

**Witnesses in the Criminal Justice System:  
A report on focus groups with detectives and prosecutors at Moroka  
Police Station and Protea Magistrates Court in Soweto**

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## **A. Introduction**

Problems in the South African Criminal Justice System are well known and have been documented in countless reports.<sup>1</sup> This report focuses on these same problems but differs in trying to understand how these problems impact on witnesses<sup>2</sup> and their role in the criminal justice system.

Good quality witness evidence is one of the key 'resources' which may be used to come to an understanding about the truth regarding the facts of individual cases, and to secure convictions against perpetrators. But there are several obstacles to ensuring the effective participation of people, including victims and other persons, as witnesses in the criminal justice system.

During the latter part of 2001 we conducted four focus groups with detectives and prosecutors at the Moroka police station and Protea magistrates court in Soweto. The focus groups were intended primarily to identify problems which detectives and prosecutors have in working with witnesses.

The report on these focus groups is intended to serve two purposes:

- The report is intended to be used as a tool towards identifying measures which can be implemented to address witness problems at Moroka and Protea;
- The report will also be distributed more broadly to promote understanding and engagement around the problems of working with witnesses in the criminal justice system in South Africa.

The report forms part of the Centre for the Study of Violence and Reconciliation's (CSVR) 'witness project' and before discussing the focus groups and findings from them, this report gives a brief outline of this project.

## **1. The witness project**

The 'Witness project' builds on work that was previously done over the period of 1997 – 1999 by CSVR. This work was reflected in a report on issues relevant to victims and witnesses in the criminal justice process which was produced by CSVR at the end of 1999.<sup>3</sup>

Within the project 'witness issues' are understood as issues which impact on the ability of criminal justice officials (police and prosecutors) to make effective use of witness evidence.

The focus on witnesses incorporates a range of concerns which are usually dealt with as aspects of 'victim empowerment' as well as other issues which in one way or another impact either on the willingness or ability of witnesses to assist the Criminal Justice System, or on the quality of witness evidence. The report referred to above identified a number of these issues and concerns. The table in [Appendix 1](#) is an attempt to categorise these problems. However as will become apparent from this report there is a high degree of overlap between many of these problems.

The core assumption of the project is that improvements in the practise of police and prosecutors in working with witnesses can have beneficial results in improving the effectiveness of the CJS in securing prosecutions against perpetrators whilst operating within the framework laid down by the Constitution. These improvements may also involve improvements in the functioning of other components of the criminal justice system such as the court management system, or initiatives associated with the criminal justice system, such as victim empowerment initiatives.

The key objective of the project is to promote good practise in working with witnesses in the Criminal Justice System, drawing on the expertise of experienced police (mainly detectives) and prosecutors in South Africa as well as ideas from international examples of good practise.

A key output of the project is intended to be a handbook on good practise in working with witness which will be based on interviews with experienced detectives and prosecutors in South Africa, as well as examples of good practise from international literature.

The second major output of the project is intended to be a small scale pilot project based at the Moroka police station and Protea magistrates court in Soweto. The project is intended to explore issues relating to improving practise in working with witnesses. The focus groups which are the subject of this report were conducted as part of this project.

In addition to research work, activities conducted thus far have included collecting relevant local and international materials and a series of meetings with roleplayers involved in addressing issues relevant to witnesses in the Criminal Justice System. The meetings served a number of purposes, including networking and informing people about the witness project, obtaining inputs and opinions regarding the project, identifying other key

roleplayers to give input into the project, and dealing with issues of access relating to the pilot project.

## **2. Focus groups on witness issues at Moroka and Protea**

After considering a number of possible localities, and discussing issues of access with a number of the concerned parties, it was decided to conduct the project with detectives at Moroka police station and with prosecutors at Protea.

The Moroka police station and Protea court were chosen for a range of reasons, including their accessibility to CSVR researchers, the motivation of a senior official of the Witwatersrand Directorate of Public Prosecutions, and the belief that the problems experienced by Criminal Justice officials working in this locality may be fairly similar to those experienced by officials working in many other localities, notably those in urban communities, in South Africa.

Moroka police stations services a substantial area of Soweto and has a large detective component while the Protea Court is the major magistrate's court in Soweto. It deals with cases from Moroka as well as a number of other police stations.

Project approval was obtained from the office of the Witwatersrand Director of Public Prosecutions, as well as that of the Provincial Commissioner of the [South African Police Service](#) (SAPS) in Gauteng and the Soweto Area Commissioner

The research involved two focus groups with detective groups at the Moroka Police station and two focus groups with prosecutors from the Protea court.

The detective component at Moroka is composed of just over 50 members excluding administrative staff. The unit is predominantly black with two whites, two Indians and one coloured. The unit is also predominantly male with only two female members. It is organised into four detective groups each with an average of 13 members. Each group has a group leader that coordinates and manages the activities of the group members.

Separate focus groups were held with two of the groups. These groups were chosen for the research due to their availability and interest in participating in the study. The head of detectives assisted with the selection of the groups. The detectives were urged to participate freely as the entire research was conducted under conditions of confidentiality of the participants. They were also encouraged to relate to their experiences in the field when making inputs.

A similar approach was followed with the prosecutors at Protea Courts where a cross section of prosecutors was targeted. But only those who were available and willing to take part in the research were involved. The first focus group was made up of four prosecutors - three females and one male. All of them were white. The second focus group involved two white female prosecutors.

Three main questions were asked in all the focus groups. These were:

1. What are the key problems that you mostly encounter on your job?

2. What are the key problems that you mostly encounter when dealing with witnesses?
3. How would you prioritise or rank these problems?

While the focus groups started with a general question about the problems experienced, this report focuses only on issues which were identified which relate directly to witnesses, or which impact directly on the ability of officials to work with witnesses.

In order to supplement our understanding of systems of support for witnesses already in place, semi-structured interviews were also conducted during May 2002 with a number of people including a joint interview with personnel involved in the Moroka Victim Empowerment Centre, the administrator of the CPF at Moroka, the court manager at Protea Court, and the coordinators of the Protea Kids Court Support Centre and the [NISSA Institute for Women's Development](#) office at Protea court.

The intention of the project has been to focus on problems being experienced in one locality. It is intended that the research will assist with prioritising issues which can be addressed in the pilot project.

It should be emphasised however that the problems at Moroka and Protea are illustrative of problems being experienced throughout the Criminal Justice System and should not be seen as specific to Moroka and Protea.

## **B. Existing Systems of Witness Support at Moroka Police Station and Protea Magistrates' court**

Various systems have been established at Moroka and Protea which are intended in one way or another to meet the needs of witnesses. One of these systems is the system of court administration or management which plays an important role in paying fees to witnesses, as well as in dealing with the administrative side of issuing domestic violence protection orders. Protea Court is one of the courts in South Africa which has also established a specific sexual offences court. In addition as compared to many police stations and courts in South Africa, both the Moroka Police Station and Protea Magistrate's court appear to be relatively well served by a range of other systems including the Community Police Forum (CPF) and Victim Empowerment Centre at Moroka and the children's support centre and NISAA office at Protea.

The role played by these systems of support is as follows:

- ***The Moroka Police Station Victim Empowerment Centre*** - Their functions are basic counselling, sexual abuse counselling, counselling on domestic violence cases, abuse of women and children cases as well as mediation in family disputes. Clients are referred to the centre from the charge office (community service centre), schools and the general community.<sup>4</sup>
- ***The Moroka Community Police Forum (CPF)*** - The CPF has taken on a number of responsibilities which are relevant to victims and witnesses including (i) intervening (mediating) in cases of domestic violence as well as providing advice to victims about possible steps that can be taken, (ii) following up on complaints from

members of the public – particularly victims – regarding cases which the person believes have not been dealt with properly. The functions of the CPF include those of the VE centre as it is seen as an extension of the CPF.<sup>5</sup>

- **Court Management** - The functions of the court manager are administrative and intended to be supportive of the smooth running of the court system including general maintenance of the court buildings. The court management system plays a direct role in assisting victims and witnesses through the payment of witness fees<sup>6</sup> as well as with the application process for Protection Orders against domestic violence.
- **Protea Kids Court Support Centre** - The general responsibilities of the Kids Court Support Centre include court preparation, counselling, play therapy, support programmes for abused children, support group for parents and families of abused children and referrals. The court does not work with adult victims of abuse as they are referred to NISAA, which is in the same premises at the Protea court.<sup>7</sup>
- **NISAA Institute for Women's development** - The NISAA Institute for Women's Development office at Protea court deals mainly with domestic violence cases referred from the domestic violence section of the court. They also do see some clients that were referred by others as well as providing counselling in a few cases to rape victims. Where appropriate referrals are made to other agencies and organisations such as: social workers from the city council and hospitals, the maintenance court, conflict management and counselling agencies. Legal information is provided to some clients but the preference is for referring people to paralegal organisations or the prosecutor for this purpose.<sup>8</sup>
- **The Sexual Offences Courts**<sup>9</sup> – Protea Court has four sexual offences courts three of which deal with child victims only. All sexual offences at Protea including cases of rape, attempted rape, indecent assault and other offences under the Sexual Offences Act, 23 of 1957, are dealt with in these courts. The courts are served by four magistrates and designated prosecutors are also allocated to the courts, with two prosecutors per court being allocated to each of the children's courts. In terms of Section 170A of the Criminal Procedure Act, 51 of 1977, child victims, and other child witnesses, who are under the age of 18 years are entitled to be assisted by an intermediary, subject to the state being able to prove that the child will be submitted to 'undue mental stress or suffering' if they have to testify in an open court.<sup>10</sup> The decision as to whether to make use of the procedure is subject to the discretion of the magistrate which depends on all the circumstances of the case but as a general rule the procedure is used to deal with all cases where children have to give evidence relating to sexual offences. In these cases the child sits in another room where the CCTV camera is located and this is connected to a television set in the courtroom. The key role performed by the intermediary is that of conveying 'the general purport of any question' (Section 170A(2)(b)) to the witness. Where interpretation is needed an interpreter will be appointed in addition to the intermediary. Child witnesses in cases not involving sexual offences may also give evidence using intermediaries and the facilities in the sexual offences court. Where the section 170A procedure is used, but the case does not involve a sexual offence,

only the evidence of the child will be heard in the ordinary court, while the rest of the trial will take place in the sexual offences court. Where for instance the case relates to a relatively minor offence and the witness is an older child the magistrate may not make use of this procedure. Applications may also be brought in terms of section 158 for an adult to testify through the closed circuit system though without the assistance of an intermediary.<sup>11</sup>

In terms of their contribution to supporting the role of witnesses in the criminal justice system the existing systems of support are primarily focused on:

- Limiting the secondary victimisation and further traumatisation of victims of sexual offences and of child witnesses – this role is performed most notably by the sexual offences court.<sup>12</sup>
- Victim empowerment through counselling – this may contribute to witnesses being positively motivated to cooperate with the police and prosecution. It also may have a positive impact on the quality of witness evidence as the counselling process may assist the victim or witness in recalling traumatic events in a more coherent manner.
- Witness fees contribute to reducing the disincentives on the part of witnesses to participating in the court process, and may contribute on quite a practical level in enabling the witness to attend court, or to afford the cost of missing a day at work.
- Court preparation also enables the victim to participate in the court process on the basis of being informed – and may thereby contribute to the quality of witness evidence and to reducing negative inclinations regarding participation which are based on false perceptions.

The existing systems undoubtedly play a positive role in contributing to positive witness motivation and the quality of witness evidence. Whether there is scope to enhance this role will depend significantly on whether additional resources may be generated for this purpose. If there are opportunities for expanding existing systems of support it might also then be worthwhile to incorporate a broader understanding of the factors which discourage witnesses from participating and which negatively impact on the quality of witness evidence, in deciding how best to expand on such services. In doing so it would be worthwhile to address questions about the provision of support systems to witnesses generally and about the types of systems of support which might meet the needs of witnesses most effectively.

## **C. Problems experienced by Detectives and Prosecutors in Working with Witnesses**

### **1. General Resources and facilities**

#### ***(a) Transport, Telephones and Shortage of Time, Courts and Prosecutors***

Both the detectives and prosecutors identified serious problems with regards to general resources. The one group specifically identified transport and telephones as 'resource' issues which obstruct detectives in working with witnesses.

Telephones are one means of communication with witnesses. The shortage, or lack of availability of vehicles, may mean that the movement of detectives is restricted limiting

their ability to be out of the office investigating, including for the purposes of locating and interviewing witnesses. For instance one detective said about cars

... you only get a car maybe once in a week ... and this affects your investigation.

Participants in both prosecutor groups identified the issue of 'time' (as in the time to prepare for cases) as a key general resource problem. The shortage of time may also be seen as reflecting a shortage of personnel. A participant in one of the groups however indicated that the problem did not impact equally on all types of offences suggesting that initiatives to improve the handling of rape and other sexual offences in court may be having a positive impact,

For rape cases there is more time these days because there are personnel on the premises that are trained specifically to do specific court preparation. For other type of cases there is not enough time. So there's like ten minutes to go quickly through the docket.

#### ***(b) Office Space for interviewing***

Detectives in one of the groups also alluded to shortage of spaces where confidential interviews can be conducted. For instance according to one detective, one office is shared between three or four detectives, therefore there is no room for privacy with any witnesses. Some witnesses are shy or scared to talk in front of other people. When a detective is interviewing a witness the other detectives are also interviewing their witnesses. For example

... if you sit in one office, you know, if you interview a person like for an example a rape case, she is going to omit a lot of relevant information because she is afraid to say it in front of somebody, like for an example she cannot tell what exactly happened at the scene ...

It may be noted that Victim Empowerment principles emphasise that rape victims in particular should have the right to be interviewed in private.

## **2. Language and statement problems**

### ***(a) Statements***

While this problem was not identified by detectives, both groups of prosecutors raised the problem that some statements taken by the police are poorly written. While not a problem with all of the detectives, both prosecutor groups indicated that it is a substantial problem.

Respondents indicated that statements sometimes omit crucial information. Bad statements may result in case not going to court as well as in delays as cases are sent back for further information to be supplied. This may also prejudice the case as there will now be two statements in the docket which may appear to contradict one another and give openings to the defence which are not based on material inconsistencies in the case for the prosecution. Prosecutors also indicated that, as a result of the omission of information in the statement,

they may only find out during testimony by the victim that other charges could have been added.

Secondly there are also sometimes problems with the accuracy of statements. Not only is the spelling and grammar often inadequate, but the statement do not always accurately reflect the facts of the case.<sup>13</sup> As will be discussed further below in the section dealing with language, these problems appear sometimes to be linked to inaccurate translation of the witness statements.

*(b) Language, translation and interpreter problems*

The issue of language was raised in one of the detective and one of the prosecutor groups. Community members in the area served by the Moroka police station and the Protea magistrates court mainly speak African languages as first languages. Some have little or no familiarity with English or Afrikaans.

While most detectives did not indicate that they experience difficulties with language, one of the detectives presented the problem with language as follows

My main problem is language ... for example I have a murder case, none of those people speak Afrikaans or English. All of them speak Tswana, so I must look for another person to translate for me, and this interpreter does not interpret whatever I wish to get from this witness. So there is a break in communication ... . Lots of people are not trained as interpreters like in court where the magistrate has a trained person and that is also now a negative side on your investigation.

However, while only one of the detectives referred to the issue of language as presenting a problem, participants in one of the prosecutor groups indicated that there was sometimes a problem of statements being translated inaccurately by the police. Referring to translated witness statements for instance one prosecutor said that

it often happens in court that something is written in the witness statements and when they get cross examined on the witness statement they say 'I did not say that'.

In addition prosecutors also rely on the assistance of interpreters in court and prosecutors in one of the groups expressed their dissatisfaction with this as it means that they, or the courts, do not hear the evidence first hand.

As discussed below language problems may also contribute to difficulty in consulting with the witness. While this was acknowledged as a problem a prosecutor also added that

It's not a major problem. If a situation arises where a witness does not speak a familiar language, the closest person who understands the language is usually asked for assistance. There is always a person near that can assist.

One exception to this situation was 'an Egyptian guy' where the prosecutor ended up relying

on 'sign language' to communicate. The issue of language is complicated by the fact that, not only do criminal justice officials have to be able to work with people in the eleven official languages of South Africa, but also occasionally have to work with people who speak foreign languages.<sup>14</sup>

### **3. Lack of witness cooperation and motivation**

Participants in all of the focus groups identified a wide range of problems which contribute to a lack of motivation and thus a lack of cooperation on the part of witnesses.

#### *(a) Witnesses do not cooperate because they do not want to get involved*

Both groups of detectives and one of the prosecutor groups identified one problem as being that witnesses simply 'do not want to get involved' and therefore do not come forward as witnesses or deny having seen or knowing anything about the crime. While some of the factors discussed below contribute to this lack of willingness to assist, contributing factors here are also a lack of confidence in the criminal justice system, and a belief, which is often related to this, that assisting the criminal justice system is futile. Thus witnesses may believe that the police will not arrest the perpetrator or even if they are arrested they will soon be acquitted.

#### *(b) Fear and intimidation*

Both detective groups, and one of the prosecutor groups, also indicated that victims and witnesses are often afraid to assist in the process of crime investigation and particularly in giving evidence in court. Thus, even in the absence of direct acts of intimidation, witnesses are often afraid to assist the CJS. As one detective somewhat cynically put it,

Sometimes they are not intimidated, they just intimidate themselves.

Another detective linked the problem to the bail system, saying that,

If a person is released and lives in the same street [as the victim or witness] – that in itself is intimidation.

Witnesses may therefore be afraid of the perpetrator, particularly if he or she lives in close proximity to them. Witnesses may also be afraid of retribution from family members, fellow gang members, or other associates of the perpetrator. The problem of fear is also obviously linked to the problem of lack of confidence in the Criminal Justice System, as witnesses may believe that they will not be protected against retribution.

The factor of fear on the part of witnesses is likely to be increased if there is direct intimidation. While direct intimidation was only discussed by one of the prosecutor groups (where it was referred to as a 'priority'), one of the detectives also raised the concern that the local CIDs do not have access to the Witness Protection Program. The WPP he claimed, tends to favour cases being dealt with by specialised units.

Not only does fear and intimidation contribute to a reluctance on the part of witnesses to come forward to give evidence, but, it may also contribute to the withdrawal of cases

(which is discussed below).

***(c) Reluctance to face cross examination***

Not only may witnesses be afraid of potential harm from the perpetrator and his/her associates but witnesses may also be afraid of going through the trial process itself. According to participants (one of the detective groups and both prosecutor groups) this is often because they are afraid of giving evidence in court fearing that they will be embarrassed or humiliated. Some witnesses have previous experience of this.

While prosecutors disagreed with this view, at least one of the detectives argued that this was because prosecutors do not protect the witness adequately. There were therefore differences of opinion from the detective and prosecutor groups on this issue. Without further examining actual prosecutorial practise it is difficult to comment on these differences of opinion but it is not implausible that some prosecutors, particularly those who are less experienced, may not intervene in situations where they should do so. But as one prosecutor pointed out,

If the question asked is relevant you cannot object. ... Just the way a prosecutor gets a chance to cross-examine the accused, or a defence witness, the same way attorneys get to cross-examine state witnesses.

***(d) Frequent postponements and lengthy delays***

This problem was identified by both the detectives and prosecutors although they tended to see it in different ways. The detectives felt that there are too many postponements, which de-motivate witnesses, and thus contribute to non-attendance by witnesses at court. One detective indicated that the factor contributing to this is that the courts tend to schedule the trial dates 'immediately' rather than allowing a 'reasonable time' for investigation of the case to be completed. As a result witnesses have to go to court many times before the case is finalised.

Prosecutors agreed that postponements contribute to apathy on the part of witnesses. For instance if they laid a charge a year ago they lose interest in the case and end up submitting withdrawal statements. However in addition prosecutors pointed to the problem that if cases are postponed for too long this results in witnesses forgetting the details of the case. Delays therefore also impact on the quality of witness evidence (see below) as well as on witness motivation.

There was slight difference in emphasis therefore with detectives focusing more on the *number of postponements* with prosecutors tending to focus on the *length of delays*. While these two problems tend to be equated with each other, in discussing solutions later in this report, we will argue that it may be preferable to distinguish them from each other.

***(e) Occupational and financial concerns***

Participants in one of the detective groups, and both prosecutor groups, referred to work obligations as a factor which discourages witnesses from assisting the criminal justice process. Prosecutors, for instance, referred to cases where the employers 'hassle' workers

for coming to court. As one prosecutor commented

Employers cannot take action against an employee that comes to court as long as the employee shows proof that they indeed were in court. But this is one of the biggest hassles why many witnesses do not want to come to court, because they are afraid they will lose their jobs. Many witnesses that are working prefer Saturday courts because they do not lose their day at work.

Sometimes it is not pressure from employers but the persons own occupational responsibilities or interests which lead to a lack of motivation, and thus non-attendance. For example, some prosecutors said that 'certain doctors', do not come to court when called as witnesses. One prosecutor expressed the problem as most damaging

especially in rape cases is where the doctors don't come to court when they are subpoenaed. Specifically certain doctors and we cannot continue without the doctor.

Where there are concerns about losing jobs or income, these will obviously also be aggravated where there are a large number of postponements, and the witness has to be absent from work or his or her business on numerous occasions.

Furthermore, according to one of the prosecutors, in some cases people assert that they were unable to come to court as they did not have the money to pay the costs of getting there.

*(f) Matters dealt with outside criminal justice system*

As indicated in the next section, prosecutors indicated that sometimes cases are 'resolved' between families or by 'paying off' the victim. Where cases are 'resolved' out of court, this can be seen as a further factor which contributes to witnesses, and particularly victims, losing the motivation to assist in having the alleged perpetrator prosecuted.

#### **4. Withdrawals**

All of the detective and prosecutor groups pointed to a significant problem of charges or cases being withdrawn. This problem appears to be particularly related to situations where there is a family relationship between the victim, or other witness, and the alleged perpetrator, especially where there is a relationship of dependency (e.g. the alleged perpetrator is the breadwinner or home-owner) between the two.

In addition, as indicated above, participants, in one of the detective and one of the prosecutor groups, indicated that sometimes certain steps appeared to have been taken to deal with the matter between the different parties such as that the 'problem has been discussed by the families of the accused and the victim' or 'the victim has been paid off by the family of the accused'.

Prosecutors indicated specifically that withdrawals appeared to be linked to intimidation of the victim, sometime by his or her own family, in some areas. The prosecutors indicated that sometimes the families settle the matter out of court and then force the complainant to

withdraw the case.

Prosecutors also indicated that sometimes withdrawals appear to be related to false charges that are laid for other ulterior motives. Problems of apparent dishonesty on the part of complainants and other witnesses appear to not only be linked to withdrawals but also effect cases which go to court, resulting in poor quality evidence being provided (see below).

## **5. Issuing Subpoenas**

Both prosecutor groups also identified problems with the issuing of subpoenas. Problems included: prosecutors failing to write in dockets that witnesses need to be subpoenaed; police serving the subpoenas only the day before the witness is due to appear in court; and witnesses not accepting subpoenas. In some cases the problem appears to be that the subpoena is not served on the witness personally but served on a relative, or someone else at his or her residence.

While problems may be linked to shortcomings on the part of the prosecution service or police, sometimes they are apparently linked to witness reluctance to testify, and thus potentially to one of the factors discussed above in relation to witness motivation. As one prosecutor said

Witnesses are getting clever. They don't accept subpoenas personally anymore. They let family members to accept it and sign for it. So ... most of the magistrates they don't want to issue a warrant if it wasn't handed over personally to the witnesses.

In relation to problems of prosecutors not writing in the case diary that a subpoena needs to be issued, prosecutors in one of the groups said that 'while this happens, it is not a big problem'.

Sometimes the problem of subpoenas not being issued in time applies to people living far away from the court. One prosecutor said,

Often we get cases where they were only subpoenaed a few days before-hand ... . There was a witness that phoned me (from Cape Town) who was only subpoenaed the day before he was supposed to be in court ... in Johannesburg ... . Eventually he didn't pitch up.

## **6. Consultation and preparation for trial by prosecutor**

Linked to the general problems of shortages of prosecutors and time (see under 'General resources) prosecutors often do not have much time to prepare their cases and to consult with witnesses. Where they are able to do so this is often just shortly before the trial. Often the only time which prosecutors have to consult with witnesses is the period in the morning before the court starts at 09h00. As a result they often do not go through the facts of the case with the witness, and for instance, are not able to pick up inaccuracies or important omissions from the statement prior to leading the witness evidence in court. One prosecutor indicated that these problems are not common to all courts

I know in town [Johannesburg], for example, there are two – three prosecutors per court; here we are one prosecutor per court. Now if we were two prosecutors per court, for example, one could start the remands along while the other one is consulting ... to start the trial. And then as soon as you finish with the remands that one can take over and start with the trial and then you can take the next trial and consult with the witnesses but that doesn't work like that here.

As discussed above a further aggravating problem, which sometimes gets in the way of proper consultation, is that of language.

#### **7. Non attendance by witnesses**

One of the detective groups and both prosecutor groups also referred to a problem of witnesses not attending court. Many of the issues discussed above were referred to by prosecutors in one of the groups by way of explanation for why witnesses do not attend court. Factors mentioned included that witnesses did not receive the subpoenas, do not have money to come to court, or feel the matter is resolved after the families discuss the matter.

A more extensive list would also add some of the other issues which have been discussed in explaining non-attendance by witnesses including that for various reasons witnesses may be reluctant to cooperate or be demotivated, and that subpoenas were not issued or not issued timeously.

#### **8. Poor quality witness evidence**

Prosecutors in one of the groups referred to specific problems with the unreliability of witness evidence

Not telling the whole truth, or they tell you one thing when they consult with you, and on the box they tell you a completely different story – despite efforts to prepare them. When this happens its because they need to keep a secret, something they can't tell you because it makes them a little bit guilty as well. They want to come through as this blameless victim.

According to prosecutors in other cases there are problem of overt dishonesty with even the basic allegations sometimes being false. Prosecutors gave an example of a case where a lot of people stayed in the same house and,

the parents want this person out of the house they go and tell the police this guy raped the child. They teach the child to come and tell the story to the court and it comes out in cross examination.

In addition to problems of witnesses who give evidence selectively or in a contradictory manner or who can't remember clearly, several of the other factors referred to above may contribute to the quality of witness evidence being inadequate. These include: statement taking and language; witnesses who are demotivated for reasons such as fear and intimidation as a result of which they feel that they will be victimised if they tell the truth in court; witnesses forget the details of an incident as a result of delays; the problem of prosecutors having insufficient (time for) preparation and consultation; and the issue of

prosecutor skills referred to by some detectives. Where dealing with an accused person with legal representation, the problem of time causes something of an imbalance in the system. While defence attorney's have more than enough time to prepare their clients for what to expect in court, prosecutors do not have the same luxury, and often are only able to do a cursory amount of court preparation before they lead witness evidence in court.

#### **D. Considerations relevant to examining solutions**

As this report has illustrated many of the problems which detectives and prosecutors experience in working with witnesses are closely inter-related. At the broadest level this inter-relationship is reflected in the vicious circle which arises from lack of confidence in the Criminal Justice System and problems with the effectiveness of the CJS. Thus lack of confidence by people in the Criminal Justice System contributes to a lack of cooperation by witnesses, which in turn contributes to the ineffectiveness of the CJS and thus to a lack of confidence, and so on.

Other examples include:

- Problems relating to language and literacy skills contribute to problems with communication generally and specifically impact on the quality of statements as well as to difficulties in consulting with witnesses prior to the court appearance, and to difficulties in using witness evidence in court. Poor quality statements in turn contribute to other problems including postponements and thus to delays (with the possible consequence that the witnesses ability to recall the event may deteriorate). Furthermore where there are delays, whether these are related to evidence needing to be collected or to other reasons, and the witness needs to refresh his or her memory regarding the incident, he or she is less likely to be able to do so if the quality of the statement is not good. Thus good quality statements may not only reduce the need for postponements, but also ameliorate the consequences of lengthy delays as witnesses are better able to refresh their memories, if relevant facts are presented in appropriate detail and with sufficient accuracy in the statement. Thus good quality statements may contribute to an improved overall quality of evidence in court in a number of different ways.
- Similarly a large number of postponements also contribute to a number of other problems including wasting of court and prosecutor time for dealing with cases. In addition, for instance where police attend court or witnesses are called to court unnecessarily, postponements also contribute to wasting the time of police and prosecutors. Furthermore they may often contribute to an increased reluctance on the part of witnesses to cooperate with the criminal justice system possibly relating to occupational or financial concerns and thus may contribute to non-attendance by the witnesses. Finally as a result of the delays which follow from the postponements the quality of the witness evidence may deteriorate (though this risk can be off-set by increasing the number of postponements). In addition it should not be forgotten that these postponements and delays may inconvenience and cause stress to the accused person.

How one approaches dealing with the situation will therefore partly depend on what one identifies as the key problems. In discussing possible solutions it should also be

remembered that some of the problems are largely outside the control of police and prosecutors and the criminal justice system. Thus for example there will always be people who are 'good' witnesses and others who are 'bad' witnesses (e.g. they have bad memories, or are easily provoked and become angry in the dock, or appear to be dishonest). While some steps may be taken to try and ensure that witnesses give good quality evidence, there are limitations to what can be done.

This discussion of solutions is therefore focused on trying to identify measures in terms of the following considerations:

- Firstly which problems have the greatest impact, either directly, or in contributing to other problems;
- Secondly are the problems 'solvable' or are they caused by factors which are essentially outside the control of the role-players concerned in this project.
- Thirdly, that solutions may be implemented by the police or prosecutors themselves, possibly with some assistance from more senior levels of the police or prosecution service or outside sources but without a major injection of resources.

With these considerations in mind we have identified the following as the main possibilities.

## **E. Possible areas for intervention**

### **1. Information for witnesses**

While it was not prioritised as an issue by any of the focus groups, one area where there may be room for improvements which can have a positive impact on relationships with, and the participation of witnesses, may be in relation to the provision of information to them. There are two issues here:

- The one concerns the provision of information to witnesses regarding their participation in the criminal justice process. This may include information on various aspects of being a witness including the making of statements, attendance at court, threats and intimidation, the process of giving evidence in court, the responsibilities of employers, and the payment of witness fees.
- The second issue concerns information regarding developments or progress with cases. This tends to be of particular interest to the victim or complainant. In some cases there may be little or no progress or the police may have decided to close the case as there appears to be no significant evidence or leads. This is potentially also information that should be provided to the victim or complainant.

Some courts in South Africa and in many other countries provide witnesses with brochures or other information dealing with issues which are relevant to them. While the emphasis is often on information that is relevant to witnesses attending court, there is also information relevant to their interactions with the police, that could be provided.

While it would not 'solve' these problems information provided in these brochures could address issues to do with the accuracy of statements, testifying and other issues to do with the quality of evidence and the practicalities of attendance at court as well as engaging with

issues which impact on witness motivation and reluctance to cooperate.

The information could be provided to witnesses at police stations and/or the courts, though there would need to be clarification on what type of information would be provided, how it would be produced, how it would be distributed, and responsible persons would have to be identified to ensure that the production and distribution of this information is maintained.<sup>15</sup>

Additional steps could also be taken to improve the provision of information to victims regarding progress made with cases. A pilot initiative focusing on this issue has already been introduced in a number of police stations. As described in a report in the Star victims of crime will receive two cards from the police. The initial card will contain the name and contact number of their investigating officer, as well as the case number. A follow up card will be sent to victims to inform them of the progress of the case. This will inform them 'whether the police have pursued the matter, whether there has been an arrest, and if so, when the suspect will be appearing in court.'<sup>16</sup>

## **2. Improved statement taking and translation**

Measures that might possibly be implemented include:

- training around literacy, language, statement taking and translation;
- improving systems of supervision and management with regard to statement taking;
- introducing a system of feedback from prosecutors to detectives in relation to the quality of statements.

## **3. Dealing with postponements and delays and time wasted at court**

While delays are not desirable, in some cases they are fairly inevitable. But while postponements cause delays, they also contribute to other problems, including exacerbating problems of witness motivation (where they attend court 'for nothing') and wasting the time of police and prosecutors.

Furthermore where cases which are placed on the court role and have time set aside for them to be heard in court are then postponed, valuable court time may be wasted. The alternative to this, which has been a practise in some courts is to load the role, so that if some cases are postponed others can be heard in their place. The result of this is that a large number of people are called to court unnecessarily, with the probability being that many of their cases will not be heard, thus exacerbating the problem of delays.

The most promising initiative in tackling this problem is the Integrated Justice System (IJS) 'court centre concept project' which is currently being introduced in 26 courts in South Africa. Most relevant in terms of improving the efficiency of the courts is the creation of 'reception courts' - a central court room used for new cases and cases that are not yet ready for trial. This 'reception court' therefore deals with cases involving bail applications or applications for legal aid and other issues which are not part of the actual trial process. Only when cases are trial ready are they forwarded to 'trial courts'.

By ensuring that time in the 'trial courts' is used more efficiently, the 'court centre project'

has the potential to improve the overall efficiency of the court system. It therefore may reduce the length of delays in cases coming to trial by reducing the overall length of the court cycle. The 'court centre project' therefore has the potential to reduce the length of delays by ensuring that time in the 'trial courts' is used more efficiently.<sup>17</sup>

The 'court centre project' may also assist in sifting out more clearly those cases which are likely to proceed from those which are likely to appear in court merely to be further postponed and thus may also assist in reducing the problem of witnesses being called to court unnecessarily.

Other types of measure which could contribute to *reducing the need for postponements* (and thereby potentially reduce the length of delays as well) might be measures (e.g. improved statement taking) which ensure that evidence is collected in a more systematic and efficient manner, and a high level of consistency in the issuing of subpoenas to witnesses, which would be intended to minimise as far as possible the number of postponements generated by the state.<sup>18</sup>

More broadly wherever possible, where the presence of witnesses is not required at court, they should be told as promptly as possible, so that they do not spend time waiting at court for no actual purpose and where possible do not attend court at all where this is not necessary. Measures which can ensure greater consistency in meeting these objectives would further contribute to minimising the demotivating effect of postponements on witnesses.

In relation to some witnesses it is possible to call them to come to court only when they actually have to appear (e.g. witnesses with phones, and own transport who work reasonably close to the court) though this would have to be arranged with them beforehand.

Reducing the number of postponements and/or the length of delays, as well as, in so far as is possible, ensuring that witnesses do not spend unnecessary time at court, could have a positive impact in addressing factors to do with witness motivation, and possibly also impact positively on the quality of witness evidence.

#### **4. Dealing with occupational and financial disincentives**

There appear to be a number of issues here:

- For some people the problem is likely to be one of pressure from employers;
- For some people, who are unemployed, or rely on 'casual employment' participation as witnesses may interfere with opportunities for income and employment;
- For some people, such as doctors or other professionals whose income is based on work output rather than on a salary, the problem is likely to be one of lost income. In addition people who run their own businesses may have to 'close the business' while attending court;
- This may be exacerbated where a person is regularly called to court, as may be the case with a doctor who has attend court fairly frequently, partly as he or she has to give expert evidence in a number of cases;
- For employers the issue is likely to be one of loss of personnel (and thus 'money

- wasted');  
• For some people there may be difficulty in financing the cost of getting to court.

The system for reimbursing people for income lost, as well as for the cost of transport to and from court is discussed above.<sup>19</sup> In relation to the latter the criterion used is that of distance travelled to court. For instance, if a person stays ten kilometres away from the courts they qualify to get reimbursed. A problem was raised with regards to the criterion because it excludes people who live within an 8-kilometre radius and yet have to pay two or three taxis to get to court. It also creates a disadvantage for some, such as elderly people who live within the radius, but still use taxis because they cannot walk the required distance. However, as indicated, the court manager indicated that exceptions are made in appropriate circumstances.

It is not clear if the system for payment of witness fees could be improved by addressing these or other issues. However if the intention is to minimise the disincentives that people have in attending court, then it may be worthwhile to look further into how occupational and financial disincentives can be minimised.

#### **5. Improved prosecutor skills in leading witness evidence and dealing with cross-examination of witnesses**

While it appears clear that fear of cross examination may contribute to demotivating witnesses it was not unanimously agreed that this problem was linked to a lack of skill on the part of prosecutors. While some detectives saw the problem as being one of a lack of 'protection' from prosecutors for instance others saw the issue as being one of a lack of witness understanding of the adversarial system in the courts. Prosecutors also made various comments indicating that they thought that there was a limited amount that could be done in relation to this problem. One prosecutor said that the issue is based on expectations from watching American television court room dramas

where ... during cross-examination the state prosecutor will defend the witness in the box. They will say I object to that question, I object to this, you are intimidating or misleading or whatever. Now in our court system that thing does not happen. That witness is alone in that box, that lawyer or attorney can do anything with that witness.

Although it was acknowledged as a possible deterrent for witnesses to come to court, the prosecutors felt that it is the right of the accused to interrogate their accuser. The job of the defence attorney according to one prosecutor is to

cross-examine as thorough and as vicious as possible, as we do with the accused ... . That is the right of the accused by the constitution.

While this issue can partly be addressed though public education (see the issue of 'information for witnesses' above) it may also be worthwhile to clarify in what circumstances prosecutors can intervene in the defence questioning of witnesses and to provide information or training to them around this. As one prosecutor commented,

It is a reality that some of the prosecutors are unsure as to when they can object

and when not. Training can only assist.

## 6. Dealing with witness fear and intimidation

Internationally there is an increasing focus on measures for dealing with witness fear and intimidation which are not as costly or disruptive as witness protection programmes. While witness protection programmes are still regarded as important for serious cases, the interest internationally is in measures which can be used in dealing with threats to witnesses which, while less extreme, still have the potential to prevent cases from coming before the courts. A few examples of the types of measures which may be considered include:

- Various measures which may be implemented to prevent witnesses from being identified prior to their appearance in court;<sup>20</sup>
- Providing information to witnesses regarding steps to be taken in the event of intimidation;
- Enabling witnesses to make a rational assessment of the situation by discussing potential threats with them in an objective way;
- Directing police patrols to the area in which the witness's live;
- Stronger emphasis on investigating cases of intimidation as a way of discouraging intimidation and sending out a message that intimidation is viewed in a particularly serious light by the police. In terms of such an approach there would be greater emphasis on police investigative follow-up in relation to cases of intimidation and this would not be based only on the possibility of prosecution.<sup>21</sup>

## 7. Resources

Ideally measures would be introduced which would address shortages such as those of personnel, courts, interviewing rooms, telephones and vehicles.

However, even in the absence of an increase of resources, it may be possible to take specific steps to improve the availability of specific resources (e.g. phones, vehicles, interviewing rooms) through improved management and better use thereof.

## 8. Other options

Other options which could be considered include:

- ***Tackling the problem of withdrawals*** - further research would probably be required in order to develop an approach to this problem;
- ***Dealing strictly with non attendance*** – this would probably also require further research to clarify to what extent this is linked to reluctant witnesses and to what extent it is linked to problems in the performance of prosecutors or police, and what impact sanctions for non-attendance would have on the situation.
- ***Improving preparation, including consultation, by prosecutors*** – in so far as this depends on prosecutors having more time, this will depend on measures being introduced which enable them to have more time, or a reduction in the case load.
- ***Quality of witness evidence*** – measures such as improvements in the quality of statements, but also reductions in delays, greater use by prosecutors of consultation, and general improvements in the skills of police and prosecutors would have the

potential to enhance this.

## **F. Responsibility for implementing measures to address witness problems**

As reflected in the following table (see following page) different agencies would potentially be responsible depending on the type of problem and measures required to address it.

Furthermore, for measures to be implemented successfully this requires that senior managers in the various agencies give their backing and support to these initiatives.

An additional issue which has also needs to be considered is to whether the Community Policing Forum and other community organisations may have a role to play in addressing witness problems. In a recent interview conducted as part of research into good practise in working with witnesses for instance, a senior detective identified the role of the community as being crucial to addressing the problem of intimidation.

**Table 1: Responsibility for implementation of suggested measures to address witness problems**

<b>Measures</b>	<b>Responsibility</b>
Information for witnesses	Police and/or courts
Improved statement taking and translation	Mainly police but possible role for prosecutors as well.
Postponements and delays and time wasted at court	Prosecution and police
Dealing with occupational and financial disincentives	Primarily court responsibility (witness fees) but also in some cases ex gratia payments authorised by the legal department of the police.
Improved prosecutor skill in leading and cross- examining witnesses	Prosecution
Dealing with witness fear and intimidation	Potentially both police and prosecution. Possible role for community.
Resources	Resources would have to be provided by government or other source.

## **G. Limitations of focus groups with criminal justice officials**

The research conducted here has relied on a small number of focus groups to identify problems that detectives and prosecutors have in working with witnesses. While the research has provided insights into the problems experienced in working with witnesses in this particular locality, there are several reasons for reservations about the findings of the research.

Firstly, by comparison with the list of 'witness issues' provided in Appendix 1, it is apparent that the focus groups did not touch on all of these issues. Issues listed in Appendix which were only partially covered, or not covered at all, by the focus groups included:

- The responsibilities and conduct of the police in the charge offices and at the crime scene.
- Sensitivity to effects of trauma on victims and witnesses.
- Diversity issues and racial or gender or other discrimination.
- Issues of legality and good practise relating to collecting and leading evidence.
- Identifying and tracing persons and remaining informed of their whereabouts.
- The provision of information to and communication with the witness.
- Consultation of the witness regarding decisions (bail, plea bargaining etc)
- Vulnerable witnesses including victims of sexual offences, children, sick and disabled persons and the elderly.
- The court environment.
- Special courts and procedures.

It is therefore not clear whether or not these are also problems at Moroka and Protea, or whether the problems which they pose are more or less serious than those identified. Thus the focus group methodology has helped to clarify that the range of problems in this locality is similar to those in many other localities. However many of the points which were raised in the focus groups were raised in response to 'prompts' from the focus group facilitator. It may be the case that if questions directly relating to the additional issues listed here had also been asked, that these might also have been identified as problems.

A further difficulty relates to the question of prioritising problems – further focus groups would probably simply provide an increasingly complex picture of the problems being experienced by detectives and prosecutors in working with witnesses. Arguably it will not be possible to properly prioritise issues without using a more quantitative methodology.

## **H. Recommendations**

### **1. Recognising existing good practise and promising initiatives**

This report has focused on problems encountered in working with witnesses. However at the same time there are police and prosecutors and others who work with the criminal justice system who have developed ways of responding to and tackling these problems. Both at Moroka Police Station and Protea Magistrates Court, and in the criminal justice system more broadly, there are undoubtedly police, prosecutors and others who have understandings and experience in how best to tackle these issues. Wherever possible opportunities should be created for this knowledge and experience to be shared, and for discussion about how best to engage with these problems.

Similarly innovations such as the efforts to improve the provision of information to witnesses through the 'two card system' and the potential for the 'court centre' initiative to reduce delays in the court process, should also be recognised for their potential value in addressing problems which are experienced in working with witnesses.

## 2. At Moroka and Protea

Police managers and prosecutors should consider measures which could be implemented relating to:

- Information for witnesses;
- Improved statement taking and translation.
- Postponements and delays and time wasted by witnesses at court.
- Dealing with occupational and financial disincentives which may effect witnesses who appear in court.
- Improved prosecutor skill relating to leading witness evidence as well as cross-examination of witnesses by the defence.
- Dealing with witness fear and intimidation.
- Resource issues including the availability of vehicles and telephones and separate interview facilities, most notably for rape victims.

Consideration should also be given to whether the Community Police Forum, or community organisations, may contribute to addressing problems in working with witnesses.

### 3. The need for an in depth quantitative survey

As indicated the focus groups at Moroka and Protea have identified issues similar to those raised in an earlier more extensive study which was conducted both in Gauteng and in KwaZulu-Natal. It therefore appears that the research which has been conducted thus far has made substantial progress in identifying the range of problems which are experienced by police and prosecutors in working with witnesses. However what appears to be lacking is good quality information on which problems have the most impact on the performance of the criminal justice system. While this can partly be evaluated through qualitative research (such as in depth interviews and focus groups) it is unlikely that there can be much clarity on this issue without attempting to quantify which problems occur most frequently.

As a means of prioritising witness issues an in depth quantitative survey should therefore be conducted with detectives and prosecutors. While this could be conducted at Moroka and Protea it may be worthwhile to conduct such a survey more broadly with detectives and prosecutors in a number of different localities within one or more of the prosecutorial regions or provinces.

For such a survey to be conducted however it would need to be supported by senior officials in the police and prosecution services.

### **Appendix 1: Issues impacting on the contribution of witnesses to the effectiveness of the criminal justice process**

<b>Issues</b>	<b>Responsibility of police (detective or uniformed) or prosecution or other party</b>
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Resources (vehicles, telephones, personnel)	Management
Factors contributing to non-reporting of crime and reluctance to come forward as a witness	Both police and prosecution
Conduct of police in charge office and at crime scene	Police (mainly uniformed)
Sensitivity to effects of trauma on victims and witnesses	Both though referral is mainly police responsibility
Diversity issues and racial or gender or other discrimination	Both
Statement taking	Police
Language and literacy issues	Both
Issues of legality and good practise relating to collecting and leading evidence	Both
Identifying and tracing persons and remaining informed of their whereabouts	Police
Witness protection	Both
Information issues and communication with the witness	Both
Consultation of the witness regarding decisions (bail, plea bargaining etc)	Prosecution
Minimising delays in case coming to trial	Both
Ensuring attendance of witnesses at court	Both
Time spent (wasted) at court	Both
Vulnerable witnesses including victims of sexual offences, children, sick and disabled persons and the elderly	Both
The court environment	Court administration
Briefing/preparation of the witness	Mainly prosecution
Special courts and procedures	Prosecution
Compensation for expenses and or losses incurred as a result of cooperation with the criminal justice process (witness fees and other payments)	Both

**Notes:**

<sup>1</sup> Examples include: Altbeker, A (1998) Solving Crime: The state of the SAPS detective service. Institute for Security Studies; Schönsteich, M (1999) [Assessing the Crime Fighters: The Ability of the Criminal Justice System to Solve and Prosecute Crime](#). ISS Paper 40.

Institute for Security Studies. Schönteich, M (2001) [Lawyers for the People – The South African Prosecution Service](#). Institute for Security Studies; Louise Stack and Paula Soggot (2001) Closing the gap between policy and implementation in justice in South Africa'. Draft report. Centre for Policy Studies. For an overview of the range of initiatives introduced to tackle problems being experienced in the criminal justice system see: Pelsler, E. and Rauch, J. (2001): [South Africa's Criminal Justice System: Policy and Priorities](#), p. 22 – 25. Unpublished paper presented at the 2001 South African Sociology Association Conference.

<sup>2</sup> In this report the term witnesses generally refers to members of the public, including victims of crime and others, who have information about incidents of criminality or of criminal activities which may be of use to the police or prosecution in solving crimes or prosecuting alleged perpetrators.

<sup>3</sup> Bruce, D. Newham, G. and Reddy, S (1999). The police, victims and the criminal justice process: an integrated approach. Draft report produced by the Centre for the Study of Violence and Reconciliation.

<sup>4</sup> The Victim Empowerment Centre at Moroka is funded by South African Breweries and the South African Police Service and has been in existence from 21 March 2001. The coordinator of the centre is a police inspector who represents the centre at station management. The centre is thereby linked to the crime prevention section of the Moroka SAPS. In addition to the coordinator the Centre is staffed by a number of volunteers. As from May 2002 the Victim Empowerment Centre has been operating on a 24 hour basis. The staff of the centre is trained by [NICRO](#) for counselling, debriefing and conflict mediation in family disputes. Training is also provided by [Business Against Crime](#) (BAC). In addition to counselling they also make referrals to other organisations like NICRO, SANCA, POWA, WAWA, [FAMSA](#) and other organisations that have social workers as well as training other counsellors and doing outreach work in pre-schools and schools in the community. Recruitment of volunteers is carried out through the Community Police Forum.

<sup>5</sup> The CPF has been in existence since 1996. It has two administrators who work on a voluntary basis, a chairperson who is an elected member of the CPF, and an executive committee. The executive committee consists of 8 members that are elected who represent sub-forums in different neighbourhoods. The CPF receives its funds from some budgetary allocations from the MEC's office and receive donations from local business from time to time. The police station provides office space and some logistical support, like telephones and transport when possible. The CPF does not work within any timelines as they respond to cases as and when they come up. Therefore the number of work hours is determined by the amount of work that needs to be done. On average the CPF deals with 20 people per day. There is no formal required training for CPF members but some members attend workshops offered by different providers. Some of these are conducted by previous executive committee members and they focus on the roles of the CPF, how it is formed and the nature of the relationship between the CPF and the police.

<sup>6</sup> Witness fees may be paid to all witnesses including expert witnesses who have been subpoenaed to appear in court. The criteria used to determine how much the witnesses are to be paid is largely based on local transport fares. They are also paid an extra R10 for being present at court. Witnesses that live in the vicinity of the court are not entitled to

payment unless they live further than 8km from the court. Exceptions are made on this exclusion and the manager uses his discretion in all the cases requiring the exception. An example cited was that of witnesses living in neighbourhoods that do not have direct public transport access to the court as well as elderly witnesses and guardians accompanying minors to court. Payment may also be made for hotel and other accommodation expenses, excluding liquor, that are incurred by witnesses coming from far away areas. Loss of income may also be reimbursed to witnesses that lost their earnings due to being subpoenaed to court. Regardless of whether the witness testifies or not, they are always paid out their fees when they obey the subpoena. The prosecutor fills in a witness fee form, which is sent to the authorising senior prosecutor with the case docket and charge sheet. The form is then sent to the clerk of the court where the fees are paid out. Witnesses should be informed by the police officer who serves them with subpoenas of their entitlement to witness fees. Information in this regard is also provided on the subpoena.

<sup>7</sup> This project was launched in February 2001 as a [Teddy Bear Clinic](#) Project. It is staffed by a secretary paid by the Teddy Bear Clinic, 2 social workers, three counselling volunteers and 6 court preparation volunteers as well as operating in cooperation with the control prosecutor for sexual offences. The Kids Court support centre is an independent establishment that supports and adds on to the services of the court. It is funded by Fedsure and the Protea court provides the space and support like cleaning services, electricity and water. The centre is responsible for general maintenance of the building in which they are housed. The Centre operates from 8:00 until 16:00 and works mostly per appointments and approximately 30 children receive the services of the centre per month. There is a management committee that is responsible for making decisions about the centre.

<sup>8</sup> Their hours of operating are from 8am till 4pm on weekdays. They only see adult clients as children are referred to the Kids Court Support Centre. The project is funded by [NISAA](#) in Lenasia as well as a subsidy from government. The Protea court provides them with space and maintenance of that space. The office started operating in 1997 as a NISAA outreach project to Protea court. Four full time staff members staff it of whom two are volunteers who work under the supervision of a qualified social worker. They see approximately 10 clients in a day.

<sup>9</sup> Much of the information in this section was provided by the Control Prosecutor at Protea Court, Nadine Nel.

<sup>10</sup> The categories of person who may be appointed as intermediaries is regulated by Government Notice No 22435 of 02/07/2001. Persons who may be appointed as intermediaries include: family counsellors, child care workers, social workers, educators including retired educators that are registered at the board of educators, doctors and psychiatrists. They are trained by different institutions including non-governmental organisations such as the Teddy Bear Clinic as well as doing practical training at the courts.

<sup>11</sup> It has been suggested that Section 158 could also be used for a child witness, particularly where the child is older and does not require the assistance of an intermediary. See K Muller and M Tait, 'Section 158 of the Criminal Procedure Act 51 of 1977: A potential weapon in the battle to protect child witnesses'. 1999 SACJ 57.

<sup>12</sup> The term "secondary victimisation" may be seen to refer to insensitive or other unpleasant treatment by officials associated with the Criminal Justice System including the police, prosecutors, magistrates and district surgeons. Contact with the Criminal Justice System rather than alleviating the victims plight therefore frequently serves as a source of additional distress for victims. While 'secondary victimisation' may be the result of unprofessional conduct, even where police and prosecutors adhere to professional standards, the process of reporting the case and appearing as a witness in court may be a difficult one for the victim and may aggravate the traumatising effect of victimisation.

<sup>13</sup> Inaccuracies could originate from the account given by the witness and do not necessarily reflect inaccurate statement taking by police members – though where they originate from the witness they could be dealt with partly by a more rigorous interviewing and statement taking technique.

<sup>14</sup> In some areas where there are large immigrant communities, communication with foreigners would be a day to day occurrence.

<sup>15</sup> A model information brochure to be distributed to witnesses is currently being developed by the Centre for the Study of Violence and Reconciliation as part of the Witness Project. The brochure will hopefully be translated into a number of South Africa's official languages.

<sup>16</sup> Oelofse, L. (2002) 'Police take steps to improve victim feedback'. The Star, 19 March.

<sup>17</sup> In theory this could be taken further by *reducing the number of postponements (without necessarily having an impact on the length of delays)*. An example of such a measure would be 'splitting the court role' into cases which are likely to be ready for trial in the near future and cases which are likely to need more time for preparation. Cases that are not likely to be ready soon, would be postponed for a longer time, thus reducing the number of postponements without necessarily reducing the length of delays.

<sup>18</sup> This is not to assume that all postponements are the result of the state case not being ready. As is well know, often postponements are the result of other factors, including factors related to the availability of defence witnesses, or delays in preparing the defence.

<sup>19</sup> See footnote 6.

<sup>20</sup> See the judgment of the Constitutional Court in *Shabalala v Attorney-General, Transvaal* 1996 (1) SA 725 (CC), 1995 (12) BCLR 1593 (CC) 1995 (2) SACR 761 (CC). Note in particular point 5 under the order of the court in paragraph 72 which states in part that 'The State is entitled to resist a claim by the accused for access to any particular document in the police docket ... on the grounds that there was a reasonable risk that such disclosure might lead to the intimidation of witnesses or otherwise prejudice the proper ends of justice'. Potentially this would justify the prosecution in withholding not only the content of witness statements, but also information regarding the identity of witnesses, from the accused.

<sup>21</sup> A wider range of options are mentioned in Elliott, R (1998): 'Vulnerable and Intimidated

Witnesses: A Review of the Literature' in Home Office (1998) Speaking Up for Justice. Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System. London: Home Office Procedures and Victims Unit, pp. 99 – 208.