



**Pilot Assessment:
The Sexual Offences Court
in Wynberg & Cape Town
and related services**

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Introduction

This study on the Sexual Offences Court (SOC) and related services aims to examine whether the Department of Justice (DOJ) has become more responsive to children's rights through the implementation of this programme. The DOJ has jurisdiction over the SOC, which is a specialised court that deals with sexual offences. Related services such as those provided by the Child Protection Unit, the District Surgeons and Victim Support Services are the responsibility of the South African Police Services, and Departments of Health and Social Development, respectively.

In this study, four main issues are considered in relation to the SOC:

1. Whether the conviction of sexual offences has increased;
2. Whether secondary trauma to child victims has decreased;
3. Whether there is sufficient inter-sectoral collaboration to provide an effective service; and
4. Whether sufficient resources have been allocated to this programme.

This study focuses on one specific programme – the SOC at the Wynberg and Cape Town courts – and on the services related to its functioning. It investigates to what extent the policies that prioritise children are implemented and assesses their impact to date. Mitchell's Plain Court is included in this study as a 'control' court to compare what happens to child sexual abuse cases in the absence of a dedicated Sexual Offences Court.

The incidence of child abuse in South Africa is very high. In 2000, 25 578 sexual offences for the age group 1-17 years were reported to the police¹. It is also generally accepted that a high percentage of cases are not reported to the police. This

study specifically looks at child protection services that are targeted at children, in this case the SOC. Child protection services are delivered by different departments that have to work together. As such, the study offers an institutional analysis of an inter-sectoral programme. The focus of the study is on the service providers in the different sectors. The study also reflects the perspectives of service users, by means of interviews with a small sample of parents and children.

Very little has been written on the SOC to date. A research study was conducted by Rape Crisis, the African Gender Institute at the University of Cape Town and the Human Rights Commission. This study had two components: an evaluation of the SOC (which was published in 1994) and a study of adult survivors' experiences of the Wynberg SOC. A doctoral thesis was written by R September on 'The Development of a Protocol for the Management of Child Abuse and Neglect' (1998). This study looked at the SOC in relation to the Protocol on the Management of Child Abuse and Neglect in the Western Cape.

1. History and background

The first Sexual Offences Court was opened at Wynberg Magistrates Court in 1993. This was in response to advocacy on the part of women's organisations as to the treatment of rape victims within the criminal justice system. The SOC deals only with sexual offences against women and children. Its aims are to decrease the secondary trauma to victims of sexual abuse, to increase the reporting of sex crimes by providing a specialised service to victims of sex crimes and to increase the conviction rate and sentencing of perpetrators.

Attached to the SOC in Wynberg, is a separate room equipped with CCTV (closed-circuit television). The SOC also has a separate waiting room for witnesses, which is decorated in a child-friendly manner². The court is staffed by two prosecutors – one who consults with complainants while the other is in court – and a social worker who provides pre and post counselling to children who have to testify in court and arranges for long term counselling. The SOC also provides an intermediary³ who assists

the child during question time during the trial.

Since the establishment of the first SOC in Wynberg, a number of additional SOCs have been opened in the Western Cape. Among these are the courts in Cape Town, Parow and Paarl. The Cape Town SOC, which opened in 1994, delivers services only to children. There were plans to open a SOC in Mitchell's Plain, but these plans did not materialise (F Kahn, 2001).

The SOC in Wynberg has been recognised as a successful intervention by the Department of Justice, and on this basis, the DOJ is setting up Sexual Offences Courts in other parts of the country. The National Directorate for Public Prosecutions has established a directorate to deal with violence against women and children, which has a specific focus on the establishment of Sexual Offences Courts across the country. The Sexual Offences and Community Affairs (SOCA) Unit is headed by Advocate Thoko Majokweni.

2. Aims

The broad aims of this study are:

- ▶ to contribute to the discussion on the implementation of children's rights and the practical implications of realising such rights;
- ▶ to examine how inter-sectoral collaboration operates in practice;
- ▶ to identify where the programme is working well and what lessons can be learnt from the experience;
- ▶ to offer recommendations on how the programme may be improved; and
- ▶ to provide information for further studies on the impact of government expenditure.

The specific aims of the research project are:

- ▶ to investigate the impact of government expenditure on the Special Sexual Offences Court;
- ▶ to investigate whether the conviction rate on sexual offences involving children has increased, and particularly, whether the conviction rate is higher at the Wynberg and Cape Town Courts (which have SOCs) than at the Mitchell's Plain Court (which does not);
- ▶ to investigate whether secondary trauma has been reduced in sexual offense cases involving children, and to review what guidelines and mechanisms have been put in place to reduce secondary trauma;
- ▶ to examine whether there has been sufficient inter-sectoral collaboration in the provision of SOC-related services, and to review what structures and systems are in place at national and programme level to facilitate inter-sectoral collaboration; and
- ▶ to examine resource allocation to the Sexual Offences Courts for services that operate across sectors.

3. Research design and methodology

This is a pilot study that assesses the impact of a particular programme. As stated above, four indicators were chosen to measure the effectiveness of the SOC. The core research question can be presented as follows:

Does the SOC programme meet its objectives to:

- ▶ increase the conviction rate on sexual offences;
- ▶ reduce secondary trauma for survivors of sexual offences;
- ▶ facilitate effective inter-sectoral collaboration; and
- ▶ catalyse appropriate resource allocation.

Key aspects of the research development process are outlined below:

3.1 Scope of the study

Wynberg and Cape Town Courts were chosen because they have been in operation for eight and seven years respectively. Mitchell's Plain Court was included in the study as the 'control' to investigate what happens to child sexual abuse cases in the absence of a dedicated programme. Due to resource and time constraints, only these three courts were included in the study. The study examines the courts for the years 1995-2000.

3.2 Consultation with roleplayers

Before embarking on data collection, a series of interviews were held with key role-players to consult with them with regard to the purpose and content of the research study. Among those interviewed were Advocate T Majokweni, Director of the SOCA Unit in the National Directorate for Public Prosecutions (NDPP), Ms O Sewpaul, Director of Children and Youth Affairs in the Department of Justice, Ms D van Stade of the Department of Social Development in the Western Cape, Ms S Wilson and Mr D Fitschen of Wynberg and Cape Town Courts respectively.

Permission was sought from Advocate T Majokweni of the NDPP and Ms G Khan the Court President of the Western Cape.

3.3 Data collection

The research study was conducted by using the in-depth interview method with a structured questionnaire. Service providers, service users, key role-players, policy makers court managers were interviewed (see Appendix 1: List of interviewees).

Designing the questionnaires

A questionnaire was developed for each of the groups identified: key informants, service providers and service users. A consultant, Bernadette van Vuuren, who has extensive experience in child sexual abuse issues, participated in the development of the questionnaires. Each questionnaire was piloted and adjusted before proceeding with data collection.

Qualitative research

In depth interviews were held with all service providers, some service users and key role-players, both government department official and individuals in NGOs. Those interviewed included staff who work in the SOC, as well as those who work outside of the court, such as the District Surgeons and Child Protection Unit officers.

Service users who were interviewed included parents and children who had gone through the court process, as well as children whose cases still had to be heard. Because of the sensitivity of child sexual abuse, only a small sample of five mothers or caregivers and five children from the Wynberg SOC were interviewed. Only children who were presently in counselling were interviewed.

Quantitative data

Accessing quantitative data for this study was extremely difficult. The personnel at the respective courts referred the researchers to the Director of the SOCA Unit, who in turn referred the researchers back to the respective courts. The only data the researchers were able to access was the annual reports of the Western Cape Director for Public Prosecutions. This data had limited application as the Wynberg Court did not disaggregate the number of cases that was heard for women from the number of cases that was heard for children. The data did not provide an age breakdown of cases, nor the number of cases that were heard using the camera room. The researchers accessed the number of cases heard over the period 1995 to 2000 and examined the conviction rate over the period.

3.4 Data analysis

A matrix was developed to deal with the four main indicators of the study and the themes that emerged from the transcripts. First, the information on the four indicators was extracted from the transcripts. Second, the researchers extracted information on the secondary questions that were in the questionnaire. Third, the researchers identified themes that had emerged from the interviews, one of which was the issue of support services for victims and service providers.

3.5 Limitations of the study

While there are four SOCs in the Western Cape, the study was limited to the Wynberg and Cape Town SOC. Also, this is a pilot study in that the researchers were conducting an impact assessment, which is a relatively new area of research.

Chapter footnotes:

1. SAPS 2000.
2. A room that is comfortable, decorated and furnished in a manner suited to children, with toys and books.
3. An intermediary is a social worker or teacher who sits with the child in the camera room and translates questions into age appropriate language for the child.

1

Current public policies & procedures for dealing with sexual offences

The purpose of this chapter is to sketch the broad policy and procedural context within which the Sexual Offences Courts operate. The chapter consists of two sections. Section 1 briefly reviews recent policy developments relating to sexual offences involving children, and draws attention to the legislation underpinning the procedures of the Sexual Offences Courts. Section 2 outlines the basic procedure for dealing with sexual offences involving children from reporting of the offense through to trial.

Section 1: Policy and legislation

This section outlines the policy context within which the SOC programme has been developed and implemented. Since 1994, when the first democratic government was elected in South Africa, there has been a strong policy commitment to improving the well being of children. This commitment is reflected in the South African government's ratification of the Convention on the Rights of the Child (CRC) in 1995 and in the South African Constitution adopted in 1996, which enshrines the rights of the child in Section 28 of the Bill of Rights.

In line with this commitment, the departments of Justice, Safety and Security and Social Development, among others, have developed policies that prioritise women and children. The Department of Justice published the Justice Vision 2000 document and the Department of Safety and Security played the lead role in developing the National Crime Prevention Strategy (NCPS). The Department of Social Development has produced a Draft Strategy on Child Abuse and Neglect. These policy documents address violence against women and children as a priority area.

The vast majority of these policies and programmes cut across departments and require an inter-sectoral approach to programme delivery. Implementing policies in a single sector is already difficult, given the constraints faced by South Africa as a country in transition. Implementing programmes that requires collaboration across a number of sectors is even more difficult. The challenge for many departments has been to translate these policies into effective programmes that can be implemented in practice.

1.1 Department of Justice

The DOJ has developed a number of policies and programmes to improve access to justice for children:

Justice Vision 2000

The DOJ's overall strategy document – the Justice Vision 2000 – outlines the department's objectives for five years. The main objective is to make the justice system accessible to everyone. In particular to 'address the special needs of disadvantaged groups such as women and children' (Justice Vision 2000:2).

Department of Justice: Directorate for Child & Youth Affairs

The DOJ has set up a directorate to deal specifically with issues affecting children and youth.

National Directorate of Public Prosecutions (NDPP)

The DOJ has also set up an Office of the National Director for Public Prosecutions, which aims to co-ordinate prosecutions at a national level. The NDPP has set up a Sexual Offences and Community Affairs Unit which specifically deals with sexual crimes against women and children. This unit is tasked with rolling out the SOC across the country.

South African Law Commission

The SA Law Commission has a Project Committee on Sexual Offences. The project committee has released an Issue Paper on Sexual Offences Against Children. This committee is developing legislation to deal with the issue of sexual offences.

National Policy Guidelines on Victims of Sexual Offences

These guidelines were developed to reduce secondary victimisation experienced by victims of sexual offences within the criminal justice system. The purpose of the guidelines is to promote responsive service delivery, which is efficient and effective. The guidelines include provisions for the departments of Health, Social Development, Justice, the SAPS and Correctional Services – all of which deal with victims of sexual offences. These guidelines are discussed in more detail in Section B of this report.

1.2 Department of Safety and Security**National Crime Prevention Strategy (NCPS)**

The NCPS is a policy framework that addresses crime prevention in South Africa in a co-ordinated and focussed way, and draws on the resources of government and civil society. Crimes against women and children are a particular focus area and specialised police units and court facilities have been put in place.

1.3 Department of Social Development**Draft Strategy on Child Protection in South Africa**

The Department of Social Development (DSD), formally the Department of Welfare, is the lead department in dealing with child abuse and neglect. The DSD has developed a Draft Strategy on Child Protection in South Africa. The purpose of the Strategy is to effectively address child abuse, neglect and exploitation in an integrated manner. The Strategy has been circulated for public comment during 2000. The DSD co-ordinates the National Committee on Child Abuse and Neglect (NCCAN). The NCCAN oversees the Protocol on Child Abuse and Neglect, which is a set of guidelines for different departments to work together to provide a quality service to victims of abuse.

Victim Empowerment Programme (VEP)

The Victim Empowerment Programme was established with the aim of making the criminal justice process more victim-friendly. The Department of Social Development is the lead department in this initiative.

Minister Skweyiya's Ten Point Plan

One of the points in the Ministers Ten Point Plan is 'Responding to the high incidence of violence against women and children' (Department of Welfare, 2000).

1.4 Legislation

The following legislation has a specific bearing on the SOC programme:

- ▶ In terms of Section 153 of the Criminal Procedure Act (No 51 of 1977), court proceedings can be held in camera;
- ▶ In terms of Section 154 (3) of the Criminal Procedure Act, no information that may reveal the identity of a witness who is under the age of 18 years may be published;
- ▶ In terms of Section 170A of the Criminal Procedure Act (1993) witnesses under the age of 18 years could give evidence in a separate room from the court, which is linked to the court via CCTV with the assistance of an intermediary.
- ▶ Section 42 of the Child Care Act of 1983 makes provision for the reporting of child abuse and neglect.

It is clear from current legislation and the policy commitments of various departments that sexual violence against children is a priority area. The challenge is to provide services that facilitates the process for the victim through the criminal justice system.

Section 2: Services provided by government departments

This section outlines the National Guidelines on Victims of Sexual Offences, as these pertain to the process from crime reporting to case finalisation. The National Policy Guidelines on Victims of Sexual Offences (hereafter referred to as the policy guidelines) set out in detail the procedures that each department official has to follow in relation to victims of sexual offences. The purpose of the guidelines is "to assist service providers with their work by being a practical tool, thereby to improve the experiences of victims in the legal system."¹

2.1 South African Police Services (SAPS)

The SAPS have a dedicated programme – the Child Protection Unit (CPU) – that investigates cases of child sexual abuse for children younger than fourteen years. The detective branch of the SAPS investigates cases of children and young people between the age of fourteen and eighteen years.

National policy guidelines for the CPU and Detectives

- ▶ The guidelines cover the reporting of a sexual offense:
 - in person at a police station; or
 - by telephone.
- ▶ An accountable adult person should accompany victims under the age of 18 years and the Child Protection Unit/Specialised worker must be contacted. If an adult makes the initial report, the child concerned should not be present as the child could be unduly influenced. If an adult has accompanied the child, the child should not be left alone while the report is being made.
- ▶ A SAP form 308 (permission for medical examination) must be completed by the investigating officer.
- ▶ If the alleged suspect is the parent or the guardian of the victim, permission should be obtained from the other parent or guardian.
- ▶ A child victim may be accompanied by parents or guardians. The safety of the child must be secured by either arresting the perpetrator or placing the child in a place of safety.

Source: National Policy Guidelines for victims of sexual offences, 1998

The reporting process

If a child discloses to their caregiver or parent that she/he has been sexually abused, the first step in the process is to go a police station where a charge is laid. If the child is younger than fourteen, an officer of the Child Protection Unit is called in to deal with the case and take a statement. If the child is fourteen years or older, a member of the detective branch deals with the case. After the police have taken the statement they take the complainant to the District Surgeon.

2.2 Department of Health

The services provided by District Surgeons fall under the jurisdiction of the Department of Health. The District Surgeon examines the victim/survivor to collect evidence for court purposes. The District Surgeon takes the necessary samples for tests and records in detail the medical information on a J88 form, which is a Medical Report Form.

National policy guidelines for the District Surgeons

- ▶ Take a detailed medical history on patient record card and a verbal history of the alleged incident. Explain the purpose and nature of the examination:
 - To collect evidence for court purposes;
 - Full body medical examination including genital and anal areas;
 - The need for possible samples/tests;
 - The need for detailed medical information.
- ▶ Record detailed findings on examination on J88(in duplicate) and addendum (if space is limited on J88).

Source: National Policy Guidelines for victims of sexual offences, 1998

After the medical examination, a case docket is opened and the police send this to the prosecutor.

2.3 Department of Social Development (DSD)

The guidelines outline the steps to be taken in cases where the victim discloses abuse to a social worker first. With regard to the SOC, the DSD provides a social worker to serve as a Victim Support Services Co-ordinator. The social worker provides several services, such as pre- and post-trial counselling to the child witness and referrals to relevant NGOs or welfare organisations for longer-term counselling. In the Cape Town and Wynberg SOCs, the social workers play slightly different roles. In the Cape Town SOC, the social worker acts as an intermediary, while at the Wynberg SOC, the social worker co-ordinates the intermediaries amongst other duties.

2.4 Department of Justice (DOJ)

The DOJ is the lead department in the SOC and provides the prosecutors, the magistrates, intermediaries and other support services, such as translators. The DOJ also provides the court and office space and the equipment for the CCTV.

National policy guidelines for Specialist Prosecutors

- ▶ Specialist prosecutors are expected to exhibit the necessary interest and sympathetic attitude that sexual offense cases require. The principle is that the prosecutor who first handled the case should follow it through the trial stage until its conclusion.
- ▶ The prosecutor must consult thoroughly with the victim before the trial commences.

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- ▶ The prosecutor must consult with the health care practitioner and ensure that s/he is familiar with the medical terminology as well as the implication of the findings of the district surgeon.
- ▶ Where possible, the prosecutor must consult with the police who investigated the case to ensure that all necessary documents and exhibits are available that will assist with the smooth running of the case.
- ▶ The victims of sexual offences should not be exposed to the accused, his family or friends outside the courtroom. The victim should be informed of the role, scope and duration of the case as well as other relevant information.
- ▶ The prosecutor must also inform the victim of section 153 of the Criminal Procedure Act (No 51 of 1977), the choice of holding the trial in camera.
- ▶ Proceedings with the use of intermediaries: When children testify, the prosecutor should generally apply to the court for permission to make use of the closed camera system to protect the child from direct confrontation. In terms of section 170A of the Criminal Procedure Act, evidence through intermediaries may be accepted. The court does not automatically grant this order, as the final decision will be left to the discretion of the magistrate.

Source: National Policy Guidelines for victims of sexual offences, 1998

Initiation of court proceedings

When the accused² has been arrested by the police, the matter is taken to court. The first appearance occurs in the District Court, where it is determined whether the case will be referred to the Sexual Offences Court. When the accused appears in the District Court, the accused has to decide whether to appoint a defense attorney, or whether the matter will be self-defended. If the accused wishes to appoint an attorney, the case is postponed for this to occur. The attorney comes on record and it is decided whether to hold a bail application or not.

The nature of the bail application determines whether it is heard in the District or Regional Court. The senior public prosecutor decides in which court the application must be held. Where the complainant is under eighteen years and has been raped or indecently assaulted or there is a history of child abuse, the application would be heard in the Regional Court.

It may take two to three months before a case is transferred from the District Court to the SOC. The prosecutor examines the docket and if she/he is satisfied with the investigation, it is placed on the court roll for trial. If there are queries outstanding, the docket is sent back to the police. Once they have dealt with the queries, the case is returned to the prosecutors.

Consultation with complainant

The prosecutor consults with the complainant to prepare the case for the court. This consultation also gives the prosecutor the opportunity to discuss the merits of the case and to assess the complainant's ability to testify in court or through the intermediary system. The complainant is informed of the option to testify in-camera in court or to use the camera room. The prosecutor should inform the complainant that the final decision to use the camera room rests with the magistrate. The complainant should be shown the courtroom and the camera room. In addition to the prosecutor, the social worker consults with the complainant.

The prosecutor decides whether or not the complainant will be comfortable to testify in court. This assessment is generally based on one or more of the following factors: whether the complainant cries when s/he talks about the incident, says that s/he is afraid of the accused or is very nervous, or won't talk in front of him, or may become hysterical if she sees the accused, or is overly withdrawn.

If the prosecutor thinks that the complainant is not ready to testify because s/he is too traumatised, he or she would discuss the matter with the senior prosecutor and request a postponement.

The trial

If the camera room is to be used, the social worker has to give testimony as to why s/he thinks it will be in the best interests of the child. Section 170(A) of the Criminal Procedure Act (No 51 of 1977) stipulates that the child must not be exposed to undue mental stress. The prosecutor makes an application in terms of Section 170(A) and leads the social worker's evidence. The prosecutor asks the social worker what she thinks about the child's ability to testify in open court. Did s/he consult with the complainant? What was the reaction of the complainant? The social worker might say that the child was very traumatised and nervous and if she were to testify in open court she will be exposed to undue mental stress. If the defense attorney does not object, the magistrate is likely to grant the application. If it is granted, the social worker is introduced as the intermediary working on the case.

If the attorney does object to the use of the camera room, the prosecutor has to lead further evidence or accept that the camera facilities will not be used. If the application to use the CCTV facility has been granted, the intermediary will sit with the complainant in the camera room and will relay all questions to the complainant. The prosecutor leads the evidence-in-chief by asking the complainant to tell the court what happened. After this the attorney leads the cross-examination. The magistrate could also interject with questions of clarification.

The district surgeon is called to testify with regard to the information on the J88 form. Once all the evidence has been presented, the magistrate will make a judgment on whether to convict or not. If the magistrate decides on a conviction, the accused will then be sentenced. Cases can be sent to the high court for sentencing if the accused is convicted of rape of a child/person under eighteen years, and or indecent assault with injuries.

Not all cases follow this pattern. Sometimes the charge is temporarily withdrawn because the complainant is not ready to testify. The accused may also be acquitted.

Chapter 1 footnotes:

1. National Policy Guidelines for Victims of Sexual Offences, 1998.
2. In the majority of cases the accused is arrested within a week (L Africa, 2000).

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Overview of the Courts

2.1 Wynberg Sexual Offences Court

The Sexual Offences Court – Court G – was established in 1993 and deals with both children and adult victims of sexual offences.

According to the control prosecutor, A Minaar, child complainants make up approximately 50% of the cases in Wynberg.¹ Subsequently, courts F and J were opened in Wynberg Regional Court. Court L, which was opened in 2000, deals specifically with cases from the Thutuzela Project.² The courts are located on the fifth floor of the Wynberg magistrates court building and all the SOC staff is located on the same floor.

The Wynberg SOC serves four magisterial districts, covering 21 police stations. The court also hears cases from Khayelitsha. Seven prosecutors are employed to conduct cases: two each in courts F, G and L, and one prosecutor in Court J. There is one control prosecutor who co-ordinates the courts, plans the court rolls, assigns cases to the courts and plans the court hours. A senior prosecutor oversees the SOC.



There are eighteen intermediaries who work on a rotational basis. The SOC also has five permanent magistrates. It has one Victim Services Co-ordinator, a social worker who consults with complainants, does court preparation, pre- and post-counselling for the child witnesses when they appear in court and refers complainants to outside agencies for longer term counselling. In addition to this, she coordinates and trains the intermediaries.

There are two rooms equipped with closed circuit television (CCTV); these are called camera rooms. There is a waiting room for children and witnesses, which is equipped with TV, toys and books. Child witnesses are provided with lunch, an arrangement made with Woolworths.



Responses from the interviewees at Wynberg SOC

The SOC at Wynberg has increased its number of courts by two over the last year. These changes were made by the SOCA Unit of the NDPP. One of the courts deals only with cases referred from the Thutuzela pilot project, an NDPP initiative.

Staff members of the Wynberg SOC have welcomed these developments. The senior prosecutor Ms Wilson says: 'I think the sexual offences court at Wynberg has got a lot of support, especially from the SOCA Unit, for which we can really be grateful, especially with the crisis. We had a backlog of so many cases last year – it was up to 800 cases, which is a lot for two courts. That means 400 cases per court, which is too much. We shouldn't have more than 200 per court. Now at the moment it is 270 per court, which is still high but much better.'

One of the SOC prosecutors, Ms van Leve, noted: 'Well, I've seen changes that Thoko's (SOCA Unit) department has brought in. They've established the Thutuzela Centre, they've added two courts here and I think she and the Unit, they're actually trying to make a difference. It's difficult for them because of financial constraints, but we're doing the best we can under the circumstances.'

On consultations with complainants:

The consultation with the complainant offers an opportunity to discuss the merits of the case with the complainant and his or her parents or caregiver. The prosecutor also uses this consultation to assess the complainant and present the options of testifying by using the camera facility or testifying in court.

Mr Minaar, the control prosecutor, outlines how the timing of the consultation is determined: 'If from the docket it all looks clear, you know, the statement's been taken



properly and you can get a good understanding of what happened, then we only consult when the case gets to trial stage, which could be a couple of months.'

A prosecutor describes the consultation as follows: 'We only make contact with the child once the docket comes in here for trial. ... When the docket is in the Regional Court for a trial date, for example, then only will we call the child in for a consultation and see whether the child is ready, whether the child can testify, whether the child remembers anything. And if the child is not ready at that stage, then we refer the child to Safeline for the court readiness preparation.' 'Depending on the age of the child, two or three consultations will be held with the child', according to Ms van Leve, a prosecutor.

'You take them through the facts and through the court procedure and try to get them to relax before the court date', said E van der Berg. The control prosecutor Mr Minaar says: 'It's often necessary for a new case, from the first time you see a docket, you see that it is necessary to have a consultation – especially when the children are very young, to establish whether they would be competent witnesses: Would they be able to testify in court?'

The age of the child influences when a consultation is held, as this is often a factor that influences whether the prosecutor will apply to use the camera facility. The issue of language is also central to the consultation with the complainant. As most prosecutors speak English and Afrikaans, the prosecutors need interpreters when they have Xhosa-speaking complainants. Ms van Leve highlights the following problem: 'There is one interpreter, and if she is in court and the prosecutor is consulting with a client that speaks Xhosa, then the prosecutor has to look for someone to help (maybe an intermediary who will not be working on the specific case) or to wait until the case in court is done.' Mr Minaar echoes this problem: 'We've got a serious shortage of Xhosa-speaking interpreters... because a lot of us can't speak Xhosa. English and Afrikaans [is] normally not a problem.'

Sometimes after a prosecutor has consulted with a complainant, it is decided to withdraw the case temporarily because the complainant is not ready to testify. Ms Wilson, the senior prosecutor at Wynberg court says: 'Sometimes it is not in the interest of the child for the prosecution to proceed. It is sometimes better if the child continues having therapy. Some children just cannot stand up in court and face a whole court or the trauma of the court.'

On court preparation:

The Victim Services Co-ordinator, Ms Hamdulay, does court preparation with the complainants. This entails seeing the complainant when s/he has a consultation with the prosecutor and doing pre- and post-counselling with the complainant.

She describes what she does: '... then I take the child through the whole [court] process and make them comfortable, demystify the whole process with them. I think they've got some major role ... and just you know to make them feel a little more comfortable ... the idea is that I have to see the child in consultation, then the child actually comes the day of the court hearing, I see the child again ... or introduce the child to the intermediary. You know, I normally let the child spend some time in the room ... so that they know the room ... Then the idea is that the case is finished on that particular day, and then I would debrief them and ... normally tell the mother to go back to that organisation [for] counselling.'

On applications for the use of the camera system:

If the prosecutor has consulted with the complainant and thinks that the child should testify through the camera facility, an application has to be made in terms of Section 170A of the Criminal Procedure Act. The magistrate has the discretion to grant or refuse the application.

According to a senior advocate in the NDPP ‘... the children under 12 [years] normally don’t have a problem, it is when they start getting a bit older. Then you have a case where the victim is 15 years old and she maybe has been gang-raped and I have all those reasons at my disposal to give to the court to say why this woman cannot testify in court. But what we have found in the court is that under 12 [years], ten to one you will get [the application granted], it is really not an issue, but over that [age], you need to be motivated a lot more why you want to [use the camera facility].’

When the application is made in court, the social worker - Ms Hamdulay - testifies as an expert witness: ‘What happens is that sometimes I actually have to testify in court to prove undue stress and it’s something that I feel the Act must change, it must say ‘all children’. It’s only the case where the lawyer actually contests the fact that the child isn’t using the ‘in camera’ facility and they normally talk about the older children, like 16 years or 14 years or 15 years old, you know that age group.’ Ms Hamdulay feels that the court does not take into account the level of psychological development of the child: ‘In fact I always have a problem because you are talking about chronological age and they’re not talking about mental age.’

However there are exceptions, according to Ms Hamdulay: ‘Some children actually don’t want to use the camera room, I don’t know if you know this. They often feel the need to face the perpetrator in court and speak to him and watch him when they actually testify. Sometimes children have the need to speak in open court and one has to respect that.’ This view is supported by Ms Wilson: ‘I spoke to one girl, she is 16 years old, and she doesn’t want the camera facility. Some people are very angry and want to confront the person.’

At the same time, there are many other complainants who do not want to face the accused: ‘There was a 15 year old today that appeared in the camera room, but she doesn’t need an intermediary to make the questions easier. She just wants a camera because she doesn’t want to face the accused’, reports Ms Wilson.





On support services for complainants:

There are a number of support services for complainants at the Wynberg SOC. Amongst these are the invaluable services provided by the SOC social worker, or victim support services co-ordinator. Transport for complainants to and from court is either arranged with the CPU, or complainants and their parents or caregivers receive witness fees. Mr Minaar says, '... especially the younger children... get brought by Child Protection Unit ...' 'Those that come on their own ... [receive] witness fees that cover public transport.'

On support services for SOC staff:

The prosecutors work under high levels of stress because of their workload, and the subject matter of sexual abuse adds to this. Mr Minaar notes that '... the workload and the stress of this job is of such a nature that, apart from the fact that I've now mentioned on numerous occasions, people leave and, you know, resign. People are constantly sick ... and I think all of this is because they're stressed out in their work environment, you know'.

The senior prosecutor Ms Wilson suggests that there should be support services for staff. 'There is a specific lack in, I think, there is a lack in de-briefing. After the prosecutor has been dealing with the cases.... month after month of dealing with sexual abuse cases. The weird behaviour of people, particularly what they do to children, it does affect the prosecutor.'

On the location and physical layout of the court:

The location and physical layout of the court plays an important role in reducing the secondary trauma to victims of sexual offences. The court and waiting room should be located in such a way that the complainant should not see the accused. Ms van Leve thinks that the camera room is well set up: 'I like the camera room, they're very nicely set up and they're light and tidy and it's okay.' However, she feels that the waiting room needs attention: 'Its filthy, its not fit for children to be in ... it needs to be cleaned regularly, I think the toilets need to be seen to, I think there are no windows in there'.

Ms Hamdulay thinks that another waiting room is necessary, 'I think we need another waiting room. The waiting room is absolutely packed to capacity ... We need another waiting room for Court J, because its too near the actual court and they may actually have the opportunity to see the perpetrator that they want to avoid.' Because there isn't a separate entrance for complainants and their families, she says, '...they use the same lift... they use the same entrance. There's not a special entrance to come here, even though we have separate witness rooms for the child ... I mean the child can actually just bump into the perpetrator, but we do have separate waiting rooms.'

On the trial:

Some delays can occur on the day of the trial. The prosecutor, Ms van Leve, says 'We need the dockets to be here on time, we need the police to be here on time, we need the witnesses to be here on time'. 'I think what we can do is start punctually at nine o'clock in the morning with our trials, firstly. We need a full staff, we normally have an interpreter problem in the morning. The police come late ... 99% of the time we start late'.

Ms Wilson notes that many complainants find testifying to be traumatic: 'If the person is in distress or whatever, the court might ask for an adjournment, to be more

sympathetic, let them sit down and testify, if they are crying and not coping. Just try and be as supportive as possible’.

The Victim Support Co-ordinator feels that the intermediaries play an important role in the trial by reducing the trauma of the complainant: ‘Their role is to interpret the words, or paraphrase the words of the court officials... The most important role they have is to basically cushion the words and to take away the harshness and aggressive tone of the court officials, the lawyers’

On postponements:

A number of factors may influence whether a matter is postponed, such as witnesses or the accused not arriving at court on the trial date, or someone taking ill. Many of these factors are beyond the control of the prosecutor. ‘Our court rolls are overloaded, which means if there is a postponement you can wait up to four months for your matter to come up again’, says Ms van Leve.

Ms Leve explains the possible disadvantage of postponement: ‘Now you have a situation, for example, where the complainant comes in, they’ve been raped. It’s a year later, they come in for a consultation, we go through that whole thing. We discover they are not court-ready at that stage. Now we send them for counselling, now they relive the whole experience at counselling, now they come back, now they’re ready, now they go to court. It’s too much trauma. I think it should be done immediately when the events are fresh in their memories.’

On inter-sectoral collaboration:

The roleplayers based at the court have a good working relationship. However, sometimes problems are experienced with the police stations or with welfare organisations. The control prosecutor Mr Minaar says, ‘... I think the magistrates, the prosecutors, the intermediaries, work quite well together, there’s collaboration. But as soon as you involve the police, then it becomes a bit more difficult again ... you get good co-operation from ... the CPU, but you get terrible co-operation from a police station like Nyanga.’

Some welfare organisations too are overloaded and do not respond quickly to requests: ‘they’re also under a lot of pressure with workload, so often you don’t get the necessary response quick enough ... For example, we need a social work report on, you know, the therapy of the child. then it’s often difficult to get it out, because it’s simply so overloaded’ says Mr Minaar.

On training of staff:

Training of prosecutors is important if they are to perform their work effectively. The Wynberg SOC has had regular training sessions. However, due to a high turnover in staff, expertise is lost and new staff members have to be trained. A factor that impacts on training is the high caseload of the court, which means that staff cannot always be released to attend training sessions. A prosecutor says: ‘ [There has been] no specific training, but we do attend seminars and training sessions from time to time, also listen to guest speakers...I think it’s one issue that should be addressed, is the training. I think we don’t attend and receive adequate training for Special Sexual Offences Courts. That’s a problem I see.’

The high caseload means that ‘we’re not allowed to attend as much as we like.



Because there is so much pressure to go to court every day and to finalise matters, we don't have time to go to seminars. So its basically on a voluntary basis and after work,' says Ms van Leve.

The prosecutor Ms van der Berg thinks that training plays an important role in making one sensitive to the complainant. She says: '... you get so used to going to court and working with the complainants that you're not really focussed on being, I think, as sensitive as you should be. And when you attend courses like this and workshops, they make you focus on the complainant again: just how sensitive, how stressful it is for a complainant to come to court ... Take your time and energy to prepare that person for court...Don't just give her, her statement, spend five minutes with her and expect a person to testify in open court about as sensitive an issue as rape.'

The prosecutors made suggestions on the content they think should be covered in training: ' [I].. would like more information from a psychologist on child abuse, how to work with children, new case law, new views, new arguments' says Ms van der Berg. Mr Minaar suggest that training should allow insight into '... the development stages of children: what can you expect from a six or a seven year old child, can you expect to ask them difficult questions in court or not ... you know there are different stages of development...'

On resources:

The staff at the court feel that they require an additional prosecutor and that they need someone to direct people when they arrive at court. Mr Minaar thinks that Magistrate should be appointed permanently to the SOC: 'With magistrates, we have permanent problems as well, none of the magistrates here are appointed permanently ...' The staff made some suggestions for improving the use of space, for example, by prosecutors sharing offices, so there can be consultation rooms away from the courts. The senior prosecutor, Ms Wilson suggested that information management could be improved: ' ...I think it must be streamlined, more streamlined in regard to computerising, getting the prosecutors computer literate ... if they were looking at questions with regard to [a] child witness ... they would have that information at their fingertips, which would make them a more formidable force in court.'

In conclusion

The Wynberg SOC was the first court established to deal exclusively with sexual offences. The court has been in operation for the past eight years. The SOC is relatively well resourced and has increased from two to four courts over the last year. The court is regarded as a model SOC and the NDPP has scaled up this programme to implement SOCs nationally.

The court has all the elements required for a SOC, including two fully equipped camera rooms. Among the staff at the court there is a high level of commitment and they have good working relationships.

Whilst the court provides a much needed service, the quality of service delivery needs attention. The court has a huge backlog and there are constantly new cases increasing the caseload further. The NDPP has addressed this problem by increasing the number of SOCs at Wynberg.

2.2 Cape Town Sexual Offences Court

The Cape Town Sexual Offences Court was established in 1994 and deals only with child victims of sexual offences. It serves the Cape Town magisterial district and the Cape Town regional circuit court jurisdiction. Initially, the SOC also served the Bellville and Kuils River magisterial districts. Since 1997, a SOC has been established in Parow; the Bellville and Kuils River cases now fall under the Parow court.

The Cape Town SOC is used mainly to lead the evidence of complainants and cases are then usually transferred to regional court level. The SOC has one social worker, which in addition to her role as a social worker, also plays the role of an intermediary. Two prosecutors are employed in the court: one prosecutor consults with complainants while the other prosecutor is in court. A control prosecutor ensures that the court runs smoothly. Magistrates preside on a rotational basis.

The court is located in the regional court building. The SOC in Cape Town has one court, with a room adjacent to the court, which serves as the camera room. There is a separate waiting room for witnesses.

Responses from the interviewees at the Cape Town SOC

On consultations with complainants:

The purpose of the consultation is to discuss the case with the complainant, show them the court and the camera room and to give them the option of where they want to testify. The prosecutor uses this consultation to assess whether the complainant is comfortable to testify in 'open' ³ court or whether to use the camera facility:

'We don't have the luxury of consulting with the child for many sessions. We only talk to the child once before the trial, sometimes ...it's an ideal situation to consult a month or a few weeks before the time, or a week before the time, but most times we can only consult on the day' explains a prosecutor, Ms Africa. Prosecutors try to relate to the child at their level, by for example, using age-appropriate language and being friendly and [empathetic].

On support services:

The social worker or the prosecutor arranges with a welfare organisation or an NGO for counselling for complainants. Mr van Wyk says: 'We are networking with people at Nicro, ... Childline, Safeline - because in most instances we find that a victim has not had the benefit of counselling.' The control prosecutor, Mr Fitschen, raises some concerns with regard to counselling: '... What disturbs me is that there are exceptionally few children who receive professional assistance at the time of reporting the offence'. He says: 'It's important that the children receive that professional assistance at an early stage. What tends to happen is that it's only in the extreme cases that the children receive that professional assistance.'

He further comments: 'If the child has received no counselling when it comes to trauma and the child is still traumatised at the time of the trial, then you're sitting with the very real problem that you have a witness who can't testify, or who could leave out crucial aspects of the evidence, which are being suppressed or hidden'.

The Cape Town SOC does not provide complainants with refreshments. Mr van Wyk says: 'We do not have a budget available to provide them [the children] with food and





refreshments ... they have been on the road since seven or six this morning, arriving at the court about ten and then they will be here until this afternoon...I would like to see some NGOs getting involved in [setting] up something where witnesses can be provided with refreshments, especially the child victims.'

The court relies on the police to bring the complainants and the accused to court. According to Mr van Wyk, the prosecutor, '... sometimes the accused travels with them, so it is a horrific situation. Imagine the child victim travelling in the same van with the perpetrator ... we don't have the facilities to collect the child on our own.' Those complainants who live in Cape Town receive witness fees.

The control prosecutor feels that language is not such a big problem in the Cape Town SOC because, '[i]n Cape Town, most of our cases involve people who are Afrikaans-speaking and then there is a small minority which would relate to Xhosa and English speakers'.

On the location and physical layout of the court:

The interviewees raised a number of issues with regard to the location and physical layout of the court. The prosecutor, Mr van Wyk, says: 'I feel the Special Sexual Offences Court should be in a separate building. The reason why I am saying that is because we are dealing with child victims and they should not be exposed to ... gangsters sitting in the passages... prisoners walking in chains. ...I feel the Sexual Offences Court should be in a separate building in a safer environment that is more child-friendly.'

The location of the witness waiting room is not ideal, Mr van Wyk says: '... With the situation as it is, the witness waiting room is in that corner and the toilet is right on the other side. So you find that the witness has to walk past the perpetrator - who is maybe not in custody - on the way to the toilet.' Another problem he raises: '...At times you will find the room packed with, not only witnesses for the SOC, but witnesses for all the courts. When you are dealing with children, I think you need a spacious witness waiting room for them... you need a lot of toys, you need pictures... small chairs for the small witnesses. You need the toilet facilities adjoining the room.'

The control prosecutor Mr Fitschen feels the situation is adequate, but does not conform to an ideal situation: 'When you're talking about the special court, it is more than just a courtroom. You've got the court room, ... the room in which the witness testifies, ... the social workers office, the waiting room, ... the prosecutor's office, ... the consulting room.' In the Cape Town SOC, the 'prosecutors are sharing offices to try and make space available. But the structure here at this building physically doesn't allow for what I would regard as suitable. It's adequate but it's not what I would like to see. It isn't suitable because it's on the passageway to all the other regional courts.'

On the trial:

The Cape Town SOC serves a vast area, including Atlantis, Malmesbury and Vredendal: 'So you find the child victims coming in from as far as Springbok and they have to travel from Springbok to Cape Town and when they eventually end up in Cape Town they are tired. ...It impacts on their ability to give evidence, ...to concentrate on the questions you ask and the ability to give a clear account of what has happened' says Mr van Wyk, a prosecutor.

Many complainants live outside of Cape Town and have to be brought to court by the police. This results in court proceedings starting late, as Mr van Wyk notes: ‘The lack of proper co-ordination between ourselves and the police... in many instances, the dockets arrive at court late as well and especially because we are serving such a wide area, we are dependent on the police to bring the witnesses to court ... and it means you only start at about 12 ... Especially when you are dealing with a child victim, the concentration of the victim is impaired so you won’t be able to do much with the witness.... An example I had last year, the victim was an eight year old, (arrived) about 11 and we started with the trial at 12 and by half past two while she was giving evidence she just dozed off.’

Due to its high caseload, cases in the Cape Town SOC are usually subject to postponements of a few months. According to Ms Africa: ‘It depends on the availability of the court. Sometimes it has to be postponed a few months in advance because our rolls are extremely full at the moment and we have one Sexual Offences Court and it’s only myself and Mr van Wyk working here.’

On secondary trauma:

According to Mr Fitschen, ‘everything in the process from the time of the offense ... is going to be traumatic... What the court achieves, it is reducing further trauma to the child by providing a more friendly and sympathetic environment than would otherwise be the case. It doesn’t take away the trauma, there will be trauma in the process. It’s a question of minimising to the extent that one can justify having a witness to relive what has happened.’

Mr van Wyk says that ‘whenever it comes to cross examination, that is when secondary trauma comes in because then the child is confronted with quite a number of things. It is confronted with the fact that he or she may be fabricating what he or she is saying and for some reason he or she will be lying and I think that triggers the secondary trauma.’

On resources:

The Cape Town SOC also has a problem with office space. Mr Fitschen comments: ‘There is a lack of office space. There are three prosecutors sharing one office so that we can have a consultation room.’

The control prosecutor Mr Fitschen raises some issues related to resources: ‘I believe the courts are under-resourced both in terms of staffing and equipment. Having four walls which is called a sexual offences court doesn’t make a sexual offences court. It depends on what is provided beyond the four walls and it depends on the attitudes of the roleplayers who operate within those four walls. I don’t see why it should be expected of the roleplayers to provide a child-friendly environment. One needs to budget for these courts so that the infrastructure is upgraded to the level where it becomes child-friendly.’ He further says: ‘I would expect the state [the DOJ] to provide those facilities and equip those facilities so that they are child- friendly.’

On training:

The importance of training was acknowledged by the interviewees. Mr Fitschen suggests that all roleplayers receive training: ‘One needs to start [training] at the lowest level - at that first stage of reporting of an offense - because if they are not sensitive to what the process should entail and what damage can be done at such an



early stage.... if they don't deal with it correctly is the biggest danger. You have the risk of that you discourage a parent and their child from taking the matter further if the first person to whom the report is made isn't sensitive to what is happening.'

The prosecutor, Mr van Wyk, proposes that '[t]here should be an element of child psychology involved ... DNA evidence... and there should be on inter-personal skills. There should be training on stress release because being a prosecutor in the special sexual offences court has an impact on you as a person ... On a daily basis you see the amount of damage that has been done to the bodily physique and the mental physique of the child ... and it impacts eventually on your personal life as well. In that regard the prosecutor in the SOC should need a monthly debriefing session as well.'

In conclusion

The Cape Town SOC provides services for child complainants exclusively. This court is structured slightly differently to the Wynberg SOC in that the social worker plays the role of an intermediary. The SOC also serves a wide area, including outlying areas in the province. The SOC has to rely on the police to bring complainants to court. This situation is not ideal as it often means that court begins late, complainants and witnesses are tired, and often in these circumstances, the accused and complainant travel in one police vehicle. The court also does not offer complainants refreshments. Sometimes child witnesses have to wait for long periods before they are able to testify, and it helps to have some refreshments. Some of the complainants and their families are quite poor and cannot afford to purchase refreshments.

Office space is a very real problem. The staff members at Cape Town feel that language is not a problem for them as the majority of their clients speak English or Afrikaans. The staff members think that training is important and have made some suggestions for the content of training courses.

2.3 Mitchell's Plain Court

The Mitchell's Plain Magistrates Court was chosen as the 'control' court because it does not have a Sexual Offences Court and therefore does not have formal structures and staff assigned to specifically deal with sexual offences. There is, however, one court that is equipped with CCTV where child complainants can testify without seeing the accused.

There are three prosecutors assigned to deal with all sexual offense cases, which form part of the normal court roll. The majority of complainants in sexual offense cases at the Mitchell's Plain court are from Khayelitsha; these are referred to the Wynberg SOC. Recently a new system was introduced in the Regional Court. Three prosecutors share two courts on a rotation basis. Each week, there is thus one prosecutor out of court so that s/he can prepare cases and consult with witnesses. Prior to this new system being implemented, prosecutors would only consult with their clients on the day of the trial. As a result, the complainant would only see the prosecutor on the morning of the trial for a short period and then they would go to court.

An assistant senior prosecutor oversees the regional court, and a control prosecutor ensures that all the investigations are completed. As Mitchell's Plain does not have a dedicated SOC, there is no social worker based at the court. The Department of Social Development in Mitchell's Plain provides intermediary services when requested. Recently a waiting room for witnesses has been provided.

A number of the prosecutors have undergone training related to sexual offences, on for example, how to lead a child witness and on rape trauma syndrome. However, there has been no extensive or in-depth training. The NDPP is providing a Sexual Offences Course and two of the new prosecutors attended the course.

Procedure for sexual offences cases at Mitchell's Plain Court

The control prosecutor manages the court roll and it is his or her role to ensure that all the investigations are complete and to consult with witnesses - particularly child witnesses - to ensure that they are competent. In addition to this, s/he does all the administration related to the case, reads the dockets, phones the doctors and arranges for the intermediaries if required.

The prosecutor who handles a specific case consults the complainant on the merits of the case and explains to the child what procedures will be followed. If the child is young, the prosecutor explains how the CCTV works, or where they will stand in court and how the court proceedings will be conducted.

Responses from the interviewees at Mitchell's Plain Court

On consultations with complainants:

According to Ms Coleman, the senior prosecutor in Mitchell's Plain court, '[p]rior to our new system being implemented, we would make contact with them on the day of the trial, probably for the first time. We would see them in the morning while we were still trying to cope with our court roll and all our other cases on the roll. We would see the child, whip them into our office, have a quick consultation with them and then whip them into court'.

Since introducing the new system in the regional court, prosecutors have more time to consult with complainants prior to the trial. During a typical consultation, explains Ms Coleman, prosecutors 'would consult on the merits of the case and basically explain to the child what the procedures are going to be... explain what's going to happen, explain about the camera system if it is a young child, or explain where they will stand in court and how the proceedings will be conducted'.

On applications for the use of the camera facility:

In most cases, it would seem that the age of the child dictates whether the use of the camera system is granted. Ms Coleman explains: 'Obviously when the child is young, young for us would be under 10 [years], we shouldn't have a problem with getting the...the magistrate will accept your motivation. But it can get problematic when the child reaches 12, 13, 14 [years old] roundabout there. Sometimes the defense [attorney] objects and we really have to motivate'.

While each case is judged on merit, the age of the complainant and the charge against the accused influences the decision of the prosecutor. According to Ms Coleman: 'Some [complainants] are capable of it [testifying in court]. I would say children who in our less serious sexual offences, if I can say it like that, in an indecent assault where there was no real penetration, they are far less traumatised so they are more capable of testifying in open court. The more older children, say 12 and upwards, generally, I going to say generally, are better testifying in open court. Obviously you have to work on a case by case basis'.

When the magistrate, Mr. Rothman was asked in the interview as to what the 'cut off'⁴





age for the use of the camera system could be, he said: 'I would say about 14 or 15 [years old].' So while the prosecutors suggest that each case is judged on its merits and the ability of the complainant to testify in court, there seems to be a strong age bias towards younger complainants having access to the camera facility.

The Social Worker from the Department of Social Development says: 'They [the prosecutors] think trauma of the child differs according to age. That is not the case. All children are traumatised when they have been raped'.

On support services to victims:

As Mitchell's Plain does not have a SOC, there is no social worker based at the court. The prosecutor can refer the complainant to a social worker at the DSD or to an NGO. The prosecutor and magistrate recognise that support services such as counselling help the complainants. Ms Coleman says: 'I don't think they [sexual offences victims] get adequate support before coming to court and I've seen a lot of victims that have gone to Rape Crisis and they've come and testified here in court and the difference between their evidence and people who have had no counselling... The evidence is actually affected by the amount of counselling they get, and that's the only thing that I could say could be improved.'

According to Mr Rothman, the magistrate: 'If there are for instance, social workers, psychologists and also very important, an understanding family, especially a mother that understands and can really comfort that child, then you tend to have a good witness in court.'

On the location and lay-out of the court:

The location and physical layout of the court plays a very important role in making the environment conducive for complainants to testify without undue stress. Even though the Mitchell's Plain Court has a camera room, its layout is problematic. The senior prosecutor says: 'Floor planning... this building was definitely very badly designed and it doesn't cater for these kinds of cases. ...The chances that our victim will see the accused are very good. There is no way of getting to the room with the intermediary system other than passing via the courts.'

A social worker, Mr Frances, illustrates the problem: 'I would also suggest that the waiting room should be linked to the camera room and the child must not walk between these people in the corridor... the child is exposed to criminals... gangs and so on'.

On the trial:

Mr Rothman has worked in the Cape Town SOC and in his interview displays a sensitivity towards child witnesses. He says: 'Ja, you know, children get very tired and you must take into account it's only a child and sometimes they lose interest because now so many questions are being asked. They easily can lose their concentration and then they tend to say yes or no to any questions and they don't think. So you must now be very careful and watch a child, if a child now after a quarter of an hour or half an hour wants to take a rest or you see the child is getting really tired, you must adjourn the court and let the child take the rest. It's very important.'

According to Mr Rothman, a number of factors influence the length of trial. Amongst these, 'if you've got an experienced Interpreter and you've got an experienced

Intermediary that understands the child, and if you've got a prosecutor that knows what's going on in court, then things go well.'

A postponement of the trial can impact negatively on the complainant, says Mr Francis: '[When the case] is postponed and that makes the whole process to continue for a long time before she will appear in court again, you see that is a problem in itself because she will again experience this trauma coming to court, she will have to relive the whole situation.'

On secondary trauma:

Interviewees were asked when the generally perceived secondary trauma amongst complainants in sexual offences cases. The magistrate Mr Rothman says, '...especially when they're a bit bigger, like say for instance 9, 10 or 11, whatever years old. They can really get emotional when they talk about this whole incident and then you must have the insight and the patience to take it very easy with that child. And you must also see that the questions being asked to the child by the prosecutor or by the lawyer, the legal representative, that they don't ask questions that have a negative impact on the child. Sometimes it's a very fine line to draw, what you are going to allow and what you're not going to allow being asked to the specific child.'

On training:

Even though Mitchell's Plain does not have a SOC, some of the staff members have attended relevant training courses. A number of the staff dealing with sexual offences against children believes that training is important for them to improve their work.

The senior prosecutor, Ms Coleman, thinks that training should be a requirement because communicating with children requires specific skills: '[T]here is an art to communicating with a child [it would be] easier to elicit information if you're trained to be more compassionate towards the person and trained on how to actually ask questions of the child'. She goes on to say that the prosecutors need to be trained on what '[complainants] have gone through, how they should deal with them on a one-on-one basis to get information from them without making it worse ... Because a lot of the time I think people land up going through the court process and coming out the other end more traumatised.'

Training can impact positively on the services provided, Ms Coleman says. '[Training is] helpful and [it] does improve the kind of service we provide ... We work in an environment where you become desensitised'. She thinks the police require training as well because if they don't take a proper statement it could jeopardise the case: 'The police are over-worked, they have too many cases and they don't have time to meet with the prosecutors.' This is supported by Mr Francis, who says that while 'the CPU is always accessible...[t]he detectives are not really trained to handle sexual abuse cases. They are not sensitive to children who are traumatised'.

In the first part of his interview, the magistrate Mr Rothman says: 'Our training is of such a nature that we can deal with these kind of cases quite easily without being specially trained for camera work. We just interpret the law and the specific Act applicable to the camera and the intermediaries. I don't think it's necessary for real special training.'

He then contradicts himself and says: '... Training is always important because there are different kinds of interpretations for a specific Act and how you must treat inter-



mediaries... Ja, maybe it would be good to have a course in a specific field, like the child... maybe a course in the psychology of children.' 'But I don't think it will be a bad idea to have such a type of thing [training], on the secondary effects of an incident, like rape or indecent assault.'

In conclusion

Whilst the Mitchell's Magistrates Court does not have a SOC, there is a court that is equipped with CCTV. The majority of sexual abuse cases in the Mitchell's Plain Magisterial District arise in Khayelitsha⁵. The court only deals with child sexual abuse cases from the Mitchell's Plain area and the Khayelitsha cases are referred to the Wynberg SOC.

Staff members at the Mitchell's Plain court reflect a sensitivity and understanding of child sexual abuse cases. The new system whereby prosecutors have time to consult their clients is an improvement. However, due to a lack of resources and commitment from management, there could be further improvements in the way child sexual cases are dealt with.

The prosecutor and the magistrate interviewed see secondary trauma mainly in terms of the child testifying in court, whereas it is acknowledged by roleplayers that secondary trauma generally occurs throughout the whole process, from the time of reporting the offense.

Because Mitchell's Plain Court does not have a SOC, there are no support services for child complainants. There is an acknowledgement from both the prosecutor and the magistrate that a child who has had counselling makes a better witness. The lack of support services has a negative impact on the case as a whole.

Because the Mitchell's Plain Magistrates Court has some of the components that is required for a SOC, it could be argued that establishing a SOC at the court would improve services for children. The Khayelitsha cases could then be dealt with at this court and it would take some pressure off the Wynberg SOC, which is overloaded at present.

2.4 Comparing the three courts

The existence of large caseloads was raised as an issue of concern across all three courts. This means that staff work under tremendous pressure, which is compounded by the nature of the cases they have to deal with on a daily basis.

All three courts are relatively well equipped. Staff members at the Wynberg SOC feel that they need CCTV equipment for the two new courts, and an additional prosecutor.

Procedures at the two SOCs differ in that the Wynberg SOC has a social worker and intermediaries and in the Cape Town SOC, the social worker sometimes serves as the intermediary. This constrains the social worker's role somewhat, because for those cases where she is the intermediary she cannot do court preparation for the complainant.

The VSC (social worker) plays a more supportive role in the Wynberg SOC, by doing some of the court preparation and briefing and debriefing complainants. Both social workers arrange for longer term counselling for complainants.

Court preparation could play an important role in reducing the secondary trauma of complainants. By explaining the procedure and all the different people in court and showing the complainant in advance what the camera room or the courtroom looks like, the environment will be more familiar once it is time to testify. From the interviews, it would seem that the Wynberg SOC has the most thorough court preparation.

In addition to court preparation, the social worker at the Wynberg SOC also does pre- and post-testimony briefings with the complainant. This can be very beneficial as it can help the complainant feel more at ease. If giving evidence has been particularly difficult, the complainant can talk to someone immediately.

The service capacity of the Cape Town SOC could be increased by making more frequent use of external intermediaries. This would mean that the social worker could increase the time she has to do the court preparation and pre- and post-testimony counselling. Because Mitchell's Plain Court does not have a SOC, complainants do not have the benefit of a social worker to do court preparation and counselling.

Support services for staff

An issue that was raised by interviewees from all three courts was the need for counselling for staff of the SOC. It was felt that staff needed debriefing sessions to talk about what they experience in court everyday. Some felt that staff could become desensitised because of the nature of the cases. This is often used as a coping mechanism to distance them from the cases.

Age of complainants

Whilst all the prosecutors who were interviewed said that the decision to use the camera facility was done on a case by case bases, the responses suggest a bias towards younger children having easier access. The prosecutors said that requesting the use of the camera facility for children younger than 12 years old was not a problem. However, for complainants above the age of 12 years old, it was more difficult to convince the magistrate. In such instances, prosecutors would often have to lead expert evidence to show that the child would experience undue stress without access to the camera facility. It would seem that there is an underlying assumption that older children are able to cope better, and therefore do not have an equivalent need for the camera facility. More in depth research needs to be conducted on this issue.

Location and physical layout of the court

The location of physical layout of the court was an issue that was raised in all three courts and is an area where some practical solutions could be sought.

Language

The issue of language was raised as a problem in the Wynberg SOC, particularly in relation to Xhosa speaking complainants. The personnel at the Cape Town SOC felt that language was not a problem.

Transport

Transport of complainants to and from trial was a problem in the Cape Town SOC, particularly if complainants came from rural areas. The first problem was that in most cases complainants would be transported in the same vehicle as the accused. This undermines the motivation for a dedicated SOC, where a main objective is to separate



the complainant and the accused. As this court serves outlying areas in the province, these cases often start late because the complainants and the accused have to travel great distances.

Training

Most of the staff at the three courts had received some training. Since the inception of the SOCA Unit, prosecutors have undergone some training on some aspects dealing with sexual offences. The interviewees all felt that training was important and that it needed to be ongoing. They made suggestions as to the content of future training programmes.

Chapter 2 footnotes:

1. Interview A Minaar, 2000.
2. The Thutuzela Project was established by the NDPP to speed up the processing of rape cases. Accordingly, it locates all the roleplayers - police, district surgeon, prosecutor and counselling services - in a centralised location at JF Jooste hospital.
3. Open court in this case means the case is held in camera, but not using the CCTV.
4. Interviewees were asked which age they use to gauge whether children should use the camera facility.
5. Personal communication with Mr Solomons, Mitchell's Plain Magistrates Court.

3

Overview of services provided by the CPU and district surgeons

The Child Protection Unit and district surgeons play an important role in the SOC. The police conduct the investigation and the district surgeons conduct the medical examination. The comments below reflect the perspectives of these roleplayers as to the sexual offences process.

3.1 Comments from police officers

On the reporting to sexual offences:

Captain van Zyl explains the procedure,

'When the thing is reported to us usually the mother makes a statement at the Police Station saying that I suspect my child was raped, or I believe that my ex-boyfriend fondled the child, or something like that. Then obviously we have to go and investigate we have to take the child for a medical examination, did this happen or is there medical evidence.'

'We interview that child, we'll get a statement from that child and then on that we arrest the guy. The Court process starts when the trial starts and the that child needs to remember what happened again, and you need to know how to be sensitive towards the child, you don't deal with a child the same you did with a man or a woman...'

It can take time to elicit the information from the complainant and Captain van Zyl says, 'Sometimes the child doesn't want to speak to us immediately because they don't trust you. Then you go and visit the child several times and then the child starts talking to you and only then you start asking about case. Sometimes we go to children and they immediately say everything that happened. Because they're still in shock they can remember, they still talk about it.'

Developing a rapport with the child and showing sensitivity is very important to developing a relationship with the complainant. According to Superintendent Swart,

'It depends on the age of the child. What we place emphasis on basically is that they did nothing wrong and the second thing because children often walk with unresolved guilt as a result of having been sexually abused. We tell them whatever happens to the perpetrator is not their fault. It's his own fault. Because what he does, he tells them if you report me to the police and I get locked up my family will lose the house and income. So we try to turn that around because obviously guilt and fear are the two weapons the perpetrator is using.'

On management:

Captain van Zyl manages her unit and oversees the cases, 'I have to check your work at least once in two weeks. Sometime there's a case coming to court and they want a specific statement to be taken. I read through the docket, I give you instructions, do this, do that, bring the docket back to me on a specific date and I'll forward the case to court.'

On resources:

Given the magnitude of the problem of child abuse, there are always likely to be resource constraints. The members of the CPU raised some of the problems they experience.

Captain van Zyl says,

'For instance, now there's a terrible problem with financial authority in fixing police vehicles. There are at least 13 of our vehicles standing in the police garage and we've only got three running, 3 or 4 which is quite hectic...'

'Our personnel are extremely motivated and extremely responsible. We don't get overtime paid to us but the guy's work at least 10 to 15 to 20 hours overtime per week that they know they're not going to get paid for.'

According to Superintendent Swart,

'We are hopelessly under-resourced. We carry more than four times what we should be carrying in numbers, you see... We are nowhere near maintaining the contact with our victims that we should be doing. We see the child now we might see her again two years from now. It's just a reality.'

On inter-sectoral collaboration:

The CPU has developed good relationships with the role players, Captain van Zyl says, 'As an investigating unit, we know which doctor we're going to go to, we know which prosecutor we're going to speak to... So the wheel rolls smoothly when you know one another and you know who you're going to deal with.'

Presently they are experiencing some problems in relation to the medical examinations because of a change in policy. Captain van Zyl says: 'At this point in time, we actually have a problem, because during the day, it doesn't matter where the case happened, even if it's in Khayelitsha, we have to take the child to Plumstead to see the district surgeon in Wynberg. We used to have Dr Frantz and Dr Manuel every alternative week. During the day, they used to attend to cases in Mitchell's Plain for Mitchell's Plain, Khayelitsha, Langa and Guguletu ... So we would actually like to see a doctor that can do our cases and is available to testify in court, in every day hospital and community health centre.'

'As role players, we don't specifically meet. There are lots of individual meetings between us and the prosecutors we deal with. Sometimes we sit and talk to about three or four prosecutors.'

There is some level of co-ordination, according to Superintendent Swart:

'We have meetings with the justice department once a month and every quarter at every court, i.e. Bellville, Cape Town, all the courts.'

In conclusion

From the interviews with relevant police officers, it is clear that the CPU works with all role players and has developed good working relationships over time. There are some resource constraints that need to be addressed.

3.2 Comments from the district surgeons

On the medical examination:

Dr Trope, who is based at Lady Michaela Hospital, says,

'I try to explain to them that nobody's going to violate them again, that we're not going to do an internal examination, it's purely that we're going to look on the outside and it's not going to be sore, and it's not going to be painful and so on, and they're very co-operative, the kids. The minute I see a child is badly traumatised, I won't examine that child unless it is absolutely imperative that we get some samples. But by and large I would rather avoid than traumatise the child more.'

According to Dr Frantz,

'the examination is, to a degree, not traumatic in that we hurt the child, but traumatic in that a doctor is now going to examine me and I've just been raped and now another man is going to examine me.'

On secondary trauma

The complainant may experience secondary trauma throughout the whole process, and the district surgeons are there to assess the emotional state of the child. Dr Trope asserts,

'if I see that a child is badly traumatised, I suggest to CPU, leave the examination for the moment, if the kid is screaming and crying. Sometime I am forced to if it's in the first while, we need to examine them ... If it's been 2 to 3 months it's not critical for me to see the child immediately.'

According to Dr Frantz the complainant will experience some trauma,

'... although there is a degree of trauma, that trauma has been minimised. I don't think that one will ever be able to minimise it a hundred percent, because the child knows that today we're going to Wynberg and I've got to talk on that thing that happened six months ago.'

On follow-up visits:

The complainant goes to the district surgeon for the initial examination, after which they are expected to visit a primary health care clinic or a private doctor for follow-up visits. However, according to the district surgeons, this does not always take place. Dr Frantz says:

'There should be a system where people are called back, there should be a unit which deals ... with rape victims, there should be someone to co-ordinate it ... There's other problems also, this is perhaps the problems of accessibility and affordability... depending where these social workers are situated.'

Rape victims are put on a course of anti-retroviral and this needs to be followed up, according to Dr Frantz:

'We for example have a problem in that we see rape victims, we put them

on AZT for 3 days and they don't come back ... Is it accessible for a patient to come from point A to point B? ... is it affordable?' He further says that the, 'psychological aspects of the victims must be addressed, both short, medium term and long term.'

On the trial:

The district surgeons present the medical evidence at the trial and the evidence they present is critical to the success of the case. The prosecutor has to have an understanding of the medical evidence that is presented in order to ask questions. Dr Frantz says that '... the quality of that discussion will depend entirely on the way in which I am being prompted and the questions which I am being asked by the prosecutor, okay and I must tell you that some prosecutors, they are not as good as others.'

On inter-sectoral collaboration:

According to the district surgeons, there is some level of inter-sectoral collaboration. There is, however, a need to improve the present situation. Dr Trope feels that there is a '... lack of co-operation between various departments' and this leads to 'fragmentation and breakdown in the kind of service that's being provided in Cape Town.' He suggests that there 'needs to be a meeting once every few months to look at what has improved, what has changed, what still needs changing.'

Dr Frantz concurs,

'I think what you need to do is to have regular meetings. We (should) have a monthly meeting where we have representation from the different role players, where the difficulties are highlighted, the difficulties are being discussed, we try and find some answers and then the representative of that role (player) is then delegated to convey the (information).'

On support services:

Dr Trope also spoke about the need for doctors to be able to de-brief:

'I tell you, I initially found it quite depressing, I must be honest, I felt very saddened by what I saw and I don't really have anybody that I can talk to about my stress.'

On training:

The district surgeons felt that training should take place regularly and suggested some content areas. Dr Frantz says:

'I think that (training) should be done on a monthly basis ... I think people will need to be honest with themselves or even if I've got a bit of a deficiency and not always understand what they mean with the different hymens, invite people ... to come and speak to them even if it's just twenty minutes ... just on venereal disease... forensic developments, ... interpretation of the DNA test ...'

In conclusion

The district surgeons felt that there should be improved collaboration in relation to a number of issues, such as dealing with problems as they arise, improving communication between role players and training, among others. The district surgeons were also aware of the trauma the complainant was experiencing, and of ways they can try to minimise the trauma.

4

How effective are the Sexual Offences Courts?

The main objective of the Sexual Offences Court is to reduce the secondary trauma that victims of sexual offences experience when going through the criminal justice system. The sexual offense is itself a traumatic experience. Given the nature of the crime, the child complainant is often the only witness to the crime. Within the legal system, children are regarded as unreliable witnesses; this frequently leads to acquittals and therefore a low conviction rate. To reduce secondary trauma, the criminal justice system should treat victims with empathy and understanding. The SOC contributes to this goal by giving victims the option of testifying without having to face the accused.

The SOC in Wynberg has been lauded as a successful programme that aims to reduce secondary trauma to victims of sexual offences. The conviction rate on sexual offences in the SOC is higher than in ordinary regional courts. This chapter examines the factors that contribute to a higher conviction rate. It also considers the extent to which the SOC succeeds in reducing the secondary trauma that the complainant is exposed to throughout the whole legal procedure. Secondary trauma is reduced when complainants deal with officials who are well trained and follow the procedures set in the National Policy Guidelines.

Secondary trauma is further reduced when role-players collaborate with one another to offer an integrated set of services to victims. While the SOC is the focus of this study, related services - such as those of the CPU, the District Surgeon and social workers or counsellors play an important role in reducing secondary trauma to the child victim. The effective implementation of the SOC is dependent on the collaboration of a number of government departments and organisations in civil society. This chapter therefore also looks at the extent of the inter-sectoral collaboration and examines whether this is sufficient.



4.1 Conviction Rates in the Sexual Offences Courts

The Wynberg and Cape Town Sexual Offences Courts have generally been seen as relatively successful in realising the objective of increasing conviction rates for sexual offences. This study examines whether the conviction rates in these courts have increased and which factors contribute to this. It considers whether a reduction in secondary trauma contributes to an increase in the conviction rate, and further examines what happens in the absence of dedicated court resources to child victims in the criminal justice system.

Information on the number of cases heard in the three courts was not easily accessible. Where statistics are available, there is very little uniformity in the manner in which data has been collected. Comparable information is not available for every year. The statistics for Wynberg Court is not disaggregated for women and children. The information below was sourced from the Western Cape Director for Public Prosecutions (formally the Attorney General) Annual Reports 1995-2000.

Where no statistics are shown for categories in the tables below, it is because none were provided. This gives a rather incomplete picture of the respective courts. The conviction rate provided for 1998 is an amalgamated figure for all the SOCs in the Western Cape. While figures for the Mitchell's Plain Court were available for the period April to July 2001, none could be sourced for the period 1995 to 2000. It was therefore not possible to draw comparisons between the conviction rates of the Mitchell's Plain court in relation to the Wynberg and Cape Town SOCs.



The Wynberg Sexual Offences Court

The Sexual Offences Court was established in 1993. The first court was housed in Court G. In 1997, a second Court F was opened. In 2000, Courts J and L were opened. Court L deals only with the cases that are referred from the Thutuzela Project. During 2000 two temporary courts were opened to deal with the backlog of cases. Wynberg's SOC cases originate in the Mitchell's Plain¹, Simons Town, Goodwood and Wynberg magisterial districts.

The statistics for the Wynberg Sexual Offences Court are not disaggregated for different victims of sexual offences, in particular women and children. According to the Director of Public Prosecutions for the Western Cape, in 1996 "55% of the victims were under 18 years of age".² It is important to know how many cases of child sexual abuse were heard, as children could find it more difficult than adults to testify in court. This, in turn, may have had an effect on the number of convictions. If the figures were disaggregated, it would have been possible to compare the conviction rate for adult victims relative to child victims.

Table 1. Statistics for Wynberg Court 1995-2000

Wynberg Sexual Offences Court	1995	1996	1997	1998 ³	1999	2000
Number of prosecutors	2	2			4	7
New cases	429	373	527			
Cases finalised	414	163	337			
Cases outstanding	221	264	372		694	675
Convictions	298	123	219	398	125	200
Conviction rate %	72%	76%	65%	65%	66%	67%
Acquittals				210	64	118
Warrants struck off roll					65	
Withdrawn					171	371
Cases placed						
% Victims under 18yrs	55%					
Intermediary used						
Average number of hours the court sits per day		4hr 5min	3hr 35min			4hrs

Source: Annual Report, Director for Public Prosecutions, Western Cape, 1996-2000

Table 1 shows that there has been an increase in the number of cases from 1995-2000. There is a significant increase in the number of cases outstanding in 1999 and 2000.

The annual average conviction rate⁴ for the period 1995-2000 is 68.5%. Over this period, the highest conviction rate of 76% occurs in 1996 and the lowest conviction rate is 65% in 1997. According to the DPP, Frank Kahn (1998), the 65% conviction rate in 1997 was due to a drop in the productivity of the court. In 1997, the SOC lost four experienced prosecutors, who were replaced by four relatively inexperienced prosecutors. This loss of experience is significant in a court that requires specialist knowledge and experience.

The figures provided for 1998 is the average of the four SOC's in the Western Cape. Disaggregated figures for each court are not provided for 1998.

In January 2000, the two SOC's had a combined caseload of 750 cases on the court roll. SOCA appointed four additional contract prosecutors and two temporary courts were set up to address the backlog in cases. Between January and

Table 2: Wynberg SOC Court Roll 2000

Court	No of Cases
F	216
G	171
J	149
L	139
Total	675

Source: Annual Report, Director for Public Prosecutions, Western Cape, 1996-2000

October, the court roll was reduced to 614. At the end of December there were 675 cases outstanding. The new courts J and L do not have the CCTV facilities.

Working with other organisations has been a strength of the Wynberg SOC. Since 1993 the court has maintained a relationship with key service delivery NGOs such as Rapcan, Ilitha Labantu, Rape Crisis and Rotary, as well as hospitals such as Red Cross Children's Hospital and Victoria Hospital. A relationship with business has also been developed. The Woolworths store in Wynberg provides lunch on a daily basis for witnesses.

Cape Town Sexual Offences Court

The data provided for the Cape Town SOC is sketchy and no statistics were provided for 2000.

Table 3. Statistics for Cape Town Court 1995-2000

Cape Town SOC	1995	1996	1997	1998 ⁵	1999	2000
Number of prosecutors	2		3			
New cases	337					
Cases finalised		277	235			
Cases outstanding	153	210	148			
Convictions		111	98	398	50	
Conviction rate %		50%	41%	65%	66%	
Acquittals		75	81	210	26	
Warrants struck off roll		35	56		11	
Withdrawn		56			16	
Cases placed		310				
Intermediary used		82				
Average number of court hours			4hrs			

Source: Annual Report, Director for Public Prosecutions, Western Cape, 1996-2000

The conviction rates for 1995 and the year 2000 are not provided in the Annual Reports of the Director, and an amalgamated conviction rate for all the courts are provided for 1998. Therefore, conviction rates could only be presented for the years 1996, 1997 and 1999. This three-year period reflects an increase in the conviction rate, the lowest being 41% for 1997 and the highest is 66% for 1999.

Mitchell's Plain Court

The researchers requested data on the number sexual offences cases involving child complainants for the years 1995 to 2000. The court was unable to provide these statistics. It is therefore not possible to draw any comparisons between Mitchell's Plain Court and the Wynberg and Cape Town SOC.

Table 4: Sexual Offences Cases for Mitchell's Plain⁶: Apr – Jul 2001

Mitchell's Plain Magistrates Court	No of Cases Mitchell's Plain Area	No of Cases Khayelitsha Area	Total number of cases for the Mitchell's Plain Magisterial District
Number of cases received	29	85	114
Number of cases finalised	14		
Convicted	9		
Not Guilty	5		
Conviction rate	64%		

Source: Mitchell's Plain Magistrates Court, 2001

The conviction rate in the Mitchell's Plain Courts over the period April to July 2001 is 64%. This is relatively high for a Magistrates Court that does not have a Sexual Offences Court. This could be attributed to the awareness and sensitivity of staff, in addition to having a separate room with CCTV facilities. Another factor that could contribute to this high conviction rate is the low number of cases and the introduction of the system where prosecutors have time to consult their clients.

The sexual offense cases from the Khayelitsha area are transferred to the Wynberg SOC. From Table 4, it is clear that the majority of cases in the Mitchell's Plain Magisterial District come from Khayelitsha.

Concluding summary: conviction rates

The conviction rate in Cape Town SOC has increased over the period 1996 to 1999. These cases only involve child complainants. The conviction rate in Wynberg, dropped significantly in 1997 and has subsequently increased. The conviction rates are still higher than those in other Magistrates Courts that deal with sexual offences. Due to a lack of data, no comparison can be made with the Mitchell's Court.

According to Advocate Majowkeni⁷, recent improvements in information systems will provide access to data from 1999 onwards. For the data to be useful, it must be collected in a uniform manner, so that comparisons can be made over time. Information that would be useful for research and planning purposes include:

- ▶ the disaggregation of cases involving adults and children complainants at the Wynberg SOC;
- ▶ the number and age of children that testify in court;
- ▶ the number and age of children that testify using the camera facility; and
- ▶ the number and age of children that use an intermediary.

This information would also be useful to keep track of the progress of cases, which could assist with case management. The information should also be made accessible for the use of professionals working in the SOC and for the continuous monitoring and evaluation of the programme.

4

4.2 Secondary trauma in the Sexual Offences Courts

"The Special Sexual Offences Court was set up to reduce secondary trauma. These cases require special attention and special handling, ... (the courts were set up) to make things a lot easier for victims of sexual crime."

(NDPP, 2000)

One of the main objectives of the Special Sexual Offences Courts is to minimise secondary trauma. It therefore useful to consider the nature of secondary trauma in more detail. How can the special sexual offences courts and related services minimise secondary trauma? How does the reduction in secondary trauma influence the child's ability to testify and, in turn, what relevance does this have for the case?

Understanding secondary trauma

Clinical psychologist, Linzi Fredman, states that secondary trauma is 'anything that re-evokes the initial trauma in an uncontained way, or an uncaring or unprotected way together with initial things' (Fredman 2000). According to Summit (1985), child victims of sexual abuse face secondary trauma in the crisis of discovery. The child victim's attempts to reconcile their private experiences with the realities of the external world are met with disbelief, blame and rejection they experience from adults. The normal coping behaviour of the child contradicts the entrenched beliefs and expectations typically held by adults, stigmatising the child with charges of lying, manipulation or imagining from parents and professionals in courts.

The outcome of many child abuse cases is determined by an evaluation of the child's credibility. The experience of secondary trauma influences the child witness' capacity to testify and be a credible witness. Testifying in court can be stressful for adults. Children are even more vulnerable to the stresses associated with appearing in court. Secondary trauma is evident in a number of behaviours. The stress of the courtroom experience is exacerbated when a victim believes that her testimony is a large influence on the conviction of the perpetrator (Vieth 1999). This becomes even more intense when the victim is the only witness and the defence attorney attacks the testimony of the child (ibid.).

Incidences that contribute to stress by the child witness include having to testify more than once, a difficult cross-examination, the defendant's presence, and unskilled professionals (Burkhart 1998). 'Questions asked by the prosecutor or the legal representative should not have a negative impact on the child' (Mr Rothman, Regional Magistrate 2000). Disbelief and rejection by adults increase the helplessness, powerlessness, isolation and self-blame that make up the child's experiences of post-traumatic stress. The responsibility of testifying increases these feelings. Victims recalling their experiences are usually more embittered toward those who rejected their pleas than toward the person that they are testifying against.

Acceptance and validation are crucial to improve the child's credibility as a witness. This need not come from the prosecutor but from support services such as a social worker, counsellor or therapist, as well as parents/caregivers. Burkhart (1998) suggests that the child be prepared to be a witness in court. This, she says:

- improves the child's ability to answer questions in court in the most accurate, complete and truthful manner;

- ▶ maximises the child's ability to be perceived as a credible witness;
- ▶ reduces stress levels in child witnesses;
- ▶ helps children understand the nature and seriousness of the proceedings and;
- ▶ minimises the likelihood that the child will suffer negative court-related consequences (ibid).

V. Anthony (2000) describes her foster child's credibility as a child witness in a case of sexual abuse heard in open court:

'I gave her my support just before she testified ... And the prosecutor called me to say she was an excellent witness. I believe this is so because she had support before she appeared in court and whilst she was testifying she knew she had my support. The other child witnesses had no support, in the community they were stigmatised, and this affected their testimony in court...'

Burkhart (1998) suggests a 'proper courtroom orientation should include the child as an active participant'. Signs of secondary trauma are visible in a number of ways. The child witness can begin to cry, start fidgeting, or will verbalise that they do not want to talk further (ibid.) Some children will become numb or silent. The child witness may show a reluctance to share information or may show signs of having difficulty with sharing information. According to a senior state advocate of the NDPP at the SSOC:

"Secondary trauma influences the child's ability to testify, and the kind of information received (during the trial)."

Secondary trauma and the SOC

All the cases at the SOC are heard in camera, that is, the case is closed to the public. The innovation of the SOC is that complainants can give their evidence in another room with a CCTV. The complainants also have access to an intermediary. Depending on how the court is structured, the prosecutor or the social worker informs the complainants of the option of using the CCTV. The prosecutor makes an initial assessment, and the final decision on whether to use the CCTV rests with the magistrate. Each case is decided on its merits. Some complainants indicate that they want to face the accused.

All the interviewees asserted that the SOC was an important mechanism to minimise secondary trauma. This is because when the case is heard making use of the camera room, the intermediary 'softens' the questions of the court officials. Most role players in the SOC agreed that intermediaries play a big role in putting the child at ease. Mr Rothman, regional magistrate at Mitchell's Plain Court, reveals a good understanding of the implications of hearing cases in camera:

"Hearing in camera does not necessarily ease the secondary trauma – the child still has to recall the incident. But the camera is a good idea because it makes it easier for the child to be a witness".

(Rothman 2000)

Another important factor that can reduce the secondary trauma of the complainant, is the consultation that the prosecutor has with the complainant prior to trial. All the prosecutors interviewed noted the importance of the consultation with the complainant. Unfortunately however, most prosecutors were only able to see the complainants on the day of the trial.

Some roleplayers that were interviewed drew attention to areas of concern that contribute to secondary trauma of the child witness, that still pervade the proceedings of the SOC. For example, the physical location and structure of the SOC means that the child witness may have to walk through the corridors of the court and could be confronted with the accused and his family. In addition, cases are frequently remanded and can take three years or longer to be concluded.

Furthermore, the SOC tends to exclude older children. Section 170A of the Criminal Procedure Act (1993) provides the legal guidelines for the SOC. In short, the act states that the prosecutor has to prove that the child will suffer undue stress if the case is heard in open court, before use can be made of the CCTV facility. From the interviews conducted in this study, there seems to be a bias towards children younger than 12 years having access to the CCTV. There seems to be a general acceptance among roleplayers that older children don't have to use the CCTV facility:

"(the) SOC normally sees children under 12. The prosecutor asks the court; if there is no objection from the defence, it is normally done. If the defence objects and the child is under 12, the case goes ahead in any case in camera. The more tricky cases are for child victims of 13-18; [there is] a 50% chance that the request for the case to be heard in camera will be granted. The court has the discretion to refuse or grant the hearing in camera."

(NDPP, 2000):

'You must remember once the child is such an age that he or she is able to tell the story, is a competent witness, then she or he is already 6 or 7 years old and he's aware... And these days, with TV, all of them have seen court cases on TV, they know what it's more or less about... It's not like when we grew up we never knew what a court was before we were 18 years old, because if you never came into contact with that type of thing, nobody ever told you about courts and policemen... Okay you knew about policemen around you, but I think these days you've often got all these stories and they've got these court situations where people swear to tell the truth. So many young girls, 12,13, they know what it is about.'

(Mr Loubsher, 2000)

The quotes above raise concern regarding the level of understanding of secondary trauma in the SOC. The latter quote suggests that little relevance is given to the cognitive or emotional development of the child. More importantly, there seems to be a lack of understanding that the child witness - regardless of chronological age - can experience secondary trauma.

Secondary trauma and services related to the SOC

Whilst preparing the child to testify and providing support for the child is important, the role that the CPU and the district surgeon plays in investigating the case and finding medical evidence is equally important. The child experiences secondary trauma from these initial stages and has to be treated in an empathetic and sensitive manner.

According to Superintendent van Zyl of the CPU, '[In] most of the cases, we only speak to the child once or twice to get the information about the case because you don't necessarily want to burden the child and cause undue stress or something like that'.

The district surgeons also display sensitivity by having a female sister and the mother present at the examination at Lady Michaela Hospital. Dr Trope explains in his interview what he does to minimise trauma to the complainant: 'I try to explain to them that nobody's going to violate them again, that we're not going to do internal examinations, it's purely we're going to look at the outside and it's not going to be sore ... and they're very co-operative the kids. The minute I see a child is badly traumatised, as I say I won't examine that child unless it is absolutely imperative that we get some samples. But by and large would rather avoid than traumatise the child more.'

Dr Frantz, another district surgeon, illustrates how the examination can be traumatic: '... the examination is - to a degree - not traumatic in that we hurt the child, but traumatic that a doctor is now going to examine me and I've got to open my legs and I've just been raped and now another man is going to examine me.'

Concluding summary: secondary trauma

One of the main objectives of the SOC is to reduce secondary trauma. Accordingly, the procedures of the SOC are customised for sexual offense victims, the court has access to specialised equipment and staff that are trained to deal with sexual offences. Guidelines have been developed for all the different roleplayers. Most of the roleplayers have undergone some training and reflect an awareness that the complainants are experiencing some trauma throughout the process and that they should attempt to reduce the trauma as much as possible. Mechanisms have been put in place to help reduce secondary trauma, such as the consultation with the complainant, court preparation and a separate witness waiting room.

The staff at the SOCs and at Mitchell's Plain Court work under a number of constraints. They have large caseloads and experience the stress of dealing with child abuse cases on a daily basis. These factors impact on the quality of services that are being delivered.

Interviews with roleplayers reveal a bias towards younger children in applications to make use of the camera facility. The assumptions underlying this trend are cause for more in-depth analysis.

4.3 Inter-sectoral collaboration in the Sexual Offences Courts

"To forge inter-departmental integration of policy and management, in the interests of co-ordinated planning, coherent action and the effective use of resources."

(NCPS:1996)

"Inter-sectoral - Describes interaction between different government sectors or departments such as health, education, housing, police, recreation, urban, and rural development. Inter-sectoral collaboration refers to both governmental and non-governmental action strategies."

(White Paper for Social Welfare, 1997:95).

The Sexual Offences Court and related services aim to provide an integrated set of services to victims of sexual offences. For this programme to achieve its objectives, collaboration is required between a number of government departments - such as the

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SAPS, Health, Justice and Social Development – as well as private welfare organisations and NGOs. Previously these different roleplayers often worked in isolation, and generally provided a fragmented array of services. To combat this, the different departments have developed policies and programmes to provide an integrated service that is more efficient and effective.

According to Robinson and Sadan (1999), inter-sectoral collaboration facilitates the interaction of complimentary programmes delivered across sectors, such as justice and social development. The absence of integrated delivery results in fragmented services, which could worsen rather than improve the situation of service users or beneficiaries. A key feature of inter-sectoral collaboration is the management and co-ordination of programmes between a number of different organisations. It is about managing a process of planning, allocating resources and engaging in activities to ensure the smooth delivery of services.

The SOC is a good example of such a programme. While the DOJ is the lead department, it works closely with the CPU and district surgeons in the delivery of its services. The purpose is to provide an effective service for child victims of sexual offences, not only for the efficient running of a programme, but more importantly to ensure that the process does not increase the trauma of the victim. Reducing the trauma of the victim can significantly impact on the child's capacity as a witness, which in turn can contribute to the conviction of the accused. The success of this approach depends on the whole system working well, minimising delays as far as possible and on providing good quality evidence for the trial.

Whilst the policies of the various departments support inter-sectoral collaboration, it can be a difficult challenge for departments that have not traditionally worked together. According to Robinson and Sadan (1999), there are a number of key factors that contribute to successful inter-sectoral collaboration. One such factor is the identification of a single department or key roleplayer to take the lead, manage the process and co-ordinate activities. In most instances, this lead department or key roleplayer will benefit from the establishment of a clear structure to manage the process. Where appropriate, this structure should be replicated at national, provincial and implementation level and there should be continuous interaction between the levels. It is within such a collaborative structure that integrated planning takes place and the respective contributions of the different departments can be identified.

For a programme to be successful, inter-sectoral collaboration needs to take place at the national level, where policies are developed. For some departments, such as the DOJ, departmental resources are also allocated at a national level. For other departments, such as Health and Social Development, programme resources are allocated at the provincial level. Inter-sectoral collaboration therefore has to span the national and provincial levels if it is to catalyse appropriate resources. Finally, collaboration is also required at the programme level, to ensure that the programme is meeting its objectives and to address implementation problems as they arise. At the service delivery level, such a structure provides a platform for communication and conflict resolution. An aspect that is often overlooked is the need to monitor and evaluate the programme to check that the objectives are being met and also to learn from the successes and the problems that the programme encounters.

Within the SOC, there has been some degree of inter-sectoral collaboration at both national and service delivery levels. At the national level, task teams have been set up

to deal with specific issues. The Department of Justice established an inter-sectoral task team to 'develop uniform national guidelines for all role-players handling rape and other sexual offense cases' (National Policy Guidelines, 1998). The task team included all the relevant government departments and NGOs. Each department was responsible for developing its own guidelines to contribute to an integrated set of National Policy Guidelines for Victims of Sexual Offences, which was published in 1998. The guidelines outline the role of each department in handling sexual offences.

The DoJ's SOCA Unit has also set up a task team to roll out the Sexual Offences Courts to the rest of the country. Twenty-five sites have been identified, of which nineteen courts have been set up (T Majokweni, 2000). Both national task teams are geared to complete a particular intervention, and as such, are temporary in nature.

Since the inception of the SOC in Wynberg in 1993, a Rape Forum has supported the court's establishment and operations. This forum, which includes relevant roleplayers, initially met monthly to oversee the setting up of the court and to deal with issues as they arose. Currently the forum meets once a quarter. It was noted in this study that not all roleplayers were aware of the forum's existence.

According to the interviewees, the courts operate relatively well and there is continuous co-operation between the role players based at the court. There is generally good co-operation between the CPU and the respective courts. In Mitchell's Plain - where there is no SOC - there is also a good level of inter-sectoral collaboration. This could largely be due to roleplayers being located in relatively close proximity to each other.

The positive response on inter-sectoral collaboration came from interviewees at both policy and implementation level. Comments from some of the interviewees were as follows:

- ▶ 'Inter-sectoral collaboration is important because each role-player needs to know what problems are being encountered and assist to seek solutions' (Magistrate M Loubscher)
- ▶ 'Inter-sectoral collaboration does exist' (Dr Franks)
- ▶ 'Inter-sectoral collaboration makes it easier for the victim' (NDPP official)
- ▶ 'There is collaboration between the CPU and the social worker' (Mr M Loubscher)
- ▶ 'Good communication between the social worker and the control prosecutor' (T Ajouhaar)
- ▶ 'Good relationship between CPU and prosecutors' (A Pienaar)
- ▶ 'There are protocols to regulate the behaviour of service providers' (T Majokweni, Director SOCA Unit)
- ▶ 'Everyone is clear about their role' (Captain van Zyl CPU)

While all the roleplayers interviewed for this study acknowledged that inter-sectoral collaboration takes place in an on-going way, many also suggested that there is room for improvement. The need was identified for a forum or committee to address a number of issues in this regard. Comments from some of the interviewees were:

- ▶ 'There really isn't a sense of someone holding [thing together], that's probably the sense I have in mind. You need.. a kind of manager' (L Fredman, clinical psychologist)
- ▶ 'There is no structure that co-ordinates the courts' (Y Notshe, Ilitha Labantu)
- ▶ "Communication between role-players is needed. Regular meetings should be held... where difficulties are discussed."(Dr Frantz, 2000)
- ▶ 'Better organisation of the court is needed. The court is not well managed' (M Loubscher, magistrate)

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- ▶ 'The present policy of taking children under 14 years old to the district surgeon in Plumstead during the day, presents logistical problems for the CPU ... Over weekends, sometimes the police are not quite sure where to go, it's very traumatic for the kids to rush them from pillar to post' (Dr Trope, district surgeon)
- ▶ 'No regular evaluation of the courts' (Y Notshe, Ilitha Labantu)
- ▶ 'Information on cases not readily available – one has to make an effort to get information' (Official, NDPP)

At both the Wynberg and Cape Town SOCs, inter-sectoral collaboration takes place in the absence of an inter-departmental committee that oversees the programme. In general, the roleplayers are able to manage the process themselves. Both courts have been established for a number of years and the different roleplayers know each other and have developed good relationships over the years. However, all the roleplayers agree that an inter-sectoral structure is required to deal with a number of over-arching and recurring issues.

Currently, each roleplayer has its own management system in place. The Commander of the CPU manages the local CPU, the control prosecutor manages the court case, the social worker manages the intermediaries. At each court there is a good measure of internal communication. There is however no structure in place that manages the whole programme. There is no central office or person that oversees the whole process from reporting to finalisation of the case and post-case counselling. A number of roleplayers raised the issue of support services to victims as an area of concern. This pertains both to counselling and follow-up visits to a day hospital or clinic.

Because there is no overall management structure in place across the sectors, there is no one body that monitors and evaluates the whole programme and identifies weaknesses or gaps in present service delivery. There is a need to create a structure to improve the collaboration between the sectors. This committee or forum should provide a space for all the roleplayers to come together and discuss how the programme is functioning and what problems are being experienced. It should also address the shared need for additional training, improved information management and continuous programme evaluation.

Chapter 4 footnotes:

1. The cases from Khayelitsha are heard in the Wynberg SOC.
2. WCDPP, Annual Report, 1996:27
3. The figures provided for 1998 are for all the Sexual Offences Courts Wynberg Court, Cape Town and Parow.
4. This excludes the conviction rate for 1998.
5. It is not clear whether the figures provided for 1998 are for all the Sexual Offences Courts or for Wynberg Court.
6. The cases from Khayelitsha are referred to Wynberg Court.
7. Interview, Advocate T Majokweni, 2000.

5

Training in the Sexual Offences Court and related services

The operation of the Sexual Offences Court requires that the respective roleplayers have specific knowledge of their area of work, and that they are responsible and sensitive with regard to sexual offences against children and women. In addition, it is necessary for each roleplayer to have a basic understanding of the whole system.

An integrated approach to training can improve the effectiveness of the Sexual Offences Court. For example, a prosecutor may have knowledge as to the legal issues in respect of the case. Yet, to successfully conclude the case, he or she also needs to understand the significance of the medical evidence that is being presented, so as to know which questions to ask and how to phrase these questions to the district surgeon. Training is particularly important in a context of a high staff turnover, where skills and experience are regularly lost. Sharing new information is crucial, especially as regards new equipment or methodologies in the medical field.

From the interviews that were conducted, it would seem that each department takes responsibility for the training of their own staff involved in the SOC. As a result, training programmes vary from being well-established to non-existent. The CPU has an intensive two week training programme that is presented in Pretoria. The district surgeons, on the other hand, do not have any formal training with regard to sexual offences. The NDPP, through its SOCA Unit, has the responsibility for the training of prosecutors and has conducted a number of training programmes for prosecutors and magistrates. Besides the institutionalised training programme of the CPU, training for all the other roleplayers take place on an ad-hoc basis.

The Social Worker at the Wynberg Court has the responsibility of training the intermediaries at that court. She has taken the initiative to arrange training on the subject of child witnesses for intermediaries and social workers from other courts in the Western Cape. An invitation to the workshop was also extended to prosecutors.



5.1 Police training

The training programme for CPU officers has been developed over a number of years. Presently, it takes the form of a three-week, multi-disciplinary training course on sexual offences, which is presented five times a year. It is held in Pretoria with presenters from different departments, including the departments of Welfare and Justice, as well as NGOs, such as Lawyers for Human Rights, and the NCRC (National Children's Rights Committee).

The training content covers the following:

- ▶ Crisis intervention – how to deal with the crime scene;
- ▶ Psychological aspects – how to interview people;
- ▶ Developmental stages of the child;
- ▶ Specific investigation skills, taking statements, and conduct at the scene of the crime;
- ▶ Investigation aids, such as the criminal record centre and forensic labs;
- ▶ Human rights issues;
- ▶ Legal requirements – relevant legislation, what the police should investigate, what elements must be proven in court;
- ▶ Court procedures – the relationship between prosecutor and investigator, court proceedings, preparation of the witness for court – focussing on the child;
- ▶ The role of the Family Advocate, social workers and medical practitioners – what information should be on the J88, accurate naming of injuries;
- ▶ Public speaking – raising awareness of crimes against children; and
- ▶ Police administration – the case docket, the investigation diary, the national police guidelines for dealing with sexual offences.

Each course is attended by approximately 25 to 35 police officers. According to the national commander, 60% to 65% of staff within Family Safety Centres and the CPU has attended these training courses.

In addition to the three-week course, two members each of the FCS and CPU were trained as trainers through a pilot programme on secondary victimisation initiated by the Centre for the Study of Violence and Reconciliation. Since then, approximately 90 police officers have been trained on secondary victimisation, including the national commander and the trainer. The course addressed issues relating to styles of questioning and the influence of police officer's own perceptions ('maybe this isn't a real rape case').

5.2 Prosecutor training

The National Directorate for Public Prosecutions (NDPP) conducts training for the prosecutors in the SOC and has developed a training programme, which runs over three days. Prosecutors from all over the Western Cape attend the training, which is presently donor funded. The content of the training is as follows:

- ▶ Day one: medical evidence – terms used for injuries, questioning of district surgeons, leading DNA evidence.
- ▶ Day two: child-appropriate behaviour, profiles of sex offenders, how to deal with mentally disabled complainants and interviewing techniques.
- ▶ Day three: rape trauma syndrome, dealing with child witnesses.

The training is usually concluded with a personal account from an adult complainant who has gone through the court process. She tells prosecutors about her experience, giving them insight into how victims survive the process.

The training course has had a positive impact on the SOC. Feedback from prosecutors has been positive: they feel better equipped to deal with sexual offense cases and have a better understanding of the complainants. They realise how important these cases are, and the training has increased their sensitivity with regard to the SOC.

The majority of the interviewees asserted that training should be ongoing, as new information and techniques are continuously being generated. Training should also be more in-depth, and help prosecutors to develop their own skills in leading evidence with children of different ages and stages of development. The prosecutors also need to learn more about the impact of sexual offences on complainants. For sentencing purposes, it is important for prosecutors to be equipped to present in court what effect the sexual offense has had on the complainant.

5.3 Magistrate training

Magistrates receive training through the Justice College. They prefer to be trained separately from prosecutors.

5.4 Training of district surgeons

There is no formal training programme for district surgeons on dealing with child victims of sexual offences. Many have sought out information informally from their colleagues.

5.5 Training of social workers

Social workers attached to SOCs do not undergo formal training on sexual offences. As stated earlier, the social worker at the Wynberg SOC has initiated training on dealing with child witnesses.

5.6 Training of intermediaries

The social worker in the Wynberg SOC trains the intermediaries. The senior prosecutor at Wynberg Court, who has undergone training says: 'Having been trained has allowed me to learn new things on the child rape and trauma syndrome. I can provide a better service and that helps to secure the conviction rate. Currently it has gone up to 67% and that is a great improvement.' The social worker at the Cape Town Court says: 'Training also builds confidence and affirmation of the work that is being done.'

5.7 Concluding summary

Very little training for staff involved in the SOC takes place across the disciplines. The CPU training programme is an important exception: it makes use of experts from different departments to present training components. While focussing specifically on the role of the police officer that has to conduct an investigation, the course also explains the work of all the other roleplayers.

Since the introduction of the SOCA Unit, training for prosecutors has improved. A constraint mentioned by the prosecutors is that they are unable to take time off for training due to their caseloads. As training is geared to improve their performance (and thus reduce the backlog of cases), this is an important issue that has to be addressed by management.

A number of the interviewees across departments made suggestions about content areas to be covered in future training programmes. Amongst these are the legal aspects of cases, the effects of abuse on the child, the psychological development of children at different stages, and working with medical evidence.

Chapter 5 footnotes:

1. Information on CPU training was provided by A Pienaar, 2001.

6

Case Studies

Case Study 1

The complainant is a 12 year old girl, who is in grade 4 at school. She lives with her grandmother in Phillippi, an informal settlement outside of Cape Town. A neighbour of her mother sexually abused the child. Her mother lives 2 kms from her grandmother.

The grandmother is a domestic worker and comes home late in the afternoon. On the day of the offense, she noticed that the child was not cheerful and welcoming as she normally was. She asked her if she was not feeling well. Later that same evening, the grandmother noticed that she had been raped.

They went to the mother's house and asked the child who had done this to her. She said, "It is the bhuti who stays in that house": a house a few doors away from her mother's house.

It was already dark and the grandmother suggested that they take the child to the house of the alleged rapist and let the child tell him what he did in front of them. The man denied that he did anything. They all went to the area committee who said they should rather go to the police. The mother says: " The woman police treated us very well, she showed care and compassion and sympathy. She spoke like a human being and did not shout at us. She took the statement and one of the detectives came and took us to in his car to the doctor in Kenilworth."

A few days after the case was reported, the accused came to the grandmother's house and said to her: "You should pay for condemning my name for something I did not do". After he threatened the family for a second time, the Grandmother decided to report the matter to the police again. He was then taken into custody. They have gone to court twice but the child has not testified as yet.

The child is attending counselling sessions at Ilitha Labantu. According to the grandmother, the child's schoolwork has regressed. She is seeking advice about this from the social workers. The mother hopes that on the day when the child has to testify she is going to tell what the accused did to her and that he will be sentenced and go to jail.

Case study 2

The family live in one of the old townships in the Western Cape, known as Guguletu. The residents are mostly Xhosa-speaking, although there are intermarriages with Sotho speakers and so-called coloureds. There is high unemployment and poverty is rife. This has led to ever-increasing crime of various kinds. There are high levels of teenage pregnancy. Houses in Guguletu are free-standing; most form part of a string of

four to eight houses, with four rooms per house. The people of Guguletu call these types of houses "carriages", since they are similar to the coaches of a train. Most houses have one or more shacks in the backyard, to accommodate family members or to rent out for extra income.

The "Mbebe" family live in Guguletu. The family consists of a single mother who is in her early 30s, her child of 8 years, a grandmother and other siblings. There are four shacks in their backyard. These shacks are used as a fence on both sides of the backyard. The house is located on the border of the plot (it is not in the middle).

The child, Zintle, is in grade 3. She looks pretty with her hair braided, and was playing outside with others when I arrived. It was in the afternoon as my appointment was for 3 pm. It was one of those beautiful Cape Town days, and people were sitting outside. Only the grandma was in the sitting room. I introduced myself to the two ladies outside and one was Nosisi, the mother of the survivor, Zintle. The other woman was her younger sister who is also a single parent.

We then joined the granny in the house. Nosisi told me the neighbour raped Zintle. It was difficult to let her talk as she would pause and I could sense that she was feeling the pain. Nosisi said Zintle went to tell another neighbour that she had been raped. Nosisi could clearly remember the process of reporting the case from the time they went to the police station. The incident happened in December 1998, and in February they had to appear in court. Nosisi could clearly remember her visit with Zintle that night to the police, and then the detective (from the CPU) took them in his car to the district surgeon. This happened the very same day.

She was pleased about the way the district surgeon treated her child. Nosisi said: 'I did not have any problem [that the district surgeon was a male]. I think it is because I was with her.' Her only anger came when she told me 'I was emm-angry' (as she talked slowly and narrowed her eyes, thinking). Then she said, 'The thing is, she is being examined and you do not know what the doctor is going to tell you about the results. You are worried. (I know that the surgeon also test for HIV/AIDS). The surgeon spoke English and there was no nursing sister to work with him'.

Nosisi then mentioned that the second surgeon was not as good as the first. He did everything very quickly and the place was small. She then said, 'I think he should take time, especially [with] something that has to do with children. And I do not like the place where he was consulting in.'

I asked what she meant by 'the second time'. Nosisi said, 'Zintle was sexually abused two times, and the first time we saw the accused around while we were still waiting for the trial...

That was the time he did the "mass" on the child the second time (another long pause). You see we did not go to court for a long time... The case was postponed every time because the accused did not have a lawyer or such things. Sometimes we would go to court and wait the whole day and we left after lunch. They should start with children because they get bored from waiting', said Nosisi.

'The second time, we met with the prosecutor and the social worker. I would have loved my child to go for counselling with the psychologist, or the social worker would do.' Then I asked her what she would recommend to others who are going through the same process. Nosisi said: 'I think this thing of going to court does not go any



further. I feel if we as parents did take the law in our own hands and punished the accused the way we felt was right, we would be satisfied much better. I have told myself that if he will do it (rape) again, I will not take him to court.'

The interview with the child was not so fruitful. Most of the time she did not respond and just looked down and kept quiet. At the time of the abuse, she was six. She confused some of the information since it was quite long since the incidents happened in 1998, and it was now more than two years later. For instance, she said the doctor gave her injection and it was not easy to conclude which doctor it was, or whether it was the district surgeon. There were times when she just did not answer at all. It is difficult to know whether she was suppressing her feelings of the abuse, whether she did not remember, or whether she was not at the stage of trusting me enough. Maybe if the case could have been speeded up, the situation would not be as it is for both the child and the family. The long waiting process is not healthy for the child, especially in a case of repeated abuse, since it forces her to relive the traumatic situation until she has to go to trial. It is also not healthy for the family who would like to move on with their daily lives.

Chapter 6 footnotes:

1. We are not using the real names of the people

7

Findings and Recommendations

7.1 Overall impressions of the SOC

A range of policies that prioritise children have been developed since 1994. The central challenge has been to implement programmes that can deliver these services. The first Sexual Offences Court was established in 1993 and reflects the ideas advocated by NGOs and government department officials in respect of service delivery for women and children.

Many policy documents talk about delivering services inter-sectorally, and this remains largely a proposed way in which to work. The SOC is an example where this notion has been operationalised. The Department of Justice is the lead department in this inter-sectoral programme. National Policy Guidelines have been developed and the programme has many sites across the country.

This study examined the Wynberg and Cape Town SOCs in the Western Cape, and the treatment of sexual offense cases involving children at the Mitchell's Plain Magistrates Court, which has no SOC.

Generally, the SOCs in Wynberg and Cape Town are well run, with very committed staff. At each of the SOCs, the roleplayers co-operate and relate well to each other. All the roleplayers who were interviewed had praise for the work of the CPU. The major issue raised in interviews was the high caseloads in the SOC and the backlog of cases. This is a problem of such magnitude that it could undermine the quality of services delivered.

The main objective of the SOC is to reduce the secondary trauma to victims of sexual abuse. One way to measure the effectiveness of the reduction of secondary trauma is to examine the conviction rate of the SOC. The conviction rates for both Wynberg and Cape Town are relatively high at 66% for both courts in 1999. The Wynberg SOC had a conviction rate of 72% in 1995, which came down to 65% in 1997 and has subsequently increased. Initially, the research study aimed to compare the conviction rates of the Wynberg and Cape Town SOCs with that of Mitchell's Plain. However, this was not possible due to a lack of appropriate and comparable data for Mitchell's Plain Court.

Data on the Wynberg and Cape Town SOCs was incomplete and inconsistent for some categories over the period 1995-2000. Advocate Majokweni, the Director of the SOCA Unit, indicated that since 1998, systems had been put in place to improve data collection. The researchers were unable to access this data. Access to reliable data is critical to monitor and evaluate any programme. In addition to data being accessible, it also has to be disaggregated for it to be useful. An example of this is the Wynberg SOC, which deals with both women and children. Therefore the data for the Wynberg SOC should be disaggregated for women and children.

A key factor to achieving the objective of reducing secondary trauma is to have staff that displays empathy and understanding toward complainants. The staff attached to



the SOC are overloaded with cases and work in a very stressful environment, which is compounded by the subject matter of sexual abuse cases. This could lead to staff becoming desensitised. A number of staff members are aware of this and have suggested that there should be debriefing or counselling services made available.

7.2 Staff

A number of interviewees at the Wynberg SOC commented on the shortage of interpreters. To be able to speak in one's mother tongue is very important, particularly about a very traumatic experience. This is an issue that needs to be addressed as a priority.

Another issue that was raised by some of the interviewees was that the SOCs did not have permanent magistrates and this impacted on the efficiency of the court.

7.3 Location and physical layout

The majority of those interviewed felt that the location and physical layout of the court, prosecutors' offices, waiting room and toilet facilities were adequate - but not ideal. Some suggestions were made with regard to both Wynberg and Cape Town SOCs. A prosecutor in Wynberg suggested that offices could be shared to make consultation rooms available away from the public waiting room.

7.4 Problem-solving and decision-making

An interesting aspect of the research has been that staff involved in the SOC and related services not only identified problems, but also suggested solutions to most of the problems they raised. While many interviewees therefore made suggestions to address the problems they were experiencing in the SOC, there was no structure or person that they could take these suggestions to. There are management structures in place for each department, but there is no overarching structure at national or provincial level that can address some of these problems – or facilitate the implementation of proposed solutions.

The Justice Department is the lead department of the SOC. Since the introduction of the SOCA Unit there have been a number of improvements, most notably the increase in capacity at the Wynberg SOC and the training of prosecutors. Because the departments involved in the SOC are both national and provincial departments, there should be structures at both levels of government to address policy, programme planning and resource allocation issues. At the implementation level, there should also be a structure that can ensure the smooth running of the programme, as well as dealing with problems and making recommendations to the provincial and national structures.

7.5 Resource allocation

Each government department that is involved in the SOC has its own specific departmental programme that deals with sexual offences. As such, each department budgets separately for their role in the Sexual Offences Court. Extracting budgetary information on the SOC and related services is difficult in that some of the services are delivered by national departments, whilst others are delivered at provincial level but form part of larger programmes.

Walker and Robinson (1996) of the Budget Information Service at Idasa conducted a costing of the SOC, as part of a study for the Protocol for Multi-Disciplinary Management of Child Abuse and Neglect. The costing exercise found that 'personnel salaries make up 99.3% of the entire costing of setting up and running a specialised

child abuse court' (Walker and Robinson, 1996). Subsequent to this costing, a number of additional SOCs have been set up in the Western Cape (in Parow and Paarl) and in the rest of the country. An updated costing needs to be done that takes inflation and salary increases into account.

Such a costing exercise should also model a functional budget for the SOC that identifies it as an inter-sectoral programme budget. Each department's allocation to the programme should be costed and department-specific costs should be identified. Cross-cutting management and co-ordination costs should either be reflected in the lead department's budget or, ideally, all departments should contribute a proportion of the management and co-ordination costs.

Given that all the services are currently being funded largely from departmental budgets, management, co-ordination and administration costs should be minimal and in fact should realise efficiency gains, thereby offsetting the initial additional funding.

An aspect that would benefit from further examination is how resources could be used more efficiently. For example, postponements of court cases increase costs. If the administrative responsibilities of prosecutors are reduced, their time could be fully utilised for consulting their clients, preparing their cases and appearing in court. Resources are also needed to improve information management systems to assist in record keeping and case management. This will also facilitate the more cost-effective finalisation of sexual offense cases.

Because the problem of child abuse is of such a magnitude, resources should be allocated equitably across the provinces. This has to be based on reliable crime statistics and capacity at the provincial level. There has to be a move towards budgeting across departments for programmes such as the SOC.

7.6 Support Services

Both magistrates and prosecutors noted that when complainants had received counselling, this generally enhanced their ability as witnesses. Whilst, in both the Wynberg and Cape Town SOC, the social workers or prosecutors refer complainants to relevant counselling services, it seems that not all complainants are either referred or have access to counselling services. This is an area that requires further research. It is the responsibility of the Department of Social Development to facilitate closer co-operation between the SOC and organisations that provide counselling. Some prosecutors indicated in their interviews that when they consulted with complainants on the day of the trial, they sometimes found that s/he was not ready to testify, resulting in the case being postponed. This trend clogs up the system further.

Another area that requires attention is follow-up health visits to a clinic. The magnitude of the HIV/AIDS pandemic is such that children who have been sexually abused - and where there has been an exchange of bodily fluid - should see a health professional to test their HIV status, as well as testing for other STDs.

7.7 The issue of the victim's age

At all three courts, the overriding approach to applications for use of the camera facility is cause for concern. The study found that, to a large extent, younger children have easier access to the camera facility. It would seem that there is an assumption on the part of both prosecutors and magistrates that older victims are less traumatised by



a sexual offense and therefore are better able to face the accused in court. Some interviewees did note that there are some complainants who want to face the accused, but that was the exception rather than the norm. Many interviewees said that the issue of age, together with a number of other factors, influenced their decision on whether to make an application to use the camera facility. The general consensus seemed to be that children under 12 would more readily be granted such applications. Using the age of 12 years as a yardstick does not take into account the emotional development of the child and the impact that the sexual offense has had on the child. This is another issue in need of further examination.

7.8 Training

In their interviews, all role-players acknowledged the importance of training to improve their work performance. They also pointed out which roleplayers they thought required training.

As with other aspects of the SOC, greater integration in the planning and execution of training is required. The responsibility of managing a training programme should be located with a specific roleplayer, who can then identify training needs across sectors and plan for the implementation of training to meet these needs. While each roleplayer could still provide specialised training to their own staff, a single co-ordinating body could develop and present a basic core course on child sexual abuse that cuts across all the disciplines. All new staff members that join the programme would benefit from a basic introductory course that illustrates how the court should operate optimally and clarify the roles of all the roleplayers. In addition, there should be regular in-service training.

Training has to be built into the budgets of the respective roleplayers. This is where functional budgeting can play a role, in that all roleplayers could make a contribution to such a cross-cutting training programme.

In conclusion

The Sexual Offences Court is a programme that illustrates in practice that inter-sectoral collaboration is possible. It shows that the government is able to respond to the needs of women and children.

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Appendix I

The in depth interviews were held with all the service providers, some service users and key role-players, both government department official and individuals in NGO's. Below is a list of those interviewed.

Department of Justice

Key informants

- Director: SOCA Unit
- Senior Advocate: SOCA Unit
- Director: Child and Youth Affairs

Service Providers

Wynberg, Cape Town and Mitchell's Plain Magistrates Court:

- Senior Prosecutors
- Control prosecutors
- Prosecutors
- Magistrates
- Intermediaries

Department of Safety and Security

Key informants

- National Commander of the Family Violence and Child Protection Unit

Service Providers

- CPU Officers

Department of Social Development

Key informants

- Assistant Director

Service Providers

- Social Workers

Department of Health

Service Providers

- District Surgeons

NGO's

Key informants and Service Providers

- Molo Songololo – Director
- Rapcan – Director
- Ilitha la Bantu – Director