of standards. Half of the prosecutors interviewed reported that on average preparation took place 30 minutes before

witnesses appeared to testify. For the prosecution, this was a source of much frustration and concern. Given the high number of caseloads and the shortage of prosecutors, let alone specialised sexual offences prosecutors, the time afforded to consultations with witnesses was insufficient. Some respondents felt this contributed to secondary victimisation of the survivors of sexual offences, as outlined in the quotes below. When questioned as to how often consultations should take place and what the nature of such consultations should be, one of the prosecutors explained that, "in an ideal environment, you'd meet them during consultation, just after court preparation and when you, you have just a day or two days before trial you let them read their statements, make sure that they are prepared thoroughly emotionally and that indeed you have a witness that is going to be strong and, and be able to testify.", The prosecutor then described the reality, "You meet them the first day, date of trial. Just, with like 30 minutes before the court you consult or just read the statement and consult and see if you have all the requirements of the offence covered." This has been an ongoing concern since the first review of the SOCs. **60**

This was a key concern for court preparation officers and intermediaries alike because they felt complainants need more time to prepare for court appearances. Equally, for the prosecution, this was a source of much frustration and concern, as all of those interviewed expressed a desire to have more time with complainants. Prosecutors do not have enough time to adequately prepare witnesses and they explained that witnesses benefit from ongoing consultations with prosecutors as it builds confidence in their ability to testify (especially under cross-examination). In addition, it gives the prosecutor an opportunity to request further investigations if additional evidence is required. Given the high caseloads that prosecutors are carrying and the serious shortage of specialised prosecutors, the time reportedly afforded to consultations with witnesses was most certainly not enough and could be said to be a key example of secondary victimisation of the survivors of sexual offences. When questioned as to how often consultations should take place and what the nature of such consultations should be, one prosecutor explained that:

> In an ideal environment, you'd meet them during consultation, just after court preparation and when you have just a day or two days before trial you let them read their statements, make sure that they are prepared thoroughly emotionally and that indeed you have a witness that is going to be strong and, and be able to testify" [however the respondent went on to explain that the reality is different where they will be lucky to squeeze in a 30-minute consultation before testifying]. "You meet them the first day, date of trial [Prosecutor]

One CPO expressed disappointment at the way in which some rape survivors are consulted with and are 'rushed through' to testify. Three of the CPOs interviewed went on to explain that they are under pressure to rush complainants who are being prepared the morning before a case is meant to be heard. In some cases, there is not even time to prepare witnesses for court. As one of the CPOs explained:

References

59 National Director of Public Prosecutions. (2010) *Directives issued in terms of section 66(2)(a) and (c) of the Criminal Law (Sexual Offences and related matters) Amendment Act, 2007 (Act 32 of 2007).* Page 4 (Para C.2)

60 Stanton, S., Lochrenberg, M. and Mukasa, V. (1997) *Improved justice for survivors of sexual violence? Adult experiences of the Wynberg Sexual Offences Court and associated services.* Rape Crisis: Cape Town; Gender Institute: University of Cape Town; Human Rights Commission.

> Regarding sexual offences, no. The reason why, maybe it's because prosecutors are now used to having court prep for sexual offences, because previously we were assigned to do all sexual offences, but with other matters, we do have challenges. Sometimes they will defer a witness just, like, the prosecutor will bring in the witness like at 5 to 9 and say, "Please prepare him or her, I want him or her in court after 5 minutes." Yeah, those are the challenges. [Court Preparation Officer]

Equally, the CPOs do not want to report prosecutors if they feel that the prosecutors have not consulted properly with the complainant, as one court preparation officer explained:

> Like for... the issue where I was saying to you that the prosecutor will be consulting with the witness. I'm used to prosecutors having this one on one, like, consultation, sitting down, finding out, more especially with sexual offences, you'd expect the prosecutor to be sympathetic in a way, ne? But when you see a prosecutor like, "Okay ma'am do you mind telling me what happened?" Ma'am this and that, sometimes I feel it's like, but I cannot go on, I cannot go report them. Go behind..." she went on to elaborate on it, "I will tell them that, "Ah, please, you know, that's not how you supposed to consult with witnesses." And they'll say, "Sister, sister, we have lots and lots of things to do. As you can see, I have ten, ah, four matters on the roll. And I have a bail application and stuff so I have to be quick in everything." You see? So, I would just, like, tell them, but I cannot go to their supervisors and say this is what they are doing. I can't. [Court Preparation Officer]

One of the solutions proposed by court personnel to the lack of time for proper consultations was to rotate prosecutors into non-SOCs. In two of the courts, the practice of being 'rotated' allowed one prosecutor to spend a week conducting consultations with complainants and witnesses, whilst the other prosecutor attended court. However, even when this is possible, high caseloads can mean that consultations are still relatively brief or restricted to only one consultation. One of the SPPs commented that, despite caseloads and limited capacities, it is indeed possible to increase consultations and to prioritise effective and proper levels of consultations. The respondent explained:

> It is possible. For an example, prosecutors in the, in the High Court get more time on their cases, say you can allocate a week to do and deal with a specific case. In addition, you have less workload, you have more time in preparing your... in court preparation, like you can consult this week, and only to commence your trial the following week. So, it, it can happen in the higher courts with their infrastructure, the facilities that they have, more certain, and it can happen. [Senior Public Prosecutor]

Another solution that was offered by one of the SPPs interviewed to improve the extent of pre-trial consultations was to institute a system whereby one prosecutor leads a case through the process from start to finish, which would allow for consultations to at least be more consistent. One assumes that this would already be the case, but it appears that more than one prosecutor may manage a sexual offences case. This might be due to the way court rolls are handled, the rotation or absence of prosecutors, the complexity of certain cases, the redistribution of heavy caseloads, or any number of reasons which might have prosecutors appropriating cases from another prosecutor from the first appearance. The SPP who suggested the 'one case, one prosecutor' system explained:

> What we've done is we've introduced a system with, beginning in April (2016) of this year, where from inception to the end of the case, the same prosecutor deals with it, whereas before you'd have one dealing with it at first appearance and someone else doing the interview and someone else doing the trial and there was, it was a problem, so now they each have coloured stickers and you start with a case you'll take it through to the end, which I think will also cut down on the amount of interviewing that is, that is required. [Senior Public Prosecutor]

Debriefing

As with the other court actors interviewed, the prosecution also pointed to the importance of debriefing and mental health support for those prosecutors working in specialised SOCs, particularly over long periods of time. These prosecutors not only have higher caseloads than some of their colleagues in other courts, they also experience a high level of vicarious trauma. As one SPP explained, dedicated sexual offences prosecutors need dedicated specialised services to support them as was outlined in the MATTSO report. The respondent said:

> If the NPA was serious about dedicated sexual offences courts, with dedicated prosecutors, I think debriefing would be mandatory. I think, and, would be offered. It wouldn't be up to a manager to phone and sort it out and arrange everyone's diaries and … It would be mandatory, we're having the debriefing on this day at this time and then you could choose whether you'd could have a group thing and then you could choose whether you had a one-on-one session. I think that would be a big help. [Senior Public Prosecutor]

Ninety percent of the prosecutors interviewed recounted stories of vicarious trauma and explained how cases have often "followed them home", leading many of them suffering from burnout and mental health issues. One prosecutor recounted how a particularly harrowing case affected them:

> I remember at some stage I had a case, it was an acquittal and I was like I know it was supposed to be a conviction, and the following day I was crying, I went to my office, I cried, and cried, you know, like, that we have those days, but I was supposed to get a conviction, and you know, with other magistrates, I won't say with mine, like with other magistrates you will get an acquittal with same facts where you get a conviction. Then you just end up being confused, go home. We do need debriefing. [Prosecutor]

While access to the wellness programme was reportedly on offer from the NPA, there were concerns that asking for that support 'officially' would affect one's record (a similar concern to that one expressed by the judiciary in this report). One of the suggestions from the respondents was that they can access support, debriefing or counselling anonymously or have a set amount that they could claim from for mental health or counselling services each year, that could be accessed confidentially without going through her SPP or DPP. One prosecutor explained that there is a lot of cynicism regarding the effectiveness of debriefing and what the true intentions are behind it. The impact of help-seeking on promotions was also a concern:

> I think a debriefing where they can just off-load is OK, but we're also very cynical, because we always know there's a carrot with something attached to the carrot, and if you now bring in a psychologist to speak to me, is that going to reflect at some stage later that I've got a problem? [...] So, we've had nothing of that. I've never been debriefed, and I've been hearing [cases for] many, many years. Never ever had any sort of emotional support people come in and say this is how, or if you feel like this, maybe you're depressed, and you think, "Shit, I couldn't help that person today," or, "I'm feeling bad we did not get a conviction." [Prosecutor]

Training

Overall, the prosecutors and case managers were satisfied with the level of training they had received from the SOCA trainers at the NPA. In fact, the SOCA Unit was praised for their ongoing engagement with prosecutors and their making available training opportunities. The integrated training at the TCCs was referred to on several occasions as being particularly helpful. As it was conducted with all stakeholders, it provided a more comprehensive picture of sexual offences. In particular, the exposure to the systems, challenges and perspectives of other justice officials and from the Departments of Social Development and Health as well as the SAPS, were perceived as extraordinarily useful. Similar to the judiciary, the prosecutors indicated that they would prefer more regular gatherings with fellow prosecutors to discuss current case law and to have refresher courses, particularly on child witnesses and the practical application of the SORMA of 2007 through 'case law workshops'.

Having specifically inquired from each prosecutor about what additional training they would request or require, some had asked for a refresher on SORMA of 2007, but with a specific emphasis on relevant case law that has emerged since its promulgation. The most common 'specialised knowledge' that was requested was a revised course consulting with child witnesses and presenting a child's evidence. One prosecutor maintained that prosecutors needed (re)training on the following:

> On the Act! On, training on, for instance, presentation of your cases. Most people don't know how to read the evidence of a child, and a child's evidence is not complicated. A child's evidence is straightforward, but the simple language, you don't speak like to the witnesses like you're speaking to an adult. Your level of, of communication, must be on the child's level and that's the only way how you're going to get information and evidence before the court. So, none of us are taught that, and people find it, like, although you have children, you interact with kids, you have family members, it's difficult to start leading the child in court on what was in the room, because I always tell my victims, "You know you watch TV?" "Yes." "And when you watch a certain programme, there's certain steps. You know? You see that. The little girl plays outside and she rides her bicycle and her mom call her to eat, so it's like a process. So, I want you today to tell me step-by-step what happened to you. It's like you're telling us a story and I'm watching it on TV. [Prosecutor]

This was a common response amongst both case managers and prosecutors, who both agreed that continuous training on child witness evidence and case law relating to child cases was important, given that "almost 80%" of their cases are sexual offences against children. Equally important was training on other vulnerable groups such as sex workers, those with intellectual and psychosocial disabilities as well as training on LGBTI witnesses' needs when proceeding with a case. This was confirmed by one SPP who stated that:

> Something I always think is important, but others don't share my views, is developmental stages of children so that you know when you're pitching your interview, where to pitch your questions, that kind of thing. Dealing with vulnerable groups, because, you talk of vulnerable groups, if you go on Wednesday and you say to them vulnerable groups, they will not know what you are talking about. Okay. I promise you, prosecutors don't see those vulnerable groups as any different to anyone else, it's dealt with all the time. I think possibly some training on that would be necessary. [Senior Public Prosecutor]

When questioned if they had received any specific training on LGBTI survivors or sex workers, the respondents generally indicated that they had received some basic information but that it did not look at the needs of these vulnerable groups in any depth. As one SPP interviewed explained when asked if any such training had been received by the prosecutors in he court responded:

> Only in the sense that if the SOCA Unit, they should include in any training course, and all my prosecutors have been on different training courses with the SOCA Unit. They must include a section on the social context, which covers that. I know cause I've done the training myself. So social context where they talk about sex workers. They don't really go into the LGBTI thing, or they didn't. They might have changed it, but I've got the presentation on my computer and as far as I'm concerned it really deals more with sex workers more than anything else. [Senior Public Prosecutor]

In addition to vulnerable witnesses and SORMA of 2007, the other main area for knowledge and skills development mentioned by prosecutors, was evaluating and translating expert evidence. Generally, the prosecutors explained that they did not call expert witnesses unless it was essential, due to the costs involved. In those cases where expert witnesses could be helpful, oftentimes prosecutors do not know where and how to access them. Prosecutors pointed to the evidence of medical experts and forensics as areas that they continually needed training on. They indicated that skills on how to translate the evidence of forensic nurses and doctors, in a language that could be understood easily by the courts and most importantly by the complainant, was of great importance. One of the prosecutors interviewed commented that skills were also required on:

> How to present the evidence of a medical doctor. Remember when the doctors come to court, it is the first time you see them and they are in a hurry because they have a whole list of people waiting, or clients outside their office. So, they just come to court and they read their findings in and get sometimes very agitated if you start questioning them on... "Doctor, I'm not a medical expert, but can you explain what or why, how did you arrive at that finding? What, what is that?" You know, sometimes the doctors don't understand we are not medically trained, but when they come to court the prosecutor must just know all these medical terms and [...] Most, most of my colleagues like, you know, when we speak it's, "Ah! I have a doctor today, you need to come and help me, and I don't know what to ask the doctor. Please! What you ask the doctor?" [Prosecutor]

In addition to increased opportunities for pre-trial preparation and the use of expert evidence during the trial, the use of and function of victim impact statements (hereafter referred to as the VIS) was also highlighted by prosecutors an area they could be better capacitated to engage with. The importance of the VIS was central to the MATTSO (2013) report on secondary victimisation and its role in giving the victim a 'voice' in the system. It is interesting to note that only the SPPs and Regional Court magistrates mentioned the use of the VIS when they were asked during the interviews how one facilitates successful case outcomes by letting the victim's voice be heard.

In the NPA Court Preparation document , the importance of the victim impact statements is carefully outlined. This quote from that report illustrates very concisely the objectives and function of it. The report states that the VIS has:

> … become of paramount importance that prosecutors present VIS at sentencing stage as was aptly remarked by Ponnan JA (Navsa JA, K Pillay AJA concurring) in S v MATYITYI 2011 (1) SACR 40 (SCA): By accommodating the victim during the sentencing process the court will be better informed before sentencing about the after-effects of the crime. The court will thus have at its disposal information pertaining to both the accused and victim, and in that way, hopefully a more balanced approach to sentencing can be achieved. Absent evidence from the victim, the court will only have half of the information necessary to properly exercise its sentencing discretion. It is thus important that information pertaining not just to the objective gravity of the offence, but also the impact of the crime on the victim, be placed before the court. That, in turn, will contribute to the achievement of the right sense of balance and in the ultimate analysis will enhance proportionality, rather than harshness" (Adv. E Smith's emphasis). Targets have been set for court preparation and victim impact statements in DPP's and prosecutors performance indicators; in addition, the Prosecutor Policy has been revised to include both indicators.

Although there was support of the use of VIS by prosecutors, there was confusion expressed over who should be facilitating the VIS process. Prosecutors questioned how it should be 'captured' and presented, and what should be done to assist witnesses in terms of submitting a VIS to the court. As one prosecutor explained:

> There are two ways of doing it. Either, the less common one is that the Court Prep Officer talks – okay, obviously if it's a child they'll do this, but with an adult, it's less likely – "Look, how has this affected your schoolwork, how has this affected whatever." And the Court Prep Officer writes it down. But more commonly, they get the witness to actually write it down, obviously guided by them, they're present and they answer questions and whatever, but, they say it, they feel that the person's more able to express themselves if they write it, write it out. [Prosecutor]

When asked how those witnesses who cannot write or communicate very well get to express themselves in the VIS, most prosecutors indicated that they tend not to get statements from those witnesses due to the difficulties communicating with them. Indeed, this presents a challenge in terms of equitable access to justice.

It is therefore essential that any training conducted on – or promotion of the use of – VIS must consider how to capture the impact of sexual offences on those complainants who may have some difficulty articulating this impact to a court. Those with intellectual and psychosocial disabilities as well as those with physical difficulties, such as deaf complainants, will require special consideration. Equally, for those survivors who feel that their sexuality or gender identity was a factor in their sexual victimisation and who already have suffered stigma within their communities, the VIS requires skilful preparation and presentation to the court. One prosecutor spoke succinctly of the practical applications of a good VIS. When asked if the respondent found that the VIS impacted sentencing, compared to cases those where there was no submission of a VIS, the respondent had this to say:

> Definitely. Yeah, well, I mean, we get this thing, okay, we're on the Justice network, but we're also on the NPA network, and we get this thing called Views, Views from the News, and like every day, at least sort of half a dozen cases with commentary are sent through, not the transcript of the case, but just a summary and I always look and see, and they say, "Victim Impact Statement was handed in by the prosecutor and the judge commented and..." And generally if you hand in a Victim Impact Statement the judge will comment on it, or the magistrate, and I do believe it makes, it makes a difference. Even, I mean, a lot of prosecutors, their argument to me has been, "No, but it's a guilty plea so we don't need a Victim Impact Statement." So, I'm saying, well then, the court has not even seen the victim, it has a victim that is faceless. I did a guilty plea where a guy was a truck driver and he abducted a little 6-year-old, a 6- or 7-year-old little girl, [and he] took her, raped her a number of times, left her for dead, so it was attempted murder and two counts of rape and something else, and she, she didn't come to court, because she was still hospitalised, but her, her parents, especially her father, were distraught. They were absolutely distraught, so I got Victim Impact Statements from her, a very simple one, and from the father and from the mother saying the impact this had had on them. The guy got life, life, life, but I do believe that the Victim Impact Statement made a difference, because otherwise, the court has no ... obviously the rape would have had an impact on the child, but when you hear the actual impact, "Now I have to use pads because I wet myself all the time," "I've had to have surgery." Yeah, all that kind of stuff, the court needs to hear. [Prosecutor]

One of the best practice examples that emerged from this study was one SPP's addition of the use of a VIS in the recording of her monthly statistics for her SOCs. This would ensure that if a prosecutor gets a conviction, they should check off if they used a VIS or not. Most importantly, if they have not used a VIS, then they must indicate a reason as to why it was not taken or used. The documentation of whether the VIS was used or not is important as it was reported by some respondents that the VIS is sometimes taken but not submitted at sentencing. When questioned as to how often VIS's are handed up, one SPP responded:

> Not often enough as far as I'm concerned. I'm pushing constantly for it to be done. For sexual offences, as well as for other contact crimes, where people are victims of robberies or whatever the case may be. One of the reasons, and this is such a stupid reason, is that I genuinely think that many prosecutors don't know how to use the [VIS] statement. Now there is a document prepared by [person name], she's at the DPP's office in [area name]. Perfect, a beautiful document on how to hand in a Victim Impact Statement, it's, it's so simple, and I've distributed it to everybody. [Senior Public Prosecutor]

There are inherent tensions between imposing pre-determined 'turn around' times and the ongoing expectation and pressures on prosecutors to have extended consultation periods with all witnesses, to support victims and their families throughout trial, to secure expert opinions to assist with victim impact statements, and to regularly participate in opportunities to develop specialised skills. These service delivery expectations impact on the ability to turn cases around within prescribed periods. Perhaps then, the measure of 'effectiveness' and 'performance' of prosecutors should focus less on time frames and more on those aspects of trial preparation and advocacy that improve the experiences of victims/witnesses of sexual offences. These measures can still be calculated – and analysed – but could look at what features of victim support are present in each case.

Recommendations

When asked how they would improve turnaround times and case outcomes for sexual offences survivors, the primary recommendations made by prosecutors included:

(i) Longer and more frequent consultation opportunities between the prosecutors and the complainants/witness at both pre-trial and during a trial stages;

(ii) Increased numbers of 'specialised' sexual offences prosecutors in the dedicated courts to make caseloads more manageable and to all greater attention to those cases that appear 'weak' at the outset;

(iii) The rotation of prosecutors between prosecuting and doing administrative duties and court preparation to allow more time for trial preparation and victim support; and

(iv) Receiving practical training, but on a continual basis, on child witnesses and vulnerable witnesses, with an emphasis on those with intellectual and physical disabilities. The latter concern is connected to concern of prosecutors that prosecutors would proceed with many more cases involving children and persons with intellectual disabilities if they were not under such pressure to run with cases that have strong probabilities of conviction. Tied to this is the way the NPA to conceptualises and measures turnaround times and case outcomes, an issue addressed earlier in this report.

4.3 The Court Managers

The court managers at the pilot courts manage the day-to-day running and administration of the SOCs. Court managers have the difficult task of coordinating the support services in the courts by all the relevant departments. They manage the intermediaries and interpreters, both casual and permanent, who are employed by the DoJ&CD, as well as all administrative and financial oversight of the SOCs.

When questioned about the merits of having SOCs, all the managers agreed that the concept was important, especially if it meant that sexual offences cases could move more efficiently through the system. However, all the court managers pointed to the structural limitations to this ideal when it comes to complying with the MATTSO regulations for the SOCs structures and the various steps that must be taken to ensure the facilities, equipment, and infrastructure are suitable to accommodate the SOC model. The process of being designated a SOC involves an assessment of current infrastructure, then remodelling or upgrading to provide the appropriate facilities. In all five courts, there had been recent refurbishments; however, the caseloads at the courts have meant that sexual offences cases have spilled over into other courts that are not officially designated as SOCs but should operate as such. This put strain not only on the human resources of the courtrooms but also on the infrastructures and the premises themselves, namely those buildings that are not capable of accommodating large numbers of people. For example, one of the pilot courts has been repeatedly promised a 'mega structure' for almost 20 years. However, its dilapidated building and small courtrooms has meant offices, and even some courts, operate in the parking lot of the premises in prefabricated containers. This was something which the court manager at the court emphasised has put a lot of strain on the court personnel and the administration of the building.

Aside from the obvious structural limitations, that are discussed in greater depth in the general findings section of this report, the court managers main recommendations for the sexual offences courts were to increase human resources, and in particular, to increase the numbers of interpreters and intermediaries available at those courts. By example, the court managers are responsible for booking interpreters and intermediaries as they are needed at the courts, in addition to the small number of permanent intermediaries based at the SOCs. The casual interpreters and intermediaries are usually called when a specific language is needed for a complainant or sign language (however, in our pilot courts there was no interpreter or intermediary who could 'sign'). The bottlenecks at the courts as a result of the shortages of interpreters and intermediaries is an important one to note. It is a daily problem that court managers have to address, as one court manager explained: "The challenges that I face it's that when one of them is absent, especially the admin staff, that I must provide see to it that court its running". All of the court managers mentioned the difficulty with engaging interpreters and intermediaries for complainants who have foreign language requirements, particularly for other African countries. In an area like Tonga or Gauteng, this is a particular problem given the large volume of foreign nationals that live and work in Soweto and Tonga (which is on the Mozambique border).

Another key issue, which was mentioned by the court managers, was the difficulty with record keeping and the sheer volume of records that they are tasked with managing and overseeing. The court clerks at each court were anxious when we requested files to be made available to the research team at the courts. At all five courts where court files were reviewed, the records were kept and maintained in very different manners. At one court, the clerks had been assisting with an audit by the Auditor General of South Africa and were unable to give us access to the files we requested. This resulted in the research team only being able to access those finalised cases that were available in the offices of the prosecutors and the three SPPs' offices. In another court, there was some anxiety as to the untidy state of the files and it was evident that the filing system was not ideal, with many files being misplaced or stored in unmarked boxes.

Our experiences with the clerks and the management of court records were very different at each court. One court had recently overhauled its filing system and as a result, was able to provide the research team with access to all finalised sexual offences cases from 2014 to 2016, which were ready for examination on arrival. In addition, this court had all cases registered on a database with the arrest dates and finalisation dates, whether judgments or sentencing, for each case, accompanied by the type of crime and the names and gender of the complainant and the accused. It was explained to us that the court clerk had spent many hours trying to make the record keeping more efficient and easier to file, which could be seen as a best practice initiative.

Given the random methods in which files are stored and managed in some of the courts, it could be recommended that the court managers and court clerks receive training on file storage and data management, or, are granted the authority to reorganise the current system. This would obviously go some way towards preventing the loss of files, or parts of files (which were sometimes incomplete, missing or 'difficult to trace' when requested for review). By example, in some cases, the court files that we did have access to review were virtually empty barring judicial findings - J88s or charge sheets were missing, they were not housed in folders, or were merely held together with a pin. This has obvious implications if the court files need to be reviewed or revisited.

The clerks of the court are also responsible for assisting the Regional Court magistrates with administrative tasks, not only record keeping and data filing. In every pilot court, there was a pool of clerks and the Regional Court magistrates would apply for assistance from the clerks. During our interviews, Regional Court magistrate's complained that they did not have enough support from the clerks and needed better administrative capacity at the courts. The Regional Court magistrates explained that the court managers oversee the administrative tasks of the clerks and the allocation of the clerks to assist with judicial administrative support. In one instance, a Regional Court magistrate claimed that the court manager was purposefully difficult when it came to giving the Regional Court magistrates assistance and that this was reflected in the manner in which the clerks treated that Regional Court magistrates at this court.

The Regional Court magistrate explained that, "the clerks treat the magistrates so badly. It is unbelievable. Nobody will tell you that but is unbelievable that is the situation." Overall, given the various tasks that the court manager has to undertake on a daily basis, the allocation of administrative resources would appear to be one of the more difficult roles to fill at the court. Indeed when approached to conduct the interviews, all of the court managers expressed a desire to be heard. They indicated that they do not often get the chance to give feedback on the challenges they face every day – and the difficult position they occupy in the middle of all the various parties at the courts such as NPA, judiciary, DSD, DCS and even the public.

The focus on the role of the court manager illustrates the many factors that can affect the efficient running of the court on a day-to-day basis, which are often beyond the control of those court personnel working on sexual offences cases within the courts. The impact of infrastructural maintenance and the increased need for more human resources is felt in the turnaround times of cases. These bottlenecks such as power outages, poorly maintained buildings, shortages of interpreters or intermediaries, lack of facilities and cramped working spaces all affect the court personnel's ability to do their job optimally. These additional indicators should be considered when looking at overall performance of the courts. The court manager acts as the conduit between all the departments within the court and thus has an important perspective to consider regarding ways in which to improve the effectiveness and impact of the SOCs.

Recommendations

When we asked the court managers what their recommendations would be to improve case outcomes for the sexual offences survivors, the unanimous answer was: better facilities, better infrastructure and more personnel. There was a desperate need in each court for more foreign language interpreters and intermediaries. Increased administrative support

and technological upgrades were also on the list of recommendations. However, increased maintenance of existing equipment and infrastructure was the primary need and undeviating recommendation. At one court, the generator had not been maintained so when there was a power cut in the area, which lasted a week, the generator could not be used. This lead to more postponements of cases. The managers explained that in terms of the SOCs, and the specialised equipment needed for them to operate effectively, there was no long-term plan on how to fund the ongoing replacement of equipment and maintenance thereof.

Our recommendations for court managers include:

(i) Regarding court managers, it is recommended that they be allowed the opportunity to gather with other court managers to discuss the improvement of court filing systems, record keeping and data management at the courts.

(ii) In addition, it would be important to ensure that the court managers of the sexual offences courts understand the requirements of MATTSO (2013). None of the five court managers were aware of the MATTSO (2103) report or how the SOC model came to be. It is therefore recommended, that this is included in any discussion of sexual offences and capacity building of court personnel.

(iii) The way files are stored and filed needs to be consistent and uniform across all courts. Simple best practices such as red stickers on rape cases and an additional green sticker on child cases, allow files to be identified quickly and correctly. There were no consistent filing practices across the five courts. There should also be demarcations for cases of multiple accused, or multiple survivors.

4.4 The Court Preparation Officers

Within the SOCs, there are two main categories of court preparation officers. There are those Court Preparation Officers (CPOs) employed and trained by the NPA and those court support and preparation officers provided by NGOs such as The South African National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) or the Greater Rape Intervention Project (GRIP). The latter are often referred to as 'Friends of the Court' but referred to as Court Support Officers (CSOs) in this document. The NPAs Court Preparation Programme, referred to as "Ke Bona Lesedi", trains and appoints court preparation officers across all courts in South Africa, not only at SOCs. According to their founder, the role of the CPO is:

> To ensure that the judicial and administrative processes are responsive to the needs of the victims, it is important that witnesses are informed of their role and the scope of their involvement, the timing and progress of the proceedings and the disposition of their cases. Therefore, the needs of witnesses at court are addressed by the "Ke Bona Lesedi" Court Preparation Programme (2001) through which services are rendered by dedicated court preparation officers based in courts throughout the country. [...] CPO's are the implementation arm of the Services Charter for Victims of Crime which realises the rights of victims. Victims' rights are championed when they report a crime to the police station, when they go to a hospital for the collection of medical evidence when they receive counselling from social workers, when they go to criminal court as witnesses, and when they participate in parole hearings. (Ke Bona Lesedi Court Preparation Component NPA Court Preparation and Victim Impact Statement Strategic Document, 2015: 14-15).

The CPOs and CSOs were a mixture of senior and junior officers. In all interviews, we asked the CPOs and CSOs to outline how they prepare a witness, a child, and an adult. In all cases, the method of preparation was similar, and it was clear that they had been sufficiently trained on how to prepare witnesses, particularly child witnesses, and more specifically for sexual offence courts. The CPOs and CSOs explained in detail the process that they go through with the witness from first meeting to testifying. In two of the five courts, there was a mix of CPOs and CSOs that meet with sexual offences complainants. In one of the five courts, the NPA-appointed CPOs prepared adult witnesses and an NGO who was based at the court would prepare child witnesses for testifying. As the CPO manager at this court explained, "we prepare every witness, every kind of the people who see the NPA. But here in Court P, only, the focus is only on adult witnesses, whilst in [court name] we prepare both adults and little ones."

In terms of their duties and responsibilities towards the complainant in all five sites, the CPOs and CSOs explained that they were an important buffer between the prosecutor and the complainant. They would act as a 'middleman' between the complainant and the prosecutors both before and after consultations with the prosecution. One CPO explained that her

role was to keep complainants informed about the process throughout, and to assist them with understanding the entire life cycle of the case. In addition to preparation for testifying, the CPOs are also responsible for informing the complainant of the sentencing hearing for those cases that have been convicted. In addition, they assist with victim impact statements and prepare them for the sentencing hearing, should the complainant wish to attend. As one of the CPOs explained:

> We'll phone them if we are aware of the date upon which the case is coming back for sentencing. We'll phone them two weeks before, or a week before, to inform that, to inform them that the accused was found guilty and that he will be sentenced on a particular date. If they are interested to come and listen, then they can come. Yeah, that's how we basically are assisting them. [Court Preparation Officer]

However, given the trauma that this can cause, most of those CPOs and CSOs that we interviewed reported that they did not have many victims wanting to return for the sentencing hearing.

SOCs and Specialisations

When questioned as to their opinion on the role of SOCs, and if specialisation was a progressive move to assist with improving case outcomes for complainants, all those interviewed agreed that it was a good idea and that specialised services were an essential component of giving the right support to complainants.

Figure 15: Child waiting are at a newly refurbished SOC

The CPOs explained that it was better to work with prosecutors who were specialised, and understood the needs of witnesses, particularly child witnesses. In terms of infrastructure and structural changes, they all agreed that the child-friendly atmosphere was essential to preparing child witnesses and making them feel comfortable and supported within the court system. This is something that the NPA CPO trainer, Adv Tewson, also highlighted in her report on the court preparation programme. The respondent stated that it was important that courts are upgraded to be as child-friendly as possible to reduce "secondary victimisation and secondary trauma" for child witnesses. The respondent explained in the report that,

> The CPO's are rendering an excellent service despite challenging circumstances. The impact of the program is, however, being negatively impacted by the circumstances in which some CPO's need to work. The environment of each CPO-office needs to be re-evaluated and made child-friendly. The NPA's Ke Bona Lesedi Court Preparation programme is an attempt to address the crisis in the criminal justice system and has much to recommend it. In general, to secure a just society for all, citizens, parents, trainers, teachers and family members of witnesses all should embrace the values of honesty, justice and good will (Ubuntu) for the greater good of all. For a child, and any other witness, who testifies successfully in court, must return home to a morally conducive environment that is free of victimisation or revenge. [61]

Regarding the facilities and structural capacity of the courts, the CPOs and CSOs indicated that the lack of toys or food for children at the courts can be a problem. In addition, they pointed to the poorly located waiting areas for clients, which can be difficult in those courts where witnesses do not have separate access from members of the public, or must wait for consultations in corridors where members of the public or even members of the accused's family or friends may also be seated.

Whilst the CPOs and CSOs agree that specialisation is important, they also expressed a need to ensure that the facilities are adequate at the courts so that not only the complainants are comfortable butt that the CSOs and CPOs are properly equipped to give court preparation in comfortable offices with the necessary facilities as outlined in the MATTSO (2013) report. [62] It is left to the court staff such as the CPOs and CSOs to try to work within the confines of the facilities and resources that are available to them.

Challenges

The lack of consultation and preparation time is the most concerning challenge that was expressed by the interviewees, given that it is clearly stated in MATTSO report that preparation and consultation time with child witnesses must be adequate.[63] The lack of time given to preparation and consultation can lead to the witnesses feeling anxious, ill prepared and unsupported which can affect case outcomes due to poor testimony. The prosecutors, CPOs and CSOs at all the courts pointed to the lack of consultation time as a key problem and one that they believe is strongly associated with negative case outcomes for complainants. When questioned as to how long court preparation takes with each sexual offence complainant, one CSO responded, "It depends. It depends on the level of stress, trauma. Cases vary. If they come and I could… I can see that maybe they are okay, I will prepare them maybe for 45 minutes, then allow them to go to court. Others, it will take more than that." Forty-five minutes of consultation on the day of a sexual offences hearing is obviously far from ideal. Unfortunately, this was the norm reported by all court actors who indicated that consultations are generally conducted the afternoon before, or the day of, the hearing. As one CSO explained, on a typical day the prosecutor "will be around checking if the witnesses are present and then he will be doing the court preparation with me […] and the prosecutor will bring in the witness like at 8.55 and say, "Please prepare him or her, I want him or her in court after five minutes."

References

61 Tewson, K. (2015) *'Ke Bona Lesedi' Programme: NPA Court Preparation Programme for Victims of Crime and Witness Assistance.* National Prosecuting Authority of South Africa. Page. 23

62 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013). *Report On the Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Pages. 34-35 and 55-65.

63 Ibid.

The only occasions where witnesses appear to have more than one consultation is when the case is postponed or there has been a delay. In these circumstances:

> … they would come today for the first time, then the case being postponed, then I will advise them, like I would ask them to come for a further session" and if the witnesses is still not capable of testifying the CPO will advise a further postponement as one explained, "and then, if, some… some of the witnesses who we do, like, after, after doing court preparation and noticing that they are not fine, I would go to the prosecutor and say "She is not ready to testify. [Court Support Officer]

The lack of time for proper pre-trial consultation was found to be disconcerting for CPOs and CSOs and made building a safe and trusting rapport with complainants challenging. With the shortage of CPOs at courts and the current caseload levels, numerous consultations with witnesses are not possible. This makes following up with complainants after they have testified difficult. One CPO went on to explain that even when the case has been finalised they would continue to try to assist the complainant, despite this not being part of their job description. As one explained:

> We create this bond between us, yeah, wherein we will phone to check as to how they are coping. Sometimes, some of them we also refer them to our churches because of, we could see that, like, they are not coping. Then I would invite them to come to church, and then we'll arrange some appointments with the pastor to counsel them or to encourage them to go through life … which she contended becomes emotionally and mentally difficult to deal with at times. [Court Preparation Officer]

It is worth noting that the NGOs who employed the CSOs had more regular debriefing sessions and support discussions that their NPA counterparts. Debriefing and access to mental health assistance were important concerns amongst all court actors and, those staff that deal primarily with child sexual offences cases daily. In terms of their caseloads, the CPOs and CSOs across all the courts tended to have an average of 15-20 cases a week, with 5-10 of those being new cases. Overall, a caseload of 60-80 complainants per month is very high for one person. Exhaustion was evident amongst those interviewed.

The concern surrounding access to support systems for personnel also relates to some of the complaints the CPOs had regarding the additional duties they have had to take on with the recording of victim impact statements. The VIS was a challenge also that arises with prosecutors and Regional Court magistrates. It is not only the underutilisation of these statements by the prosecution that has been raised as a concern but the difficulties in getting complainants to return to court at the sentencing stage to give their statements. This can cause difficulties for CPOs and CSOs who are trying to locate complainants and convince them of the benefits of returning to court to give victim impact statements. In terms of the process, it has been suggested by some of the CPOs and CSOs that a witness should be allowed to complete a VIS in the comfort of their own home and familiar surroundings. This would ensure that they are giving a statement under conditions that are conducive to eliciting a true impact statement that is authentic and not influenced by the intimidating nature of court settings. To quote one CPO at length:

> There's this thing that has been introduced, the victim impact statement. At times when they are supposed to, like after testifying, like, maybe, those that are ready… in those cases that are ready to, for trial. I'll prepare them and they will go to court, and then later the prosecutor will indicate that I need to do the victim impact statement, only to find that when they come in here on that day that they're in court, they will tell you that they are not ready to do the victim impact statement, rather I'll come some other time to do it […] So, I

> would ask, like, if we could give witnesses the... we can allow them to do their victim impact statement at home. But we were told that it's not supposed to be like that, they have to come in the office to do it. So, only to find that when they come, there is no one to sign for their witness fee, remember they are not called by the court, they only came because of their choice, because they want to do their victim impact statement? At times they will tell you that, "I have no money to go back home with." So, because they came to my office, and I'm the one who, like, assisted them, I will give them something for transport. That's the challenge. [Court Preparation Officer]

The issue regarding transportation and food for witnesses came up in all of the interviews with the CPOs and CSOs. According to the MATTSO (2013) regulations, feeding schemes are recommended for child witnesses. Subsequent reports to the DoJ&CD by UNICEF [64] have stated the importance of child witnesses having food to be able to concentrate fully during their court appearance. As studies have shown, if a child is hungry, their concentration is affected and they may either not be able to testify or not be able to testify to their fullest capabilities. [65] Two of the CPOs interviewed explained that there is some confusion amongst the CPOs and the intermediaries as to whose responsibility it is to ensure that child witnesses or their guardians receive witness fees and purchase food for the child. The DoJ&CD stating in their 2015-2016 Annual Report that it was the role of the intermediary. The report states that, "The task of ensuring the early provision of witness fees to children must be allocated to the court intermediaries, who must oversee the purchase of the food and the feeding of the child, as it has been found that some parents/guardians use this money to buy groceries". [66] The lack of a feeding scheme and transportation for complainants and witnesses at courts is a serious impediment to their participation in the process and acts as a form of secondary victimisation.

Training

When it came to the CPOs and CSOs needs in terms of their skills with preparing witnesses, they all indicated that they had received specialised training on sexual offences and intensive advanced training in dealing with child witnesses. Overall, the feedback was that this training had been sufficient and they all had a good knowledge of the way to prepare a witness.

There were a couple of areas where they indicated they would like additional training or refresher courses. In terms of refresher courses, the CPOs and CSOs indicated they would appreciate a refresher on the SORMA of 2007 and more so the practical application of the law through relevant case studies. In addition, they said that it was important that they receive continuous training on child development and child witness preparation, with a specific emphasis on children with intellectual and psychosocial disabilities, as well as with adults with impaired mental capacities. As one interviewee explained, "What is always a bit of a problem was people with mental disabilities, because even the intermediaries, they were forever asking if they can be sent for training just to be empowered as to how to deal with people with mental disability." One of the CPOs also indicated she would like to have training on sign language. Overall the issue of communicating with those witnesses who cannot speak or hear was pointed to as being an issue at times at the courts, as the services of sign language or experts in non-verbal communication were often not available.

During our discussion with the interviewees, the issue of training gave way to conversations on career prospects and skills development. Sixty percent of the CPOs and CSOs interviewed explained that they did not have sufficient opportunities to advance in their careers. In addition, the same interviewees were unsure how to add to their qualifications and skills to move up in their field or to move onto other areas within the court system where their skills could be used. One of the CPOs expressed the desire to receive training on advanced counselling skills and how to assist complainants with trauma after the witness has testified in a long-term setting. Another CPO interviewed indicated that she would like to extend her job to allow her to conduct home visits with witnesses and check in on them after the case has been finalised

References

64 Department of Justice and Constitutional Development, (2016) *Annual Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa. Page.58-59

65 Ibid.

66 Op. cit. Page 35

(i.e. providing ongoing counselling and support as a follow-up service, if needed). However, they explained that it was not possible given the lack of capacity at the courts in terms of human resources and the caseload to CPOs ratio.

The key indicator that one looks to when examining the role of the CPO and the CSO is the 'readiness' of the witness to testify and appear in court. A focus on measuring the amount of time a CPO spends with a client to reach that level of 'readiness' needed to testify confidently tells us very little about the nature of the service being provided and its impact on attaining successful case outcomes and increasing convictions. The CPOs explained that for them, success is measured in the survivor's ability to testify confidently and with courage so that their story can be told and heard, whether it ends in a conviction or not. The quotes and challenges outlined above, illustrate that counting and comparing the hours spent preparing the witness by CPOs is practically impossible unless you can compare cases of exact natures. The cases would have to have the exact same types of crimes, number of witnesses, if it is a child, and adult, intellectually disabled person and so on. The time needed to prepare a witness to testify varies greatly from case to case and it follows that the more time spent in preparation, the greater the confidence of the witness to testify. The lack of time for consultations coupled with human resource shortages could actually delay the cases further, in that 'weak witnesses' who are unprepared to testify can cause further delays further into the trial process. Thus, more time spent in preparation is important. Performances should be measured on the number of clients that felt adequately prepared before arriving in court rather than those cases that were finalised in nine months with a swift conviction.

Recommendations

When we asked the CPOs and CSOs what their recommendations were to improve case outcomes for sexual offences survivors the responses were varied. However, the dominant response was to make more counselling available to complainants before and after the trial, with a strong emphasis on long-term counselling. In terms of their own positions, they recommended more time for consultations with complainants and the opportunity to meet with witnesses multiple times prior to testifying and then again after the case has been finalised. One CPO suggested that it would be beneficial if they were allowed to get some survivors to prepare a video or audio explaining their experience of testifying in court. This could be shown to witnesses who might relate to someone of their age, gender or race who has been through the process. The respondent explained that:

> It is so important … those are the children that are going to come back and tell their stories, the children that have testified, which will have a positive impact for others to say "listen I am holding a torch today I walked that walk and look where I am I made something of myself, you can do it too", like some kind of an encouragement for the others but now it's not there.

This seems like a very good suggestion and would allow the witnesses to see the process through the eyes of a peer, who could encourage them to testify. Another key recommendation was the need not only for more female court preparation officers, but particularly female prosecutors who are specialised in sexual offences. As one CPO explained:

> Sometimes we wish that cases would be dealt with by female prosecutors? Because you would see how vulnerable, or how traumatised the witness is, and you would wish, as a court prep officer, that it may be assigned to a female prosecutor, only to find that it's a male. And at times, you know how others are? Like, I'll be worried? Like sometimes I would, I wish I could just go to my SPP and say, "But why can't you allocate this case to the female prosecutor, because it seems as if they would understand what she's going through […] So there was no female prosecutor, unfortunately, they were all male prosecutors, and all are trained, but, you know, the complainants said, "I don't feel free telling the prosecutor the worst part." She's an African woman who was raised not to tell, like to talk anyhow in front of males, so she thought that having to go testify, like being questioned by a male prosecutor, it was something else. Like, remember, it was a consultation, but she was having all this thing that, "You know what, I can't do it because he's a male." So, those are the challenges that I most of the times experience.

Our recommendations for CPOs and CSOs based on our analysis of their interviews and observations are as follows:

(i) Training on preparing children and adults with intellectual and psychosocial disabilities. In addition to the theoretical issues, the CPOs and CSOs expressed a desire to have their training methodology adjusted to focus more on the practical application of knowledge and examples of cases where best practices were implemented in a court preparation setting.

(ii) A clear distinction has to be made between the roles of the CPOs employed by the NPA and the CSOs (and friends of the court) appointed at courts by NGOs. During our field observations, we noted that there seems to be tension between the NGO organisations and the NPA appointed persons providing court preparation services. One of the NPA CPOs felt that they prepare witnesses that are referred through NGO-related channels in addition to those that come through NPA court preparation services. There is a sense amongst the CSOs that CPOS are taken more seriously by prosecutors and Regional Court magistrates as they are NPA employed and perhaps 'more adequately' trained than those from NGOs. There is a lot of confusion even amongst court managers, Regional Court magistrates, TCC staff and other stakeholders as to who employs CPOs and what the differences are between their role and those provided by NGO support officers.

(iii) It is recommended that the court preparation of witnesses only be conducted by NPA-appointed CPOs for adults and children, which removes the confusion over who is responsible for the preparation of witnesses. The streamlining of CPOs from one body would ensure consistency and symmetry in terms of how they are trained, what skills they have and what their responsibilities are. It would assist not only the CPOs themselves, but make engagements with court support systems easier for all court actors including prosecutors and Regional Court magistrates. The duplication of resources between CPOs and CSOs would then be addressed. CSOs skills would be better utilised for post-court follow-ups and continued care for the witnesses after they have had their cases finalised or for continued support during postponements or long delays in cases.

(iv) CPOs should be trained in sign language and the skill necessary to communicate with those who cannot communicate clearly. This is particularly important when it comes to victim impact statements where complainants are unable to write or communicate their story themselves, exceptions should be made in such cases to allow the CPOs and CSOs to assist the witness with compiling their impact statement.

4.5 The Intermediaries

In line with the SORMA of 2007, the SOCs make intermediaries available to child witnesses, adults with the mental capacity of a child or with intellectual disabilities. During the fieldwork we interviewed intermediaries and intermediary managers at the courts. In one pilot site, there was one intermediary who travelled between two courts, seeing child sexual offences survivors at one court and assisting with adults who had intellectual disabilities at the other court. The role of the intermediaries has been managed by the DoJ&CD who are responsible for the training and appointment of intermediaries at the courts.

SOCs and Specialisations

When asked for their opinion on the role out of sexual offences courts and their experiences of working in a dedicated sexual offences court with specialised staff, the intermediaries overall were positive about the SOCs and their potential for improving case outcomes for sexual offences survivors. The intermediaries explained that it was a better experience for the complainant when the prosecutor and magistrate presiding over the case had specialised knowledge and understood the needs of the complainant, and most importantly the law. The caseload for intermediaries at the SOCs was like that of CPOs and CSOs, in that they had between 10-15 cases a week. However, given that child sexual offences matters tend to take place in the mornings, and try not to proceed too long throughout the day, many of the intermediaries explained that they often spent afternoons doing administration and assisting the court in other ways if they were not busy with cases.

Once again, when questioned as to the content of the MATTSO (2013) report and the SOC model, none of the intermediaries had read the report or were aware of what it was referring to. Moreover, when we asked if they had had training on the SORMA of 2007, they also confirmed that they had been taken through the law but did not understand how the SOCs related to the 2007 legislation in terms of the recommendations from the MATTSO report. The one element of the SORMA

that they were most familiar with was the importance of the role of the intermediary in assisting child witnesses and those with intellectual disabilities with testifying and telling their story in court. The intermediaries were very aware of the regulations regarding the use of child-friendly rooms, CCTV facilities and the way to assist the child whilst testifying. The only aspect of the SOCs that they were critical of was the lack of debriefing or emotional support for the intermediaries given that they primarily deal with sexual offences cases and do not have the option to rotate to have a break from sexual offences cases. They did explain that they had had group debriefing sessions; however, they explained that they generally prefer individual debriefing.

Challenges

The main challenge for intermediaries at the courts was like that of the CPOs: that there were too few of them and not enough intermediaries who could speak foreign languages or were able to sign. The lack of intermediaries is an important issue and it is something that was mentioned by prosecutors, Regional Court magistrates and CPOs. As one prosecutor explained:

> Other problems that I have encountered are our intermediaries, you requisition them, you book them for the day and you just get a call, well, there's no intermediary. There are not enough intermediaries, because I don't know if you're familiar, most of the intermediaries that were working here was from [...] and they're now permanently employed intermediaries from Justice, but there's only a certain number, so for instance, for isiZulu there will be only two intermediaries that must cater for the entire Soweto and for Johannesburg and other courts, so that causes a lot of also frustration on the part of the prosecution and the witnesses. [Prosecutor]

One magistrate explained that many of his cases are postponed due to the lack of intermediaries as they cannot proceed with a child witness without them:

> You see, the prosecutors would know the problems they experience but we know in court that there is no intermediary available. So, this is something they need to deal with themselves. Or there is no language. The prosecutors will make arrangement for that, I know what I would put in place if I was a prosecutor but unfortunately there is nothing I can do in court. Previously I've refused matters because there was no intermediary. So, I don't know whether the prosecutors are the problem or the intermediary. [Regional Court Magistrate]

During one of our site visits, one of the trials that we were observing had to be postponed for the third time due to the non-availability of an intermediary who could speak Swahili. The lack of intermediaries is a daily challenge and one that impacts the court role, not to mention the time it takes for a case to finalise. Given that prosecutors and case managers interviewed indicated that almost 85% of cases at the pilot sites involve child complainants (as illustrated on page 112 of this report) it stands then that the number of intermediaries in a court should also reflect the caseload. However, this is not the reality in the courts we visited. Whilst the SOCs all have one or two dedicated intermediaries, at one court the intermediaries rotate between two courts due to the shortage at a nearby court. At another pilot site, the intermediaries travelled between two courts on a weekly basis. When asked whether they felt that there were enough intermediaries in the SOCs one answered, "No, there are definitely not enough."

Moreover, in some of the courts, there is no intermediary-manager, leaving the intermediaries to report to the court manager who is responsible for delegating tasks and cases to the intermediaries. This has led to feelings of mismanagement and inadequacy for some intermediaries who feel they do not have sufficient oversight in their courts and are not supported enough by their departments. When asked about a court intermediary-manager or having a support system at the court,

one intermediary replied, "We are street kids, I mean we can call ourselves that, you find your way, we are motherless children. We were born but then must just fend for ourselves [...] without on an ordinary day having somebody that you can bounce off things with because we really get the work that we do it is very emotionally draining."

The hierarchy of departments is felt at every level within the system, more so by intermediaries and interpreters who are often side-lined in the discussions. As an intermediary explained:

> Most of the time when we sit as intermediaries from all different courts when we go through training we complain about the same thing that the acknowledgment from the other stakeholders is not there we are being undermined most of the time. Prosecutors will feel that they have... they are the big dogs if I may call them that. At the end of the day we are all part of a team and we are all for this child so it is nice to have somebody who gives you that space and in my court my Prosecutor he does that and it is very important because it makes you feel wow, I'm part of something". [Intermediary]

The lack of management or oversight can lead to a loss of motivation. Given that the job of the intermediary can be mentally and emotionally exhausting, it is important to have leadership within the court to support the intermediaries. Thus, motivation, or a lack of it, becomes a key issue when it comes to career advancement for intermediaries. Despite being passionate about their jobs, some of the intermediaries expressed a sense of disillusionment and lack of motivation in relation to the future of their careers within the courts. As one explained:

> I also feel that with us ever since we started working [...] I want to climb the ladder I have entered this level, I have been on this level what is next. I want to be thriving towards something but right now there is nothing and the level of motivation sometimes it drops it is like it just exists it is a circle. [...] you have been here for so many years it is just one level we need some kind of ladder that you can look forward to and developmentally wise you want to work towards that you want to [...] but here you just exist, you are numb you are not being debriefed you just a zombie and that's like a very sad life so we need to move out of that and you can tell we have never been giving platforms because once we know we just go on and on. [Intermediary]

The role of the intermediary is restrictive and they are not allowed to consult or advise the witnesses or interact with the prosecutor or magistrate. Their role is to interpret for the child and act as a support for them in the testifying room. The restrictive nature of their position was something that the intermediaries felt also had an impact on motivation and career prospects. On those days when child cases are postponed or delayed, the intermediaries explained that they would like to be able to do other tasks within the court rather than just administration; they specifically suggested assisting with counselling or court preparation.

The issue regarding the language of the law and wanting to learn more about the legal process also arose. One intermediary explained that she felt that understanding the language used by the prosecutors, attorneys and Regional Court magistrates would empower her to assist sexual offences complainants and would alleviate the feeling of being marginalised by other parts of the criminal justice system. The respondent explained that the restrictions they have can be frustrating. Such frustrations arise particularly when they feel that a child is being misunderstood in court, they wish to address the court or a child's body language needs to be explained to the court. They feel that their role in the process is perhaps restricted because they do not have a legal background or have the required accreditation to participate more actively in court. Equally, when intermediaries feel that defence attorneys or prosecutors are asking inappropriate questions to a child, they explained that they do not feel that they can voice their opinion or object. One of the intermediaries interviewed explained,

"they (the prosecutor and magistrate) don't know you are sitting there boiling in that chair, that you are crunching your teeth [...] when they ask the questions I will keep quiet."

Another key challenge was the ability to communicate in the vernacular with complainants, particularly foreign nationals. As one of the senior intermediaries explained:

> The challenge that we used to have in [courtroom name) was that some... intermediaries [...] would say they speak Sepedi, but yet when the child is supposed to come and they must assist the child in Sepedi, they would say, "Unfortunately, I speak Setswana." And then the case would be postponed based on that fact. [...] We used to have cases postponed a lot because intermediaries would say, "I speak Xhosa," only to find that he only knows Zulu, doesn't know Xhosa, and the child speaks Xhosa and the case cannot proceed. [Senior Intermediary]

Similar to the CPO interviewed, all the intermediaries interviewed also expressed that debriefing and lack of emotional or mental health support was a challenge for intermediaries. One intermediary explained that the trauma of her cases is compounded by the feeling of isolation and 'homelessness' of intermediaries in her court. The respondent went onto to state that this feeling was made worse by her not having a manager to confide in for support. The respondent explained that after taking some compassionate leave to get some counselling she returned and to cope and do her job, she switched off. She explained,

> You get numb and forget and you don't know what is coming and what is going because you are numb. But now, I had been away and when I can back I was fresh and it just felt so painful for me. This realisation just came splashing in my face to say who are we... who do we belong to does anyone even care you break down in courts there is no one there who are you going to run to there is no one you are going to run to and say listen today I had a difficulty with this (case). [Intermediary]

Training

The DoJ&CD has conducted extensive research on the skills development needs of intermediaries in 2016[67], which reported that overall the intermediaries felt they the primary additional training they required was on communication skills and language skills. They pointed to the following areas in terms of needs when it comes to additional training: (i) child communication; (ii) the role of the intermediary; (iii) communication with clients who have psychosocial or intellectual disabilities; (iv) debriefing and (v) advanced training on sexual offences. The intermediaries we interviewed also conveyed these issues. They indicated that they would like more advanced training on child witnesses and child development.

References

67 Department of Justice and Constitutional Development, 2015/2016 N.D. Annual Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Pretoria: Department of Justice and Constitutional Development, South Africa. Page.40

Concerning additional training one of the intermediaries answered:

> I would say just a brush through child development is important but because of the finances the budget constraints and the time constraint you really can't delve too much in depth with how you as a person because I mean you learn about yourself as well, you learn about self-awareness and you learn how to tackle this and how to see where the child's gaps are. You get to see things that other people will not see because of the background that we have. So, I honestly feel that each time we need more of that, more of knowing and understanding each and every single child where they function, where they from, and how to approach them. [Intermediary]

In addition to child witness training the intermediaries also expressed more in-depth training on communicating with witnesses who have intellectual disabilities, both adults and children, and more importantly how to communicate with those children who are physically disabled and cannot verbalise. In these instances, sign language or some ways of communicating non-verbally would be beneficial. Every intermediary we interviewed expressed a desire to learn how to sign and other ways of communicating with those who cannot communicate clearly. As one of the intermediaries explained:

> I would say in terms of training wise they need to introduce as part of the training I don't know how it is going to work and how long it is going to be but sign language because I think we are suffering all courts everywhere are suffering with that regard because there is no court intermediary that qualifies you to need to improvise and take somebody else but who is not really an intermediary but because they can sign then you know... [Intermediary]

When we look at the specialised services at the SOCs, the role of the intermediary comes to mind immediately as being central to providing children and other vulnerable witnesses with the services they need to have as successful a case outcome as possible. Intermediaries are the vital link between vulnerable witnesses and the courts but the importance of their role is often overlooked. As highlighted in the evidence above, those intermediaries we spoke to felt that they do not 'belong' to the courts and that they are not utilised to their maximum abilities. Rather than focusing on how many hours are spent with vulnerable witnesses, the intermediaries offered alternative indicators and services that they can provide beyond assisting with testimonies, which should be considered by the DoJ&CD in their revision of their intermediary training and qualifications.[68] Success for these respondents is when a client can have their voice heard in court and could testify confidently through the intermediaries' assistance. This should be a focus of future indicators.

Recommendations

In terms of recommendations to improve case outcomes for sexual offences survivors, the intermediaries recommended that more intermediaries be appointed at the courts and that each court has a dedicated intermediary-manager. In addition to human resources, they recommended that infrastructure is upgraded or maintained in the child waiting rooms and intermediary rooms. In one court, the CCTV camera had been broken for "quite some time" and the intermediary had to bring the children into the back of the courtroom to identify the accused. Maintenance of CCTV and intermediary room

References

68 Department of Justice and Constitutional Development, (2016) *Annual eport on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa. Pages. 40-41

equipment was a major challenge at all the courts. In one of the courts, the child witness facilities had not been upgraded at all, the TV was broken, and toys were in pieces around the room. The intermediaries also recommended a maintenance plan and a budget for the replacement of equipment and toys in intermediaries' rooms.

In terms of training, they recommended that the training be more in-depth and practical in terms of case law on sexual offences and include better instruction on the 'language of the law', particularly regarding the medical language used in forensic evidence.

Our recommendations for intermediaries based on our analysis of interviews and observations at the courts are as follows:

(i) Intermediaries must have a dedicated intermediary manager that they can report to on a regular basis at each court. Intermediaries explained that they often feel side-lined and excluded from stakeholder meetings or case flow meetings, which are held to discuss issues to their court. Having a manager to would allow information about the conditions affecting intermediaries to be fed into case management meetings and other management level discussions at local and provincial levels.

(ii) Intermediaries should be trained in sign language and other non-verbal ways of communicating with children and adults with verbal difficulties and intellectual disabilities.

(iii) Intermediary waiting rooms should be comfortable for children and broken toys and whatever else is supplied to keep child witnesses entertained and occupied need to replace and/or maintained regularly.

(iv) Due to the very stressful nature of their jobs dealing with primarily child sexual offences, it is recommended that intermediaries have regular access to debriefing and counselling, both on an individual basis and accompanied by regular group meetings to discuss challenges and issues at their respective courts.

(v) All the intermediaries we interviewed agreed that the DoJ&CD should extend their services to older persons and a wider range of vulnerable witnesses' not just children.[69] In addition, they expressed a desire to acts as intermediaries in just in sexual offences cases but also homicide cases or any other violent crimes that involve traumatised vulnerable witnesses. This would not only maximise their skills but also the use of their time at court.

4.6 The Interpreters

Language interpretation is an essential support service for complainants at the pilot courts, particularly in those areas with high numbers of foreign nationals (as English is the official language of the court).[70] At the pilot sites, the interpreters were proficient in many local languages including isiZulu, isiXhosa, Sepedi, SiSwati, Tshivenda, isiNdebele and Setswana but could not communicate in other common languages spoken on the continent. None of the interpreters could communicate non-verbally through South African sign language or any other non-verbal methods (such as picture boards). The situation is worsened by the lack of availability of casual sign language interpreters in four of the five courts visited. They explained that when complainants speak languages such as Shona, Swahili, Sotho, French or Portuguese, they contract in casual interpreters to assist with those complainants. In the study sample, there was a mix of senior and junior interpreters.

References

69 The DoJ&CD annual report in 2016 stated that "It has been argued that ageing has the potential of reducing a person's mental ability to the level of a child. As a result intermediary services should be extended to older persons, where need arises. This matter is being considered by the Department" See Department of Justice and Constitutional Development, 2015/2016 *Annual Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa. Page. 32

70 In April 2017, the heads of the courts declared that English must be the official language of record in all courts in the Republic of South Africa, despite the Justice Department's language policy passed last year, which recognises three official languages nationally as well as the languages spoken regionally. For more details on this decision see http://www.timeslive.co.za/sundaytimes/stnews/2017/04/16/Afrikaans-sentenced-to-death-English-now-sole-official-court-language

Each court had a senior interpreter who worked with the court manager to assign interpreters to cases and organise for casual or temporary interpreters to be assigned when the need arose. The interpreters we interviewed were an evenly mixed group of men and women.

SOCs and Specialisations

When asked if they felt the SOCs and specialisation in sexual offences was important to improving case outcomes for complainants, all the interpreters agreed that a specialised understanding of the needs of sexual offences survivors was an important element to assist the complainants. As one respondent stated:

> I remember there was a stage where there were sexual offences courts designated yes hence you would find that there are only a few courts that have CCTV and the intermediary rooms. I agree with my colleague that all courts need to specialise, all courts need to do that in order to expose officials into that field, but it will be very fruitful if certain magistrates, prosecutors as well specialise because it is difficult to go there as an experienced interpreter and work with an inexperienced magistrate, you cannot be seen telling the magistrate how things are supposed to be done. [Senior Interpreter]

The interpreters felt closed courts and CCTV testifying was important and afforded the complainants dignity and the ability to testify in a supported and safe space. However, none of those interviewed were familiar with or had read the MATTSO report and did not understand what the SOC model was or how it came to be. Half of the interpreters interviewed did not know that their courts were 'dedicated' SOCs. This may be because most of the pilot courts operate as hybrid courts with only a few courtrooms 'dedicated' to sexual offences. All the interpreters agreed that prosecutors and Regional Court magistrates who were proficient in sexual offences issues made the cases more efficient. One interpreter manager who worked in the court for many years, shared that he saw an improvement in how the complainants were treated and supported, especially the children, because of the specialised SOCs services being offered. However, all the interpreters pointed to high caseloads as a challenge in the dedicated sexual offence courtrooms. Some respondents' understandings of what qualities make a good SOC interpreter rested on inaccurate stereotypes focused on women being more emotional than men are.

Both interpreters and other members of the court shared these sentiments. For example, one interpreter indicated that she is often sent to the SOCs "because I'm a woman so children are feeling safer with me." An interpreter manager agreed, saying, "Yes in court when we are dealing with this sexual offences court, I said I would love the interpreters to be women..." Rather than offering the complainants a choice, some respondents shared opinions that suggested that women or men are inherently better as sexual offences interpreters, based on essentialist understandings of gender. For example, one respondent shared that he felt women may become too emotionally involved in cases (more so than men may) and would therefore not be suitable interpreters, rather than focusing on the qualities that make a good interpreter - regardless of gender. Not all respondents shared this perspective. Another defined a good interpreter as follows: "What makes a good interpreter in a sexual offence is a person with a heart to be able to feel that were feelings of what has gone on with the victim be able to bring yourself down to a level of the victim because as an interpreter I expected not to just be a mouthpiece, but to emulate the level of the person for who you are interpreting."

Challenges

The main concern that arose in the conversations with interpreters was the lack of interpreters available at court, particularly for a broad range of languages, including South African sign language. Interpreters for additional languages are in short supply. The interpreters explained that sign language interpreters are particularly difficult to find and employ.

The red tape was another issue that arose at the courts. Interpreters used on a freelance basis had had to wait long periods for payment and consequently refused their services due to long waiting periods for payment. They would only come to court if they were prepaid or received cash on the same day.

The lack of emotional and psychosocial support available to interpreters in the form of debriefing and counselling was also a key problem. The interpreters also expressed that career development opportunities, such as in-service training and understanding how to achieve a promotion, were scarce. Resource limitations were shared, such as the lack of canteen facilities, missing toys in the child waiting areas, and no food or refreshments for those testifying.

Training

The interpreters reported that they had received training on the SORMA of 2007 and intensive training on interpreting for complainants, with an emphasis on children. The training included social contexts and sensitivities to complainants from vulnerable groups; however, they did not recall a specific training on LGBTI people or adults with intellectual or psychosocial disabilities. The interpreters requested that they receive training on how to interpret for these complainants in future. Beyond the interpreters, most stakeholders, including prosecutors and Regional Court magistrates, identified sexual offences training as important for interpreters. As one high-level stakeholder recalled, "many years ago just after I started in the Regional Court because I came from Justice College, I bullied them into having some course on sexual offences for interpreters as well because I saw that there is need for that."

One prosecutor interviewed explained that all interpreters working in the SOCs should have the same level of knowledge of the law to correctly interpret the law and its consequences for the complainant and the accused. He went on to say that, "the interpreters are there but they also need training. [...] we're getting there slowly. Ja, they must just give us a broad spectrum of language interpreters who understand the legislation." Interpreters agreed that they need more training on interpreting laws specifically. In addition to improving their work, they felt that training would build their confidence and allow them to be perceived as more competent when in court. Interpreters reported feeling that they are currently looked down upon by Regional Court magistrates and prosecutors due to their lack of knowledge and qualifications. One interpreter manager explained that interpretation of expert testimony can be particularly difficult and confusing for interpreters who work to give as accurate interpretations as possible. He explained:

> The challenges are with the expert evidence there is so much of expert evidence with the sexual offences courts so much of it is based on experts because it would not more of the witnesses that would come and give evidence would not be often the not lay people it would be like expert people, and you will find doctors, specialists, psychiatrists and this and that who would just flow in the evidence in giving evidence because they have dealt with these types of things and so many times so they just flow. So, for you with an interpreter it is either if you find the challenge or you find that you do not understand and afford what the speaker said, bring that across to the attention of the bench that I am unable to follow one of the speakers other than letting the interpreter... you interpret something that you don't understand. [Senior Interpreter]

Interpreters at one court found a solution - to gather the interpreters in the mornings when they have no cases and share knowledge among themselves to improve their understanding of the law and expert evidence.

As one interpreter explained:

> We have classes in the morning. We have decided as interpreters that we should have classes in the morning so that we can teach one another of these legal which are called terms because we deal with them daily. That is only when I got to know some of these legal terms that I did not know before and how to interpret them, but I did not go to a course or received any training of that sort except the morning classes that we have in the morning. That was also covered in the advanced sexual offences course that was phased out. [Interpreter]

According to many interpreters, the advanced sexual offences training previously offered by Justice College was now unavailable, despite their requests to have access to the training. When asked about why they felt the course had been phased out they said, "I don't know, they decided, I think it is because of budget to, to put all these courses under one umbrella (of general intermediary training), the specialisation, that is sexual offences, ballistics all those cases where you would find experts coming to court under one umbrella and they said." An opportunity to reintroduce the advanced training could be to incorporate it into a training module for junior interpreters. This would address the desire raised by some junior interpreters who wished to have support in career advancement. The junior interpreters expressed feeling unmotivated about promotion prospect due to challenges such as delays in bursaries to continue their formal education. As with interpretation training, opportunities to study for a diploma were perceived to gain respect from colleagues and ultimately qualify for promotion. One interpreter said:

> The only problem that I have, is that like for example in sexual offences court, and I have a problem with recognition because I don't think that we are being recognised enough. Firstly, they call me an entry-level interpreter, with my experience. I have got ten years' experience with the Department and I am doing all these cases. They will advertise a senior post and they will want a Diploma for that course, while I am in court now, and I have no Diploma, but I am doing those cases". [Interpreter]

When it comes to the impact of the interpretation services on turnaround times of sexual offences cases, the primary bottleneck is the shortage of available foreign language interpreters and sign language interpreters. Training all interpreters on sign language and other non-verbal methods of communication would greatly assist in those cases that are delayed due to these resource limitations.

Recommendations

Interpreters recommended increased access to counselling and support for complainants, both at the courts after testifying and long term. The interpreters shared that they do not have any idea what happens to a case once it has been finalised and that they would like a system whereby they can get feedback on the outcomes of cases with which they had assisted. In addition, they recommended that facilities at the courts be upgraded and maintained properly for both the comfort of complainants and to enable interpreters to do their jobs efficiently. Electricity outages, broken CCTVs, lack of office space, administrative capacity issues and lack of refreshments or entertainment for children at the courts were cited as challenges.

Our recommendations for interpreters based on analysis of interviews and observations are as follows:

(i) Reintroduction of the advanced sexual offences course for interpreters that is SAQA accredited and can contribute towards a promotion from junior to a senior interpreter.

(ii) Training interpreters in sign language and nonverbal ways of communicating with complainants who have intellectual or psychosocial disabilities

(iii) Debriefing support and counselling for those dealing with sexual offences cases or any traumatic cases

(iv) Rotation of interpreters from sexual offences courtrooms to other courts to allow them to get an emotional and mental break from traumatising cases

(v) In-depth training on the language and methods used by expert witnesses with an emphasis on forensic evidence and child development.

(vi) Inclusion of gender in all court personnel training, including qualities needed for good interpretation and how gender is or is not relevant during interpretation.

4.7 The Thuthuzela Care Centre Staff

On behalf of the TCC, we interviewed forensic doctors and nurses, social workers, NPA appointed site co-ordinators, victim assistance officers and case managers. We asked the TCC staff members about their interactions with the SOC and their understanding of the SOC model and regulations. The interviews also covered challenges with the justice system and how they felt actors in the courts and the wider justice system could improve the case outcomes of sexual offences survivors. In order to differentiate between the different governmental departments, who have unique perspectives or vantage points on the system, DoH, NPA and psychosocial TCC staff's responses are reported separately.

TCC DoH Staff

TCC DoH interviews included forensic doctors and nurses at the sites and high-level national stakeholders from the DoH. We asked them to describe their knowledge of SORMA of 2007, their experiences of operating within the TCCs and most importantly their interactions with SOCs, with an emphasis on bottlenecks, delays and how their roles contribute towards case outcomes for sexual offences survivors.

SOCs and Specialisations

Of all those interviewed from DoH, only one national level stakeholder had read the MATTSO report and understood the SORMA of 2007 legislative requirements for the re-establishment of SOCs. Whilst the forensic doctors and nurses have been trained in the new definitions of rape in the SORMA of 2007, they were not familiar with the SOC modelas outlined in MATTSO or the reasons why it is deemed to be a good model to increase convictions rates and improve case outcomes for sexual offences survivors. As one respondent commented, in relation to the effectiveness of specialised sexual offences courts:

> They do make a difference, really in terms of convictions with having NGOs at the courts, having court preparation officers, having forensic nurses. For me, the biggest thing is, just if you have dedicated prosecutors, you halfway there but then you need to have somebody... looking after victims...but even if it is a control prosecutor, just, doesn't necessarily have to be a dedicated case manager for the TCCs, because, I mean... for space, that is what you want to have. [Senior Forensic Doctor]

In addition, it was explained that for first responders it is critical that TCCs are operational to provide victims with immediate help and access to forensic evidence collection, medical assistance and essential psychosocial assistance immediately. "It helps (TCCs), in terms, I think with getting quicker to the courts and making sure stuff is done but in terms of victims, where I think the TCCs are still very necessary is, referrals, to ensure that victims are getting assistance and counselling." It was also maintained that forensic nurses and doctors are not taken seriously enough at a national level, considering their important role in improving case outcomes for sexual offence survivors: "The Department of Health needs to understand that these doctors play a meaningful role. To call us 'rape doctors,' you know, I mean, what's that?" " Another respondent added:

> One of the big barriers that we've had, and I don't think it's unique to this province, is where the senior ones, the supervisors, the nurse managers and the people in the hierarchical positions, whether it's in the provincial office, district office or in an institution in charge of the nurses they are the ones that need a change of mind-set. They are the ones that need to understand what this is all about. That we're dealing with traumatised patients, we're dealing with examinations here that may take one to two hours. [Senior Forensic Doctor]

Overall, respondents expressed the need for greater understanding from the DoH about the importance of and challenges in sexual offences work.

Challenges

The dire need for more sexual offences specialised forensic staff, particularly in emergency rooms and TCCs, was the main challenge reported. One TCC did not have a forensic doctor and explained that as they do not offer a 24-hour service some victims should go to casualty. Here they are examined by General Practitioners (GPs) who are not properly trained or they wait in casualty until the morning when the TCC opens, which leads to compromised evidence. Another doctor explained:

> I see two per day, on an average if I'm seeing sixty in a month and I'm the only one doctor and the one forensic sister who is the facility manager. Therefore, we brought this matter up quite a few times at the meetings, but you know what, sometimes it's best not to argue. Be quiet. Do as much as you can. Finish your shift and go. So, that's how it works, sometimes, yes. So, manageable. Difficult, stressful, but at the end of the day you do for the patients and you go. That's just the end of it. [TCC Forensic doctor]

This brings up another key challenge - the lack of emotional and psychosocial support for forensic doctors and nurses at the TCCs, in the form of access to regular debriefing or counselling support. Whilst the social workers and the NGO staff at the TCCs all explained that their departments and employers provide regular access to debriefing, the doctors and nurses we interviewed had not had the opportunity to access such services.

In addition, respondents highlighted how testifying in court further complicates staffing shortages. Testifying can take a day or more and during this time the TCC is left without a forensic doctor or nurse. Considering the shortage of forensic nurses and doctors at the TCCs, this creates a dilemma as nurses and doctors must choose between testifying and ensuring the TCC is staffed. All the TCC forensic staff interviewed expressed an apprehension at testifying in court. The reasons ranged from a lack of understanding of the legal processes needed for them to testify confidently to being afraid of being recognised by an accused or friends of the accused in court, which could lead to their personal safety being compromised outside of the court. As one respondent explained when recounting his experience of testifying:

> Initially I was afraid to go to court like anybody else [...] The first I'd been to court and the defence attorneys want to give you the bullying look [...] so he stood up and he looked at me in the eye and his hands on the desk and he asked me some question that I felt was ridiculous. So, I looked at the judge and said, "your Honour, your Worship, I refuse to answer that question" and I was acutely embarrassed when the magistrate said to me, "Doctor, the court will decide which questions you shall answer and which you shall not answer". [Senior Forensic Doctor]

This respondent, however, went on to explain that they persevered despite the intimidation he initially felt in court. It was with experience that one is comfortable with testifying:

> So, over the years I tried as far as possible to learn as much from a practical point of view and the only way you're going to learn is to go into the witness box and be there and give evidence, and to face the music and you trip and you fall and you learn about how these things work. So that's practical. And then to do lots of reading and attend courses etcetera. So, I'm not phased today, but that comes with the number of years. But doctors want to do the work, want to earn the money, but they don't want the nuisance of going to court, and it can't be. [Senior Forensic Doctor]

It was emphasised that training and preparation for forensic staff members must be practical and experiential, despite the strain on resources this can cause. The doctor on to explain, "We've discussed the matter and we found that one of the important aspects of the training should be a mock trial, where these nurses are put through that process as well. Therefore, we need to revisit that. We need to train, do proper training, mock trial, etcetera until these nurses feel confident."

Prosecutors and Regional Court magistrates pointed to delays with forensic evidence and the problems with insufficient or incorrect collection of forensic evidence as challenges with forensic services. They connected these challenges with delaying cases and leading to withdrawn or SOR (struck off the roll) cases. The prosecutors expressed concern about the lengthy process of moving evidence across the country to a central laboratory and how the many people and processes involved in this movement can compromise evidence. One prosecutor recounted a story of SAPS officers transporting rape kits in a van to Pretoria from Durban, which led to compromised DNA. The evidence was discounted in court. One forensic doctor stated that as a result, "our rape kits now are sent to … well, sent first to Toti for a preliminary test, and if they find anything there then they re-package it and send it to Pretoria. But all of the DNA profiles are sent to Cape Town. You've got to wrap your head around that one."

The access to DNA evidence is vital to improving case outcomes and facilitating more convictions. As one of the Regional Court magistrates explained, "When you deal with a child, although they say we must be cautious, we do exercise that but sometimes you don't get the DNA results and this is important. If we could get DNA results from each case you are dealing with, it would make our work very easy. The prosecutors ask for it but sometimes there are no results and sometimes they can't be analysed because, you know… there is hardly any evidence or it's the delay in obtaining the results." One senior prosecutor stated that the central problem for improving case outcomes for survivors was DNA evidence and inadequate services and resources at forensic laboratories. The respondent had very detailed issues with forensic laboratories and the ways in which forensic evidence is managed, therefore it is important to quote an SPP at length to highlight the specific issues that are challenging for prosecutors. The respondent explained that:

> The problem is that our state forensic laboratories do not have the facilities to test for date rape drugs. Now, when this was brought to my attention it was kind of minor irritation until I saw another case, where the, now I'm an ardent proponent of not going to private medical facilities for examinations because I believe the expertise is in the State and I've had some very bad exam… bad situations from private hospitals, but this specific girl went to a private hospital. They did a simple urine test and found that her barbiturate level was sky high, and she said, "I didn't have that much to drink, but I was completely gone out of it, and I couldn't move my body but I was awake." Clearly a date rape, and they could do it on a simple urine test! State labs cannot do it. So, that's my one problem because we get enough cases to justify them doing it. [Senior Public Prosecutor]

In addition to this, an SPP had problems with the handling of evidence and the way it is obtained:

> Secondly, this whole DNA thing with the buccal swabs they do now. It's a nightmare just waiting to happen. Because what happens is a buccal swab is taken and then everyone, all of them in the country are sent to the Western Cape for analysis. Crazy, but anyway. The victim's samples are sent to [indistinct 1:04:12] for preliminary analysis. At some point, if the DNA on the buccal swab, if they find male DNA on the victim's swabs, they get sent to [indistinct 1:04:25]. At some point they meet up, I do not know how and where, and we have not yet had a DNA result of any sort on a buccal swab, firstly. Secondly, what the police have told us is that the thing that they use to scrape the cells on the epithelial cells in the mouth, not disintegrates but degenerates... The DNA basically gets damaged, if it doesn't get done within a certain number of weeks or months. So, you've taken the swabs, you're sending them all the way to the Western Cape, and then they're saying, "No, but this degenerates, we need another one." Then they come back and take another DNA (sample) and then you don't know how long it is going to take. So, that is a disaster. It just is bad, and I don't know what the solution is. Because [...] if we had more positive DNA we would have higher conviction rates, and DNA takes a minimum of 8 months. That's assuming everything was done properly. I know the DNA Act and the DNA Project and all of them are very positive about it, but I promise you, how the forensic science lab could have signed on and said they could get results within 12 weeks, I have no idea, because it doesn't happen. Simply doesn't happen. So, more DNA labs would be a great help. [Senior Public Prosecutor].

This quote above demonstrates the impact that DNA processing delays have on the turnaround times of sexual offences cases. Moreover, if a case has more DNA and forensic evidence to process than another does, this implies that the evidence for that case will take a longer time to present at court. Therefore, despite prosecutorial efficiency or the complainants' trial readiness, the case can still be delayed significantly due to the DNA processing backlog. This again highlights the need to look at the more qualitative and systemic factors, as presented above, which influence turnaround times that are not within the control of the court or justice personnel.

Training

Concerning training, the main issue that arose from TCC DoH staff was more training on communicating with children and being sensitised to dealing with children in child sexual offences cases. As the doctors and nurses explained, they try to remain clinical about their interactions with patients and do not get emotionally involved with them; however, the do need to be able to get details from them regarding the offence and make them feel safe and comfortable whilst being examined. Given that it is a lengthy and prolonged process, it is also important that the rooms are comfortable and that staff are adequately trained in the use of equipment and facilities, which will make the experience more efficient for the patient.

There have been complaints that important COP scope equipment is not being utilised properly and that in those situations where forensic nurses are not available nursing staff are using the equipment incorrectly and leading to compromised evidence or insufficient evidence collection. As one doctor explained, "We have a COP scope at this hospital. The site coordinator will explain to you it hasn't been used. I don't know why. There was a doctor that was there who has left now, but it hasn't been put to use." In terms of other court staff, they have also questioned the expertise of some of the forensic staff that fill out J88 forms and whether the training they receive is sufficient given the gravity of the cases they are dealing with and the importance of forensic evidence in sexual offences cases. As one prosecutor stated, it is an issue that is used often by defence attorneys and use to exploit and discredit their expert testimonies:

> The doctors and the nurses and I'm not sure about the nurses, the lawyers – no one has ever taken this on appeal but the nursing staff – ten days of forensic investigation and then they come and testify their expertise, is that one that you can rely on. I'm afraid they're going to see a lot of cases being set aside on the basis of that because the nursing sisters – one has got general nursing [inaudible 0:30:14] and then ten days of forensic investigation and examining these children. If I was a lawyer I would challenge that, you understand what I mean? [Prosecutor]

Further to the challenges noted above, those interviewed indicated that they would like more practical training on testifying in court and more opportunities to observe at court prior to testimonies, which would necessitate replacement staff for them for them to observe at courts and indeed testify more often when needed. As one forensic nurse commented, "While we are still on that please maybe one of the things to recommend maybe in preparation, it is part and parcel of the very training that we do preparing somebody for court. But during the preparation I think it is better when a person has attended the courts do that court preparation, theoretically, it is advisable maybe try or how, to take that person, actually taking him to court to see actually see how a case is run."

When discussing the need for specialised training in testifying and giving expert evidence, the senior forensic doctor we interviewed explained that much of the training he has assisted in devising was informed by his own experiences of testifying in court. He explained:

> I realised that you must go to court, you have to give expert … it's the job half done if you just examine, write an excellent report, but to write at the bottom 'not available' or 'will not go to court'. So, over the years I tried as far as possible to learn as much from a practical point of view and the only way you're going to learn is to go into the witness box and be there and give evidence, and to face the music and you trip and you fall, and you learn about how these things work. […] I think whether it's a nurse or a doctor you must understand that you're there as a patient advocate, you've examined this patient, you have the potential, it might be very low, 20% or 10% of cases we call to court, but the potential is there and unfortunately what people have to realise is that the cases that they think they may not be called to court are the ones that they will be called to court. So, the idea is to do all cases properly. [Senior Forensic Doctor]

Regarding recommendation from other court actors, they commented on the way forensic staff address sexual offences survivors at the TCCs and medical facilities. Specifically, they recommended the forensic staff have some form of etiquette training or social context training about being respectful of sexual offence survivors and being mindful of the specific needs for various vulnerable groups. The actors recounted stories of maltreatment of sex workers by forensic nurses at some of the TCCs and a lack of knowledge regarding LGBTI survivor's needs and circumstances.

TCC NPA Staff

Personnel at the TCCs that are employed by the NPA include the case managers, victim assistance officers (hereafter referred to as VAOs) and site co-ordinators (hereafter referred to as SCs). For the purposes of this report, we have included the case managers within the section on the prosecution and are only reporting on those SCs and VAOs we interviewed at the pilot sites within this section. It is important to note that, at the time of the fieldwork, none of the three TCCs included in the research had a full complement of NPA appointed staff as outlined in the TCC protocol [71] and illustrated in the diagram below.

Figure 16: NPA staff at the TCCs associated with the pilot court sites at the time of fieldwork.

In TCC 1 there was an SC and case manager but no VAO; in TCC 2 there was a site coordinator and VAO but no dedicated case manager; and in TCC 3 there was no site coordinator or case manager, only a VAO who was supported by a case manager from another TCC cluster (since the fieldwork was conducted TCC 3 has received a case manager). [72]

SOCs and Specialisations

The TCCs are governed by a series of protocols that govern service delivery at the TCCs with various directives informing the operation of the TCCs from the many different justice cluster departments that operate with the TCC, including the DoH, the SAPS and DSD. However, with regard to the SOC model, only 10% of those interviewed had read the MATTSO report and furthermore that 10% were not familiar with the full range of recommendations that were made in it in relation to the reestablishment of the SOCs and its relationship with TCCs. [73] The TCCs, through their treatment and care of sexual offence survivors, are optimally placed to assist with getting cases to court and walking the survivor through the various processes involved with assisting them their cases. In terms of the link between the TCCs and the courts, one site co-ordinator was acutely aware of the need to cooperate closely with the SOCs. Apart from the specialised services the courts provide, the link between the court personnel and TCC staff is an essential component of being able to provide feedback to clients and thus assist with a speedy and successful outcome. As the site co-ordinator from one of the TCCs visited explained, their role is to "ensure that the cycle time of finalisation of cases is reduced" and that this particular TCC "had a finalisation target of between six to nine months."

References

71 For a full outline of the TCC blueprint see

72 https://www.npa.gov.za/sites/default/files/resources/public_awareness/TCC_brochure_august_2009.pdf. This data is similar to the findings of the latest TCC compliance audit conducted by the Foundation for Professional Development. The FPD report in their recommendations revealed that the NPA were in the process of filling all vacant posts at the TCC at the time of the writing of this report, therefore the staff compliment may have changed since this fieldwork was gathered. For more details on the FPD report findings see Foundation for Professional Development (2016) Thuthuzela Care Centre Compliance Audit and Gap Analysis 2016. Foundation for Professional Development. Pages. 69-70.

73 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, 2013. Report On The Re-Establishment Of Sexual Offences Courts. Department of Justice and Constitutional Development, South Africa. Pages. 31-33

The SC went on to explain that:

> The main objective (of the TCC) is to ensure that our victims are turned into survivors and by that I intend to say that, we are trying to empower them and try to put them in the position that they were in before they were or before they encountered violence sexually against them and as a case manager therefore, I am also assigned with the responsibility of ensuring that I link the work time at TCC with the court because I am the middleman between the TCC and the courts. [TCC Site Co-ordinator]

This link with the court is an important conduit for communications between the court and the complainant regarding the status of a case and its progress. Whilst the protocol envisages this role being filled by a case manager, who is a qualified and experienced prosecutor, two of the sites we visited did not have a case manager at the time of our visits and the role of court liaison fell to the site co-ordinator or the VAO. One of the VOAs we interviewed explained that this can be problematic as the respondent felt that they did not have sufficient legal acumen to be serving as a conduit between the prosecutors and the complainants at her TCC. It was then suggested that in such circumstances, where positions have not been filled, the VOA should be trained as a court liaison. However, this may be a short-term solution as a case manager is preferable in the long term, given their legal experience and prosecutorial skills.

In one pilot site, there was a best practice example of a close working relationship between the site coordinator and the case manager, where regular feedback sessions and case management meetings were co-ordinated and well attended. In addition, they worked together closely to screen cases daily to ensure that all the necessary investigations had taken place properly before it came to the prosecutor's desk for consultation. This practice appears to be quite useful and the case managers and site co-ordinators explained that it resulted in streamlining cases more swiftly through the TCC system to the courts. They also claimed it resulted in higher rates of conviction and more successful case outcomes because of the time taken to ensure cases are fully prepared to come to court. This is important to note, as it affects the turnaround times at the TCCS. Although more time may be taken at this stage, this time is an investment into the outcome of the case and it will most probably save time at a later stage when additional investigations do not have to be requested.

Conversely, at one of the TCC sites, the coordinator there had not spoken to the prosecutor at the local court in over two years. This was a result of a high turnover in case managers and prosecutors at the court and the shifts in staff and service providers at the TCC, which resulted in a breakdown in communications at the TCC. This is also corroborated within a report by Vetten (2015) and an FPD report (2016) where they explain that the relationships within the TCCs vary quite drastically between one and the other and this can be because of personalities, intersectoral dynamics and interdepartmental relationships. **74**

Regarding specialisation, all the site co-ordinators and VOAs agreed that specialised courts and court staff would benefit the survivors of sexual offences. The case managers explained that they find it much easier to work with specialised sexual offence prosecutors and indicated that they improve their conviction rates and outcomes when operating in the new SOCs system as opposed to non-dedicated courts. The two site co-ordinators interviewed at the pilot sites recommended that more courts be rolled out in their areas, as they can see that the courts are "struggling to cope with the caseloads" as they currently stand. In relation to caseloads at the TCC, the site co-ordinators indicated that up to 80% of their clients who present at the TCCs are children with a notable increase in recent years of older persons and both adult and children with intellectual and physical disabilities. This echoes the caseload figures presented to us by the prosecution on page 78 of this report.

References

74 Vetten L. (2015). *"It sucks/it's A Wonderful Service": Post-Rape Care and the Micro-Politics of Institutions.* Johannesburg: Shukumisa Campaign and ActionAid South Africa. Pages.11-12 and Foundation for Professional Development (2016) *Thuthuzela Care Centre Compliance Audit and Gap Analysis 2016.* Foundation for Professional Development. Pages.152-155

Challenges

The basic challenges that they expressed to us related to the poor infrastructure at the TCC and lack of maintenance thereof; the lack of case managers to facilitate communications with the courts regarding the reasons for postponements, delays or outcomes of bail hearings and so one; the shortage of forensic nurses and doctors to provide a 24-hour service; and the lack of emotional support or debriefing for some TCC staff.

Regarding more systemic challenges, all the respondents interviewed at the TCCs commented on the significant amount of intersectoral confusion in the TCCs. Given that the TCC personnel are answerable to different departments (forensic staff to DoH, social workers to DSD, court support to NGOs, VOAs to NPA and so forth) this can make the environment relatively 'schizophrenic'. The staff at the TCCs navigate their way constantly between the many different protocols and regulations that govern them all.[75] As the NPA oversees the TCC and has the larger contingent of staff based there, 40% of the non-NPA employees we interviewed reported that they often feel as if NPA staff are perceived by the court personnel as being superior to them. Subsequently, the social workers and non-NPA staff have reported to feel 'side-lined' or excluded from central decision-making. As one DoH employee explained, "You know the problem is as sometimes there is no feeling of belonging to Thuthuzela. It's like somebody saying okay I belong to health but I'm working at Thuthuzela. There is that idea that the Thuthuzela is for NPA only."

In one TCC, the NPA appointed site coordinator and VOA expressed similar feelings, in that they felt that the court stakeholders and senior NPA staff, such as prosecutors and case managers, did not understand the nature of their roles and the importance of the psychosocial services and human assistance that the site co-ordinator and VOA provides. In addition, they felt they did not understand the reasons why conviction rates may not be as expected at TCCs due to lack of resources, case managers and many other variables which are beyond their control. For example, when we asked one site co-ordinator to define a successful case outcome, the respondent explained that there is immense pressure to produced high conviction rates for TCC clients to prove that the TCC model improves conviction rates in line with their employer's definition of 'success'. However, for this respondent, a successful outcome for a client is one where the survivor has completed their counselling at the TCC, had a good experience with all the staff and received enough support and assistance that they can be on the road to healing and "feel good about themselves again" irrespective of whether their case results in a conviction or not. [76]

The focus on convictions is demoralising, especially for TCCs where co-ordinators measure their own success as being those survivors that leave feeling empowered, helped and healed. One explained that in relation to the case management meetings they feel saddened by the way in which their work is reduced to numbers.

References

75 The intersectoral nature of the TCCs can lend itself to many challenges surrounding hierarchies and lines of communication between the various actors. For an exploration of the various other challenges that can present themselves in these intersectoral and interdepartmental setting see Lia s Vetten's comprehensive report (2015) Vetten L. (2015). "It sucks/it's A Wonderful Service": Post-Rape Care and the Micro-Politics of Institutions. Johannesburg: Shukumisa Campaign and ActionAid South Africa.

76 Statistics contained with the NPAs annual reports point to a link between the TCCs and those courts that enrolled the most cases, finalised the most cases and had the highest conviction rates. The report explained that, "the conviction rate with regard to cases referred to the Thuthuzela Care Centres (TCCs) is measured separately in order to assess their effectiveness in managing sexual offences cases. The conviction rate achieved with regard to such cases is 71.8% (compared to 68.4% in the previous year 2014), with 2 340 cases being finalised in respect of matters reported to TCCs". National Director of Public Prosecutions 2015/2016. N.D. Annual Report in Terms of the NPA Act 32 of 1998. Pretoria: National Prosecuting Authority. Page. 10

As one of the site co-ordinators interviewed explained:

> We just sit there and listen to them, putting the figures in front of us. And then you check yours, if you have your laptop with you. You open (your) statistics you compare (and say) actually we've seen 140 people. So, we only put 20 (cases) on the road (to recovery) and you are now complaining to us 20 that we only managed to finalise three (cases). Meaning that the 137(cases) that I worked on are gone (as in not considered by the statistics) [...] the chief prosecutor said the conviction rate is slow (at our TCC) and he puts it down to the prosecutors and then they say no (not our fault) and then it goes down to us. We are always here at the bottom. Hence, the nine months or two years working with that victim [...] is reduced to one figure. So, that's the challenge. [TCC Site Co-ordinator]

Whilst the TCC model aims to provide better outcomes through better service provision for survivors at the TCC, it was clear from our conversations with site co-ordinators, VAOs and case managers that the TCC model has become synonymous with increasing conviction rates. It focuses on looking at statistics as the important outcomes rather than the effect of good service provision and support on a survivor's emotional and mental wellbeing. One VAO respondent explained that if only the protocol was followed carefully and implemented properly then the outcomes for survivors would improve and there would be less pressure to focus on conviction rates if everyone works more harmoniously together. To quote this respondent:

> If all else in the world failed, and I was given the world to do as I please, I would make sure that that so-called blueprint goes through, that so-called policy goes through. We have another policy saying that a case must be finalised within six months and it doesn't happen. Because if that policy was in place on saying cases must be finalised in six months and it does happen, probably we will not have so much real life, we wouldn't have so much relapse on retaliating on crimes. Like I've spoken to you because they end up now moving from being nice to being monstrous. So, if those things hmm, those ideas as they say, the South African Constitution is one of the best in the world but implementation is whack, if we can just fall into the true implementation of how things should be, then I think that we could have a system where we don't have to complain. [TCC Victim Assistance Officer]

Training

Overall, the feedback on training was positive from the TCC NPA staff with them indicating that they had attended regular training on the TCC protocol, sexual offences training and intersectoral training with all stakeholders at the TCCs. This was important in terms of understanding everyone's individual roles in the TCC and the regulations and legislation that governs their responsibilities within the centres. When we asked if there was any area that they felt they needed additional training, all of the VAOs indicated that they would like additional training on assisting children and adults with intellectual and psychosocial disabilities. This is important to note given that two of the site co-ordinators interviewed mentioned to us when discussing their caseloads, that that they have seen a significant rise in the number of adult and child survivors with intellectual and psychosocial disabilities presenting at their TCCs over the past two years. With regards to other vulnerable groups, when questioned if they had had any training on assisting LGBTI survivors at their TCCs, these site co-ordinators responded that they had not had in-depth training on this issue and that they felt they would benefit from further training on this. As one VAO explained, "I know the NPA does training with the prosecutors but they don't do training not specifically in terms of how you deal with the mentally ill person with us, but it tells you which act, which

section is related to this person's case. It becomes about the case itself more than the person. [...] I would be lying if I will say we have any training with LGBTI. We don't have that training, in fact we never had any training like that."

TCC psychosocial services

The psychosocial services at the TCCs are provided by various organisations and departments which vary from one TCC to another. The sites we visited were staffed by a mixture of social workers from NGOs, DSD and DoH. The situation regarding the sustainability and adequate provision of psychosocial services provision in the TCCs is a difficult one. There is a dire lack of funding for psychosocial services from government and the DSD, a gap which is filled by NGOs who are struggling with capacity and funding problems. For the purposes of this study, we interviewed some social workers, post-exposure prophylaxis (PEP) counsellors and crisis counsellors based at the three TCCs we visited. Overall, the caseloads for the social workers and other psychosocial service providers at the TCCs were estimated at between 40-60 clients a month on average, with a peak on the weekends and evenings. One counsellor described weekends as the busiest time for the Centre: "I'm working maybe six or seven clients a day because of Saturday and Sunday we have five cases [and] yesterday we had two. Weekends we have sometimes five sometimes six [...] During the week sometimes we have three, but in the week, sometimes I work three, two then it is five per week sometimes we don't have any clients from justice to follow up." The role of the social workers and the counsellors was consistent across all the TCCs visited with a standard number of sessions allocated to clients and a standard procedure as to what those sessions should cover and how they are to assist the clients. One social worker described their typical approach to clients as follows:

> So, those first two sessions, I mainly attend to rape trauma syndromes. And after that how that person is recovering and the coping skills and the family's support on all that, but when it comes to the second and the third session, I usually concentrate on self-esteem, self-image, family support, work relationship or relationships, family relationships, family preservation all those things, I just put them together in those two sessions, just to make sure that the client is getting their reintegration of her life, in terms of rape and how they sort of accommodate, how is the family accommodating the incident, how is the family giving support.[Social Worker]

When we questioned the social workers and counsellors about the turnaround times for their cases they explained that they stick to the protocol of four crisis counselling sessions and that sometimes they will do more if a client is particularly traumatised and needs more counselling before they can testify. Other factors which the social workers listed as affecting the amount of services provided and the length of time they receive them for included if it was an assault or a rape, if it is a child or an adult and if the client needs PEP counselling, among other reasons. This illustrates that the amount of time spent by a survivor with counsellors and social workers is entirely dependent not only on the type of crime but also the needs of the client and if they need specialised services, as with persons with intellectual disabilities, for example.

SOCs and Specialisations

When asked to discuss their experiences of working with the courts and the specialised SOCs, half of those counsellors and social workers interviewed agreed that the concept was important and that it facilitated more efficient systems for the survivors to get feedback, follow-ups and have their specific needs met regarding counselling, trauma debriefing and reducing secondary trauma. The remainder, however, were not familiar with the model of the SOCs and had not read the MATTSO report. One of the social worker who was familiar with the objectives of the SOCs referred to them as being a "safer space for her clients" than other mixed roll courts. The respondent commented that the SOCs were a "good idea because the client doesn't have to queue or to be in the roll with all the others waiting and listening to other things. They can go to a special place there where they are understood while they are there. The environment is also supportive, they feel safe because there are not lots of things that are happening there, they feel safe and protected in that environment. That also stabilises them mentally and then it helps them to go through the case with dignity."

In terms of the specialised personnel at the SOCS, the one relationship that was most important to the social workers and counsellors in relation to the court system was the link with the case manager. The social workers explained that having a specialised case manager that links daily with the courts allows them to give feedback to the clients and vital information that they desperately require. In one TCC, this relationship was evidently efficient and well established, which could be pointed to as a best practice example. The social worker at that TCC explained that communication with the case manager is vital to get feedback on cases, which supports and informs the clients. The respondent explained, "It makes them feel much better to be updated and then we do that, we follow that up" and went on to explain that when updates on cases are required:

> I usually phone, the case manager, and give him/her the case number and then all the cases that are having challenges that are just not ordinary, we communicate and then e/she usually comes here on Mondays, then we follow it up and we sit down and talk about it and we make decisions [...] I think sometimes we do benefit if we all sit down, that is the only time that we find to be more helpful is when we have our staff meeting. Our multidisciplinary implementation meeting, that is where we are able also to raise all these challenges that we want everybody to know about so that we all learn from them. [Social Worker]

As mentioned previously in sections of this report, these intersectoral case management forums can be underutilised and poorly attended. However, as this quote demonstrates, they can be effective and informative if they are used more efficiently and more often.

Challenges

Those interviewed highlighted the shortage of social workers at the TCCs, reiterated once again the precarious nature of the funding for psychosocial services at the TCCs and the difficulties they have getting clients to return for follow-up treatments and counselling after they have left the TCC. The shortage of staff is a common challenge across the TCCs in every department, and the shortages of social workers or NGO service providers can lead to delays with the case. This then affects the 'court readiness' of the clients, particularly if an assessment is required by a social worker for a case to proceed. As one of the regional magistrates interviewed explained:

> Some of the cases tend to drag the trial on a bit because we first have to refer the child to the [NGO service provider name] to get assessed and because they don't have enough social workers it takes a few weeks then for us to start with the trial. That is not a good thing because the quicker the child testifies the better. Money is the bottom line. DSD does not have money to appoint social worker to sit here every day and assess the children and prepare them [...] It takes too long. It takes 6-8 weeks then to get the child trial ready. [Social Worker]

Some of the other court personnel mentioned that when it comes to improving turnaround times, the lack of DSD social workers at the TCCs and other NGOs affects the numbers of clients that are 'court ready' with regard to being able to testify. Subsequently, this bottleneck has a knock-on effect on the time it takes to get a client to court to testify.

One of the SPPs interviewed explained that:

> There is a serious shortage, lack, when it comes to psychosocial services. I know that in some parts of the province, and many other parts of the country [...] there's quite a good support from DSD, but not here. Not here at all. We don't get any support from them. I think it's a small-town thing. [...] Here, you phone Child Welfare and they tell you that if it's a behaviour problem you must go to DSD and you phone DSD and tell you, "No, if the child is over 16 you must go to this other NGO." It's just actually a nightmare. [Senior Public Prosecutor]

In relation to follow-ups and assisting the clients with health services and counselling, a common challenge was ensuring that the clients return after the initial consultation to complete their PEP treatments and counselling. The primary barrier that the service provider interviewed highlighted was (i) the lack of transport to the TCCs, particularly in rural areas and (ii) the lack of money to pay for transport. Three of the service providers interviewed explained that often they give the clients food to take home so that they can spare the taxi fare to return for treatments. Regarding providing food and refreshments to clients, all three TCCs we visited relied on food and beverage donations from local businesses.

In addition, they explained to us that they also should dip into their NGO's petty cash to pay for transportation, in those TCCs that have petty cash facilities. As one HIV counsellor explained, "There are not many but the challenges the survivor has no money to come back for follow up and someone they don't take the treatment because they have no food at home [...] It is difficult because sometimes if they call here they say, "I have no food I am not coming for follow because I have no money" but sometimes now I ask at (the NGO [77]) who has a taxi fare." This issue of lack of money for transport to get to and from SOCs is a common thread that arose in all the courts and can be a considerable impediment to the survivors accessing follow-up services, consultations and even appearing at court to testify. This was also a finding of the FPD (2016) report which states that:

> One problem that has been seen almost universally among the TCCs is the lack of transport. This problem greatly effects the working of the TCCs and creates several barriers for effective treatment. It is recommended that the stakeholders decide on who is responsible for providing transport from the police station to the TCC, but also who is responsible for transport after the visit to that TCC. This must be budgeted for by the dedicated department. In addition to this, transport should be available for the NGOs to deliver long-term psychosocial support and for all staff to be involved in community awareness programmes. [78]

The lack of follow-up services and capacity for long term assistance is a gap that must be addressed. As one intermediary explained, "the child comes to court and when we have done now with the child and when they are done with us, then what? [...] I don't know, maybe some people are doing it (following up on clients) but on a very small scale because it is not (a regular occurrence) so I think there is a gap right there as well. The aftercare."

Recommendations

Overall, we found that the TCC staff, from the forensic doctors to the social workers, had some key common recommendations to improve the outcomes and turnaround times of sexual offences cases. The primary recommendation was the need for increased human resources and improved facilities for clients and staff at the TCCs. All the site co-ordinators pointed to the need for the TCC centres to be properly housed in regularly maintained buildings within the hospitals grounds that they occupy rather than the dilapidated containers that housed one of the TCCs we visited, for example. In all the TCCs we visited, the children's waiting rooms were dilapidated and had broken toys and broken equipment, such as TVs and

References

77 The name of the NGO has been removed to protect the anonymity of the respondent

78 Foundation for Professional Development (2016) *Thuthuzela Care Centre Compliance Audit and Gap Analysis 2016.* Foundation for Professional Development. Page. 146

torn or used colouring books. The waiting areas were in some cases bare, unwelcoming and had no air conditioning. Two of the TCCs visited needed repair and the staff expressed a desire to have the waiting areas, child examination areas and counselling rooms refreshed and decorated in a more calming and appealing manner to make clients feel comfortable and safe.

Our recommendations for the staff at the TCCs, based on our analysis of their interviews and observations are as follows:

(i) Forensic doctors and Nurses: It is suggested that the nurses receive more extensive training on the use of specialised equipment for collecting DNA evidence from sexual offences victims. Additionally, it is recommended that there should be extensive training on expert testimony from forensic staff at court and how the expert can translate complicated medical terminology into terms and a language that the court can easily understand and evaluate.

(ii) Based on the interviews with the site co-ordinators and VAOs, it is recommended that they all receive additional training on communicating with children and adult clients with intellectual and psychosocial disabilities. In addition, a more practical training on the application of the SORMA 2007 is also proposed.

(iii) Based on the interviews with the social workers and NGO psychosocial services providers, it is proposed that they receive advanced training on assisting witnesses with intellectual and psychosocial disabilities, with an emphasis on non-verbal methods of communication.

4.8 SAPS

One of the main limitations of this research, as outlined in the methodology, was the absence of interviews with investigating officers and FCS officers at the courts and the TCCs. Therefore, this section relates to the perceptions that the court personnel interviewed have regarding the SAPS and the various delays and bottlenecks that are caused by them and their investigation methods, which in turn affect turnaround times. There were three dominant challenges that staff at the courts expressed in relation to SAPS investigations and investigating officers: (i) SAPS etiquette and the way sexual offence survivors are treated when first reporting at police stations, (ii) the quality of victim statements and initial investigations in relation to sexual offences cases, and (iii) the management and preparation of dockets that must come to court.

Challenges

When asked to discuss the definitions of a successful case outcome and how to reduce secondary trauma to sexual offences survivors, many of the court personnel interviewed highlighted the need for survivors to be treated respectfully and with dignity at the point of reporting offences at the police stations. There was a consensus that case outcomes and conviction rates will improve once such barriers to reporting are improved. The staff at the TCCs mentioned repeatedly instances where clients recounted bad experiences when reporting the crime to the SAPS.

Regarding their interactions with investigating officers, one of the main challenges expressed to us by 90 per cent of the prosecutors and regional magistrates we interviewed was the issue of dockets and victim statements being poorly prepared. One regional magistrate had this to say, "They don't prepare the dockets well enough. The police are not going to investigate a certain aspect unless a prosecutor tells them to." The magistrate went on to explain that it is also the responsibility of the prosecutor to instruct the investigating officer to prepare the dockets adequately. He said that:

> The police are lazy, I am sorry to say it, so the prosecutor needs to instruct the investigating officer to do things. You see there's a difference in the matters that go to the high court and the matters that we deal with here in the lower court. Firstly, the DPP will only transfer a case to the High court if it is a clear cut case if they can't possibly lose. There has to be a conviction. If it's a dicey thing and they don't think there is a good chance of success but it isn't something you can decline to prosecute, they'll send it to us. It's only a crazy Regional Court magistrate who might end up convicting this person. In the matters that are sent to the High court, because they've got a continuous roll and other aspects are dealt with differently. They go far more trouble to prepare the docket and in instructing the investigating officer

> than happens here (at regional level). Here it doesn't happen the way it should and certain aspects are omitted and it's not properly investigated, there is certain evidence that is not placed before the court, the prosecutor doesn't read the docket properly, those are things that I think would make a vast difference in the case outcomes. [Regional Court Magistrate]

From the prosecutor's perspective, it is not always easy to instruct investigating officers and the interaction between the investigating officer and the prosecution can be strained by poor investigations. One prosecutor interviewed explained that when a docket comes to them at Regional Court and they realise some things have not been complied with, they then should instruct the investigating officers to conduct further investigations. However, she went on to comment that this is not always possible and subsequently in some cases they can be struck off the roll as a result. She explained that:

> You must either phone the investigating officer or you report him to his commander, or you go to your senior, because remember they have meetings with the commanders every month and unfortunately, we don't interact with the police, our seniors do. So, the shortfalls, they're supposed to discuss it in the meetings they have with the commanders. But the trend is that either the investigating officer is on leave, he's on a rest day and the docket has not been allocated to his colleague, or the docket is locked somewhere in his office. So, those are most of the reasons why our investigations are not dealt with properly [...] then the magistrate will ask you, "But, we've given you ample time to do your investigations." "Well, your worship, none of my instructions has been complied with, the investigating officer is on leave, or there's nothing noted in our diary why he hasn't complied." The court refuses the postponement, there you are, and the matter is struck off the roll. So, the process, at the end of the day, for the victim's justice has failed them. [Prosecutor]

Tied in with the concept of a 'good' investigation is the importance of thorough and detailed witness statements. According to the prosecutors and regional magistrates we interviewed, a detailed and well written witness statement is a vital component of being able to present what they referred to as an "effective witness" at court. As one of the regional magistrates interviewed explained, "If the police investigate the matter properly in the first case so that we have detailed statements of all relevant witnesses in the docket, then you will able to properly consider who you should call or not. If it's not in there then there is something missing that should have been there that could have helped you get a better outcome." If a statement is not taken carefully and properly it has a knock-on effect for the entire case. FCS officers are trained to take statements, but what of those people who report to SAPS officers who have not been specially trained to take statements from sexual offence complainants or children or those with intellectual disabilities. In one province, the situation had worsened to the extent that the prosecution appealed to the FCS coordinator to sign an agreement that only FCS officers would take statements and it has been taken on board by SAPS there in principle. A case manager commented that, "I get a statement, where the statement writes, I saw this lady she was well dressed, she was smiling, she was smart and I just could not believe she was raped. I said, then that defies everything you've just told me because that's not your job to decide whether she was raped or not."

Even though specialised FCS officers are trained in taking statements from sexual offence survivors, the problem that was discussed amongst the court personnel interviewed was the lack of FCS officers at the stations they interact with. Those interviewed expressed concern that FCS officers are not always available at stations to take the statements. Consequently, inexperienced officers take witness statements and can miss essential information that could determine the outcome of a case at court. As one SPP interviewed explained:

> There's a standing instruction which I kind of reiterated about a year ago and it went out, I actually drafted the contents and it went from the Provincial Commissioner's Office to all stations around the province to say that we will not accept a docket if the victim's statement has not been taken by a trained FCS official, okay, because what was happening was, you have trained FCS people on duty 24/7 [...] there is a standing order that said that only FCS members who have been on the prescribed training course for FCS, and that's very few, may take statements. [Senior Public Prosecutor]

A related issue regarding obtaining detailed and effective witness statements was the problem of languages at the police stations, particularly in those areas with high densities of foreign nationals who cannot speak the local languages. As a court interpreter explained in his interview, "when a person comes speaks whatever language they do, a police officer writes a statement in English. It means now a police officer is also doing a translating or interpreting role which is wrong because they cannot interpret and they cannot also record properly what the victims would be saying at that time."

Another key issue that arose in our discussions with court personnel about bottlenecks at the courts that affect turnaround times, was the misplacement of dockets or disappearance of dockets at court. In some of the case files we reviewed during our fieldwork, it was recorded in the files that cases were postponed because dockets were not brought to court. This was corroborated by statements from the respondents who recounted occasions where police dockets had been reported as missing without any explanation as to how they went missing and this has caused cases to be SOR or withdrawn. In one court in the sample, this was a significant problem with 'missing' dockets leading to the withdrawal of many cases. As one of the court personnel at that court explained:

> We are having problems of cases being withdrawn and it is the police (who are at fault). When cases are withdrawn because there is no docket today, no docket tomorrow, no docket the next day and then the case simply is struck off. I become angry because I believe that we are here to save the community as much as you are here to serve the community and each and every one should be doing his job. If the docket is nowhere to be found, who took the docket that becomes my question? Where is the docket? Why is the docket not in court? I don't like that at all [...]I have noticed last month that is June/July we had some cases I think it is four cases like this, that is a lot of cases withdrawn because there is no docket and that is too much. [Intermediary]

On a positive note, when we asked the TCC site co-ordinators and VOA about their experiences of SAPS they had positive experiences to recount, particularly for those TCCs that have a SAPS FCS officer dedicated to their TCC. Unfortunately, not all TCCs have SAPS at the Centre, which would assist with the improvement of case outcomes and survivor's experiences of accessing justice at the TCCs greatly. One of the TCC co-ordinators said, "Actually we do have a very good working relationship with the police, the only problem is that, if they could be here at the Centre. I would be very happy actually. We would be very happy at the Centre because of part of this, actually, the blueprint said they have to be in the centre." Given that there are so many barriers to reporting when it comes to sexual offences survivors, the presence of a dedicated SAPS officer and FCS trained officers at the TCCs would assist with reducing turnaround times and in addition reduce the secondary trauma that survivors can experience when reporting sexual offences to general SAPS officers at a police station.

Recommendations

It is difficult to discuss recommendations for the improvement of services by SAPS to complainants and court actors without having interviewed IOs and FCS officers. However, based on the reflection of the court actors we can recommend the following:

(i) Intensive and in-depth training for all SAPS officer on obtaining victim statements from children, persons with intellectual difficulties and other vulnerable persons. This recommendation goes for all SAPS officers and not only FCS officers, as generally those officers who attend such training do so on a voluntary basis.

(ii) SAPS should have a dedicated FCS officer for every TCC in line with the protocol, which sets out that complainants should be able to open a case and give statements in the comfort and safety of the TCC centres.

(iii) Care must be taken with dockets that should also be carefully stored, compiled and filed so that they do not disappear from the court or fail to show up at court on an appointed date. Postponements and bottlenecks such as these are avoidable and can be negated with a dedicated data management system and streamlined administration of dockets.

4.9 Summary: Court Personnel at the Pilot Sexual Offences Courts Perceptions and Needs Matrices

The following tables summarise the various challenges that each category of court personnel experience in the courts that affect the turnaround times and outcomes of sexual offences cases. Table 23 summarises key perceptions that each actor had on the key issues regarding case outcomes and bottlenecks at the SOCs studied. Table 24 sets out the short, medium and long-term needs that the court personnel interviewed expressed to us throughout the research. This gives a perceptive on the issues that form a common ground amongst all the stakeholders. These issues are important to note when it comes to developing intersectoral M&E frameworks as well as new indicators through which one can measure the performances or improved outcomes of sexual offences survivors at the pilot courts.

Table 23. Court personnel's perceptions on bottlenecks and challenges

INDEX
Neutral
Amber- Medium concern, issues that need to be addressed, long term issues
Green- low concern, overall positive, no immediate actions
Red – Areas of high concern, immediate actions and considerations needed

Perceptions on...	Specialisation/ rotation	Turnaround times	Training/ skills	Challenges
Judiciary	This can lead to deskilling and affects career advancements negatively	The pressure to finalise cases swiftly needs to take the different nature of each case into account	Training is adequate. Refresher courses on child witness evidence and evaluating forensic evidence	Evaluating poorly investigated evidence, infrastructure, human resources shortages, rotation, burn-out, lack of social context training.
Prosecutors and Case Managers	Specialisation leads to delays if judiciary are rotated	Pressure to get a conviction within 9 months is immense and demoralising	Training is adequate. Additional training on consultations and evidence if children with intellectual and mental disabilities	Screening dockets to weed out weak cases, burn-out, debriefing, Inadequate number of pre-trial consultations with witnesses
Forensic Medical Doctors and Nurses	Consistency of specialised staff assists with efficient and experienced case management	Pressure to finalise quickly leads to mistakes and bad investigations	Training on medi-co-legal language and terminology and preparations for testifying.	Lack of training on medico-legal language, understaffed, 'rape-doctors' stigma, burn-out
TCC NPA Site Manager and VAO	Specialised services will improve case outcomes	Turnaround times valued over the services provided to survivor that facilitates mental and physical healing	Debriefing skills and survivors with mental and intel-lectual disabilities	Burn-out, capacity shortage esp. staff, administrative support and maintenance of facilities
Psychosocial service providers	Specialisation leads to burnout if there is no debriefing support	Turnaround times pressure means rushed counselling and lack of follow-ups	Debriefing skills and increased training on assisting survivors with psychosocial and intellectual disabilities.	Maintenance of facilities, shortage of staff, lack of funding to provided services to all vulnerable groups
Court Preparation Officers	Specialisation import-ant to reduce sec-ondary victimisation	Pressure of turn-around times affects consultations times	Training is adequate. Additional training on consultations and evidence if children with intellectual and psychosocial disabilities	Lack of time for consultations and frequency, inadequate follow-up capacity, SORMA of 2007 and use of impact statements.
Intermedi-aries and interpreters	Specialisation leads to burnout if there is no debriefing support	Pressure of turn-around times affects consultations times	SORMA of 2007 refresher, improved knowledge of medico-legal termi-nology used when presenting forensic evidence in court.	Medico-legal language training, SORMA of 2007 refresher so they can understand the proceedings, child witness interactions

Table 24. Court personnel needs matrix

Court Actors	Short-term needs	Medium-term needs	Long -term needs
Judiciary	Refresher courses on child witness evidence and evaluating forensic evidence, debriefing	Administrative assistance and improved infrastructure such as office space, security and equipment	Social context training. Rotation to avoid burnout coupled with easily accessible staff wellness services in place
Prosecutors and Case Managers	Debriefing, refresher courses on integrated training and advanced training on preparing expert evidence	Practical based training on case outcomes and application of case law, debriefing	Increased number of specialised prosecutors to facilitate rotation and mentoring, easily accessible staff wellness system in place
Forensic Medical Doctors and Nurses	Social context training and etiquette concerning treating with survivors of sexual offences especially Children and other vulnerable groups such as LGBTI	Preparation for testifying – more practical training on giving expert evidence in court	Increased human resources capacity at TCCs for doctor and forensic nurses
TCC NPA Site Manager and Victim Assistance Officer	Debriefing, provision of refreshments for survivors, entertainment equipment for children	Increased funding for maintenance of TCCS and facilities, structural maintenance	24-hour staff contingent. Case manager at each site and multiple case managers at larger TCCs
Psychosocial service providers	Feeding scheme for clients and comfort packs, debriefing for social workers	Prioritise increasing capacity to provide follow up services to survivors, improved communications with courts	Increased funding and permanent funding from government not NGOs and foreign donors
Court Preparation Officers	Additional training on medico-legal terminology and assisting child witnesses with intellectual disabilities	Increased number of CPOs at courts to increase consultations	Human resources capacity improved, easily accessible staff wellness system in place
Intermediaries and interpreters	Medicolegal terminology training	Increased number of interpreters and intermediaries at courts with multiple languages and sign language skills	Easily accessible staff wellness system in place
Court Actors		Multiple languages and sign language skills	

CHAPTER 5:

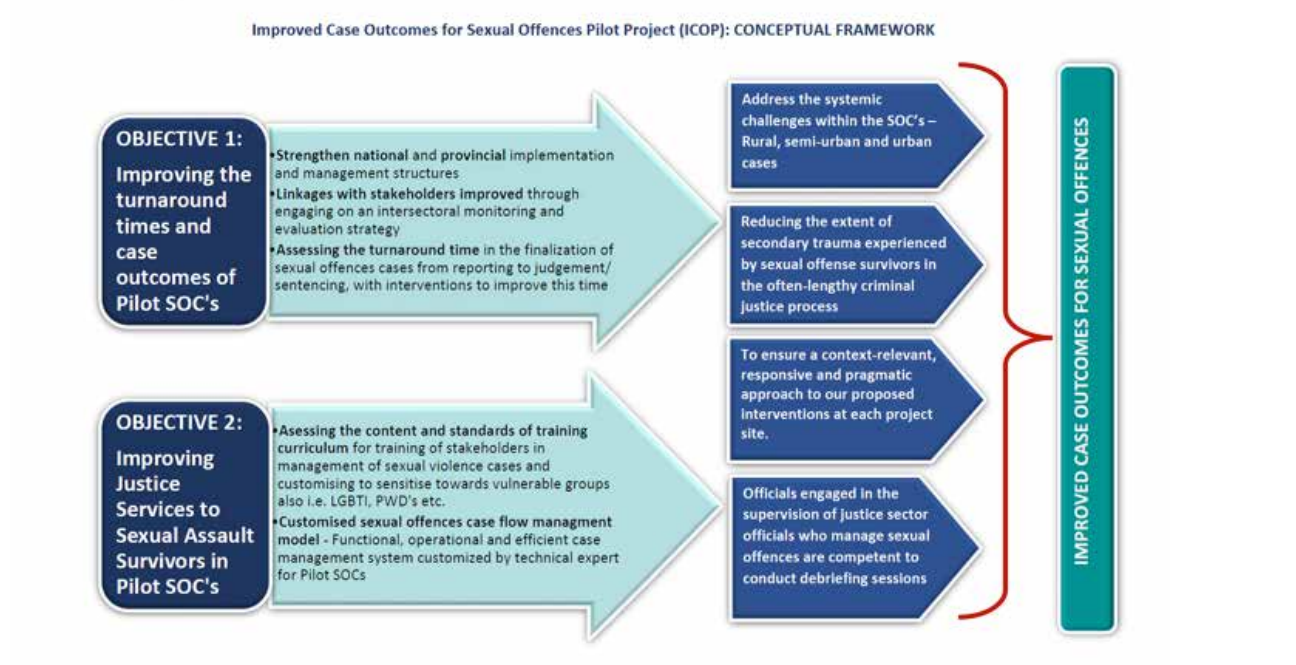
RECOMMENDATIONS

RECOMMENDATIONS

5.1 Overall Recommendations

The conceptual framework presented in Figure 21 below illustrates the original objectives of the Baseline Study, which were to (i) look at the systemic challenges within the SOCs and how they affected turnaround times within the courts; (ii) look at the services within the courts to assess the extent of secondary trauma and if specialised services had reduced this; (iii) review the current turnaround times of cases within these courts to assess the average length of times cases take to be finalised and what the issues are that influence the various factors that contribute towards that timeframe.

Figure 17: ICOP Project Objectives



The evidence that has been laid out in this report demonstrates that, at the level of the local courts, personnel are dealing with these issues daily. In fact, the challenges and bottlenecks have changed very little from those challenges outlined in the MATTSO (2013) [79] report and it follows then that many of our recommendations echo those made by MATTSO in 2013. The differences with these recommendations are that they are informed by the responses and anecdotes of court personnel at the SOCs that have been operating at these courts since their re-establishment, coupled with the quantifiable current case flow data obtained at the courts. Consequently, it is hoped that the rich detailed data gathered through this research will offer valuable evidence based insights on how improvements in sexual offences case outcomes can be achieved through the above objectives. Based on the knowledge gathered at the courts, in addition to an analysis of the bottlenecks, challenges and best practices at the five pilot sites, this section offers the following recommendations gathered from the baseline study to improve case outcomes for sexual offences survivors at the SOCs.

References

[79] Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, 2013. *Report On The Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Pages. 97-99

Improving the turnaround time in the finalisation of sexual offences cases from reporting to judgment/ sentencing (with interventions to improve this time)

A central concern underlining much of the discussions in this project is the concept of the turnaround times of sexual offences cases within the justice system and the effects that lengthy drawn-out legal processes have on survivors of sexual offences. The hypothesis states that if we can improve turnaround times, we can reduce secondary trauma and thus improve the case outcomes for survivors. The specialised SOC model, as outlined in the MATTSO (2013) report, offers a means of providing these specialised services to sexual offences survivors to improve conviction rates indirectly through provision of services, assistance at court and so forth (see Section 3.1 of this report). However, as shown in the section on the turnaround times, the bottlenecks present in the SOCs must be considered when looking at the life cycle of a sexual offence case and how these bottlenecks impact the various stages of a case. The evidence presented in Sections 3.3 and 3.4 shows that the concept of 'turnaround times' should be reconceptualised by the NPA and the DoJ&CD to move beyond measurements of time spent on cases to include the multifarious variables that exist in cases which affect the turnaround times beyond mere processes and administrative timeframes. The NPA is currently conducting a "work study project which seeks to review the effectiveness of the current organisational design as well as evaluate the optimal capacity for the organisation to obtain maximum benefit from the existing resources" [80], which may add light to this issue. Nonetheless, as the MATTSO (2013) report states, "there are inherent interdependencies in the criminal justice systems that often cause serious delays in the finalisation of these cases" [81] and these interdependencies need to be identified and understood. With that in mind, we offer the following recommendations:

- ***Revising recommended sexual offence case finalisation timeframes:*** The chapter on turnaround times in this report clearly illustrates, that of those cases that we sampled, there was an average case time of 9.1 months (see page 79 of this report). However, when we interrogated those cases we found that they were cases in which the accused pled guilty, was withdrawn or struck of the role in addition to other variables that can affect case turnaround times such as the nature of the offence, numbers of witnesses and so forth. The data showed that if the turnaround times were to be revised, that the stakeholders should consider 18 months as an alternative and more realistic timeframe in which sexual offences cases could be finalised. This revised measure displays that public perceptions of cases taking three or four years to finalise are not the norm and there are realistic timeframes that can be considered. The current guideline put all court personnel, particularly prosecutors under immense pressure to rush cases through the system often at the expense of the survivor who may be screened out at an early stage or not given the proper time needed to succeed in their case.
- ***Developing alternative and new indicators of success and performance measures:*** As the findings illustrate the court actors are currently limited by the existing performances measures, particularly the NPAs merit system. There is a need to look at alternative measures of success and what constitutes a successful court experience and case outcomes. For example, the numbers of consultations conducted with a complainant and length of time should have a minimum requirement and that if this requirement is met it could reflect as a merit. Also complying with the taking of Victim Impact Statements could also feed into these measures. Given the pressure to present conviction statistics and the affect this has on denying complainants their day in court because of being perceived to be a weak case, the impetus is on the NPA to revise current indicators which do not accurately reflect the multifaceted nature of sexual offences cases.
- ***Developing alternative and new indicators of success and performance measures:*** As the findings illustrate the court actors are currently limited by the existing performances measures, particularly the NPAs merit system. There is a need to look at alternative measures of success and what constitutes a successful court experience and case outcomes. For example, the numbers of consultations conducted with a complainant, length of time should have a minimum requirement, and that if this requirement is met it could reflect as a merit. Also complying with the taking of Victim Impact Statements could also feed into these measures. Given the pressure to present conviction statistics and the affect this has on denying complainants their day in court as a result of being perceived to be a weak case, the impetus is on the NPA to revise current indicators which do not accurately reflect the multifaceted nature of sexual offences cases.

References

80 National Director of Public Prosecutions 2015/2016. N.D. *Annual Report in Terms of the NPA Act 32 of 1998.* Pretoria: National Prosecuting Authority. Page. 69

81 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report On The Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Page. 97

The ICOP team will be working with the data and consulting with the stakeholders to develop alternative indicators that will form a part of an overarching M&E framework for the SOCs, which was recommended win the MATTSO report. By developing more robust and holistic indicators, the stakeholders can expand their definitions of success which can incentivise staff to improve case outcomes through indicators that are achievable, realistic and reflective off the challenges they face when it comes to securing convictions and proceeding with difficult cases. As mentioned in earlier sections the current policy directives could be revised and specified to speak to these other indicators.

- Customised sexual offences case flow management model: Following a series of consultations with the Regional Court Presidents after presenting our findings on case flow management the following two key ways forward were proposed:

(i) The ICOP team will explore revising and customising the Department of Justice and Constitutional Development, Case Flow Management Guidelines of 2010 to reflect the specific case guidelines that should govern sexual offences and consider the various developments that have occurred within the system since 2010.

(ii) Secondly, we will work with the Regional Court Presidents to explore the validity and usefulness of revising the current Criminal Practice Directives for the Regional Courts in South Africa (2016), to incorporate specific directives for the management of sexual offences. It is proposed that prior to this revision we will consult with Regional Court magistrates as to how they run sexual offences cases differently and if indeed specific directives would be useful to them in improving case outcomes and assisting with improve performance measures.

Improved specialised services at the Sexual Offences Courts for sexual offences survivors

When it comes to defining successful case outcomes, the court personnel interviewed for this report stated that, for them, success was not determined by convictions or lengthy sentences alone. They defined successful case outcomes as providing the survivor with justice through offering specialised services at court and allowing them to be fully supported both mentally and emotionally, throughout the court process. This included the provision of the full array of specialised services for all vulnerable groups, particularly children and adults with intellectual disabilities. Whilst the MATTSO (2013) focuses on the physical infrastructure at the courts, apart from the comments on old furniture and cramped spaces, the court personnel felt justice had been delivered to survivors not only through providing a comfortable room or chair but, more importantly, through being treated with dignity and respect by all court personnel in addition to having the full opportunity to tell their story and be heard through the specialised support systems provided by the SOCs. The research shows, that in all the pilot courts the huge caseloads are putting considerable strain on already stretched human resources, which include the specialised service of sexual offence prosecutors, court preparation officers, court support officers, intermediaries, interpreters, counsellors and social workers. Given the importance of making the survivors experience at the SOCs be a positive and successful one through improved specialised services, the following recommendations are proposed:

- ***Specialised sexual offences personnel:*** Increased specialised staff must be addressed in all courts particularly in the specialised prosecutor's positions, foreign language interpreters and foreign language intermediaries. The interviews with national level and local level representative of the NPA, indicated that specialised prosecutor positions are grossly understaffed. Currently, the NPA has frozen all appointments due to financial stress.[82] Given that Phase 2 of the SOC roll-out is about to commence, it is disquieting that these courts will not have specialised prosecutors.

References

82 "Due to insufficient funding of the establishment, the NPA will have to report 0% vacancy rate although the real vacancy rate was 15.1% at the end of the financial year. It is expected that the real vacancy rate will rise above 15% as more posts will become unfunded when they become vacant due to the budget cuts effected by National Treasury on compensation of employees" National Director of Public Prosecutions 2015/2016. N.D. Annual Report in Terms of the NPA Act 32 of 1998. Pretoria: National Prosecuting Authority. Page. 68

- ***Prosecutor's pre-trial consultations with survivors:*** Greater time and preparation is needed between prosecutors and complainants during the pre-trial period. The MATTSO (2013) report recommends that two prosecutors must be assigned to each SOC. This is 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. [83] However, anecdotal evidence from the prosecutors we interviewed showed, that whilst this is an ideal situation, the vast caseloads prosecutors are handling do not enable them to rotate or set aside time for consultations and administrative tasks. Generally, consultations happened once before the trial date and, in some cases, on the morning of a trial at those courts we visited (see quotes on pages 164-166 of this report). Again, it is suggested that adequate consultation times and 'readiness' of the complainant should be a measured performance indicator.
- ***Feeding schemes, transport and witness fees:*** The need for feeding schemes for child witnesses was a key recommendation of the MATTSO (2013) report, which explained, "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". [84] Microwaves and refrigerators placed in witness rooms, to comply with MATTSO requirements remain in their packaging or are empty and unused due to no budget or capacity to fill them with refreshments. In addition, the issue of transportation arose in the discussion with court personnel, particularly in rural areas where complainants should travel long distances to attend their nearest SOC. However, recent research within the DoJ&CD conducted by UNICEF illustrated that the feeding scheme is currently not viable. This is due to lack of budget and an acute awareness that Treasury is not going to allocate funds to the scheme. There is a current recommendation that witness fees should be increased and it should become the responsibility of the intermediary that money is allocated or used for food. This is equally problematic, as it has been found that parents may take the money or in the case of adolescents, they are given the money in the morning when they arrive at court and then they do not come back to court in the afternoon.
- ***Sexual Offences Ombudsperson:*** It is clear from the report that many cases are being withdrawn and there is a recognised need to give the survivor a voice in some form. A Sexual Offences Ombudsperson is urgently needed to provide a strong and consistent for of oversight across all departments and act as a much-needed interface between the justice system and the public.

Addressing human resources challenges and enhancing specialisation of staff through training

A specialised court model requires specialised staff, and the MATTSO (2013) report makes clear the recommendations for various forms of specialised training that personnel working in dedicated and exclusive sexual offences courtrooms should receive in order to make the re-establishment of the SOCs feasible and successful. [85] In fact, the MATTSO (2013) report stated that a lack of specialised training was a contributory factor in the failure of the early SOCs roll-out due to the "limited training programmes and lack of a dedicated budget for multi-disciplinary training initiatives", which "contributed to the reduced performance of these courts". [86] The court personnel interviewed had all been trained, to varying degrees and at various intervals, on sexual offences and the specialised knowledge that was needed in order to provide the services they were tasked with at the SOCs. The overall feedback we received was that, whilst most respondents had all attended specialised training, they reported that it was intermittent and lacked practical application.

In addition, some of the personnel, particularly the intermediaries and interpreters, felt that the opportunities for career advancement at the courts were limited due to the lack of training resources available to them and the lack of SAQA accredited training that they could do. In addition, the respondents indicated that they would appreciate more 'outcomes

References

83 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report On The Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Page. 79

84 Op. cit. Pages. 77-79

85 Ibid

86 Op. cit. Page. 97

based' training and more advanced training on vulnerable groups, with an emphasis on children and persons with intellectual and psychosocial disabilities. Whilst the obvious recommendation would be for more training (as one respondent said, "you can never have too much training or be trained enough") the budgetary constraints being experienced by justice stakeholders at present implies that this is not something that can be achieved in the short- or medium-term. Therefore, we propose the following recommendations relating to enhancing the content and standards of specialised training at the SOCs, in addition to the methods through which materials are taught:

- Outcomes based training that is also incentivised: Training for court actors operating in the specialised sexual offences courtrooms needs some reconceptualising, supported by an outcomes-based framework. Currently, whilst thorough in terms of content, the impact of the training is difficult to measure, particularly in terms of the improvement of direct service provision. The feedback from respondents was that although training was informative, they wanted more practical applications of the protocols and the laws that govern their positions in the system. Outcome-based learning represents a shift from objectives to outcomes. In this type of training, it becomes more focused on the learner. In traditional training and learning models, materials are designed by the instructional leader, or perhaps the training managers at a company. They guide the curriculum and content, as well as the learning objectives, teach the content over a set period of time, and then trainees are assessed on what they learned as a result. With an outcome-based model, the goal is not to necessarily follow a predetermined timeline or set curriculum, instead it is to build upon the individual trainee's pre-existing skills, knowledge, and experience. Some of the characteristics prevalent in outcome-based learning may include hands-on activities, interactivity and real-world case law analysis. In addition, it is recommended that the attendance at training modules be incentivised to encourage participation and perhaps become yet another alterative performance indicator.
- Integrated sexual offences training: We recommend that a form of integrated training be devised for the SOCs, similar to the integrated training model developed by the NPA for the TCCs. It was observed during the integrated forums we held in each province, that court personnel appreciated being able to share ideas, challenges and concerns with all the other members of the courts. A more integrated focus on sexual offences training may also help facilitate synchronicity and foster better working relationships. Educating all relevant role players regarding their role the SOCs, the legislature and the processes and procedures, may facilitate better working relationships and smoother, more effective case outcomes. It is suggested that following the development of the M&E model proposed by this project that it could form the basis for integrated training on common M&E indicators across departments.
- Research and expert witnesses: In our discussion with prosecutors on preparing vulnerable witnesses or dealing with particularly difficult and complicated cases, the prosecutors explained that access to expert witnesses and current case law research would assist them with finalise cases more swiftly and as such would improve case outcomes as well as turnaround times. As an attempt to assist with the recommendation to make expert witnesses more readily available and accessible to the prosecution, the GHJRU will set up a referral process and research portal for the prosecutors at the pilot sites. This pilot intervention will allow prosecutors to contact the GHJRU when they need assistance with recent case law research or a referral for an expert witness in a sexual offence case. Apart from the experts based within the GHJRU, we will facilitate referrals to other experts in our wider network. It is envisaged that if the pilot project is a success that similar agreements could be piloted between the NPA and other universities across the country. This would be a free service offered to the prosecutors staffed by the researchers at the Unit.

Improving the emotional and mental wellbeing of specialised staff

Despite their passion regarding improving outcomes for survivors and their admirable dedication to the sexual offences courts, almost every court actor we encountered at the courts reported experiencing burn-out and emotional exhaustion, as their quotes on the difficult nature of specialising on sexual offences cases illustrated. Whilst specialisation and exclusivity is accepted as being the best practice to produce the best outcomes for sexual offences survivors, it places a significant strain on specialised staff. The specialised staff interviewed for this baseline report expressed a need to have access

References

87 Post-Traumatic Stress Disorder.

88 McEachran, E. (2013) Aid Workers and Post-Traumatic Stress Disorder. Dealing with RiskHub. [Online] http://www.theguardian.com/global-development-professionals-network/2014/mar/03/post-traumantic-stress-disorder-aid-workers.

to debriefing on a regular basis or some form of psychosocial support. Research on humanitarian aid workers working in conflict zones, has found that 30% of them experienced symptoms of PTSD [87] when returning from their posts. [88] The nature of humanitarian work and the conditions of trauma that they work in exposes them to extreme levels of stress, which can lead to many emotional, mental and physical health problems. In their longitudinal study of NGO workers involved in humanitarian work who experienced depression, anxiety and burnout, Cardozo et.al (2012) [89] recommended that when recruiting and preparing aid workers for dealing with traumatic events during deployment, organisations should take steps to decrease chronic stressors, and strengthen social support networks for their staff. [90]

Given the traumatic and terrifying nature of sexual offences in this country, it could be said that the court personnel find themselves in a similar situation and as such the recommendations of this body of literature could be applied to those court personnel we encountered at the courts who described symptoms of burn-out and vicarious trauma through their work with sexual offences cases. This field of literature recommends that a focus on positive aspects of a job lessens the prevalence of burn-out. These aspects were positive job-related feelings such as satisfaction and accomplishment, adequate training and managerial support. [91] In addition to this, establishment of a safe and secure working environment is essential. As illustrated in some of the quotes from the Regional Court magistrates, they can feel unsafe in the court structures where their chambers are accessed via public pathways or if they have to share lifts to court with members of the public. In addition, one of the forensic nurses described being afraid of testifying in court for fear that the accused or the family of the accused would recognise her out of court. Whilst we acknowledge that various departments are busy developing wellness programmes or have pre-existing ones, which maybe underutilised, we propose the following regarding enhancing those programmes and increasing access to their benefits for the personnel at the SOCs:

- ***Debriefing and support services:*** The stakeholders need to acknowledge that the support needs of various types of staff are likely to be different and that a 'one size fits all' approach to staff well-being would not be advisable. Stress management policies and supportive practices should be designed to respond to the distinct needs of different types of staff in the SOCs and the type of caseload they are managing. In addition, the wellness programmes need to promote a culture of stress awareness throughout the organisation and an understanding that it will respond supportively to staff concerns about stress. Anecdotes from Regional Court magistrates and senior prosecutors demonstrated the reluctance that staff should ask for psychosocial support as they feel that it may act against their chances for career advancement if they are seen to be susceptible to emotional trauma from working on sexual offences cases.

  In addition to educating all potential specialised staff about the general risks of their work, wellness and staff support programmes need a specific strategy for reducing risks to each individual staff member at the SOCs. This should address for example, safety and security risks; physical health risks, risk of exposure to trauma, as well as more routine sources of stress.

  On a practical level, we recommend that a specific 'mental health or wellness' allowance be allocated to each employee to use for this type of support on a yearly basis so that they can discreetly and confidentially employ the services of a counsellor or support service of their choice without having to go through employer approved service providers. This approach promotes a 'self-care' ethos which is more in tune with the feelings of court staff regarding accessing work wellness services. This process would negate need to request counselling through official challenges which is currently acting as a deterrent to those staff that are aware of wellness programmes or debriefing support. Alternatively, those working in such traumatic environments could be compensated through their remuneration with a form of 'emotional burden' remuneration added to their salaries.

References

89 Cardozo, B. et al. (2012) Psychological Distress, Depression, Anxiety and Burn out Among International Humanitarian Aid Workers: A Longitudinal Study. PLOS ONE, 7 (9), Page. 1-13.

90 Ibid. Page 1-13.

91 Ehrenreich, J. H. and Elliott, T.L. (2004) Managing Stress in Humanitarian Aid Workers: A Survey of Humanitarian Aid Agencies Psychosocial Training and Support of Staff. Peace and Conflict: Journal of Peace Psychology, 10 (1), p. 53-66

- ***Rotation and 'exclusivity':*** Voluntary rotation must be offered to those court actors, particularly presiding officers and prosecutors, who 'specialise' in sexual offences cases. Whilst the consensus amongst Regional Court magistrates and prosecutors was that they prefer working with specialised staff that do not rotate, in the absence of increased human resources and adequate emotional and mental health support, rotation is a short- to medium-term solution to the mental exhaustion.

5.2 Recommendations for each stakeholder category

Following extensive consultation with the ICOP Advisory Committee on the findings of the baseline study, the following recommendations are proposed to each stakeholder in the SOCs:

The National Prosecuting Authority

(i) It is recommended that the NPA revise their current performance indicators and guidelines regarding the turnaround times for sexual offences cases. It is proposed that the merit system and performance measurement should consider the prosecutors' ability to conduct sufficient consultations with complainants, ability to take impact statements, rewards for adequate preparations pre-trial and so on. There are many other ways in which success can be measured and performance of the prosecution gauged that looks beyond turnaround times and convictions to more equitable and meaningful performance indicators.

(ii) In addition to revisions of performance and success indicators, we suggest that the NPA revise their current guidelines for withdrawals and the decisions not to proceed with cases to be more specific and more encompassing of vulnerabilities such as specific guidelines when dealing with intellectually, physically or mentally disabled complainants, particularly intellectually and mentally disabled children.

(iii) Improve access to expert witnesses and expand database of experts that can be consulted for expert testimony on a pro bono basis.

The Department of Justice and Constitutional Development

(i) The findings show that the pilot courts visited are still experiencing many of the challenges presented in the MATTSO (2013) report with little improvement in important areas such as infrastructure, human resources and financial resources. The main pressure is the high caseloads at each court and the pressure this is putting not only on the rolls in the designated exclusive SOCs but on the entire court infrastructure as a whole. Therefore, we **strongly caution the DoJ&CD against proceeding with the next phase of SOC roll-outs** before the state of the current SOCs is considered carefully. The DoJ&CD are currently presented with several important pieces of independent evidence-based research on the SOCs, the services provided to sexual offence survivors and the perceptions of those survivors on the justice system and their experiences of the courts.

(ii) This is an opportunity for the department to take stock of the situation at the courts and look at ways of improving current SOCs or alleviating the pressure of huge caseloads through appointing more intermediaries, interpreters and allocating more resources to maintain the equipment and facilities upgraded in 2014. It would seem futile to proceed with allocating more courts as SOCs when the NPA is no longer training specialised prosecutors or hiring and given that the DoJ&CD cannot fill the 185 intermediary positions allocated to the courts in 2014-2015 [92], due to budgetary constraints. Whilst the DoJ&CD admits that it has budgetary difficulties, the lack of intermediaries has also been explained as being due to an "inability to attract experienced candidates." [93] It is proposed that the DoJ&CD change its criteria to qualify as an intermediary to attract more applicants. This is crucial if the department is to attract more applicants to fill the positions needed at the courts, particularly if they proceed to make intermediaries available to other vulnerable groups, such as older persons.

(iii) Improved training for senior officials and mangers on debriefing colleagues and offering psychosocial support to junior staff members.

(iv) Extensive and more detailed training for court managers, intermediaries and interpreters at SOCs on the medico-legal terminology used in the presentation of forensic evidence, the application of the SORMA of 2007 and general legal terminology training so that they can understand court proceedings and be more confident with their colleagues when discussing issues at court.

(v) Allocate the responsibility to organise, facilitate intersectoral forum meetings to the court manager, and incentivise participation. For example, participation could count towards each department's own performance indicators as well as the indicators which are court specific (suggested indicators will emanate from the proposed M&E framework, which forms part of the next phase of this project).

(vi) Maintenance of equipment and a consistent sustainable maintenance plan is needed at each court. Whilst we understand that the demand for increased resources is an obvious one, it cannot be ignored that broken CCTV equipment, recording equipment or lack of interpreters or language experts can slow down the roll and lead to cases turnaround times being negatively affected.

The Office of the Chief Justice and the Regional Court Presidents

(i) Devise case management directives for sexual offences cases at district court level.

(ii) Revise rotation mechanisms and develop more specific guidelines on how rotations should take place such as consistent timeframes across all courts, rotation based on levels of experience in the SOCs, the availability of debriefing support for those Regional Court magistrates on rotation away from SOCs, emotional burden remuneration, sabbaticals etc.

(iii) Increase access to current research and case queries from experts.

The Department of Health

(i) More extensive training for forensic doctors and nurses on testifying at court and on how they present forensic evidence during trial to the defence, prosecution, magistrates and the witnesses. This should be accompanied by an extensive refresher course of the SORMA of 2007 as well as training not only on the new format J88 but also the reasons why the J88 was revised. **94**

(ii) It is advised that the DoH produce a booklet or reference guide for the courts – for prosecutors, magistrates and others - which clearly illustrates and outlines visuals and descriptions of injuries and evidence in sexual offences cases. During the research it was suggested by many of the court personnel that such a visual guide would be helpful, particularly concerning the absence of child injuries in children who have been sexually assaulted and the legal definitions of rape, which concerns the level of penetration.

The Department of Social Development

(i) Provision of social workers to provide psychosocial support at the courts and trauma centres. The evidence points to the concerns of all court actors regarding the levels of psychosocial support offered to complainants. When we asked the court personnel to define successful case outcomes, the majority pointed to the availability of counselling and post-trial psychosocial support to the survivors as being essential to the success of a case and the best outcome for the survivor, irrespective of a conviction being obtained or not. The emphasis on the availability of more counselling sessions and wider follow-up services cannot be underemphasised and it came up in 98% of our interviews conducted at the pilot courts.

References

92 Department of Justice and Constitutional Development, 2014/2015 N.D. Annual Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Pretoria: Department of Justice and Constitutional Development, South Africa. Page. 25

93 Department of Justice and Constitutional Development, 2015/2016 N.D. Annual Report on the Implementation of the Criminal Law (Sexual offences and Related Matters) Amendment Act 32 of 2007. Pretoria: Department of Justice and Constitutional Development, South Africa. Page. 31

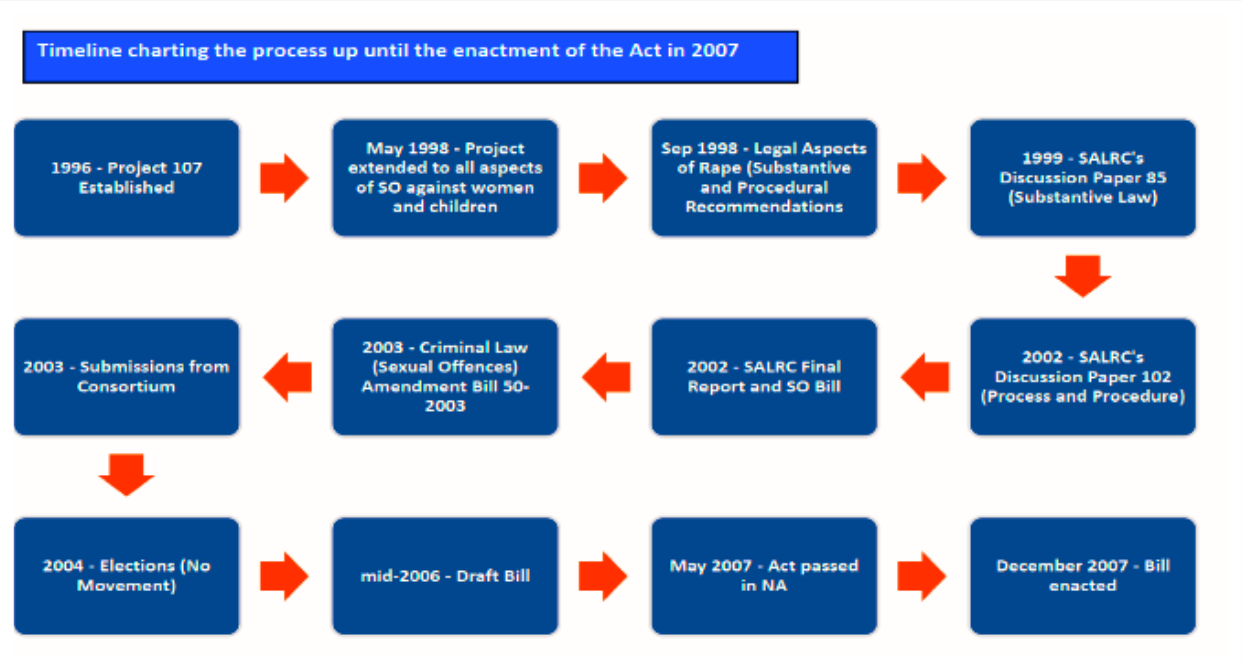
94 See Jina, R. and Kotze, JM (2016) Improving the Recording of Clinical Medicolegal Findings in South Africa. South African Medical Journal, September 2016 pp.872-87

APPENDICES - APPENDIX 1

Appendix 1: Oversight, Implementation and Accountability: A Critical Analysis and Literature Review of the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007

In 1998, a long process that would overhaul the laws relating to sexual offences was initiated. The aim of the reform of the laws on sexual offences was to create all-encompassing legislation that codified the law as it pertained to sexual offences, as well as to create effective procedural provisions pertaining to the lifecycle of a sexual offence case – from the reporting stage, to the management, investigation, and eventually prosecution. However, the priorities of those either involved in the process or invested in it differed. While civil society organisations largely pushed for a victim-centred approach that would enhance the experience of survivors of sexual offences, others sought legislation that would create a more punitive environment for offenders. [95] What was clear was that at the end of the process 'new offences' would have been created and the definitions of 'old offences' amended. While this latter objective was achieved, the submissions of civil society organisations requesting procedural mechanisms aimed at reducing secondary victimisation and providing for the consistent use of protective measures for survivors and witnesses, were largely not followed. The version of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 (hereafter referred to as the SORMA of 2007) that was enacted in December of 2007, for many, fell short of the objectives that civil society organisations, and even the South African Law Reform Commission (2002) itself set out to achieve by enacting the legislation. [96] (See Appendix 1 for a discussion and review of the aftermath of the SORMA and how it fell short of expectations The diagrams below outline the timeline towards the adoption of the SORMA of 2007 and the various amendments made to it since 2007.

Figure 18: Timeline to enactment of the SORMA of 2007

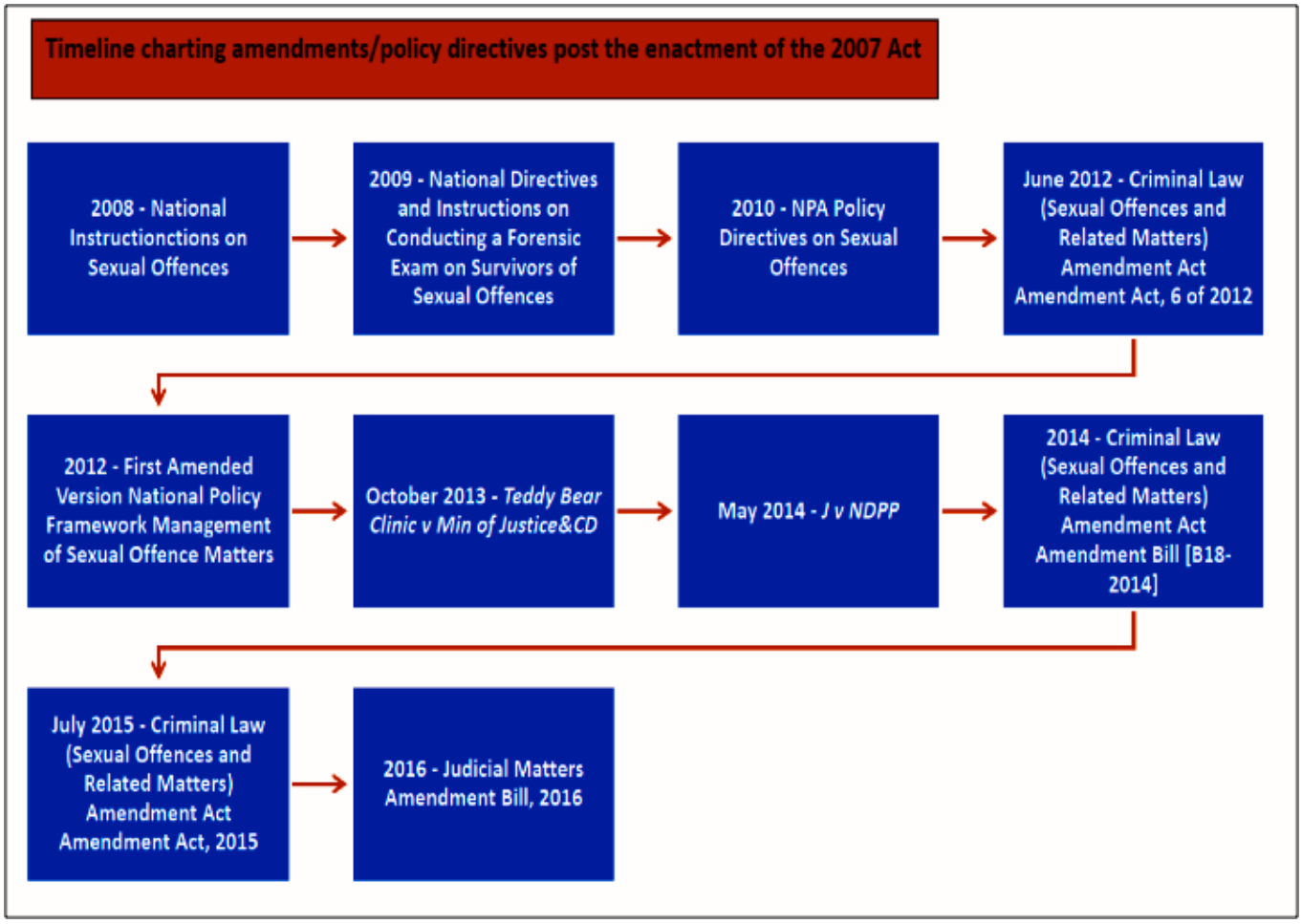


References

95 Artz, L. and Smuthe, D. (2008) (eds.) *Should We Consent?* Rape Law Reform in South Africa. Page 1

96 South African Law Commission Project 107 (2002) Sexual Offences Report at page 3 stated that 'The report purposely contains innovative and progressive recommendations regarding changes to the criminal justice system. The intention is to encourage victims of sexual violence to approach the system for assistance and to improve the experience of those survivors who choose to enter the criminal justice system, while at the same time giving due regard to the rights accorded to alleged perpetrators of sexual offences.' Law Commission (2002). Project 107, Sexual Offences Report, Cape Town: Minister for Justice and Constitutional Development.

Figure 19: Amendments to the SORMA of 2007



When looking at the success of the SORMA of 2007 on improving the case outcomes for sexual offences survivors and decreasing secondary traumatisation, it is essential to ask the following questions:

(i) What key issues in the management of sexual offences cases have remained persistent since the promulgation of the SORMA of 2007?

(ii) What does the existing literature say about how these issues are being addressed or implemented since the passing of the legislation?

(iii) If these key issues/concerns were not addressed in the legislation, what does the existing literature say about how these issues are being addressed or remedied through any other means (and indeed if they have been remedied at all)?

Mechanisms for oversight and implementation

In seeking to answer the above questions one must firstly look at the mechanisms for oversight and implementation of the SORMA of 2007. How would those bodies or structures who are tasked with overseeing the effective implementation of the SORMA of 2007 answer those questions if they were put to them? By examining annual reports, strategic plans and policy frameworks issued by relevant authorities, one can see how the implementation of the SORMA of 2007 and its oversight mechanisms are reported upon. Moreover, these documents show how the key stakeholders responsible for implementing the legislation around the sexual offences measure the effectiveness and success of their roles and relationships within this process.

APPENDIX 1

The oversight of the management of sexual offences cases and specifically the SOC model involves the full spectrum of governmental stakeholders which include:

- Department of Social Development (DSD);
- Department of Health (DoH);
- South African Police Service (SAPS);
- Department of Correctional Services (DCS);
- Department of Women, Children and Persons with Disabilities (DWCPD);
- Department of Home Affairs;
- Department of Basic Education;
- Government Information and Communication Services; and
- National Prosecuting Authority (NPA).

However, for the purposes of this report, we will focus specifically on the role of the Department of Justice and Constitutional Development (DoJ&CD) and the National Prosecuting Authority (NPA). The DoJ&CD and NPA are the key stakeholders involved in the daily management of sexual offences cases within the justice system and the SOCs, which is the core focus of this project. The SORMA of 2007 tasks the DoJ&CD with coordinating the other key departments involved in the justice system to form an intersectoral team to manage sexual offences and the justice systems handing of sexual offences cases.

In 2013, the Minister of Justice and Constitutional Development (the Minister) established the Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters 2013 (MATTSO) to investigate the viability of the re-establishment of SOCs in South Africa. The first SOC was established in the Wynberg Regional Court in 1993 as an innovative measure to improve the adjudication of sexual offences and sexual offences case outcomes. Between 1993 and 2010, many more courts were adapted and adjusted to accommodate sexual offence court rolls and improve caseloads and outcomes of sexual offences cases. It was also envisaged that they would affect change at a deeper societal level by improving access to justice for sexual offences survivors and pose the improved system as a deterrent to offenders. However, many issues and challenges led to the Minister freezing the further roll-out of SOCs in 2010.[97]

The MATTSO committee undertook to investigate what challenges led to the freezing of the SOC roll-out and if the reestablishment of the courts was purposeful and possible. The details of the resulting report (hereafter referred to as MATTSO (2013) or MATTSO report) recommendations and findings will be discussed in a later section on the role of SOCs in the implementation of the SORMA of 2007 legalisations. It is important to identify those structures and oversight mechanisms that MATTSO (2013) recommended be put in place to properly monitor and implement the suggestions for improved management of sexual offences across all departments. In so doing, one can assess the effectiveness of the structures in supporting the re-establishment and growth of the sexual offences courts models, in line with the overarching recommendation of the MATTSO team in 2013.

One of the central recommendations of the MATTSO report was that, "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 SOCs. This Committee must function as the sub-committee of the Director-Generals Intersectoral Committee for the Management of Sexual Offences". [98] Following the release of the report, the DoJ&CD set about establishing a variety of oversight and implementing bodies to oversee the effective application of the SORMA of 2007 and the recommendations of the MATTSO report. The various committees are co-ordinated by the Chief Directorate: Promotion of the Rights of Vulnerable Groups (CD: PRVG) who are responsible for drafting guidelines for implementation of strategies, measuring progress, ensuring compliance and monitoring the implementation of the national policy framework. The committees are as follows:

References

97 Artz, L. and Smuthe, D. (2008) (eds.) *Should We Consent?* Rape Law Reform in South Africa (2008).

98 Op. cit Pages. 23 and 98

(i) The Director Generals Intersectoral Committee on Sexual Offences (DG ISC SO) who are mandated to meet three to four times a year; [99]

(ii) The National Technical Intersectoral Committee for Sexual Offences (NT ISC SO), previously known as the National Operational Intersectoral Committee on Sexual offences (OP ISC SO), which serves as the technical support to the DG ISC SO and has provincial representatives and NGOs; [100]

(iii) The Regional Heads Forum, which are the DoJ&CD's regional heads and are responsible for the effective management of court services; [101]

(iv) The National SOCs Committee (NSOCC), which is disbanded; [102]

(v) The National Intermediary Committee;

(vi) The Provincial Intersectoral Sexual Offences Committees (the chairs of each provincial committee appear at the national NT ISC SO);

(vii) The intersectoral committee of persons with disabilities, which was established in 2015 and is establishing a draft model for access to disabled persons in 2017;

(viii) The National Task Team on Lesbian, Gay, Bisexual, Transgender and Intersex persons (NTT LGBTI); and

(ix) The Intra-Departmental Committee on Implementation of the Act, which has also been disbanded and dissolved into the NT ISC SO.

These structures and their provincial subsidiaries are guided by two main mandates or frameworks – The MATTSO (2013) and the National Policy Framework (NPF) on Sexual Offences. These frameworks clearly outline the objectives of the oversight bodies and their respective responsibilities regarding the implementation of the legislation and the recommendations of the MATTSO committee. Section 65(1) of the SORMA of 2007 requires the DG ISC SO, under the leadership of the Director-General: Justice and Constitutional Development, develop a NPF that sets out guidelines mainly for the intersectoral implementation and monitoring of the Act. According to Artz (2014)[103] , it was envisioned that the NPF would function as the operational framework of the legislation, guiding both the administrative and procedural implementation of the Act. This, of course, would not supersede the relevant national instructions, regulations or directives provided for in Sections 66 and 67 of the Act. Artz goes on to explain that early discussions surrounding the NPF emphasised the need for 'implementation principles' (in effect, the ethos underlying the substance of the law). Drawing from the principles of Batho Pele, and other relevant policy documents such as the Service Charter for Victims of Crime in South Africa (the Victims' Charter), the framework was introduced to provide concrete guidelines for implementation as well as to provide measures to ensure enforcement of the Act (Section 62(b)).

The National Policy Framework

In 2013, the Department published the National Policy Framework on the Management of Sexual Offences in Government Gazette Notice No 3684, dated 6 September 2013. The document has remained in draft format; however, its main principles have been presented as follows:

- Principle 1: Adoption of a Victim-Centred Approach to Sexual Offences
- Principle 2: Adoption of a Multi-disciplinary and Intersectoral Response to Sexual Offences

References

99 Op cit. Page. 16 lists full complement of members

100 In March 2017 the name of this committee was changed to the NT ISC SO (National Technical Intersectoral Committee for Sexual Offences)

101 Regional Heads Forum the Regional Heads Forum (RHF) is chaired by the Acting Deputy Director-general: Court Services and Policy Development Branch, and carries the representation of 9 Regional Heads of all regional offices of the DoJ&CD. It is a forum that gives oversight in the performance of all courts in the country. Amongst its regular agenda items is the departmental implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

102 The oversight of the implementation of the Act is complicated and confusing with various committees having been established and then been disbanded such as the National Sexual Offences Courts Committee (SOCC) which has ceased to operate

103 Artz, L., 2014. 'The National Policy Framework'. In Smythe, D and Pithey, B. (2011) (eds) Commentary on the Sexual Offences Act (Revised),. South Africa: Juta Publishers. Pages 25-28

APPENDIX 1

- Principle 3: Provision of Specialised Services to the Victims of Sexual Offences
- Principle 4: Equal and Equitable Access to Quality Services for Victims of Sexual Offences [104]

The NPF it has three core objectives: [105]

- ***Specific Objective 1*** - To Establish Uniform Norms, Standards and Mechanisms for the Coordination of the Implementation of the Act, which dictates a governance structure that operates at four levels:

(i) The Director Generals Intersectoral Committees (DG-ISC) is the first level of responsibility for monitoring the implementation of the NPF by the various government departments and institutions.

(ii) National and Provincial Intersectoral Committees (NOISC and POISC) on the Management of Sexual Offences support the DG-ISC in ensuring that the relevant departments and institutions carry out their respective obligations and resolutions. The provincial structures are responsible for the monitoring and collection information at local level. The NOISC reports directly to the DG-ISC, whilst the POISC is accountable to the NOISC.

(iii) Inter-Ministerial consultation is the second level of accountability as Sections 62(2) and 65(3) of the Act requires the Minister of the DoJ&CD to consult with the relevant ministers on the adoption of the NPF and the Annual Reports.

(iv) Parliament is the third level of accountability as it receives the NPF and monitors its implementation through receiving annual progress reports on the implementation of the Act. It has the responsibility to ensure the full compliance with the Act and the NPF. [106]

- ***Specific Objective 2*** - To Develop and Strengthen Coordinated Services, which focuses on the "improved provision of integrated specialised services to survivors of sexual offences. Adequately skilled personnel manage sexual offences cases effectively and efficiently".
- ***Specific Objective 3*** - To Provide Resources for the Effective Implementation of the Act and the NPF, which incorporates coordinating "cluster budget development and presentation to the National Treasury. Source donor funding to supplement existing available financial resources".

The NPF was tasked with outlining a uniform and coordinated approach by all government departments and institutions in dealing with matters relating to sexual offences that would also guide the implementation, enforcement and administration of the SORMA of 2007. It was envisaged that this would ultimately lead to enhanced service delivery and access to justice for all vulnerable groups.

A review of the systemic and situational issues with the implementation of the Act can be conducted from several angles, including the point of view of first reporting or first responders to sexual offences, from the perspective of survivors' experiences of the justice system or through the lens of those filling the gaps in service provision and access to justice for survivors. For the purpose of this review, it is helpful to focus the critiques and observations on the SOCs literature and the way in which the SORMA of 2007 has been implemented via this model.

The Establishment of the Sexual Offences Courts

The need for specialised courts to manage sexual offences cases has been recognised by all key government stakeholders and has been advocated for by a multitude of organisations and research efforts over the last decade.[107] These courts aimed to provide improved access to justice, more efficient case management, and act as a vehicle for the implementation of sexual offences legislation. [108] The history of SOCs in South Africa has shown evidence of the benefits of this intervention through increased conviction rates, a notable decrease in processing time, and as a tool to mitigate secondary victimisation of survivors of sexual offences as they navigate the criminal justice system. [109]

References

104 *Draft National Policy Framework: Management of Sexual Offences.* Department of Justice and Constitutional Development pg. 25 http://www.justice.gov.za/vg/sxo/2012-draftNPF.pdf

105 Op. cit Page. 31- 36 : outlines the specific roles and responsibilities of each department with regards to implementation of the Act

106 Op. cit. Pages 23-25

107 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report on the Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa.

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

109 DOJCD, Report on the Re-establishment of Sexual Offences Courts

The first SOC was established in 1993. [110] This pilot project was successful in its survivor-centreed approach, utilisation of a multi-disciplinary team, provision of support services to survivors, and high conviction rates (80% over one year). [111] In 1998, the NPA established the National Sexual Offences Court Task Team to replicate the Wynberg model. When, in 2002 and 2003, a Blueprint for SOCs was developed and the National Strategy for the Rollout of Specialised SOCs was released, the number of SOCs throughout South Africa grew from 20 such courts in 2003 [112] to 74 in 2005 [113]. In May of 2005, the success of these courts was announced in Parliament; particularly the efficiency of specialised courts in comparison with mainstream courts. At this point, concern grew that the resourcing of SOCs was disadvantaging mainstream courts and violating the constitutional right of survivors of other crimes to equal access to justice, protection and benefit of the law. At the same time, some SOCs remained under-resourced. Following a review of the courts by the Minister, a moratorium was placed on the establishment SOCs. [114] In the following years, many of the existing courts introduced mixed case rolls, became Regional Courts that were not specialised or continued to function as SOCs notwithstanding no longer being formally designated as such. This inconsistency informed the Minister's call to establish the MATTSO committee.

MATTSO Report (2013)

The central task of the MATTSO team was to undertake a study on the efficacy of the SOCs model, as followed in the example of Wynberg Court, with the aim of determining the feasibility of re-establishing the courts. The MATTSO (2013) investigations included a field study to examine the nature and extent of existing specialised SOCs around South Africa and assess the systemic challenges that persisted and contributed to the demise of the SOCs coupled with an audit of the structural and human resources across all regional and circuit courts. These investigations, it was hoped, would then inform the determination of resources available to support the re-establishment of the SOCs. This was also intended to guide the costing process of the re-establishment of these courts, given that there has never been a specific budget assigned to sexual offences or GBV within Parliament. The endpoint of the MATTSO report was to reignite the need for specialised SOCs to reduce the prevalence of sexual violence in South Africa through the development and implementation of a new model which would aim to address the gaps in the original blueprint.

Overall the research by the MATTSO (2013) team pointed to several key challenges that had contributed towards the demise of the SOCs in 2010. They were:

(i) the lack of a specific legal framework to establish these courts;

(ii) the lack of buy-in from other stakeholders due to inadequate consultation;

(iii) the lack of a dedicated budget, which resulted in inadequate resourcing of these courts;

(iv) the lower visibility of these courts in remote areas, which was construed as a violation of the Constitution;

(v) the restricted space capacity in courts that 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);

(vi) inadequate and inconsistent provision of skills training and debriefing programmes for the court personnel, which led to many court personnel experiencing vicarious trauma from dealing with these cases; and

(vii) the lack of monitoring and evaluation mechanism developed specifically for the management of these courts. [115]

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111 Vivier, S. (1994) *Wynberg Sexual Offences Court: impressions after a year in operation.* De Rebus. August 320:569.

112 Majokweni, T. (2000) *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

113 National Prosecuting Authority and Department of Justice and Constitutional Development (2003) National Strategy for the Roll-Out of Specialised Sexual Offences Courts.

114 Op. cit. pg. 8.

115 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report on the Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Page 9

APPENDIX 1

In summary, the MATTSO report states that:

"[...] 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" [116]

The MATTSO (2013) committee made concrete recommendations which spoke to the importance of re-establishing the SOCs (for a full list of recommendations see Appendix 2). The MATTSO findings were supported by other studies which pointed to the importance of the SOCs in reducing finalisation periods and increasing conviction rates for sexual offences within the specialised courts. [117] Taken together with NPA statistics showing that conviction rates for rape in all Regional Courts from January 2002 to November 2003 was 42% whereas the conviction rate in SOCs was 62% [118], MATTSO (2013) recommended that South Africa urgently needed the re-introduction of the SOCs, and that this the re-establishment process should unfold as follows:

> **Phase 1:** 57 Regional Courts that are resourced closest to the new SOCs Model must be upgraded into SOCs over a period of 3 years commencing in 2013/2014; and thereafter
>
> **Phase 2:** 106 Regional Courts must be upgraded into SOCs, as per the new SOCs Model." [119]

In 2014, the Minister of Justice and Correctional Services announced the decision to reinstate SOCs in South Africa, citing a need for specialised and dedicated focus on sexual offences as a significant subset of South Africa's violent crime. As supported by the Chief Justice, reinstating these courts represented an important milestone for South Africa's justice system. Consequently, the DoJ&CD was tasked with establishing 57 SOCs over a period of three years, commencing in 2013/2014. This was a mammoth task requiring the cooperation and coordination of no less than four justice sector stakeholders: the DoJ&CD, the NPA, the Office of the Chief Justice (OCJ) and the South African Judicial Education Institute (SAJEI).

Regulations relating to the SOCs

Section 67 of the Act permits the Minister of Justice and Correctional Services to make regulations to achieve the objects of the Act. The draft regulations relating to SOCs have been developed and costed, and the process of adoption is underway. [120] The regulations are contained in seven chapters that deal with the following topics: (i) requirements for designated court; (ii) facilities at designated court; (iii) devices and equipment available at designated court; (iv) services available at designated court; (v) training of persons involved in trials of sexual offences; and (vi) special arrangements for hearings by designated court.

The Regulations make a distinction between basic requirements and advanced requirements regarding facilities. Basic requirements for a sexual offences court include a courtroom, a testifying room and separate adult and child waiting rooms for survivors. Advanced requirements include a court preparation room, restrooms for witnesses, an office for the court preparation officer, an office for the intermediary, an office for the designated probation officer, and an office for the sexual offences prosecutor.

References

116 Op. cit. Page 11

117 See (i) *'Protecting Survivors of Sexual Offences: The Legal Obligations of the State with regard to Sexual Offences in South Africa' (2013)* Rape Crisis and the Women's Legal Centre.(ii) Bornman, S and Dey, K Et Al. (2013). *The Legal Obligations of the State With Regard To Sexual Offences in South Africa.* (iii) Renee, JM and Kruger, Hb (2006). Sexual Offences Courts: Better Justice for Children. *Journal for Juridical Science*, 31(2), Pp. 73-107. (iv) Shukumisa Campaign, (2014) *Submission: Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007): Regulations Relating To Sexual Offences Courts and Draft National Strategic Implementation Plan For The Re-Establishment of Sexual Offences Courts.* Shukumisa Campaign, South Africa. (v) Shukumisa Campaign, (2014) *Monitoring the Implementation of Sexual Offences Legislation and Policies Findings of the Monitoring Conducted in 2013/2014.* Shukumisa Campaign, Cape Town, South Africa. (vi) Shukumisa Campaign, (2012) *Monitoring The Implementation Of Sexual Offences Legislation and Policies Findings of The Monitoring Conducted In 2011/2012.* Shukumisa Campaign, Cape Town, South Africa.

118 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report on the Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Pages 23-30

119 Op. Cit. Page 26

120 The Draft Regulations for the Sexual Offences Courts are currently under review by the OPS ISC SO Committee, Government Gazette NO 899, September 30 2015 http://www.gov.za/sites/www.gov.za/files/39240_gon899.pdf

The Draft Regulations contain very specific provisions covering the areas outline in Table 25 below.

Table 25: Areas Covered by the SOC Regulations

Summary of the Draft Regulations for the Sexual Offences Courts	
Access for persons with physical disabilities	Signage of courts
Accompaniment of victim by court preparation officer	Separate court entrances where applicable;
Basic requirements regarding devices and equipment for testifying rooms and court rooms	Requirements to preside over sexual offences cases and the training required by judicial officers
The contents and procedure for court preparation programmes	The duties of probation officers
The requirements for victim support services	Counselling services for court officials, prosecutors and judicial officers
Intermediary services and training of intermediaries	Operation and repairing of electronic equipment;
Availability of educational information	Complaints mechanisms for survivors
Requirements because a witness must be treated in cases where an intermediary has not been appointed	Requirements for anatomical dolls
Designation of prosecutors and the training required	Designation of court interpreters and the training required
Training requirements for police, probation officers and court preparation officers	Provisions relating to cycle times for the finalisation of cases
Special arrangements relating to the interviewing and transport of witnesses as well as to the investigation of these cases	The roles and duties of investigating officers and prosecutors
The roles and duties of legal aid officers	Scheduling of sexual offences cases
[Source: Draft Regulation of the Sexual Offences Courts, DoJ&CD 2015]	

Monitoring the Implementation of the SORMA of 2007 through the Re-establishment of the SOCs

An important element of the reestablishment of the SOCs was the way poor implementation could be monitored and how implementing bodies could be held accountable and responsible for reporting on the performance of their departments. MATTSO (2013) recommended that a data collection method must be available to allow for the monitoring and evaluation of the court's effectiveness across all departments, which would mean strong intersectoral communication and coordination to ensure the success of the sexual offences courts. To give credence to the role of SOCs in increasing conviction rates and improving the survivor's overall interactions with the justice system, it was of paramount importance that the stakeholders were seen to be collecting this data. Moreover, the MATTSO (2013) concerned itself with the reporting on the performances of their departments in a manner, which looked carefully at the statistical evidence of improvements as well as the effective implementation of the new structures, laws, and guidelines that were provided in the SORMA of 2007. As such the performance of the SOCs was recognised by all stakeholders as being central to the improved outcomes for sexual offences survivors.

In terms of accountability and reporting performance, the annual reports of the justice cluster stakeholders contained information regarding the progress of the re-establishments of the courts, statistics on sexual offences turnaround times and finalisation rates as well as detailed reporting on the training that court staff were receiving to operate in the

APPENDIX 1

specialised environment that the sexual offences courts required. The traditional indicators varied from the finalisation and convictions rates from the NPA, allocated sexual offence courts or courtrooms from the DoJ&CD coupled with the appointment of intermediaries and court interpreters to the bench hours and court roll caseloads from the judiciary and reported cases and arrests from SAPs. Initially is was the responsibility of the DoJ&CD to oversee this monitoring of the implementation of the SORMA of 2007and more importantly the performance of the SOCs as outlined in the 2013-2014 report on the implementation of the SORMA of 2007 where it states that, "among the key legislative responsibilities of the Department is the coordination and monitoring of the intersectoral performance in the implementation of the Act and its National Policy Framework (NPF)". [121] This is important to note, as one of the main concerns with the previous sexual offences courts management was that it lacked a coordinated approach to performance management and no clear line of accountability and responsibility. Therefore, it was essential to the success of the re-establishment that a strong leader would bring the other stakeholders to the table to run the courts effectively and efficiently. As the IDASA report on the sexual offences courts in 2001 explained regarding the old model:

> "Because there is no overall management structure in place across the sectors, there is no one body that monitors and evaluates the whole programme and identifies weaknesses or gaps in present service delivery. There is a need to create a structure to improve the collaboration between the sectors. This committee or forum should provide a space for all the role-players to come together and discuss how the programme is functioning and what problems are being experienced. It should also address the shared need for additional training, improved information management and continuous programme evaluation". [122]

This disjointed internal coordination across and between departments and various stakeholders led to much confusion amongst court personnel and staff and it could be said contributed to the poor reporting on performances and weak intersectoral collaboration, as the IDASA report goes on to illustrate:

> "An interesting aspect of the research has been that staff involved in the SOC and related services not only identified problems, but also suggested solutions to most of the problems they raised. While many interviewees therefore made suggestions to address the problems they were experiencing in the SOC, there was no structure or person that they could take these suggestions to. There are management structures in place for each department, but there is no overarching structure at national or provincial level that can address some of these problems – or facilitate the implementation of proposed solutions". [123]

Therefore, the birth of various new coordinating structures, as outlined in the earlier section on oversight, were initially welcomed by al the stakeholders and those involved in the management of the sexual offences courts, particularly at a national level. One stakeholder even went so far as to report in their recent annual report that, "a multi-disciplinary approach followed by newly established provincial structures with stakeholders from the DoJ&CD, Legal Aid South Africa (LASA), SAPS, DoH and NPA seems to have contributed to the improvements on sexual offence cases". [124]

References

121 Department of Justice and Constitutional Development (2012) *Final draft national policy framework management of sexual offence matters,* Pretoria: Dept. of Justice and Constitutional Development. Page 25

122 The IDASA report sought to look at the Wynberg Sexual Offences court, which was one of the first sexual offences courts to be established in 1993, and looked at 4 key areas: 1. Whether the conviction of sexual offences has increased; 2. Whether secondary trauma to child survivors has decreased; 3. Whether there is sufficient inter-sectoral collaboration to provide an effective service; and 4. Whether sufficient resources have been allocated to this programme (IDASA 2001). IDASA. (2001) *Pilot assessment: The Sexual Offences Court in Wynberg and Cape Town and related services.* Cape Town: IDASA. Pages 1-59

123 Op. cit. Page 59

124 National Director of Public Prosecutions (2016) *Annual Report in Terms of the NPA Act 32 of 1998. Pretoria: National Prosecuting Authority. ational Director of Public Prosecutions Annual Report 2015/2016.* Page 40

Critical reflections on the SOCs and its effectiveness in improving the case outcomes for sexual offences survivors

The SOCs could be said to be a microcosm of the challenges that have been persistent and unremitting over the last decade since the promulgation of the SORMA of 2007. Through examining the management of the SOCs and the way in which the model has been implemented amongst all key stakeholders, one can gauge the systemic problems within the model and how this has affected the outcomes of cases for sexual offences survivors. Through looking at the challenges that remain in the model, you can examine how persistent issues are being addressed or implemented since the passing of the legislation? However, what if these key issues/concerns were not addressed in the legislation. There are several key issues regarding the implementation of the SORMA of 2007 that have remained problematic as illustrated through the challenges that have presented themselves within the SOCs.

Structural and Financial Resources: SOCs or Courtrooms?

The confusion over what constitutes a SOC and whether the court rolls at these courts must be exclusively sexual offences or mixed rolls has been ongoing for almost fifteen years. In 2002, a Blueprint for SOCs was developed by the Sexual Offences and Community Affairs Unit (SOCA Unit) within the NPA. [125] In February 2003, the National Strategy for the Rollout of Specialised SOCs introduced the concept of two categories of courts. [126] This gave rise to the confusion relating to terminology being used to describe the functions and designations of these courts. 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 SOCs 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." [127]

In 2013, MATTSO warned against the use of the term 'specialised' and went on to propose the establishment of two distinct forms of SOCs models for the newly established courts. The models would reflect the varying capacity levels of the courts and facilitate a swift conversion of some courts to meet the targets outlined. To quote the MATTSO (2013):

> "1. 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 identified the establishment of these courts as the ultimate goal that the Department should strive to achieve.

References

125 https://www.npa.gov.za/sites/default/files/sexual-offences-ndaba-2008/Phase%202.pdf

126 National Prosecuting Authority and Department of Justice and Constitutional Development (2003) National Strategy for the Roll-Out of Specialised Sexual Offences Courts.

127 National Prosecuting Authority and Department of Justice and Constitutional Development (2003) National Strategy for the Roll-Out of Specialised Sexual Offences Courts as quoted in the Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (2013). Report On The Re-Establishment of Sexual Offences Courts, Page 20

APPENDIX 1

2. However, in court buildings where the SOCs 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." [128]

The difficulty lies in the way the court roll is set out in the courts – in many cases the courts that were named as having dedicated rolls have had to mix their court rolls to accommodate high caseloads and limited structural and human capacity to keep the roll pure. Moreover, whilst the idea of the hybrid courts was a temporary solution until these courts could be upgraded, many courts have been operating as hybrid courts for over 15 years with little or no chance of reaching the levels of upgrades needed to meet the MATTSO (2013) model blueprint, particularly when it comes to having a dedicated roll. Due to high caseloads, rolls have had to spill over into other courtrooms, creating mixed rolls which further exacerbates existing capacity issues. This has led to widespread complaints from those managing the courts and the judiciary who are tasked with managing the case flow and court rolls within the system. The SORMA of 2007 does not assist with clarifying the difficulties of mixed court roll in courts that are deemed as being hybrid.
The 2014-2015 SORMA Implementation Report states: [129]

> "It might also be worth-noting here that section 55A of the Judicial Matters Second Amendment Act, 2013 which empowers the Minister to designate a court as a sexual offences court has been criticised for not giving clarity as to whether the designated sexual offences court will be referring to the entire court building or a particular courtroom. Some argue that a courtroom cannot be designated as a sexual offences court, as this will be a move against the current South African trend, which considers the entire infrastructure when designating a court or structure, e.g. the designation of the Commercial Courts and the One Stop Child Justice Centres speaks to the entire court building or infrastructure". [130]

This tension and confusion has given birth to a new classicisation to inform the designation of SOCs, where those courts that are forming part of the model are designated to have sexual offences courtrooms as opposed to entire court buildings. This negates some of the structural capacity issues and distances itself and the model away from the concept of a hybrid court, requiring only dedicated sexual offences courtrooms. Even within the DoJ&CD's own annual reports there is a confusion of terms [131]. Therefore, it is easy to imagine why the terminology can become very confusing for court personnel, stakeholders and most importantly for those responsible for case flow management within the courts. Not to mention the difficulty posed by using the wrong terminology when it comes to budgetary allocations and discussing the implementation of the SORMA of 2007 with Treasury. Given that no separate budgeting is done for the implementation of the SORMA of 2007, confusion over what it is that one is costing for would indeed make it difficult to discern the extent of budgeting.

References

128 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report on the Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa, Page 11

129 It goes on to say that, "An argument to the contrary is that the designation of the entire court building as a sexual offences court may result to a waste of resources, since not all Regional Courts have a sexual offences court roll that may sustain full court hours on daily basis. It is further argued that these courts only seek to provide marginal specialty services, in addition to the greater core service compendium offered by the general courts; so the designation of the entire court building as a sexual offences court may therefore lead to unnecessary and very costly service duplication" Op. cit. Page 39

130 Department of Justice and Constitutional Development, (2014) *Report On The Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2013 To 31 March 2014.* Department of Justice and Constitutional Development, South Africa. Page 32

131 Department of Justice and Constitutional Development, (2016) *The Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: Annual Report 2015/2016.* Department of Justice and Constitutional Development, South Africa. Page 8

132 Shukumisa Campaign, (2012) *Monitoring The Implementation of Sexual Offences Legislation and Policies Findings of The Monitoring Conducted In 2011/2012.* Shukumisa Campaign, Cape Town, South Africa. Pages 5-8

133 Shukumisa Campaign (2012), *Monitoring The Implementation of Sexual Offences Legislation and Policies Findings of The Monitoring Conducted In 2011/2012.* Shukumisa Campaign, Cape Town, South Africa. Pages 55-70

With regard to the structural capacities of these courtrooms there have been many reports completed since 2007 which have tried to measure the levels of progress made in the courts structurally and auditing the levels of compliance within the courts in relation to the standards and requirements outlined in the SORMA of 2007(Shukumisa, 2010, 2011; Vetten, 2015; IDASA, 2001; TELAC, 2015; Hollely, 2014) the Shukumisa Campaign completed monitoring reports on the implementation of the SORMA of 2007 in 2010 and 2011 by examining the levels of compliance in 25 courts across the country. According to the Customer Service Charter for Court Users [132] , those accessing court facilities should be provided with clear direction signs, a clean court house which is accessible and specialised services, such as ramps for those with disabilities. Court facilities should also be safe, accessible and convenient to use. The Charter also guarantees survivors of crime that access court services the following facilities:

- An information desk for the provision of information services;
- Refreshment facilities;
- A room for Non-Governmental Organisations (NGO) services;
- Separate witness waiting rooms for victims of sexual violence;
- Separate room with a closed-circuit television (CCTV) facility; and
- Court preparation services.

Finally, the Charter obligates the courts to provide clean and accessible public toilets for its users. According to MATTSO (2013), the key components of a SOC are the availability of a main courtroom and a testifying room that are linked by closed-circuit television systems. The courtroom must have access to a separate waiting room for adults and children, who must testify. It is an important principle of a SOC that direct contact between a child and a victim or witness and the accused be avoided at any point in the justice process. The courtroom must have specific electronic equipment for testifying as specified in the model. The testifying room must also be fitted with the specified equipment and should be comfortable and welcoming. Waiting rooms for children and adults must be furnished in accordance with the model to reflect a comfortable, victim-friendly environment. There is a focus on empowerment - the waiting rooms must contain information screens, booklets, and pamphlets that can provide survivors with the information that they require. In addition, the model requires adequate signage for the SOCs, and the provision of private restrooms for survivors. The model also suggests the minimum personnel required for a SOC as well as the need for specialised training, and the minimum topics that need to be covered by the training.

In their 2012 study on the courts the Shukumisa researchers found that of the 25 courts they surveyed:

(i) Only 45% of the courts had clear direction markers or signage.

(ii) 64% of courts had witness waiting rooms; the remaining 10 had no designated place for witnesses to wait. 16 of these were furnished with chairs or benches.

(iii) 13 of the witness waiting rooms had toys for child witnesses

(iv) 78% of courts had CCTV facilities;

(v) 48% of courts had a room/office for NGO use;

(vi) 59% of courts had court preparation officers.

(vii) Only 8 witness rooms had posters on display. None of the courts in the Western Cape had publicity or information material.

(viii) 12 of the 25 courts, 48% of the sample, had anatomical dolls. [133]

Based on these findings and the concerns that were voiced regarding the future capacity limitations at the courts, Shukumisa recommended the following with a view to improving capacity and ultimately service delivery to the sexual offences survivors:

(i) The legislation should be amended to allow adults to apply for intermediary services.

(ii) All courts should provide intermediary services for people living with disabilities.

(iii) Court preparation services should be available at all courts.

(iv) Witness waiting rooms which are child-friendly should be available at all courts.

(v) Work should be done to make witness waiting rooms comfortable and secure and to ensure they contain educational materials.

(vi) All courts should have open, clean and working public toilets.

(vii) Courts should have anatomical dolls that are representative of race, genders and age groups.

The other major gap has been the consistent failure to allocate adequate resources to these matters. We note that government resources are stretched but also note that government policy priorities must be reflected in resourcing if they are to be more than empty promises.

Vulnerable groups

Whilst sexual violence rates are high throughout South Africa, certain groups of people experience increased vulnerability and corresponding difficulty accessing and navigating the criminal justice and health systems. For the purposes of this review, the following are considered under the umbrella of vulnerable groups: LGBTI persons, people with disabilities, older persons, refugees and migrants, sex workers and children.

The specific challenges, barriers and vulnerabilities facing each of these groups will be discussed below; however, several commonalities are apparent. In each case, specific training is necessary for stakeholders, including court personnel, police and service providers, to serve these communities more effectively. Other common themes include the need for public education regarding the provisions of SORMA of 2007, both generally and as it relates to vulnerable groups, and the need to address overall mistrust and lack of confidence in the criminal justice system by such groups.

The SORMA of 2007 uses concepts such as 'vulnerable persons', 'vulnerable, particularly women and children' and 'vulnerability of children' and 'certain victims'. Vulnerable persons are persons who, due to their peculiar circumstances, are susceptible to sexual violence. According to the NPF the following groups are generally considered as vulnerable:

(i) **Women:** mainly due to gender power imbalances in society, as well as the prevalence of discrimination against women;

(ii) **Children:** mainly due to their young age relative to the age of the sexual offender, as well as their immaturity and gullibility;

(iii) **Elderly persons:** mainly due to their elderly age relative to the sexual offender, as well as their compromised physical strength due to age;

(iv) **Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons:** mainly due to discriminatory societal perceptions that this group practices unacceptable sexual behaviour. The LGBTI persons also suffer as they challenge the societal gender roles.

(v) **Immigrants and refugees:** mainly due to their insecure and uncertain status in the country; and/or

(vi) **Awaiting trial detainees and incarcerated offenders:** mainly due to gangsterism in prison, as well as the general propensity of fellow awaiting trial detainees and incarcerated offenders towards violence (NPF, 2012:14)

LGBTI Persons

LGBTI persons experience high levels of sexual and gender-based violence in South Africa, particularly – but not exclusively – in the context of homophobic rapes experienced by black lesbian and bisexual women as well as transgender men which have been reported on widely in the media and by NGOs. [134] Taking this - combined with barriers to access to justice and health services – into account, LGBTI persons are considered to be especially vulnerable to sexual violence and thus have particular needs that must be addressed when interacting with the justice system.

The South African Law Commission Final Report on Sexual Offences (2002) highlights three inclusions in the SORMA of 2007 which are of note in the context of LGBTI persons' access to justice under the Act. First, the gender-neutral language of the Act, which criminalises unlawful penetration and thus allows for men and women alike to be convicted of rape,

References

134 (i) Nath, D., and Mthathi, S. (2011) *"We'll Show You You're a Woman": Violence and Discrimination Against Black Lesbians and Transgender Men in South Africa.* New York, NY: Human Rights Watch, 2011; (iii) Sandfort, T.G., Baumann, L.R., Matebeni, Z., Reddy, V. and Southey-Swartz, I. (2013) Forced sexual experiences as risk factor for self-reported HIV infection among southern African lesbian and bisexual women. *PLoS One*, 8(1), p.e53552; (iv) Muller, A. and Hughes, T.L.,

allows for the prosecution of sexual violence cases between same-sex couples as well as assaults on male survivors. It is also worth highlighting that the definition of genital organs given in the SORMA of 2007 includes surgically constructed and reconstructed organs. Second, the Commission highlights the removal of distinction between vaginal and anal penetration in terms of the age of consent to sexual acts, mentioning specifically that the Act brings the ages of consent for heterosexual and homosexual intercourse in line with one another. Finally, the report highlights the non-discrimination provision which, among other grounds, prohibits discrimination on the grounds of gender and sexual orientation.

Further key issues for LGBTI survivors of sexual violence were highlighted in the MATTSO report. The report recognises LGBTI persons as a group who are particularly vulnerable to sexual violence, but notes that LGBTI persons are not considered a vulnerable group by the Department of Justice and Constitutional Development's Chief Directorate: Promotion of the Rights of Vulnerable Groups. Additionally, the report highlights several barriers to reporting sexual violence to police, including facing scepticism from police and other personnel who lack knowledge regarding women on women violence, as women are not perceived to be perpetrators of violence. Other barriers to reporting include being closeted, guilt and self-blame, stereotypical perceptions of LGBTI persons as promiscuous and inviting the assault, and barriers to accessing the legal system.

The MATTSO report also specifically addresses the question of homophobic, or bias-motivated, rape as a factor in the high levels of sexual violence faced by LGBTI persons, noting that it is not a specific crime, but rather refers to "hate-driven rape [135] that is commonly committed by heterosexual men against lesbians". [136] The report notes that international studies have found that higher levels of psychological distress are caused by hate crimes, and thus specialised support services and infrastructures are required to reduce secondary victimisation and further traumatisation for survivors who identify as LGBTI.

The following challenges faced by LGBTI survivors are identified within the report as something to be addressed in the re-creation of the SOCs: (i) lack of adequate support services; (ii) lack of statistics regarding LGBTI survivors; (iii) "limited policing"; and (iv) discrimination against or deprioritisation of hate crime survivors by decision-makers and service providers alike.

Many of the same key issues are picked up in a research report generated from a civil society summit on sexual offences law and community justice held in 2015. [137] The authors highlight the gender neutral expanded definition of rape as a starting point; however, numerous challenges and barriers to reporting for LGBTI survivors that were highlighted in the MATTSO report [138] are mentioned. In addition to many of the themes picked up in the documents covered above, the authors take specific notice of the barriers faced by male survivors and trans survivors, noting that male GBTI persons are experiencing assault in high numbers in townships and rural areas. For male survivors, they highlight experiences of secondary victimisation when reporting and the need for TCC staff to be empowered to respond sensitively to these cases, noting that both the criminal justice system and the health system fall short when dealing with male survivors. [139] For all LGBTI survivors, having to prove their identity and out themselves to police and health care workers when reporting sexual violence is listed as a barrier to reporting and to receiving services. Other barriers to reporting are secondary victimisation more broadly, fear of not being taken seriously and fear of being outed to their communities. [140] This affects how offences against LGBTI persons are recorded as people are afraid to disclose their sexual orientation and/or gender identity to police and the hate crime aspect is lost.

References

2016. Making the invisible visible: a systematic review of sexual minority women's health in Southern Africa. BMC public health, 16(1), p.307.

135 Homophobic rape is often called 'corrective rape' in the South African media and public discourses. This term is contested among LGBTI persons and advocacy organisations, as it gives justification to the unacceptable motivation of the perpetrator (to 'correct' lesbian women in their sexual orientation), and further obfuscates the role of irrational hate against LGBTI persons as the key motivation. In this report, therefore, the term 'homophobic rape'/ 'homophobic sexual offences' will be employed in order to avoid the simplification of the matter.

136 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (2013). *Report On The Re-Establishment of Sexual Offences Courts*, Department of Justice and Constitutional Development. Page 44.

137 Galgut, H., and Artz, L. (2016) *"If You Don't Stand-Up and Demand, Then They Will Not Listen": Sexual Offences Law and Community Justice.* Gender, Health and Justice Research Unit, University of Cape Town, Cape Town, South Africa.

138 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (2013). *Report On The Re-Establishment of Sexual Offences Courts,* Department of Justice and Constitutional Development. Page 44

139 Galgut, H., and Artz, L. (2016) *"If You Don't Stand-Up and Demand, Then They Will Not Listen": Sexual Offences Law and Community Justice.* Gender, Health and Justice Research Unit, University of Cape Town, Cape Town, South Africa. Page 56

140 ibid.

APPENDIX 1

Additional challenges identified during the summit include: the reliance of police stations on NGOs to provide services and support to LGBTI persons, LGBTI persons needing to be encouraged to seek care; service providers needing to be trained to provide adequate and sensitive care; inadequate service provision for LGBTI persons from existing services, including victim empowerment programs the criminal justice system and the health care system; and stereotypical assumptions regarding what sexual violence looks like, who experiences it and who perpetrates it. Finally, the summit report engages with homophobic sexual offences, noting that black lesbian and bisexual women in townships are the most vulnerable to this type of violence. In these cases, it is also noted that often survivors do not want to be referred for services or to open a case. Additionally, and most relevant to this review, the criminal justice system is slow to respond to cases of homophobic sexual offences when they are reported. The summit report highlights the need for hate crimes and sexual offences against LGBTI persons to be recorded as part of the general sexual violence statistics, and argues that statement taking by SAPS needs to be improved to determine and support the bias-motivation of the violence. [141]

In addition to the official documents and reports discussed above, other documents broach the subject of the implementation of SORMA of 2007 with regards to LGBTI persons. They identify the following challenges facing LGBTI survivors as they navigate the criminal justice system or seek services: experiences of secondary victimisation, transgender survivors having to prove their identity, low confidence in the justice system related to the culture of impunity and the slow progress of cases through the system, negative experiences when reporting violence and accessing services including hostility, abuse and discrimination, limited ability on the part of police stations to provide assistance to LGBTI survivors, and the limited availability of data as SAPS and the NPA do not record hate crime data or general statistics regarding sexual orientation or gender identity. The main barriers to reporting sexual offences identified in the documents were low confidence in the justice system, fear of not being taken seriously, fear of abuse or secondary victimisation, fear of being outed in their community and fear of appearing in court due to fear of repercussions from the offender.

In response to media attention surrounding the elevated rates of sexual and gender-based violence experienced by black lesbian women and transgender men, particularly in the context of homophobic sexual offences, the DoJ&CD established an LGBTI National Task Team (NTT) in 2011. Since its inception, the NTT has released a National Implementation Strategy outlining three key areas for action to address the levels of violence against LGBTI persons: developing prevention programs, improving the response of the criminal justice system and strengthening the capacity of state and civil society institutions and systems to address and prevent violence against LGBTI persons. [142]

Outputs identified as a part of this strategy include:

(i) creating a database to document and track cases;

(ii) promoting the rights of LGBTI survivors, developing strategies to address hate crimes;

(iii) designing and providing education and training programmes;

(iv) creating a mentoring programme for public service officials;

(v) strengthening the capacity of civil society organisations;

(vi) supporting engagement between Chapter 9 organisations, civil society organisations and the government; and

(vii) developing a monitoring and evaluation strategy.

Additionally, the National Intervention Strategy established a Rapid Response Team (RTT) to respond to the backlog of pending cases. The 2014 progress report for the NTT reported that out of the 45 cases the RTT received from civil society organisations, 21 cases had been finalised, 8 of which resulted in convictions, while 24 cases continued to be pending. Further progress reports taken from the Implementation of the SORMA of 2007 Annual Reports between 2014 and 2016 by the DoJ&CD indicate that the NTT is in the process of developing a training programme for civil society

References

141 (i) Lynch, I. (2013) *Justice Delayed: Activist Engagement In The Yoliswa Nkonyana Murder Trial.* Cape Town: Triangle Project. (ii) Galgut, H., Artz, L. (2016) *If You Don't Stand-Up and Demand, Then They Will Not Listen: Sexual Offences Law and Community Justice.* Gender, Health and Justice Research Unit, University of Cape Town, Cape Town, South Africa. (iii) Lee, p. Lynch, I and Clayton, M. (2015) *'Your Hate Won't Change Us'* Cape Town: Triangle Project.

142 LGBTI National Task Team (N.D> *National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex* (LGBTI) Sector. DoJ&CD: LGBTI NTT.

143 Shukumisa. (2011) M*onitoring the Implementation of sexual offences legislation and policies. Findings of the monitoring conducted in 2011/2012.* Shukumisa Campaign.

and service providers, in addition to a guide for officials are service points entitled Working with Diverse Communities: Understanding Sexual Orientation, Gender Identity and Expression: A Guide for Service Providers. Training workshops are to be conducted with relevant officials. Along with reporting on the progress of the LGBTI NTT, the SORMA 2007 Annual Reports mainly highlight public engagement and communication efforts designed to ensure people are aware of the Act as it relates to LGBTI persons.

Critical responses to these reports show that the outputs purported in the MATTSO (2013) and SORMA reports are not evident in action. Since 2008, the Shukumisa Campaign has conducted several evaluations of the implementation of the SORMA of 2007 in police stations. Overall, these reports show that the level of understanding of the needs of LGBTI survivors varies, with the 2011 report noting that 37 of 83 stations surveyed either had existing relationships with LGBTI organisations, trained professionals who could provide services for LGBTI survivors, or staff who had received some training. [143] They have also noted that stations that were able to provide services to LGBTI survivors were heavily dependent on external resources for support with those cases.

Additionally, the campaign noted several cases wherein officers claimed to have never come across a case that involved a LGBTI survivor. In their assessment of the Thuthuzela Care Centres, they found that there were barriers to reporting and accessing services facing LGBTI persons and that it is unknown how frequently lesbians' experiences of sexual violence are recorded in SAPS statistics. [144] The Shukumisa submissions on the SORMA of 2007 Regulations and the Draft National Strategic Implementation Plan for the Re-Establishment of Sexual Offences Courts [145], highlight the critical importance of victim impact statements in LGBTI-related hate crimes to demonstrate the erosion of LGBTI survivors' sense of safety and belonging. Additionally, the submission recommends training and sensitisation of trauma counsellors, court officials, SAPS, the NPA and other service providers to reduce secondary victimisation of LGBTI survivors.

People with Disabilities

People with disabilities are also considered to be especially vulnerable to sexual violence. The factors that increase their risk include discrimination, being viewed as incapable and helpless, being separated from society and denied education and other opportunities. [146] These factors are exacerbated by misperceptions about the sexuality of people with disabilities who are often perceived either as hypersexual or asexual, and do not receive adequate sex education. [147]

Generated during a civil society summit, the If You Don't Stand Up and Demand, Then They Will Not Listen: Sexual Offences Law and Community Justice report highlights changes in the SORMA of 2007 which provide protection for a wider variety of survivors, including persons with intellectual disabilities. [148], the report points to the establishment of mandatory reporting of sexual offences against persons with mental, intellectual and physical disabilities.

From an implementation perspective, the Shukumisa Campaign reported that a significant number of police stations were ill equipped to deal with survivors with disabilities, noting a lack of relevant resources for survivors with physical and intellectual disabilities and a similar lack of resources combined with heavy reliance on NGOs for providing support to survivors with hearing disabilities [149].

Cape Mental Health, one such NGO, has, that through their Sexual Assault Victim Empowerment (SAVE) Programme achieved consistently better case outcomes for survivors with intellectual disabilities than anywhere else in South Africa with a conviction rate consistently as high as the national average in the general population. [150]

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[144] Vetten L. (2015) *"It sucks/it's A Wonderful Service": Post-Rape Care and the Micro-Politics of Institutions.* Johannesburg: Shukumisa Campaign and ActionAid South Africa.

[145] Shukumisa (2014) *Submission on Sexual Offences Courts Regulations and Implementation Plan.* Shukumisa Campaign.

[146] Meer, T., and Combrinck, H. (2016) H*elp, harm or hinder? Non-governmental service providers' perspectives on families and gender-based violence against women with intellectual disabilities in South Africa.* London: Disability and Society, 32(1), pp. 37-55

[147] (i) Hanass-Hancock J (2009)'Interweaving conceptualisations of gender and disability in the context of vulnerability to HIV/AIDS in KwaZulu–Natal, South Africa', in *Sexuality and Disability,* 27, 1, Pages 35-47; (ii) Meer, T. and Combrinck, H (2015) 'Invisible intersections: Understanding the complex stigmatisation of women with intellectual disabilities in their vulnerability to gender- based violence', Agenda, 29:2, Pages 14-23

[148] Galgut, H., and Artz, L. (2016). *"If You Don't Stand-up and Demand, Then They Will Not Listen": Sexual Offences Law and Community Justice.* Gender, Health and Justice Research Unit. University of Cape Town: South Africa

[149] Shukumisa Campaign, (2012) *Monitoring The Implementation of Sexual Offences Legislation and Policies Findings of The Monitoring Conducted In 2011/2012.* Shukumisa Campaign, Cape Town, South Africa. Pages 10-15

[150] See Dickman, BJ, and Roux AJ. (2005) Complainants with learning disabilities in sexual abuse cases: a 10-year review of a psycho-legal project in Cape Town, South Africa. *British Journal of Learning Disabilities,* Vol 33:138–144 programme assisting complainants with intellectual

APPENDIX 1

They reported that in light of the 2007 Sexual Offences Act, they are better able to advocate for the rights of their clients in the criminal justice system and their clients have been taken more seriously, the scope of recognised offences has been widened, there is a larger availability of expert testimony and there has been closer monitoring of case withdrawals. [151]

However, Galgut and Artz (2016) highlight some persistent barriers and challenges. This includes the need for training of key players to identify sexual offences and provide better services to people with disabilities and for increased funding to ensure that people with disabilities can access services and to cover the costs of expert reports. [152]They also highlight the need for greater awareness of the provisions of the SORMA of 2007 as it relates to people with disabilities and for challenging the public perceptions surrounding the sexuality of people with intellectual disabilities – including providing education so that people with intellectual disabilities can identify inappropriate behaviour. People with intellectual disabilities should be afforded protective measures such as an intermediary. This is often denied on the basis that they are too old.

In their research regarding the perspectives of non-governmental service providers on gender-based violence against women with intellectual disabilities, Meer and Combrinck (2016) [153] found that women with intellectual disabilities may be especially vulnerable to sexual violence due to common perceptions that they are either hypersexual or asexual, in addition to conditions such as neglect, institutionalisation without oversight from family members or communication barriers which allow for opportunistic sexual violence to occur. Another relevant concern raised by the authors pertains to family as conduits between women who have experienced gender-based violence and the services, often due to communication barriers and restricted independent movement. This has the potential of blocking access to those services, for example in cases where the caregiver responded negatively to signs or accusations of sexual violence from family members or cases where those signs and accusations of sexual violence may be dismissed due to infantilisation and perceived lack of credibility.

Despite the SORMA of 2007 including provisions for mandatory reporting of sexual violence against people with intellectual disabilities, families may also feel that reporting is not in the best interest of the survivor due to difficulties in accessing the criminal justice system, mistrust of said system, the potential for secondary victimisation and the potential of having the survivor removed from the home. The authors also found an unequal distribution of services, with services pertaining to sexual and gender-based violence relatively unavailable to women with intellectual disabilities and services for parents and caregivers limited. They also highlight the financial concerns involved in reporting sexual violence, including marriage and/or lobola (or other payments) being an appealing solution to a struggling household.

From a government perspective, the MATTSO (2013) report also recognises people with disabilities as a particularly vulnerable group, noting that South Africa has obligations to ensure effective access to justice for people with disabilities as a signatory of the Convention on the Rights of Persons with Disabilities [154], in addition to the South African Constitution (108 of 1996) which prohibits discrimination based, inter alia, on disability. The mandate of the Chief Directorate: Promotion of the Rights of Vulnerable Groups also includes people with disabilities.

The MATTSO (2013) report identifies physical and social isolation, dependence on others for basic needs, communication difficulties in articulating and disclosing assault, and lack of knowledge and understanding about potential risks and consequences due to limited cognitive and adaptive skills as elements which increase the vulnerability of people with disabilities to sexual violence. They also note that perpetrators are more likely to be known to the victim and a high percentage of survivors encounter the perpetrator in an environment they accessed because of their disability.

While there is a certain amount of overlap, people with intellectual disabilities and people with physical difficulties face different barriers in accessing the criminal justice system. For people with intellectual disabilities, the barriers mentioned in the MATTSO (2013) report include not being believed, not being reliable witnesses, being believed to be incapable of participating in the justice process and being removed from their homes and placed at a greater risk. Considering this, the committee recommends a holistic approach offering specialist services which addresses problems relating to infrastructure, resources, training and research, noting specifically that the adversarial system is not designed to deal with sexual offences, particularly those involving children and people with intellectual disabilities. They note a need for immediate intervention – including specialised training, as well as a need to make court buildings accessible and user-friendly for people with disabilities by providing accessible waiting rooms, addressing language barriers for people who

References

[151] Op. cit Pages 52-53

[152] Ibid.

[153] Meer, T., and Combrinck, H. (2016) Help, harm or hinder? Non-governmental service providers' perspectives on families and gender-based violence against women with intellectual disabilities in South Africa. London: *Disability and Society*, 32(1), pp. 37-55.639

[154] UN Convention on the Rights of Persons with Disabilities, ratified by South Africa 30 November 2007

use sign language, providing audio-visual educational materials in forms that will be accessible to persons with intellectual disabilities and those who use sign language, and providing brailed material.

The annual SORMA of 2007 implementation reports published by the DoJ&CD recognise both the increased vulnerability experienced by persons with disabilities and their obligations under domestic and international law to ensure that the SORMA of 2007 comes to life for persons with disabilities. The report covering 2014/2015 [155] notes that Section 170A of the Criminal Procedures Act recognises the needs of people with intellectual disabilities regarding intermediary services and mental stress and suffering. Research conducted on the needs of intermediaries showed need for training and knowledge regarding people with disabilities including a need for communication and listening skills to engage with people with intellectual disabilities and knowledge and use of appropriate assistive devices. The report recommends that this be included in Justice College training materials.

The report pertaining to 2015/2016 [156] highlights the following infrastructure improvements to ensure equal access to justice for disabled court users: ramps, dedicated parking bays, lifts with voice commands and braille, large print and audio educational booklets. Additionally, they highlight the establishment of the Intersectoral Committee on Persons with Disabilities in 2015. The committee has been charged with drafting a best practice model for court-based support services to be completed in the 2016/2017 fiscal year. The report also addresses the question of intermediary services for people with intellectual disabilities highlighting the hiring of an increased number of intermediaries; however, they also note that intermediary services can be refused by the judicial officer and as such they are in the process of reviewing the Criminal Procedure Act to determine if the provision of an intermediary should not be automatic in the case of people with intellectual disabilities.

In the MATTSO (2013) report and the annual progress reports alike, numerous barriers facing people with intellectual disabilities are highlighted; however, most of the interventions are focused on improving physical accessibility of court buildings and police stations. In that vein, the NPA Annual Report 2015/2016 [157] highlighted progress with regards to implementing SORMA 2007, noting that, in partnership with the University of Pretoria and Cape Mental Health, court preparation officers were given training to assist witnesses with disabilities.

NGO service providers in the disability and gender-based violence sectors in Gauteng, KZN, and the Western Cape reported that the barriers to access to justice for women survivors with intellectual and psychosocial disabilities included a lack of knowledge about disability and related skills on the part of criminal justice officials, availability of evidence, lack of awareness of services and rights, socio-economic circumstances, issue with accessibility and mobility, dependency on abuser, stigma and prejudice against women with intellectual or psychosocial disabilities (Combrinck and Meer, 2014). [158] Of concern were limitation in evidential aspects of the criminal justice process, including police feeling that they could not take a statement from someone with an intellectual or psychosocial disability, difficulty determining the competence and credibility of a witness with a disability, and knowledge of and provision for protective measures (for example, appointment of an intermediary). [159]

Similarly, in their review of the implementation of the SORMA of 2007 in 2011, Artz and Moult also pointed to the persistent problems with the way in which people with disabilities, both physical and intellectual, access the system and are treated by the justice system. In terms of those with mental disabilities the report explained that, "when asked to describe the difficulties and challenges they faced in dealing with cases involving a sexual offences complainant who is considered mentally disabled – or if they have not had such cases, difficulties and challenges they have faced in dealing with mentally

References

[155] Op. cit Pages 52-53

[156] Department of Justice and Constitutional Development, (2015) *Annual Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa.

[157] National Director of Public Prosecutions (2016) *Annual Report 2015/2016. in Terms of the NPA Act 32 of 1998.* Pretoria: National Prosecuting Authority. .

[158] Combrinck, H and Meer, T (2014) *Policy Brief 1: Gender-based violence against women with intellectual disabilities or psychosocial disabilities: Promoting access to justice.* Gender, Health and Justice Research Unit: Cape Town

[159] Ibid.

APPENDIX 1

disabled persons during their policing careers – the most common challenge articulated was that of 'communication' .[160] The authors went on to state that those court personnel and frontline staff they had interviewed who had experience of working with complainants with mental disabilities spoke of the problems they had experienced regarding understanding what the complainant had reported happened during the commission of the sexual offence because of these communication issues. Artz and Moult pointed to SAPS members who had reported to them that they have "an extremely difficult time trying to understand what the complainant was attempting to convey during the statement-taking process". [161] They explain that the lack of skill in communicating with mentally disabled persons was recognised and considered as deficit in the ability of SAPS officers to take a proper statement of the events.

Sex Workers

In their submission to Civil-Society Led Summit Regarding the Implementation of Sexual Offences Legislation in South Africa on Sex Workers Experiences and Sex Workers Ability to Access Services and Justice, SWEAT and SISONKE outline the impacts and implementation of the 2007 Sexual Offences Act with regards to sex workers. [162] The law criminalises sex work and the clients of sex workers, but not sex workers themselves, meaning that they cannot be arrested for being known to the police as a sex worker. To make an arrest, the police must have reasonable suspicion that the person in question engaged in sex for reward with s specific person at a specific time. This makes the law difficult to enforce, as the only way to convict a client is to have the sex workers testify, thus implicating themselves. In turn, criminalisation pushes sex workers further to the margins of society and thus increases the vulnerability of sex workers concerning sexual violence as reporting or laying a criminal charge may expose them to further discrimination and violence or force them to incriminate themselves. Stigma and discrimination, including attitudes such as the belief that sex workers cannot be raped, can affect the services received both from the criminal justice system and in health care settings. To address these issues, SWEAT and SISONKE recommend legal reform to decriminalise sex work. In the MATTSO (2013) report, sex workers are particularly vulnerable to sexual violence – experiencing high rates of sexual violence, but low rates of reporting. Similar to the SWEAT and SISONKE report, they identify stigmatisation, legal restrictions, legal biases and discrimination as factors contributing to that vulnerability. Some of these elements also contribute to a reluctance to report crimes, particularly fear the criminal justice system will disregard or trivialise reports, or even victimise them again and the perception that role players in the criminal justice system feel they deserved it or it is part of their job. Sex workers were also found to have received unfair treatment from both legal and health systems when they do report and to have faced re-traumatisation.

While there is no mention of sex workers in the implementation reports for the 2007 Sexual Offences Act, the NPA Annual Report for 2015/2016 mentions of the murder of a sex worker as a noteworthy case wherein the accused was sentenced to life imprisonment. In addition to the submission from SWEAT and SISONKE, the If You Don't Stand Up and Demand, Then They Will Not Listen: Sexual Offences Law and Community Justice report recognises sex workers as a vulnerable group, highlights the continued criminalisation of sex work and includes sex workers on a list of sexual offence survivors whose needs and experiences are not recognised by the legal system.

Older Persons

Despite older persons being considered particularly vulnerable to sexual violence and abuse, research regarding their experiences in the South African context has been limited. In government reports, older persons were mentioned in the context of needing to address barriers to reporting for vulnerable persons, and in relation to the Older Persons Act of 2006, which was enacted to protect older persons from abuse. Concerning implementation, the report highlights the existence of National Instruction 1/2014: Protection of Older Persons, which outlines police procedures for dealing with cases of abuse of older persons. [163]

The MATTSO (2013) report recognises older persons as a vulnerable group and notes that these needs require specialised infrastructural, including accessible waiting areas. The report highlights the Older Persons Act of 2006 as a relevant piece of legislation but does not go into any further detail.

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[160] Artz, L. and Moult, K (2011) *Criminal Law (Sexual Offences) Amendment Act (32 OF 2007) Reforms, Risks and Revelations*. Open Society Foundation, Page 43

[161] Ibid.

[162] Galgut, H., and Artz, L. (2016). *"If You Don't Stand-up and Demand, Then They Will Not Listen: Sexual Offences Law and Community Justice"*. Gender, Health and Justice Research Unit. University of Cape Town: South Africa

[163] Department of Justice and Constitutional Development, (2015)*Annual Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. 2014/2015*. Pretoria: Department of Justice and Constitutional Development, South Africa.

In their 2013/2014 annual report [164], the DoJ&CD highlighted progress with regards to the Older Persons Act of 2006, noting that they are collecting statistics to be added to the National Register of Abuse of Older Persons when the register is developed – a process which has yet to be completed. They also note that there is no statutory provision requiring courts to report offenders to the register. Additionally, they highlight a public education event regarding sexual abuse of older persons held in the province of Kwa-Zulu Natal. The 2014/2015 DoJ&CD annual report [165] noted that they have continued to collect stats for the National Register of Abuse of Older Persons and conducted public education events and campaigns including outreach in old age homes and at the places where older persons receive their grants, highlighting a specific event in Mpumalanga encouraging older person witnesses to attend court. This continues in the 2015/2016 report [166], where sexual violence suffered by older persons is a focus of public education efforts within South Africa.

Refugees and Migrants

While the MATTSO (2013) report does not contain extensive information regarding refugees and migrants, they do include "foreign women and survivors trafficked for the purpose of sexual exploitation" as vulnerable groups and note that sexual violence has been used as a tool of xenophobia. [167] The remainder of the relevant discussion in the report pertains to survivors of trafficking, noting that specialised training is necessary for law enforcement and immigration officials to identify these survivors of trafficking and that this training has thus far been inadequate. The report also recognises undocumented migrants, refugees and asylum seekers as a vulnerable group, noting a rise in xenophobic attacks and cases where undocumented migrants, refugees and asylum seekers were denied access to justice and basic rights. The authors of MATTSO (2013) found that policies and legislation do not suit the needs of refugees, asylum seekers and migrants. In addition to having limited access to social support due to distance from family and other support networks, access to justice and the justice system is limited as people are reluctant to report to SAPS due to lack of papers and fear of being arrested or deported. Even in cases when people do report, they risk being turned away by both police and healthcare services due to lack of official papers or xenophobic attitudes. The report also identifies language barriers as a significant concern, owing to the requirement that registered interpreters be used which, in the absence of a suitable interpreter, leads to survivors being turned away or unable to tell their story in their own language, which may in turn lead to lost information or evidence and further traumatisation. [168]

In order to address the implementation gap and improve services for migrant, refugee or migrant survivors of sexual violence, one organisation (PASSOP) recommends a civil society group or task force to affect law or policy reform. [169] Other recommendations include: training for counsellors, social workers and police officers to engage more sensitively, improving the relationship between civil society, government and both justice and healthcare service providers, increasing safe houses, counselling and support for survivors with particular emphasis on vulnerable groups and particularly refugees, asylum seekers and (un)documented (im)migrants, engaging with communities to change how foreign persons are perceived, and increasing the number of accredited local community translators.

With regards to refugee and migrant women, specifically, the annual SORMA 2007 implementation reports of the Department of Justice and Constitutional Development focus mainly on survivors of trafficking. One exception is the 2015/2016 report [170], reporting on the visit of the UN Special Rapporteur on Violence against Women who highlighted new vulnerabilities facing women due to increases in migration and other transnational flows of persons.

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[164] Department of Justice and Constitutional Development (2014) *Annual Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa.

[165] Op Cit

[166] Op. Cit.

[167] Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, (2013) *Report On The Re-Establishment of Sexual Offences Courts.* Department of Justice and Constitutional Development, South Africa. Page 42

[168] Op. cit. Page.39

[169] Galgut, H., and Artz, L. (2016). *"If You Don't Stand-up and Demand, Then They Will Not Listen: Sexual Offences Law and Community Justice.* Gender, Health and Justice Research Unit: University of Cape Town

[170] Department of Justice and Constitutional Development, (2016) *Annual Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.* Pretoria: Department of Justice and Constitutional Development, South Africa.

APPENDIX 1

A study published in 2011 [171] on the subject of the prevalence and response to sexual violence against migrant women in South Africa, found cases of sexual violence used as a weapon during outbreaks of xenophobic violence. No current legislation explicitly states that undocumented migrants are entitled to any protections under the constitution; however, rights expressed in general terms, including the right to be free of violence, apply to all persons in South Africa. It should also be noted that legislation protects migrants who have applied for refugee status, but that this does not apply to economic refugees. This legal context leads undocumented (im) migrants to be less likely to report experiences of sexual violence. Additionally, the study argues that even among those migrants who have documentation, survivors do not report due to shame and stigma associated with sexual violence in their culture. The author notes that while SORMA 2007 does not explicitly include increased reporting as a goal, it is a crucial part of addressing sexual violence. Beyond reporting, low levels of trust in service providers were found among migrants, refugees and asylum-seekers, particularly following an outbreak of xenophobic violence in 2008. In this case, out of 1627 people arrested, only 469 were prosecuted and only 70 were found guilty – none of whom were found guilty of murder or rape. Additionally, the author found evidence of discrimination against migrants on the part of SAPS leading to reluctance to report and to cases not being pursued. She also found that hospitals may ask for documentation and that language barriers were affecting the level of care received. Despite the small sample size of the study, the author argues that the study is indicative of larger trends and suggests a need for more resources and education to be directed at migrants and service providers alike. [172]

Many of the same themes are picked up in Giorgio et al.'s study (2016) [173] on the impact of social support on survivors of sexual violence and forced transactional sex among migrants in Southfrica, which found that social support reduces the mental health impacts of sexual violence. However, such support is not easily accessible to many migrants who may experience isolation in their host communities and are far from support networks in their home communities. Considering this, support from service providers becomes even more important for these survivors.

Children and Secondary Traumatisation

Another key issue that remains problematic in terms of implementation of the SORMA of 2007, has been the reduction of secondary traumatisation and victimisation of child witnesses and child survivors of sexual offences within the justice system. The SORMA of 2007 makes provisions for the improvement of case outcomes for children by highlighting the need for intermediaries and facilities that make the system more child friendly. Moreover, the MATTSO (2013) report puts child witnesses at the centre of its focus of the new sexual offences courts model which sees the introduction of CCTV camera testimonies for children and other vulnerable witnesses, the use of intermediaries for children, child friendly waiting rooms and testifying rooms as well as the use of anatomical dolls during testimony to name but a few of the extra provisions for safeguarding child witnesses from any further trauma whilst appearing in court.

Secondary traumatisation of children at court is an important focus of much of the research that has emanated from the child centered focus of the justice system since the promulgation of the SORMA of 2007and has been a key feature of critiques on the implementation of the Act and its effectiveness is providing a safer more child friendly justice system in the guise of the SORMA of 2007. The treatment of the child witness needs very specialised attention and court personnel need to be trained to deal with children in a very sensitive and specific manner, given the intricacies of getting accurate testimony from children. As two experts on child witnesses, Müller and Hollely (2000) explain in their book Introducing the Child Witness, the judicial system in general demands that a victim give a "prompt, clear and consistent report of a recognisable crime" and that, for a child to be an effective witness, he or she must be able to recall information completely and accurately and be able to communicate effectively; must know the difference between truth and falsehood; must understand lawyer's questions and must clearly indicate if he or she doesn't understand a question; and must resist replying to leading questions. [174]

These are challenging aspects for adult witnesses to deal with and, therefore, are much more difficult for children. In addition, the abovementioned authors stress the importance of realising the discrepancy between the "typical process by

References

171 Boyd, C. (2011) Sexual Violence Against Migrant Women: A Study of The Prevalence of and Response To The Rape of Migrant Women In *South Africa. Journal of Identity and Migration Studies*. 5(1), Pages 2-20.

172 Op. cit

173 GGiorgio, M., Townsend, L, Zemke, Y, Guttmacher, S., Kapadia, F., Cheyip, M, and Mathews, C. (2016) Social Support, Sexual Violence, and Transactional Sex among Female Transnational Migrants to South Africa. American Journal of Public Health, 106(6), Pages 1123-1129.

174 Muller, K and Hollely, K (200) *Introducing the Child Witness.* Vista University, 200. Page. 288

which evidence is elicited in court and the developmentally sensitive process that is needed to elicit accurate information from children". [175] If this is not done so in a consistent and sensitive manner it can result in a child not can testify at their optimal capacity which will result in higher levels of stress and re-traumatisation than is necessary. In addition to communication and preparation issues, the authors also explain that judicial concepts that cause stress to the child witness include "a belief that only people who have done something wrong go to court; a belief that adults are omniscient; and not knowing the role of all the role-players". [176] It follows the that a system that is aiming to be child friendly and victim centres would entail that a child witness is adequately prepared for court in a sensitive and timely manner and that the child will be comfortable and not intimidated at court by having soft furnishings, facilities available for the child only and other such measures as outlined in the MATTSO (2013) report.

Nevertheless, despite the infrastructural additions to the courts such as waiting rooms and child play areas, the problem of resourcing these facilities remains a problem and the implementation of adequate preparation continues to be problematic. The absence of feeding schemes and the lack of adequate time to prepare child witnesses for court continues to be a cause for concern for those monitoring the implementation of the child friendly measures at court and within the system at large. Most recently, a report compiled by the Child Witness Institute in association with UNICEF (2015) which indicated that the MATTSO (2013) recommendations regarding the viability of feeding schemes within the SOC needed to be reconsidered and revised. After surveying a large number of courts that were following the MATTSO (2013) model, the report concluded that the feeding scheme was not being implemented as recommended by MATTSO (2013) and recommended that a standardised process be introduced to "ensure that all child witnesses have access to food when they are required at court" [177] amongst other recommendations concerning increasing witness fees, working with private companies to make feeding schemes sustainable and oversight of the scheme.

In addition, the issues of witness fees cause's additional problems in that oftentimes the child witnesses do not receive food purchased with those monies as they are kept by their parents and not used to feed the child before the trail. [178] Recently in the 2015-2016 SORMA report, the DOJ indicated that it was to be the responsibility of the intermediaries to ensure that the child witness fees were used correctly, and it was also recommended in this report that the fees be increased to a more realistic amount from R20 to R50. However, it was stated very clearly that Treasury did not approve these recommendations for increases and as such, the timeframe for the implementation of these increases was not stated.

The other key issue when it comes to critiquing implementation of the amount of time witnesses, and child witnesses, should consult with prosecutors and court preparation officers prior to their testimonies at court. It was a key recommendation in the SORMA of 2007 and MATTSO (2013) that due time is given to the process of court preparation and as we have outlined above, this is particularly important for vulnerable persons and children, who have difficulty communicating traumatic events. The importance of court preparation is central to strong testimony and form the prosecutorial point of view cases will not be proceeded with if the witness is deemed to be weak or ill prepared.

Consultations between the child and the prosecutor are integral to this process and lack of consultations can further traumatise the child due to lack of preparation and insufficient time being spent on determining the needs of the child. It is often more important to remove a case from the roll here a child is not strong enough to testify and refer them for counselling only to place them back on the roll when they are better prepared mentally and emotionally to testify. The prosecutors in the study by IDASA in 2001 explained that the definition of justice is not just about proceeding with a case towards conviction, as a quote from the report states "'Sometimes it is not in the interest of the child for the prosecution to proceed. It is sometimes better if the child continues having therapy. Some children just cannot stand up in court and face a whole court or the trauma of the court." [179] However, this can cause delays in the case for the prosecution, who are under immense pressure to finalise cases quickly and efficiently, so this practise is not encouraged openly even though it serves the best interests of the child. Therefore, one could say based on the research that has been done since 2007 that the situation for child witnesses still needs to be improved and that the emphasis must remain on reducing the unnecessary secondary trauma that children can experience at courts. However, as one commentator cautions, "in spite

References

175 Op. cit. Pages 288-290

176 Ibid

177 Department of Justice and Constitutional Development, (2016) *The Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: Annual Report 2015/2016.* Department of Justice and Constitutional Development, South Africa. Page 58

178 Centre For Child Law (2015) *Making Room: Facilitating The Testimony of Child Witnesses and Victims*, Centre for Child Law, University of Pretoria. Pages 70-72

179 IDASA (2001) *Pilot assessment: The Sexual Offences Court in Wynberg and Cape Town and* related services. Cape Town: IDASA. Page. 16

APPENDIX 1

of years of attention to addressing sexual offences, and investment into developing the legislative and policy frameworks, the gains in reducing further traumatisation of children who go through the system are difficult to ascertain. It is clear the numbers of children who experience avoidable trauma remain higher than would be expected [...] the consequences on the lives of those children and their families are profound". [180]

Case Flow Management and Intersectoral Collaboration

When it comes to the implementation of the SORMA of 2007, there remains a persistent problem with the way tasks are allocated to various departments and the levels of intersectoral collaboration which in turns affects the efficient flow, or lack thereof, of cases through the justice system. The duplication of efforts and proliferation of committees and various governing bodies that have emerged from the MATTSO (2013) report and SORMA of 2007 have led to confusion, competition and derision amongst the key stakeholders involved in managing sexual offences and implementing the recommendations and provisions of the SORMA of 2007 and the MATTSO (2013) model. This was also reflected upon by Lisa Vetten in her 2014 study on the implementation of the Act, when she stated that, the "duplication of functions and the dilution of resources represents is evident not only in relation to NPOs but also in relation to government. Not only is there an Inter-Ministerial Committee on Gender-based Violence but there is also a National Council on Gender-based Violence, with the first driven by DSD and the second by the DWCPD.[181]

Communications gaps between key role players at that level reflect the gaps in communication between these parties at a local court level relating to the progress of the case and the way procedures are explained to complainants and prepared for the court experience for example. For the justice system to serve the survivors optimally, it must be run efficiently and more so the case flow management of the cases through the system should be carefully thought out and monitored across all departments. The "M&E" function of case flow management is essential to gauge if the mechanics of the court system is working the survivors favour. Given that the traditional measures of successful case outcomes are those cases that have proceeded timeously and speedily through the system with the bonus feature of a conviction, it would them follow that the measurement and monitoring if case flow management would be key to the successful and fruitful implementation of the SORMA of 2007.

However, the case flow management of the SOCs has been a complex process to measure given the multitude of stakeholders involved in the life cycle of a sexual offences case. Each stakeholder or department has its own performance indicators and means of measuring the progress of a 'case' and as such, it is difficult to find a common ground that all these indicators can speak to each other upon. In terms of turnaround times, the emphasis generally is on a turnaround time of nine months from reporting to conviction or finalisation for a case, an indicator that has been set out by the NPA. Whilst this is an idealised figure the reality remains that turnaround times on cases vary according to the nature of the case, the number of defendants or survivors, the structural infrastructure of a court, the caseload at a court to name but a few of the never-ending various combinations of reasons as to why a singular case can take anything from one month to 72 months to finalise. The indicators suggested by justice stakeholders could be said to be unrealistic, unattainable and outdated.

Nevertheless, there is a need to track sexual offences cases in the criminal justice system and currently there is no system in place that can track a single case in the various systems including the police, health and court systems that provides updated information on where a case is at a given point in time. Despite the DoJ&CD having created an "Integrated Case Management System: Sexual Offences (ICMS SO)", that, "manages and tracks down a case of sexual offence from the time of registration in the court up until it is finalised [...] and is intended to assist the Department to identify the trends of offending and areas where resources of interventions should be directed [...] to ensure good quality data" [182] the system remains flawed and unintegrated with the other departments own means of tracking performance and generating sexual offences statistics. The fact that there is no consolidated statistical database between department's means that the true picture of sexual offences is difficult to envisage and the various elements that affects the scope size and success of its outcomes thus also remains elusive. Currently it is impossible to accurately gauge turnaround times along the value chain of a sexual offences case since the data that one would need to capture those times is not currently recorded in that manner by individual personnel in the system never mind their departments.

References

180 Waterhouse, S. Et Al. (2015) Implementation Brief on The Management of Child Sexual Offences in Sexual Offences Courts: Failing Systems, Broken Promises. Page 23

181 Vetten, L. (2014) Post Rape Services and Their Funding: A Review of the National Department of Social Development's Budgets Between 2009/10 And 2013/14. Shukumisa Victims

182 Department of Justice and Constitutional Development, (2014) *Report On The Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2013 To 31 March 2014.* Department of Justice and Constitutional Development, South Africa. Page. 68

The Human Element

An important consideration when examining the implementation of the SORMA of 2007 is the role of human resources and staff capacities. As one commentator explained, "regardless of how well the substantive and procedural laws of rape are written, it is the 'human factor' that determines how effectively these progressive laws are implemented" (Artz, 2011:43). The human element of implementation determines the quality of services provided depending on experience, commitment and training. This involves exploring the issue of specialisation and the subsequent training that is needed for those working with sexual offences cases to be specialised in their positions. The SORMA of 2007 and the MATTSO (2013) report make specific reference to the need for specialisation when it comes to dealing with sexual offences cases and providing the proper attention to the needs of vulnerable survivors. Specifically, the MATTSO (2013) report recommends that training be prioritised to create specialised positions for sexual offences prosecutors and Regional Court magistrates at the dedicated SOCs and that to prevent secondary traumatisation of survivors and to ensure that the correct level of respect and etiquette is shown towards survivors of sexual offences at court that all training must include 'social context' training as mandated by the SORMA of 2007. In this regard, the sensitivity and competence of all SOC personnel is paramount.

A review of former SOCs recommended that "all court personnel receive continuous, specialised training to improve the prosecution and adjudication of sexual offence cases", [183] this training requires the inclusion of diverse survivors of sexual violence, particularly the experiences of vulnerable groups such as children, LGBTI persons and persons with mental, intellectual and physical disabilities. This training pertains especially to the complex interplay of intersectional discrimination their cases' evidence and their nuanced justice needs – both in relation to accessing justice and in improving case outcomes. A review by Muller and Van der Merwe, "found that only 50% of prosecutors in SOCs had not received any training and the other half only received non-standardised training on an ad-hoc basis." [184] The DoJ&CD has also recommended in its annual reports and in the MATTSO (2013) report that integrated South African Qualifications Authority (SAQA) accredited training programs be developed and implemented, together with court personnel debriefing programs, on a regular and ongoing basis so as to strengthen the skills, sustainability and coordination between all relevant role-players while also being cognizant of and catering specifically to the particular needs, constraints, roles and responsibilities as well as the individualised training requirements of disparate role-players. [185] However, the content and veracity of this specialised training has been inconsistent and difficult to monitor given that the specialisation training is tasked to various departments and has over the years moved between bodies. For example, initially the judiciary was training on specialised sexual offences issues by Justice College under the jurisdiction of the DoJ&CD, coupled with some training provided to presiding officers by the NPA. In recent years this has changed due to disagreements over the way judicial officers were being trained and now currently the training is provided by the SAJEI which was founded specifically to address the gaps in the specialisation training for regional magistrates.

The MATTSO (2013) report specifies that prosecutors and Regional Court magistrates require 'experience', should have specific training that equips them to work with children, people with mental disabilities and to understand the dynamics of sexual abuse (MATTSO (2013), 90). The earlier blueprint that was upgraded in 2005, specified that Regional Court magistrates should be "dedicated, sensitised, empathic and have at least six month's experiences." This detail regarding qualities and length of experience is no longer included in the Model recommended by the MATTSO (2013). The earlier "blueprint" for sexual offences courts specified that prosecutors have a minimum of three years' experience, this detail too is not contained in the MATTSO (2013) model.

References

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

184 Ibid.

185 Department of Justice and Constitutional Development. (2014) *Report on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 OF 2007: 01 April 2013 to 31 March 2014.*

APPENDIX 1

Within their annual reports the DoJ&CD document the various training initiatives that they conduct with their court staff, intermediaries and interpreters. [186] Other stakeholders conduct annual training; however, much of this training is compulsory nor does it seem to be outcomes based. Attendance at a training session is not a sufficient indicator of that person's ability to work on these matters. There is no evidence to suggest that court staff who attend training are being assessed against learning outcomes. This makes it impossible to assess the standard of the training. As Sam Waterhouse explained in her 2015 monitoring report, "in addition to addressing the points raised in the MATTSO (2013) report, emphasis must be placed on ensuring that suitable staff are appointed to these courts and the weakness in quality of training programmes (not only the numbers of people trained) must be addressed". [187]

In addition to measuring the effectiveness of the training, there have also been criticisms of the amount of time that should be dedicated towards specialisation on staff that are already stretched in terms of high caseloads and the problems that arise when those skills are lost when a prosecutor is moved or reassigned to another court during rotation. For example, in their 2001 report on sexual offences courts, IDASA stated that the training of prosecutors is important if they are to perform their work effectively and that the "Wynberg SOC has had regular training sessions. However, due to a high turnover in staff, expertise is lost, and new staff members should be trained. A factor that impacts on training is the high caseload of the court, which means that staff cannot always be released to attend training sessions". [188] This turnover of staff and pressure to delay cases to attend training: "Because there is so much pressure to go to court every day and to finalise matters, we don't have time to go to seminars. So, it's basically on a voluntary basis and after work" [189] is yet another reason for some prosecutors disagreeing with specialisation in relation to the sexual offences courts.

The issue of specialisation remains contentious with no clear guidelines or protocols outlining the specific criteria that is needed to designate a court actor as being a specialist. Even amongst the justice sector officials themselves there is disagreement over whether specialisation should be mandatory and if in fact it may lead to deskilling of judicial officers or prosecutors who become less proficient in dealing with other matters if they are only dealing with sexual offences cases. More importantly, the issue of specialisation on sexual offences brings with it the issue of staff wellness and the fear of burn out due to the highly emotional and taxing nature of dealing with these cases. Rotating residing officers has been one of the approaches put forward to deal with this issue however this causes disruption to the court rolls and inconsistency for the sexual offences survivors for who specialisation is supposed to improve their case outcome rather than delay it or affect it negatively.

References

186 (i) Department of Justice and Constitutional Development, (2014) *Report On The Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2013 To 31 March 2014*. Department of Justice and Constitutional Development, South Africa. (ii) Department of Justice and Constitutional Development, (2015) *Report On The Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: 01 April 2014 To 31 March 2015*. Department of Justice and Constitutional Development, South Africa. (iii) Department of Justice and Constitutional Development, (2016) *The Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: Annual Report 2015/2016*. Department of Justice and Constitutional Development, South Africa.

187 Waterhouse Et Al. (2015) Implementation Brief On The Management of Child Sexual Offences In Sexual Offences Courts : Failing Systems, Broken Promises, pg. 24

188 IDASA. 2001. Pilot assessment: The Sexual Offences Court in Wynberg and Cape Town and Related Services. Cape Town: IDASA. Page. 19

189 Ibid. pg. 20

APPENDIX 2 MATTSO Report Key Recommendations

MATTSO (2013) Key Recommendations

The Task Team makes the following recommendations, namely that:

1. In view of the findings listed above, the SOCs must be re-established either as The SOCs or the Hybrid SOCs .
2. The use of the terms, Specialised Sexual Offences Court' and 'Specialist Sexual 'Dedicated SOCs' 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 SOCs must be upgraded into SOCs established in terms of the Sexual Offences Court Model. 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. The rest of the identified Regional Courts must be progressively resourced into SOCs over a period of ten years, which will commence in April 2015.
4. The costing of the implementation of the Model must be finalised. It must be done against the available resources identified from the Resource Audit, and must also consider the operational and maintenance costs. The Department is advised to secure a dedicated and adequate budget from the National Treasury to realise the speedy establishment of these courts. Specialised services is cost intensive, political support is required to ensure appropriate budget allocations.
5. 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 SOCs, 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 SOCs 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 SOCs in terms of the enabling provision of the amended Act.
6. The enabling legislation must make provision for the necessary Regulations to guide the designation and resourcing of sexual offences courts.
7. 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 optimise the performance of the SOCs.
8. 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 SOCs. This Committee must function as the sub-committee of the Directors-General Intersectoral Committee for the Management of Sexual Offences.
9. This Committee must be given limited time to upgrade the Hybrid SOCs into fully-fledged SOCs, 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.

APPENDIX 2 MATTSO Report Key Recommendations

10. A feeding scheme for child witnesses must be investigated for possible introduction in these courts and be properly costed.
11. 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.
12. An integrated monitoring and evaluation framework must be developed to ensure the effective and efficient intersectoral management of the SOCs. This framework must set out performance standards for the intersectoral management of sexual offences and the re-establishment of SOCs to ensure heightened accountability amongst stakeholders. These standards must form part of the National Policy Framework for Sexual Offences.
13. SAQA accredited training programmes must be developed and their 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.
14. The creation of specialist posts for personnel in the SOCs must be explored in an attempt to ensure the sustainable skills capacity.

[Source: MATTSO (2013) Report: 97-99]

APPENDIX 3 Pilot Courts MATTSO Compliance Tables

	Court A	Court B	Court C	Court D	Court E
Type of Sexual Offences Matters Heard:					
Does this court hear sexual offences matters involving adults?	*	* (We were however only given a tour of the two courts that were dedicated to child SO matters)	*	*	X
Does this court hear sexual offences matters involving children?	*	*	*	X	*
Closed-Circuit Television/One-Way Mirror:					
Number of televisions in main courtroom	**3** (confirmed for two out of five of the courts that heard SO matters)	**3** (two facing the court, and one facing the magistrate).	Regional Court Four: (This Court had been built-on to the rest of the court in a dedicated sexual offences section of the court as a result of the number of SO cases being heard at X.) **3** (2 screens facing the court, and 1 facing the magistrate). Regional court Two: (Not part of the sexual offences section of the court). 2 (1 facing the court, and 1 facing the magistrate).	Court A: **2**, Court B: Could not access. The CCTV facilities at this court were NOT WORKING.	**2** (one facing the court, and one facing the magistrate).
Size of television screen(s)	**2** out of 3 were approximately 40 inches. 1 (used by the assessors and the magistrate) was approximately 20 inches.	The two facing the court were approximately 40-50 inches. The one facing the magistrate was approximately 20 inches.	Screens facing the court: approximately 40 inches. Screens facing the magistrates: approximately 20 inches.	Court A: Approximately 15-20 inches.	
Televisions currently operational	– though we were told that this was often not the case	*	*	X	X

APPENDIX 3 Pilot Courts MATTSO Compliance Tables

	Court A	Court B	Court C	Court D	Court E
Number of cameras in the testifying room	**2** per room (in each of the two testifying rooms that we were given access to)	**2** per testifying room.	**2** per testifying room (One mounted on the television screen and one on the table facing the intermediary and the witness).	**2**	**1**
Cameras currently operational?	*	*	*	X	X
Number of microphones for child witnesses	**1** per room (being used between the intermediary and witness – possibly intentionally)	**1** per testifying room. (There were two testifying rooms in total).	**2** (per testifying room – one for the intermediary and one for the child). Note: The intermediary preferred to use one microphone between her and the witness.	**0**	**1** per testifying room. (There is one testifying room in total).
Microphones currently operational	*	*	*	X	*
Number of intermediary earphones	**1** (per room)	**1** (per room)	**1** (per room)	**0**	
Earphones currently operational?	*	*	*	X	*
Does the court have access to a dvd player?	* (there were dvd players in two of the waiting rooms)	* (There were dvd players in the child waiting areas).	*	X	X
Adequate sound quality in the courtroom	*(specifically for court 11)	*	*(we were told that it was)	X (the CCTV equipment was not working).	Could not test sound quality
Is there a one-way mirror between the court and the testifying room?	X	X	(there was 1 between the intermediary room and court 4, however it was no longer being used)	X	X

	Court A	Court B	Court C	Court D	Court E
Testifing Room:					
Number of chairs for children	**1** two-seater couch for the child and intermediary to share	**1** two-seater couch, **2** (conjoined) chairs, and **2** ordinary chairs	Court 4: **1** two-seater couch, **1** one-seater chair, **2** children's chairs, and **1** cushioned backless seat. Court 2: **1** two-seater couch, an office chair, **3** children's chairs and **1** one-seater chair.	There is a room that was previously used as a testifying room – it is however no longer used. There was **1** chair in the room. Child SO cases are not heard at this court.	**1** two-seater couch for the child and intermediary to share
Number of chairs for intermediary	See immediately above	See immediately above	See above	See immediately above	See immediately above
Other furniture/ equipment in the room	Coffee table, metal cabinet, and a tv screen	**1** table	**1** cupboard and a table.	A desk and **2** cameras that **do not work.**	**x**
Toys in the testifying room	**x**	Only anatomically detailed dolls	Only anatomically detailed dolls	**x** (The testifying room is not used as Child SO matters are not heard at this court)	**x**
Sufficient ventilation in the room?	**x**	**x**	There was an aircon in the room, which we were told was in working order.	**x**	**x**
State of the furniture	Good (looked new)	Decent	Good	The testifying room is not used as Child SO matters are not heard at this court. The state of the furniture that was there was very poor.	Poor – room had been painted in MATTSO colours but no new furntiture – old wooden office furniture.
Anatomically Detailed Dolls:					
Present in the testifying room?	**x**	*	*	**x** (The testifying room is not used as Child SO matters are not heard at this court)	**x**
Number of dolls	Two sets of **6**	Court One: **4** dolls and Court Two: **6** dolls.	Two sets of **6** dolls	N/A as no dolls present	N/A as no dolls present

APPENDIX 3 Pilot Courts MATTSO Compliance Tables

	Court A	Court B	Court C	Court D	Court E
Are the dolls representative?	There were dolls of different ages, but not races	For both of the courts there were dolls representing both males and females, court one had dolls representing two different ages, and court two had dolls representing three different ages. Bar one doll used for court one; all the dolls represented the same race.	Dolls used for Court 4: The dolls represented different ages, and appeared to represent two different races.	**N/A** as no dolls present	**N/A** as no dolls present
Were the dolls in good condition?	*	*	*	**N/A** as no dolls present	**N/A** as no dolls present
Feeding Scheme:					
Are child witnesses given anything to eat or drink when they are at court?	Only at the **Teddy Bear Clinic.**	*	**X** There is no dedicated feeding scheme, but there is an agreement with the tuckshop that is located outside the court, whereby witness fees are used to help negotiate a reduced rate on a healthy meal and snack for child witnesses specifically.	**N/A** Child SO cases are not heard at X.	*
Who provides the food to the child witnesses?	The Teddy Bear Clinic	The court preparation officers	See above. Intermediaries and prosecutors also often end up giving child witnesses' food to eat.	**N/A** Child SO cases are not heard at this court.	NGO Masikumeneni
From where is the food obtained?	A local business-man who runs a local Spaza Shop donates the food	KwaCare – a church in Pinetown donates the food	See above	**N/A** Child SO cases are not heard at this court.	NGO or local businessess

	Court A	Court B	Court C	Court D	Court E
What food is provided?	Bread and margarine	NikNaks, juice, a fruit stick, and a bar	This will depend on what the privately owned tuckshop is serving on any given day.	**N/A** Child SO cases are not heard at this court.	Bread and margarine
Is there a cafeteria/ Kitchen facility available in the court?	**X** - Only for staff. There is one public vending machine which can only provide drinks, and there are stalls outside the court which sell food.	**X** - The Legal Bean Café. There is also a kitchen facility in the court preparation area.	*There is a fridge and a microwave for witnesses to use (if they have brought their own food, or have purchased some from the tuckshop).	*There is a kettle, bar fridge, and a microwave (that we were told were working) that witnesses are permitted to use in the waiting area.	*There is a kettle, bar fridge, and a microwave (that we were told were working) that witnesses are permitted to use in the waiting area. No tuck shop on premises or vending machines
Waiting Rooms:					
Number of waiting rooms for children	**3** (for five courts) – None of them were being used. A child witness testifying in Court 11 was sitting in the public waiting area (with the accused).	**2** (1 per court)	**1**	**0** – Child SO cases are not meant to be heard at this court. However, there was in fact a child in the adult waiting room when we were talking to the CPOs and the intermiediary.	**1**
Number of waiting rooms for adults	Unclear – we were unable to gain access to a room which had a sign that read 'adult waiting room'. It was unclear whether it was actually being used for this purpose.	We were not shown any. We were only shown an adult waiting room used by adults who were accompanying a child witness.	**1**	**1**	**2** – Public and Witnessess
Furniture available in the children's waiting room	Couches, children's table and chairs, and an empty cupboard (plus a tv and dvd player).	Couches, chairs, padded furniture (housing toys), children's table and chairs, a credenza/ cupboard (plus a tv, dvd player, and a water cooler).	Couches, padded furniture (housing books and toys), a cupboard, and a children's table.	**N/A** Child SO cases are not heard at Tonga.	Yes but stacked in a corner, no sign of them being used. Large wodden table and chair in witness room for children, no other toys or furntiture.

APPENDIX 3 Pilot Courts MATTSO Compliance Tables

	Court A	Court B	Court C	Court D	Court E
Does any of the furniture need to be replaced?	**X** – The furniture appeared to be quite new.	**X** – They were in reasonably good condition.	**X** – The furniture appeared to be quite new.	**N/A** Child SO cases are not heard at Tonga.	* Yes, poor condition
Furniture available in the adult waiting room	We were unable to gain access to the room that is meant to be used for this purpose	The adult waiting room for adults who were accompanying child witnesses had **3** conjoined chairs, a water cooler, a tv, and a stand with pamphlets on it.	**6** hard, conjoined chairs, a two-seater couch, a coffee table, and a pamphlet stand.	**2** one-seater couches/chairs, a cabinet with a tv (not working), a shelf with toys and a heater, **1** two-seater couch, **1** three-seater couch, **1** table, a children's table and chairs (despite the fact that Tonga does not hear child SO cases, there were toys in the waiting room), and a coffee table.	Large wooden desk and **2** standard chairs one each side,- filling cabinet.
Does any of the furniture need to be replaced?	See immediately above	The furniture looked hard and uncomfortable, the room was cramped, and there was no aircon/decent ventilation.	**X** - The furniture appeared to be quite new.	* - The furniture was very old.	* - The furniture was very old.
Signage:					
Is there signage indicating the location of the sexual offences court?	*1 sign (immediately as you enter the court)	*	*	**X**	*
How many signs are available?	**1** (which actually mentions which courts are SO courts, and points to their direction. This sign only pertains to the two courts that were meant to be dedicated SO courts, not to the three additional courts that are being used as additional hybrid courts that hear SO matters)	**2** per courtroom	**3** signs leading to the dedicated sexual offences section of the court.	See immediately above	**2** signs leading to the dedicated sexual offences section of the court.

	Court A	Court B	Court C	Court D	Court E
What do the signs say?	They point to the direction of the (two) courts, and mention which numbers they are.	The main one indicates where the child/teen waiting area is, where the sexual offences court-rooms are, where the intermediary is situated.	They have arrows pointing in the direction of the sexual offences courts, and they say 'Sexual Offence'.	There were no signs.	They have arrows pointing in the direction of the sexual offences courts, and they say 'Sexual Offence'.
Do the signs provide clear direction to the sexual offences courts?	**X** Not all the SO courts have clear signage per-taining to them, there are also no signs that point to the direction of the child waiting rooms for Courts 10 and 11.	*	*	**X** There were no signs.	*
Restrooms/Toilets:					
Are there restrooms for children to use?	Only at the Teddy Bear Clinic.	*	* - There is one 'toilet/mother's room', there is one male toilet, and one 'paraplegic toilet'.	**X** – There are no toilets that are specifically meant for children. There is one female toilet (located directly in front of a public waiting area), and one male toilet.	**X** – There are no toilets that are specifically meant for children. There is one female toilet (located directly in front of a public waiting area), and one male toilet.
How many are there?	**1** (at the Teddy Bear Clinic)	**2** (one located outside each of the two court-rooms). There are also **2** additional toilets located in the court preparation area (not specifically for children).	**1** – used by females and mothers.	See above	**2** (one located outside each of the two court-rooms). There are also **2** additional toilets located in the court preparation area (not specifically for children)
What was the state of the restrooms?	The adult toilets were reasonably clean, but old and in need of main-tenance/repair. The toilet for females had no door (it had come off its hinges).	They were old, and in need of repair.	They were adequate. One of the female toilets was out of order.	The female toilet was in need of an upgrade. It consisted of one toilet (which had no toilet paper at the time), and a sink.	They were adequate. One of the female toilets was out of order.

APPENDIX 3 Pilot Courts MATTSO Compliance Tables

	Court A	Court B	Court C	Court D	Court E
Office Capacity:					
Does the prosecutor have his/her own office?	*	* (according to the assistant court manager)	Office space is an issue, and some of the prosecutors do share offices according to the court manager.	* (there were two prosecutors, and they each had their own offices)	Office space is an issue, and some of the prosecutors do share offices according to the court manager.
Does the prosecutor have his/her own computer?	*	* (according to the assistant court manager)	*	This could not be established as the court manager did not give us the tour of the court.	This could not be established as the court manager did not give us the tour of the court.
Does the intermediary have his/her own office?	*	*Both of the intermediaries had their own office.		* (The intermediary worked at both Tonga court and at Boschfontein. She had an office at both these courts).	* (The intermediary worked at both Tonga court and at Boschfontein. She had an office at both these courts).
Does the intermediary have his/her own computer?	*	Both intermediaries had computers, but one of them was not working.		x	x
Does the court preparation officer have his/her own office?		*Both of the CPOs had their own offices in the court preparation area.	One CPO did have her own office, there were plans to convert a broom cupboard in order for the second CPO to have an office as well.	x (The court preparation officers are not employed by the court. Two were employed by NGOs).	x (The court preparation officers are not employed by the court. Two were employed by NGOs).
Does the court preparation officer have his/her own computer?	*	*		x (Not at the court).	x (Not at the court).
Human Resources:					
Number of Regional Magistrates	**5** (1 per courtroom that hears SO matters).	**2** (1 per courtroom)	**2** (1 per courtroom)	**1**	**1**

	Court A	Court B	Court C	Court D	Court E
Are the RCMs dedicated SO court RCMs?	**X** - All five courts are hybrid courts, and therefore the RCMs hear SO, and other matters.	* (for child sexual offences specifically)	*	**X**	**X**
Number of prosecutors	**6?**	**2**	**4**	**2**	**0**
Are the prosecutors dedicated SO court prosecutors?	**X**	* (for child sexual offences cases)	* (These four prosecutors were rotated amongst the two courtrooms)	**X**	**X**
Number of interpreters		**2**	**2** – There were 4 in total, but 2 were dedicated to the SO courts.	**1**	**1**
Number of intermediaries		**2** – contract staff since November 2015	**2**	**1**	**1**
Languages spoken by the intermediaries		Zulu and English	Zulu, English, and one intermediary spoke Xhosa.	Siswati and English	Siswati and English
Is there a dedicated court clerk?		* **2** (1 per court)	* **2** (1 per court)	* **1**	
Number of court preparation officers		**2**	**2**	**2** (Two were employed by NGOs)	
Social workers based at the court?	Teddy Bear Clinic provided forensic assessments to children.	**X** – Not for the benefit of the complainants.	**X** - There were no social workers that worked with complainants; however there were social workers that worked on sentencing reports and court provide referrals.	**X**	
Number of legal aid officers based at the court?	**X** – none based at the court	**X** – none based at the court	**X** – none based at the court	**X** – none based at the court	**X** – none based at the court

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