

Improving Case Outcomes for Sexual Offences Survivors Pilot Project

Khayelitsha Court Sub-Study
2018



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FOREWORD BY THE DEPUTY MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT

MR JOHN JEFFERY

3 DECEMBER 2018

For us to ensure the optimal delivery of services to victims of sexual offences we need as much information as possible. It enables us to focus our resources in areas where the need is greatest and to do our planning accordingly. This becomes all the more imperative against the current backdrop of budget cuts and austerity measures.

For us, in the Department of Justice and Constitutional Development, our main aims are to reduce secondary trauma and to improve the conviction rates in sexual offences. Sexual Offences Courts play an important role in this regard.

We take into consideration a number of factors such as average turnaround times of sexual offences cases from date of arrest to finalisation; the areas where there are high volumes of sexual offences crimes; and how changes to the existing infrastructure can help reduce secondary trauma. In addition,

we also need to identify bottlenecks in the process, locate delays in case flow and the reason for such delays; and consider recommendations for addressing such bottlenecks through interventions to enhance case flow.

For us to do that effectively we rely heavily on reputable, reliable and independent research – which focuses on qualitative and quantitative data - such as this study undertaken by the Gender Health and Justice Research Unit of the University of Cape Town.

Independent and objective research studies tell us, as government, what we need to hear and what we need to do – it is an invaluable tool in enhancing service delivery to victims of crime and to our broader communities.



ACKNOWLEDGEMENTS

Firstly, we would like to thank the Deputy Minister of Justice and Constitutional Development, Mr John Jeffery, for requesting the research on Khayelitsha Court and for being so supportive of the Improving Case Outcomes for Sexual Offences Survivors Pilot Project.

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CHAPTER 1:

INTRODUCTION

CHAPTER 1: INTRODUCTION

In 2015, 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 National Prosecuting Authority (NPA), the Regional Court Presidents, Department of Justice and Constitutional Development (DOJ&CD) and other key justice stakeholders to conduct a pilot project to pursue the overarching objective of improving case outcomes for sexual offence cases in piloted Sexual Offences Courts (hereafter referred to as SOC) 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.¹

Hence, the Improving Case Outcomes for Sexual Offences Cases Pilot Project (ICOP) aims to identify evidence-based best practices to promote the functioning of the pilot SOC, enhance 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. 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 SOC beyond this project.

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

- To determine the current, average turnaround time for sexual offences cases from reporting to judgment and sentencing ²;
- 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

References

¹ Heath, A., Artz, L., Odayan, M & Gihwala, H. (2018). Improving Case Outcomes at Pilot Sexual Offences Courts Project: Draft Baseline Study. Gender Health and Justice Research Unit.

² The turnaround times were calculated from the arrest dates on the J15 to the finalisation date, whether that be the date of withdrawal, SOR, judgment or sentencing.



In December 2017, after a discussion with the Deputy Minister of Justice and Constitutional Development about the findings of the ICOP Baseline Study and the objectives of the ICOP project, he invited us to conduct a similar sub-study of the Khayelitsha Magistrate Court in the Western Cape (See Appendix 7 Letter of Request). Although this court was not part of our pilot study and was not an officially designated SOC, the Deputy Minister wanted to assess if the court would be suitable to designate as a SOC and if a situational analysis of the challenges that the court is facing, regarding sexual offences, could assist him in making that decision.

The decision whether to designate the court as a SOC was prompted by a series of protests by a local NGO - Rape Crisis Cape Town Trust (RCCT), who had been campaigning to get better services for sexual offences survivors at the court and to improve the infrastructures for said survivors and their support services. In their memorandum given to the Deputy Minister of the Justice and Constitutional Development on 5 December 2016 stated that they resolved to “hold the government of South Africa, specifically the Department of Justice and the National Prosecuting Authority, accountable for the planned and funded rollout of Sexual Offences Courts nationally”. They also demanded, “that the government establish a Sexual Offences Courts in Khayelitsha to serve the community, to reduce secondary trauma and to improve the conviction rates in sexual offences prosecutions” (See Appendix 1). Therefore, we agreed to conduct a small scale situational analysis of the Khayelitsha Magistrate Court that would address the following issues for the Deputy Minister:

- What are the average turnaround times of sexual offences cases at the court from date of arrest to finalisation?
- What are the bottlenecks in this process and reasons for delays?

In addition, based on our findings from the Baseline Study on sexual offences courtrooms in KZN, Gauteng and Mpumalanga, we added the following questions:

- Are SOCs being identified in areas of high volumes of sexual offences?
- How can changes to the existing infrastructure reduce secondary trauma?
- Should the Khayelitsha Magistrate Court be considered for official designation as a SOC by the DOJ&CD?



CHAPTER 2:

METHODOLOGY

CHAPTER 2: METHODOGY

Similarly to the other case studies in the ICOP Baseline Study, we used a mixed methods approach to gather data at the court.

QUANTITATIVE DATA: CASE FILE REVIEW AND CASE DATA COLLECTION TOOL

We analysed 100 randomly selected case files from the clerk's office of finalised sexual offences cases from 2014 to 2016. Finalised cases are those cases that resulted in a conviction, withdrawal, were struck-off-the-roll or given an acquittal. On average, it took approximately 30-45 minutes to review each case file ³ due to missing information, indecipherable handwriting and the general condition in which the case files were found. Nonetheless, the casefile data gathered gave a snapshot of key issues. Despite the high rate of missing information, the data from the case files provides insight into the 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.

QUALITATIVE DATA: INTERVIEWS AND INTERVIEW GUIDES

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. The same interview guides were used as in the other study sites with additional questions added to account for the fact that the court was not an "official" SOC. These questions included:

- Are you aware of the Ministerial Advisory Task Team on Sexual Offences (MATTSO) report and the SOC model?
- What is the difference between the designated official SOCs and your court?
- Do you think the SOC model would work in this court?
- What do you believe is needed to justify this court becoming an 'official' sexual offences court?

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 same interview guides were used as those reviewed by the Advisory Committee for the Baseline Study in 2016.⁴ In total we interviewed seven court personnel members at the court, which included prosecutors and magistrates who sit in the courtroom with a dedicated sexual offences roll, intermediaries, court managers and court support staff. In addition, similarly to the Baseline Study, we also interviewed a forensic doctor from the nearby Thuthuzela Care Center.

References

³ Also referred to as a case 'docket' by some court personnel

⁴ The Advisory Committee for the project is an independent body of experts that the GHJRU consulted with to ensure that the project was transparent, that it followed the expectations of the TORs and was reflective of the issues in the field of sexual offences research.



ETHICAL CONSIDERATIONS

The Khayelitsha Magistrate Court situational analysis was added to our ethics application and was approved as an addition to the research project by the Human Research Ethics Committee at UCT (letter of approval is available upon request). Interview participants were provided with a participant information form which explained the purpose and objectives of the project. The participant information form and consent form also explained what was expected of the interviewee in the in the interview. These forms were also read out to the interviewee, after which they 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 (separate offices at the court). All interviews were conducted face-to-face.
- (ii) All transcripts of the interviews were made anonymous .
- (iii) No data collection processes or interviews took identifying information beyond basic demographic characteristics and the names used in the interviews were replaced by pseudonyms in the transcription.
- (iv) The principal researcher kept all contact information 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 to read and this was signed, 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 notes were taken by the interviewer during the interview.

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 and differences in descriptive topics, and central ideas across interviews. This process was expedited by using the same coding framework as used in the ICOP Baseline Study (See Appendix 2). The case file data was analysed using Statistical Package for the Social Sciences (SPSS). The data was captured from the data collection sheets into Excel and then exported into the SPSS quantitative data statistical software to be analysed.



CHAPTER 3:

SEXUAL
OFFENCES IN
KHAYELITSHA

CHAPTER 3: SEXUAL OFFENCES IN KHAYELITSHA

Khayelitsha township is situated on the south-eastern edge of the City of Cape Town, approximately 30 kilometres from the city centre, its geographical location serving as a constant reminder of Apartheid. Khayelitsha was established in 1983, the last area of the city to be formally set aside for African residents during the period of Apartheid. According to the most recent census, the population is 391 749 with 70.2% of this population being between the ages of 15 to 64 years of age. ⁵ Statistics available on sexual offences crimes in the area show that there are a high number of Sexual and Gender Based Violence (SGBV) crimes in Khayelitsha and they are increasing. As Table 1 shows below, in 2017 there were 156 sexual offences reported to SAPS. It is important to make the distinction that these are the only reported cases, as attrition and underreporting are another area of concern in Khayelitsha, which we will return to later. Underreporting can severely distort reported crime figures. ⁶

Table 1: SAPS reported sexual offences in Khayelitsha in 2017

Type of offence	2017 cases
Rape	139
Sexual Assault	5
Attempted Rape	6
Other	6

In comparison, national statistics for sexual offences in 2017 show 49 445 sexual offences cases reported of which 39 663 were rape, 6 253 sexual assault, and 2 071 attempted rape. ⁶ In addition, Khayelitsha was placed in the top five worst precincts in South Africa for murder, attempted murder and robbery. ⁷ SAPS crime statistics for 2016 – 2017 show that the number of sexual offences nationally for 2017 was 49 660, of which 39 828 were rape. There were 19 016 murders nationally in the same year. Within the Western Cape there were 7115 reported sexual offences of which 4 771 were rape cases. There were 3 311 murders in the Western Cape in the same year. Within Khayelitsha, in 2017 there were 156 sexual offences cases reported, of which 139 were rape cases. In the same year there were 179 reported murders. According to SAPS statistics, Khayelitsha station does not make the top ten stations with the highest number of sexual offences for 2016 – 2017, as shown in Table 2 below. However, if you combine all the sexual offences for a selection of the stations that feed into the Magistrate Court (Khayelitsha 156, Harare 204 and Lingeletu West 67), there were 427 reported cases that could have possibly made it through to the regional courts in 2016-2017.

References

⁵ http://www.statssa.gov.za/?page_id=4286&id=328

⁷ <https://www.crimestatssa.com/national.php>

⁶ (i) Artz, L. & Smythe, D. (2007). Losing Ground? Making Sense of Attrition in Rape Cases. Cape Town: SA Crime Quarterly, 22, pp. 13-20. (ii) Artz, L. & Smythe, D. (2007). Case Attrition in Rape Cases: A Comparative Analysis. Cape Town: South African Journal of Criminal Justice, 20(2), pp. 158-181.

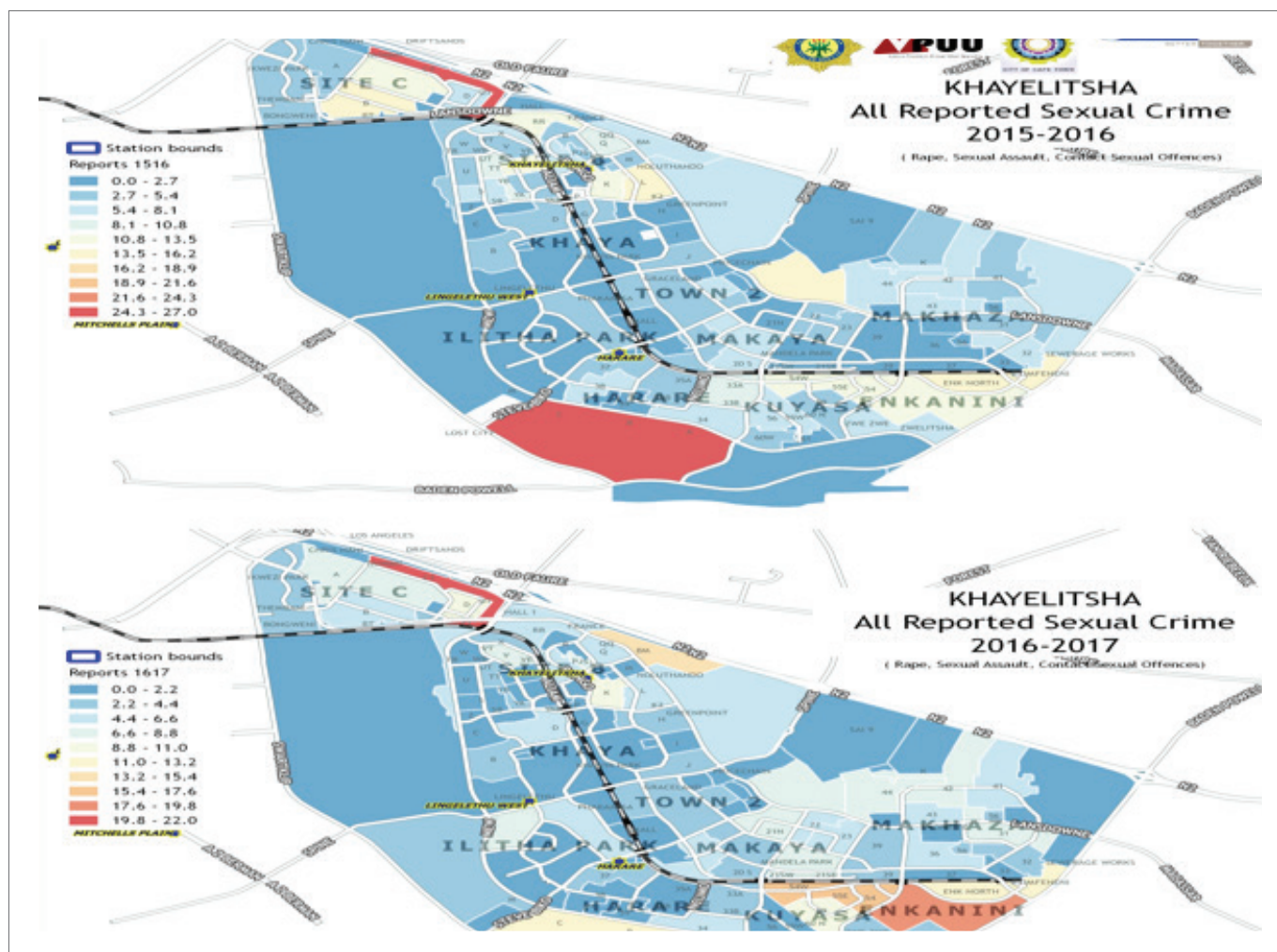


Table 2: Top 5 SAPS stations with highest reported sexual offences in 2016 to 2017

Station	Province	Sexual offences	% change from 2008
Nyanga	Western Cape	356	+1.4%
Inanada	KZN	348	+10.1%
Umlazi	KZN	295	-7.5%
Jouberton	North West	265	+17.8%
Mthatha	Eastern Cape	246	+1.2%

Figure 1 below shows that overall in Khayelitsha there were 1 617 reported sexual offences in 2016-2017 (encompassing all stations)

Figure 1: Map of sexual offences in Khayelitsha as reported to SAPS



[Source: Violence Prevention through Urban Upgrading Organisation (VPUU), 2017]

CHAPTER 3: SEXUAL OFFENCES IN KHAYELITSHA

The statistics above clearly show that with regards to the numbers of sexual offences, Khayelitsha has enough incidents to be considered a high risk area and that these incidents are concentrated in certain areas, as the maps show. The key problem however is that many of these reported cases do not make it to the courts; therefore, the number of sexual offences cases on the roll at Khayelitsha is much less than the number of reported sexual offences. Consequently, there is a need to clarify if the criteria used by DOJ&CD to designate SOCs looks at number of reported sexual offences cases in an area or number of sexual offences cases enrolled at the courts. As shown in Table 3 below, in the years 2014 to 2016 only 115 new sexual offences cases were registered on the court roll. However, in the same time period there were 827 reported sexual offences cases at the Harare and Khayelitsha police stations. This means that only 14% of reported sexual offences made it to the regional court in that time period.

Table 3: Judicial statistics on sexual offences cases at Khayelitshab Magistrate Court for 2014-2016

Year	New Registered Cases	Cases Finalised			Cases removed from the roll					New Registered Cases	Outstanding cases
		Guilty	Not Guilty	Other Finalised	Other Removed	Struck Off Roll	Transferred	Warrant of arrest	Withdrawn		
2014/15	89	31	8	4	1	10	0	21	35	110	191
2015/16	36	16	19	1	1	15	2	0	45	99	176

[Source: Western Cape Regional Court President]

The next section on findings highlights some of the reasons why these cases are not making it to the courts and why those that do make it through fail to result in convictions. The data also problematises the nature of those convictions by looking at how the pleas entered, types of crimes and the age of the persons involved can influence numbers of convictions and acquittals. The findings also look at the turnaround times for these cases and how delays and postponements, as well as the nature of each case's individual challenges, can add to these timeframes. In addition, the data highlights how different variables can affect the length to finalise a case and how the challenges faced by complainants and court personnel can make the finalisation of these cases difficult, challenging and prolonged.



CHAPTER 4:

FINDINGS

CHAPTER 4: FINDINGS

4.1 QUANTITATIVE CASE FILE REVIEW AND CASE OUTCOMES

The following is a descriptive outline of the data retrieved from 100 case files examined at the Khayelitsha Magistrate Court. It is important to outline firstly the nature of the sexual offence and the profile of the victim and the accused in these cases. The data takes the ages of the victims and cross-references them against the types of crimes allegedly committed against them. The section then goes on to look at the length of time between reporting of an incident to the police and the first appearances in court, from first appearances at court to the conclusion of a case, including the final full measurement of reporting to finalisation. These measures are then compared with other variables such as age of complainant, type of crime, and the outcome of the case. This data demonstrates that the turnaround times alone do not give a fully rounded view of the challenges faced by those working on sexual offences cases at the courts and that all manner of variables need to be considered when comparing lengths of time it takes to finalise sexual offences cases. .

Victim and Accused Profiles

Years	Count	Valid Percent
0 to 8 yrs	12	13.3%
9-12 yrs	13	14.4%
13-18 yrs	25	27.8%
19-25 yrs	24	26.7%
26-35 yrs	11	12.2%
36-50 yrs	4	4.4%
51 yrs +	1	1.1%
Total	90	100.0%

The ages were recorded in the data for the complainants in only 90 of the 100 cases reviewed. This was due to missing information on the J15 incident sheets. As Table 4 shows, almost half of the complainants were aged between 13 to 25 years (49%) with 25% of the sample being between 13 to 18 years. Of those accused of the crimes, (Table 5) all their ages were recorded. Where there were two or more accused in a single case, a combined average was included in the analysis. Regarding the gender of the complainants, similarly to the other pilot sites the number of male complainants was 4% compared to 96% females.



Table 5: Age of accused (n=100)

Years	Frequency	Valid Percent	Cumulative Percent
9-12yrs	1	1.0 %	1.0%
13-18yrs	7	7.0%	8.0%
19-25yrs	40	40.0%	48.0%
26-35yrs	33	33.0%	81.0%
36-50yrs	15	15.0%	96.0%
51yrs +	3	3.0%	99.0%
Not recorded	1	1.0%	100.0%
Total	100	100.0%	

As Table 5 shows, many of those accused were between the ages of 19 and 35 years (73%) with 8% of those accused being under the age of 17. Seventy-five percent of the accused were charged with rape with an additional 6% being classified as multiple or gang rapes. There was a higher number of sexual assault charges amongst these cases as compared to 5.1% of sexual assault charges in the 5 ICOP pilot courts sample in the Baseline Study. Two percent of the charges were recorded as ‘flashing’, which was a charge that did not appear in any of the files reviewed in the pilot sites. Secondary charges included kidnapping, assault with Grievous Bodily Harm (GBH), displaying child pornography, housebreaking, crimen injuria and possession of firearms. 20 of the 40 cases with additional charges had a secondary charge of assault with GBH.

The pleas recorded to these charges were 80% not guilty and 6% guilty. It is also important to note that in 14% of the cases the plea was not recorded in the case file. In addition, of those five accused who pleaded guilty only one of them was charged with rape. The remaining guilty pleas were for charges of flashing, sexual assault and display of pornography to a child. Only one of the accused who pleaded guilty received a prison sentence (seven years for two counts of rape) whilst the others received wholly suspended sentences.

One can go deeper into the profile of the accused and the victim by looking at the nature of the crimes by age group and by looking at patterns or trends across the ages of perpetrators and victims. For example, in Table 6 below, 29% of complainants (n=20) aged between 0 to 12 years had laid a Section 3 charge of rape against their accused, with a further 25.3% of complainants (n=19) aged between 13 and 18 years (including multiple rapes and excluding statutory rape cases). In total of all the rape cases (including multiple rapes) recorded in the sample (n= 75), over 52% of the victims were under 18 (55% if we include the two cases of statutory rape).

CHAPTER 4: FINDINGS

Table 6: Age of complainant & criminal charge (n=90)

		Attempted Rape	Flashing	Rape	Rape (Multiple)	Sexual Assault	Statutory Rape	Total	
Age of Victim	0-8 yrs	Count	0	0	10	0	2	0	12
		%	0.0%	0.0%	14.5%	0.0%	25.0%	0.0%	13.3%
	9-12 yrs	Count	0	1	10	0	2	0	13
		%	0.0%	50.0%	14.5%	0.0%	25.0%	0.0%	14.4%
	13-18 yrs	Count	1	1	18	1	2	2	25
		%	33.3%	50.0%	26.1%	16.7%	25.0%	100.0%	27.8%
	19-25 yrs	Count	2	0	16	4	2	0	24
		%	66.7%	0.0%	23.2%	66.7%	25.0%	0.0%	26.7%
	26-35 yrs	Count	0	0	10	1	0	0	11
		%	0.0%	0.0%	14.5%	16.7%	0.0%	0.0%	12.2%
	36-50 yrs	Count	0	0	4	0	0	0	4
		%	0.0%	0.0%	5.8%	0.0%	0.0%	0.0%	4.4%
	51 yrs +	Count	0	0	1	0	0	0	1
		%	0.0%	0.0%	1.4%	0.0%	0.0%	0.0%	1.1%
Total	Count	3	2	69	6	8	2	90	
	%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 7 below illustrates that within the age group of 0 to 8 years old (n=12), 83.3% of those victims were allegedly raped, with the remainder charging the accused with sexual assault. Of all the cases involving 9 to 12 year olds (n=13), 76.9% (n=10) were on rape charges.

Table 7: Age group of victims and alleged crimes committed against them (n=90)

Victim Age		0-8 yrs	9-12 yrs	13-18 yrs	19-25 yrs	26-35 yrs	36-50 yrs	51 yrs +	Total
Attempted Rape	Count	0	0	1	2	0	0	0	3
	%	0.0%	0.0%	4.0%	8.3%	0.0%	0.0%	0.0%	3.3%
Flashing	Count	0	1	1	0	0	0	0	2
	%	0.0%	7.7%	4.0%	0.0%	0.0%	0.0%	0.0%	2.2%
Rape	Count	10	10	18	16	10	4	1	69
	%	83.3%	76.9%	72.0%	66.7%	90.9%	100.0%	100.0%	76.7%
Rape (Multiple)	Count	0	0	1	4	1	0	0	6
	%	0.0%	0.0%	4.0%	16.7%	9.1%	0.0%	0.0%	6.7%
Sexual Assault	Count	2	2	2	2	0	0	0	8
	%	16.7%	15.4%	8.0%	8.3%	0.0%	0.0%	0.0%	8.9%
Statutory Rape	Count	0	0	2	0	0	0	0	2
	%	0.0%	0.0%	8.0%	0.0%	0.0%	0.0%	0.0%	2.2%
Total	Count	12	13	25	24	11	4	1	90
	%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

When we look further at the age profiles of the accused and their victims in Table 8, the data gathered on those cases where the victims age was known shows that of the 19 to 25 year olds who committed sexual offences (n=34 out of 90) 24% of their victims were under the age of 12 (n=8) and 47% (n=16) of their victims were between 13 to 18 years of age. Those older accused in the age category of 26 to 35 years of age (n=30 out of 90) had allegedly committed 36.7% of the crimes in that age group against persons under the age of 18. Of the 19 alleged crimes committed by those older than 36 years, 42% (n=8) were committed against children between the ages of 0 – 12 years.

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Table 8: Accused by age category and victims by age category

	Victim Age	0-8 yrs	9-12 yrs	13-18 yrs	19-25 yrs	26-35 yrs	36-50 yrs	51 yrs +	Total
9-12 yrs	Count	1	0	0	0	0	0	0	1
	%	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
13-18 yrs	Count	0	2	3	1	0	0	0	6
	%	0.0%	33.3%	50.0%	16.7%	0.0%	0.0%	0.0%	100.0%
19-25 yrs	Count	4	4	16	7	1	2	0	34
	%	11.8%	11.8%	47.1%	20.6%	2.9%	5.9%	0.0%	100.0%
26-35 yrs	Count	2	4	5	13	5	1	0	30
	%	6.7%	13.3%	16.7%	43.3%	16.7%	3.3%	0.0%	100.0%
36-50 yrs	Count	4	3	1	3	3	1	0	15
	%	26.7%	20.0%	6.7%	20.0%	20.0%	6.7%	0.0%	100.0%
51 yrs +	Count	1	0	0	0	2	0	1	4
	%	33.3%	0.0%	0.0%	0.0%	66.7%	0.0%	33.3%	100.0%
Total	Count	12	13	25	24	11	4	1	90
	%	13.3%	14.4%	27.8%	26.7%	12.2%	4.4%	1.1%	100.0%



Table 9 below illustrates the types of crimes that were committed within age groups of the accused persons.

Age of Accused		Attempted Rape	Flashing	Rape	Rape (Multiple)	Sexual Assault	Statutory Rape	Total
9-12 yrs	Count	0	0	1	0	0	0	1
	%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%
13-18 yrs	Count	0	0	7	0	0	0	7
	%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%
19-25 yrs	Count	0	2	27	2	7	2	40
	%	0.0%	5.0%	67.5%	5.0%	17.5%	5.0%	100.0%
26-35 yrs	Count	1	0	26	2	4	0	33
	%	3.0%	0.0%	78.8%	6.1%	12.1%	0.0%	100.0%
36-50 yrs	Count	2	0	10	2	1	0	15
	%	13.3%	0.0%	66.7%	13.3%	6.7%	0.0%	100.0%
51 yrs +	Count	0	0	3	0	0	0	3
	%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%
Total	Count	3	2	76	6	12	2	100
	%	3.0%	2.0%	76.0%	6.0%	12.0%	2.0%	100.0%

As Table 9 shows, 100% (n=7) of the 13 to 18-year-old accused persons were alleged to have committed rape. Multiple rapes were highest in the 36 to 50-year-old groups. A closer look at the records of those specific cases (n=2) of multiple rapes shows that these incidents of prolonged were committed by the fathers of the complainants, and these complainants were under the age of eight at the time of the incidents and between 13 to 18 years of age at the time of reporting.

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Case outcomes

Regarding the outcomes of each case, Table 10 shows that the withdrawal rates were very high, with 46% of the cases being withdrawn. This was higher than the 41% overall withdrawal rate recorded at the pilot sites. The 'Struck-Off-the-Roll (SOR) rate was also notable at 17%; however this was lower than the 24% SOR combined rate at the other pilot courts. The conviction rates at the Khayelitsha Court are notably lower than the reported national average and are lower than the 14.7% conviction rate recorded at the pilot sites.

Table 10: Outcomes of cases reviewed (n=100)

	Khayelitsha	Average of ICOP pilot courts	Combined Averages
Struck off Roll	17.0%	24.4%	20.7%
Withdrawn	46.0%	40.8%	43.4%
Conviction	9.0%	14.7%	11.8%
Acquittal	28.0%	20.0%	24%

The case outcomes for each court are displayed in Table 11 below. When compared with the other SOCs that formed part of the ICOP Baseline Study, we can see that the SOR rates are similar to court A and lower than court C and D. However, the conviction rates at Khayelitsha Court are significantly lower and their withdrawal rates are notably larger, as shown in Table 9 above.

Table 11: Case outcomes at the pilot courts

	Court A	Court B	Court C	Court D	Total
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%
	100%	100%	100%	100%	100%



If we look closer at the finalisation outcomes and break them down by other variables, such as age of the complainant, the plea of the accused, and the nature of the crime, we can see that these variables can influence not only the outcome of a case but also the length of time it takes to finalise a case. For example, if we look at the types of crimes committed and the outcomes in Table 12, we can see that 37% (n=37) of all the rape charges (including multiple and statutory rape) in the sample (n=100) were withdrawn and only 4% of those cases resulted in a conviction. The conviction rate was highest for the flashing and sexual assault cases, which upon looking at those cases were cases in which the accused pleaded guilty.

Table 12: Case outcomes of cases (n=100) compared with crimes of the accused

		Attempted Rape	Flashing	Rape	Rape (Multiple)	Sexual Assault	Statutory Rape	Total
Struck off Roll	Count	0	0	14	2	1	0	17
	%	0.0%	0.0%	18.7%	33.3%	8.3%	0.0%	17.0%
Withdrawn	Count	2	0	32	3	7	2	46
	%	66.7%	0.0%	42.7%	50.0%	58.3%	100.0%	46.0%
Conviction	Count	0	2	4	0	3	0	9
	%	0.0%	100.0%	5.3%	0.0%	25.0%	0.0%	9.0%
Acquittal	Count	1	0	25	1	1	0	28
	%	33.3%	0.0%	33.3%	16.7%	8.3%	0.0%	28.0%
Total	Count	3	2	75	6	12	2	100
	%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Furthermore, it is concerning that those cases where there were multiple rapes by the same accused, mainly cases of prolonged sexual abuse with child victims, there were no convictions and five out of six of those cases were SOR or withdrawn.

As mentioned above, the turnaround times and the outcomes can also be affected by many other variables in addition to the ages of the victim or accused, such as the plea of the accused. Table 13 below compares the nature of the plea to the outcome of the case or finalization status of the case.

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Table 13: Case outcomes (n=100) compared with the plea of the accused

			Not Recorded	Guilty	Not Guilty	Total
Outcomes	Struck off Roll	Count	2	0	15	17
			13.3%	0.0%	18.8%	17.0%
	Withdrawn	Count	11	0	35	47
			66.7%	0.0%	43.8%	46.0%
	Conviction	Count	1	4	4	9
			6.7%	100.0%	5.0%	9.0%
	Acquittal	Count	2	0	26	28
			13.3%	0.0%	32.5%	28.0%
	Total	Count	16	4	80	100
			100.0%	100.0%	100.0%	100.0%

In a case where the accused has pleaded guilty the chances for conviction are stronger and a withdrawal less likely. As Table 13 illustrates, of those four persons who admitted to the crimes, four were convicted. Only 5% of those who pleaded not guilty were found guilty of the crimes with which they were accused.

The final cross-tabulation with case outcomes is that of the age of the victim in the cases reviewed in Table 14. Given the nature of the trauma experienced by children in sexual offences cases, it is recommended that these cases be finalised as quickly as possible to limit the secondary trauma caused to the child. It is therefore important to look at the case outcomes and see how these outcomes are distributed across the age categories. For example, if we look at all the cases that were SOR (n=15), 46.7% of them (n=7) involve complainants under the age of 18. More alarming are the figures for withdrawals with 53.4% (23 out of 43 cases) of the withdrawals involving victims under 18. Whilst we understand that a short trial will minimize the amount of secondary trauma a child complainant can experience in court, it is not to be at the expense of convictions.



Table 14: Case outcomes compared to the age of the victims for Khayelitsha court (n=90)

	Age of Victim		Struck off Roll	Withdrawn	Conviction	Acquittal	Total
Outcomes	0-8 yrs	Count	2	7	0	3	12
		%	13.3%	16.3%	0.0%	12.5%	13.3%
	9-12 yrs	Count	1	6	2	4	13
		%	6.7%	14.0%	25.0%	16.7%	14.4%
	13-18 yrs	Count	4	10	2	9	25
		%	26.7%	23.3%	25.0%	37.5%	27.8%
	19-25 yrs	Count	3	13	1	7	24
		%	20.0%	30.2%	12.5%	29.2%	26.7%
	26-35 yrs	Count	4	5	1	1	11
		%	26.7%	11.6%	12.5%	4.2%	12.2%
	36-50 yrs	Count	1	1	2	0	4
		%	6.7%	2.3%	25.0%	0.0%	4.4%
	51 yrs +	Count	0	1	0	0	1
		%	0.0%	2.3%	0.0%	0.0%	1.1%
Total	Count	15	43	8	24	90	
	%	100.0%	100.0%	100.0%	100.0%	100.0%	

If we take an alternative look at this cross comparison by age group in Table 15, one can see that there were no convictions for any cases involving complainants under the age of 8, with 75% of the cases involving this age group being withdrawn or SOR. The 9 to 12-year-old complainants did not fare much better with 53.9% (7 out of 13 cases) being withdrawn or SOR and only a 15.4% (2 out of 13 cases) conviction rate, which involved 2 cases where the accused pleaded guilty of sexual assault and were both given wholly suspended sentences. For 13 to 18-year olds 56% (14 out of 25 cases) were withdrawn or SOR.

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This age group also had the highest percentage of acquittals. In addition, the acquittal rates amongst all complainants under the age of 18 were higher than adults with a combined acquittal rate of 66.7% (as shown in Table 15 below)

Table 15: Case outcomes within each victim age groups.

Victim Age		0-8 yrs	9-12 yrs	13-18 yrs	19-25 yrs	26-35 yrs	36-50 yrs	51 yrs +	Total
Struck off Roll	Count	2	1	4	3	4	1	0	15
	%	16.7%	7.7%	16.0%	12.5%	36.4%	25.0%	0.0%	16.7%
Withdrawn	Count	7	6	10	13	5	1	1	43
	%	58.3%	46.2%	40.0%	54.2%	45.5%	25.0%	100.0%	47.8%
Conviction	Count	0	2	2	1	1	2	0	8
	%	0.0%	15.4%	8.0%	4.2%	9.1%	50.0%	0.0%	8.9%
Acquittal	Count	3	4	9	7	1	0	0	24
	%	25.0%	30.8%	36.0%	29.2%	9.1%	0.0%	0.0%	26.7%
Total	Count	12	13	25	24	11	4	1	90
	%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Turnaround Times

In addition to the analysis of the case outcomes, the turnaround times of the cases were recorded from the dates of arrest to the date of judgment which refers to the date the cases were finalised (a conviction, withdrawal, acquittal or the date it was removed from the roll). These turnaround times were then put into time bands, as shown in the tables below. This shows what percentages of cases are taking less than the recommended nine months to finalise (in line with NPA guidelines)¹⁰ and which of the cases are taking longer. In addition, by looking at various

References

¹⁰ (i) National Director of Public Prosecutions Strategic Plan 2013-2018 Pretoria: National Prosecuting Authority. Pg. 35.



other quantitative variables, such as the charges or pleas of the accused, we can illustrate how those cases being finalised between 0 to 9 months may be finalised quickly due to the particular circumstances of the case, which are beyond the control of the prosecutor or the courts.

In Table 16 the turnaround time bands for the 79 cases for which we could measure the date of arrest at the Khayelitsha Magistrate Court are illustrated. As the table shows, only 25.4% of cases were finalised within nine months with over half of cases being finalised before the 18-month mark (50.7%). It took between 19 and 24 months to finalise 20.3% of the cases. Of the cases reviewed, 11.5% took over 36 months to finalise with 5.1% taking between 45 to 50 months to close. This illustrates that the cases at the court are taking a long period of time to move through the system, for various reasons.

Table 16: Turnaround times for cases at the Khayelitsha Magistrate Court from date of arrest to date of

Time Period ¹¹	Count	Percent
0-5 months	4	5.1%
6-9 months	16	20.3%
10-12 months	11	13.9%
13-18 months	9	11.4%
19-24 months	16	20.3%
25 - 30 months	10	12.7%
31 - 36 months	4	5.1%
36-45 months	3	3.8%
45-50 months	4	5.1%
51-60 months	1	1.3%
6 yrs +	1	1.3%
Total	79	100.0%

References

¹¹ The turnaround times could only be calculated for 79 out of the 100 cases from arrest to judgment. This is due to arrest dates being missing/ not recorded in case files

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It is interesting then to compare these turnaround times with those times calculated for the pilot SOCs that were reviewed in the ICOP Baseline Study in 2016 to see if there are any notable similarities or differences with the Kheyelitsha data. As Table 17 below shows, 55.2% of cases were finalised between 0 to 9 months in the pilot sites compared to the 5.1% of cases in Khayelitsha finalised within the same period. However, as the Baseline Study shows many of those cases finalised in the pilot courts in less than nine months were cases that were withdrawn, where the accused had pleaded guilty, and which involved child complainants; all of which are factors that can shorten the turnaround times for criminal cases of sexual offences. ¹²

Table 17: Turnaround time from arrest to judgment in ICOP pilot sites (n=399)

	Categories of time from arrest date to judgment date	ICOP Pilot SOCs	Khayelitsha Court
Time Period	0-5 months	37.1 %	5.1%
	6-9 months	28.1 %	20.3%
	10-12 months	14.3 %	13.9%
	13-18 months	11.0 %	11.4%
	19-24 months	4.3 %	20.3%
	25 - 30 months	3.5 %	12.7%
	31 - 36 months	1.3 %	5.1%
	3 yrs +	.5 %	11.5%

From 10 to 18 months the rates are similar and then they diverge sharply from 19 months onwards with 12.7% of cases at Khayelitsha Magistrate Court taking between 25 to 30 months to finalise compared to the 3.5% of cases finalised in the ICOP pilot SOC courts during the same period. By comparing the turnaround times from arrest to judgment with the outcomes of the cases, one can see how the turnaround figures can become distorted. As shown in the ICOP Baseline Study, whilst it appears that the average turnaround time was nine months, many of those cases had been finalised in that time due to being withdrawn or removed from the roll. Cases that resulted in convictions or acquittals took up to 18 months to finalise. In Khayelitsha Magistrate Court, Table 18 shows that of those cases finalised from 0 to 9 months, 62.5% were due to being withdrawn, 31.3% were struck from the Roll and 4 of the 9 convictions were finalised within 5 months (these were cases in which the accused pleaded guilty). If we look at the period of 10 to 12 months, 81.8% of these cases were withdrawn. Convictions dip from six months onwards and begin to increase again from the 25 to 30 months category.

References

¹² Heath, A., Artz, L., Odayan, M & Gihwala, H. (2018). Improving Case Outcomes at Pilot Sexual Offences Courts Project: Draft

Baseline Study. Gender Health and Justice Research Unit



Table 18: Turnaround times for cases at Khayelitsha Court from date of arrest to date of judgment / finalisation (n=79) compared with case outcomes

Khayelitsha (n=79)		Struck off Roll	With-drawn	Conviction	Acquittal	Total	
Turnaround time category	0-5 months	Count	0	0	3	1	4
		%	0.0%	0.0%	75.0%	25.0%	100.0%
	6-9 months	Count	5	10	1	0	16
		%	31.3%	62.5%	6.3%	0.0%	100.0%
	10-12 months	Count	0	9	1	1	11
		%	0.0%	81.8%	9.1%	9.1%	100.0%
	13-18 months	Count	2	4	1	2	9
		%	22.2%	44.4%	11.1%	22.2%	100.0%
	19-24 months	Count	3	8	0	5	16
		%	18.8%	50.0%	0.0%	31.3%	100.0%
	25 - 30 months	Count	1	3	1	5	10
		%	10.0%	30.0%	10.0%	50.0%	100.0%
	31 - 36 months	Count	0	1	1	2	4
		%	0.0%	25.0%	25.0%	50.0%	100.0%
	36-45 months	Count	2	0	0	1	3
		%	66.7%	0.0%	0.0%	33.3%	100.0%
	45-50 months	Count	0	1	1	2	4
		%	0.0%	25.0%	25.0%	50.0%	100.0%
	51-60 months	Count	0	0	0	1	1
		%	0.0%	0.0%	0.0%	100.0%	100.0%
6 years +	Count	0	0	0	1	1	
	%	0.0%	0.0%	0.0%	100.0%	100.0%	
Total	Count	13	36	9	21	79	
	%	16.5%	45.6%	11.4%	26.6%	100.0%	

Equally, if the accused pleads guilty, as mentioned above, then the finalisation time is affected and can often be finalised within 9 months. As Table 19 illustrates, of those cases that were finalised in 0 to 5 months all of them (100%) were cases in which the accused had pleaded guilty. As the highlighted area shows, 34 of the 62 cases with 'Not Guilty' pleas took longer than 19 months.

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Table 19: Turnaround times for cases at Khayelitsha Magistrate Court from date of arrest to date of judgment / finalisation (n=79) compared to plea of the accused

Khayelitsha (n=79)		Not recorded	Guilty	Not Guilty	Total	
Turnaround time category	0-5 months	Count	0	4	0	4
		%	0.0%	100.0%	0.0%	100.0%
	6-9 months	Count	3	0	13	16
		%	18.8%	0.0%	81.3%	100.0%
	10-12 months	Count	6	0	5	12
		%	54.5%	0.0%	45.5%	100.0%
	13-18 months	Count	1	0	8	9
		%	11.1%	0.0%	88.9%	100.0%
	19-24 months	Count	1	0	15	16
		%	6.3%	0.0%	93.8%	100.0%
	25 - 30 months	Count	1	0	9	10
		%	10.0%	0.0%	90.0%	100.0%
	31 - 36 months	Count	0	0	4	4
		%	0.0%	0.0%	100.0%	100.0%
	36-45 months	Count	1	0	2	3
		%	33.3%	0.0%	66.7%	100.0%
	45-50 months	Count	0	0	4	4
		%	0.0%	0.0%	100.0%	100.0%
	51-60 months	Count	0	0	1	1
		%	0.0%	0.0%	100.0%	100.0%
6 yrs +	Count	0	0	1	1	
	%	0.0%	0.0%	100.0%	100.0%	
Total	Count	13	4	62	79	
	%	15.2%	6.3%	78.5%	100.0%	



Another important variable to explore when examining the turnaround times of cases is the age of the complainants. The Case Management Directives for the magistrates ¹³ clearly outlines the way in which they should be scheduling cases involving children on the court rolls. It is a widely accepted and common practice in the courts for child cases to be prioritised on the court roll. Therefore, the judiciary and the prosecution aim to finalise these cases as quickly as possible to minimise disruption to the child, as explained previously in the report. However, if these cases are withdrawn or removed from the roll in order to meet timeframe targets then it is not in the best interests of the child and as shown earlier in the report in Table 12.

Table 20: Turnaround times for cases at Khayelitsha Court from date of arrest to date of judgment / finalisation

		0-8 yrs	9-12 yrs	13-18 yrs	19-25 yrs	26-35 yrs	36-50 yrs	51 yrs +	Total
0-5 months	Count	0	1	1	0	0	0	0	2
	%	0.0%	8.3%	5.6%	0.0%	0.0%	0.0%	0.0%	2.9%
6-9 months	Count	1	2	5	3	5	0	0	16
	%	11.1%	16.7%	27.8%	18.8%	50.0%	0.0%	0.0%	22.9%
10-12 months	Count	3	2	2	3	0	0	0	10
	%	33.3%	16.7%	11.1%	18.8%	0.0%	0.0%	0.0%	14.3%
13-18 months	Count	1	0	1	4	2	0	0	8
	%	11.1%	0.0%	5.6%	25.0%	20.0%	0.0%	0.0%	11.4%
19-24 months	Count	2	3	3	3	0	2	0	13
	%	22.2%	25.0%	16.7%	18.8%	0.0%	50.0%	0.0%	18.6%
25 - 30 months	Count	0	2	2	1	1	1	1	8
	%	0.0%	16.7%	11.1%	6.3%	10.0%	25.0%	100.0%	11.4%
31 - 36 months	Count	0	1	0	2	0	1	0	4
	%	0.0%	8.3%	0.0%	12.5%	0.0%	25.0%	0.0%	5.7%
36-45 months	Count	1	1	1	0	0	0	0	3
	%	11.1%	8.3%	5.6%	0.0%	0.0%	0.0%	0.0%	4.3%
45-50 months	Count	0	0	2	0	2	0	0	4
	%	0.0%	0.0%	11.1%	0.0%	20.0%	0.0%	0.0%	5.7%
51-60 months	Count	0	0	1	0	0	0	0	1
	%	0.0%	0.0%	5.6%	0.0%	0.0%	0.0%	0.0%	1.4%
6 years plus	Count	1	0	0	0	0	0	0	1
	%	11.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.4%
Total	Count	9	12	18	16	10	4	1	70
	%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

References

²⁰ <http://www.justice.gov.za/legislation/rules/RegionalCriminalCourt-PracticeDirectives-2017.pdf>

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However, as shown in Table 20 above in the shaded areas, only one out of nine cases for those complainants between 0 to 8 years old were finalised by nine months, with many of the cases taking from 10 to 24 months to be finalised. Similarly, this trend holds steady for the age groups from 9 to 12 years and 13 to 18 years. Whilst the average time for finalising cases for children was up to 18 months for the other ICOP pilot courts, for Khayelitsha Magistrate Court we can see from Table 20 that 19 out of 31 cases involving those under 18 years of age are finalised on between 19- 24 months.

In addition to the turnaround times, measured from the date of arrest to the date of finalisation or judgment, we also measured the length of time from the first appearance to finalisation. This demonstrates how long it takes for the cases to proceed to the regional court. Table 21 shows that 39.5% (n=32) of cases had been finalised from their first appearance at Regional Court within nine months, with almost 79% (n=64) being finalised within 18 months. This highlights the need to look at the delays that occur at the District Court level and to examine the bottlenecks and systemic challenges that affect the turnaround times from first appearance at District Court to Regional Court appearances. ¹⁴

Table 21: Turnaround times for cases at Khayelitsha Court from first appearance at Regional Court to judgment (n=81)

Khayelitsha		
Time Period	Frequency	Valid Percent
0-5 months	21	25.9%
6-9 months	11	13.6%
10-12 months	8	9.9%
13-18 months	24	29.6%
19-24 months	3	3.7%
25 - 30 months	4	4.9%
31 - 36 months	3	3.7%
36-45 months	6	7.4%
61-72 months	1	1.2%
Total	81	100.0%

References

¹⁴ It was not the scope of this project to examine the bottlenecks or turnaround time delays at the district court level. Also, it is important to note that our data sources were the case files at the Regional courts and we did not have access to the district court files.



As Table 22 illustrates, the nature of the outcome can also heavily influence the turnaround time with 40.6% of all cases in the 0 to 5 months category being finalised as withdrawals and 59.4% of cases finalised within 6 to 9 months in the Regional Court also as withdrawals.

Table 22: Turnaround times for cases at Khayelitsha Court from first appearance at Regional Court to judgment (n=81) compared to case outcomes

		Struck off Roll	Withdrawn	Conviction	Acquittal	Total	
Turnaround time category	0-5 months	Count	5	13	6	8	32
			15.6%	40.6%	18.8%	25.0%	100.0%
	6-9 months	Count	4	19	2	7	32
			12.5%	59.4%	6.3%	21.9%	100.0%
	10-12 months	Count	1	1	1	4	7
			14.3%	14.3%	14.3%	57.1%	100.0%
	13-18 months	Count	1	3	0	0	4
			25.0%	75.0%	0.0%	0.0%	100.0%
	19-24 months	Count	1	0	0	1	2
			50.0%	0.0%	0.0%	50.0%	100.0%
	31 - 36 months	Count	0	1	0	0	1
			0.0%	100.0%	0.0%	0.0%	100.0%
	Total	Count	12	37	9	20	78
			15.4%	47.4%	11.5%	25.6%	100.0%

Acquittals take longer with 57.1% of all cases finalised between 10 to 12 months resulting in acquittals. It is important to note that there are no convictions beyond the 12-month mark, with the remaining cases over 12 months resulting in SOR or withdrawals.

The final table of the descriptive findings summarises the observations highlighted above and compares them to the statistics found in the same variables measured at the ICOP Baseline Study SOCs. Table 23 illustrates the multifaceted and multivariate nature of exploring what the turnaround times are at the courts and points to the bottlenecks that are influencing these times and the way sexual offences cases are finalised in all the courts studied within this ICOP project.

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Table 23: Comparison Table between ICOP Baseline findings for 5 pilot sites and Khayelitsha Fieldwork data

Variable	Khayelitsha	ICOP Pilot SOCs
Length of time arrest to judgment	11.4 months	9.05 months
a. Maximum length of time	33 months	64 months
b. Minimum length of time	1 month	1 month
Length of time arrest to first appearance	7.2 months	6.8 months
Length of time first appearance to judgment	13.8 months	12.8 months
Average age of victim	19.5 years	16.2 years
Minimum age	3	3
Maximum age	57	63
Age of victim (highest category %)	12 to 18 years (22 %)	12 to 18 years (28%)
Average age of accused	28.8 years	31.3 years
Minimum age	15	13
Maximum age	59	65
Age of accused (highest category %)	18 to 25 years (40%)	26 to 35 years (32%)
% of Rape charges	81%	92.7%
% of Attempted Rape charges	3%	1%
% of Sexual Assault charges	12%	5%
% of Statutory Rape charges	2%	0.4%
Conviction rate	9%	15%
SOR rate	17%	14%
Acquittal rate	28%	20%
Withdrawal rate	46%	41%
% Guilty plea	5%	12%
% Not Guilty plea	80%	53%



Variable	Khayelitsha	ICOP Pilot SOCs
% of wholly suspended sentences	5%	4.3%
Average number of appearances	10	13
Minimum number	2	1
Maximum number	41	40
Number of postponements	6	10
Minimum number	1	2
Maximum number	35	34

The table shows that the differences between Khayelitsha Magistrate Court and the other ICOP pilot sites are significant, particularly regarding convictions. This is important to note as one would expect, when comparing a designated SOC to a 'normal' regional court, the conviction rates to be significantly higher in the official SOCs. The withdrawal rates are similar as are all of the other variables, including turnaround times, which illustrates that non-SOC courts are having just as many cases withdrawn and as few cases making it to trial stage. This is contrary to the objectives of the Sexual Offences Court model and the specialisation of prosecution and specialised court support services(as outlined in the MATTSO report), which aim to make justice swifter through providing better services and skills in the courts for handling sexual offences cases. based on these figures, one could clearly recommend that in order to improve conviction rates in Khayelitsha Magistrate Court, it should be designated as an official SOC.

4.2 BOTTLENECKS AND SYSTEMIC CHALLENGES

Similar challenges and concerns arose in the interviews with the respondents at Khayelitsha Magistrate Court as in the other ICOP court interviews. These findings are laid out in detail in the Baseline Study Report. Comparable issues, such as the need for debriefing and the need for additional specialised training of all court personnel, were noted, with an emphasis on vulnerable complainants such as child witnesses and persons with intellectual and mental disabilities. In addition, the prosecutors spoke about high caseloads and being under-resourced. A consistent concern voiced by respondents was why the court was, once again, being investigated by the DOJ&CD as being a possible SOC site. I was explained that official justice parties had visited and assessed the court previously but nothing had come of those visits or reports. Consequently, all participants expressed a desire that this report result in some actual infrastructural changes to the court accompanied by additional human resources.

There were some specific challenges at the Khayelitsha Magistrate Court, which should be highlighted and are explored below. This includes the need for more resources for court services; the tensions between Court Preparation Officers (CPOs) and NGOs providing Court Support Officers (CSOs) and services; the problems with poor investigations and an overburdened Family Violence, Child protection and Sexual Offences (FSC) Unit at the South African Police Service (SAPS); large numbers of cases being withdrawn and the vast problem of underreporting of sexual offences in Khayelitsha.

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Resources

The infrastructural needs of the specialised sexual offences courtrooms are an issue that arose in all the courts in the ICOP study. The MATTSO report outlines a very specific set of structural requirements for the SOCs that are aimed at reducing the secondary trauma experienced by sexual offences victims. Such structural enhancements include survivor-friendly waiting rooms, entrances to the sexual offences courtrooms designated to survivors only and discreet access to court support and court preparation services. Compared to the other courts we have studied within this project, Khayelitsha Magistrate Court buildings are spacious and appear well resourced. However, interviews with the court manager revealed that many positions that have been vacated have not subsequently been filled at the time of conducting this study, such as the financial manager, and that ongoing maintenance of the building is a key concern.

The court manager described how they were currently experiencing 13 staff member vacancies. He explained how, "in the absence of one clerk, one interpreter you are faced with the challenge of having matters that cannot proceed". This is supported by the findings of our case file review, which showed that some of the postponements and delays in the trails were the result of a lack of intermediaries or interpreters for foreign nationals.

One of the objectives of this study of the court was to determine if the existing waiting areas and access points to the sexual offences courtroom were sufficient and if there were low cost ways to incorporate some of the MATTSO model requirements into the existing court structures. To assist with this cost assessment, Rape Crisis Cape Town Trust (RCCTT) engaged an architect to look at the building plans and outline low cost ways of adapting existing structures and other additional buildings so as to improve the complainants experience of the court and bring it closer in line with MATTSO recommendations (See Appendix 3). The report from the RCCTT speaks specifically to the physical infrastructural issues that are affecting service delivery and victim experiences at the court. Their specific concern related to the placement of their CSOs, which is an essential service for the complainants at the SOC. The RCCTTs report explains that:

"Firstly, the location of the Court Support Officers container is far from the court building and on the other side of the security gates, which makes it unsafe and inaccessible. The fact that the container is on the other side of the security gates means that it is remote and, should a survivor or the support staff be in any kind of trouble, no one would know. One of our staff members have even had the experience of meeting the court supporter in the container and then not being able to get back to the court building because the security gates were locked. In wind and rain, it is extremely unpleasant to walk to the container and this creates a barrier to access. There is also no signage to indicate what services are offered there." (RCCTT Response to Architects Report Appendix 4)

Another chief concern was access to the courtroom for survivors and that to comply with MATTSO regulations the complainants should have a separate entrance. RCCTT highlights in their report that,

"The current situation means that when survivors have to enter the courtroom, either coming from the court supporter container or the waiting room, they have to walk past the corridors where the perpetrators and their supporters wait. This causes secondary trauma and often affects whether the survivor can tell her version of events as the state's witness. This has been confirmed by both prosecutors and intermediaries at this court. Although this issue has been raised at both the Gender Justice Forum hosted by the Department of



Justice as well as at the Victim Empowerment Forum hosted by the Department of Social Development on numerous occasions, the situation has not been resolved. As a result of the above, survivors are not able to access the support that they need in the setting that it should be provided in. Due to the unsuitability of the court supporter's current office space, she sometimes consults with the survivors in the waiting room upstairs, but this room offers no privacy and is therefore also unsuitable for consultations. In addition to this, although one of the courtrooms hears mostly sexual offences cases, it is not established as a sexual offences court and therefore cannot offer the specialised services, personnel and infrastructure that such a specialised court would be able to offer." (RCCT Response to Architects Report Appendix 4)

The location of the services for survivors is an important point of consideration particularly when there are numerous NGOs offering services within the courts. Within Khayelitsha the two main court support services being offered are by RCCT for adult survivors and Childline for children. Childline have their own office on the first floor and they offer both court support services for child complainants and court preparation for children. The location of their office is not ideal either, as it is opposite a common area and the traffic office, this location forces children to pass long queues of adults on their way to counselling or court preparation. It was suggested during the meeting with the court manager and Deputy Minister of Justice at the court in February 2018 with the architect, that some form of NGO or court support hub be created so that services are grouped together for the convenience of the survivors.

Court Support Services

The issue of physical infrastructure is linked to another key challenge at the court for sexual offences survivors: specialised court support services. The distinction between the services offered by the NPA's own CPOs and the NGOs CSOs is not very clear to all court personnel and clarity on these roles needs to be addressed at the court and in the forthcoming Sexual Offences Courts Draft Regulations. The CSOs explained that they used to consult on a regular basis with clients, despite their isolated CSO container at the back of the court. However in recent months the CPOs have ceased sending clients to them for court support and one CSO claims they have been told not to enter the court with complainants, despite this being her role to support the client in the courtroom during the trial.

The CSO described how in the past the complainant would be counselled first and would then go to the prosecutor for consultation then to court preparation and back to the CSO for court support until they were called to testify, "I would speak to the client and then when I am finished I send the client downstairs to the prosecutor and then the client comes up and wait for the orderly person to come and fetch her to court". However now, "(the prosecutor), said to me that he can't give me the court roll because he doesn't know what am I doing, [...] He said to me they have got their own court preparation officer now and so it means they no longer need me anymore because he is not going to give me clients. [...] Nobody wants to tell us we no longer need your services. They just do things so that we can be out because there are lots of clients coming and witnesses, but I miss them."

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Performances and outcomes

A contributing factor to the reduced numbers of clients going for court support is also due to a general decline in cases making it through to trial stages. This was an issue that was present across all the courts in our study. The prosecutors at Khayelitsha Magistrate Court pointed to all the same challenges and issues as outlined by the prosecutors in the Baseline Study – being under staffed, not having enough specialised prosecutors, too many cases, lack of specialised training to deal with child victims and just a general overall level of burnout and demotivation.

The issue of performance indicator pressures and the need to move forward with ‘winnable cases’ was at the forefront of the prosecutors concerns at Khayelitsha Magistrate Court. They explained that despite their best efforts to meet their targets they feel that they are under scrutiny and constant pressure to reduce the length of their cases, despite the fact that many of the reasons for delays or postponements are beyond their control. The judiciary were also acutely aware of the pressures that the prosecutors are under to reach their targets. One magistrate at the court observed:

“I know [the prosecutor] is under pressure to finalise matters but it’s just the way it is. I always say to [the prosecutor] you need to explain to them if you can keep record of everything that is happening in court. I know the NPA is very strict but there are things beyond your control. So, really there is really nothing we can do. We try and push as much as we can but if we can’t, we can’t. I always say that to him. So, we are at six and I say how much more do we need in order for you to be okay and then they will say we need four more and I say okay, don’t worry we will try and push but if we don’t get that four cases finalised we can’t but I think what will happen if he doesn’t meet the target this month then we will try the next month to push and make over for the shortfall. It’s very, very difficult especially for them. It’s very, very difficult.”

The prosecutors suggest that a shift in mindset is needed and performance measures must be reconceptualised beyond simply aiming to prosecute ‘winnable cases only’. The prosecutors explain that, “It isn’t about numbers and we shouldn’t be churning numbers. We must remember why we are here. The justice system is geared towards one party says and the other party says but we have sort of let go of that system because we are looking at I am not going to get a conviction in this case and for me that isn’t what it should be about. So, I would want the mindset to change and for us to realise again that we have a victim and we are saying that people are entitled for their voices to be heard but those voices will not be heard because we are looking towards how can I be guaranteed a conviction in this case”.

That said, they also explained that the need for a ‘winnable case’ is also for the benefit of the complainant who can suffer as much trauma going through a process when there is very little to no chance of winning. Prosecutors believe that they often risk irritating the magistrates by bringing weak cases to them with no evidence. The prosecutors explained, “ we must look at reasonable prospect of a conviction as well and that is our baseline and we look at that and in all honestly we look beyond that because we know we must have cooperation, you know we must have something to substantiate what the complainant is saying and we do look for that because we are mindful that we have a target for conviction”. The prosecutors understand that performance measures are a normal part of any job and they can be a source of motivation, if they reflect the realities of dealing with such cases. This is particularly important with difficult cases, like child sexual offences or persons with intellectual or physical disabilities, which tend to take longer to finalise due to the extra evidence needed and the need for expert reports and so on. When it comes to the NPA, one of the prosecutors acknowledged that: “must measure performance and I think we all understand that. There must be a target that you work towards to justify salary and to justify your post and I



understand that completely, but sexual offences is different to a robbery case you know where you can finish a robbery case in a day and a half or a murder trial for that matter. It is different, but I must say that in terms of what they require for a conviction rate it is lower. It is five percent lower than the normal conviction rate standard that the NPA has set but it is still an unreasonable target and it is difficult to convince them of that”.

Attrition and Withdrawals

The prosecution also must deal with a high number of withdrawals of cases at Khayelitsha Court. Discussions with the prosecutors, forensic doctors and the magistrates in addition to notes in the case files show that the top reason for withdrawals has been the failure of the complainant to appear in court. Attrition is a serious problem in Khayelitsha with regards to sexual offences cases with almost 80% of the withdrawals in our review being due to the failure of the witness to appear in court. Underreporting of sexual offences and crimes in general in Khayelitsha is an issue ¹⁶ and this affects the number of cases that are making it to consultations with prosecutors and from there to the Regional Magistrate Court. The testimonies of residents in Khayelitsha as contained in the Khayelitsha Commission Report relating to sexual offences illustrate in their own words the difficulties they have with reporting and getting justice. ¹⁷

During the interviews the forensic doctor, prosecutors and the court supporters explained that they have experienced this problem first hand with survivors who have a deep level of mistrust in the justice system and its ability to bring those accused to justice. The forensic doctor at the Thuthuzela Care Centre (TCC) estimated that probably “about 10%” of the cases the are seen by the forensic doctor proceed to open cases at SAPS and even less make it to court. The doctor explains, “We get quite a few patients that do not want to open cases. They are adamant and then we obviously talk to them about why it is important, get the perpetrator off the street and you are not the first person that they raped and you could be one of many but you need to raise awareness in the community so that people understand their rights and they understand the law and they must understand what services are actually available”. The Forensic doctor goes on to explain that from the survivor’s perspective, “there are so many gaps. There are so many obstacles, you must really be very strong and tough to fight to get to the court and to sit through that time”. The doctor recalled many occasions where attempts were made to try to convince the survivor to stick to the process and proceed with a case however they are often put off by lack of evidence or the burden of proof, the doctor stated that,

“I say that is not your job, your job is to come, and report and our job is to assist you and then the police investigate and then the court will put everything together and we get you into counselling. So, we all do our bit and you have done your bit just by getting to us and just by reporting you are done basically. We are trying to take that burden off of them that they must say who it is and where the person stays and what he looks like and so on because people think if they do not know the perpetrator then what is the use of reporting and so we have to actually tell them we are going to collect DNA from you and it’s going to go onto a DNA database and there might be a hit and all of that. I mean you could be saving other people as well but also to get the perpetrator off the streets and all of that, so we try to convince them, but a lot of people say I cannot talk to anybody. I cannot tell anybody in

References

¹⁶ At the time of the Khayelitsha Commission it was estimated that 40% of all crime in the area was unreported. Towards a Safer Khayelitsha: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a breakdown in Relations between SAPS and the Community of Khayelitsha (2014) Pg. 44

¹⁷ Towards a Safer Khayelitsha: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a breakdown in Relations between SAPS and the Community of Khayelitsha (2014) Pgs. 81 - 115

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my family. I cannot tell my boyfriend or my partner. So, if I go to court or the police wants a statement it is going to come out or other people just say I cannot do the court thing. It's just going to be a long thing and I don't have time for that".

Whilst cases can proceed without a complainant once the charges are not withdrawn by them, we found that at the court many cases were withdrawn or struck-off-the-roll at trial due to non-appearance of the complainant. In addition, it is important to note that the number of occasions that the witnesses did not appear before withdrawal or SOR was on average 3-4 times. Furthermore, of the 100 cases, there were four Sec 174 of the Criminal Procedures Act (CPA) applications granted by the magistrate which was not something we encountered in any of the sampled cases reviewed at the other pilot courts. According to section 174 of the Criminal Procedure Act 51 of 1977 a court may, at the close of the case for the prosecution, if it is of the opinion that there is no evidence that the accused committed the offence referred to in the charge sheet or any other offence of which the accused may be convicted of, return a verdict of not guilty. This procedure is referred to as a discharge at the end of the case for the prosecution.

None of these Section 174 applications (as shown in Table 24) were opposed and all were granted due to the complainant not appearing at court. A Section 174 application is in fact a verdict of not-guilty without even hearing the defence's case. Therefore, a person who has been successful with a S174 application, can never be tried for the same crime again. It is therefore a final decision. It is the magistrate who makes these decisions and it can be very dangerous to grant Sec 174 applications so liberally. When we questioned the magistrate as to why there was such a high rate of non-appearances in the court and why these cases were withdrawn or SOR after only a couple of postponements they explained that "in sexual offences you will hardly have an eye witness because in most cases it is something that is behind the closed door between the accused and the complainant. So, the main witness is the complainant [...] you can have your doctor and your doctor can come and say there was penetration that had occurred but without the complainant you don't know whether she consented or not. So, it is very difficult and so the complainant is the main witness and she needs to be in court."

The magistrate went on to explain that when it comes to removing cases from the roll due to non-attendance of the main witness that, "you cannot just put it as a blanket rule and say if the complainant doesn't come to court you will just strike the matter off the roll. It may be so that the complainant does not even know that they are supposed to come to court so it goes back to the police whether the police did subpoena the complainant but now you then find a case whereby other complainants have been coming to court and [...] the complainant has been properly subpoenaed she knows and then there really is nothing that we can do. We just have to strike the matter off the roll". Table 24 below illustrates some of the notes from case files where Section 174 applications were granted and the reasoning from the defence for the request and some of the indicated reasons for being granted it.



Table 24: Notes on Section 174 cases from case file review

Case number	Cases where the outcome was a Section 174 of the CPA
Case A	<ul style="list-style-type: none"> • No witnesses were subpoenaed by SAPS and failed to appear at court and postponed twice for this reason. • Appears very little attempts made to locate witnesses and complainant. • When on 6th occasion no witnesses, police said they were unaware that they had to trace witnesses. • Defence claim accused is being denied the right to a speedy trial. • Prosecutor complains about lazy IO, defence applied for Sec174 discharge iro no evidence and it was granted.
Case B	<ul style="list-style-type: none"> • Complainant before court on 4th appearance. • Then complainant admitted to hospital • Accused pleaded not guilty and follows 8 postponements due to complainant being ill, legal aid absent. • Court postponed with no reasons given and one entry that states “too late in the day to proceed”. • Warrant issues to trace complainant and defence motions that complainant not interested and prosecution counters this and magistrate grants a final postponement • Next appearance sec 174 granted by magistrate to defence.
Case C	<ul style="list-style-type: none"> • Complainant fails to come to court 4 times and defence attorney states that his client is being denied a fair and speedy trial • Sec 174 granted by magistrate and accused acquitted (18 months since first appearance in RC)
Case D	<ul style="list-style-type: none"> • 19-year-old male and female – both accuse 19-year-old male of rape of female, assault of male and housebreaking charge added later. • Witnesses not at court twice • Cell phone numbers according to IO do not work for witnesses • IO says complainants cannot be traced at work • Defence cites unreasonable delays (sec 342) and applies for a sec 174 • Sec 174 granted

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A glaring common denominator in all these cases above, as in many of the cases we reviewed ¹⁸, is the problems that the courts have had with locating witnesses through SAPS and the issuing of subpoenas to complainants. In the interviews with prosecutors, magistrates, case managers, TCC staff and court managers there were comments made on the inefficiencies within SAPS regarding assisting the complainants in cases and the way in which the local FCS Unit in Khayelitsha is grossly under staffed and very over burden with cases. This will be discussed in detail in the next section. It is important to add the context of the historical problems that residents of Khayelitsha have had with the police and how this possibly influences reporting rates and attrition in the communities relating to seeking justice for sexual offences cases.

Policing in Khayelitsha

Historically, there have been tensions between the SAPS and the community of Khayelitsha. The Khayelitsha Commission highlighted these concerns in a public manner with the community in 2014. According to the report “the Khayelitsha Commission was asked by the Premier of the Western Cape to investigate complaints of allegations of inefficiency at the three Khayelitsha police stations (Khayelitsha Site B, Lingelethu West and Harare) as well as an alleged breakdown in the relationship between the Khayelitsha community and members of the South African Police Service (SAPS) based in Khayelitsha. The Premier appointed the Commission in August 2012 in response to a complaint she received from a group of non-governmental organisations who asserted that there were widespread inefficiencies, apathy, incompetence and systemic failures of policing in Khayelitsha”.¹⁹ The report concluded that, “it is clear to the Commission that policing in Khayelitsha is profoundly challenging. Deep levels of poverty, poor levels of infrastructure and very high crime rates make Khayelitsha a particularly difficult place for SAPS to operate [...] many crimes reported to the three Khayelitsha police stations and the FCS Unit are not investigated properly or at all”. In addition it concluded that “SAPS in Khayelitsha is an unreliable partner in a range of team networks, particularly the network centred at the Thuthuzela Care Centre that seeks to assist care for survivors of sexual violence and further the prosecution of perpetrators of family violence, sexual offences and child abuse, and the Khayelitsha Magistrate Court network that seeks to promote co-ordination between various stakeholders to ensure the successful prosecution of crime.

The respondents also pointed to similar problems with SAPS relating to lack of resources and lack of implementation of the national instructions relating to sexual offences. As the prosecutor explained, oftentimes complainants do not appear at court because the FCS Unit is overburdened and cannot find vehicles to bring them to court, or to bring dockets to court. In addition, it was explained that investigations are often substandard due to the stretched nature of the FCS units. As one of the respondents explained,

References

¹⁸ The notes on case files were only made for those cases we felt had alarming facts in them, illustrated attrition, poor performance of stakeholders or lengthy prolonged cases.

¹⁹ Towards a Safer Khayelitsha: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a breakdown in Relations between SAPS and the Community of Khayelitsha (2014) Pg. xxii



“We have got a FCS unit so we have got captains and we have got a colonel who is in charge of the unit and I can really say to you they try their best but you know what it is like - this one weekend we had sixteen cases and there were two officers on duty for the weekend and two detectives on standby which means by that Sunday night each one of them had eight cases. The problem with the FCS unit is that they are spread very thin and they cannot cope with what is on their table and that is why they are not getting to all of the cases [...] They should be twenty-five members but they are ten people and that includes everybody, that includes the commander and the captains and it includes the investigators. You cannot have ten people investigating sexual offences and I am not even going to say only for Khayelitsha, but they don't only do Khayelitsha because they do Somerset West and Strand and all of those”.

Another respondent echoed this concern about stretched resources and explained that the lack of a police presence in Khayelitsha and the failure of FCS to conduct good investigations as a result has affected the community's faith and trust in the police and this has not improved since the commission in 2014, “Yes, people have already lost faith in the police and in the court and I can tell you our police they are understaffed. They really try but they are burnt out”. The Khayelitsha Commission report also agreed with senior SAPS members when they said in 2014 that “they have insufficient personnel to provide an efficient and effective service in Khayelitsha”.²⁰ One of the respondents even went as far as to say that an improved FCs Unit in the cluster could assist with strengthening the weak links referred to in the Khayelitsha Commission report. The respondents said that, “sexual offences in Khayelitsha to a very large extent can improve by huge margins if you can improve on FCS, that is our weak link in sexual offences in Khayelitsha”. The Khayelitsha Commission Report highlighted the challenges the FCS Unit faced in the community such as “poor quality management; under-staffing of the Unit; low morale amongst members; and quite possibly burn-out of some members” and it appears those some challenges are still evident ²¹.

It is clear from all our studies for the ICOP projects that the absence of interviews with FCS officers is a glaring limitation of the review, however the commentary above serves to again highlight the court personnel's own experiences of problems with SAPS and the reoccurring issue of a lack of resources in Khayelitsha. Indeed, the recent investigation by the Public Service Commission (PSC) presented to the provincial standing committee on community shows that the Western Cape is hugely under policed, with the Western Cape having “the highest shortage of police officers in the country, with 85% of police stations in the province understaffed” ²² . Public Service Commissioner Mr. Luthuli said, “posts in the province decreased from 22 633 in 2013 to 20 969 in 2017/18”. He also said that “the national police department was set to reduce the number of police officers from 193 431 in 2017/18 to 191 432 in 2020/21”.

References

²⁰ Op. Cit. Pg. 390

²² <https://www.news24.com/SouthAfrica/News/the-western-capes-crippling-police-shortage-by-numbers-20180705>

²¹ Op. Cit. Pg. 383



CHAPTER 5:

RECOMMENDATIONS

CHAPTER 5: DOES KHAYELITSHA NEED A SEXUAL OFFENCES COURT?

Currently there are no specific set of directives from the Department of Justice and Constitutional Development as to what the criteria are to designate a court as a Sexual Offences Court. In order to assess whether Khayelitsha should be designated as an SOC, we can look to some of the comparable variables between it and other magistrate courts with designated courtrooms. These include the number of sexual offences in the areas, infrastructural variables, access to support services and human resources in an area.

One of the clear factors is the ability for a court to be easily 'converted' to a sexual offences court and in 2014 the DOJ&CD conducted an audit of 567 ²³ courts across South Africa to identify those courts which were the best 'quick wins' in terms of conversion to SOCs and being able to adapt to a low cost version of the MATTSO model. The audit identified 57 courts that were ready for immediate upgrade, Khayelitsha was not one of those 57. ²⁴ As the details of the audit were not released it is difficult to compare the results of Khayelitsha court in 2014 with other courtrooms, however Appendix 5 compares Khayelitsha court with the 5 other courtrooms we encountered in our ICOP baseline report. This shows there are very few differences between the SOCs and the non-designated courtroom at Khayelitsha. Indeed, the architects report (see attached in Appendix) and the accompanying report by RCCT show the easy and low-cost way that the current facilities can be enhanced to make it fully compliant with the MATTSO model, of which it already complies to many of the basic requirements, as shown in the compliance table in Appendix 5.

A second criterion is to look at the volume of sexual offences cases in the area and the number of cases making it onto the roll. As explained in previous sections there are high attrition rates relating to sexual offences cases in Khayelitsha coupled with a high withdrawal rate of cases before it comes to trial and also at trial stage. However, the SAPS statistics show that sexual offences in this area are just as high if not higher than other areas where SOCs have been established. Table 25 below illustrates this by comparing the top 20 stations reporting sexual offences in 2017 according to SAPS statistics. The shaded stations all feed into the Khayelitsha Magistrate Court, therefore there is the potential for at least 427 sexual offences cases to be heard at that court, which is a certainly a high enough number to justify a SOC designation, if we go according to volume of cases in an area. The stations marked in blue are those areas with officially designated sexual offences courtrooms and seven out of those nine stations have lower numbers of reported sexual offences cases than Khayelitsha. The areas marked with an asterisk are stations with high numbers of reported sexual offences however there are no designated Sexual Offences Courts in the area.

²³ 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. Pg. ii

²⁴ A full description of the audit and variables analysed is in the MATTSO report pages 81 – 91.



Table 25: Top 20 Stations with reported sexual offences in 2017 ²⁵

Station	Sexual offences	Rape	Sexual Assault
Umlazi, KZN	295	262	22
*Mthatha, EC	246	227	7
*Mfuleni	230	183	38
Mankweng, LIM	220	200	5
Mitchells Plain, WC	193	104	78
Tonga, MPU	176	167	4
*Khayelitsha ²⁶	156	139	5
*Harare	204	162	20
Lingelethu West	67	56	2
Madadeni, KZN	139	122	10
Tembisa, GP	121	103	11
Thembalethu, WC	106	83	17
Butterworth, EC	94	84	3
Protea Glen, GP	90	73	12
Durban Central	86	67	9
Edenpark, GP	81	70	9
Atlantis, WC ²⁷	69	41	23
Paarl, WC	52	34	11
Parow, WC	40	22	18
De Aar, NC	29	21	6

[Source: SAPS Crime Statistics 2017]

In addition, if we compare the provincial spread of the existing courtrooms from the DOJ&CDs official list, one in Table 26 can see that provinces with significantly lower numbers of reported sexual offences have similar if not the same numbers of SOCs as the Western Cape.

References

²⁵ SAPS Excel sheet source <https://www.saps.gov.za/services/crimestats.php>

²⁶ In 2016 there were 109 cases of sexual offences reported.

²⁷ Areas with a star are stations with high numbers of reported sexual offences but no Sexual Offences Courts

CHAPTER 5: DOES KHAYELITSHA NEED A SEXUAL OFFENCES COURT?

Table 26: Provincial allocation of Sexual Offences Courts

Province	Sexual Offences 2016-2017	Number of Sexual Offences Courts ²⁸	Number of Sexual Offences Courtrooms
Gauteng	9 566	6	15
KZN	8 484	7	9
Eastern Cape	8 050	4	5
Western Cape	7 115	7	11
North West	4 326	8	8
Limpopo	3 828	6	7
Free State	3 488	6	8
Mpumalanga	3 216	5	5
Northern Cape	1 587	7	7

[Source: SAPS Crime Statistics 2017; DOJ&CD website of Sexual Offences Courts: Ref in footnote]

Another issue to consider is the demand for a SOC and the possible effects that having an officially designated SOC would have on reporting of sexual offences in the community of Khayelitsha. Given the deep levels of mistrust of SAPS in the community and the lack of faith in a responsive and fair justice system, the visible efforts of Justice Cluster stakeholders to improve access to justice for sexual offences survivors in the area can only help in encouraging reporting and building access to specialised sexual offences services in the area. The publicity and presence of an SOC in the area may assist with increasing awareness of the support available to sexual offences survivors and perhaps illustrate the Justice Clusters dedication towards improving case outcomes for sexual offences survivors through making these specialised courts available in their locality.

KEY RECOMMENDATIONS

Based on the analysis of the case file data, the qualitative interviews and a review of the background documents, such as the memorandum from RCCT and the Khayelitsha Commission, we recommend the following regarding the future of Khayelitsha Magistrate Court:

- (i) We strongly recommend that the Khayelitsha Magistrate Court be officially designated a Sexual Offences Court and are listed in the next phase of the court roll-outs as they meet many of the criteria that other courts we have visited have met. The architects report clearly outlines simple and cost effective ways in which this can be done.

References

²⁸ According to the DoJ&CD website <http://www.justice.gov.za/vg/sxo-SOC-list.html>



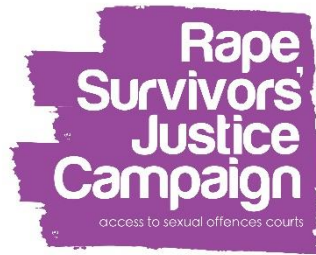
- (ii) Whilst the reasons for attrition and underreporting have been documented by many researchers ²⁹ we recommend that the DOJ&CD investigate those courtrooms which have high withdrawal rates with particular attention to those cases involving children, and those sexual offences survivors with intellectual or mental disabilities. As research has shown ³⁰ the complainants in these cases are the most vulnerable and their cases are difficult to prosecute, and as such they tend to get screened out of the system at early stages as they are often deemed “unwinnable” cases with “weak witnesses”.
- (iii) Public confidence in the justice system in Khayelitsha is very low, the establishment of an official SOC at Khayelitsha may contribute towards building this confidence through giving those survivors at the courts a better experience of justice with less secondary trauma and more access to specialised services. It would be hoped that the word would spread through the community that sexual offences survivors are being prioritised and assisted by the courts and possibly encourage more reporting in addition to improved outcomes for SGBV survivors.
- (iv) Since this report was compiled the intermediary room has been changed into a waiting room/ interview room and the CSOs have received new offices, this will help significantly with assisting survivors as they enter the court. However, a separate entrance is still needed, and this can be achieved quite easily as demonstrated in the architect’s report.
- (v) Regarding the tensions between NPA court preparation officers and NGO court support officers, the Draft Regulations on the SOCs must clearly stipulate the division of tasks between the two and clearly define their roles as this is a recurrent problem in many courts where both NGO and NPA support and preparation services are offered. A clear distinction between the two is necessary.

References

²⁹ (i) Artz, L. & Smythe, D. (2007). Losing Ground? Making Sense of Attrition in Rape Cases. Cape Town: SA Crime Quarterly, 22, pp. 13-20. (ii) Artz, L. & Smythe, D. (2007). Case attrition in rape cases: A comparative analysis. Cape Town: South African Journal of Criminal Justice, 20(2), pp. 158-181

³⁰ (i) Heath, A., Artz, L., Odayan, M & Gihwala, H. (2018). Improving Case Outcomes at Pilot Sexual Offences Courts Project: Draft Baseline Study. Gender Health and Justice Research Unit. (ii) 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

Appendix One



MEMORANDUM: KHAYELITSHA MAGISTRATES' COURT TO HAND OVER ON 5 DECEMBER 2017 TO: THE DEPUTY MINISTER OF JUSTICE

Noting that: The community of Khayelitsha experiences extremely high rates of rape and difficulty accessing justice.

Noting further that: There is no Sexual Offences Court in Khayelitsha that can provide a survivor centred Criminal Justice System.

Resolving: To hold the government of South Africa, specifically the Department of Justice and the National Prosecuting Authority, accountable for the planned and funded rollout of Sexual Offences Courtrooms nationally.

We demand that: The government establish a Sexual Offences Courtroom in Khayelitsha to serve the community, to reduce secondary trauma and to improve the conviction rates in sexual offences prosecutions.

Sincerely,

The Rape Survivors' Justice Campaign and partners.

Appendix Two

BASELINE STUDY CODING TABLE FOR NVIVO ANALYSIS	
NODES\\Primary Code\\Sub-Code	
Nodes\\ALARM	
Nodes\\Best Practice Examples	
Nodes\\Bottlenecks	
Nodes\\Bottlenecks\\Communication	
Nodes\\Bottlenecks\\DCS delays	
Nodes\\Bottlenecks\\Human resources limitations	
Nodes\\Bottlenecks\\Judicial delays	
Nodes\\Bottlenecks\\LASA Delays	
Nodes\\Bottlenecks\\Medical delays	
Nodes\\Bottlenecks\\Postponements	
Nodes\\Bottlenecks\\SAPS delays	
Nodes\\Bottlenecks\\Witness delays	
Nodes\\Case Flow Management	
Nodes\\Case Flow Management\\Negative	
Nodes\\Case Flow Management\\Oversight	
Nodes\\Case Loads	
Nodes\\Debriefing	
Nodes\\Field observations of note	
Nodes\\Forensic Evidence	
Nodes\\Forensic Evidence\\Negative	
Nodes\\Forensic Evidence\\Positive	
Nodes\\Forensic Evidence\\Rape Kits	
Nodes\\Forensic Evidence\\Recommendations	
Nodes\\Forensic Evidence\\TCC staff	
Nodes\\Forensic Evidence\\Testifying	
Nodes\\Forensic Evidence\\Training	
Nodes\\Implementation of the SOA (2007)	
Nodes\\Implementation of the SOA	
Nodes\\Implementation of the SOA	
Nodes\\Intersectoral co-ordination	
Nodes\\Intersectoral co-ordination\\Negative	
Nodes\\Interventions & Training	
Nodes\\Judiciary	
Nodes\\Judiciary\\Court roll	
Nodes\\Judiciary\\Negative	
Nodes\\Judiciary\\Positive	
Nodes\\Judiciary\\Recommendations	
Nodes\\Judiciary\\sentencing	
Nodes\\Judiciary\\Specialisation	
Nodes\\Judiciary\\Training	
Nodes\\M&E (Performance Indicators)	
Nodes\\Miscellaneous ICOP	
Nodes\\Miscellaneous ICOP\\community &	

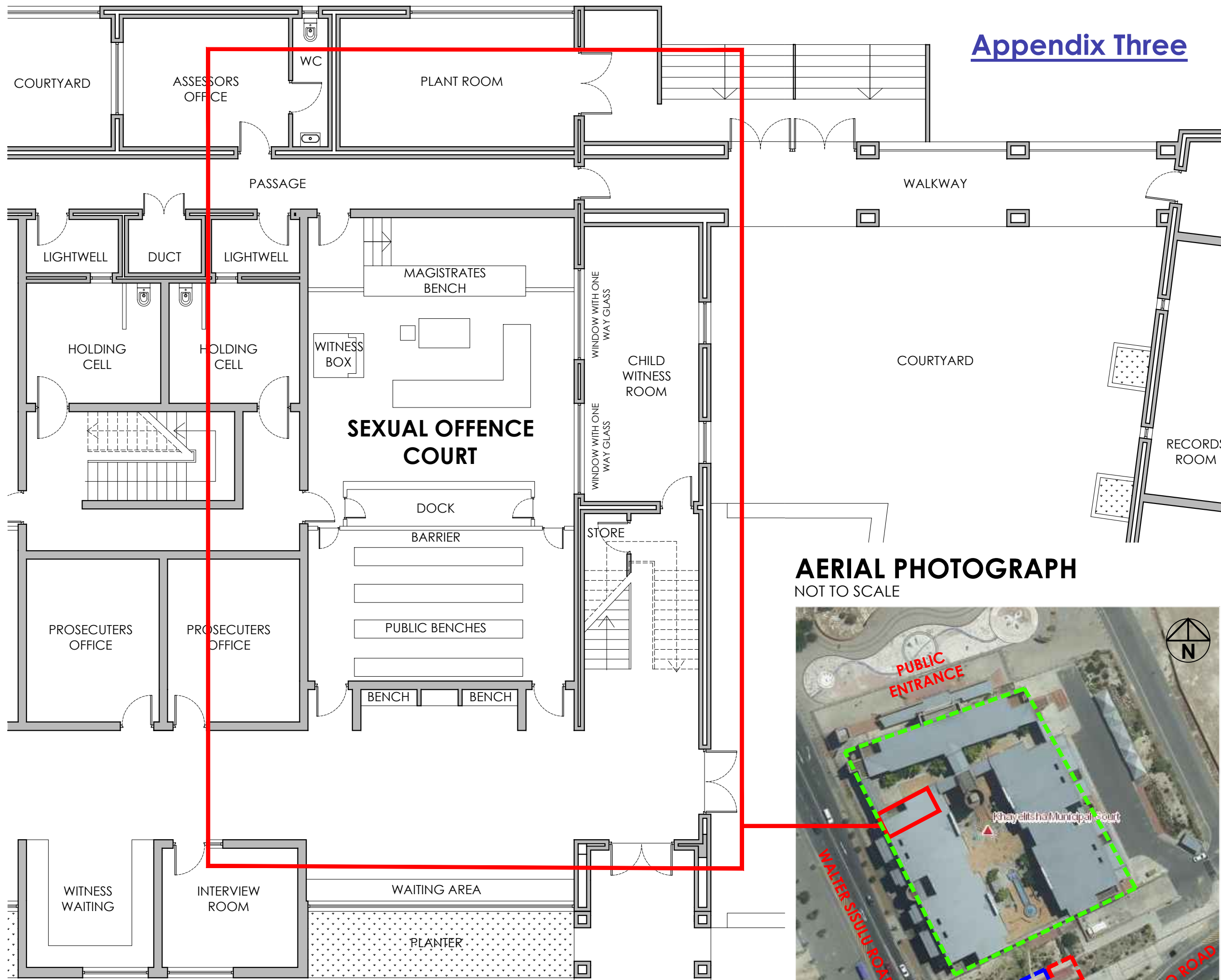
Nodes\\Miscellaneous ICOP\\Expert evidence
Nodes\\Miscellaneous ICOP\\Language issues
Nodes\\Miscellaneous ICOP\\Transportation to
Nodes\\Other court actors
Nodes\\Other court actors\\Court clerks
Nodes\\Other court actors\\Court clerks\\Record
Nodes\\Other court actors\\Court managers
Nodes\\Other court actors\\Court prep
Nodes\\Other court actors\\Court prep\\negative
Nodes\\Other court actors\\Court prep\\Training
Nodes\\Other court actors\\Intermediaries
Nodes\\Other court
Nodes\\Other court actors\\Interpreters
Nodes\\Other court actors\\Interpreters\\negative
Nodes\\Other court actors\\Interpreters\\positive
Nodes\\Other court
Nodes\\Other court actors\\Interpreters\\training
Nodes\\Prosecution
Nodes\\Prosecution\\DDPP & SPPs
Nodes\\Prosecution\\Negative
Nodes\\Prosecution\\Outcomes
Nodes\\Prosecution\\Outcomes\\conviction
Nodes\\Prosecution\\Outcomes\\finalisation
Nodes\\Prosecution\\Outcomes\\SOR
Nodes\\Prosecution\\Outcomes\\withdrawals
Nodes\\Prosecution\\Positive
Nodes\\Prosecution\\Prosecutorial discretion
Nodes\\Prosecution\\Recommendations
Nodes\\Prosecution\\Specialisation
Nodes\\Prosecution\\Training
Nodes\\Psycho-social services
Nodes\\Psycho-social services\\Negative
Nodes\\Psycho-social services\\Social workers &
Nodes\\Psycho-social services\\Types of services
Nodes\\SAPS
Nodes\\SAPS\\Negative
Nodes\\SAPS\\Positive
Nodes\\SAPS\\Recommendations
Nodes\\SAPS\\Training
Nodes\\SAPS\\Witness statements
Nodes\\Secondary Victimisation
Nodes\\Sexual Offence Life Cycle
Nodes\\SOCs
Nodes\\SOCs\\Advantages
Nodes\\SOCs\\Disadvantages
Nodes\\SOCs\\MATTSO

Nodes\\SOCs\MATTSO\compliance
Nodes\\SOCs\MATTSO\LGBTI NTT
Nodes\\SOCs\MATTSO\LGBTI
Nodes\\SOCs\MATTSO\MATTSO Committee
Nodes\\SOCs\MATTSO\non compliance
Nodes\\SOCs\Recommendations
Nodes\\SOCs\Rotation
Nodes\\SOCs\Structural limitations & Capacity
Nodes\\Sources
Nodes\\Sources\Court Managers
Nodes\\Sources\Court preparation and
Nodes\\Sources\Forensic Staff
Nodes\\Sources\High Level national stakeholders
Nodes\\Sources\Interpreters
Nodes\\Sources\Magistrates
Nodes\\Sources\ProsecutorsNPA
Nodes\\Sources\Regional Court Presidents
Nodes\\Sources\Service providers
Nodes\\Sources\TCCs
Nodes\\Successful case outcomes
Nodes\\Successful case outcomes\Definition and

Nodes\\Successful case
Nodes\\Thuthuzela Care Centres
Nodes\\Thuthuzela Care Centres\Case Manager
Nodes\\Thuthuzela Care Centres\Coordinator
Nodes\\Thuthuzela Care Centres\Negative
Nodes\\Thuthuzela Care
Nodes\\Thuthuzela Care Centres\training
Nodes\\Thuthuzela Care Centres\VAO
Nodes\\Turnaround times
Nodes\\Vulnerable groups
Nodes\\Vulnerable groups\Children
Nodes\\Vulnerable groups\Intellectual disabilities
Nodes\\Vulnerable groups\LGBTI
Nodes\\Vulnerable groups\LGBTI\hate crimes
Nodes\\Vulnerable groups\LGBTI\training
Nodes\\Vulnerable groups\Mental disabilities
Nodes\\Vulnerable groups\Older persons
Nodes\\Vulnerable groups\Physical disabilities
Nodes\\Vulnerable groups\Refugee and Asylum
Nodes\\Vulnerable groups\Sex workers
Reports\\Node Structure Report

Appendix Three

PAGE 1: EXISTING SEXUAL OFFENCE COURT



EXISTING SEXUAL OFFENCE COURT: GF PLAN
scale 1:100

AERIAL PHOTOGRAPH NOT TO SCALE



- revisions:
- | rev | date | description |
|-----|------|-------------|
| | | |
- Sexual Offence Court
 - ▨ Existing witness and survivor, pre-counselling and waiting rooms
 - ▨ Existing civil legal aid
 - ▨ Secure gated area of the Court

client:
THE RAPE CRISIS CAPE TOWN TRUST

architect: _____ checked: _____

date: _____ date: _____

project name:
SEXUAL OFFENCE COURT
MAGISTRATES COURT, KHAYELITSHA

drawing name:
EXISTING SEXUAL OFFENCE COURT

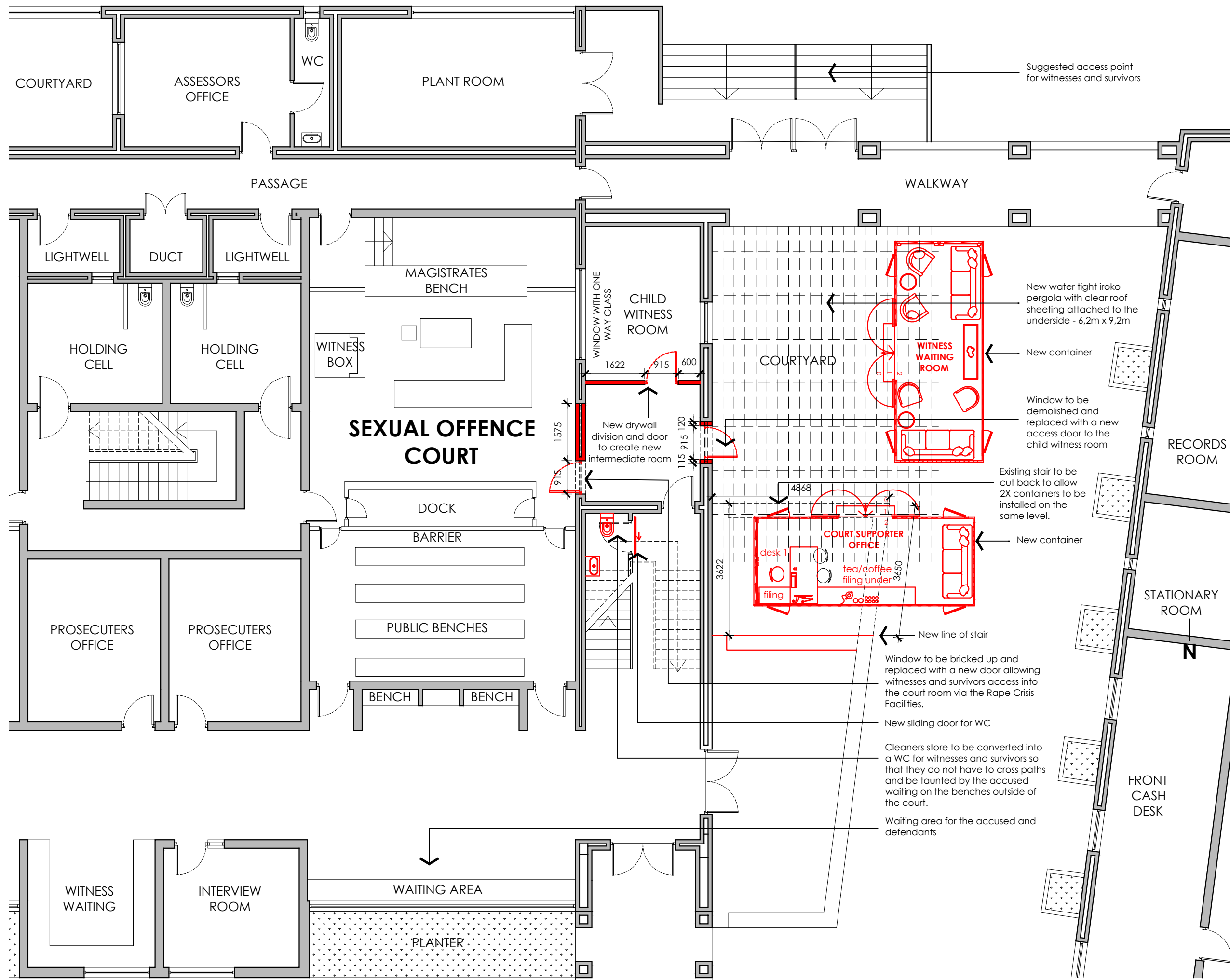
drawn: _____ date: APRIL 2018

revision: - scale: 1:100

drawing no:
1800_01_01



PAGE 2: PROPOSED CHANGES TO THE SEXUAL OFFENCE COURT



revisions:

rev	date	description

client:
THE RAPE CRISIS CAPE TOWN TRUST

architect: _____ checked: _____

date: _____ date: _____

project name:
SEXUAL OFFENCE COURT
MAGISTRATES COURT, KHAYELITSHA

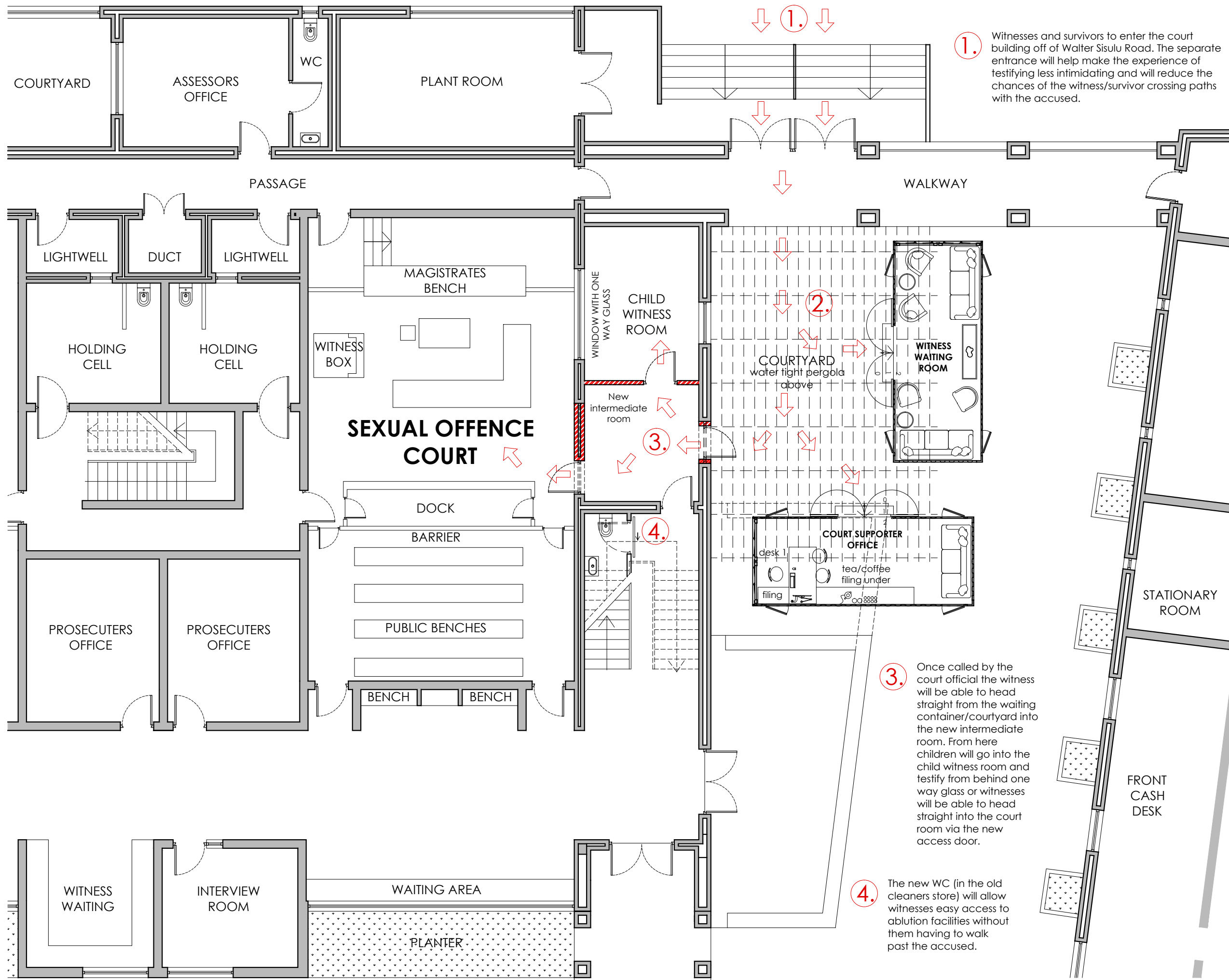
drawing name:
PROPOSED CHANGES TO
THE SEXUAL OFFENCE COURT

drawn: _____ date: APRIL 2018

revision: - scale: 1:100

drawing no:
1800_01_02





POSED
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

2. Once inside the court building the witnesses and survivors walk directly into the Rape Crisis Cape Town Trust's courtyard and then head to either the "Court Supporters" container or the "Waiting Room" container. The courtyards pergola will be water tight so that witnesses and survivors are protected from the rain. Currently they have to walk in the rain from the existing container.

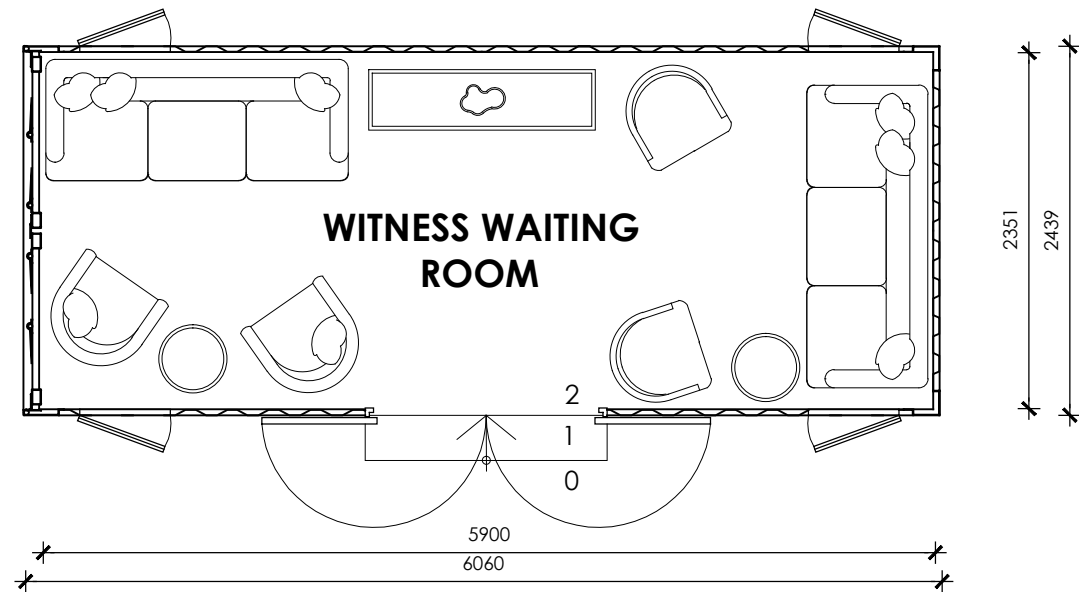
The covered pergola will also benefit the courts officials as they will no longer have to walk in the rain to call witnesses to testify.

THE RAPE CRISIS CAPE TOWN TRUST
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

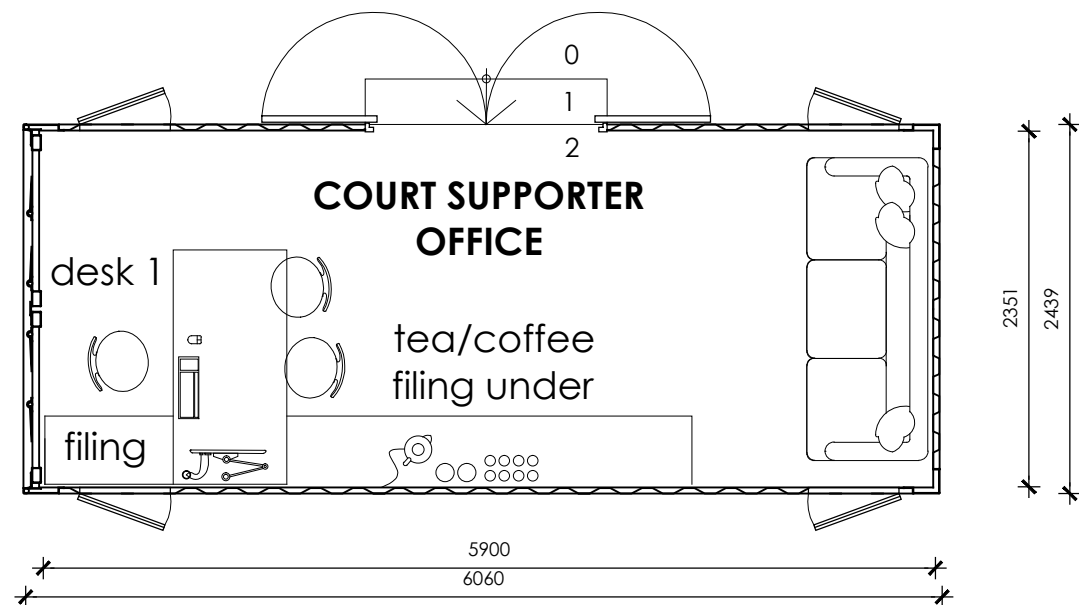
date: APRIL 2018
 [REDACTED]
 [REDACTED]
 [REDACTED]
 1800_01_03

PROPOSED MOVEMENT PATHS FOR WITNESSES & SURVIVORS: GF PLAN
 scale 1:100





PLAN: CONTAINER No. 1
scale 1:50



PLAN: CONTAINER No. 2
scale 1:50

CONTAINER CONVERSION REQUIREMENTS:

- Hospitable/comforting interior
- Ventilated (mechanical or natural)
- Insulated against the winter cold and summer heat
- Openable windows allowing natural light into the containers interior
- Secure and safe
- Power provided internally

revisions:

rev	date	description

client:

THE RAPE CRISIS CAPE TOWN TRUST

architect:

checked:

date:

date:

project name:

SEXUAL OFFENCE COURT
MAGISTERATES COURT, KHAYELITSHA

drawing name:

CONTAINER CONVERSION
SPECIFICATION

drawn:

date:

APRIL 2018

revision:

scale:

-

1:50

drawing no:

1800_01_04



Appendix Four



Report on Recommended Changes to Khayelitsha Court Supporter Office

Background

Established in 1976, Rape Crisis is the most experienced organisation in South Africa working in the area of adult rape and sexual violence. We have a vision of a South Africa in which women are safe in their communities and where the criminal justice system supports and empowers survivors of rape and other sexual offences and acts as a deterrent to perpetrators of crime. Our mission is to promote safety in communities, to reduce the trauma experienced by rape survivors, to encourage the reporting of rape and to work actively to address flaws in legislation. One of the ways in which we do this, is through our Road to Justice Programme where we ensure that rape survivors are supported within the Criminal Justice System (CJS), experience reduced secondary trauma, remain in the CJS and offer effective testimony in the rape trial so that conviction rates for rape increase. We offer consultation and support in five Cape Town courts in service of this.

As part of this programme, Rape Crisis has been offering support to survivors in Khayelitsha Regional Court since 2005. Due to limited office space at the court, as well as issues of confidentiality preventing the sharing of office space, the Rape Crisis court supporter was moved to a container on the edge of the court's premises. This was meant to be an interim measure, but the situation has not changed.

Problem Analysis

The court supporter currently occupies one half of a container placed at the far edge of the court's premises. The other half is occupied by a form of legal support to perpetrators. The container space is unsuitable as an office for the court supporter.

Firstly, the location of the container is far from the court building and on the other side of the security gates, which makes it unsafe and inaccessible. The fact that the container is on the other side of the security gates means that it is remote and, should a survivor or the support be in any kind of trouble, no one would know. One of our staff members have even had the experience of meeting the court supporter in the container and then not being able to get back to the court building because the security gates were locked. In wind and rain, it is extremely unpleasant to walk to the container and this creates a barrier to access. There is also no signage to indicate what services are offered there.

Secondly, the container has very little natural ventilation and insulation and is in fact quite unsuitable to be used as a full time office. In the winter, the space is extremely cold and in summer it is unbearably hot. Bearing in mind that the survivors must testify in court after meeting with the court supporter, the physical condition of the particular container is possibly detrimental to the success of the court case.

Thirdly, the current situation means that when survivors have to enter the courtroom, either coming from the court supporter container or the waiting room, they have to walk past the corridors where the perpetrators and their supporters wait. This causes secondary trauma and often affects whether the survivor can tell her version of events as the state's witness. This has been confirmed by both prosecutors and intermediaries at this particular court.

Although this issue has been raised at both the Gender Justice Forum hosted by the Department of Justice as well as at the Victim Empowerment Forum hosted by the Department of Social Development on numerous occasions, the situation has not been resolved.

As a result of the above, survivors are not able to access the support that they need in the setting that it should be provided in. Due to the unsuitability of the court supporter's current office space, she sometimes consults with the survivors in the waiting room upstairs, but this room offers no privacy and is therefore also unsuitable for consultations. In addition to this, although one of the courtrooms hears mostly sexual offences cases, it is not established as a Sexual Offences Courts and therefore cannot offer the specialised services, personnel and infrastructure that such a specialised court would be able to offer.

The Rape Survivors' Justice Campaign highlighted this problem during gatherings in front of the court building in both 2016 and 2017. At the latter, RSJC handed over a memorandum to the Deputy Minister of Justice and Constitutional Development, Minister John Jeffery, to demand that a sexual offences court be established at the Khayelitsha Regional Court to serve the community of Khayelithsa. An important aspect to this is the upgrading of the space in which survivors receive court support and the waiting room for complainants.

The Deputy Minister of Justice since visited the Khayelithsa Regional Court, together with the Regional Head of the Department of Justice, Mister Hishaam Mohamed, as well as a delegation from the Department of Public Works to discuss possible solutions to the problem. Tiffany Melless from Michelle Sandilands Achitects, *pro bono* architects to the Rape Crisis Cape Town Trust, was also part of the delegation in order to offer their professional services on a *pro bono* basis and assisted by proposing various solutions to the problem.

Proposed solution

In the Budget Vote Speech in Parliament on 9 May 2018, the Department of Justice and Constitutional Development stated that it currently has severe resource constraints. This might make extensive capital works to address the above problems unattainable. In the light hereof, we have consulted with Michelle Sandilands Architects to propose more cost effective solutions that will provide long term solutions instead of more costly capital works.

Kindly see attached the Drawing Package Pages 1 to 5 for more detailed sketches.

Recommendation 1

It is recommended that two containers should be placed in a safe and secure space that would help to reduce the secondary trauma suffered by survivors by providing easy access to the court room, limiting the possible contact with the perpetrator. We therefore propose that the containers be placed in the court yard, as illustrated on Page 2 of the Drawing Package. As illustrated on Page 5, the proposed containers are extremely durable and should be considered as a long-term solution.

One of these containers will house the court supporter's office and consultation area and the other container will house the waiting room for complainants and witnesses. We did consider the possibility of moving the current container and retrofitting it, but we were advised that it is not fit for long-term use. In addition, the container is fragile and will in all likelihood collapse should it be moved.

The two new containers should have a hospitable and comforting interior with openable windows allowing natural light into the containers. Furthermore it should be ventilated, either naturally or mechanically and insulated against winter cold and summer heat. Power should be provided internally.

The fact that these containers are constructed off-site and then placed in the court yard, also means no disruption in court time for extensive capital works.

Recommendation 2

The current bathroom facilities are in the passage at the far end of the court room. This means that survivors who wait in the waiting room container or who consults with the court supporter, has to walk past the perpetrator to access the bathroom facilities. We therefore propose that the store room space next to the intermediary office (Page 1) be converted into a bathroom (Page 2) to provide easy access for survivors.

Recommendation 3

We propose that some minor changes be made to the current intermediary room to allow survivors to access the court room and the intermediary room without contact with the perpetrator. This is in line with the objects of the Criminal Law (Sexual Offences and Related Matters Act)¹ by protecting complainants of sexual offences and their families from secondary trauma through a sensitive criminal justice system. The proposed changes to the current intermediary room are indicated on Page 2.

Conclusion

We wish to express our appreciation towards the Department of Justice and Constitutional Development as well as the Department of Public Works for their willingness to explore appropriate solutions in order to create infrastructure that would ensure that survivors have access to much needed court support services in a safe and dignified manner.

The proposed changes will assist the Department of Justice in its quest to provide a criminal justice system that reduces the secondary trauma experienced by survivors and it is the first step in establishing a Sexual Offences Court in Khayelitsha.

We would like to avail ourselves to meet to discuss the above recommendations and the roll that Rape Crisis and Michelle Sandilands Architects can play in this process.

¹ 32 of 2007.

Appendix Five

	COURT A	COURT B	COURT C	COURT D	COURT E	Khayelitsha
Type of Sexual Offences Matters Heard						
Does this court hear sexual offences matters involving adults?	✓	✓	✓	✓	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).	<u>2 courtrooms – 5 screens</u>	2 courtrooms – had 4 screens but none working	2 (one facing the court, and one facing the magistrate).	2
Televisions currently operational	– though we were told that this was often not the case	✓	✓	X	X	✓
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	1
Cameras currently operational?	✓	✓	✓	X	X	✓
Number of microphones for child witnesses	1 per room	1 per testifying room.	2 rooms – 1 per testifying room	0	1 per testifying room.	1
Microphones 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	X
Is there a one-way mirror between the court and the testifying room?	X	X	✓	X	X	✓
Testifying Room:						
Chairs for children	✓	✓	✓	✓	✓	✓
Toys in the testifying room	X	Only anatomically detailed dolls	Only anatomically detailed dolls	X (The testifying room is not used as Child SO	X	✓ (but very few)

	COURT A	COURT B	COURT C	COURT D	COURT E	Khayelitsha
				matters are not heard at this court)		
Sufficient ventilation in the room?	X	X	There was an aircon in the room, which we were told was in working order.	X	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 furniture – old wooden office furniture.	Brand new MATTSO furniture donated to court in June 2018 by USAID
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	One full set
Are the dolls representative?	There were dolls of different ages, but not 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?	✓	✓	X	N/A Child SO cases are not heard at Tonga.	✓	✓
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 Tonga.	NGO Masikumeneni	NGOs – Childline and Rape Crisis Cape Town Trust
From where is the food obtained?	A local businessman 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 Tonga.	NGO or local businessess	NGOs
What food is provided?	Bread and margarine	NikNaks, juice, a fruit stick, and a bar	This will depend on what the privately	N/A Child SO cases are not heard at Tonga.	Bread and margarine	Bread, Margarine, tea, cooldrink

	COURT A	COURT B	COURT C	COURT D	COURT E	Khayelitsha
			owned tuckshop is serving on any given day.			
Is there a cafeteria/Kitchen facility available in the court?	X - Only for staff.	✓	✓	✓	✓	X - Only for staff.
Waiting Rooms:						
Number of waiting rooms for children	3 (for five courts) – None of them were being used.	2 (1 per court)	1	0 – Child SO cases are not meant to be heard at this court.	1	1
Number of waiting rooms for adults	1	1	1	1	2 – Public and Witnessess	1
Furniture available in the children’s waiting room	✓	✓	✓	NO child cases at this court	✓	✓
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	No – new furntiture in intermediary waiting room, but Childline waiting room furniture very poor.
Furniture available in the adult waiting room	✓	✓	✓	✓	✓	✓
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.	✓ - in Childline waiting room.
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 at main entrance	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.	1 mid way

	COURT A	COURT B	COURT C	COURT D	COURT E	Khayelitsha
Do the signs provide clear direction to the sexual offences courts?	X	✓	✓	X There were no signs.	✓	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	X – There are no toilets that are specifically meant for children.	X – There are no toilets that are specifically meant for children
How many are there?	1 (at the Teddy Bear Clinic)	2 (one located outside each of the two courtrooms).	1 – used by females and mothers.	See above	2 (one located outside each of the two courtrooms).	2
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.	✓ (two share an office)
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).		✓
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	X (The court preparation officers are not employed by the court. One was an employee of GRIP, and the other of Masisukumeni).		✓
Does the court preparation officer have his/her own computer?	✓	✓	✓	X (Not at the court).	X (Not at the court).	✓

	COURT A	COURT B	COURT C	COURT D	COURT E	Khayelitsha
Human Resources:						
Number of magistrates	5 (1 per courtroom that hears SO matters).	2 (1 per courtroom)	2 (1 per courtroom)	1	1	1
Are the magistrates dedicated SO court magistrates?	X - All five courts are hybrid courts, and therefore the magistrates hear SO, and other matters.	X – courtroom has a mixed roll but prioritises child SO and SO cases.	✓	X	X	X
Number of prosecutors	6?	2	4	2	2	2
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	
Is there a dedicated court clerk?		✓ 2 (1 per court)	✓ 2 (1 per court)	✓ 1	X	X
Number of court preparation officers		2	2	2 (one from GRIP, and one from Masisukumeni)	?	2
Social workers based at the court?	X	X	X	X	X	X
Which Non-Governmental Organisations offer services in the court?	Teddy Bear Clinic	NICRO and RAR – specifically for offenders.	Probono.Org, FAMSA, KULISA, and NICRO.	GRIP, Masisukumeni	GRIP, Masisukumeni	Rape Crisis Cape Town Trust for Court Support and Childline for Court Support and prep for children.

Appendix Seven



**DEPUTY MINISTER
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

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Ref: 3/7/1 DM
Enq: Blendynn Williams
Email: [REDACTED]

Adv Hishaam Mohamed
Regional Head: Western Cape
Private Bag X 9171
CAPE TOWN
8000

Dear Adv Mohamed

**DEVELOPMENT OF PRACTICAL AND ACHIEVABLE STRATEGIES TO IMPROVE CASE
OUTCOMES IN THE FINALIZATION OF THE SEXUAL OFFENCES CASES**

The Department of Justice and Constitutional Development has been involved in a study on the Improving Case Outcomes for Sexual offences Pilot Project, which has an element focusing on the turnaround times in the finalization of sexual offences cases from reporting to judgment/sentencing since 2016. Five sites of the newly-established Sexual Offences Courts had been identified by the donor for this pilot project namely: [REDACTED]

Following my recent visit to the Khayelitsha Magistrates Court, as well as discussions with the project co-ordinators from USAID and the University of Cape Town, I requested the research team to also extend this study which has already been conducted at the afore mentioned pilot sites in 2016 – 2017 to include Khayelitsha Magistrates Court. This research should take place from 17 [REDACTED]

The objective of the survey is to determine the turnaround time of each service offered to deal with sexual offences cases by all key stakeholders in the criminal justice system, including the support services offered by the NGOs to the survivors of sexual offences. The project will further review the support services being provided to the sexual offences survivors at sexual offences courts, particularly to children, women, older persons, LGBTI persons and persons with disabilities.



The Improving Case Outcomes Pilot Project is coordinated and funded by USAID and the Gender Health and Justice Research Unit (GHJRU) at the University of Cape Town.

Methodology:

- (a) Firstly, the review of 100 sexual offences cases per pilot and these will be selected randomly;
- (b) Secondly, qualitative interviews will be conducted with key stakeholders and staff members at the court focusing on their experiences in services provided to sexual offences survivors and the turnaround time of such services. This includes Court Managers, Regional Court Magistrates, Regional Court Prosecutors, Intermediaries, Court Preparation Officers, as well as officials based at Thuthuzela Care Centres.

I would appreciate the support and participation of your Office in the forthcoming survey. Should you require more information, your office should not hesitate to contact the following officials:

Mr Blendynn Williams at [REDACTED]
[REDACTED] at [REDACTED]

You are, of course, also welcome to contact me should you deem it necessary.

Kind Regards

John Jeffery, MP

Deputy Minister for Justice and Constitutional Development

Date: 18/12/17

CC [REDACTED]
[REDACTED]

Improving Case Outcomes for Sexual Offences Cases Project

Pilot Study on the
Sexual Offences Courts

