

JM Reyneke & HB Kruger

Sexual Offences Courts: Better justice for children?

Summary

Child victims of sexual abuse are vulnerable witnesses who experience trauma and secondary victimisation when they testify in sexual abuse cases. Sexual Offences Courts aim to alleviate this problem in various ways. The main focus of this article is to examine the prescribed blueprint for Sexual Offences Courts in order to determine whether blueprint-compliant Sexual Offences Courts contribute to better justice for child victims of sexual offences. Each blueprint requirement is therefore analysed with the aim of determining whether possible advantages for child victims can be identified. The conclusion is reached that substantial advantages for child victims are provided by blueprint compliant Sexual Offences Courts. By 2005 54 Sexual Offences Courts were established countrywide and official statistics indicate that these courts are very successful. However, despite numerous commitments by government to establish more of these courts, a moratorium on the establishment of new courts was announced. It is argued that blueprint compliant Sexual Offences Courts do indeed provide better justice for children and therefore more of these courts should be established at a much faster rate.

Opsomming

Howe vir Seksuele Misdrywe: Beter beregting vir kinders?

Kinderslagoffers van seksuele mishandeling is kwesbare getuies, wat trauma en sekondêre viktimisering ervaar wanneer hulle in sake van seksuele misdrywe getuig. Die Howe vir Seksuele Misdrywe het ten doel om hierdie probleem op verskeie wyses aan te spreek. Hierdie artikel ondersoek hoofsaaklik die bloudruk vir Howe vir Seksuele Misdrywe om te bepaal of die hierdie howe bydra tot tot beter beregting vir kinderslagoffers van seksuele misdrywe. Al die bloudruk-vereistes is dus ontleed om te bepaal of die Howe vir Seksuele Misdrywe enige voordele inhou vir kinderslagoffers. Daar is tot die gevolgtrekking gekom dat hierdie howe inderdaad substansiële voordele bied vir die kinderslagoffer. Teen 2005 was daar landswyd 54 Howe vir Seksuele Misdrywe en amptelike statistieke dui aan dat hierdie howe baie suksesvol is. Ten spyte van verskeie ondernemings deur die regering om meer van hierdie howe daar te stel, is daar egter 'n moratorium geplaas op die instelling van verdere Howe vir Seksuele Misdrywe. Daar word aangevoer dat Howe vir Seksuele Misdrywe wat aan die bloudruk-vereistes voldoen, inderdaad beter beregting vir kinderslagoffers verseker en dat daar daarom meer van hierdie howe ingestel moet word teen 'n versnelde pas.

*JM Reyneke, Lecturer, Department of Procedural Law and Law of Evidence, University of the Free State, P O Box 339, Bloemfontain 9300, South Africa.
HB Kruger, Senior Lecturer, Department of Criminal and Medical Law, University of the Free State, P O Box 339, Bloemfontein 9300, South Africa.*

1. Introduction

I'll see you in court!

This familiar phrase is a well-known threat amongst rivals. To go to court implies conflict and hostility, especially in South Africa with its accusatorial type of criminal procedure.¹ For a witness to give evidence in court usually means being subjected to intense scrutiny. Therefore, to testify in court is an intimidating experience for most witnesses,² and especially for vulnerable groups such as children. In addition, the court experience is even more intimidating when the child has to testify in open court about traumatic events that occurred during sexual abuse.³

Owing to the high incidence of sexual offences against children, many child victims have to testify in court. The exact extent of sexual violence against children is not known, since no central, official database in this regard is in place.⁴ However, some inferences can be drawn from the statistics that are available. The trend is that about 55 000 rape cases are reported yearly in South Africa.⁵ Well over 15 000 rape cases against children were reported in 2003 as well as in 2004.⁶ Mr Charles Nqakula, Minister of Safety and Security, announced that, in the 2004-2005 financial year, the number of reported sexual offences against children had escalated to an alarming 22 486.⁷ According to this shocking statistic, an average of more than 60 children are raped per day in South Africa. A further cause for concern is the decrease in the average age of both the child victim and the sexual offender.⁸ Finally, what is most disturbing is that only 6% to 7% of the reported rape cases against children are successfully prosecuted.⁹ These worrying statistics once again stress the

1 For a concise distinction between an accusatorial and inquisitorial legal system see SALC 1997: 55-56.

2 Bruce 2005: 24-25.

3 Müller and Hollely 2000: 70-73; Hollely 2003: 28; *Klink v Regional Court Magistrate NO and Others* 1996 (3) BCLR 402 (E) 403. The South African Law Commission (SALC), now called the South African Law Reform Commission, confirmed the plight of these child victims when testifying in court proceedings — SALC 1997: 46; SALC 2002:126.

4 SAHRC 2002: 7. Nonetheless, as far back as 1995, the court stated in *Klink v Regional Court Magistrate NO and Others* 1996 (3) BCLR 402 (E) 403 that “the incidence of crimes involving young persons, particularly crimes involving sexual abuse and assault, has risen significantly in the recent past”.

5 SAPS 2005: 1; SOCA Unit 2002a: 3.

6 Le Grange 2006: 4; Van Niekerk 2003: 1. Of all sexual crimes committed against children and reported to Childline countrywide, 43% were committed by children under 18 years of age — Naran 2005: 12.

7 Steenkamp 2005: 4. In addition, it must be kept in mind that it is widely accepted that only a small percentage of the actual number of rapes that occur are reported. “NICRO estimates that only 1 out of every 20 rapes is reported to the police, while the South African Police Services places the estimate of reported rapes at 1 out of every 35 rapes.” SALC 1999: 66 and the SAPS Central Information Management Centre Website <http://www.saps.co.za/index.html>; SALC 1997: 47.

8 SAPA-AFP 2005: 5; Van Niekerk 2003: 12.

9 Steenkamp 2005: 4; Morna 2006: 2.

need for urgent intervention to protect these child rape victims and to prosecute perpetrators efficiently.

In 2002 the study of the Vera Institute of Justice and the Bureau of Justice Assistance¹⁰ confirmed that witnesses experience substantial problems in the South African criminal justice system.¹¹ Towards the end of 2003 this problem was again stressed in a study by the Centre for the Study of Violence and Reconciliation (CSVr) by means of a witness satisfaction survey with 450 witnesses in three magistrates' courts in Gauteng.¹² The CSVr study concluded that, "although several initiatives have been developed to make courts more witness-friendly, the need to be more responsive to witnesses is not a policy priority in the criminal justice system".¹³ The Vera Institute Report also pointed out that, despite formal policies emphasising the concerns of victims, the commitment to victims of crime in general had been "*ad hoc* and piece-meal" and that female complainants in sexual abuse cases in particular endured secondary victimisation during all stages of the criminal justice process.¹⁴ Consequently, the problems experienced by witnesses needed to be prioritised and the report stressed the importance of increasing the effectiveness of the South African criminal justice system.

Apart from the abovementioned problems which witnesses experience generally in court, child witnesses in sexual abuse cases often face additional difficulties, which have been pertinently outlined as follows:

Child witnesses experienced significant difficulties in dealing with the adversarial environment of a court-room and young persons experienced difficulty in comprehending fully the language of legal proceedings and the role of the various participants. The adversarial procedure involved confrontation and extensive cross-examination. Children experienced difficulties of communication in a court-room situation which was 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 was required to testify.¹⁵

Hence it is evident that sexual violence against children is a multifaceted and challenging problem in South Africa. One attempt to address this dilemma was the introduction of specialised courts for sexual offences.

The main focus of the present study is to examine the prescribed blueprint for Sexual Offences Courts to determine whether blueprint-compliant Sexual Offences Courts contribute to better justice for child victims of sexual offences. A qualitative evaluation research methodology was chosen to conduct the research. Data collection was mainly undertaken by means of a literature review and by way of qualitative, semi-structured interviews during on-site visits at Sexual

10 Vera Institute Report 2002: 25-29 (hereafter referred to as the Vera Institute Report).

11 This study was commissioned by the National Prosecuting Authority (NPA) to assess the NPA and the entire criminal justice system.

12 Bruce 2005: 23-28.

13 Bruce 2005: 28.

14 Vera Institute Report 2002: 25-26.

15 *Klink v Regional Court Magistrate NO and Others* 1996 (3) BCLR 402 (E) 403.

Offences Courts in Bloemfontein, Grahamstown and Wynberg (Cape), as well as by way of semi-structured, e-mail questionnaires. The participants were purposefully selected and consisted of various relevant role-players, including prosecutors, presiding officers and case managers at Sexual Offences Courts, personnel at the Manenburg Thutuzela Centre and the Tshepong Victim Support Centre,¹⁶ as well as members of the Sexual Offences and Community Affairs Unit (SOCA Unit).¹⁷ Child victims of sexual offences were not included as participants, but research focusing on their experiences of the criminal justice system will be a worthwhile topic for further research.

During interviews, professionals from different disciplines expressed an interest in playing a more active role in accompanying the child victim of sexual abuse through the criminal justice process. Documentation and research on the nature and functioning of the Sexual Offences Courts as regards child victims and the recent upgraded blueprint for these courts are not published widely.¹⁸ The present study aims at making a contribution to filling this gap by informing professionals about the functioning of Sexual Offences Courts and of the opportunities to become part of the multidisciplinary team providing services for child victims during the criminal justice process.

This article examines the differences between Sexual Offences Courts and general courts by exploring the nature, functioning and attributes of Sexual Offences Courts. Each blueprint requirement is analysed with the aim of determining whether possible advantages for child victims can be identified.

2. Nature, functioning and attributes of Sexual Offences Courts

2.1 Distinguishing features

What are Sexual Offences Courts? How do they differ from other courts? In short, Sexual Offences Courts are regional courts dedicated exclusively to sexual offences.¹⁹ It is important to know that, apart from blueprint-compliant Sexual Offences Courts, there are also courts called “dedicated courts”. The differences between the two categories of courts are pointed out clearly in the *National Strategy for the Roll Out of Specialised Sexual Offences Courts*:

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- 16 The Tshepong Centre was established by various role-players as a one-stop centre providing multidisciplinary services to victims of sexual offences. The Centre opened at the National Hospital, Bloemfontein, in November 1998. Shortly thereafter, the first Bloemfontein Sexual Offences Court was established in February 1999.
- 17 See Appendix A for list of participants interviewed.
- 18 SAHRC 2002: 36. This report of the South African Human Rights Commission (SAHRC) emphasised the lack of research outlining shortcomings in the provision of treatment for children who have been sexually abused. This gap in research is also to be found with regard to child victims in the criminal justice system.
- 19 SAHRC 2002: 28.

... the establishment of a Sexual Offences Court is a process that often takes several months. It is not always possible to immediately provide all the facilities required for a blueprint compliant court. The ultimate goal is to ensure that all courts comply fully with the said blueprint, but it is, however, also necessary to continue with the rollout of dedicated courts, and in the meantime to try and provide at least a minimum standard of facilities in these courts. It has therefore been decided to divide the classification of Sexual Offences Courts in two categories. The first category includes all courts that are dedicated to hearing sexual offences even though they do not yet comply with the blueprint. These courts should not be classified as a Sexual Offences Court, but should rather be referred to as dedicated courts dealing with sexual offences. Throughout that rollout phase, the NPA and DOJCD should strive to convert all dedicated courts into fully-fledged blueprint compliant courts.²⁰

In a nutshell, the main features that distinguish Sexual Offences Courts from ordinary courts are the content-specific jurisdiction of these courts and their blueprint-compliance.

2.2 Blueprint

Before a court can be regarded as a blueprint-complaint Sexual Offences Court it must conform to the blueprint. On 10 April 2005 the blueprint for Sexual Offences Courts was revised and approved by the Sexual Offences and Community Affairs Unit (SOCA Unit).²¹ The upgraded blueprint is outlined in a compact, bulleted document²² and is probably only intended for readers who are familiar with the context of Sexual Offences Courts. For the sake of completeness, we used the requirements set out in the 2005 upgraded *Blueprint for Sexual Offences Courts*²³ as the primary source, but also other literature, to inform the requirements. Most of the current requirements were also included in the previous blueprint. Literature on the previous blueprint is therefore very useful in acquiring a better understanding of the 2005 updated blueprint requirements. The blueprint requirements are as follows:

20 NPA & DOJCD 2003: 2. To ensure the delivery of proper services by dedicated courts, the following minimum requirements are set for these courts: two prosecutors per court; a dedicated magistrate; proper intermediary facilities (closed-circuit television, etc.); a separate waiting area for children and women; and sufficient legal aid to ensure speedy finalisation of cases. Since the gist of the blueprint requirements is also applicable to dedicated courts, most of the advantages that Sexual Offences Courts hold for child victims are also found in dedicated courts.

21 SOCA Unit 2005: 1-3. For further information on the SOCA Unit see NPA s.a.a: SOCA structure <http://www.npa.gov.za/SOCA/SOCA_structure.asp>; NPAs.a.b: SOCA Achievements <http://www.npa.gov.za/SOCA/SOCA_achievements.asp>; NPA s.a.c: SOCA Mission and Objectives <http://www.npa.gov.za/soca/soca_mission.asp>

22 A copy of the blueprint is attached as Appendix B.

23 SOCA Unit 2005: 1-3. The upgraded blueprint was approved on 11 April 2005 — interview with, and written confirmation by, KK Mbakaza, SOCA Unit.

2.2.1 Prosecutors

a) Blueprint requirements

- Two prosecutors per court

Two prosecutors are assigned to each Sexual Offences Court, not one as in other courts.²⁴ This arrangement provides prosecutors with more time to prepare cases well, conduct *in loco* inspections and consult in-depth with witnesses on out-of-court days.

Another positive implication of having two prosecutors per court is the vertical prosecution of cases.²⁶ Thus, unlike the situation in 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.²⁷

- Recruitment and experience

Prosecutors must be specifically recruited for these courts. Recruitment is based on legal knowledge, as well as skill in, and commitment to, prosecuting sexual offences. They must have an interest and passion for the work, as well as a natural ability to work with vulnerable witnesses. Furthermore, a minimum of three years²⁸ experience in criminal litigation is required. In short, these prosecutors should be sensitised, passionate, empathetic and highly skilled.²⁹

- Training

Prosecutors must be trained as specialist sexual offences prosecutors and must undergo continued training. Training is often sponsored by international donors.³⁰ The respondents reported that the Department of Justice and Constitutional Development (DOJCD) arranges training at the Justice College³¹ and that prosecutors are encouraged to avail themselves of other training opportunities. Apart from official training, informal in-house training is often provided by members of the multidisciplinary team such as medical practitioners, social workers and psychologists. Training is not focused on court personnel only, but the trend is to provide all role-players with multidisciplinary

24 SOCA Unit 2005: 1. See also SOCA Unit 2002a: 13; NPA s.a.d: 2.

25 SAHRC 2002: 28.

26 For a discussion of vertical prosecution see Williams 2005: 131-148.

27 SAHRC 2002: 28.

28 Previously, five years' experience in the regional court was required — NPA s.a.d: 2.

29 NPA s.a.d: 2.

30 NPA s.a.a.: 4. For example, in June 2003, training in advanced prosecuting skills was sponsored by UNICEF for 45 prosecutors of the SOCA-established courts. R1 454 881, 00 was spent on multidisciplinary training in all four sections of the SOCA Unit. R1 368 106, 30 of the total amount was funding money — http://www.npa.gov.za/soca_structure.asp.

31 Rasool 2000: 12.

training.³² Training covers a range of topics such as how to interview³³ and deal with child victims of sexual offences, the developmental stages of the child,³⁴ the impact of trauma on the child, human trafficking, and advanced skills for prosecuting the child sex offender.³⁵ These training initiatives provide invaluable opportunities to advance prosecution skills, which, by implication, benefits the child victim.

Since 2002, the SOCA Unit has published the “Sexual Offences Bulletin” and has distributed it to prosecutors at Sexual Offences Courts.³⁶ These bulletins contain an update on the latest legal developments pertaining to sexual offences, thus enabling prosecutors to prepare more effectively for cases.³⁷ Consequently, these bulletins serve as an ongoing-training tool.

- Debriefing

Prosecutors must be regularly exposed to debriefing so as to remain sensitised and avoid burnout.³⁸

- Remuneration

Owing to the unique requirements these prosecutors have to comply with, they must be remunerated as specialists.³⁹

- Specified tasks

The following tasks are not normally performed by prosecutors, but are required of prosecutors in Sexual Offences Courts. These prosecutors must proactively participate in prosecution-guided investigations⁴⁰ and conduct

32 NPA s.a.d: 1; NPA 2004: 52; NPA 2005: 40. The SOCA Unit indicated in the 2004/2005 NPA annual report that 108 people, including delegates from Swaziland, took part in multidisciplinary training on the investigation and prosecution of sexual offences.

33 Considerable skill is required to interview the sexually abused child – see Glaser and Frosh 1988: 81-82.

34 For a further discussion of developmental issues and the sexually abused child, see Stanley 1990: 39-50 and Louw 2004a: 3-15. Wickham and West 2002: 78-79 analyse four stages of cognitive development, namely the stage of sensory-motor intelligence (0-2 years); the stage of preoperational thought (2-7 years); the stage of concrete operations (7-11 years); and the stage of formal operations (11-15 years). The contributions by Piaget and Erikson to developmental theory are also discussed.

35 NPA 2005: 41. According to the SOCA Unit, 135 prosecutors were trained in advanced prosecution skills between June 2004 and April 2005. See also Stack and Soggot 2001: 23.

36 NPA 2004: 1.

37 See guidelines for prosecutors on language difficulties experienced by children in court — Schoeman 2005: 38-41.

38 NPA s.a.d: 2.

39 NPA s.a.d: 2.

40 SALC 2002: 95-98. The SALC found that large numbers of rape cases were classified by the police as “unfounded/withdrawn/no arrest made”. Therefore, the SALC proposed that the National Director of Public Prosecutions should decide whether police investigation should be discontinued in cases of sexual abuse. The purpose of this recommendation was to ensure a “higher quality of police investigation”. This provision aimed at facilitating prosecution-guided investigations. Although this provision was originally included in section 21 of the Criminal Law (Sexual Offences)

thorough consultations with witnesses *prior to the trial date* (our emphasis). These prosecutors are further responsible for the co-ordination of the Local Project Oversight Committee (LPOC), which is responsible for the operational processes of the courts.⁴¹

b) Advantages for the child victim

A significant benefit of having two prosecutors per court is that more time is available for the demanding task of successfully prosecuting cases where children have been sexually abused. Owing to the effects of sexual abuse on children, consultations with these child witnesses are often intricate and time-consuming.⁴² Furthermore, research indicates that it is difficult for children to discuss sexual abuse openly and that they often disclose their sexual abuse in a fragmented way.⁴³ Hence, having more time for in-depth consultations is a crucial benefit to the child witness. In addition, the time advantage is also very helpful, because it facilitates guidance of the investigation and quality trial preparation — thus effecting a successful prosecution, which has obvious benefits for the child victim.⁴⁴

Specialised training for prosecutors on aspects pertaining to cases where children have been sexually abused has vital benefits for the child victim. Stanley emphasises that “it is essential to have knowledge of child/adolescent development to understand the issues and needs of the sexually molested victim”.⁴⁵ Consequently, it is to the advantage of the child victim when the prosecution is conducted by well-trained and experienced prosecutors who are knowledgeable on relevant issues such as the fears and needs of sexually abused children, their developmental stages, the rape trauma syndrome and the child sexual abuse accommodation syndrome.⁴⁶ In addition, specialised training empowers prosecutors to present expert evidence about the severity of the emotional trauma of the victim, which enables presiding officers to meet out a just sentence.⁴⁷

The recommended personality traits for these prosecutors further facilitate the establishment of a relationship with the child witness and contribute to

Amendment Bill (B50 — 2003), it was unfortunately deleted from the Criminal Law (Sexual Offences) Amendment Bill 2004, Working Document of 24/02/04 (chapter 7) and also not included in the Criminal Law (Sexual Offences) Amendment Bill 2006.

41 See paragraph 3.3.8.

42 For a further discussion of short- and long-term effects of sexual abuse on children, see Sandler and Sepel 1990: 235-238. The Rape Trauma Syndrome (RTS) refers to the type of post-traumatic stress response that victims have to rape. The prosecutor must be knowledgeable about the physical, behavioural and psychological symptoms of RTS to conduct an effective consultation with these victims.

43 SALC 1997: 46.

44 Owing to better-trained prosecutors, conviction rates improved — Stack and Soggot 2001: 24.

45 Stanley 1990: 39.

46 See discussion by Sandler and Sepel 1990: 225-227.

47 The court emphasised the importance of such specialised knowledge on the part of experts to inform the judicial officer in *Holtzhausen v Roodt* 1997 3 SA 553 W at 561G-562A.

the reduction of secondary victimisation. The proper selection and regular debriefing of prosecutors will ensure high standards of prosecution. Compliance with the abovementioned requirements for prosecutors therefore has indirect, but significant, advantages for child witnesses in so far as the establishment of a relationship with the child witness, the investigation, case management and eventual prosecution are concerned.

2.2.2 Victim assistant services

Government policy emphasises the concern for victims of crime.⁴⁸ In 1996 the Cabinet approved the *National Crime Prevention Strategy* (NCPS) which *inter alia* prioritised victim empowerment by recognising the role and rights of victims. This strategy recognised that the processes in court should be more victim-friendly to minimise the negative effects of crime. Furthermore, victims should be given a greater role in the criminal justice system and provision should be made for the prevention of secondary victimisation.

In terms of the previous blueprint for Sexual Offences Courts, special assistance for victims at court ought to include

... effective dissemination of information to the victim, counselling, assisting with protection orders, preparing the victim for court and reassuring the victim. Personnel responsible for victim assistance services must be empathetic, decisive and have good organisational skills.⁴⁹

The latest development pertaining to victim assistance policy is the development of the *Service Charter for Victims of Crime in South Africa*, which was approved by the Cabinet in November 2004.⁵⁰ The Victim's Charter grants all victims of crime the following rights in their interaction with the criminal justice system: to be treated with fairness and respect for their dignity and privacy; to offer information; to receive information; to protection; to assistance; to compensation; and to restitution.⁵¹

However, despite the existence of government policies which prescribe a victim-centred approach, the Vera Report found in 2002 that victims still experience frustration in the criminal justice system. Their greatest frustrations result from being treated rudely or dismissively, and from the failure of the police, prosecutors and the court to keep them informed about the progress of their cases and about what has happened to the perpetrator.⁵²

48 Current policies are to some extent in line with international standards set by the *European Union Framework Decision on the Standing of Victims in Criminal Proceedings*, the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *Council of Europe's Recommendation on the Position of the Victim in the Framework of Criminal Law* — see discussion by Groenhuijsen 2005: 333-342.

49 NPA 2003a: 2.

50 DOJCD 2004: 1-6; Nkala 2005: 70.

51 DOJCD 2004: 2-4. The Schedule of Minimum Standards on Services for Victims of Crime explains the content of these rights in more detail and specifies how to implement these rights. For a further discussion see Artz and Smythe 2005: 137-138.

52 Vera Institute Report 2002: 25-29.

The Vera Report also stressed the difficult task of putting policy into practice. The importance of increasing the effectiveness of the South African criminal justice system is evident from the report, since victimisation and secondary victimisation are unfortunately still a challenge. According to Nkala,⁵³ the prevention of secondary victimisation⁵⁴ is one of the primary goals of the Sexual Offences Section, because the neglect of the victim's needs causes witnesses and complainants to exit the criminal justice system owing to ineffective service delivery. The SOCA Unit has also realised that there are "alarming numbers" of silent victims who do not even enter the criminal justice system because of their fear of secondary victimisation.⁵⁵ As a result of this fear, perpetrators are able to continue with their criminal acts and get away with them. Therefore, victim assistance in reducing secondary victimisation is of crucial importance.

In 2005 the CSVR report confirmed the problems experienced by witnesses and indicated that more than a quarter of all witnesses (not only victims) felt intimidated by court procedures, in particular when testifying and being cross-examined.⁵⁶ Furthermore, the report revealed that 30% of witnesses in sexual offences cases were intimidated by a person or a group.⁵⁷ The report stressed that

although some concerns of some witnesses may seem trivial or even irrational, such fears could turn a potentially good witness into an unconvincing one, and so damage the chances of a conviction or a fair trial.⁵⁸

In the light of the above discussion, it is clear that victim assistance services are a vital component in ensuring a fair trial. The current blueprint for Sexual Offences Courts acknowledges this viewpoint and aims to address this problem by prescribing victim assistant services.

a) Blueprint requirements

Victim assistant services are refined in the 2005 blueprint.⁵⁹ These services now include the preparation of victims for court in accordance with standardised practices; the provision of support and assistance for victims during the court process; as well as the referral of victims to appropriate support services rendered outside of court. Victim assistant services are provided by Victim Assistance Officers, Court Preparation Officers, Court Supporters and volunteers from non-governmental organisations (NGOs).⁶⁰

53 Nkala 2005: 67.

54 Secondary victimisation usually refers to negative or insensitive responses to the victim by the police, court officials and medical personnel in the criminal justice process.

55 This problem was specifically highlighted in *S v Staggie and Another* 2003 1 SACR 232 C 247d-e.

56 Bruce 2005: 24-25. Other intimidating factors related to the court environment included the fact that it was the first time that the victim or witness had appeared in court, the public hearing and the fear that they might not be believed, while some found the "whole experience of being at court intimidating".

57 Bruce 2005: 26-27.

58 Bruce 2005: 28.

59 SOCA Unit 2005: 1-2.

60 Those who provide these victim assistant services also participate in the LPOC.

b) Examples of victim assistant services in practice

A real effort is made at Sexual Offences Courts to create a victim-friendly environment with as much support as possible. Unfortunately, the blueprint does not give definitions or job descriptions for the different victim support personnel prescribed in the blueprint. Therefore other literature, interviews and visits to courts were used to inform the roles of the different service providers and the services they render.

- Victim Assistance Officer

The position of Victim Assistance Officer was created by the SOCA Unit to eliminate secondary victimisation.⁶¹ The Victim Assistance Officer's function is to provide victim assistance at Thuthuzela Care Centres (TCCs)⁶² by ascertaining "that the victim is at ease with his/her case, understands his/her role in the criminal justice system and relieve the victim of his/her anxieties".⁶³ The Victim Assistance Officer is therefore responsible for meeting the needs of the victim by *inter alia* establishing contact with the victim, 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. Furthermore, this officer's responsibilities include the provision of interpretation services, acting as a Support Person in terms of the Domestic Violence Act,⁶⁴ providing emotional support, notifying victims of the outcome of the case, ensuring that victims and witnesses attend hearings, and keeping a register of daily cases.⁶⁵

- Court Preparation Officer

The literature underscores the fact that a child giving evidence in court must be prepared.⁶⁶ Various factors may have a detrimental influence on a child's testimony in court.⁶⁷ Müller and Hollely recognise that the judicial

61 Nkala 2005: 68.

62 NPA 2004: 1; NPA 2005: 50. The SOCA Unit has established rape-care centres, called Thuthuzela Care Centres (TCC's), in various parts of the country. By 2005, seven TCC's had been established nationally. TCC's are linked to Sexual Offences Courts. A Thuthuzela Care Centre is a 24-hour facility providing professional support and services required by rape victims. These centres serve as "a 'one-stop shop' for rape-care management, streamlining a network of existing investigative, prosecutorial, medical and psychological services in the hospital where they are located". SOCA Unit 2002a: 13-14; NPA s.a.d: 3.

63 Nkala 2005: 69.

64 116/1998: sec 11.

65 Nkala 2005: 68-69.

66 Wickham and West 2002: 157.

67 Louw points out that emotional and social contextual factors can impact on children's memory skills and indicates that these factors may affect not only the quality of children's accounts of what happened, but also the amount of information remembered. For a further discussion of the competency of children as witnesses in child sexual abuse cases that focuses on factors such as age and developmental level, see Louw 2004a: 3-15 and Louw 2004b: 16-24.

system as a whole demands that a victim give a “prompt, clear and consistent report of a recognisable crime”.⁶⁸ The authors indicate that, for a child to be an effective witness, he or she must be able to recall information completely and accurately and be able to communicate effectively; must know the difference between truth and falsehood; must understand lawyer’s questions and must clearly indicate if he or she doesn’t understand a question; and must resist replying to leading questions. These are challenging aspects for adult witnesses to deal with and, therefore, are much more difficult for children.

In addition, the abovementioned authors stress the importance of realising the discrepancy between the “typical process by which evidence is elicited in court and the developmentally sensitive process that is needed to elicit accurate information from children”.⁶⁹ If this is not realised and practised properly, it will result in children not testifying at their optimal level of capability, and they may experience higher levels of stress than is necessary.

Furthermore, the judicial procedure, which includes unfamiliar legal language and procedures and antiquated dress, could place considerable stress on children and their families, and such stress should therefore be minimised.⁷⁰ Judicial concepts that cause stress to the child witness include: a belief that only people who have done something wrong go to court; a belief that adults are omniscient; and not knowing the role of all the role-players.⁷¹ Accordingly, effective measures must be taken to help the child witness testify at an optimal level and to reduce fear and anxiety. The child witness should therefore be properly prepared for court, without coaching the child on the merits of the case.

In an effort to address the abovementioned problems experienced by the child witness, Court Preparation Officers familiarise the victim with the court process. Before the trial, the child is taken to the courtroom and the intermediary room and told which role-players will be in court and who will be with him/her.⁷² If a one-way mirror will be used, the child will be acquainted with it before the trial — assuring the child that he or she will not be able to see the accused while testifying. Moreover, the trial procedure and the roles of the court personnel, from the presiding officer to the court orderly, are clarified by, for instance, using puppets dressed like the different role-players or by building relevant jigsaw puzzles. The role of the child victim as a witness is also explained by emphasising that the child must listen carefully to questions, answer as clearly as possible and always tell the truth.⁷³ The importance of telling the truth is discussed and practised. True and false statements, on a neutral subject, will for instance be put to the child so that he or she can indicate whether they are true or false. The aim of cross-examination is also explained to the child. The witness is further taught to

68 Müller and Hollely 2000: 288.

69 Müller and Hollely 2000: 288.

70 Wickham and West 2002: 157.

71 Müller and Hollely 2000: 288-290.

72 Wickham and West 2002: 157.

73 Müller and Hollely 2000: 302.

indicate if he or she does not understand a question and to resist responding to leading questions.⁷⁴ The child is not only familiarised with the court and the process, but is also empowered on a psychological level by teaching him or her stress-reduction and confidence-enhancing techniques.⁷⁵

- Court Supporters⁷⁶

To ensure that a child witness testifies at an optimal level, not only is court preparation before the trial essential, but also the provision of support at court. Accordingly, Court Supporters at Sexual Offences Courts are a further blueprint requirement. However, the specific tasks assigned to Court Supporters are not specified in the blueprint. While visiting some of the courts it became clear that NGO volunteers⁷⁷ play an important role in providing support at court. NGO's are often involved in support and counselling services, and especially the comforting of child victims.⁷⁸ These services varied at the different courts, but essentially amount to volunteers seeing to the needs of victims throughout the day while they are at the court. The support at court includes playing with and comforting the children and providing them with meals. These meals are donated by various businesses and volunteers. The Court Supporters also keep the prosecutors informed of any developments during the day, for example of children who arrive late or of children who become too tired to testify. As far as possible, Court Supporters also keep witnesses and their families informed of developments at court.

c) Advantages for the child victim

Victim assistant services play an invaluable part in reducing secondary victimisation and the trauma associated with the court process. The child witness is prepared and is more at ease in the company of people who really care about the physical and emotional needs of the child. Victim assistance services enhance the capability of child witnesses to testify effectively and to cope better with the whole experience. Hollely⁷⁹ confirms this conclusion by way of research that indicated that children's evidence improved when they were assisted by a Support Person. Nkala⁸⁰ summarises the aim and advantage of victim assistance services correctly when he states that "it is quite desirable that all victims of crime (and children in particular)⁸¹ who engage the system will become survivors".

74 Müller and Hollely 2000: 294.

75 Müller and Hollely 2000: 306-310.

76 The literature also refers to a Support Person, who may accompany a witness to court "to strengthen and encourage the witness emotionally by his or her physical presence" — SALC 2002: 128. The current position in South Africa regarding the use and role of Support Persons is not clear. The difference between a "Court Supporter" and a "Support Person" seems to be that the former provides various support services at court, while the latter only accompanies the witness and thus provides emotional support.

77 The 2005 blueprint specifically prescribes "NGO volunteers" with Court Supporters.

78 Some of these NGO's are Rapecrises, Rapcan, NICRO and the Teddy Bear Clinic.

79 Hollely 2003: 31.

80 Nkala 2005: 70.

81 Our comment.

2.2.3 Magistrate/Judge

a) Blueprint requirement

Dedicated and experienced presiding officers are essential for the successful operation of Sexual Offences Courts. Accordingly, the 2005 blueprint stipulates that presiding officers must be committed, sensitised and empathetic regarding sexual offences and vulnerable witnesses.⁸² In addition, they must be specifically assigned to these courts for a period of at least six months.⁸³ Lastly, these officials are also required to participate in the LPOC.

b) Advantages for the child victim

Presiding officers assigned to Sexual Offences Courts gain specialised experience which results in improved coherence and consistency in judgments and sentencing.⁸⁴ The latter enhances legal certainty. However, the most important benefits for the child victim are the presiding officers' empathy with vulnerable witnesses, their expertise on aspects relating to sexually abused children and the efficient adjudication of these cases.

2.2.4 Structure and equipment of Sexual Offences Courts

a) Blueprint requirements

The 2005 blueprint lays down various requirements concerning the structure and facilities of Sexual Offences Courts.

- Victim-friendly environment

Sexual Offences Courts must be victim-friendly. Special attention is given to the court building and to the equipment used to create a victim-friendly environment. Examples of structural changes include the location of the courts and the availability of separate waiting rooms, which are made victim-friendly by means of toys and colourful furnishings.

- Location

It is clear from the CSVr report that a number of witnesses felt insecure, because they had to be in the presence of the accused at the trial.⁸⁶ Therefore contact between state witnesses, especially child victims, and the accused must be prevented or minimised to reduce secondary victimisation. Arranging the location of the Sexual Offences Court and the associated services in such a manner as to avoid such contact is of crucial importance.⁸⁷

82 SOCA Unit 2005: 2.

83 Participants stated that the continuous rotation of magistrates results in many partly-heard cases, which makes the management of the court rolls extremely difficult.

84 Opperman 2003: 6.

85 SOCA Unit 2005: 2.

86 Bruce 2005: 25.

87 For example, the Sexual Offences Courts at Wynberg are on a separate floor to which accused persons have no access and to which the general public has only limited access.

- Separate waiting rooms

If separate waiting rooms are not available, victims have to “face humiliating and frightening encounters with their attackers in the hallways of the court”.⁸⁸ For this reason, separate waiting rooms for child and adult victims are prescribed in the blueprint.⁸⁹ With the help of donors, waiting rooms for children are furnished at several courts. In some instances, pictures are painted on the walls to create a child-friendly environment. Toys are often sponsored by retailers or volunteers.⁹⁰ Children are kept positively occupied here while they wait to testify. NGOs often take it upon themselves to furnish and supervise the waiting rooms.

- Private consultation area

Owing to the intimate nature of sexual offences, private consultation areas are vital, especially for consultations with child victims. However, it is difficult to comply with the blueprint by providing private consultation areas, because of a lack of space in most court buildings. Unoccupied waiting rooms are sometimes used for consultations, especially after court hours. Prosecutors can often not use their offices for private consultation purposes, because they have to share their offices with others.⁹¹ This situation hinders confidential consultations with victims.⁹² As opposed to using an office full of files, a ringing telephone and other interruptions, the ideal remains a private, victim-friendly room which is specifically designated for consulting confidentially with witnesses.

- Closed-circuit television facilities

The general principle is that criminal trials should be conducted in open court in the presence of the accused.⁹³ However, to face the perpetrator in open court is a terrifying and humiliating experience for many victims of sexual abuse. Witnesses in sexual offences cases therefore often require the use of closed-circuit television (CCTV) facilities, where the witness testifies in a separate room, but can still be seen and heard by everyone

88 VERA Institute Report 2002: 26.

89 Separate waiting rooms are available at the Sexual Offences Courts which formed part of this study (Bloemfontein, Grahamstown and Wynberg) and they are used with appreciation by the victims and their parents or supporters.

90 NPA 2005: 45; Stack and Soggot 2001: 23; interviews from 2003-2005 with role-players at Bloemfontein Sexual Offences Courts — see Addendum A.

91 The Constitutional Court recently expressed concern regarding general, insufficient office space at courts and regarding prosecutors’ rightful complaint that no private office or telephone was available to them. “For the state to respect, protect, promote and fulfil the rights in the Bill of Rights, resources are required” — *Jaipal v S* 2005 JOL 13715 CC para 54-55. The Constitutional Court emphasised that important facilities must be provided and directed that copies of the judgment be furnished to the relevant authorities such as the Department of Justice, the National Prosecuting Authority and the Justice College.

92 Ferreira 2003:7.

93 Criminal Procedure Act 51/1977 sec 158(1); Constitution of the Republic of South Africa, 1996 sec 35(3)(c).

in the courtroom.⁹⁴ For this reason, a closed-circuit television facility is a blueprint requirement in Sexual Offences Courts. In terms of the Criminal Procedure Act,⁹⁵ the court may order that a consenting witness give evidence by means of closed-circuit television.⁹⁶ The use of closed-circuit television facilities has become common practice in cases involving children.

- One-way mirror

One-way mirrors may also be used to shield the child from the accused during testimony. The child is then unable to see the accused. Kriegler and Kruger⁹⁷ are of the opinion that one-way mirrors may be used on condition that the prosecutor, legal representatives and the accused are in a position to see the witness.

- Anatomically detailed dolls

According to Müller,⁹⁸ the fact that children, especially younger children, sometimes lack verbal ability and the ability to recall requires that the use of special tools to help children to communicate and recall better be considered.⁹⁹ Examples of these special tools are anatomically detailed dolls, which are equipped with parts resembling genitalia.¹⁰⁰

The literature suggests that the use of anatomical dolls is controversial, because some perceive the dolls to be suggestive and invoking of sexual fantasy.¹⁰¹ However, the blueprint calls for these dolls in Sexual Offences

94 SALC 1997: 60. 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 251d-e and 252c-d.

95 Act 51/ 1977 sec 158(2) & (3).

96 CCTV is not only used in sexual offences cases, but is most frequently used in these type of cases. The court may only make such an order in terms of sec 158(3) if CCTV facilities "are readily available or obtainable, and it appears to the court that to make such an order would (a) prevent unreasonable delay, (b) save costs, (c) be convenient, (d) be in the interests of the security of the State or of public safety or in the interests of the State or the public, (e) or prevent the likelihood of harm or prejudice to any person if he/she had to testify or be present at such proceedings".

97 Kriegler and Kruger 2002: 416-417.

98 Müller 2001: 90.

99 The literature outlines various tools and techniques used to assist the child to express things during interviews, for example clay, puppets, anatomically correct drawings and sand trays — for a more detailed discussion see Goldstein 1999: 260-283; Glaser and Frosh 1988: 87-88.

100 SALC 1997: 61. The literature also refers to these dolls as anatomically correct dolls — Stack and Soggot 2001: 23. However, these dolls are not strictly anatomically correct — they do not contain nails, real hair, and so forth — only certain parts of the body such as the penis, anus, female breasts and vagina are anatomically detailed.

101 Goldstein 1999: 270-271; Holmes 2000: 1.

Courts to facilitate a child's account of events. The dolls are used in court as, for example, an anatomical model to name body parts, as a demonstration aid¹⁰² and/or as a memory stimulus.¹⁰³

- Intermediary room

An intermediary room is a separate room with specific equipment which enables the child witness to testify by means of an intermediary and CCTV in criminal proceedings.¹⁰⁴ While testifying in the intermediary room, the child witness and intermediary are visible on a closed-circuit television monitor in the courtroom.¹⁰⁵ On the other hand, the witness and the intermediary cannot see what happens in court and thus the witness does not have to face the accused. Furthermore, witnesses do not hear the questions put to them by the parties present in the courtroom. Only the intermediary hears these questions by means of headphones and then relays all questions to the witness.

The blueprint prescribes that Sexual Offences Courts must have an intermediary room with audiovisual equipment. This equipment is expensive and many courts do not hear enough sexual offences cases to justify permanently installed equipment. To solve this problem, transportable CCTV equipment is being used in some circuit courts.¹⁰⁶ It is recommended that more sexual offences circuit courts with transportable equipment should be introduced. These circuit courts will make experienced prosecutors with CCTV and intermediary facilities available to more child victims, especially in the rural areas where a permanent Sexual Offences Court is not feasible.

b) Advantages for the child victim

At Sexual Offences Courts the child victim is surrounded by personnel and volunteers who provide the necessary victim assistance. In addition, from the discussion above it is clear that definite steps are taken to make the environment at these courts victim-friendly. Separate waiting and consultation rooms, CCTV and intermediary facilities, as well as anatomical dolls, are some of the significant protective measures introduced to assist children in testifying to their full potential. The structure and equipment at these courts play a major role in reducing secondary victimisation and the trauma associated with the court process.

102 The use of these dolls can be very valuable in clearing up ambiguities regarding what a child is describing. Children may, when their verbal skills are limited, use these dolls to demonstrate what happened to them — Glaser and Frosh 1988: 87; SALC 1997: 61; Goldstein 1999: 271; Holmes 2000: 1.

103 Müller 2001: 100-103.

104 Criminal Procedure Act sec 170A. The constitutionality of the use of an intermediary was challenged in *Klink v The Regional Court Magistrate NO and Others* 1996 (1) SACR 434 (E). The court however found the use of an intermediary to be constitutional.

105 This requirement was analysed in *S v T* 2000 2 SACR CkH 658 and 664 f-g. The concern was expressed that the court was not able to “personally observe either the demeanour of the witness or any hand or other physical gestures which the witness may have employed in explaining what apparently was done to him”.

106 For example in the Bloemfontein Sexual Offences Court — Krafft interview 2004; Opperman interview 2005.

Although the use of anatomical dolls can benefit a child by enhancing communication and recall abilities, it must be pointed out that research findings on the use of anatomical dolls are controversial.¹⁰⁷ Therefore the use of this aid must be approached with caution. Owing to the alleged suggestibility of the dolls, it should be kept in mind that the child's interaction with the dolls should not be the only basis for deciding whether the child has been abused or not. Other less suggestible, non-verbal tools, such as drawings, are also available to gather information from children and should be used. The dolls should be regarded as a tool for enhancing communication with the child and not as one to be used for diagnostic purposes.¹⁰⁸ Furthermore, to be an effective aid, these dolls must be age, ethnicity, gender and culture appropriate and the genitalia on the dolls should be proportionate to those of their human counterparts.¹⁰⁹ In the light of the above discussion, it is vital that the professionals using these dolls are properly trained to do so. Müller¹¹⁰ and Holmes¹¹¹ provide some valuable guidelines for the use of these dolls. However, official, standardised training has not yet been finalised in South Africa. Consequently, to benefit the child, it is recommended that the drafting of official guidelines for the use of anatomical dolls is prioritised.

2.2.5 Intermediaries

a) Blueprint requirements

Each Sexual Offences Court must have its own pool of dedicated and sensitised intermediaries. Legislative requirements must be followed regarding the appointment and duties of the intermediary.¹¹² These professionals should be specifically trained to comply with standards laid down in legislation and case law.¹¹³ It is important that intermediaries are accessible to child witnesses and are able to cater for language and cultural diversities. Intermediaries should also participate in the LPOC.

The appointment of an intermediary enables child witnesses to give their evidence through the intermediary. Two requirements must be met before an intermediary may be appointed. First, the witness must be under the age of

107 SALC 1997: 61. The debate on the advantages and disadvantages has been published widely — see Goldstein 1999: 270-271; Holmes 2000: 1; and further sources quoted in these sources.

108 Glaser and Frosh 1988: 87; Holmes 2000: 1; Müller 2001: 120.

109 SALC 2002: 344; Holmes 2000: 2; Glaser and Frosh 1988: 87.

110 Müller 2001: 118-119.

111 Holmes 2000: 1-3.

112 Criminal Procedure Act 51/1977 sec 170A; SAHRC 2002: 31. A number of people have been identified as being competent to act as intermediaries, subject to certain requirements relating to qualifications, experience and registration with professional bodies. They include psychologists, paediatricians, psychiatrists, family counsellors, child-care workers, lay counsellors, educators (including retired educators) and social workers.

113 Case law has analysed the requirements of sec 170A and has provided guidelines for the proper appointment and use of intermediaries — see *S v T* 2000 2 SACR 658 CkH; *S v Stefaans* 1999 1 SACR 182 C; *S v Mathebula* 1996 4 SA 168 C.

18 years. Secondly, a reasonable likelihood must exist that the witness will be subjected to “undue mental stress or suffering” if he or she testifies in open court.¹¹⁴ It serves no purpose to appoint an intermediary if the victim must still testify in the presence of the accused in the same courtroom. Thus, after an intermediary has been appointed, the court may also order that the witness testify via CCTV in a separate room.¹¹⁵ All direct examination, cross-examination and re-examination of the child witness take place through the appointed intermediary. The intermediary may rephrase the questions put to the child witness to enable the victim to understand them. This process is aimed at reducing secondary trauma.

b) Advantages for the child victim

As was indicated in *Klinck v Regional Court Magistrate NO and Others*,¹¹⁶ child witnesses experience major problems in facing the accused in the adversarial environment of a courtroom, as well as in understanding the language and legal proceedings. The use of an intermediary is therefore of great importance to the child, because testimony can be given without the trauma of being in the presence of the accused. In addition, the language problem is addressed by the intermediary who is allowed to reformulate the questions to convey the content and general meaning of the question in a language that the witness can understand. The reformulation of questions takes the child’s age and stage of development into consideration and protects the child from the hostility often displayed by the cross-examiner. In this manner the use of intermediaries enables the child to give evidence in court effectively — and thus justice is enhanced.

2.2.6 Support services

a) Blueprint requirements

It is pivotal for a child who has suffered sexual violence to undergo treatment.¹¹⁷

Owing to the trauma associated with sexual offences, counselling services must be provided at each Sexual Offences Court by dedicated social workers and NGO’s. Apart from victims, support services must also be rendered to prosecutors and the police dealing with sexual offences cases. These support services include the referral of victims for long-term counselling, as well as referral to a shelter where necessary.

114 To testify in court as a rape victim is unquestionably stressful. But to comply with the requirement of undue stress, more than ordinary stress is required. Therefore, a victim’s young age on its own will not suffice. Various factors such as emotional immaturity and intelligence of the victim, the nature of the crime and its effect on the victim, must be considered. For a further discussion see the case law cited in footnote 113.

115 SOCA Unit 2002b: 19 — the differences between sec 158(2) & (3) and sec 170A of the Criminal Procedure Act 51/1977 is also discussed.

116 1996 (3) BCLR 402 (SE) — see quote from the case: footnote 16 above.

117 SAHRC 2002: 35.

Support services rendered by professionals include assessing victims for readiness to testify, testifying in preliminary applications regarding the need to use intermediaries and/or CCTV, and testifying in aggravation of sentence when required. The blueprint also calls for the participation of these role-players in the LPOC.

b) Advantages for the child victim

Child victims can benefit in various ways from the provision of support services. The aim is to have support services available for child victims from the moment the case is reported until its finalisation, depending on the availability of services at a specific court and the different role-players on board. Numerous services can be provided for the child victim, such as immediate crisis counselling, supportive counselling, specialised therapy and psychological assessment.¹¹⁸ Furthermore, the child victim may be referred for long-term or follow-up counselling if necessary. This approach is more victim-friendly, because the children are used not simply as witnesses, to be abandoned by the criminal justice system once they have testified. Support after completion of the trial is essential. Therefore, the provision of debriefing services for witnesses after testifying is vital. Court personnel are also debriefed when necessary to avoid burnout and to enable them to remain sensitised to the needs of children.

2.2.7 Legal aid

a) Blueprint requirements

The accused in a criminal case is entitled to legal representation.¹¹⁹ A considerable problem is experienced in practice in that cases are often postponed, because the accused do not have legal representation or the arrangements for legal representation have not been finalised. Therefore the blueprint prescribes that legal aid attorneys should be assigned specifically to a Sexual Offences Court.¹²⁰

b) Advantages for the child victim

The availability of legal aid attorneys plays an important part in the speedy finalisation of cases by reducing unnecessary delays. This arrangement is to the advantage of child victims, because, the sooner cases can be finalised, the sooner the children concerned will be able to end a traumatic experience and get closure. Müller and Holley¹²¹ highlight the child's diminishing recall ability over time and perceived suggestibility as some of the problems experienced by children due to court delays. A further problem is the question of the credibility

118 SAHRC 2002: 35.

119 Constitution of the Republic of South Africa, 1996 sec 35(2)(b) — refers to detained persons.

120 At the Wynberg court, legal aid attorneys are assigned to a specific Sexual Offences Court. Therefore cases which are not finalised can be rolled over to the next day, because the legal aid attorney will be available — thus unnecessary delays are avoided.

121 Müller and Hollely 2000: 83-87.

of a child's evidence after therapy and the need for speedy intervention to help the child to cope. Putting a stop to unnecessary court delays helps to prevent, or minimise, recall problems and enables the child to get the necessary therapy sooner without jeopardising the credibility of the evidence.

2.2.8 Local Project Oversight Committee

a) Blueprint requirements

Representatives of the NPA, the SAPS, the Department of Health, the DOJCD, Legal Aid, NGO's and other role-players should serve on the Local Project Oversight Committee (LPOC). The aim of the LPOC is to facilitate the proper management of Sexual Offences Courts. The coordination of the LPOC is the responsibility of the NPA. The committee should meet monthly and should report to the Provincial Project Oversight Committee (PPOC) through the prosecutors of the Sexual Offences Courts.

b) Advantages for the child victim

The literature increasingly emphasises the need for a close working relationship among members of the multidisciplinary team dealing with child victims of sexual abuse.¹²² Therefore, the combined efforts of all the relevant role-players are necessary to ensure a victim-centred approach.¹²³ The LPOC is an essential vehicle for facilitating communication and co-ordination among the different role-players and in thus providing better services for victims who have been sexually abused.¹²⁴

3. Achievements of Sexual Offences Courts

The development of legal expertise in Sexual Offences Courts has resulted in more efficient prosecution and adjudication in the various areas. First, the overall, average conviction rate in these courts has improved substantially to 62%, as opposed to 42% in the ordinary courts.¹²⁵ What is even more impressive is that the average conviction rate in some well-established Sexual Offences Courts has increased to between 75% and 95%.¹²⁶

Another achievement of the Sexual Offences Courts has been the reduction in the turnaround time from date of report to finalisation of the case. The SOCA Unit has reported that the turnaround time in the finalisation of sexual offences

122 Wickham and West 2002: 157.

123 Nkala 2005: 70. This aspect was also confirmed in interviews with the social workers of Child Welfare rendering services at the Sexual Offences Court, Bloemfontein — see Appendix A.

124 See para 3 on achievements of Sexual Offences Courts where a multidisciplinary approach is followed.

125 NPA 2004: 13; NPA 2005: 50. In 2003 the average conviction rate in Sexual Offences Courts varied between 70% and 75% — NPA 2003: 31.

126 NPA 2005: 51. Deputy President Phumzile Mlambo Ngcuka confirmed the successes of these courts and stated that the conviction rate of Sexual Offences Courts linked to Thuthuzela Centres had increased to between 85% and 90% — Ngcuka 2005: 2.

cases at some of the courts has been reduced to under 6 months.¹²⁷ These improvements have been the result of assistance by specialised prosecutors, case managers and victim assistance officers, of the buy-in of relevant role-players and of the principle of prosecutor-led investigations.

A further accomplishment of these courts has been the reduction of secondary victimisation as a result of the provision of separate waiting rooms for victims, multidisciplinary services and intermediary and CCTV facilities.¹²⁸ Finally, multidisciplinary training has enhanced the skills of court personnel as well as other role-players.¹²⁹ In the light of these achievements, it can justifiably be said that these courts have contributed significantly to the efficient prosecution and adjudication of sexual offences. By implication, these achievements are invaluable to child victims in the criminal justice system.

4. Pressing challenges and concerns

Notwithstanding the laudable efforts and achievements of Sexual Offence Courts and the commitment of President Mbeki in addressing the needs of victims of sexual offences, it is of serious concern that there were still only 54 Sexual Offences Courts in South Africa by the end of 2005.¹³⁰ The perception is thus created that the promises and commitments made with regard to the establishment of Sexual Offences Courts and what happens in practice do not always correspond.

By the end of the 2002-2003 financial year, there were 39 Sexual Offences Courts in existence countrywide.¹³¹ The aim was to roll out as many of these courts and TCC's as possible. The target of the SOCA Unit was to establish a total of 55 courts and 10 Thuthuzela Care Centres by March 2004. The DOJCD and the NPA realised that this would be a difficult task, but claimed it was "possible to achieve this goal with the assistance of donor funding and the buy-in of all the role-players".¹³²

By the end of the 2003-2004 financial year, the goal of 55 courts had not been realised, but the number of Sexual Offences Courts did increase to 51.¹³³ The government undertook to open another 10 such specialised courts every year over the next five years and also to increase the number of Thuthuzela

127 NPA 2003: 31.

128 A more victim-centred approach is followed and, in practice, the services rendered to victims have been substantially improved — NPA 2004: 53.

129 NPA 2003: 31. Multidisciplinary training seminars on prosecuting sexual offences were presented in all the provinces for more than 500 magistrates, prosecutors, police personnel, forensic nurses and doctors — NPA s.a.a: 1. It is clear from the interviews with court personnel (see Appendix A) that training is taking place on an ongoing basis, either formally as initiated by the NPA or SOCA, or informally as arranged by the role-players themselves.

130 NPA 2005: 50. Only 26 of these 54 courts were fully blueprint-compliant, while the rest were dedicated courts — Mabandla 2005: 3.

131 NPA 2003: 30.

132 SOCA Unit 2002a: 13.

133 NPA 2004: 53.

Centres.¹³⁴ This undertaking was in line with President Mbeki's State of the Nation Address of 6 February 2004 in which it was reiterated that

from this financial year, the programme to set up specialised courts, including those dealing with commercial crimes and women and child abuse, will be intensified as will the process of transforming the entire judicial system.¹³⁵

Despite these commitments to intensify the establishment of specialised courts, by the end of 2005 it was reported that the number of Sexual Offences Courts had increased to only 54 in the previous financial year and that no additional Sexual Offences Courts had been established during the 2004-2005 financial year.¹³⁶ What is even more alarming is that the Minister declared a moratorium on the establishment of additional Sexual Offences Courts because of an extensive audit called for to evaluate these courts.¹³⁷

In contrast to this moratorium on the establishment of more Sexual Offences Courts, President Mbeki again pledged support for the plight of abused children and acknowledged on 3 February 2005 in his State of the Nation Address that

... there are crimes such as aggravated robbery and child abuse, which show an increase. Yes the level of crime, especially violent incidents, remains unacceptable. But we are confident of meeting our target to reduce the rate of contact crimes by 7-10% per year.¹³⁸

To combat the increase in child abuse, the President promised that

(i) in the coming year, we shall continue with all these and other programmes, to ... operationalise more sexual offences courts, taking into account that the conviction rate in these courts, (at 62%), is much higher than in ordinary courts (at 42%), and improve the capacity of all dedicated courts ...¹³⁹

On 20 May 2005, the Minister of Justice and Constitutional Development, Ms Brigitte Mabandla, confirmed the successes of these courts in her budget speech in Parliament by stating that specialised courts had shown significant progress in comparison with other mainstream courts. However, it was added that the aim was not to have "a proliferation of specialised courts that are better resourced than the mainstream courts". Therefore, a review to determine the "impact, effectiveness and sustainability of specialised courts" was initiated.¹⁴⁰

In the 2006 State of the Nation Address, no specific mention was made of specialised courts, or of the plight of children in particular. Instead, only general comments were made with reference to crime as a whole. President Mbeki said that surveys unequivocally indicated that people expected that

134 Merten 2004: 42; NPA s.a.e: 4.

135 Mbeki 2004: s.p.

136 NPA 2005: 50-51.

137 NPA 2005: 51.

138 Mbeki 2005: 18.

139 Mbeki 2005: 20.

140 Mabandla 2005: 3.

we must act more aggressively with regard to our criminal justice system to improve the safety and security of our people, especially by improving the functioning of our courts and increasing our conviction rates to strengthen the message that crime does not pay.¹⁴¹

Furthermore, he pledged that the government would continue to focus on the critical challenge of further improving our criminal justice system and that case-load management would be improved in our courts.¹⁴² In contrast to the previous year, no mention was made of the commitment to increase the number of Sexual Offences Courts.

Reflecting on the abovementioned developments, it is noteworthy that the audit called for in 2004-2005 was to “help improve services for effective roll out of more courts”.¹⁴³ However, no specific reasons for the moratorium were given in the 2004-2005 annual report and no feedback has yet been given on the outcome of the audit. Consequently, there is a startling unease about the moratorium and the unofficial declaration on mainstreaming the Sexual Offences Courts.¹⁴⁴ It is also cause for concern to note that the rate at which these courts were established declined drastically despite indications in 2004 that as many as 10 additional courts would be established per year. The target of 55 courts by March 2004 was also not reached by the end of the 2004-2005 financial year.

Further concerns were raised when proposals to extend the use of CCTV and intermediary facilities in court were not fully incorporated in the Sexual Offences Bill. In May 2006 a disappointed Joan Van Niekerk, the National Coordinator of Childline, said:

I think the bill is gearing up to dismantle our specialised sexual offences court. That is what I see on the wall with this bill. We really need a public outcry.¹⁴⁵

On the other hand, on 5 May 2006 a commitment was made by government and its civil society partners by signing the Kopanong Declaration. It was decided to take a holistic approach to eradicate violence against women and to take priority actions before 25 November 2006. Amongst others, a strategy of managing sexual offences, which includes the establishment of Sexual Offences Courts with the participation of NGO service providers, will be developed. It is planned to establish a coordinating structure and to draft a National Action Plan.¹⁴⁶ These are plausible undertakings, but can sexually abused children afford to wait another year or more for policies and structures

141 Mbeki 2006: 12.

142 Mbeki 2006: 12.

143 NPA 2005: 51.

144 A further concern is the South African Police Service's decision to redeploy all police members in specialised units such as the Child Protection Unit and the Family Violence, Child Protection and Sexual Offences Unit and what the effect of this will be on the functioning of Sexual Offences Courts — Da Costa 2006: 1-3.

145 Quintal 2006: 2.

146 Dlamini 2006: 1-3.

to be put in place? When will implementation start and, more important, what will be implemented?¹⁴⁷

It is clear from the statistics given in this article that the number of child sexual abuse cases is significant and is escalating. It is also clear that Sexual Offences Courts contribute to better justice for children. The perturbing question is why are more Sexual Offences Courts not being established at a faster rate and, even worse, why are some of these courts being closed down owing to insufficient staff.¹⁴⁸

According to Pretorius and Louw,¹⁴⁹ the initial focus of victim empowerment was on woman and children, but, currently, the Victim Empowerment Policy includes all victims of crime and 119 victim empowerment initiatives across the country exist. Since all victims are now covered by the Victim's Charter, and other victim assistant services exist, the question arises whether special attention should be paid to, and scarce resources allocated to, women and children, and, more particularly, to children who are the victims of sexual abuse. Should all victims of crime not be treated equally?

We strongly argue that women and children, in particular, who are the victims of sexual offences, should still have the benefit of specialised courts and of a multidisciplinary approach. The courts have also confirmed that the criminal justice system must address the plight of these victims. Acting Judge Sarkin held: "Often they (*victims of sexual crimes*) believed the criminal justice system to be unsympathetic ... Greater assistance ought to be given to those women who wish to report rape and other sexual offences."¹⁵⁰ The principles of unfair discrimination and substantive equality are well established in our law.¹⁵¹ We submit that it is common cause that the prosecution of sexual offences is much more intricate than that of most other crimes.¹⁵² Furthermore, the victims of these crimes usually come from the most vulnerable groups of our society and must be provided with additional protection. Therefore it is argued that child victims in particular are entitled to preferential treatment in relation to other

147 The 2005-2006 annual report of the NPA was not available at the time of finalisation of this article. It is unknown if any Sexual Offences Courts were established in the last financial year and whether the audit was completed, or what the outcome of the audit was.

148 In March 2006 one of the two Sexual Offences Courts in Pietermaritzburg was closed down because of a lack of personnel — Correspondent 2006: 8.

149 Pretorius and Louw 2005: 81.

150 *S v Staggie and Another* 2003 1 SACR 232 C 247 d-e.

151 De Waal *et al* 2001: 197-225; Cheadle *et al* 2002: 51-117.

152 In *Klinck v Regional Court Magistrate NO and Others* 1996 (3) BCLR 402 (E), the court accepted that the child witness has special needs — National Project Oversight Committee 2003: s.p. The Committee found as follows: "Sexual offences, whether perpetrated against women or children, are extremely intricate and complicated crimes to prosecute. The intimate nature of these cases requires prosecutors and magistrates to be sensitive to the needs of the survivor and the scientific and complicated nature of the evidence requires all role players to have specific and specialised expertise in order to effectively deal with issues that may arise during the trial. It was with the above in mind, that it was decided to establish these specialised courts".

victims of crime. The Constitution further clearly states that “the child’s best interests are of paramount importance in every matter concerning the child”.¹⁵³ Accordingly, the delay in establishing a greater number of specialised courts, or the suspension of special services for this special group, cannot be justified.

The rights of sexually abused children must be given effect to in terms of national constitutional obligations, and also in terms of international commitments.¹⁵⁴ South Africa has ratified human rights instruments referring specifically to children, such as the *World Declaration on the Survival, Protection and Development of Children* (ratified in 1993);¹⁵⁵ the *Convention on the Rights of the Child* (CRC) (ratified in 1995);¹⁵⁶ and the *African Charter on the Rights and Welfare of the Child* (ratified in 2000).¹⁵⁷ As a party to the *Declaration and Agenda for Action* adopted in 1996 by the World Congress against Commercial Sexual Exploitation of Children, South Africa also undertook to co-operate in combating such exploitation internationally as well as nationally.¹⁵⁸

5. Conclusion

The investigation into the nature and attributes of blueprint Sexual Offences Courts revealed numerous advantages for child victims of sexual offences. Direct, or sometimes more indirect, advantages for the child victim were illustrated regarding every prerequisite laid down by the blueprint. Sexual Offences Courts have made a substantial difference, as indicated by official statistics on improved conviction rates, the reduction in the turnaround time from date of report to the finalisation of the case, the reduction of secondary victimisation, as well as an improvement in the skills of different role-players. Furthermore, these courts are equipped with various measures to protect children, such as intermediary and CCTV facilities, anatomical dolls and separate waiting rooms. These benefits are not generally available when sexual offences are tried in ordinary courts.

Notwithstanding the laudable efforts and achievements of Sexual Offences Courts, it is still a serious concern that, by 2005, there were still only 54 Sexual Offences Courts in South Africa.¹⁵⁹ These courts are only able to service one-tenth of the need.¹⁶⁰ What is even more disturbing is that, in the 2004-2005 financial year, no additional Sexual Offences Courts were established, because the Minister declared a moratorium on the establishment of further Sexual Offences Courts.¹⁶¹ As a result, only some child victims experience the benefits of Sexual

153 1996: sec 28(2).

154 For a discussion on the application of international human rights instruments in relation to the rights of the child, see Mbakaza 2005: 42-48.

155 Oosthuizen 2000: 113.

156 Oosthuizen 2000: 112. The articles in the CRC which are relevant to sexually abused children are articles 3,4,19.

157 Olivier 2000: 199; article 16 of the *African Charter on the Rights and Welfare of the Child* is relevant to sexually abused children.

158 Oosthuizen 2000: 113.

159 NPA 2005: 51; NPA 2004: 53.

160 Morna 2006: 2.

161 NPA 2005: 51.

Offences Courts. We can only hope that more courts will be established in future at a much faster pace.

Finally, there are still numerous challenges in providing real justice for children who have been sexually abused. Nonetheless, there are sufficient grounds to conclude that Sexual Offences Courts, in contrast to ordinary courts, do provide improved justice for child victims of sexual offences.

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Appendix A

Glossary for appendices

CCTV	Close Circuit Television
LPOC	Local Project Oversight Committee
NGO	Non-Governmental Organisation
NPA	National Prosecuting Authority
SAPS	South African Police Services
SOC	Sexual Offences Court
SOCA Unit	Sexual Offences and Community Affairs Unit
VEP	Victim Empowerment Programme

Qualitative, semi-structured interviews and questionnaires

Completed semi-structured questionnaires were received from and/or interviews were conducted with the following persons to whom we express our appreciation for their co-operation and valuable input:

S Amsterdam, Senior Public Prosecutor, Magistrates' Office, Grahamstown (Interviews 2003-2005).

A Coetsee, Social worker: VEP children — Child Welfare, Bloemfontein/Childline Free State (Services for child victims at Sexual Offences Court, Bloemfontein) (Interview 2 June 2006)

J Greyvenstein, Regional Court Magistrate, Sexual Offences Court, Bloemfontein (Interviews 2003-2004)

M Johnson, Programme Manager, Social Work Services: Child Welfare, Bloemfontein/Childline Free State (Services for child victims at Sexual Offences Court, Bloemfontein) (Interview 2 June 2006)

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

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

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

M E Opperman, Magistrate, Magistrates' Office, Bloemfontein (Interviews: 2001-2005)

S Uys, Prosecutor, Sexual Offences Court, Bloemfontein (Interviews: 2005)

A Venter, Magistrate at Tshepong Victim Support Centre, Bloemfontein (Interviews: 2001-2006)

C Wolhitz, Case Manager, Sexual Offences Court, Bloemfontein (E-mail and personal interviews: 2004-2005)

Appendix B

Sexual Offences Courts: Blueprint Document

Approved by Sexual Offences and Community Affairs Unit on 10 April 2005

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 3 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 co-ordination 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
- Coordinated by NPA
- Meets monthly
- Reports to Provincial Project Oversight Committee through the SOC prosecutor