



Sexual Offences Court Monitoring Results:
Khayelitsha Court

December 2019

Acknowledgements

This Citizen-Based monitoring project would not have been possible without the dedicated staff and volunteers of Rape Crisis Cape Town Trust, who assisted with the development of the monitoring tool and conducted the monitoring. They are:

Zanele Vananda

Nwabisa Gugu

Nosipho Fuzile

Ncediwe Singiswa

Estelle Carollissen

Rene Manuels

Deliwe Ngqwala

Anneke Eichstedt

Tohira Jardien

Neliswa Tshazi

We also acknowledge the following people:

Jeanne Bodenstein, Rape Crisis Cape Town Trust, for her technical expertise, coordination of the project and contribution to this report.

Janet Austin, Rape Crisis Cape Town Trust, for her guidance in the development of the monitoring tool, research input, and contribution to this report.

Mandisa Mbotshelwa, Rape Crisis Cape Town Trust, for her administrative and logistical support.

Alison Tilley, Consultant, for her strategic input and editing contributions.

Executive Summary

South Africa has staggeringly high rates of reported sexual offences. This has compelled the South African government to explore innovative ways to provide for a robust criminal justice system that not only holds perpetrators of crime accountable, but also provide support to complainants.

The introduction of specialist criminal justice system services in the form of Sexual Offences Courts, Thuthuzela Care Centres and FCS units in the SAPS has been met with enthusiasm by civil society and citizenry alike.

This report reflects the results of a Citizen-Based Monitoring project to assess the Khayelitsha Regional Magistrates' Court against the Draft Regulations on Sexual Offences Courts ("the Draft Regulations"). Furthermore it aims to provide recommendations to the Department of Justice of steps to be taken to address the current gaps.

Our monitors visited the Khayelitsha Magistrates' Court on two occasions and made some very encouraging observations. These include some infrastructure upgrades that have been made to attempt to limit possible contact between the accused and the complainant. Other encouraging observations include attempts to ensure the safety of the complainant as well as the presence of committed support personnel.

However, our monitors also observed some alarming gaps – specifically related to the public restrooms and the location of the office of the court supporter. We have also observed that many of the facilities are not to persons with disabilities and this needs to be addressed urgently.

We recommend the following (please see page 21 for a full description of our recommendations) :

1. The Department of Justice must convene a project meeting with the court personnel, personnel from the Office of the Regional Head and representatives from Rape Crisis to ensure that the recommendations are implemented.
2. Addressing the concerns relating to the restrooms and the office of the court supporter
3. Ensure that all facilities are accessible to persons with disabilities
4. Operationalise a separate entrance to the court building for complainants
5. Establish a mechanism for the sharing of information in order to enable citizen monitors to effectively monitor government services.
6. Ensure that the waiting room is made child friendly and using creative means to obtain educational toys and information

Terminology

- The terms “complainant” and “survivors” are used interchangeably
- The term “witness” refers to witnesses for the State
- CCTV refers to Closed Circuit Television
- Department of Justice refers to the Department of Justice and Correctional Services, but this reference is used to attempt to eliminate the over population of the document with acronyms.
- SAPS refers to the South African Police Services
- FCS refers to Family Violence, Child Protection and Sexual Offences Units

Introduction

Although South Africa has some of the highest rates of reported sexual offences, it also has a criminal justice system that boasts innovative inventions in an attempt to address this. One such example is the establishment of sexual offences courts. Two decades have passed since the establishment of the first sexual offences court in the country in 1999 as part of the Wynberg-project.¹

The establishment of sexual offences courts had three main goals. Firstly, that survivors of rape that entered the criminal justice system were supported, treated kindly and received information about the system and about the specific case. Secondly, that although the people working on a rape or sexual offences case might come from different departments they had to work together. This meant that there was a need for the police officer who took down her report and investigated her case, the doctor who examined her, the court supporter who supported her, and the prosecutor and court preparation officer who sought justice for her to all listen to and to work with each other. The third goal was that sexual offences were reported, investigated and prosecuted.

Over the past twenty years, the rollout of sexual offences courts had many starts and stops, but the goals changed very little. The guiding factor in the Rape Survivors' Justice Campaign is that the survivor must be at the centre of the justice system and receiving the necessary support. We have constantly advocated for this during the process of drafting the primary and secondary legislation relating to sexual offences courts.²

With these goals in mind, we embarked on a Citizen-Based Monitoring project to monitor Khayelitsha Regional Court to see what is currently on offer for survivors of sexual offences and what is needed to ensure that a sexual offences court can be established in Khayelitsha in line with the Draft Regulations on Sexual Offences Courts.

Methods and Approach

We approached this project as an exercise in Citizen-Based Monitoring. Citizen-based monitoring (CBM) is an approach to monitoring government performance that focuses on the experiences of ordinary citizens in order to strengthen public accountability and drive service delivery improvements. It requires citizens to be active participants in shaping what is monitored, how the monitoring is done and what interpretations and actions are derived from the data.³

This approach to monitoring is situated in the context of a democratic nation where the voice of citizens play an important part in building a capable State.

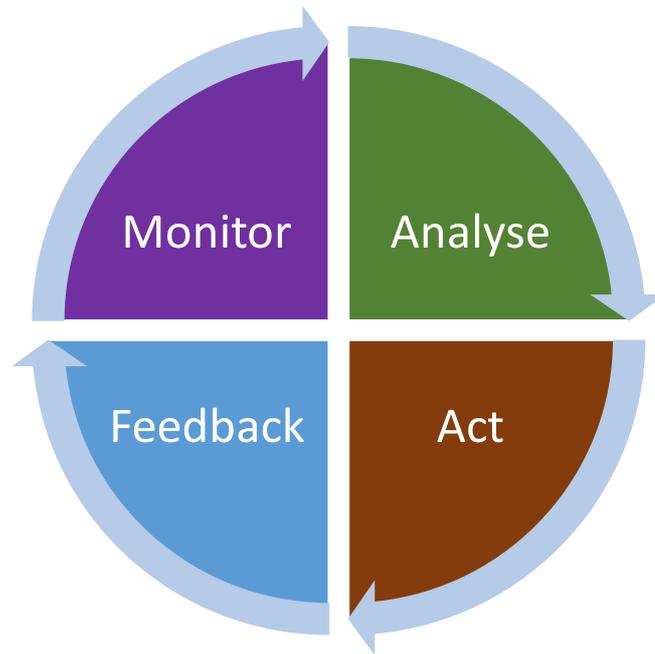
As such, the experience of ordinary citizens is an integral component in measuring how government services are performing. It is also the experience of ordinary citizens that must shape the changes that government implement to address the gaps in service delivery. This is recognised as a component that is often missing from government's own processes and with this project, we aim to assist government in providing this input.

¹ Pilot Assessment: The Sexual Offences Court in Wynberg and Cape Town and Related Services, 2001.

² Section 55A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 and the Draft Regulations on Sexual Offences Courts.

³ A Framework for Strengthening Citizen-Government Partnerships for Monitoring Frontline Service Delivery. Published by: The Presidency: Department of Performance Monitoring and Evaluation, 2013.

The following model adopted by the Department of Planning, Monitoring and Evaluation, proved useful in our planning of this project:



Monitoring

Preparation:

A call was made for all interested staff and volunteers to attend a training session on this court monitoring process. A group of fourteen staff and volunteers involved in advocacy, court support, and practitioners in the gender based violence sector was formed as a Citizen-Based Monitoring team. Following a general update of our advocacy campaign progress, we introduced the court monitoring tool developed for our first court monitoring exercise. Here questions could be raised, definitions and intentions explored, and comments and edits could be made, all resulting in our final edition of the tool. The group discussed how to approach the exercise, and reached collective agreement on conducting this initial court monitoring at Khayelitsha Regional court. This is one of the five courts at which we operate our court support service and is the site where we have demonstrated for upgrades to a sexual offences court to be made for the past three years.

The Tool:

In order to create an effective tool for monitoring sexual offences courts, the Draft Regulations had to be operationalised into a checklist for all observable facilities, services, and other provisions. The regulations are generally divided by facilities, equipment, training, and procedures, and this was optimised to enable the monitors to comprehensively examine the facilities and their equipment, as well as report on procedures where relevant. The adapted stipulations from the Regulations were placed as statements with space for monitors to select a “Yes” or “No” answer, as well as give more detail in the space for “Comments” provided. The language of the statements was put into a clearer and simpler register to make it more accessible to all users. In order to effectively monitor access for people with disabilities, older persons, or other groups with specialist needs, a tool guide was developed to expand on these different requirements and how they may translate to what could be seen in the facilities.

The Court Monitoring process:

We informed the Khayelitsha Court Manager as well as the Senior Prosecutor of our intention to conduct the court monitoring. Five of our Advocacy volunteers elected to conduct the initial court monitoring exercise on 11th November 2019. They were to enter the court and seek the assistance of the Court Manager or anyone else delegated by him or another court official. The court monitors were to enter all of the facilities mentioned in the regulations and be able to request any information about such facilities and the relevant equipment and procedures related to their use. Should any room or piece of equipment not be made accessible, the group would return on another date.

Analysis

The five completed surveys were gathered and given the small sample, the responses were compared and collated into a composite of all data supplied. Disagreement between survey responses was insignificant. This composite survey was then presented back to the court monitoring training group for their input and clarification on the survey responses, and the implications of such. Our Advocacy Specialist then further drew out the practise and legislative gaps between the regulations and the monitoring findings.

Feedback

The team agreed on next steps regarding how the results would be disseminated to fulfil the feedback component of the process. The report will be shared with the Department of Justice's Regional Office for the Western Cape, the Deputy Minister of Justice and the Parliamentary Portfolio Committee on Justice. This report will also be shared on Rape Crisis's media platforms.

Limitations

- Due to the fact that the final version of the Regulations on Sexual Offences Courts are not gazetted yet, we had to use the Draft Regulations on Sexual Offences Courts as at October 2019 to develop our monitoring tool.
- As this was a monitoring project done by citizens based in the community where the monitored facility is located, we were only able to monitor what could be reasonably observed at the facility. We were not able to monitor the requirements related to training, debriefing and all of the processes that take place "behind closed doors".
- As the Department of Justice has not established a sexual offences court yet at this facility, none of the findings of this report should reflect on the rollout of sexual offences courts generally.
- As the Draft Regulations are in English, the court monitoring tool was developed in English and all monitoring team meetings were conducted in English only.
- Gaining access to the court room was difficult on the first day of the monitoring and so monitors had to visit the court again on another day to observe the court room.

Findings

1. FACILITIES AND EQUIPMENT/DEVICES AT DESIGNATED COURTS

The Waiting Area

Facility

Survivors of rape and other sexual offences often find it very difficult to navigate the court building. When survivors have to be at a court building in order to testify about a rape in which their privacy and bodily integrity were undermined, it can be extremely distressing and traumatising. Therefore the waiting area for survivors who are coming to testify is a very important component of a sexual offences court. This area should be designed in such a way that contributes to the empowerment, safety and comfort of all who use it. It should also be set up in such a way that limits secondary trauma as this is one of the areas where survivors and other witnesses for the State will spend the most time.

Item	Yes	No	Comments
Does the court have a waiting area?	X		
Is there proper signage indicating the location of the waiting area?	X		
Does a court official ensure that the waiting area is used exclusively by complainants and their supporters? (Please specify who and how in the comments)	X		
Is there someone to ensure that any unauthorised person leaves the waiting area immediately? (Please specify who and how in the comments)	X		
What if the waiting area is full? Is there another space to wait?		X	
Does a court official delegated by the court manager accompany the complainant to and from the waiting area? (Please add in the comments who does this)	X		
Is the waiting area child-friendly?		X	
Is it accessible to persons with disabilities and accommodate their assistive devices?	x		

Can people who use guide dogs, such as complainants and witnesses who are visually impaired, use the waiting area?		X	They have not had a complainant with a guide dog yet, but the security guard was asked and said that no dogs are allowed.
Does it accommodate the needs of older persons?		X	There is no comfortable seating available
Is it furnished comfortably? Is it suitable for waiting long periods of time?		x	No comfortable seating
Does it have proper ventilation? Are there windows that can be opened?	X		
Does it have water available for the complainants?		x	Although there is a water machine, it is empty and there are no cups
Is information displayed accessibly to all persons about court procedures, the role of a complainant and a witness, witness fees payable to complainants and witnesses and any other relevant court service?		X	Nothing is displayed on the walls. Fees are handled by the NPA, but that information is not shown.
Is information displayed regarding how to access support services? Eg social work services, etc?		X	
Does the waiting area have toys and, where possible, educational items for children which are age appropriate?		X	Very few toys and no crayons or educational items.
Have space and design arrangements been made to ensure that complainants and witnesses will not come into physical contact with the accused or any associates?	X		

As can be observed from the above measurement tool, we are concerned about the fact that the waiting room is not furnished with comfortable furniture for adults waiting in this area. In addition, the area dedicated for children has very few toys and no educational items as well as exposed wall plugs close to the ground and uncovered brick corners that can cause injuries.

There is also an obvious lack of informational materials with nothing displayed about any support services, the court process or any of the other required information.

However, we would like to note that the waiting room appears to be guarded by security personnel and has been arranged in such a way that survivors will not come into contact with the accused or their associates.

Court Preparation Room and Consultation Rooms
Facility

Item	Yes	No	Comments
Does the court have a court preparation room and consultation room?	X		
Is there proper signage indicating the location of the court preparation room and consultation room?	X		
Does a court official accompany the complainant to and from the court preparation and consultation room? (Please add in the comments who does this)		X	The Court Preparation Officer consults with the complainant in her office. But she collects the complainant from the waiting room
Is the room child-friendly?	X		
Is it accessible to persons with disabilities and accommodate their assistive devices?		X	The door is not wide enough to fit a wheel chair.
Can people who use guide dogs, such as complainants and witnesses who are visually impaired, use the court preparation room and consultation room?	X		The Court Preparation Officer says that this is possible
Does it accommodate the needs of older persons?	x		
Is privacy assured with the rooms, with no access by the public, the accused or associates?	X		
Is there enough space to accommodate the personal assistant of a complainant or a witness with a disability or an older person?	X		
Are the rooms comfortable and furnished in a way that will not distract a complainant or a witness during a consultation?	X		
Have space and design arrangements been made to ensure that complainants and witnesses will not come into physical contact with the accused or any associates?		X	The door to this room is next to the waiting area where the public (including the accused or any associates wait).

We are concerned that this room falls outside of the safe area that has been created with access control. We suggest upgrades to address this.

Equipment

Item	Yes	No	Comments
Does the room have lockable storage to store the court preparation devices and equipment?	X		

The Court Room

The courtroom must be set up in such a way to ensure that court proceedings are conducted efficiently and effectively. In addition to this, it must also allow for the limitation of secondary trauma to survivors and be accessible to all persons who might need to access it.

Facility

Item	Yes	No	Comments
Does a court official accompany the complainant to and from the courtroom? (Please add in the comments who does this)	X		The Court Supporter
Is there proper signage indicating the location of the court rooms?	X		
Is it accessible to persons with disabilities and accommodate their assistive devices?		x	The passage way to the witness stand is very narrow and a wheel chair cannot fit through
Can people who use guide dogs, such as complainants and witnesses who are visually impaired, use the court room?			Unknown
Does they accommodate the needs of older persons?	X		
Have space and design arrangements been made to ensure that complainants and witnesses will not come into physical contact with the accused or any associates?			The courtroom is very small and the layout are such that witnesses will have to walk past the accused to get to the witness stand.

We are concerned that the room is not accessible to persons with assistive devices, like wheelchairs. We recommend the passage to be widened to allow for wheelchairs to fit through. We also recommend creative solutions to ensure that contact between witnesses and accused persons are limited.

Equipment

Item	Yes	No	Comments
Does the room have closed circuit television or similar electronic media for giving evidence?	X		
Is CCTV ever used for adult complainants?	X		
Does the court provide reasons for refusing applications to give evidence using closed circuit television or similar?			Unknown
If an intermediary is appointed, is the witness able to testify (through electronic devices or directly) and be seen and heard from somewhere other than the court?	X		
Is the equipment good enough to enable the efficient and effective giving of evidence by complainants and witnesses and to avoid secondary traumatisation?	X		

The Testifying Room

Both the Victim Service Charter and sexual offences legislation recognises the need to limit secondary trauma and one method of implementing this is by the creation of child-friendly testifying rooms which aim to reduce the stress and trauma related to testifying.⁴ The testifying room will be used by children as well as adults and must be accessible to people with disabilities.

Facility

Item	Yes	No	Comments
Does the court have a testifying room?	X		
Is there proper signage indicating the location of the testifying room?	X		
Does a court official accompany the complainant to and from the testifying	X		A court official accompanies the complainant to the

⁴Report on the Re-Establishment of Sexual Offences Courts by the Ministerial Advisory Task Team on the Adjudication of Sexual Offences, 2013. 53.

room? (Please add in the comments who does this)			testifying room and then the intermediary escorts the complainant back to the waitingroom
Is the room child-friendly?	X		There is a bench and an office desk as well as one teddy bear and a carpet.
Is it accessible to persons with disabilities and accommodate their assistive devices?		X	The couch must be shifted because there is too little space.
Can people who use guide dogs, such as complainants and witnesses who are visually impaired, use the testifying room?		X	The intermediary never had complainants who had guide dogs. However, the security guard mentioned that no dogs are allowed.
Does it accommodate the needs of older persons?	X		There is a couch to rest
Is the lay-out of the room sufficient to work in, with enough space and fit to ensure quality evidence is given?	X		The one intermediary has an office separate from the testifying room, so there is enough space
Is it comfortable and non-distracting for complainants and witnesses?	X		It is quiet and reasonably comfortable and there is a security guard outside the door.
Does it have sufficient lighting to show clear images to the court?	X		
If appointed, do intermediaries ensure that only persons who are required in the testifying room enter the testifying room?	X		If it is a minor complainant accompanied by parents, the parents wait in the waiting room.
If appointed, do intermediaries ensure to remove any unauthorised persons from the testifying room immediately?	X		
Have space and design arrangements been made to ensure that complainants and witnesses will not come into physical contact with the accused or any associates?	X		The testifying room is located in such a way that the complainant can go there from the waiting room and back without coming into contact with the public. However, there is only one entrance to the court complex currently in use, so there is still the opportunity to come

			into contact with the accused or their acquaintances.
--	--	--	---

Equipment

Item	Yes	No	Comments
Does the room have closed circuit television or similar electronic media for giving evidence?	X		
If an intermediary is appointed, is the witness able to testify (through electronic devices or directly) and be seen and heard from somewhere other than the court?	X		
Is the equipment good enough to enable the efficient and effective giving of evidence by complainants and witnesses and to avoid secondary traumatising?	X		

We are pleased to report that the testifying room has the necessary equipment.

Operation and repairing of electronic devices in Testifying and Court rooms

The maintenance of equipment is an immense challenge. Firstly, the maintenance of equipment is outsourced and so it can take weeks to be repaired. Secondly, it causes serious delays in the court processes and often means that survivors carry the brunt of their testimony being postponed. Not only can this be very traumatic, but it also has a number of financial implications for both the State and the witness. It is therefore of the utmost importance that a mechanism is established that will see devices and equipment maintained and repaired in a manner that is prompt and effective.

Item	Yes	No	Comments
Does a court official verify each day that the devices and equipment in the testifying room and court room are functioning properly? (Please specify in the comments who)	X		
Is there are process to immediately report that a device or equipment in the testifying room or court room is not functioning properly? (Please list the steps in the process and who does it in the comments)	X		However, the tendered service provider is not delivering a good service and this creates difficulties sometimes.

Does the court manager regularly write to the Regional Court President about the progress made in solving these problems?			Unknown
---	--	--	---------

Anatomical Dolls

Often children and vulnerable adults are required to testify in sexual offences matters. This has created a number of problems for legal systems since children are not equipped, either cognitively or emotionally, to deal with the demands of a trial. Children, especially very young children, have a limited ability to verbalise their experiences and this hampers their ability to disclose the details of sexual abuse. There was a need for reliable investigative tools to assist with interviewing children in cases of sexual abuse, and anatomical drawings and anatomical dolls were introduced into the interviewing process. Anatomical dolls were found to be useful in obtaining evidence from children who had been sexually abused, especially children who were younger or who suffered from a mental disability and did not have the terminology necessary to describe the sexual abuse.⁵

An anatomical doll, also known as an anatomically detailed or anatomically correct doll, is a doll which exhibits some of the primary and secondary sex characteristics of a human. They are usually soft, cotton or plastic dolls that are intended to be a replica of the human body, complete with sexual body parts.⁶

Item	Yes	No	Comments
Is there at least one set of dolls for use by intermediaries and prosecutors?	X		
Does the set include all of the following: (a) a doll representing a male child; (b) a doll representing a female child; (c) a doll representing a male adult; (d) a doll representing a female adult; (e) a doll representing an aged male; and (f) a doll representing an aged female.	x		
Are the dolls replicas of the external human body, complete with genitals?	X		
Are the dolls designed in such a manner and made of material that allows the complainant or the witness to manipulate the doll in order to demonstrate what has been done to the complainant by using the doll?	X		
Are the dolls always clothed?	x		The dolls were clothed on the day of our observation. The intermediary confirmed that the dolls are always clothed.

⁵ Shamroy, J.A. 1987. Interviewing the sexually abused child with anatomically correct dolls. *Social Work*. 32(2). 165 – 166 at 165.

⁶ Hollely, K. 2011. *Interviewing Aids: The Use of Anatomical Dolls* in Müller, K.D. Prosecuting the Child Sex Offender. Printridge: Port Elizabeth. 77.

Are the clothes of the anatomical dolls made in such a manner so that they can be removed easily by the complainant or the witness when demonstrating what has been done to the complainant?	X		
When not in use, are the dolls kept in lockable storage?		X	They are kept in a bag under the table.

Restrooms

Witnesses, both survivors and other witnesses, often wait for a long part of the day before they are required to deliver testimony. Sometimes, survivors wait for consult with the prosecutor or the court supporter. This means that survivors and other witnesses have to have access to safe restrooms. This is identified as a particular area where secondary trauma can occur should a survivor who is a court to testify, encounter the accused or an accomplice of the accused. This risk is especially high if the restroom is far away from the waiting room or if there is no infrastructure in place to make sure that contact does not occur. Secondary trauma describes the situation where a survivor is forced to relive the initial traumatic event when they encounter the accused or an accomplice and this can have a detrimental effect on the survivor's ability to deliver effective testimony as well as on their mental health.

Facility

Item	Yes	No	Comments
Does the court have enough restrooms? (At least 2)	x		Only one and for use by all.
Is there proper signage indicating the location of the restrooms?	x		
Does a court official accompany the complainant to and from the restrooms? (Please add in the comments who does this)		X	
Are the restrooms child-friendly?		X	
Are they accessible to persons with disabilities and accommodate their assistive devices? Are there any disabled toilets?		X	There is no stall that is wheel chair friendly.
Can people who use guide dogs, such as complainants and witnesses who are visually impaired, use the restrooms?		x	Our monitors were informed that there are no dogs allowed in court, ever.
Does they accommodate the needs of older persons?	X		
Have space and design arrangements been made to ensure that complainants and witnesses will not come into physical contact with the accused or any associates?		X	There is only one restroom, so encounters are possible.
Are the restrooms clean?	x		

2. SERVICES AVAILABLE AT DESIGNATED COURT

The Court Preparation Programme

The Court Preparation Programme is implemented by the National Prosecuting Authority. Court Preparation Officers familiarise the witnesses with the court process.

Item	Yes	No	Comments
Does the court provide a court preparation programme for complainants?	x		
Is there enough staffing for the court preparation programme?	X		When the Court Preparation Officer is not available, there is a stand-in.
Is the staff available on a full time basis? (Please write in the comments if part time, ad hoc, or otherwise)	X		
Are other staff and persons involved in the criminal justice system aware of the court preparation programme?	x		The Investigating Officers from SAPS are aware of this service.
Are all complainants given court preparation before testifying, unless the prosecutor has deemed it unnecessary in the circumstances?	X		The Court Preparation Officer consults with complainants a week before the they have to testify.
Does the court preparation officer or other relevant court official identify the needs of the complainant and secure this information in writing to ensure that their needs are met?	X		
Is an interpreter available to assist the court preparation officer or victim assistance officer during a court preparation programme, if required?	X		
Are arrangements made before the trial for complainants to be assisted in his or her language of choice?	x		The Court Preparation Officer informs the Prosecutor, who then informs the Intermediaries
Are arrangements made before the trial for accommodation of the needs of complainants with disabilities when they arrive at court?	X		The Court Preparation Officer informs the Prosecutor who then makes the arrangements
Are complainants referred to an appropriate professional service provider for continuum of care, if the complainant requires such service? Eg: social work, etc	x		Adult complainants are referred to Rape Crisis and child complainants are referred to ChildLine

Interpreting services

Language barriers become a challenge in courts where interpretation services for the language of the witness cannot be provided. This has also been identified as a major challenge, particularly in cases involving deaf witnesses.⁷ Where interpreting services are not available in the languages that are spoken by the witnesses providing testimony, the matter has to be postponed and this causes delays.

Item	Yes	No	Comments
Is the interpreter available to assist during a court preparation programme?	X		
Is the interpreter available to assist during a consultation by the prosecutor with a complainant?	X		
Is the interpreter available to assist a complainant who is unable to read or write?		x	
Are interpreter services available for people who are deaf, blind, or unable to speak? Please specify which interpreting services are available.			Unknown

The Draft Regulations of Sexual Offences Courts do not specifically mention the availability of interpreters that can communicate with witnesses who are deaf, but we would urge the Department of Justice to consider this as a need. During our monitoring visit we also noted that there are no interpretation services available for witnesses who are illiterate and we recognise that this could limit access to justice.

Intermediary services for witnesses

The Criminal Procedure Act provides for the appointment of an intermediary when criminal proceedings are pending before court in certain circumstances and sets out the process for the appointment of intermediaries.⁸ The intermediaries play an extremely important role in assisting child witnesses as well as certain adult witnesses who testify via electronic devices while they are in the testifying room. This is a means to limit secondary trauma as well as to effectively obtain testimony. In instances where an intermediary was appointed to assist a witness, testimony cannot be lead without the intermediary present. Therefore, if intermediaries are unavailable or absent for whatever reason, it will lead to delays. For this reason, it is necessary that a database be kept of intermediaries who are available on an ad hoc basis.

Item	Yes	No	Comments
Are there enough intermediaries available who can be appointed in sexual offence cases at a designated court?	X		There are two intermediaries

⁷ Report on the Re-Establishment of Sexual Offences Courts by the Ministerial Advisory Task Team on the Adjudication of Sexual Offences, 2013. 50.

⁸ Section 170A of the Criminal Procedure Act, 51 of 1977

Are intermediaries appointed on an ad hoc basis, if there are not sufficient intermediaries employed at that court?	x		
Is a database or list kept of intermediaries who are available to provide intermediary services at an ad hoc basis?		X	
Have there been any complaints regarding intermediaries being suitably sensitive of the following when a complainant testifies: their age, physical or mental status, or stage of development? (Please detail in the comments if Yes)		X	
Do intermediaries request the court for a recess if it appears to them that a complainant or a witness who is giving evidence is fatigued or stressed?	X		They can ask of a recess or for a postponement.
Do intermediaries ensure that the immediate needs of a complainant or a witness who is giving evidence, are met? Eg, a glass of water if needed.	X		They can provide a glass of water, a stress ball, tissues, or assist with going to the restroom.
Do intermediaries, before a complainant or a witness testifies, take the necessary steps to establish a rapport with the complainant or the witness?	X		
Do intermediaries inform the court about any change in the physical, emotional or mental behaviour of a complainant or a witness?	X		The magistrate first talks with the child, especially after a postponement to assess their readiness
Do intermediaries inform the court about any communication problem with a complainant or a witness, which may affect the court proceedings?	X		
After the complainant has given evidence, do the intermediaries inform the court officials about how giving evidence affected the complainant? Eg, if the client broke down or if they felt well supported, etc?	x		They work with the prosecutor and the magistrate so they all give reports. The prosecutor is the one who talks to the parent of complainant about the progress of the case and whether it will be dismissed or not.

We are pleased that there are two intermediaries appointed at this court, however, we note that there is no database kept of intermediaries that are available to provide intermediary services on an ad hoc basis. During our monitoring, we were informed that one of the two appointed intermediaries are on leave for an extended period of time. Should the remaining intermediary fall ill or become unavailable, there will be no intermediaries at this court.

Court Support

The Court Supporter is appointed by a Non-Profit Organisation and who has been trained to fulfil this role. The Court Supporter plays a dual role in that they help the complainant to become familiar with the court proceedings and layout and help to reduce the secondary trauma experienced by the survivor. Their primary focus is to provide psycho-social support to the survivor. It is therefore extremely important that, where a court supporter is available, they are the primary support in sexual offences matters. One of the main roles of the court supporter is to understand that, while testifying in the trial or consulting with the prosecutor, the complainant may experience the same traumatic thoughts and feelings that they experienced at the time of the rape. The court supporter knows this and supports the complainant by helping to carry this heavy load. After the consultation or testimony, court supporters provide a safe place for complainants and witnesses to debrief from the traumatic thoughts and feelings that they experience after testifying etc.

Item	Yes	No	Comments
May court supporters accompany complainants and witnesses to and from any of the facilities including the court room and the restrooms?	x		The court supporter will only accompany the complainant to the court room if requested.
May court supporters accompany complainants to and from alternative waiting areas if so designated?	X		
May court supporters provide support to complainants and witnesses during the proceedings in court, if a complainant or witness so wishes?	X		
May court supporters refer complainants and witnesses to the correct institutions for professional services? Eg: social work referrals.	X		
May court supporters assist complainants and witnesses to obtain witness fees?		X	The NPA is responsible for this.
Is it ensured that the docket and other confidential public documents are not made available to court supporters?	X		
Is there a room for court supporters to consult with clients?	x		However, it is far from the waiting room and court. The court supporter fetches clients from the waiting room but then they may miss being called when they have to testify. Therefore the court supporter has to often consult

			with complainants in a nearby area without privacy.
Is the room accessible to persons with disabilities and can it accommodate their assistive devices?		x	The door to the room is not wide enough to fit a wheel chair.
Can people who use guide dogs, such as complainants and witnesses who are visually impaired, use the court support room?		X	
Does the court support room accommodate the needs of older persons?		x	It is very hot without proper ventilation.
Where there is a court supporter, does the court supporter provide the complainant with psycho-social containment before and after their consultation or testimony?	x		

Our monitors noticed that the office that is currently allocated to the court supporter offers a number of challenges. Firstly, the office is located on the second floor while the rest of the facilities that will be used by survivors and other witnesses are on the ground floor. This means that the court supporter has to fetch her clients from the waiting room in order to consult but then faces the risk that their names will be called out to testify and they will not hear. The result is that the court supporter often consults nearby to the waiting room, but without any comfortable seating and without privacy.

The second challenge is that the office of the court supporter is too narrow to be accessible for persons who are in wheelchair. This is unacceptable.

The third challenge is that the office of the court supporter is located outside of the area where infrastructural upgrades have been made to ensure that survivors and other witnesses do not come into contact with the accused and their accomplices. This means that when the survivors go to the court supporter's office, they enter the "public area" and this carries a high risk of secondary trauma to be suffered by the survivor.

We urge the Department of Justice to address this situation soonest.

Recommendations

We would like to make the following recommendations to the Department of Justice in order to address the existing gaps and to ensure that a Sexual Offences Court can be established to serve the community of Khayelitsha.

1. Our first recommendation relates to the restrooms and the office of the court supporter. We recommend the necessary space and design arrangements to be made to ensure that complainants and witnesses will not come into physical contact with the accused or any associates. Specifically, we propose the implementation of the recommendations previously made to the Department of Justice to address this issue. We suggest that a restroom and the

office of the court supporter can be housed in modern retrofitted containers with proper ventilation and plumbing.

2. Our second recommendation is that all the facilities be modified to be accessible to persons with disabilities and accommodating their assistive devices. We are particularly concerned about the blanket statement that no dogs, including guide dogs, are allowed in the building.
3. In order for ongoing monitoring and evaluation to be most effective, a mechanism should be established to ensure that information relating to the criteria contained in the Regulations for Sexual Offences Courts and that is currently unobservable to citizen monitors, is shared.
4. The Waiting Room can be made more child friendly by implementing small and creative changes. We propose that local NPOs be alerted to the lack of information and educational materials and a mechanism must be established where their contributions can be used.
5. The Department of Justice must convene a project meeting with the court personnel, personnel from the Office of the Regional Head and representatives from Rape Crisis to ensure that the recommendations are implemented.
6. Our last recommendation relates to the establishments of a separate entrance for complainants and witnesses to the court complex. A representative from the Office of the Regional Head of the Department of Justice as well as the Head: Promotion of the Rights of Vulnerable Groups Unit, DOJ&CD has visited the court complex in November 2019 and agreed that this a necessary renovation. Both representatives agreed that this can easily be done and we recommend the implementation of this plan.

References

Pilot Assessment: The Sexual Offences Court in Wynberg and Cape Town and Related Services, 2001.

Section 55A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 and the Draft Regulations on Sexual Offences Courts.

A Framework for Strengthening Citizen-Government Partnerships for Monitoring Frontline Service Delivery. Published by: The Presidency: Department of Performance Monitoring and Evaluation, 2013.

Report on the Re-Establishment of Sexual Offences Courts by the Ministerial Advisory Task Team on the Adjudication of Sexual Offences, 2013. 50, 53.

Shamroy, J.A. 1987. Interviewing the sexually abused child with anatomically correct dolls. *Social Work*. 32(2). 165 – 166 at 165.

Hollely, K. 2011. Interviewing Aids: The Use of Anatomical Dolls in Müller, K.D. *Prosecuting the Child Sex Offender*. Prinrite: Port Elizabeth. 77.

Section 170A of the Criminal Procedure Act, 51 of 1977.