

Improving Case Outcomes for Sexual Offences Cases Project

Pilot Study on the
Sexual Offences Courts



USAID
FROM THE AMERICAN PEOPLE



the
**GENDER
& HEALTH
JUSTICE**
Research Unit



USAID
FROM THE AMERICAN PEOPLE

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

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

© 2018 Gender Health and Justice Research Unit

Gender and Health Research Unit

GENDER, HEALTH and JUSTICE RESEARCH UNIT

DIVISION OF FORENSIC MEDICINE

Department of Pathology

Faculty of Health Sciences

University of Cape Town

Falmouth Building, Anzio Road

Observatory

Telephone: +27 (0)21 650 4304

ACKNOWLEDGMENTS

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

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

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

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

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

EXECUTIVE SUMMARY

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

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

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

Purpose and Objectives

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

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

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

References

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

EXECUTIVE SUMMARY continued

Methodology

The baseline made use of a purposive sampling method. The table below outlines the three primary sites that were assigned to the GHJRU for the ICOP project by the DoJ&CD, along with two additional subsidiary sites identified through an initial project court mapping exercise².

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

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

- (i) **Statistical analysis:** Quantitative case flow data was collected through a retrospective case file review of finalised sexual offences cases with the use of a case data collection tool developed for the project. Over 400 case files were analysed to collect data on average turnaround times from the date of arrest to the date of the final judgment, reasons for postponements, the relationship between types of charges and sentencing, the reasons for withdrawals or convictions and various other factors that influence the life cycle of the sexual offence case.
- (ii) **Qualitative analysis:** Experienced researchers conducted *in-depth* qualitative interviews with high-level provincial stakeholders and court actors, using semi-structured interview guides developed to reflect the conceptual framework of the ICOP ToR. Key questions were asked across all interview schedules and additional questions addressed specific themes for each court actor or stakeholder. All court staff interviewed were part of a proposed and approved schedule of interview respondents but all interviews were arranged on site depending on availability of court personnel and the court roll. In total, the team interviewed 53 stakeholders and court actors including high-level stakeholders (5 national and 8 provincial), regional magistrates (7), prosecutors (7), intermediaries (5), interpreters (5), court preparation officers (4), social workers, and other staff from TCCs (12). The interviews resulted in over 200 hours of audio recordings and 1190 pages of interview transcripts that were coded and analysed by theme. The data was then analysed for commonality and differences in descriptive topics, and central ideas across interviews
- (iii) **Court observation:** Permission was obtained from senior court personnel and court managers for the research team to conduct an observation of sexual offences cases that were being heard. This researcher observed the proceedings, completed an observation checklist sheet to observe certain aspects of the trial and took additional observational notes for each sitting.
- (iv) **Meta-analysis and systematic review of existing research:** The data collected at the sites was supplemented by a meta-analysis of existing data available on SOCs, research reports and current indicators used by DoJ&CD and NPA relating to the SOCs. In addition, the team conducted a systematic desktop analysis and audit of existing statistics on sexual offences from each stakeholder.

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



Findings

1. Turnaround times and successful outcomes of sexual offences cases

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

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

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

- The turnaround time from arrest to judgment/sentencing ranged between 1 month and 64 months, with an average of 9.1 months. However, of those cases finalised within the average of 9.1 months, 65.2% were struck off the roll or withdrawn. ⁴
- The convictions obtained within 0-9 month were mostly from cases where the accused plead guilty where swift convictions are easy to obtain.
- Most cases (90.5%) were finalised within 18 months.
- Importantly, a total of 91.8% of those cases that ended in convictions were finalised within 18 months, with 34.5% of convictions taking place for cases that take between 10 and 18 months to finalise.

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

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

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

References

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

³ The current target is 70 – 90%.

⁴ The current target is 9 months.

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

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

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

2. Bottlenecks in the justice system

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

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

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

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



3. Caseloads

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

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

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

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

4. Vulnerable Groups

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

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

- (i) **LGBTI:** Statistics on LGBTI survivors of sexual offences are difficult to obtain as the current incident forms do not record sexual orientation or gender identity. Court actors estimated that LGBTI survivors made up at most 1-3% of their caseload, and others were not aware of LGBTI cases in their community. Cases with LGBTI survivors are generally approached in the same way that all cases of rape are approached ('rape is rape' ethos). Prosecutors and judiciary felt a survivor's sexual orientation or gender identity did not affect the nature of injuries or consequences of the attack. This could render survivors who were targeted because of their sexual orientation or gender identity (bias-motivated sexual offences) invisible and it ignores that LGBTI survivors might have specific needs in the criminal justice process.
- (ii) **Children:** On average the cases involving children constituted about 80-85% of the total caseload of the courts in the baseline study. All the courts visited during fieldwork had been refurbished to some extent to be more child-friendly, which is essential to the effective participation of the child in the court process and the minimisation of secondary trauma. The overall impression regarding facilities for children is that the facilities are there to be compliant with the model, but that they are not frequently used. Although all the court personnel at the pilot courts had received some basic form of training on communicating with and preparing child witnesses, it was reported that some prosecutors do not proceed with cases due to the limited evidence or difficult circumstances surrounding child witnesses such as mental disability or inability to express themselves in court.
- (iii) **People with disabilities:** On average prosecutors and Regional Court magistrates estimated that children and adults with disabilities (with an emphasis on adults and children with mental and intellectual disabilities) comprised 10-15% of their cases, with a notable increase in such cases over the last 5 years. While specific statistics on complainants with intellectual disabilities are not available, most of the court actors had not received specific training on consulting with or preparing persons with intellectual disabilities. Senior stakeholders confirmed that many of these cases are not making it to trial and corroborates the statements of some prosecutors that these types of cases get screened carefully and withdrawn early.
- (iv) **Older persons:** The number of older persons presenting at the courts was generally reported to be low, with most court actors reporting a caseload of 1-3% being persons over 60 years of age. Though there are very few cases of sexual offences reported against older persons, those that they have seen have been as traumatic as child cases. None of the respondents indicated that they had had specialised training for this particular vulnerable group and were not aware of any specific protocols when dealing with older sexual offences survivors.

5. *Intersectoral collaboration*

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

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

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

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



6. Training

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

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

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

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

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

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

7. Caseflow Management Practice within the Sexual Offences Courts

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

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

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

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

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

Recommendations

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

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

- (i) Revising recommended sexual offence case finalisation timeframes to a more realistic timeframe of 18 months. Case turnaround times should be reviewed to reduce pressure to rush cases through the system at the expense of survivors whose cases may be screened out at an early stage through withdrawals or being struck off the roll.
- (ii) Developing alternative and new indicators of success and performance measures and revising current policy directives accordingly to reduce the focus on conviction statistics and reflect the holistic factors that determine case outcomes. This should include consideration of indicators relating to the number of consultations conducted by prosecutors with a complainant and length of time before trial, the complex nature of multiple victim/multiple accused cases, other complex cases involving vulnerable groups, the taking of victim impact statements, and complainant satisfaction with services.
- (iii) Customising the sexual offences case flow management model through
 - Revising and customising the Department of Justice and Constitutional Development Case Flow Management Guidelines of 2010 to reflect the specific case guidelines that should govern sexual offences and consider the various developments that have occurred within the system since 2010.⁵
 - Working with the Regional Court Presidents to explore the validity and usefulness of revising the current Criminal Practice Directives for the Regional Courts in South Africa (2016) to incorporate specific directives for the management of sexual offences .

References

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



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

- (i) Increasing specialised staff in all courts particularly in the specialised prosecutors' positions for current and phase 2 courts, as well as foreign language interpreters and foreign language intermediaries.
- (ii) Providing for greater time and preparation between prosecutors and complainants during the pre-trial period.
- (iii) In the absence of a feeding scheme, the DoJ&CD need to approach treasury again to increase witness fees from R20 to R50.
- (iv) The urgent establishment of a Sexual Offences Ombudsperson to provide strong and consistent oversight across all departments and act as a much-needed interface between the justice system and the public.

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

- (i) Reconceptualising training for court actors to be outcomes-based and incentivised. This will allow for measurement of the impact of the training on direct service provision and provide for more practical applications of the protocols and laws. It is recommended that the attendance at training modules be incentivised to encourage participation and be linked to performance indicators.
- (ii) Devising a form of integrated sexual offences training for the SOCs, like the integrated training model developed by the NPA for the Thuthuzela Care Centres, to allow court actors to share ideas, challenges and concerns. A more integrated focus on sexual offences training may also help facilitate synchronicity and foster better working relationships - educating all involved regarding their role in the SOCs.
- (iii) Increasing access to case law research resources and expert witnesses for prosecutors to assist them to finalise cases more swiftly and as such improve case outcomes and turnaround times.

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

- (i) Designing stress management policies and supportive practices to respond to the distinct needs of different types of staff in the SOCs and the type of caseload they are managing. A 'one size fits all' approach to staff well-being is not advisable.
- (ii) Ensuring that wellness programmes promote a culture of stress awareness and a supportive response to staff concerns about stress. Staff must be assured that asking for psychosocial support will not act against their chances for career advancement by being an indication of susceptibility to emotional trauma.
- (iii) Introducing a strategy for reducing risks to each individual staff member at the SOCs. As a start, this should address safety and security risks, physical health risks, risk of exposure to trauma and more routine sources of occupational stress. On a practical level, a specific 'mental health or wellness allowance' should be allocated to each employee to use for this type of support on a yearly basis so that they can discreetly and confidentially employ the services of a counsellor or support service of their choice. This approach promotes a self-care ethos which would negate need to request counselling through official channels which is currently acting as a deterrent to those staff accessing current wellness programmes or debriefing support.
- (iv) Offering voluntary rotation to court actors who specialise in sexual offences cases, particularly presiding officers and prosecutors. Although Regional Court magistrates and prosecutors may prefer working with specialised staff that do not rotate, in the absence of increased human resources and adequate emotional and mental health support, rotation is a short to medium term solution to the mental exhaustion.

Improving Case Outcomes for Sexual Offences Cases Project

Pilot Study on the
Sexual Offences Courts

