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Sexual Offences Courts in South Africa: *Quo vadis?*

Summary

Since the establishment of the first Sexual Offences Court in Wynberg in 1993, various developments have taken place that include, but are not limited to, the following: several investigations into these courts were undertaken; the Sexual Offences and Community Affairs Unit (SOCA Unit) was established; a blueprint for Sexual Offences Courts was drafted and later refined; and, by 2007, the number of Sexual Offences Courts had increased to 59. These courts have performed exceptionally well compared with general regional courts and conviction rates rose to 70 per cent on average. Despite the obvious success of these courts, the Minister of Justice and Constitutional Development declared a moratorium on the establishment of additional Sexual Offences Courts pending the outcome of an evaluation of existing Sexual Offences Courts. In this article, a synopsis of the development of Sexual Offences Courts is given and the subsequent evaluation commissioned by the Minister is assessed and is supplemented with recommendations to enhance efforts to combat sexual offences through the Sexual Offences Courts.¹

Howe vir Seksuele Misdrywe in Suid-Afrika: *Quo vadis?*

Sedert die totstandkoming van die eerste Howe vir Seksuele Misdrywe in 1993 te Wynberg het verskeie ontwikkelinge plaasgevind, onder andere is verskeie ondersoekte geloods, die Sexual Offences and Community Affairs Unit (SOCA Unit) is gestig, 'n bloudruk vir Howe vir Seksuele Misdrywe is opgestel en later verfyn en teen 2007 was daar 59 Howe vir Seksuele Misdrywe operasioneel. Hierdie howe het besonder goed gevaar in vergelyking met gewone streekshowe en die skuldigbevindingskoers in hierdie howe het gestyg tot gemiddeld 70 persent. Ten spyte van die ooglopende sukses van hierdie howe het die Minister van Justisie en Grondwetlike Ontwikkeling 'n moratorium geplaas op die vestiging van verdere Howe vir Seksuele Misdrywe hangende die uitkoms van 'n evaluering van die bestaande Howe vir Seksuele Misdrywe. In hierdie artikel word die ontwikkeling van die Howe vir Seksuele Misdrywe saamgevat en die resultate van die assessering wat die Minister aangevra het word geëvalueer en aanbevelings word gemaak om die bekamping van seksuele misdrywe in die Howe vir Seksuele Misdrywe te versterk.

1 This article reflects the available information up to June 2008. Further developments after this date will be material to be covered in a follow-up article.

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1. Introduction

The successful management of sexual offence cases in court poses a challenge for all role-players, especially in comparison with other offences. Specific factors complicate the effective handling of sexual offence cases in court, namely the high incidence of sexual offences, difficulties in prosecuting and adjudicating these offences, and the unique needs of the victims of these crimes.

The incidence of sexual offences is unacceptably high in South Africa. The trend reflects that, from 2001 to 2007, between 52 000 and 55 000 rape cases were reported annually.² In this regard, Acting Judge Matthee stated the following in *S v Mlandeli Dayimani*³:

I accept that there would be a certain lie factor in these statistics, but have no doubt that such lie factor would be outweighed by the many matters of rape which [are] never reported.

This statement is underpinned by the estimate of the National Institute for Crime Prevention and Re-integration of Offenders (NICRO) that only 1 out of every 20 rapes is reported to the police, while the South African Police Service places the estimate of reported rapes at 1 out of every 35 rapes.⁴ The position of child victims of sexual abuse is especially disconcerting. According to the official statistics of the Department of Safety and Security, the number of reported sexual offences against children escalated to an alarming 22 486 in the 2004 to 2005 financial year.⁵ In other words, about 60 children are raped every day in South Africa.⁶ Finally, what is most disturbing are the reports for 2005 indicating that only 6 to 7 per cent of the reported rape cases against children were successfully prosecuted.⁷ Acting Judge Matthee rightfully stated the following in the unreported case of *S v Mlandeli Dayimani*:

I have an aversion for adjectives and exaggeration, but in the light of the statistics highlighted above I can without fear of contradiction state that our Province and indeed our Country [face] an evil of gigantic proportions, especially when it comes to the barbaric dehumanisation and brutalisation of girl children by means of rape.⁸

2 SAPS 2006:1; SOCA Unit 2002a:13; SAPS 2007:s.p.

3 Unreported case of *S v Mlandeli Dayimani*, Case no. CC 12/2007, with judgment being handed down on 26 September 2007 in the Eastern Cape Division in Grahamstown: page 13:line 3.

4 SALC 1999:66; SALC 1997:47. See also Gillwald 1999:2; London *et al.* 2005:194; *S v Van Wyk* 2000 1 SACR 45 at 47b-c.

5 Steenkamp 2005:4.

6 In *S v Mlandeli Dayimani*, Case no. CC 12/2007, page 12:line 16, it was found that, on average, there had been a report of a rape of a girl younger than 15 years every third day and that every 16 days a girl younger than 5 was raped. These figures are the averages for two-and-a-half years — from January 2005 to June 2007 — in the Grahamstown policing area.

7 Steenkamp 2005:4; Morna 2006:2. These figures are even worse in some areas such as the Grahamstown policing area, where the court found in *S v Mlandeli Dayimani* that only 28 percent of the reported cases were heard in court, with the conviction rate being a mere 3.6 percent: page 13:line 10.

8 Page 13:line 20.

These perturbing statistics stress the extent of the problem and the need for effective justice to be delivered in those courts dealing with sexual offences.

Apart from the problem of excessive numbers, the management of sexual offence cases in court is challenging owing to the degree of difficulty inherent in prosecuting and adjudicating these offences.⁹ To secure a conviction in cases of sexual abuse is often a complicated task because of numerous evidential, procedural and other complexities.¹⁰ One explanation for this is that these offences usually occur in private, and, as a result, there are seldom eyewitnesses to corroborate the complainant's testimony and thus strengthen the case. Recognising the difficulty witnesses experience in testifying about the intimate details of these crimes, the authorities have realised that special physical facilities are often necessary, such as suitably adapted court rooms,¹¹ as well as private consultation and waiting areas.¹²

Another difficulty encountered during the court process is that the evidence led in sexual offence cases is often of a scientific and complicated nature, such as evidence identifying a person by means of Deoxyribonucleic Acid (DNA) "fingerprinting".¹³ Although it is agreed that DNA profiling can be of crucial importance in rape cases, Schwikkard and Van der Merwe rightly warn that this scientific process "must be executed and recorded with such care that it can be verified by any objective scientist, and *a fortiori* also a court of law".¹⁴ For this reason, prosecutors introducing DNA evidence via expert witnesses must be knowledgeable about the quality control and quality assurance procedures that must be followed in the laboratory in order to ensure that the DNA profiling is valid and reliable.¹⁵

A further challenge for prosecutors in rape cases is the efficient leading of evidence on specialised subject matters by experts from various disciplines, such as psychology, psychiatry, social work and health.¹⁶ Examples of such

9 Stanton, Lochrenberg & Mukasa 1997:1; NPA s.a.d:1.

10 Müller & Hollely 2000:287-319.

11 *Inter alia*, court rooms are equipped with closed-circuit television sets, intermediary rooms and one-way mirrors.

12 NPA s.a.d:1.

13 DNA is the human genetic blueprint of an individual. For an explanation of the complicated nature of DNA testing technology, see *S v Maqhina* 2001 1 SACR 241 T at 247c -251j; *S v R* 2000 1 SACR 33 W:39C-D, as well as Schwikkard & Van der Merwe 2002:198 and the literature cited there.

14 Schwikkard & Van der Merwe 2002:198; *S v R* 1 2000 SACR 33 W. In *S v Maqhina* 2001 1 SACR 241 T at 242F-G and 247B-252H, the court rejected the DNA evidence, indicating by implication that specialised knowledge is needed to present and evaluate such evidence. The court emphasised that, when presenting expert evidence of DNA testing, the scientific analyses, the testing process and the control measures applied have to be executed and recorded with such caution that the results can later be verified by an objective scientist, and also by the trial court. See also London *et al.* 2005:219 on the court's role of evaluating whether expert testimony rests on a reliable foundation.

15 Meintjies-Van der Walt 2001:381. For a further discussion, see Meintjies-Van der Walt 2001:378-383.

16 London *et al.* 2005:219; Ceci & Hembrooke 1998:11-24; 105-120; Raulinga 2002:25-31.

subject matters that are not grounded in the legal field include expert testimony on the Post Traumatic Stress Disorder,¹⁷ the Rape Trauma Syndrome¹⁸ and the Child Sexual Abuse Accommodation Syndrome.¹⁹ Prosecutors must also be equipped with adequate knowledge of relevant health matters, such as the medical examination of rape victims and the doctors' subsequent findings.²⁰ London *et al.* and Kreston point out that, although a child has been sexually abused, there may be no physical injuries and accordingly no definitive medical or physical evidence to corroborate such abuse.²¹ Even in these circumstances, a successful prosecution may be possible, but prosecutors must have adequate training to proceed with the prosecution.²² In light of the above discussion, understanding, presenting and evaluating multidisciplinary expert evidence require that prosecutors and presiding officers have appropriate expertise.²³

In addition to the high incidence of sexual offences and the difficulties relating to the court process, the impact of sexual abuse on victims, especially child victims, often has far-reaching, short-term and long-term physical, emotional, psychological and developmental effects.²⁴ These effects also impact on

17 In the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV TM), the essential features of Post Traumatic Stress Disorder are described as “the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one’s physical integrity ...” American Psychiatric Association 2000:463. For a further discussion of the post-traumatic stress disorder, see American Psychiatric Association 2000:463-467; Ceci & Hembrooke 1998:249-261. Also see Müller 2002:101-105 for a discussion of the complex post-traumatic disorder.

18 Rape Trauma Syndrome, first identified in 1974 by Burgess & Holmstrom 1974:982, is the acute phase and long-term reorganisation process as a result of rape. The syndrome of “behavioral, somatic and psychological reactions is an acute stress reaction to a life-threatening situation” — Burgess & Holmstrom 1974:982. While Post Traumatic Stress Disorder is a recognised psychiatric disorder, Rape Trauma Syndrome is a condition that often develops in the aftermath of sexual assault and consists of behavioural, somatic and psychological symptoms — Van der Bijl 2006:120. Van der Bijl 2006:116 & 123 also states that the legal literature on Rape Trauma Syndrome from a South African perspective is very limited. Regarding case law, in *S v Van Wyk* 2000 2 SACR 45 at 50H-51G recognition was given to the suffering and subsequent cluster of symptoms experienced by rape victims, which the court referred to as “post traumatic rape syndrome”. It must be noted that this term is unfamiliar and is not to be found in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV TM). It is not clear whether the court meant to refer to the Rape Trauma Syndrome or the Post Traumatic Stress Disorder.

19 London *et al.* 2005:194-195,197; Summit 1983:181-190; Sandler & Sepel 1990:225-227. Summit 1983:181-190 developed the Child Sexual Abuse Accommodation Syndrome model to explain why children may not disclose intrafamilial abuse, may provide tentative disclosures and may subsequently retract such disclosures. In contrast, London *et al.* 2005:219 have pointed to studies that do not consistently support Summit’s findings.

20 Raulinga 2002:26-27.

21 London *et al.* 2005:194; Kreston 2007:81; 89.

22 Kreston 2007:89-93.

23 SAHRC 2002:28; SALC 1999:66-67.

24 Sandler & Sepel 1990:235-238. For a more detailed discussion, including a discussion of the traumagenics model, see Müller & Hollely 2000:106-135; Müller 2002:99-120.

children's ability to testify efficiently.²⁵ For this reason, prosecutors need special training so that they are knowledgeable about the developmental stage of the child witness,²⁶ the dynamics of sexual abuse and its effects on child witnesses. Even with this expertise, prosecutors often find it demanding to consult with traumatised complainants,²⁷ to prepare them for court and, eventually, to lead their evidence successfully.²⁸ Müller and Hollely point out that the judicial system requires that a victim give a "prompt, clear and consistent report of a recognisable crime".²⁹ Specialised training concerning the effects of sexual abuse on victims, the appropriate treatment, court preparation, support as well as multidisciplinary services for sexually abused victims is essential to enable children to testify optimally in court.³⁰ Insensitive, antagonistic or rushed treatment brings about secondary victimisation,³¹ with the result that victims often withdraw from the court process. Therefore, to ensure justice and the fair treatment of victims before and during the trial, court personnel need the knowledge and expert skills necessary to deal with the challenges these victims experience.³²

The effects of sexual abuse on witnesses further present a challenge for proper adjudication. Presiding officers need to be knowledgeable about the impact of sexual abuse and the resulting symptomologies so as to have insight into the demeanour and behaviour of the victims testifying before them.³³

25 Müller & Hollely 2000:140; 289.

26 For a discussion of the importance that court personnel be knowledgeable about the cognitive and language development of the child witness see Müller 2003:2-9; Massengale 2001:2-5.

27 For a discussion on, and assessment of, the current techniques used in forensic interviews with sexually abused children and new recommendations, see Cronch *et al.* 2005:196-207.

28 For a further discussion on, and guidelines for, pre-trial interviews with child witnesses, see Müller 2001:27-81. An example of a prosecutor not succeeding in interviewing a child witness was reported in *S v Bezuidenhout* 1991 1 SACR 43A at 47F-G.

29 Müller & Hollely 2000:288; London *et al.* 2005:194.

30 Müller & Hollely 2000:70-73; Hollely 2003:28; *Klink v Regional Court Magistrate NO and Others* 1996 (3) BCLR 402 (E) at 403; SALC 1997:46; SALC 2002:126. For a discussion of the methodologies involved in the court preparation of the child witness, see also Müller 2004:85-118.

31 After victims are brave enough to report sexual offences, they come into contact with various officials in the criminal justice system, for example the police, district surgeons or forensic nurses, prosecutors, court interpreters and presiding officers. "The process of interacting with these systems and officials can be extremely traumatic, especially when survivors ... are treated as objects ... rather than as dignified human beings who are in a crisis that is not of their own making" — Gillwald 1999:3.

32 Müller 2003:2-9; Massengale 2001:1-5. Stanley 1990:39 emphasises that "it is essential to have knowledge of child and adolescent development to understand the issues and needs of the sexually molested victim". In addition, prosecutors and presiding officers must be knowledgeable as to how children disclose sexual abuse. For example, delay of abuse disclosure is common and abuse disclosure may be more an ongoing, bit-by-bit process than a single event, followed by recantations of prior disclosures — London *et al.* 2005:195, 217; 219-220; DeVoe & Faller 1999:218-219, 225-226.

33 Müller 2002:100. For a broader discussion, see Müller 2002:99-120.

These complicating factors in sexual abuse cases justify sensitised treatment of sexually abused victims. However, a research study conducted by Rape Crisis Cape Town, the African Gender Institute: University of Cape Town (UCT) and the South African Human Rights Commission emphasises that rape victims frequently suffer secondary victimisation in the normal criminal justice system.³⁴ To ensure a fair trial, victims who are brave enough to testify in court need support and sensitive treatment.³⁵ Consequently, a victim-centred approach is essential for the appropriate handling of sexually abused victims. Then again, it must be borne in mind that a victim-centred approach is time-consuming and that capacity, in the form of human and other resources, is essential.

From the discussion of these complicating factors it is clear that the successful finalisation of sexual offence cases in court is a multifaceted and challenging undertaking.³⁶ Sexual Offences Courts are earmarked to meet this challenge. These courts have achieved remarkable successes,³⁷ yet a moratorium was placed on the establishment of additional courts.³⁸

This article investigates Sexual Offences Courts in South Africa. The introduction, development, distinguishing features and functioning of these courts are mapped out. As has been indicated in various evaluations of Sexual Offences Courts, these courts are open to criticism and do face substantial challenges. However, despite the criticism and challenges, significant improvements have been reported in these courts in various areas, improvements relating to conviction rates, training, and facilities and services for victims. As a result of the Minister placing a moratorium on the further establishment of these courts in 2005, the future of these courts is now veiled in uncertainty. It is submitted that the future of these courts must be secured by lifting the moratorium. The way forward for Sexual Offences Courts is to build on their achievements, address the challenges and further unlock their considerable potential in contributing to improved justice by way of the effective and efficient management and handling of sexual offence cases.

34 Stanton, Lochrenberg & Mukasa 1997:11-12; 44-58; 102-167; 153. In 2002, the Vera Institute of Justice and the Bureau of Justice Assistance Report assessed the NPA and the entire criminal justice system. The Vera Institute Report confirmed that, despite formal policies emphasising the concerns of victims, the commitment to victims of crime in general has been *ad hoc* and piecemeal. Furthermore, female complainants of sexual abuse in particular endure secondary victimisation during all stages of the criminal justice process — Vera Report 2002:25-26.

35 Müller & Van der Merwe 2004:136.

36 Stanton, Lochrenberg & Mukasa 1997:1.

37 NPA 2003:31; NPA 2004:53; NPA 2005b:4; NPA 2006:42.

38 Mabandla 2005:3; NPA 2005a:51.

2. History of Sexual Offences Courts

2.1 First Sexual Offences Court

In 1993, the first Sexual Offences Court was created in South Africa as an innovative measure for improving the prosecution and adjudication of sexual offences.³⁹ Following a public outcry at the inefficient handling of some rape cases in the Cape Town magistrate's court, Mr Frank Kahn, the then attorney-general of the Western Cape, established the first Sexual Offences Court in Wynberg.⁴⁰ This court tried sexual offences exclusively and was also equipped with appropriate facilities to address the needs of complainants in these cases.

The Wynberg Sexual Offences Court Project had three broad objectives.⁴¹ The first objective was to reduce insensitive treatment or secondary victimisation of victims in the criminal justice system by following a victim-centred approach. The second objective was to adopt a coordinated and integrated approach among the various role-players who dealt with sexual offences.⁴² And the third objective was to improve the investigation and prosecution of sexual offence cases, to improve the reporting of such cases and to increase conviction rates in these cases.⁴³

The Wynberg Sexual Offences Court differed from general regional courts in various ways. First, a victim-centred approach was followed even before the trial commenced.⁴⁴ As soon as a victim reported a sexual offence to the police, a multidisciplinary team rendered services to the victim. A social worker from the then Department of Welfare was appointed as a full-time, victim-support services coordinator.⁴⁵ This coordinator arranged for intermediaries and also for appropriate services and the counselling of victims.⁴⁶

In the context of the victim-centred approach, several measures were initiated to reduce the secondary victimisation of victims. For example, although the Sexual Offences Court was still housed in the same magistrate's office building with the other criminal courts, it was moved to a separate floor. The reason for this arrangement was to prevent face-to-face contact with the accused and with the general public in the corridors of the court building while victims waited to testify. A further measure was the provision of private, colourful and victim-friendly waiting rooms for victims attending court. Here food and support services were provided for victims by Rapcan, a nongovernmental organisation.⁴⁷ Another measure taken to reduce secondary victimisation was to adjust the personnel component of this court. Two prosecutors were assigned to the court instead of the usual one prosecutor per court. This arrangement

39 Walker 2002:1; 13.

40 Rasool 2000:11; Stanton, Lochrenberg & Mukasa 1997:1.

41 Stanton, Lochrenberg & Mukasa 1997:1; 148.

42 NPA s.a.b:1.

43 SAHRC 2002:28.

44 Walker 2002:13.

45 SAHRC 2002:28.

46 Vivier 1994:569; SAHRC 2002:28.

47 SAHRC 2002:28.

enabled the prosecutors to take turns in presenting their cases. Out-of-court days gave prosecutors the opportunity to prepare more thoroughly. They could research their cases, consult with witnesses, guide the investigation and conduct *in loco* inspections.⁴⁸ While in other courts more than one prosecutor often dealt with a case, having two prosecutors per court made vertical prosecution possible.⁴⁹ This meant that the prosecutor in a specific sexual offence case was tasked with handling the case from the moment the police docket was received, through the trial stage, to the completion of the case.⁵⁰ Magistrates assigned to this Sexual Offences Court worked according to a rotational system, presiding in this court for one week in every six.⁵¹

The Wynberg Court was also provided with facilities suited to its objectives. There were private waiting rooms for victims and the Sexual Offences Court was also the first court in Wynberg to be equipped with a closed-circuit television (CCTV) facility.⁵² This latter facility enabled minors who were victims to testify in a separate room while court officials could still see and hear them testifying on the television monitor in the courtroom. In appropriate circumstances, testifying by means of an intermediary was also possible.⁵³ These facilities were aimed at securing justice by enabling child victims to testify to the best of their ability without the secondary trauma caused by facing the accused in court.

2.2 Evaluation of the first Sexual Offences Court

In 1997, the Wynberg Court was evaluated by Rape Crisis Cape Town, the African Gender Institute: UCT and the South African Human Rights Commission. In their evaluation report, the Wynberg Sexual Offences Court Project was recognised as a deserving initiative. The project was rated as being partially successful in establishing integration and teamwork among the different role-players dealing with sexual offences, in reducing victim trauma and in improving reporting and conviction rates in the Cape Town region.⁵⁴ To reach this level of success after only four years in operation was considered a laudable achievement.

On the downside, the evaluation report pointed to a number of challenges that would need to be addressed in order to fully realise the court's objectives.⁵⁵ The report recommended that all court personnel receive ongoing, specialised training to improve the prosecution and adjudication of sexual offence cases. It further recommended that district surgeons be available 24 hours a day to avoid delays in forensic examinations. A further recommendation was that a complaint mechanism be established, as well as mechanisms to disseminate

48 SAHRC 2002:28.

49 Practising vertical prosecution is in accordance with the practice adopted in other jurisdictions, such as Queens County New York, which recognises the advantages of such prosecution — see Miller 2003:2. See also Williams 2005:131-148.

50 SAHRC 2002:28; Stanton, Lochrenberg & Mukasa 1997:46.

51 Vivier 1994:569; Stanton, Lochrenberg & Mukasa 1997:46.

52 Also see *Criminal Procedure Act 51/1977*:sec 158(3).

53 *Criminal Procedure Act 51/1977*:sec 170(A).

54 SAHRC 2002:29.

55 SALC 2002:8.

information to victims about the criminal process and the progress being made with their cases. It was also proposed that an integrated and coordinated multi-agency project regarding sexual offences be initiated to enhance the commitment of all role-players to Sexual Offences Courts. Finally, the report also called upon the Department of Justice to draft a blueprint for Sexual Offences Courts, based on the improved Wynberg model, that would serve as a benchmark for future Sexual Offences Courts in South Africa.⁵⁶ It was clear from these recommendations that official policy and guidelines for future developments had to be formulated.

2.3 Further Sexual Offences Courts

The Department of Justice recognised the value of specialised courts for sexual offences and established the National Sexual Offence Court Task Team in 1998. The objectives of this task team included the establishment of Sexual Offences Courts in all regional court districts in the country and the provision of training for both justice personnel and role-players dealing with sexual offences.⁵⁷

In February 1999, South Africa's second court dealing exclusively with sexual offences was established in Bloemfontein.⁵⁸ The establishment of this court was the result of an integrated effort by local, dedicated role-players such as NICRO, the Department of Social Development, the Rape Unit of the South African Police Service and the senior public prosecutor at the magistrate's court in Bloemfontein. Since a national blueprint had not yet been drafted, these role-players drew up their own blueprint, which resembled, in some instances, the Wynberg model. From 1999, additional Sexual Offences Courts were established and, by 2000, Sexual Offences Courts had also been established in Durban, Parow and Grahamstown.⁵⁹

2.4 Further evaluations

Further evaluations of Sexual Offences Courts were conducted. These evaluations included the investigations by IDASA in 2001⁶⁰ and by the South African Human Rights Commission (SAHRC)⁶¹ in 2002, as well as an audit of Sexual Offences Courts called for by the Minister of Justice and Constitutional Development in 2006.⁶²

The 2001 IDASA study compared the Wynberg and Cape Town Sexual Offences Courts with the Mitchell's Plain magistrate's court, which had no Sexual Offences Court. The aim of the study was to "examine whether the Department of Justice (DOJ) has become more responsive to children's rights" through

56 SAHRC 2002:29.

57 Müller & Van der Merwe 2004:136.

58 Opperman 2003:1.

59 Majokweni 2000:6.

60 IDASA 2001:1-59.

61 SAHRC 2002:1-82.

62 NPA 2005a:51.

Sexual Offences Courts.⁶³ IDASA was unable to make a comprehensive comparison owing to insufficient data.⁶⁴ Therefore, the study recommended that appropriate data-collection systems be implemented to allow the monitoring and evaluation of these courts. The study also found that staff at Sexual Offences Courts were “overloaded with cases and work[ed] in a very stressful environment”. Consequently, it was recommended that debriefing and counselling services be provided for the staff at these courts. The study also found that the lack of permanent magistrates for the Sexual Offences Courts “impacted on the efficiency of the courts”. Furthermore, since coordination between the relevant state departments was problematic, it was recommended that overarching structures at implementation level, as well as at provincial and national level, be established. Although costing was done for the running of a Sexual Offences Court, an updated costing was recommended so as to make provision for inflation and salary increases. The importance of training was again stressed and a “single co-ordinating body [which] could develop and present a basic core course on child sexual abuse that cuts across all the disciplines” was recommended. In conclusion, the study found that “inter-sectoral collaboration is possible” and that “government is able to respond to the needs of women and children”.⁶⁵

Subsequent to the IDASA study, the SAHRC released an extensive report on sexual violence against children in 2002. This investigation focused on 11 different aspects, including the prosecutorial system, compliance with national and international human rights standards with regard to children subjected to sexual violence, and the way in which these cases were handled by the different agencies.⁶⁶ The SAHRC found, *inter alia*, that the prevailing system of dealing with child sexual violence was hostile and further traumatised children and that “government [was] failing to live up to its commitments in terms of the constitution and other international human rights instruments”.⁶⁷ In addition, it was found that a “coordinated criminal justice response to child sexual abuse [was] critical to ensure the protection of South African children”.⁶⁸ Although the procedures followed did not convince the SAHRC that children were properly handled in the criminal justice system, it recommended that there should be “an express rollout of specialised sexual offences courts”.⁶⁹

Apart from the above-mentioned studies, other researchers also conducted investigations. Müller and Van der Merwe⁷⁰ conducted an investigation focusing on the prosecutors in Sexual Offences Courts in December 2001. They found that 50 per cent of the prosecutors did not receive any specialised training

63 IDASA 2001:4.

64 IDASA 2001:53. It was not able to compare the conviction rates, because the data was incomplete and inconsistent and because no distinction was drawn between women and child complainants.

65 IDASA 2001:53-56.

66 SAHRC 2002:2-3.

67 SAHRC 2002:66.

68 SAHRC 2002:66.

69 SAHRC 2002:74.

70 Müller & Van der Merwe 2004:141-142.

before appearing in Sexual Offences Courts and that those who did receive training were subjected to nonstandardised training on an *ad hoc* basis. They reported that prosecutors felt “drained and emotionally traumatised after cases”.⁷¹ As far as the selection of prosecutors for Sexual Offences Courts was concerned, they found that only some of the prosecutors requested to be in the Sexual Offences Courts, while others had been assigned to these courts without being given any choice in the matter.⁷² It is clear from their investigation that some prosecutors had a natural ability to work with children and seemed to be empathetic, while others clearly used the Sexual Offences Courts as a stepping stone in their career paths or were forced to work there. One of their respondents even went so far as to say, “I don’t even like working with children”.⁷³ It was accordingly recommended as follows:

... it should be considered an essential prerequisite that only prosecutors who [are] willing and interested be allowed to practise as sexual offences prosecutors.⁷⁴

The prosecutors indicated that poor facilities, an unfriendly environment, a lack of time, little or no experience, a lack of training, a lack of access to essential material such as case law, and the lack of emotional support prevented them from achieving specialisation.⁷⁵ They indicated that they needed effective management, training, emotional support and multidisciplinary involvement to overcome these obstacles.⁷⁶ Better salaries and more time to perform their duties were the major factors that would have motivated the respondents to become more effective prosecutors. Other motivating factors included access to better facilities, such as offices, interview rooms and closed-circuit television facilities, as well as access to resources such as law reports, computers and research. They also stressed the importance of other role-players, such as doctors, police officials and intermediaries, being properly skilled and available. Finally, Müller and Van der Merwe recommended a preparation programme for child witnesses to improve the effectiveness of their testimony.⁷⁷

2.5 Other developments

Various other developments had a direct or indirect bearing on Sexual Offences Courts, with a number of initiatives being introduced almost simultaneously from 1999 onwards. These developments included, amongst others, the drafting of a number of policies, the establishment of task teams and the creation of the Sexual Offences and Community Affairs Unit (SOCA unit).

71 Müller & Van der Merwe 2004:145.

72 Müller & Van der Merwe 2004:142-143.

73 Müller & Van der Merwe 2004:142.

74 Müller & Van der Merwe 2004:143.

75 Müller & Van der Merwe 2004:147-148.

76 Müller & Van der Merwe 2004:148-149.

77 Müller & Van der Merwe 2004:149.

2.5.1 Sexual offences and the Community Affairs Unit

To strengthen the government's prioritisation of combating sexual violence, particularly against women and children, President Thabo Mbeki issued a proclamation on 15 September 1999 establishing the SOCA Unit.⁷⁸ This unit is a specialised unit within the NPA and a special director of public prosecutions, Advocate Thoko Majokweni, was appointed to head up the new unit.

The SOCA Unit comprises four sections. The Sexual Offences Section is one of these sections.⁷⁹ The objectives of this unit are to improve the conviction rate in sexual offence cases through effective prosecution, to reduce victimisation within the criminal justice system⁸⁰ by establishing multidisciplinary care centres and by adopting a victim-centred approach, and to develop the skills of all role-players in the multidisciplinary prosecution of these offences.⁸¹ In short, the Sexual Offences Section has the important and challenging task of developing best practice in dealing with sexual offences by initiating relevant measures and systems. One of the most significant best practices to have been developed for handling sexual offences has been the promotion of Sexual Offences Courts. Since 1999, the SOCA Unit has been tasked with driving the roll-out of the Sexual Offences Courts.⁸²

In evaluating the efficiency of the Wynberg Court model, the SOCA Unit identified some shortcomings, such as the lack of official guidelines for court personnel and of a national blueprint for the development of future Sexual Offences Courts. To address these shortcomings, the SOCA Unit developed an official blueprint for Sexual Offences Courts in 2002, thereby giving effect to another recommendation in the evaluation of the Wynberg Court in 1997.⁸³ As will be indicated later, this blueprint also endorses and addresses many of the findings of the investigation by Müller and Van der Merwe and its recommendations.⁸⁴

The objective was that all new Sexual Offences Courts should comply with the blueprint.⁸⁵ The blueprint requirements call mainly for an extensive, multidisciplinary personnel component and for special facilities for Sexual Offences Courts.⁸⁶ These requirements entail considerable expense and are

78 Rasool 2000:11; NPA 2005a:37.

79 For further details regarding the Sexual Offences Section and the other 3 sections of the SOCA Unit, see NPA 2005a:37-39.

80 According to Nkala, the prevention of secondary victimisation is one of the primary goals of the Sexual Offences Section, because the neglect of a victim's needs causes witnesses and complainants to exit the criminal justice system owing to ineffective service delivery. The SOCA Unit also realised that there are "alarming numbers" of silent victims who do not even enter the criminal justice system for fear of secondary victimisation — Nkala 2005:67.

81 NPA s.a.d:1.

82 Stack & Soggot 2001:23.

83 SOCA Unit 2002a:13-14; NPA s.a.d:1-4.

84 Müller & Van der Merwe 2004:136-151.

85 NPA s.a.d:2-3.

86 SOCA Unit 2002b:13. The original blueprint requirements included special courts with appropriate facilities, 2 prosecutors per court, experienced magistrates, victim assistant services, counselling services, administrative support, case managers, intermediaries and legal aid attorneys.

far-reaching; thus it will be a mammoth task to provide Sexual Offences Courts on a national basis. On 10 April 2005, the blueprint for Sexual Offences Courts was revised and upgraded by the SOCA Unit.⁸⁷

By May 2000, a multidisciplinary National Task Team was formed by the SOCA Unit to oversee the establishment of additional Sexual Offences Courts. This team comprised representatives of the then Department of Justice (DOJ), of the Department of Welfare and Population Development (DOWPD) and of the Department of Safety and Security (DOSS). The objectives of this National Task Team were to improve the existing initiatives, to establish properly equipped Sexual Offences Courts, to coordinate and ensure participation among all role-players, to put support systems in place for prosecutors and other court officials, and to coordinate specialised training for all role-players in the handling of child abuse.⁸⁸ The SOCA Unit, in conjunction with the Department of Justice and Constitutional Development (DOJCD), embarked on a process of rolling out Sexual Offences Courts in compliance with the national blueprint requirements.⁸⁹ By the end of the 2002/2003 financial year, 39 Sexual Offences Courts were in operation in South Africa.⁹⁰

In February 2003, the *National Strategy for the Roll Out of Specialised Sexual Offences Courts* was announced. The SOCA Unit facilitated a written agreement between the NPA and the DOJCD in which the parties undertook to streamline the roll-out and management of Sexual Offences Courts country-wide.⁹¹ Project oversight committees were established at a national, provincial and local level to facilitate the roll-out of Sexual Offences Courts.⁹² The national plan stressed the importance of a multidisciplinary approach and the fact that the NPA and DOJCD must be at the forefront of the efforts to reduce the incidence of sexual offences and to provide better services for victims.⁹³

2.5.2 Thuthuzela Care Centres

Another important development in managing sexual offences was the establishment of Thuthuzela Care Centres (TCC's) by the SOCA Unit. A TCC is a 24-hour facility providing professional support and services required by victims of sexual abuse. These one-stop service centres coordinate and centralise the activities of all role-players, providing investigative, prosecutorial, medical and psychological services under one roof.⁹⁴ Some of the TCC's are linked to a specific Sexual Offences

87 SOCA Unit 2005:1-3. E-mail confirmation from Mbakaza, SOCA Unit:26 August 2005.

88 Majokweni 2000:6.

89 SOCA Unit 2002b:13.

90 NPA 2003:30.

91 NPA & DOJCD 2003:1-7; NPA 2005a:48.

92 NPA 2005a:48.

93 NPA & DOJCD 2003:1-15. Certain of the literature prefers the term "survivors" and not "victims" — see the 1997 research report of Stanton, Lochrenberg & Mukasa entitled *Improved Justice for Survivors of Sexual Violence?*

94 NPA 2004:2;52-53. For a further discussion of the Thuthuzela model, the blueprint for TCC's and other related matters, see NPA 2005a:49-51; NPA s.a.d:3 and SOCA Unit 2002a:13-14; NPA 2007:46.

Court.⁹⁵ Where the TCC's are not linked to a specific court, victims are not turned away, but are referred to other general regional courts. The objectives of the TCC's, which are aligned with those of the Sexual Offences Courts, are to reduce the secondary traumatisation of victims, to increase the reporting and conviction rate, and to reduce the cycle time of sexual offences cases.⁹⁶ By 2007, a total of ten TCC's had been established nationally.⁹⁷

Apart from the 10 TCC's established by the SOCA Unit, other role-players also established similar one-stop victim-assistance centres, such as the Tshepong Victim Support Centre (Bloemfontein), the Teddy Bear Clinic (Gauteng) and Ikhaya Lethemba (Johannesburg).⁹⁸ The Eastern Cape Division also established a number of mini, one-stop sexual trauma centres.⁹⁹

At the TCC's and other victim-support centres, effect is given to one of the recommendations of the 1997 evaluation report on the Wynberg Court, namely that there be 24-hour availability of district surgeons. District surgeons are now more readily available for forensic examinations, since these support centres are situated at, or are linked to, hospitals. Furthermore, qualified forensic nurses are also used at some TCC's, such as at Manenberg in Cape Town.¹⁰⁰ Unfortunately, this service is not available to all victims of sexual abuse, because victim-support centres are not in place across the country, and because the majority of Sexual Offences Courts are not linked to a specific, one-stop victim-support centre.

The multidisciplinary "Thuthuzela Model" has received international recognition from the United Nations General Assembly for combating gender violence and is regarded as a "world best model".¹⁰¹ It is envisaged that there will be 80 TCC's in total by 2010.¹⁰² Despite claims that the roll-out of TCC's is on track, no new TCC's were established in the 2006/2007 financial year, but, according to the SOCA Unit, the roll-out of TCC's is indeed on track and enough funding is available to have 42 TCC's in total by the end of 2009.¹⁰³ Another laudable development is an auditing tool developed by the SOCA Unit to measure service-delivery levels at the TCC's.¹⁰⁴

2.5.3 Victim's Charter

When victims report crime and testify in court, they contribute significantly to offender accountability. In return, the criminal justice system should provide justice, treat victims with respect and acknowledge their rights. In 2002, the

95 NPA 2007:46.

96 SOCA Unit 2002b:13.

97 NPA 2006:42; NPA 2007:45.

98 Pretorius & Louw 2005:85-86.

99 NPA 2007:36.

100 Kenny: e-mail correspondence 25 May 2007.

101 NPA 2007:45-46.

102 Kenny: e-mail correspondence 25 May 2007.

103 NPA 2007:45; SOCA 2008:slide 6 & 12. Danish funding was received by the end of 2007, which will contribute towards the roll-out of 12 TCC's.

104 NPA 2007:45.

report of the Vera Institute of Justice suggested that the NPA should deepen its commitment to victims by way of measures such as the development of a charter of victim rights.¹⁰⁵ Towards the end of 2004, the Service Charter for Victims of Crime in South Africa (hereafter referred to as the Victim's Charter) was approved by the cabinet.¹⁰⁶ This charter aims to promote the principle of justice for all through seven rights which should be upheld in the course of a victim's contact with the criminal justice system,¹⁰⁷ namely the right to be treated with fairness and with respect for dignity and privacy, to offer information, and to receive information, as well as the rights to protection, assistance, compensation and restitution. The Schedule of Minimum Standards on Services for Victims of Crime was developed to explain the content of the rights in the Victim Charter and to specify how to implement these rights.¹⁰⁸ Victims of sexual abuse are empowered by the Victim's Charter and the Minimum Standards document to hold the criminal justice system accountable for delivering justice and for enforcing the stipulated seven rights in sexual offences trials. Apart from any specific requirements set for Sexual Offences Courts, prosecutors are also bound by the provisions of the Victim's Charter.

3. Nature, functioning and features of Sexual Offences Courts

3.1 Objectives

Sexual Offences Courts have specific objectives which are in line with the objectives of the SOCA Unit. These objectives are to increase the reporting and conviction rate in respect of sexual offences, to reduce the cycle time of cases and to reduce secondary victimisation of victims.¹⁰⁹ In short, the main aim of the Sexual Offences Courts is to enhance the efficient prosecution and adjudication of sexual offences and to accommodate victims' needs. To realise these objectives, Sexual Offences Courts have distinctive features which enable them to function differently from general courts as regards certain aspects.

3.2 Functioning and distinctive features

3.2.1 Dedicated to dealing with sexual offences

In examining whether Sexual Offences Courts are unique, vital questions to be answered are: What is a Sexual Offences Court? How does such a court differ from other courts? One of the most important differences between Sexual

105 VERA Report 2002:31.

106 DOJCD 2004a:1-5. See also Quintal 2004:1; Adams 2004:1.

107 DOJCD 2004a:2-4.

108 DOJCD 2004b:2-4. For a further discussion, see Artz & Smythe 2005:137-138.

109 SOCA Unit 2002b:13; National Project Oversight Committee 2003:2.

Offences Courts and other courts is that Sexual Offences Courts do not try any offences other than sexual offences. In short, Sexual Offences Courts are regional or high courts dedicated to dealing with sexual offences.¹¹⁰ Sexual Offences Courts also have various blueprint features which distinguish them from general courts in the handling of sexual offences.

3.2.2 Blueprint

To comply with the specific objectives of Sexual Offences Courts, a unique blueprint was designed for these courts. The requirements of the 2005, updated blueprint¹¹¹ can be categorised in three sections, namely the personnel component of Sexual Offences Courts, the structure and equipment of these courts, and the services rendered to victims at these courts.

The first category of blueprint requirements focuses on the personnel component. The personnel in Sexual Offences Courts differ from those in the general courts, because the blueprint has specific requirements pertaining to prosecutors, presiding officers and legal representatives.

With regard to prosecutors, both the 2002 and 2005 blueprints require that prosecutors recruited for these courts must comply with high standards. They must be specialist prosecutors with experience in criminal litigation, must have apposite legal knowledge and skill, must have the ability to manage vulnerable witnesses, and must be sensitised and committed to dealing with sexual offences.¹¹² The blueprint further requires that two prosecutors, instead of the usual one, be assigned to these courts.¹¹³ This arrangement enhances thorough preparation of cases on out-of-court days, in-depth consultations with witnesses prior to the trial, vertical prosecution, and active participation in prosecutor-guided investigations.¹¹⁴ Apart from calling for prosecutors to be remunerated appropriately as specialists, the blueprint further calls for debriefing to prevent burnout and for continued training to uphold high standards of prosecution.¹¹⁵

110 SAHRC 2002:28.

111 A copy of this document is attached as addendum B.

112 Specialised training is often sponsored by international donors. In 2003, training in advanced prosecuting skills was sponsored by UNICEF for 45 prosecutors of the SOCA-established courts — NPA s.a.a.:4. Training covers a range of topics, such as advanced skills for prosecuting the child offender, a topic which was presented in conjunction with the Institute for Child Research and Training for 135 prosecutors from 2004 to 2005 — NPA 2005:41.

113 See also SOCA Unit 2005:1; SOCA Unit 2002a:13; NPA s.a.d.:2. The National Prosecuting Service recommended a ratio of two prosecutors per court for every court (not only Sexual Offences Courts) to increase the number of court hours — see NPA 2007:31.

114 For a further discussion, see SAHRC 2002:28, where another positive aspect is mentioned, namely that, in contrast to other courts where police dockets often change hands, in Sexual Offences Courts the same prosecutor handles a case from the time a decision to prosecute is made until the case is finalised.

115 NPAs.a.d.:2. The SOCA Unit focuses on equipping specialised prosecutors with specialist skills — NPA 2005a:42.

The prescribed ongoing training is in line with the recommendations of the original evaluation report of 1997¹¹⁶ and the IDASA evaluation.¹¹⁷ The original blueprint required five years' experience in a regional court, while the 2005 version requires only a minimum of three years' experience in criminal litigation. An additional requirement was added in the 2005 blueprint, as a result of which prosecutors are now responsible for the coordination of the Local Project Oversight Committee (LPOC). Listed as a blueprint requirement, the LPOC fulfils the important role of facilitating the proper management of Sexual Offences Courts.¹¹⁸ The lack of formal structures to coordinate the different role-players at a local, provincial and national level was identified by IDASA in 2001 as a weakness.¹¹⁹ The LPOC has accordingly been earmarked to address this problem in future.

The next personnel component for which the blueprint stipulates specific requirements, concerns presiding officers. Presiding officers must be committed to working with sexual offences and are expected to have certain attributes, that is, they must be sensitised and empathetic to vulnerable victims.¹²⁰ Presiding officers are assigned to these courts for at least six months and must now also participate in the LPOC in terms of the 2005 blueprint. Although specialised training for presiding officers is not prescribed by the blueprint, it is submitted that such training is vital. In this regard, the proposed *South African Judicial Education Institute Bill* [B4D-2007], which recognises the importance of continued training of judicial officers, is to be welcomed. The complexities of sexual offences were highlighted earlier and it is submitted that judicial education in this regard, as envisaged by the Bill, will benefit victims of sexual abuse.¹²¹

The last personnel component prescribed by the blueprint is the legal aid attorney who must be available to the accused. In the original blueprint, only dedicated legal aid attorneys were required.¹²² However, in the latest blueprint, apart from participating in the LPOC, legal aid attorneys must be experienced and specifically assigned to Sexual Offences Courts.

The second category of blueprint requirements focuses on the structure and equipment of Sexual Offences Courts. The blueprint contains directives for

116 Stanton, Lochrenberg & Mukasa 1997:166.

117 IDASA 2001:56.

118 The LPOC consists of representatives of all the major role-players, such as the NPA, Justice, Legal Aid, the SAPS, Social Development, Health and NGO's. The Committee should meet monthly and report to the Provincial Project Oversight Committee.

119 IDASA 2001:54.

120 Müller 2002:282 states that, "in order for judicial officers to fulfill properly their responsibility of managing the testimony of the child witness, they must be trained to identify and apply various techniques during trial to reduce unnecessary emotional trauma" and increase the accuracy and completeness of the child's testimony. For a further discussion, see Müller 2002:280-296.

121 In the preamble to this Bill, the benefits of education and training are acknowledged. It is recognised that the law is much more "complex and varied, develops rapidly and is increasingly influenced by the globalisation of legal systems, trade, technology, new insights and challenges". The Bill further emphasises that the education and training of judicial officers are necessary to improve service delivery.

122 SOCA Unit 2002a:13-14.

the structuring and arrangement of these courts so as to serve the interests of sexually abused witnesses. Research indicates that, because of the intimate nature of sexual offences and the aftermath of sexual abuse, victims are often insecure and fearful when they have to be in the presence of the accused at the trial.¹²³ Accordingly, the blueprint requires that the location of these courts and of the associated services be such as to avoid contact between the accused and the state witnesses.¹²⁴ Furthermore, the blueprint prescribes private consultation areas, separate waiting rooms, and intermediary rooms.¹²⁵ Even if these structural requirements are met, the location will not be functional without the appropriate equipment. Hence the blueprint prescribes a closed-circuit television system and/or a one-way mirror system and intermediary rooms. The closed-circuit television facilities enable witnesses to testify in a separate room — thus they do not face the accused, but are still seen and heard by everyone in the courtroom.¹²⁶ In a similar manner, one-way mirrors may also be used to shield the child from the accused during testimony. In addition, the blueprint requires these courts to be equipped with anatomically detailed dolls which have body parts resembling genitalia.¹²⁷ These dolls may be used in court as a demonstration aid,¹²⁸ as a memory stimulus and as an anatomical model to name body parts — thus clearing up ambiguities when the child's verbal skills are limited.¹²⁹ Finally, the complete court setup must constitute a victim-friendly environment for witnesses. The victim-friendly

123 Bruce 2005:25; VERA Report 2002:26.

124 For example, the Sexual Offences Courts at Wynberg were moved to a separate floor to which the general public and accused persons had no free access.

125 An intermediary room is a separate room with audiovisual equipment which enables the child witness to testify by means of an intermediary and closed-circuit television in criminal proceedings in terms of section 170A of the *Criminal Procedure Act* 51/1977.

126 SALC 1997:60; NPA s.a.e:3. The courts have pointed out that the interests of the accused must certainly be taken into consideration as well. "When a witness testified via closed-circuit television, the size and resolution of the television set, as well as the way the camera was positioned, were crucial. There should be no reason why all parties in court could not view the witness fully on the monitor and accurately observe the reaction and demeanour of the witness" — *S v Staggie and Another* 2003 1 SACR 232 C at 251d-e and 252c-d. Section 158(4) of the *Criminal Procedure Act* 51/1977 also stipulates that the reaction of the witness must still be visible to the prosecutor and accused — see also Kriegler & Kruger 2002:416-417.

127 SALC 1997:61; Faller 2005:11-13. The literature also refers to these dolls as anatomically correct dolls — Stack & Soggot 2001:23. It is important to note that these dolls are not anatomically accurate, because they do not contain all body parts such as nails, ear and nose openings, and so forth. Only certain parts of the body such as the penis, anus, female breasts and vagina are anatomically detailed.

128 Children often use these dolls to demonstrate what has happened to them — Glaser & Frosh 1988:87; SALC 1997:61; Goldstein 1999:271; Holmes 2000:1. For a discussion of the advantages and disadvantages of using anatomical dolls with sexually abused children as well as of best-practice uses of anatomical dolls, see Faller 2005:8-14; Thierry *et al.* 2005:1132-1133.

129 Müller 2001:100-103. On the other hand, the literature indicates that the use of anatomical dolls is controversial, because some perceive the dolls to be suggestive and invoking of sexual fantasy — Goldstein 1999:270-271; Holmes 2000:1; Faller 2005:4-6; Thierry *et al.* 2005:1132-1133; Cronch *et al.* 2006:200-201.

atmosphere in consultation, waiting and intermediary rooms can be enhanced by means of pictures, toys and colourful furnishings.¹³⁰

Apart from the first two categories focusing on court personnel and special facilities, the blueprint also prescribes a third category of requirements emphasising the services to be rendered to victims at these courts. These victim services include intermediary services, victim assistance and victim support.

First, in terms of both blueprints, intermediary services must be available. This service allows child witnesses to testify in the intermediary room through an intermediary.¹³¹ Direct examination, cross-examination and re-examination of the child witness take place through the appointed intermediary. Each Sexual Offences Court must have its own pool of intermediaries. It is compulsory that legislative requirements must be met regarding the appointment of intermediaries and the exercise of their duties.¹³² Therefore, intermediaries must be specifically trained to comply with standardised practices, as well as with guidelines laid down in legislation and case law.¹³³ Apart from being dedicated and sensitised, intermediaries must also be able to handle language and cultural diversities. Finally, intermediaries should also participate in the LPOC in terms of the 2005 blueprint.

The second type of service prescribed by the blueprint is victim assistant services. In terms of the original blueprint, victim assistant services entailed the management and dissemination of information to victims, arrangements for victims to access services that they needed, the maintenance of a database of frequently required and accessed services, and the preparation of witnesses for court.¹³⁴ Those responsible for victim assistant services have to be empathetic and decisive and must have good organisational skills. Many of these services are included in the 2005 blueprint and involve, among other things: pre-trial court preparation in accordance with standardised practices;¹³⁵

130 Toys are often sponsored by retailers or volunteers — NPA 2005a:45; Stack & Soggot 2001:23.

131 The courts have emphasised that child witnesses experience “significant difficulties in dealing with the adversarial environment of a court-room” and that young persons experience “difficulty in comprehending fully the language of legal proceedings and the role of the various participants”. “The adversarial procedure involve[s] confrontation and extensive cross-examination. Children [experience] difficulties of communication in a court-room situation which [is] exacerbated in cases of criminal prosecutions for sexual offences by the emotional stress and fears arising from the need to recall traumatic events about which the child [is] required to testify.” *Klink v Regional Court Magistrate NO and Others* 1996 (3) BCLR 402 (E) at 403.

132 *Criminal Procedure Act 51/1977*:sec 170A. Two requirements must be met before an intermediary may be appointed, namely the witness must be under the age of 18 years and there must be a reasonable likelihood that the witness will be subjected to “undue mental stress or suffering” if he or she testifies in open court. Also see SAHRC 2002:31.

133 Case law has analysed and interpreted section 170A. Guidelines for the appropriate appointment and use of intermediaries were laid down in, for example, *S v T* 2000 2 SACR 658 CkH; *S v Stefaans* 1999 1 SACR 182C; *S v Mathebula* 1996 4 SA 168C.

134 NPA s.a.d:2.

135 The blueprint does not define these “standardised practices”.

the provision of support and assistance for victims during the court process; as well as the referral of victims to suitable support services rendered outside of court. In contrast to the 2002 blueprint, the current blueprint prescribes that these services be provided by different role-players, namely Court Preparation Officers, Victim Assistance Officers, Court Supporters and volunteers from nongovernmental organisations (NGO's). These role-players also participate in the LPOC. Unfortunately, the blueprint does not specify the responsibilities of each of these officials. The responsibilities of these officials have been determined by reference to other literature.

Court Preparation Officers focus on familiarising the victim with the courtroom and intermediary room, the trial procedure, the roles of court officials, as well as the role of the victim.¹³⁶ In addition, victims are empowered on a psychological level by teaching them stress-reduction and confidence-enhancing techniques.¹³⁷ The victim is thus empowered to give evidence, without the merits of the case being dealt with during the preparation.¹³⁸

On the other hand, Victim Assistance Officers provide victim assistance at Thuthuzela Care Centres (TCC's).¹³⁹ These officers "provide frontline emergency containment for the victims upon entry into the criminal justice system".¹⁴⁰ This is achieved by, *inter alia*, providing information, responding to special needs of the victim, providing court preparation, establishing readiness to testify, maintaining contact with service providers, notifying the victim of the arrest and bail conditions of the accused, determining risk factors and developing a Personal Safety Plan for the victim.¹⁴¹ The services of the Victim Assistance Officers are of the utmost importance, because all victims receive the available services at the TCC's, although not all of them testify in court.¹⁴²

Another role-player is the Court Supporter, who provides support at court on the trial date. NGO's are often involved in providing support services at court, such as providing meals, and playing with and comforting children while they are at court.¹⁴³ Court Supporters also keep witnesses and their families informed of developments at court. Together with court preparation and the attendance to victims' needs, victim assistant services play an important role in minimising secondary victimisation and the trauma associated with the court process.

136 SOCA Unit 2006b:75. The literature emphasises that children must be prepared before they testify in court, because numerous factors may have a negative influence on their testimony — see Wickham & West 2002:157; Louw 2004a:3-15; Louw 2004b:16-24. For a further discussion, see Müller 2004:1-24; 85-102.

137 Müller & Hollely 2000:306-310.

138 SOCA Unit 2006b:75. Court Preparation Officials are also appointed for other courts and, by 2006, 68 Court Preparation Officials had been appointed.

139 Nkala 2005:68; NPA 2004:1; NPA 2005a:50. The position of Victim Assistance Officer was created by the SOCA Unit. These officers serve at these rape-care centres, which are linked to Sexual Offences Courts. At these centres, professional support and services required by rape victims are provided on a 24-hour a day basis.

140 SOCA Unit 2006b:77.

141 Nkala 2005:68-69.

142 SOCA Unit 2006b:77

143 Some of these NGO's are Rape Crisis, Rapcan, NICRO and the Teddy Bear Clinic.

Finally, the blueprint prescribes a third type of service for victims, namely support services. Owing to the traumatic effects following sexual abuse, counselling services must be provided at each Sexual Offences Court by dedicated social workers and/or NGO's.¹⁴⁴ Support services include the assessment of victims for readiness to testify, testifying in preliminary applications regarding the need to use intermediaries and/or CCTV, and testifying in aggravation of sentence if required. These support services further include the referral of victims for long-term counselling, as well as referral to a shelter when necessary. Apart from victims, support services must also be rendered to prosecutors and the police dealing with sexual offences to avoid burnout. These services were called "counselling services" in terms of the original blueprint. As is the case with other role-players, the 2005 blueprint also calls for the participation of these role-players in the LPOC.

The original blueprint also made provision for administrative support and for case managers who were responsible for case flow.¹⁴⁵ These requirements are not included in the 2005 blueprint. Case-flow management received more attention generally in the lower courts as a result of *The Practical Guide for Court and Case Flow Management for South African Lower Courts* launched in September 2005.¹⁴⁶ Implementation of the Case Flow Management system was reported on in the 2006/2007 NPA annual report and it is envisaged that data collected by this system will enable assessment of the "impact of policies, programmes and projects in conjunction with budgetary requirements".¹⁴⁷

3.3 Blueprint courts as opposed to dedicated courts

As indicated in the historical review, blueprint-compliant Sexual Offences Courts are a costly and demanding undertaking. For this reason, many "dedicated courts" came into existence. The differences between these dedicated courts and blueprint-compliant courts were highlighted in the *National Strategy for the Roll Out of Specialised Sexual Offences Courts*. If a court does not comply with the blueprint requirements, but tries only sexual offence cases, the court is called a dedicated court.

Although dedicated courts are not fully blueprint-compliant, they must still meet minimum requirements to ensure their proper functioning. These requirements are: two prosecutors per court; a dedicated magistrate; sufficient legal aid to allow

144 Numerous services can be provided such as immediate crisis counselling, supportive counselling, specialised therapy and psychological assessment. SAHRC 2002:35.

145 SOCA Unit 2002a:13.

146 SOCA Unit 2006a:61. This document's aim is twofold according to the former National Director of Public Prosecutions, Advocate V Pikoli, namely to improve "the focus of all towards more effective and efficient administration of justice through the courts and to create a better understanding and appreciation of what is expected from each of the role-players involved": SOCA Unit 2006a:65. Taking the unique requirements for successful prosecution of sexual offences into account, Acting Judge Monaedi also stressed the importance of a "very specific case flow management system" for courts dedicated to sexual offences.

147 NPA 2007:33.

the prompt finalisation of cases; intermediary facilities; and a separate waiting area for witnesses.¹⁴⁸ However, the aim of the NPA and DOJCD is to convert all the dedicated courts into blueprint-compliant courts.¹⁴⁹

4. Roll-out of Sexual Offences Courts

4.1 NPA reports on the roll-out of Sexual Offences Courts

The NPA reports annually on the progress made with the roll-out of Sexual Offences Courts. The NPA reports in this regard are summarised in Table 1.

Table 1: NPA reports on the roll-out of Sexual Offences Courts and Thuthuzela Care Centres

Financial year	Existing SOC's by end of financial year	Established SOC's during financial year	Promised SOC's in financial year	TCC's opened	Total TCC's	TCC's promised /planned
2002/2003 ¹⁵⁰	39	11				
2003/2004 ¹⁵¹	51	3 ¹⁵²			5	2
2004/2005 ¹⁵³	54	0	Moratorium announced	2 ¹⁵⁴	7	4
2005/2006 ¹⁵⁵	67	14	100 for 2006	5 ¹⁵⁶	10	18 more for 2006
2006/2007 ¹⁵⁷	59	-8	15 each year	0	10	5 more by March 2008

It is unclear from the 2002/2003 and 2003/2004 NPA annual reports how many courts were blueprint-compliant and how many were only dedicated courts. The 2004/2005 report indicated that there were 54 blueprint-compliant courts. In the 2005/2006 and 2006/2007 reports, there was no mention made of blueprint-compliant courts as far as the number of courts was concerned and the applicable tables referred to “dedicated courts” only. The reports unfortunately did not give a breakdown of Sexual Offences Courts per province. Only national figures were given.

148 NPA & DOJCD 2003:2-3.

149 NPA & DOJCD 2003:2.

150 NPA 2003:30.

151 NPA 2004:52-53.

152 NPA 2005a:50-51.

153 NPA 2005a:50-51.

154 NPA 2005a:50.

155 NPA 2006:41-44.

156 NPA 2006:42. There were 4 290 survivors of rape attended to at the TCC's between February 2005 and March 2006.

157 NPA 2007:45-46.

4.2 Summary by the NPA in the 2006/2007 report

Table 2 has been taken directly from the NPA 2006/2007 annual report.¹⁵⁸ According to this table, the figures in respect of dedicated courts and courts linked to a TCC are given. It is thus presumed that all the courts mentioned below are regarded as dedicated courts, without any distinction being made between blueprint-compliant and dedicated courts. It would be hard to imagine that the blueprint-compliant courts would be completely left out of the calculations; thus it is submitted that these figures represent all the Sexual Offences Courts.

According to Table 2, the conviction rate in dedicated Sexual Offences Courts was more than 15 per cent higher than that in the other regional courts. In the 2005/2006 financial year, the difference was 28 per cent. These figures become even more telling when the Sexual Offences Courts are linked to a TCC. In 2005/2006, the conviction rate in dedicated courts linked to a TCC was 38 per cent higher than that in the other regional courts and was more than 33 per cent higher in 2006/2007. This is thus a clear indication of the higher conviction rates maintained in the Sexual Offences Courts in general, with exceptional results being obtained in Sexual Offences Courts linked to TCC's. It is also important to note that, in some regions, the conviction rates were extremely low. In *S v Mlandeli Dayimani*,¹⁵⁹ the court noted that, in the Grahamstown policing area, the conviction rate was a mere 3.6 per cent.

The annual reports of the NPA were investigated for the period 2002/2003 to 2006/2007. According to the 2003/2004 report, there were 51 Sexual Offences Courts nationally (Table 1), and, according to Table 2, in that same financial year there were 41 dedicated courts. The 2004/2005 report (Table 1) states that there were 54 blueprint courts, and, according to Table 2, there were 53 dedicated courts. The 2005/2006 report states that 100 Sexual Offences Courts were envisaged for 2006, but, according to Table 2, not only did the number of Sexual Offences Courts drop in the next financial year, but only 25 more were required, which would not result in a total of 100 courts.

These and other discrepancies are a clear indication that reliable statistics on the number of Sexual Offences Courts are not available and that information concerning the envisaged expansion of the number of Sexual Offences Courts is not reliable. Furthermore, the terms "blueprint court" and "dedicated court" are not used in a uniform manner in the NPA's annual reports. Problems regarding sufficient and reliable data were also stressed by the IDASA report.¹⁶⁰

¹⁵⁸ NPA 2007:45.

¹⁵⁹ Case no CC 12/2007:13, line 10.

¹⁶⁰ IDASA 2001:53.

Table 2: SOCA/NPS service-delivery performance indicators: 2002/2003 to 2006/2007

Sexual Offences — NPS and SOCA								
	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
Number of dedicated courts	22	41	53	67	59	-12.4%	166.7%	Due to dedicated prosecutors plus better victim service. About 20-26% cases in Regional Courts are sexual offences. 50% of victims younger than 16. About 25 more courts required.
Conviction rate: Dedicated courts	64%	61%	63%	70%	65%	-7.3%	1.4%	Against below 50 per cent in other Regional Courts (last year 42 per cent).
Number of TCC's	3	5	5	10	10	0.0%	233.3%	Integration of services from all departments brings conviction rates about.
Conviction rate: TCC's	74%	82%	80%	80%	83%	4.2%	12.6%	95% at well-established TCC in Wynberg.

4.3 Evaluation results pertaining to the roll-out of Sexual Offences Courts

According to the 2004/2005 report, the Minister of Justice and Constitutional Development declared a moratorium on the establishment of Sexual Offences Courts pending an evaluation of prevailing Sexual Offences Courts (hereafter called “the 2004/2005 evaluation”).¹⁶¹ The raw data from the 2004/2005 evaluation that is used in the ensuing discussion was supplied by the SOCA Unit and was processed by the authors. Despite the moratorium, 14 Sexual Offences Courts, which were already in the pipeline, were established in the next financial year.

Although minimum requirements (set out above) do exist for dedicated courts,¹⁶² the 2004/2005 evaluation used only one criterion to categorise a court as a dedicated court, namely the criterion that such a court must have only sexual offence cases on its court roll.¹⁶³

The 2004/2005 evaluation also examined the state of blueprint-compliant courts. The criteria used in this investigation for blueprint-compliant courts were: (1) two prosecutors per court if the court sits full-time; (2) one prosecutor per court if the court sits part-time; (3) victim assistant services: Victim Assistance Officers and/or Court Preparation Officers and/or Court Supporter and/or NGO Volunteers; (4) magistrate/judge allocated to the court for at least a 6-month period; (5) waiting rooms for adults and children to be separate from those for the accused; (6) CCTV system and/or one-way mirror; (7) intermediary room if court hears testimony from child witnesses; (8) anatomically detailed dolls; (9) intermediary if court hears testimony from child witnesses; (10) legal aid allocated to court; (11) court presides over sexual offence cases only.

The requirements used in this evaluation are not completely the same as those of the 2005 blueprint. The requirement of one prosecutor per court, if the court sits part-time, is not included in the original blueprint or in the 2005 blueprint. The 2005 blueprint also requires participation in the LPOC by certain role-players, but this requirement was not included in this evaluation. As far as legal aid is concerned, it is unclear whether legal aid should be available or be specifically allocated as prescribed in the blueprint. The evaluation also does not refer to the requirements prescribed in the blueprint pertaining to, for example, the characteristics of prosecutors and magistrates or the degree of experience or commitment which they are required to possess. This investigation can therefore be regarded as being merely an evaluation of the availability of the prescribed resources and not an investigation into compliance with the detailed blueprint requirements or into the effectiveness of the courts.

The roll-out of Sexual Offences Courts complying with the above-mentioned criteria is indicated in Table 3.

161 NPA 2005a:51.

162 See section 3.2 above.

163 Lawrence: e-mail correspondence:25 May 2007.

Table 3: Number of dedicated and blueprint-compliant courts per province

	Dedicated courts	Blueprint courts		
Province	Permanent courts	Circuit courts	Number of districts served by circuit courts	Blueprint-compliant courts
Eastern Cape	2			1
Northern Cape		1	5	1
Free State	3	2	15	
Western Cape	2	7*	7	12
Gauteng	16**			3
KwaZulu-Natal	5			1
Limpopo	2			2 ¹⁶⁴
Mpumalanga	2 ¹⁶⁵			1
North West	4			2
	36	10	27	23

* These courts sat only part-time.

** Two of these courts sat only part-time.

According to the data provided by the SOCA Unit, by 2006 there were 69 courts country-wide that dealt with sexual offences only.¹⁶⁶ In total, 67 per cent of these courts were dedicated courts and 33 per cent were blueprint-compliant.¹⁶⁷

The remainder of this discussion deals only with the 2004/2005 evaluation results, unless otherwise indicated. There were 46 dedicated courts in total recorded in this evaluation. There was at least one dedicated court per province, with Gauteng having the most dedicated courts, namely 16. These dedicated courts included ten circuit courts, of which seven, all in the Western Cape, sat only part-time.

The Western Cape had the most blueprint-compliant courts, namely 12 courts. This means that 52 per cent of all the blueprint-compliant courts were in the Western Cape. Gauteng was in second place, but with only 13 per cent of the blueprint-compliant courts. According to the evaluation, the Free State, on the other hand, did not have any blueprint-compliant courts and had only three dedicated courts.¹⁶⁸ There were 23 blueprint-compliant courts in total.

164 The Mokerong court sat for three weeks at Mokerong and for one week at Nylstroom.

165 The Evander court is situated at Secunda.

166 Lawrence: e-mail correspondence:25 May 2007.

167 These statistics differ from those in the NPA's annual report for 2005/2006, which indicates that there were 67 Sexual Offences Courts nationally — see Table 1 and NPA 2006:41-44. The statistics also differ from the table in the 2006/2007 report, included as table 2 above, which indicates that there were 67 dedicated courts. See also NPA 2007:45.

168 According to the audit there were no dedicated courts in Bloemfontein. However, according to Kraftt & Opperman: interviews 2001-2005, they disagree with this finding and state that there were dedicated courts in Bloemfontein and not only the 1 circuit court for Bloemfontein mentioned in the audit. Ferreira 2003:7 indicates that

The question that inevitably arises is why the majority of the courts dealing with sexual offences were not blueprint-compliant. Table 4 indicates which requirements were not met by the different dedicated courts, thereby resulting in them not being blueprint-compliant.

According to Table 4, many courts did not comply with the blueprint as regards more than one of the prescribed requirements. The major problem was that 26 (57 per cent) of the courts in question did not have two prosecutors as prescribed in the blueprint. The second main area of noncompliance was the absence of legal aid (37 per cent) and the third was the lack of a separate waiting room from the accused (26 per cent). The lack of victim assistant services at the courts was also reported in 20 per cent of the cases. In all other instances, the missing requirement was applicable to less than 20 per cent of the courts.

Another question is how close the different courts were to complying with the prescribed criteria. In Table 5, the total number of criteria still to be met is indicated, as well as the specific criteria that have not been met.

It is significant that, in the case of 27 courts, only one criterion was not met to render the court blueprint-compliant. In the case of 17 (63 per cent) of these 27 courts, the only criterion not met was that of two prosecutors being available. Consequently, if 17 additional prosecutors had been allocated to these Sexual Offences Courts, the picture would have changed dramatically. Instead of only 23 blueprint-compliant courts, there would have been 40 blueprint-compliant courts; in other words, there would have been a 73.91 per cent increase in the number of blueprint-compliant courts.

In the case of another four of the 27 courts, the absence of victim services prevented full compliance. The lack of legal aid was reported to be the last requirement to be met at four more courts. At one court, a separate waiting room from the accused was not available and one circuit court did not comply with the blueprint requirements because an intermediary room was not available.

Of the nine courts that did not comply with two criteria, three did not comply because there were not two prosecutors available and because legal aid had not been allocated to these courts. This is in line with other findings, which indicate that there were not enough prosecutors and legal aid available.

there were three Sexual Offences Courts in Bloemfontein by 2003. The Bloemfontein circuit court was established in June 2003. Other Sexual Offences Courts had also been established in Welkom and Bethlehem by 2003. The Bloemfontein Sexual Offences Court, for example, had, by 2003, twice won the award for the best Sexual Offences Court country-wide and had played a key role as a role model for the establishment of other Sexual Offences Courts country-wide.

Table 4: Number of courts per province not complying with a specific blueprint requirement

Province	Victim services	Two prosecutors per court	Separate waiting room from the accused	CCTV and/or one-way mirror	Legal aid	Intermediary room	AD dolls	Intermediary	Allocated magistrate	Total number of courts ¹⁶⁹
EC	2									2
NC	1	1	1	1	1					1
FS	1	4	2	1	5	1				5
WC	2		5	1	7	3	5	2		9*
Gauteng	1	14	2	1		1	1	1		16**
KZN	2	3	1						1	5
Limpopo		2			1				1	2
Mpumalanga					2					2
NW		2	1		1		1	2	1	4
Total number of courts	9	26	12	4	17	5	7	5	3	46
	20%	57%	26%	9%	37%	11%	15%	11%	7%	

* Seven of these courts sat part-time.

** Two of these courts sat part-time.

Table 5: Number of requirements still to be met

Number of criteria/requirements still to be met	Victim services	Two prosecutors	Separate waiting room	CCTV and/or one-way mirror	Legal aid	Intermediary room	AD dolls	Intermediary	Allocated magistrate	Total number of courts
1	4	17	1		4	1				27
2	1	4	1		5	1	1	2	1	8
3	2	1	6		5		3		1	6
4		1					1	1	1	1
5	1	1	1	1	1					1
6	1	2	3	3	2	3	2	2		3
	9	26	12	4	17	5	7	5	3	46

5. Wynberg evaluation of the effectiveness of Sexual Offences Courts

While the results in section 4 above give an indication of the roll-out and number of courts and their respective resources country-wide, another evaluation was conducted at the Wynberg Sexual Offences Courts (hereafter called “the 2005 Wynberg evaluation”). The 2005 Wynberg evaluation, which was carried out by the SOCA Unit and the NPA at the Wynberg courts in the Western Cape, gives an indication of the practical application of the blueprint and of the consequences of noncompliance with the blueprint requirements. A quantitative and qualitative evaluation was conducted. Some challenges were identified at the Wynberg courts.

At the time of the 2005 Wynberg evaluation, five regional courts were sitting full-time as Sexual Offences Courts at Wynberg and all of them were classified as blueprint-compliant in terms of the above-mentioned investigation regarding blueprint-compliant and dedicated courts.¹⁷⁰ Four of these courts¹⁷¹ had adopted a particular *modus operandi*, while the fifth court¹⁷² had adopted a slightly different procedure.

Four courts had adopted the following procedure. At the first appearance, the investigating officer hands the docket to the regional court control prosecutor for sexual offences. The regional court control prosecutor then gives instructions to the district court prosecutor indicating whether the accused should be detained further or released. Further instructions are given to the investigating officer by the regional court control prosecutor until the case has been fully investigated. While the case is still on the district court roll, consultations between the victim and/or witnesses and the regional court control prosecutor take place only in problematic instances, for instance where the complainant wishes to withdraw the case. A first appearance date is determined for the regional court roll. Thereafter, the case is provisionally placed on the regional court roll. Only at this stage is the docket given to the responsible prosecutor and does the first appearance in the Sexual Offences Court take place. The case is then postponed for consultation. If further information comes to light after such consultation, the case is postponed for further investigation, counselling, assessments and DNA testing, or the case may be withdrawn. At the time of the next appearance in court, and after consultation has taken place, a trial date may be set.

The fifth court (hereafter called the “TCC court”) was linked to a TCC and dealt only with TCC cases.¹⁷³ The TCC court followed a prosecutor-guided investigation model, which entailed the following. At the first appearance, the investigating officer hands the docket to the responsible prosecutor in the TCC court. The TCC prosecutor then gives instructions to the district court prosecutor indicating whether the accused should be detained further or released, either on bail or on warning. If bail is opposed, a bail application is heard in the district

170 See section 4.3 above.

171 Courts F, G, M and L.

172 Court J.

173 TCC cases were referred to all four courts — the fifth court, which dealt only with TCC cases, no longer exists.

court. Once the bail-application process has been completed, or where the accused is released either on warning or on bail after the first appearance, the matter is transferred to the TCC court. All further investigations then take place in the TCC court under the guidance of the TCC prosecutor. It must be noted that the TCC court is a regional court and that regional courts do not normally accommodate matters for further investigation. Only after completion of the investigation is the case placed on the Sexual Offences Court roll for trial.

The case manager also plays an important role in this process and is responsible for tracking, monitoring and facilitating cases while in the criminal justice system, for assisting with the management of court rolls, for securing the attendance of witnesses and of the investigating officer, for liaising with all role-players, for ensuring that the cycle time for finalising cases is reduced and that the conviction rate is increased, and for keeping statistics/maintaining a database.

It is clear from the qualitative analysis that different results are obtained despite the fact that the five courts are blueprint-compliant, that is despite having the same resources available. In the case of the four courts, the prosecutors see the docket for the first time when the case is on the Sexual Offences Court roll. Most of the consultations take place only once a matter is on the roll. This leads to the unsatisfactory situation where further investigations are requested at this stage, while such investigations should have been carried out while the matter was still on the district court roll. Therefore, cases take longer to finalise, which has a negative effect on the turnaround time for cases. This *modus operandi* also results in a large number of withdrawals and in a large number of postponements for the purpose of DNA analysis, securing legal representation and finding further witnesses.

It was also reported that the four different courts did not have a uniform system for working with two prosecutors. The division of court work differed in the four courts. The different courts' work was divided up by week or by day and, in some instances, both prosecutors were in court daily. In addition, different levels of prosecutorial experience were identified, as well as the fact that a lack of experience might lead to some issues not being appropriately identified. Another problem was the inconsistent drafting of charge sheets, with charges not being formulated uniformly.

It was reported that some complainants lose faith in the system owing to the high number of withdrawals and that there is no contact with the complainant after reporting the offence. Withdrawals at this late stage of the process are due to a lack of evidence required to prosecute, intimidation, the unavailability of witnesses, "lost" evidence and "false" reporting.

On the other hand, in the fifth court, the qualitative analysis revealed that, by following the vertical prosecution model, the prosecutor has an intimate knowledge of the docket from the time of the first appearance, which facilitates a proper relationship with the complainant at a very early stage of the process. This also helps prevent complainants from losing faith in the system. Unnecessary delays are also prevented, because the counselling and referral needs of the complainant are identified at a very early stage and problematic issues such as DNA analysis can be managed timeously. Another positive result of this process is the development

of a personalised working relationship between the investigating officer and the responsible prosecutor. There is also a consistent division of court work in that prosecutors are in court for a week and out of court for the next week.

This difference in the results of the two sets of courts revolves around two requirements set out in the blueprint, namely that investigations should be prosecutor-guided and that consultations with witnesses must take place prior to the trial date. In the case of the TCC court, these two requirements were complied with, which was not precisely the case with the other four courts. In the four courts, the initial investigation was guided by the district court prosecutor, while, in the fifth court, the responsible prosecutor was directly involved from the time of the first appearance in the district court. Consultations also took place only after cases had been placed on the rolls of the four courts, which inevitably led to postponements. This was not the case with the fifth court, for here a case was placed on the regional court roll once the bail application and/or first appearance of the accused in the district court had been finalised. The main aim was therefore that the prosecutor should become involved in guiding the investigation right from the start. It was not a prerequisite that these cases be carried on the regional court roll for further investigation.

In the light of what has been said above, it is accordingly submitted that only a slight departure from the blueprint and its principles can result in a less effective, and even unsuccessful, trial.¹⁷⁴

6. Performance of Sexual Offences Courts

It is clear from Table 2 that the conviction rates of Sexual Offences Courts are much higher than those of ordinary regional courts. Furthermore, since 2002, Sexual Offences Courts linked to a TCC have consistently had a 10 per cent or higher conviction rate as compared with Sexual Offences Courts not linked to a TCC. The fifth court mentioned in the 2005 Wynberg evaluation was linked to a TCC and was a well-established court with a conviction rate of 95 per cent in 2005/2006¹⁷⁵ and in 2006/2007.¹⁷⁶

174 See the comments of Acting Judge Monaledi in SOCA Unit 2006a:65-66. The judge stresses the importance of a prosecution-driven investigation to facilitate proper investigations and the collection of all possible corroborative evidence as soon as possible. She states that the availability of sketch plans of the scene and of photographs will “often assist the witness’s testimony, making it easier for the child to explain what happened where” — SOCA Unit 2006a:65. She confirms that the DNA analysis should be requested in good time and be followed up. She urges prosecutors to clarify possible applications in terms of sections 170 and 158 of the *Criminal Procedure Act 51/1977* to ensure that enough time is allocated to a case and to ensure the availability of assessment reports, thereby preventing unnecessary postponements of cases. She also suggests that the prosecutor should confirm arrangements with the intermediary a week before the trial. The investigating officer should also inform the prosecutor before the trial if difficulties could arise in securing the attendance of witnesses. This will enable the prosecutor to be proactive and ensure that valuable court time does not go to waste, thereby reducing the cycle time of cases.

175 NPA 2006:43.

176 NPA 2007:45.

It is clear from the conviction rates of the Sexual Offences Courts that these courts have a very important role to play in the criminal justice system. It is also clear from the 2005 qualitative and quantitative evaluation conducted at the Wynberg court that the requirements set out in the blueprint should be followed closely in order to provide the best possible results and that an exceptional conviction rate of 95 per cent is possible.

7. Recommendations

Having charted the development of Sexual Offences Courts in South Africa, the authors wish to make the following recommendations with a view to paving the way for more effective Sexual Offences Courts in the future.

7.1 Complaint and monitoring mechanism

An audit tool to determine the quality of service delivery at the TCC's was developed by May 2008.¹⁷⁷ Unfortunately, a specific complaint and monitoring mechanism for Sexual Offences Courts is not yet in operation. The necessity of monitoring mechanisms for courts in general is also stressed in the *Practical Guide for Court and Case Flow Management for South African Lower Courts*.¹⁷⁸ These guidelines emphasise that monitoring mechanisms must be implemented at all courts to "reduce backlog[s], overcrowding of prisons, case cycle time and to increase productivity".¹⁷⁹ Implementation of the Victim's Charter also requires that people be assigned to investigate the complaints of victims and to find solutions that will address these complaints.¹⁸⁰

Implementation of proper complaint and monitoring mechanisms at Sexual Offences Courts is way overdue, since such implementation was already recommended in 1997 after the first evaluation at the Wynberg court.¹⁸¹ Although the above-mentioned two documents make provision for complaint and monitoring mechanisms for courts in general, it is submitted that, owing to the specialised nature of sexual offence cases and to specialisation in the Sexual Offences Courts, a tailor-made complaint and monitoring mechanism for these courts should be introduced. It is further recommended that this complaint and monitoring mechanism be included in the blueprint for Sexual Offences Courts and that the blueprint comprehensively set out the procedures to be followed.

177 SOCA Unit 2008:slide 6.

178 SOCA Unit 2006a:61.

179 SOCA Unit 2006a:65.

180 SOCA Unit 2006b:70.

181 SAHRC 2002:29.

7.2 Compliance with the blueprint: Two prosecutors per court

The necessity for complying with all the blueprint requirements is illustrated by the following incongruous situation. In terms of the blueprint, prosecutors should be trained as specialists. Thus, ongoing training is essential. A further requirement is two prosecutors per court. Acting Judge Monaledi,¹⁸² however, states that training programmes, which disrupt the functioning of the courts, and a lack of adequate training are two of the issues that impact negatively on effective and efficient prosecutions and utilisation of court time.¹⁸³ It is submitted, however, that, if the blueprint requirement of two prosecutors per court is adhered to, training and the optimum use of court time can be properly balanced without denying prosecutors proper training and without wasting precious court time.

The 2005 Wynberg evaluation also stressed the importance of two prosecutors per court. The lack of two prosecutors hampers the proper preparation of cases, prosecutor-guided investigations and in-depth, pre-trial consultation with witnesses, thereby contributing to secondary victimisation, which should be prevented at all costs. This is another good reason for complying with the blueprint requirement of two prosecutors per court. Acting Judge Monaledi also stresses the importance of more than one prosecutor per court and states: "It is essential for the smooth running of courts dedicated to sexual offences that these courts have more than one prosecutor, and they should receive specialised training".¹⁸⁴

The workload of prosecutors is very high.¹⁸⁵ Research should therefore be conducted to determine what would be a reasonable caseload for prosecutors in a Sexual Offences Court so that the blueprint requirements can be properly complied with and so that effect can be given to the objectives of Sexual Offences Courts.

7.3 Resources as opposed to principles

The various evaluations referred to above reveal the necessity for monitoring not only the availability of resources, but also the effective use of these resources. They further reveal that compliance with the detailed requirements of the blueprint is essential in order to give effect to the underlying principles of the Sexual Offences Courts.

It is submitted that the underlying principles of the blueprint, such as a victim-friendly approach, a prosecution-driven approach and high-quality specialisation, should always be adhered to. These principles are very important, for, owing to a lack of resources and the human factor, courts will never operate in exactly the same way and practicalities might require a slight departure from the blueprint. This departure from the blueprint should, however, never compromise the above-mentioned principles.

182 Acting Judge Monaledi of the Bophuthatswana Local Division is the Regional Court President: North West.

183 SOCA Unit 2006a:64.

184 SOCA Unit 2006a:65.

185 IDASA 2001:54.

7.4 Compliance with principles in circuit courts

It is clear from Table 4 that the single-most important reason for noncompliance with the blueprint is a lack of two prosecutors per court. It is hard to understand how prosecutors with abnormally high caseloads¹⁸⁶ will be able to adhere to the requirements of a victim-centred approach and conduct proper prosecution-led investigations. The importance of a proper prosecution-guided investigation was proven during the 2005 Wynberg evaluation discussed above.

With this in mind, the next question is: what is the position regarding a victim-centred approach and prosecution-guided investigation in the circuit courts? In terms of the evaluation commissioned by the Minister, only one prosecutor is necessary if a court sits only part-time. But, then, how is effect given to the requirement of prosecution-guided investigations? And how often are these prosecutors available? For instance, if a prosecutor visits a town only twice a week, or once a month in some instances, is there enough time to travel to the destination, consult with witnesses and give guidance in investigations? No data is available on this point and further research is thus necessary.

Acting Judge Monaledi confirms that a truly prosecution-driven investigation requires a close working relationship between the police and prosecutors. She therefore rightly recommends that the United States model of specialist prosecutors being on call to assist the investigation as from the time that cases are reported be given serious consideration.¹⁸⁷

7.5 More circuit courts

Table 3 indicates that there are 10 circuit courts country-wide, of which 7 sit only part-time. Yet these 10 courts serve 27 districts. Moreover, these courts are situated in only 3 provinces. The 7 part-time circuit courts are all in the Western Cape. There are 2 full-time circuit courts in the Free State and 1 in the Northern Cape. It is submitted that circuit courts dealing with sexual offences can play a vital role in providing better justice for the victims of such offences in the rural areas and should therefore be introduced in the 6 other provinces too.

7.6 Refinement of the blueprint

The roles, functions and responsibilities of Court Preparation Officers, Victim Assistance Officers and Court Supporters are not included in the 2005 blueprint. It is therefore recommended that the blueprint be refined to include the specific roles, functions and responsibilities of these important role-players.

Although the blueprint prescribes that prosecutors be trained as specialists, that they have three years' experience in criminal litigation and that they undergo ongoing training, there is no official minimum standard or test to determine whether prosecutors do in fact comply with such competency requirement. It is

186 IDASA 2001:54.

187 SOCA Unit 2006a:66.

therefore submitted that the blueprint should make provision for compliance with a measurable level of specialised competence and not only the requirement of three years' general experience as a prosecutor.

7.7 Costing of Sexual Offences Courts

According to the IDASA report, 99.3 per cent of the total cost of establishing and operating a Sexual Offences Court goes towards paying the salaries of personnel.¹⁸⁸ This might very well explain why so many Sexual Offences Courts only have one prosecutor instead of the prescribed two prosecutors. It is submitted that the success of a Sexual Offences Court depends largely on the prosecutor, who must guide the investigation and conduct the trial. It is further submitted that overloaded prosecutors will not be able to comply with the requirements of the blueprint and will not be able to render the service required, and thus will not be able to minimise secondary trauma effectively. It is therefore submitted that additional funding must be budgeted for and be allocated for the appointment of more prosecutors. With the proven success of courts such as the Wynberg TCC court, with a conviction rate of 95 per cent,¹⁸⁹ and international recognition of the successes of Sexual Offences Courts linked to TCC's,¹⁹⁰ it might also be possible to obtain more donor funding so as to appoint more prosecutors on a contract basis in future.¹⁹¹

7.8 Proper data-collection systems

Despite the assurance by the Director of the SOCA Unit in 2001 that systems had been put in place to improve data collection,¹⁹² it is submitted that there is still room for improvement in this regard, since discrepancies remain even after the 2004/2005 evaluation, as pointed out in the discussion of Tables 1 and 2.

7.9 Distinction between blueprint and dedicated courts

It is clear from the 2005/2006 and 2006/2007 annual reports of the NPA that no distinction was made between blueprint-compliant courts and dedicated courts. It is also clear that the requirements used in the 2004/2005 evaluation did not completely correspond with those prescribed in the blueprint. It is submitted that these discrepancies should be addressed and that a proper distinction

188 IDASA 2001:54-55.

189 See Table 2.

190 SOCA 2008:slides 6 & 12.

191 Prosecutors in Sexual Offences Courts linked to a TCC were appointed on a contract basis and remunerated by way of donor funding at the Wynberg Court — interview: Kellerman (e-mail and personal interviews:2003-2005). Donor funding is also already available for several other aspects of Sexual Offences Courts. USAID funded the appointment of case managers and UNICEF funded the training of prosecutors — see SOCA Unit 2002a and NPA s.a.c:2. Danish funding was received at the end of 2007 to establish 12 additional TCC's — see SOCA 2008:slides 6 & 12.

192 IDASA 2001:53.

should be made between blueprint-compliant and dedicated courts in future annual reports of the NPA.

7.10 Implementation

Although the blueprint and many other policy documents have been put in place, it seems as though implementation of all the requirements and policies is not yet entirely satisfactory. As far as compliance with the blueprint is concerned, Tables 4 and 5 give a good indication of progress with regard to implementation. It is clear that compliance with some of the requirements can be achieved quite easily, such as the provision of anatomically detailed dolls. Others, however, might be more difficult to comply with, such as the provision of waiting rooms, especially if structural changes are necessary. The results of the evaluation commissioned by the Minister give a good indication of what is necessary for purposes of compliance and it is submitted that implementation should now take priority.

7.11 Link Sexual Offences Courts with Thuthuzela Care Centres

It is clear from Table 2 that the conviction rates in Sexual Offences Courts are much higher than those in the ordinary regional courts. Furthermore, the conviction rates in Sexual Offences Courts linked with TCC's are considerably higher than those for Sexual Offences Courts not linked to a TCC. It is thus submitted that preference should be given to the establishment of Sexual Offences Courts linked to a TCC.

8. Sexual Offences Courts — *Quo vadis?*

At least until December 2006, the NPA's website continued to report that the aim of the government was to establish at least 10 Sexual Offences Courts per year.¹⁹³ However, in 2005 the Minister placed a moratorium on the establishment of more Sexual Offences Courts, pending an evaluation.¹⁹⁴ The subsequent unexplained decrease in the number of Sexual Offences Courts in the 2006/2007 financial year, despite the positive results produced by these courts, was even more concerning. Furthermore, there was no mention of the lifting of the moratorium in the NPA's 2006/2007 annual report. Moreover, unlike the case in previous years, there was no mention of Sexual Offences Courts in the 2008 State-of-the-Nation Address.¹⁹⁵ Owing to these developments, uncertainty looms with regard to the future of Sexual Offences Courts.

It remains to be seen if previous and present promises and commitments to preserve and expand Sexual Offences Courts will be honoured. It is submitted that Sexual Offences Courts, although not yet optimally operational country-wide, do indeed play a positive role in combating sexual offences and should be part of any future criminal justice system.

193 NPA 2005b:4.

194 NPA 2005a:51.

195 Reyneke & Kruger 2006:94-98; Mbeki 2008:1-16.

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ADDENDUM A

Qualitative, semistructured interviews

Semistructured interviews were conducted with the following persons. We express our appreciation for their cooperation and valuable input.

Kellerman J, Control Prosecutor for Sexual Offences Courts, Wynberg
(E-mail and personal interviews: 2003-2005)

Kenny M, SOCA Unit, NPA (E-mail correspondence: 25 May 2007)

Krafft E, Control Prosecutor for Sexual Offences Courts, Bloemfontein (Interview: 2004)

Lawrence BG, SOCA Unit, NPA (E-mail correspondence: 25 May 2007)

Mbakaza KK, SOCA Unit, NPA (E-mail and personal interviews: 2005)

Opperman ME, Magistrate, Magistrate's Office, Bloemfontein (Interviews: 2001-2005)

ADDENDUM B

Sexual offences courts: Blueprint document

Approved by Sexual Offences and Community Affairs Unit on 10-4-05.

Guiding principles

- Sexual Offences Court services are devised to assist and protect all vulnerable groups, *inter alia*, women and children.
- Within this context, in accordance with the Constitutional imperative of Section 28, if there are limited resources, cases involving children must be prioritised.

Essential requirements

Prosecutors

- Two per Sexual Offences Court.
- Specifically identified and recruited based on legal knowledge and skill, and commitment to prosecuting sexual offences.
- Trained as a specialist sexual offences prosecutor.
- Minimum three years' experience in criminal litigation.
- Sensitised, passionate and empathetic regarding sexual offences.

- Remunerated as specialists.
- Regularly exposed to debriefing.
- Continued training.
- Involved in prosecutor-guided investigations.
- Consultation with witnesses prior to trial date.
- Ability to work with vulnerable witnesses.
- Responsible for the coordination of the LPOC.

Victim assistant services

- May be constituted as Victim Assistance Officers, Court Preparation Officers, Court Supporters, and NGO volunteers.
- Prepare victims for court in accordance with standardised practices.
- Provide support and assistance for victims during the court process.
- Referral of victims to appropriate support services (outside of court).
- Participation in the LPOC.

Judge/ Magistrate

- Specifically assigned to Sexual Offences Court for a period of at least six months.
- Commitment to working with sexual offences.
- Sensitised and empathetic regarding sexual offences, and vulnerable witnesses.
- Participation in the LPOC.

Specialised courts (structure and equipment)

- The location of the SOC and associated services must ensure the prevention of contact between state witnesses, specifically victims, and the accused.
- Victim-friendly environment.
- Separate waiting rooms for children and adults.
- Private consultation areas.
- Closed-circuit television system and/or one-way mirror system.
- Intermediary room.
- Anatomically detailed dolls.

Intermediaries

- Must comply with legislative requirements.
- Specifically trained to comply with standard practices.
- Sensitised and dedicated pool for each court.
- Language and culture appropriate.
- Participation in the LPOC.

Support services

- Dedicated social workers and NGO's provide counselling.
- Provide services to victims, prosecutors and police.
- Referral for the provision of long-term counselling or shelter when required.
- Assessment of witnesses for readiness to testify.
- Testify in preliminary application for the use of intermediaries and/or CCTV.
- Testify in aggravation of sentence when required.
- Participation in the LPOC.

Legal aid

- Experienced Legal Aid attorney assigned specifically to a Sexual Offences Court.
- Participation in the LPOC.

Local project oversight committee

- Consists of NPA, SAPS, Health, Social Development, Judiciary, Legal Aid, NGO's and any other relevant role player(s).
- Management of SOC.
- Co-ordinated by NPA.
- Meets monthly.
- Reports to Provincial Project Oversight Committee via the SOC prosecutor.