

# PETTY CRIMES THAT MATTER

## Evaluating the Western Cape community courts

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By focusing on petty crimes, community courts hope to encourage a 'zero tolerance' approach to criminality, develop integrated and constructive responses to local crime problems, and alleviate case loads in magistrates' courts. Based on an evaluation of three community courts in the Western Cape, this article argues that overall, the courts are functioning satisfactorily. Challenges in the areas of planning, public awareness, police data collection, and the provision of diversion and alternative sentencing options must, however, be addressed.

Community courts were identified as a government priority in 2004, and in December of that year the Western Cape courts were launched at the Fezeka, Guguletu community court by the Deputy Minister of Justice and Constitutional Development, Advocate Johnny de Lange, who outlined the vision for these courts:

For a long time petty criminal activities were not dealt with as vigorously as they ought to be. The establishment of the community courts is therefore a statement of intent that wherever or whatever petty crime is committed, it will be dealt with swiftly. It gives practical meaning to the concept zero tolerance in our fight against crime.

In other words, the community courts are meant to focus on less serious crimes, based on the concept of 'zero tolerance', which envisages that tackling such offences will help reduce serious crime in the long term. At the launch De Lange also described community courts as "district courts that deal with the same cases as normal magistrates' courts. The

difference lies in the way in which services are integrated."

The deputy minister cautioned that these courts are not to be confused with the informal community justice structures or the traditional courts in rural areas, which assist in resolving less serious disputes. To avoid confusion, De Lange noted that the community courts established by directive of the President would be referred to as 'Hatfield-type courts'. The 'Hatfield model' is based on the American approach to petty crimes, which is believed to help reduce crime in general.

### Background and methodology

In May 2005, the Open Society Foundation for South Africa, on behalf of the DOJCD, commissioned an evaluation of the impact of the three Western Cape community courts in Mitchells Plain, Fezeka (Guguletu), and Cape Town. The study aimed to assess the performance of these courts against the objectives of community courts in general (as defined by the DOJCD), which are to:

- address area solutions to crime;
- improve access to justice;
- deliver justice effectively and efficiently;
- prevent urban decay; and
- treat youth offenders appropriately.

The study used both quantitative and qualitative methods, including:

- a document review;
- court observations in all three Western Cape courts as well as the Hatfield, Pretoria court;
- interviews with 56 role-players;
- case analysis of a random representative sample of cases from each court;
- review of SAPS crime statistics on offences prosecuted in the community courts.

This article first presents the results of the review of the Hatfield community court, followed by those of each of the three Western Cape courts. Finally, recommendations are provided.

#### **The Hatfield court**

The Hatfield court was established in April 2004 as a public-private partnership project between the DOJCD, the University of Pretoria, the National Prosecuting Authority (NPA), the Department of Social Development, Hatfield CID, City of Tshwane Metropolitan Council, the SAPS and the Department of Correctional Services (DCS).

#### *Staff and facilities*

The court is staffed by one clerk, three prosecutors, an interpreter, a magistrate, a Correctional Services probation officer, a social worker, two Legal Aid attorneys, a receptionist, and SAPS court orderlies. The new building has two courtrooms, holding cells, and a number of offices. The diversion service providers are not housed on the premises, but social workers and probation officers refer cases to them.

#### *How cases are dealt with*

At its inception the court dealt only with cases from the Brooklyn police station area. A dedicated prosecutor receives all new dockets pertaining to district court cases, and assesses whether they are indeed district court cases, or whether they are of such seriousness that they should instead be referred to the Pretoria Regional Court.

#### *Collaboration between service providers*

The accused is assessed as soon as possible (usually within 48 hours of arrest) to decide on suitability for diversion from the criminal justice system. Legal Aid attorneys are available on-site and a Department of Correctional Services probation officer deals with the diversions or alternative sentences of all adults. A social worker from the Department of Social Development is available on specified days of the week for referrals of juvenile offenders.

#### *How the Hatfield court measures up*

The Hatfield model has several distinguishing, core characteristics:

- it deals with all district court cases;
- its area of jurisdiction is one police precinct;
- the court is housed in a dedicated building with a full-time magistrate;
- there is integrated service delivery, with all government role-players and the Legal Aid Board based at the court;
- non-government (NGO) personnel are not located on the premises;
- the court practices a restorative justice approach and many diversion and alternative sentencing options are available;
- juveniles and adults are dealt with in the courts;
- cases are dealt with immediately and/or quickly; and
- there is some involvement by and practical support from the business and university community.

The court has, however, begun to deviate a little from the original model for community courts envisaged by the DOJCD. A brief summary is provided below:

- Another police precinct is to be added to its intake area, which may result in an increased backlog and slower handling of cases.
- Postponements appear to be becoming more routine, and for long periods (a week), resulting in accused persons who are unable to make bail being incarcerated.
- The majority of cases in this court appear to involve shoplifting. While this type of crime is not one of the 'lifestyle' crimes that the community courts aim to focus on, it is a problem in Hatfield.

Despite these observations, this court did appear to be functioning as envisaged. The Western Cape community courts operate quite differently, however, particularly the one situated in the Cape Town city centre. Interviews with project steering committee members suggest that a different approach to the Hatfield model has been adopted in the Western Cape, based on perceptions about local needs. The overview of the three courts below shows that although there are similarities, none operate exactly like the Hatfield model.

### Mitchells Plain community court

The Mitchells Plain community court commenced operations in November 2004.

#### Staff and facilities

The court is staffed by one clerk, one prosecutor, a magistrate, a Social Development social worker, a NICRO social worker,<sup>2</sup> and SAPS court orderlies.<sup>3</sup> The court is housed in a prefabricated building and 'wendy' houses adjacent to the magistrate's court and police station.

#### How cases are dealt with

The offences determined by the NPA that can be dealt with in this court are common assault, less

*Table 1: Offences dealt with in the Mitchells Plain community court*

Offence	%
Shoplifting	35.6
Common assault	27.8
Drinking in public	11.1
Theft	6.7
Crimes in injuria	3.3
Possession of dagga	3.3
Malicious damage to property	3.3
Riotous behaviour	2.2
Trespassing	2.2
Urinating in public	2.2
Possession of illegal weapon	1.1
Child abuse	1.1
Total	100.0

*Source: Mitchells Plain community court*

serious assault, malicious damage to property, petty theft, petty gambling offences, petty traffic offences, drunkenness, drinking in public, riotous behaviour, failure to comply with a lawful instruction of a police officer, and various train-related offences.

Table 1 shows that the largest offence category handled by the Mitchells Plain court was shoplifting, reflecting a similarity to the Hatfield court. This was followed by assault and drinking in public. Together, these three crimes comprise three quarters of all the matters heard in this court.

Data on the outcome of cases indicate that suspended fines are most common, followed by withdrawals (Table 2). It is likely that diversions are categorised as 'withdrawn'. Community service made up the third most common outcome for cases.

*Table 2: Outcome of prosecutions in the Mitchells Plain court*

Classification of outcome	%
Fine but suspended	34.5
Withdrawn	29.9
Community service	18.4
Transferred	8.1
Suspended term	4.6
Cautioned	3.5
Dismissed	1.2
Total	100.0

*Source: Mitchells Plain community court*

#### Collaboration between service providers

The accused is assessed as soon as possible to decide on suitability for diversion, either by the government social worker or NICRO. When appropriate, pre-court mediation with the complainant and accused takes place. The prosecutor bases her decision on the assessments.

#### Is the court meeting its objectives?

In terms of its operations, this court is most similar of all the Western Cape community courts to the Hatfield model, in that:

- it deals with a broader range of cases, including common assault and petty theft;

- its area of jurisdiction is the Mitchells Plain precinct;
- it is housed in a dedicated court building and has a dedicated full-time magistrate;
- there is some level of integration with other role-players, except DCS, and although Legal Aid are not on site, their services are available on request;
- the only NGO located on the premises is NICRO;
- it practises a restorative justice approach and has a range of diversion and community service options available;
- cases are dealt with immediately or quickly; and
- involvement of the community is limited.

A key difference to the Hatfield court is that only adults are dealt with, rather than both juveniles and adults.

When measured against the DOJCD's specific aims regarding community courts, the following emerges:

- *Solve the area's crime problems:* The court is beginning to address interpersonal and alcohol-related violence, and the increase in shoplifting is being tackled. The existence of the court has also led the police to re-design their crime prevention strategy with a view to uplifting the community as a whole. It is, however, too soon to assess the impact on crime levels.
- *Improve access to justice:* More cases are being dealt with in Mitchells Plain overall, and interpersonal violence cases are now handled more appropriately through pre-trial mediation and innovative sentencing. The court is also located next to the police station and bus and taxi rank, and there is sufficient signage and seating for the public in the courthouse.
- *Deliver justice effectively and efficiently:* Police report that cases of assault are generally dealt with on the day of reporting. The diversion and alternative sentencing options provided (such as anger management and alcohol and drug rehabilitation) are innovative and restorative.
- *Prevent urban decay:* The key issues in Mitchells Plain are graffiti, shebeens, drunkenness in public and *crimen injuria*. The community court has the potential to impact on the perception of justice, and on behaviour in the community, but it is too soon for the full impact to be assessed.

- *Treat youth offenders appropriately:* This court does not deal with juveniles.

### Fezeka community court

The Fezeka court was opened in December 2004.

#### Staff and facilities

Court staff comprise one clerk, two prosecutors, an interpreter, a magistrate, a NICRO social worker, and SAPS court orderlies. The court is housed in a dedicated building on municipal ground.

#### How cases are dealt with

The NPA has instructed that the same range of cases be dealt with as in the Mitchells Plain court.

Table 3: Offences dealt with in the Fezeka community court

Offence	%
Drinking in public	31.1
Common assault	23.3
Invalid/no driver's licence	23.3
Dagga	7.8
Malicious damage to property	5.6
Crimen injuria	3.3
Nuisance	2.2
Obstructing police	1.1
Riotous behaviour	1.1
Theft	1.1
Total	100.0

Source: Fezeka community court

Drinking in public, assault, and driver's licence cases are the most frequently prosecuted in this court and together account for more than three-quarters of cases heard (Table 3).

Deferred fines are by far the most frequent outcome in this court, which is of concern given the low socio-economic status of the area. If diversions are included under the 'withdrawn' category, then it is worrying that only roughly a quarter of matters result in diversions. In terms of non-custodial sentences, community service is seldom used as a sentencing option.

Table 4: Outcome of prosecutions in the Fezeka court

Classification of outcome	%
Fine but suspended	47.2
Withdrawn	24.7
Cautioned	14.6
Dismissed	6.7
Community service	2.3
Fined	2.3
Suspended term	2.3
Total	100.0

Source: Fezeka community court

#### Collaboration between service providers

The accused is assessed as soon as possible by either government or NICRO social workers, to decide on suitability for diversion. The prosecutor bases her decision on these assessments.

#### Is the court meeting its objectives?

The Fezeka court bears less of a resemblance to the Hatfield model than the Mitchells Plain community court. The following similarities to Hatfield were noted:

- it is housed in a dedicated court building with a full-time magistrate;
- the only NGO located on the premises is NICRO;
- the court deals mostly with adults, although some juveniles were also dealt with; and
- cases are dealt with immediately or quickly.

The differences to the Hatfield model are:

- initially, all district court cases were dealt with, but the court is now limited to a closed list of crime types, predominantly assault and drinking in public;
- it services three police precincts (Manenberg, Guguletu and Nyanga);
- integration with other government role-players is limited to the SAPS; as in the case of Mitchells Plain, Legal Aid are not on site but their services are available on request;
- few diversion and alternative options are used; and
- there is no real community involvement.

When measured against the DOJCD's specific aims regarding community courts, the following emerges:

- *Solve the area's crime problems:* Most of the crimes dealt with are prevalent in the area, but it is unclear at this stage whether the court is having an impact on crime in general.
- *Improve access to justice:* Physical access has improved dramatically with court users in Guguletu and surrounding areas now able to walk to court. Although the court is well sign-posted, there is limited seating for the public. Another positive indicator is that more cases of assault and other contact crimes are being heard than before.
- *Deliver justice effectively and efficiently:* Cases are generally dealt with on the same day. There appear to be few diversion and alternative sentencing options and the court has tended to hand down sentences of deferred fines. An analysis of the November 2005 deferred fines shows that 63% of the deferred fines had not been paid, nor had warrants for arrest been issued for these cases.<sup>4</sup>
- *Prevent urban decay:* Given the lack of basic services in the area, such as public toilets, bus shelters, and adequate and suitable housing, the problem here is the lack of upliftment rather than urban decay.
- *Treat youth offenders appropriately:* This court deals with a negligible number of youth offenders. In general they are immediately transferred to places of safety.

#### Cape Town community court

The Cape Town court was opened in November 2004 and is the court that differs most markedly from the Hatfield model described above.

#### Staff and facilities

The court is staffed by: one clerk, one prosecutor, an interpreter, a magistrate, a NICRO social worker, Street People's Ministry (SPM) intake officer, a data capturer, and SAPS court orderlies. The court is housed on two floors of a building that is shared with other businesses.

#### How cases are dealt with

The offences determined by the NPA for this court are: petty gambling offences, drunkenness, drinking in public, riotous behaviour, failure to comply with a lawful instruction of a police officer, various train-

related offences, pedestrians endangering motorists or themselves, urinating in public, loitering, and trespassing.

*Table 5: Offences dealt with in the Cape Town community court\**

Offence	%
Drinking in public	41.1
Public nuisance	26.0
Unrecorded	12.3
Riotous behaviour	11.0
Urinating in public	5.5
Littering	1.4
Obstructing the police	1.4
Trespassing	1.4
Total	100.0

\*Excluding Metrorail  
*Source: Cape Town community court*

Table 5 shows that drinking in public is the offence most frequently prosecuted at the court, followed by 'public nuisance'. Unfortunately the next largest category is 'unrecorded', which is concerning in respect of accurate data recording. The types of offences in Table 5 illustrate the extent to which the court is pursuing crimes committed by homeless people – a trend that was confirmed by interviews with a range of stakeholders involved.

*Table 6: Outcome of prosecutions in the Cape Town court\**

Classification of outcome	%
Withdrawn	30.4
Cautioned	23.2
Suspended term	15.9
Community service	13.0
Fine but suspended	8.7
Fined	4.4
Transferred	2.9
Dismissed	1.5
Total	100.0

\*Excluding Metrorail  
*Source: Cape Town community court*

The most common outcome of cases heard at the Cape Town court is for cases to be withdrawn, followed by offenders being cautioned, receiving a suspended term, and being given community service.

#### *Collaboration between service providers*

The accused is assessed at the court to decide on suitability for diversion, either by Department of Social Development social workers, or those provided by SPM or NICRO. The prosecutor bases his/her decision on whether the accused is diverted or prosecuted on the basis of the assessments. If sentencing or diversion involves accommodation at The Haven Shelter, the SAPS provides transport to the offender.

#### *Is the court meeting its objectives?*

The following characteristics show that the Cape Town community court differs most markedly from the Hatfield model:

- it deals with a limited range of offences which are primarily by-law related or traffic offences;
- it services three police precincts (Cape Town, Sea Point, Table Bay);
- the building occupied by the court is shared with other businesses;
- integration with other government role-players is limited to the SAPS; as in the case of the other Cape-based courts, Legal Aid are not on site, but their services are available on request;
- a number of non-government organisations, including a religious one, are housed on the premises;
- the restorative approach is not generally followed and a limited number of diversion and alternative sentencing options are available;
- no juveniles are dealt with in the court; and
- most offenders processed through the courts are homeless adults rather than those who have fixed addresses, and most of those arrested appear to spend at least one night in detention.

When measured against the DOJCD's specific aims regarding community courts, the following emerges:

- *Solve the area's crime problems:* The behaviour of homeless persons, which influences perceptions

of safety among residents, tourists and other city users, was raised by the police and the NPA as an ongoing problem. But while homelessness may be a social problem, it does not relate to crime levels in the area.<sup>5</sup> Thus, unless the Cape Town court measures its success on issues of crime and grime rather than on the most prevalent crime, it is likely to fare poorly on this indicator. On a more positive note, the court is attempting to deal constructively with the problem of homelessness by offering an array of services to assist offenders.

- *Improve access to justice:* In terms of physical access, the court is close to all modes of public transport, and has clear signage but limited seating for the public. In terms of other access issues, the court does not appear to be improving access to victims, because most of the cases heard are 'victimless', such as drinking or urinating in public. While those who live in and use the city for work, business and entertainment may benefit from this approach, the homeless are now being targeted, and have faced more injustices since the court opened.
- *Deliver justice effectively and efficiently:* Cases are processed more quickly here than in the normal courts. This court has virtually no backlog and, based on a court roll analysis, is efficient and effective. However, many accused spend at least one night in detention before being processed – something which may not be cost-effective in the case of petty offences. Another negative factor is that recidivism rates among offenders tried in this court are high. NGOs providing sentencing and diversion options also note a high rate of non-compliance with court orders.<sup>6</sup>
- *Prevent urban decay:* The community court is the first attempt to deal with 'lifestyle crimes' that contribute to urban decay. Given its limited operation and the fact that a public opinion survey was not part of this evaluation, it is difficult to establish the court's performance in this regard. Uplifting the homeless requires support services and prospects for employment and shelter. Programmes to deal with substance abuse are also needed.

- *Treat youth offenders appropriately:* The proximity of the juvenile court to the community court means that youth offenders are dealt with in the former, as it has the resources and infrastructure to deal with juveniles.

### **Overall, a positive rating**

The evaluation has shown that some community courts in the Western Cape are not operating in the way that the DOJCD originally envisaged. This is not necessarily a problem if the courts meet the department's objectives. Furthermore, local conditions and crime problems may necessitate a departure from the prototype model.

Despite problems in several areas (which the recommendations below address), all the courts showed a dramatic growth in understanding of alternative approaches to dealing with petty offences, along with notions of restorative justice. There is also a commitment to the increased use of diversion and alternative sentencing options. However, this is limited by the lack of alternative sentencing and diversion options and the limited involvement of DCS in the project.

### **Recommendations**

The following recommendations were made for the Western Cape community courts in general:<sup>7</sup>

#### *Planning*

- Community courts need to be more clearly defined.
- The types of crimes that the courts will deal with need to be more thoroughly identified and analysed.
- All role-players could benefit from an improved understanding of restorative justice, and of the difference between diversion and alternative sentencing options.
- All role-players could benefit from a common understanding of the goals of the community court in their area.
- The DOJCD should explore the feasibility of limiting intake per community court to one police precinct, and for the courts to be located within the precinct they serve. This would ensure the building of relationships, improved communication and integration, and facilitate the effective and



localised handling of cases. It would also ensure that caseloads remain manageable.

- The commitment and participation of key role-players must be secured.

#### *Public education and awareness*

- Public awareness campaigns are needed to highlight that certain activities do in fact constitute a crime. Mock trials, like those held regularly by the Hatfield Court, could be held at each court.
- An independent survey of public opinion would be beneficial to gauge the impact of the courts.
- Adequate facilities for public observation of court proceedings should be provided.

#### *Police services*

- More feedback from the courts to the police is necessary, especially to ensure that diversion is recorded on the case dockets.
- Case outcomes, as recorded by the SAPS, need to reflect diversion as a 'completion' rather than simply as a 'withdrawal', as is currently the case. Diversions are a positive performance indicator for the police and courts, and need to be recorded to reflect this fact.
- The role of the City Police in the community courts needs to be addressed.

#### *Diversion and alternative sentencing options*

- Diversion and alternative sentencing options need to be expanded. They also need to be monitored and evaluated.
- The role of NGOs needs to be defined and accountability mechanisms put in place.
- The provision of community service and other forms of alternative sentencing should be explored with the DCS.
- The problem of homelessness needs to be addressed holistically to avoid that the Cape Town court (in this case) is seen as targeting the poor.

#### *Data collection and processing*

- The collection of statistics in all three courts is inaccurate and problematic. A standardised system is needed that includes information about the following for each case:

- date of arrest, and diversion or sentence;
- clarity on what is meant by a 'recycled case';
- the type of crime;
- more detail about case outcomes.

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#### **Endnotes**

- 1 Lifestyle crimes are those which are usually victimless in nature (such as drinking in public) but may include offences such as *crimen injuria*, and affect quality of life perceptions.
- 2 NICRO stands for The National Institute for Crime and the Rehabilitation of Offenders.
- 3 When the courts opened in 2004, LAB attorneys were not available. UCT and UWC legal aid lawyers volunteered at all three courts for a period of about six weeks. Legal Aid lawyers were thereafter available at the courts until the end of April 2005. Currently, LAB lawyers are not on site but will come to the court on request. This applies to all three courts at present.
- 4 The fact that deferred fines are the main form of sentence is often cited as a reason for NICRO not establishing more diversion options in the area.
- 5 According to the SAPS, the most prevalent crimes are not committed by the homeless.
- 6 For example, a report from the District 6 Shelter indicates that of the 89 people referred by the court to this shelter between December 2004 and May 2005, 67 of them absconded.
- 7 Specific recommendations were also made for each of the three courts, and these can be accessed in the full evaluation report.