

The Implementation of the Criminal Law (Sexual Offences and  
Related Matters) Amendment Act 32 of 2007



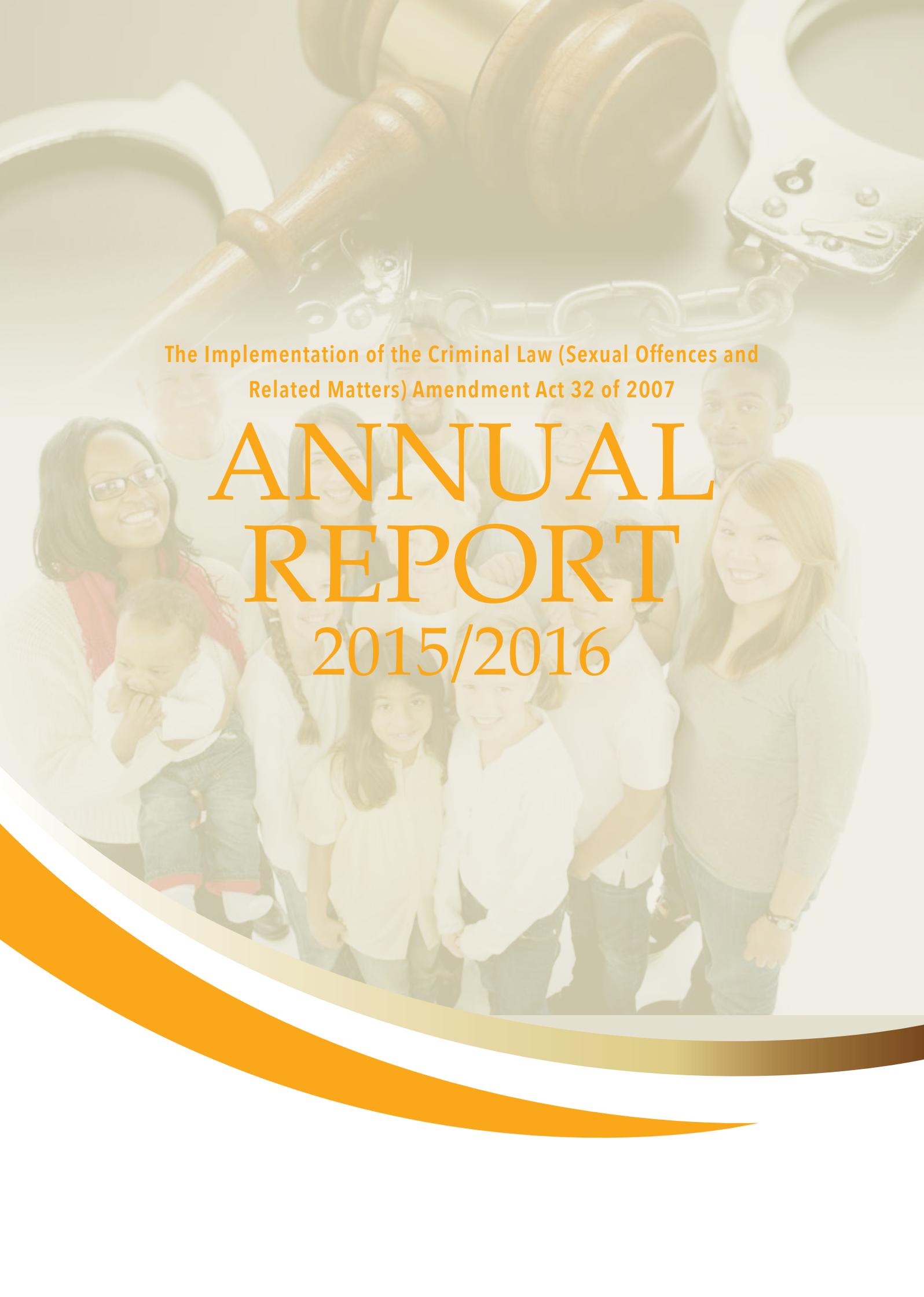
# ANNUAL REPORT

2015/2016



**the doj & cd**

Department:  
Justice and Constitutional Development  
**REPUBLIC OF SOUTH AFRICA**



The Implementation of the Criminal Law (Sexual Offences and  
Related Matters) Amendment Act 32 of 2007

# ANNUAL REPORT 2015/2016

**OFFICIAL SIGN-OFF**

It is hereby certified that this Departmental Annual Report was developed by the Department of Justice and Constitutional Development for tabling in Parliament by the Minister of Justice and Correctional Services in terms of section 65(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) (the Act). It highlights the achievements and limitations experienced to realise the goals of the Act. The reporting period for this Report is from 01 April 2015 to 31 March 2016.

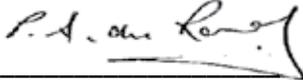
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Chief Director: Promotion of the Rights of Vulnerable Groups

Signature: 

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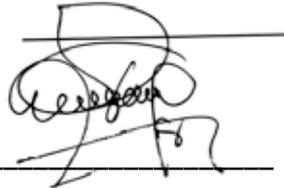
Deputy Director-General: Court Services Branch  
On behalf of Adv JB Skosana (Adv P Du Rand)

Signature: 

**Approved by:**

**Mr V. Madonsela**

Director-General: Department of Justice and Constitutional Development

Signature: 

## **TABLE OF CONTENTS**

|  |           |
|--|-----------|
| Official Sign-off  | 3         |
| List of acronyms   | 7         |
| <b>The Overview</b>  |           |
| Introduction   | 8         |
| <b>Chapter 1: Legal Framework</b>  | <b>11</b> |
| 1.1 Introduction   | 11        |
| 1.2 International Protocols  | 11        |
| 1.3 The Regional Protocols   | 11        |
| 1.4 The Country Reports  | 12        |
| 1.5 The Constitution   | 13        |
| 1.6 Other relevant Laws and Policies   | 13        |
| 1.7 National Development Plan 2030   | 14        |
| 1.8 The National Policy Framework (NPA) on the Management of Sexual Offences                               | 14        |
| <b>Chapter 2: Governance</b>   | <b>16</b> |
| 2.1 Introduction   | 16        |
| 2.2 The Justice, Crime Prevention and Security (JCPS) Ministers  | 16        |
| 2.3 The Directors-General Intersectoral Committee on the Management of Sexual Offences Matters (DG ISC SO) | 16        |
| 2.4 The National Operational Intersectoral Committee on Sexual Offences (National OP ISC-SO)               | 16        |
| 2.5 Regional Heads Forum   | 19        |
| 2.6 National Sexual Offences Courts Committee (SOCC)   | 19        |
| 2.7 National Intermediary Committee  | 19        |
| 2.8 Provincial Sexual Offences Committees/Forums   | 19        |
| 2.9 The Intersectoral Committee on Persons with Disabilities   | 20        |
| 2.10 The National Task Team (NTT) on Lesbians, Gays, Bisexual, Transgender and Intersex Persons (LGBTI)    | 20        |
| 2.11 Intra-Departmental Committee on the Implementation of the Act   | 21        |
| 2.12 Challenges  | 21        |
| <b>Chapter 3: Physical and Human Resource</b>  | <b>23</b> |
| 3.1 Introduction   | 23        |
| 3.2 Infrastructure and other Physical Resources  | 23        |
| 3.2.1 Sexual Offences Courts Project   | 25        |
| 3.2.2 Donor Funding for Sexual Offences Courts Project   | 27        |
| 3.2.3 Progress with the Achievement of the MATTSO Recommendations  | 28        |

|   |           |
|---|-----------|
| 3.3 Human Resources   | 31        |
| 3.3.1 Constitutional Context of Strengthening of Intermediary Services  | 31        |
| 3.3.2 Intermediary Services Outputs   | 32        |
| 3.3.3 Top Languages required for Intermediary Services in 2015/2016   | 34        |
| 3.3.4 Challenges  | 34        |
| <b>Chapter 4: Training and Development</b>  | <b>36</b> |
| 4.1 Introduction  | 36        |
| 4.2 Trauma Debriefing Programme   | 36        |
| 4.3 Inter-Departmental Training of Frontline Officials  | 37        |
| 4.4 Departmental and Intersectoral Training Conducted by Regions  | 37        |
| 4.5 Summary of Training Conducted in 2015/2016  | 40        |
| 4.6 The Intermediary Training: Evidence-based and Empirical Investigation into the Training Needs of Intermediaries | 40        |
| 4.7 Challenges  | 41        |
| <b>Chapter 5: Public Education</b>  | <b>43</b> |
| 5.1 Introduction  | 43        |
| 5.2 Media Public Education Interventions  | 43        |
| 5.3 Community Imbizos and Schools Campaign  | 45        |
| 5.4 Challenges  | 49        |
| <b>Chapter 6: National Register for Sex Offenders (NRSO)</b>  | <b>51</b> |
| 6.1. Introduction   | 51        |
| 6.2. Convictions Registered In the NRSO   | 51        |
| 6.3. National Manual Historic Data Verification of Historic Data Project  | 51        |
| 6.4. The Recent Amendments to the Act   | 52        |
| 6.5. Submission of Original FORM5 Court Orders to the Registrar   | 53        |
| 6.6. Development of Systems for Issuance of Clearance Certificates  | 53        |
| 6.7. Amendments to Forms Prescribed by NRSO Regulations   | 53        |
| 6.8. Research on the Alignment of the NRSO with the National Child Protection Register (NCPR)                       | 54        |
| 6.9. Capacity Building and Training   | 54        |
| 6.10 Public Education and Communication on NRSO   | 55        |
| 6.10.1 Media Public Education   | 55        |
| 6.10.2 School Educational Campaign  | 56        |

|   |           |
|---|-----------|
| <b>Chapter 7: Research Interventions</b>  | <b>58</b> |
| 7.1 Introduction  | 58        |
| 7.2 Provision of Food Support to Child Witnesses in Court   | 58        |
| 7.3 Research on Skills Needs of Intermediaries  | 59        |
| 7.4 Position Paper on the Merger of NRSO and NCPR   | 59        |
| 7.5 The Baseline Victim-Satisfaction Survey at Non-Sexual Offences Courts   | 59        |
| <br>  |           |
| <b>Chapter 8: Law and Policy Development</b>  |           |
| 8.1 Introduction  |           |
| 8.2 The Judicial Matters Second Amendment Bill  |           |
| 8.3 Regulations Relating to the Sexual Offences Courts: Judicial Matters Second Amendment Act, 2013<br>(Act No. 43 of 2013) | 62        |
| 8.3.1 Intersectoral Consultations   | 62        |
| 8.4 Amendment of sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act                 | 62        |
| <br>  |           |
| <b>Chapter 9: Limitations, Possible Interventions and Conclusion</b>  |           |
| 9.1. Limitations and Possible Interventions   | 64        |
| 9.2. Conclusion   | 65        |

## **LIST OF ACRONYMS**

|              |   |
|--------------|---|
| CCTV         | Closed-Circuit Television   |
| DBE          | Department of Basic Education   |
| DCS          | Department of Correctional Services                                   |
| DG-ISC SO    | Directors-General Intersectoral Committee                             |
| DOH          | Department of Health  |
| DSD          | Department of Social Development                                      |
| DOW          | Department of Women   |
| ICMS         | Integrated Case Management System                                     |
| ISC          | Intersectoral Committee   |
| JCPS         | Justice, Crime Prevention and Security Cluster                        |
| Legal Aid SA | Legal Aid South Africa  |
| LGBTI        | Lesbian, Gay, Bisexual, Transgender and Intersex                      |
| MATTSO       | Ministerial Advisory Task Team on the Adjudication of Sexual Offences |
| NCPR         | National Child Protection Register                                    |
| NGO          | Non-Governmental Organisation   |
| NHTL         | National House of Traditional Leaders                                 |
| OPS ISC      | National Operational Intersectoral Committee                          |
| NPA          | National Prosecuting Authority  |
| NPF          | National Policy Framework   |
| NRSO         | National Register for Sex Offenders                                   |
| PEC          | Public Education and Communications                                   |
| SAPS         | South African Police Service  |
| UNCRC        | United Nations Convention on the Rights of the Child (1989)           |
| UNICEF       | United Nations Children's Emergency Fund                              |
| VC           | Victims' Charter  |

## **THE OVERVIEW**

This is the 2015/2016 Departmental Annual Report compiled in compliance with section 65 (3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007 (the Act), which requires the Minister of Justice and Correctional Services to submit to Parliament annual reports received from the implementing stakeholders, which include the Department of Justice and Constitutional Development (DoJ&CD), the National Prosecuting Authority (NPA), the Department of Correctional Services (DCS), the Department of Social Development (DSD), the Department of Health (DoH), and the South African Police Service (SAPS). This provision is subject to an amendment which will be dealt with later in this report.

The Report covers 9 out of 10 key priority areas of reporting outlined by the Directors-General Intersectoral Committee for all implementing stakeholders, and these are: (i) the Legal Framework; (ii) Governance Structures; (iii) Physical and Human Resources; (iv) Training and Development; (v) Public Education; (vi) the National Registrar for Sex Offenders; (vii) Research Interventions; (viii) Law and Policy Developments; and (ix) Limitations and Possible Solutions.

In terms of the Act, the mandate of the DoJ&CD excludes the prosecution and adjudication of sexual offences cases. It is for this reason that in 2015 the Directors-General Intersectoral Committee (DG ISC SO) resolved that the monitoring and evaluation function of the sexual offences courts and the reporting on statistical performance of all regional courts dealing with sexual offences cases be transferred from the DoJ&CD to the NPA. This decision was motivated by the fact that the NPA, with its prosecution mandate, is better placed to analyse and report on the statistics collected via the Integrated Case Management System managed by the DoJ&CD; hence the exclusion of the 10<sup>th</sup> priority area of statistical performance (monitoring and evaluation). It must be noted that some of these reporting areas are listed as strategic objectives of the National Policy Framework on the Management of Sexual Offences Matters.

Chapter 1 of the Report covers the domestic legal framework on sexual offences with reference also to the applicable international and regional instruments. It also provides a narrative of the contribution made by the Department in country reporting.

Since the Act promotes intersectoral interventions against sexual violence, Chapter 2 gives highlights of the performance of each intersectoral governance structure on sexual offences. To ensure the implementation of strategic resolutions by the DG ISC SO, provincial and local structures have been established. Section 63 of the Act requires the Director-General of the DoJ&CD to chair the DG ISC SO. This is the trend followed by the structures supporting the performance of this Committee.

Resources are critical in any implementation process of an Act which is the focus of Chapter 3. Chapter 3 also covers the progressive strides taken by the Department in the implementation of the Sexual Offences Courts Project and the MATTSO<sup>1</sup> Report recommendations. It is with pride to report that in 2 years of this Project there are 47 sexual offences courtrooms that are operational in the country.

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<sup>1</sup> Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters

As globally acknowledged, victims of sexual offences have special needs that often require specialized skills. Chapter 4 gives an account of the training interventions done by the Department during this reporting period. In compliance with the MATTSO Report, this Chapter further covers the Department's outputs on the implementation of the Trauma Debriefing Programme offered to intermediaries, interpreters, stenographers and other court personnel having direct contact with the traumatized victims of sexual offences.

Outcome 14 of the National Development Plan (NDP) 2030 requires every government stakeholder to develop and implement constitutional rights awareness campaigns/ programmes targeting the public with a focus on vulnerable and marginalised groups. Chapter 5 of this Report deals with efforts to implement the NDP in sexual offences, and a lot of these interventions were held in "high sexual offending communities".

Chapter 6 deals with the progress and challenges experienced in the implementation of the National Register for Sex Offenders. This Register is widely considered as an important measure in the prevention of sexual offences perpetrated against children and persons with mental disability. From 2011/ 2012 to 2015/2016, the registered sex offenders increased from 2 340 to 22 879. However, the Department considers this figure to be inadequate in view of the fact that it also covers historic convictions in sexual offences.

The MATTSO Report recommended certain research activities in relation to the management of the Sexual Offences Courts. Chapter 7 covers 4 studies conducted in 2015/2016 as part of the Sexual Offences Courts Project- mostly to collect the baseline data that could be used in the monitoring and evaluation of the performance of these courts.

As the key stakeholder in legislative and policy development, in Chapter 8 the Department outlines its performance in this regard. Legislative amendments processed during this reporting period are dealt with.

Chapter 9 of this Report provides a narrative of limitations and possible interventions experienced by the Department in the implementation of this Act. Some of these challenges are already agenda items of the DG ISC SO.

The DG ISC SO has considered this Report and recommended to the Minister of Justice and Correctional Services that he tables it in Parliament in terms of section 65 of the Act.

# Chapter 1: Legal Framework

CRIMINAL LAW  
(SEXUAL OFFENCES &  
RELATED MATTERS)  
ACT 32 OF 2007  
& REGULATIONS

## SEXUAL OFFENCES



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Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

## **CHAPTER 1: LEGAL FRAMEWORK**

### **1.1. Introduction**

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (the Act), with the exception of Chapters 5 and 6, dealing with services for victims of sexual offences and compulsory HIV testing of alleged sex offenders and the National Register for Sex Offenders, respectively, came into operation on 16 December 2007. Chapter 5 came into operation on 21 March 2008 and Chapter 6 on 16 June 2008<sup>2</sup>. It is an Act that establishes a victim-centric approach in interventions against sexual violence. It also promotes prevention by establishing a National Register for Sex Offenders to record the particulars of sex offenders convicted of sexual offences involving children and victims with mental disabilities. The Act further requires intersectoral interventions so as to ensure that victims are offered coordinated and integrated services.

The Act is not implemented and applied in isolation. It has linkages with other Acts of Parliament and it seeks to comply with the international and regional protocols, whilst upholding constitutional values and objectives set out in related laws of the country. In this Chapter, the applicable legal framework is enumerated and briefly discussed.

### **1.2. International Protocols**

The Department continues to support the implementation of International and Regional Conventions, Protocols and Guidelines aimed at addressing violence against women. Some of the key international obligations are listed below as follows:

- (i) The United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power (1985);
- (ii) The United Nations Convention on the Elimination of All Forms of Discrimination against Women (1985);
- (iii) The Beijing Declaration and Platform for Action (1995);
- (iv) The United Nations Convention on the Rights of Persons with Disabilities (2007); and
- (v) The United Nations Principles for Older Persons adopted by the UN General Assembly (Resolution 46/91) on 16 December 1991.

### **1.3. Regional Protocols**

The African Union (AU) legal instruments that promote the rights of women include:

- (i) The Protocol to the African Charter on Human and People's Rights on the Rights of Women, which sets out the legal framework for the promotion and protection of the rights of women and girls;
- (ii) Solemn Declaration on Gender Equality in Africa, which is the reporting framework;
- (iii) The AU Gender Policy, which sets out the policy framework;
- (iv) The African Women's Decade, which outlines the implementation framework; and
- (v) The Fund for Women, which provides the financial framework.

In showing its commitment to end violence against women and girls of Africa, the African Union declared 2015 as the 'Year of Women's Empowerment and Development towards Agenda 2063'. During the 28<sup>th</sup> Ordinary Session of the AU Executive Council<sup>3</sup> the year 2016 was further declared as the 'African Year of Human Rights with particular focus on the Rights of Women' to ensure that gender equality and women's empowerment remain the highest priorities on the continental agenda for 2 consecutive years.

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<sup>2</sup> This is by virtue of the commencement provisions in section 72 of the Act.

Looking into the next 50 years of Africa, the AU Summit commissioned the African Union Commission (AUC) to develop the 50 year continental agenda, which is now referred to as the AU Agenda 2063. The Agenda 2063 sets out 7 aspirations of which the most relevant to this Report is the 6<sup>th</sup> aspiration which, *inter alia*, condemns all forms of discrimination and violence against women and girls. The critical areas of focus on this aspiration include intolerance against sexual violence suffered by women and girls, as well as other harmful social practices, which include child marriages (ukuthwala), female genital mutilation, and all forms of violence against older women. As a prominent member of the AU, South Africa has the obligation to implement Agenda 2063, and this Act may provide the necessary framework to achieve the 6<sup>th</sup> aspiration of Agenda 2063.

#### **1.4. Country Reports**

Under the leadership of the Department of Women, the DoJ&CD contributed in the drafting of the following country reports:

- (i) **CEDAW Report:** The Department contributed to the compilation of the Report on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW Report), which was submitted to the Committee on the Elimination of all Forms of Discrimination Against Women (the CEDAW Committee) in June 2015. This report covered achievements and challenges reported on in the 2014/2015 Departmental Annual Report on sexual offences already tabled in Parliament.
- (ii) **Response to Article 8 of the Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW Optional Protocol):** In addition to the compilation of the CEDAW Report, South Africa had to respond through observations in terms of article 8 of the CEDAW Optional Protocol. Article 8 of the CEDAW Optional Protocol enables Civil Society Organizations (CSOs)/Non-Governmental Organisations (NGOs) to report directly to the CEDAW Committee any failure by government, as a member state party, to comply with the provisions of the CEDAW. The CEDAW Committee sent South Africa a number of questions relating to certain complaints received from civil society that the Committee considered "reliable and indicative of grave or systematic violations of rights set forth in the Convention regarding violence against women in South Africa". The submission of the response report by the country was critical to assist the CEDAW Committee to decide whether or not to establish an inquiry against South Africa concerning these alleged complaints. This Report was finalised in April 2015 for submission to the CEDAW Committee.
- (iii) **Response to the Questionnaire from the Special Rapporteur on the Rights of Persons with Disabilities:** The Department contributed to the report in preparation for the Special Rapporteur on Rights of Persons with Disabilities. Our input included efforts and achievements undertaken by the Department to ensure equal access to justice to disabled court users. It made reference to the provision of ramps, dedicated parking bays, lifts with voice commands, as well as braille, large print and audio educational booklets, especially for disabled victims of sexual offences at the newly-established sexual offences courts.
- (iv) **Report prepared for the Special Rapporteur on Violence against Women:** The Department compiled a preparatory report for the visit of the Special Rapporteur on Violence Against Women (SRVAW) in the country in December 2015. The SRVAW last visited the country about 18 years ago, i.e. 2 years after the commencement of the new democratic dispensation in South Africa. At that time, there was a lot of good will to the young democratic country and a lot still had to be done in the field of violence against women.

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3 Held in January 2016

The report therefore articulated the success story of South Africa in fighting violence against women, whilst also noting a number of negative factors that militate against its efforts, which include the high profile incidents of sexual violence and intimate femicides that received international media attention. The preliminary issues that were of interest to the SRVAW during this visit are listed below as follows:

- (a) Violence in the Family: both domestic violence (all forms of abuse, marital rape, incest, violence against domestic workers and the girl-child), and culturally justified practices that are violent to or subordinate women;
- (b) Violence in the community: rape/sexual assault, sexual harassment, early and forced marriages, violence within institutions, and forced prostitution, amongst others.
- (c) Violence perpetrated or condoned by the State: violence during conflict, violence in custodial settings and or violence perpetrated by the State Security Forces.
- (d) Violence in transnational sphere: violence encountered by women facing new vulnerabilities as a result of increased transnational processes such as immigrant women, asylum seekers and refugees. This can include also women who are victims of trafficking for labour and sexual exploitation.

During this visit, the Minister of Justice and Correctional Services led one of the ministerial deliberations held with the Special Rapporteur at the Union Buildings, Pretoria.

### **1.5. The Constitution of the Republic of South Africa, 1996**

The Constitution proclaims South Africa as a state founded on the values of human dignity, equality and the advancement of human rights and freedoms, as well as non-racialism and non-sexism. Government therefore carries a mandate to ensure that our country respects, protects, promotes and fulfills the constitutional rights of women, children, older persons, persons with disabilities, as well as the Lesbians, Gays, Bisexual, Transgender and Intersex (LGBTI) persons.

In the world, we have made a trend-setting mark by becoming the very first country to expressly entrench in our Constitution the right of the marginalized group of LGBTI persons not to be discriminated against on the ground of sexual orientation. In 2006, we earned more global recognition when we became the 5<sup>th</sup> country in the world and the 1<sup>st</sup> nation on the African continent to grant official recognition to same-sex marriages.

The most prominent rights that are infringed when a person is subjected to sexual violence are the right to equality, the right to human dignity, the right to freedom and security of the person and the right to privacy.

### **1.6. Other Relevant Laws and Policies**

In addition to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, the South African Parliament passed the following Acts in order to intervene against gender-based violence, including sexual violence:

**Table1: Relevant Legislation**

| <b>Legislation</b>   | <b>Lead Department</b>                               |
|--|--|
| Domestic Violence Act, 1998 (Act No 116 of 1998)   | Department of Justice and Constitutional Development |
| Employment of Educators Act, 1998 (Act No 76 of 1998)  | Department of Basic Education                        |
| Older Persons Act, 2006 (Act No 13 of 2006)  | Department of Social Development                     |
| The Protection from Harassment Act, 2011 (Act No 17 of 2011)   | Department of Justice and Constitutional Development |
| Prevention and Combating of Trafficking in Persons Act, 2013 (Act No 7 of 2013)  | Department of Justice and Constitutional Development |
| The Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013), which provides for the designation of the sexual offences courts | Department of Justice and Constitutional Development |

### **National Development Plan 2030**

Outcome 14 of the National Development Plan (NDP) 2030 requires every government stakeholder to develop and implement constitutional rights awareness campaigns/ programmes targeting the public with a focus on vulnerable and marginalised groups. This is one of the interventions to demonstrate the commitment of the political leadership in reducing the levels of sexual violence in the country. Chapter 5 of this Report deals with efforts done to implement the NDP in this regard.

### **1.8 The National Policy Framework (NPA) on the Management of Sexual Offences**

This Policy serves as the guiding and monitoring tool in the intersectoral implementation of the Act. This Policy was gazetted on the 6 September 2013<sup>4</sup>. During this reporting period, the Department sought a legal opinion from the Office of the Chief State Law Adviser to determine what the actual date for the review of the SO NPF which is required in terms of section 65 of the Act. The legal opinion provided that the formal date for the review is calculated from the date of publication of the NPF by Gazette. While the SO NPF was implemented in August 2012, the formal submission of the review is due in September 2017. However, the Directors-General Intersectoral Committee on Sexual Offences has commissioned the Department to commence with the review of the NPF. To ensure an unbiased review process, the Department concluded an agreement with UNICEF to provide technical assistance in this process. It is anticipated that this review will be finalized in the 2016/2017 financial cycle.

<sup>4</sup> Government Gazette Notice No 3684 dated 6 September 2013

The image features a light beige background with a faint, semi-transparent illustration of several hands reaching towards a cluster of interlocking gears of various sizes. The hands are positioned around the gears, suggesting a collaborative effort to manage or maintain the system. The overall aesthetic is clean and professional. At the bottom of the page, there is a decorative curved border consisting of a dark red outer band and a gold inner band.

# Chapter 2: Governance

## **CHAPTER 2: GOVERNANCE**

### **2.1 Introduction**

The Act establishes governance structures to ensure the coordinated and collective response to and prevention of, the scourge of sexual violence. These structures are coordinated by the Department (under the leadership of the Chief Directorate: Promotion of the Rights of Vulnerable Groups (CD: PRVG)), and their achievements and challenges are discussed in this Chapter.

### **2.2. The Justice, Crime Prevention and Security (JCPS) Ministers**

In terms of section 65(3) of the Act, the Minister of Justice and Correctional Services (the Minister) is required to consult with the cabinet members responsible for police, correctional services, social development, health and the National Director of Public Prosecutions before submitting to Parliament the Annual Reports received from each implementing Department or institution. In August 2015, the Minister consulted with the reporting Ministers, and tabled the 2014/2015 Departmental Annual Reports in Parliament on 29 September 2015.

### **2.3. The Directors-General Intersectoral Committee on the Management of Sexual Offences Matters (DG ISC SO)**

The Department continues to convene the meetings of the DG ISC SO in compliance with section 64(1) of the Act, which stipulates that it must meet at least twice a year. The resolution of the DG ISC-SO to meet 3 or 4 times per year still stands and is executed and coordinated by the CD: PRVG, which serves as the secretariat of the DG ISC SO, in compliance with the National Policy Framework.

The DG ISC SO is established in terms of section 63 of the Act, mainly to give oversight in the intersectoral implementation of the Act and its National Policy Framework (NPF). This Committee is chaired by the Director-General: Justice and Constitutional Development, and is comprised of the Directors-General: Justice and Constitutional Development, Social Development and Health, the National Commissioners of the South African Police Service and Correctional Services and the National Director of Public Prosecutions. The co-opted members of this Committee include Legal Aid South Africa, the Department of Basic Education (DBE), the Department of Cooperative Governance and Traditional Affairs (COGTA), the Department of Higher Education and Training (DHET), and the Department of Women (DoW).

During this reporting period, the DG ISC SO met 3 times, i.e. on 14 July 2015, 30 September 2015, and 24 November 2015. The Deputy Minister of Justice and Constitutional Development, Mr J Jeffery, MP attended the first 2 meetings and gave valuable inputs to improve the oversight role of this Committee. The DG ISC SO made the following interventions and took the following resolutions:

### **2.4. The National Operational Intersectoral Committee on Sexual Offences (National OP ISC-SO)**

The National OP ISC SO provides technical support to the DG ISC SO. Its membership is the same as in the DG ISC SO, except that it further includes the representation of the chairpersons of the provincial governance structures and NGOs. It reports directly to the DG ISC SO on all achievements and challenges experienced in the implementation of the Act. Efforts to include more NGOs specializing in sexual offences and gender-based violence are underway.

### 14 July 2015

- (i) Reviewed the proposed amendment of section 65(3) of the Act, and recommended some amendments, which were later adopted by DoJ&CD and Parliament;
- (ii) Recommended that the NPA takes the responsibility of monitoring and analysing statistics collected by DoJ&CD through the Integrated Case Management System for Sexual Offences managed by DoJ&CD;
- (iii) Considered the draft Annual Reports by the reporting stakeholders, and made some recommendations, which resulted in the amendment of the Reports;
- (iv) Recommended that the DHET be co-opted as a member of the Committee in view of the reported sexual violence at institutions of higher learning; etc.
- (iv) The DCS was requested to provide statistics of sex offender inmates who re-offend while in DCS facilities
- (v) The DBE was requested to commence with a curriculum on sexual offences and its Homophobic Guide

### 30 September 2015

- (i) Considered the next Draft of Departmental Annual Reports and resolved that all Reports must be signed by the DGs/ Heads of institutions and recommended for tabling by the Minister;
- (ii) Considered and adopted the revised version of the amendment of section 65(3) of the Act;
- (iii) Commissioned the DoJ&CD to commence with the review of the NPF despite the fact that it is due for review in 2017;
- (iv) Considered inputs on the Draft Regulations for the Sexual Offences Courts;
- (v) Adopted the research report on the Skills Needs of the Intermediaries, and recommended that the DoJ&CD and Department of Higher Education and Training implement the report recommendations.

### 30 September 2015

24 November 2015

- (i) Adopted the Trauma Debriefing Report by the DoJ&CD which focused on sessions held for intermediaries, interpreters, and sternographers operating in sexual offences proceedings.
- (iii) Adopted the 'Improving Case Outcomes Pilot Project, (ICOP) which *inter alia* seeks to determine the turnaround time in the finalization of sexual offences cases - from the entry point into the criminal justice system up to judgement/ sentence.

During this reporting period, the National OP ISC SO met 3 times, i.e. on 4 June 2015, and 8 July and 22 September 2015, and recorded the following progress:

- (i) Monitored the process of the development of the 2015/2016 Departmental Annual Reports by each government stakeholder, and recommended to the DG ISC SO the tabling of the reports in Parliament by the Minister;
- (ii) Considered and adopted the Draft Regulations Relating to the Sexual Offences Courts: Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013). These Regulations were drafted by the Department and were consulted with the NPA, SAPS and other stakeholders to ensure that they are aligned to the National Directives and National Instructions, respectively. The Draft Regulations are intended to give guidance in the establishment and management of sexual offences courts;
- (iii) Monitored the final costing of the Draft Regulations on sexual offences courts;
- (iv) Considered and adopted the amendment of section 55A of the Judicial Matters Amendment Act, 2013 (Act 43 of 2013), which defines the sexual offences courts and allow the Minister to designate these courts as sexual offences courts. Whilst this Act was promulgated into law on 22 January 2014, the amendment was inserted to address concerns raised by the Regional Court Presidents' Forum;
- (v) Considered the Draft National Strategic Plan for Sexual Offences Courts, which identifies activities and resources that each stakeholder is responsible for in the establishment and management of sexual offences courts. The Committee recommended that the Department should hold consultative workshops with civil society and government stakeholders at provincial level to ensure the collective adoption of the Plan. The adoption process will be finalised in the next financial year. The DoJ&CD and the NPA were tasked to co-facilitate this process;
- (vi) Considered the The Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 (hereafter referred to as the 'DNA Act') which was enacted into law on 27 January 2014. The Committee noted its potential in tracking down the identity of sex offenders, even in 'cold cases' in South Africa, and requested SAPS to popularize it internally, intersectorally and publicly. The National Registrar for Sex Offenders (NRSO) was requested to submit the data of registered sex offenders to SAPS, as required by this Act, for the purposes of strengthening the objects of the DNA Act. It is anticipated that more pending cases of sexual offences may be resolved through the use of the National Register for Sex Offenders. At the time of writing this Report, the NRSO<sup>5</sup> has already submitted the first batch of data to SAPS;
- (vii) Held a working session to assess the extent to which the various role-player departments implemented the National Policy Framework on the Management of Sexual Offences Matters (NPF SO). The data collected from this session is intended to contribute to the broader review of the NPF SO, which will be conducted by UNICEF, in partnership with the DoJ&CD; and
- (viii) Recommended that the National Sexual Offences Courts Committee ceases to operate, and that its agenda items be incorporated into the OP ISC SO. This resolution was implemented in the financial year.

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<sup>5</sup> Established under DoJ&CD

## **2.5. Regional Heads Forum**

The Regional Heads Forum (RHF) is constituted by the DoJ&CD Regional Heads. It meets monthly to discuss the various Key Performance Areas which are critical for the effective management of Court Services. The Sexual Offences Courts Project is a standing agenda item of the Forum to ensure informed monitoring of the project by the Regional Heads at provincial level.

## **2.6. National Sexual Offences Courts Committee (SOCC)**

To avoid the duplication of governance structures, the OP ISC SO recommended that the National Sexual Offences Courts Committee ceases to operate, and that its agenda items be incorporated into the OP ISC SO.

## **2.7. National Intermediary Committee**

The National Intermediary Committee is coordinated and chaired by the DoJ&CD. It is a Committee that monitors intermediary services in the country, and is comprised of representatives from the DoJ&CD, the NPA, the SAPS and the DSD. During this reporting period, it met 3 times, i.e. on 24 April, 19 June and 6 September 2015, and delivered the following:

- (i) Monitored the appointment of 185 court intermediaries and 9 assistant director intermediaries by the DoJ&CD. These appointments will be finalised in the 2016/2017 financial year;
- (ii) Considered the Department's tariff on witness fees, and recommended that they be increased from R20 to R50 per witness to align them with witness fees allocated in civil matters. The Department responded positively and made a submission to the National Treasury to approve this proposal. However, the Department indicated that it had a shortfall of R28 million, which might not be funded in 2016/2017;
- (iii) Considered the DoJ&CD annual report on the customized Trauma Debriefing Programme for Intermediaries and Court interpreters. Among others, the Report indicated the value of the debriefing sessions and recommended that the programme be held over 3 days, rather than for a single day. The Committee adopted this Report, and recommended that the Programme be extended to other court officials dealing with gender-based violence, when budget permits;
- (iv) Adopted the Report on the Skills Needs of the Intermediaries, and recommended that it be presented to the DG ISC SO for final adoption; and
- (v) Commissioned Justice College to develop an improved learning programme for intermediaries, as recommended by the investigation report.

## **2.8. Provincial Sexual Offences Committees/Forums**

These are provincial structures tasked with the provincial monitoring of the implementation of the Act under the chair- leadership of the Department<sup>6</sup>. The chairpersons of these structures also participate in the National OP ISC SO to represent the views of their respective provinces. They report directly to the OP ISC SO and also escalate issues that could not be resolved at provincial level. Each structure has the representation of the implementing government stakeholders and the civil society.

## **2.9. The Intersectoral Committee on Persons with Disabilities**

The Intersectoral Committee on Persons with Disabilities was established by the Department in 2015 mainly to establish mechanisms promoting access to justice by disabled persons. It draws representatives from the JCPS government stakeholders and NGOs specializing in the disability sector. During this reporting period, the Committee commenced with the process of drafting the best practice model for court-based support services- in seeking to comply with the Victims Charter. This Committee is expected to determine the specific support needs required to assist disabled victims of sexual offences. The Draft Model is expected to be finalised in 2016/2017.

## **2.10. The National Task Team (NTT) on Lesbians, Gays, Bi-sexual, Transgender and Intersex Persons (LGBTI)**

The NTT is represented by the JCPS Cluster Departments and Institutions, Government Communication and Information System (GCIS), Chapter 9 institutions and NGO's specializing in the promotion and protection of the rights of LGBTI persons. It is chaired by the Director-General: Justice and Constitutional Development. Progress made by the NTT on LGBTI persons during this reporting period is as follows<sup>7</sup>:

- (i) 2 quarterly meetings were held as other meetings were overtaken by the planning of the Regional Seminar on LGBTI;
- (ii) The NTT meeting held in April 2015 assessed the progress made in 2014/2015. Inputs were sought on the draft document "Working with Diverse Communities: Understanding Sexual Orientation, Gender Identity and Expression: A Guide for Service Providers". This guide targets officials who are located at service points within the criminal justice system. It was approved by the Director-General and thereafter printed. Training workshops will be conducted on this guide with the targeted officials;
- (iii) 8 Provincial Task Teams (PTTs) were established in the Northern Cape, Limpopo, Mpumalanga, Western Cape, Gauteng, North-West, Eastern Cape and Free State. Preparations are underway to establish a PTT in KwaZulu-Natal. These PTTs are responsible for the implementation of the National Intervention Strategy (NIS), under the leadership and support of the DoJ&CD Regional Offices;
- (iv) 1 National Workshop on the Criminal Justice System was held instead of 9 Provincial Workshops due to budgetary constraints. The purpose of the workshop was to raise awareness on the various processes in the criminal justice system amongst the Civil Society Organizations (CSOs). It was attended by 18 participants, representing civil society on the PTTs. The focus of the workshop was on the Criminal Investigation Process, Prosecution Process, the Act, Correctional Supervision and Parole and the Victim's Charter. Time was also be allocated for raising awareness on the Equality Courts, namely on the courts' functions and on steps to follow in order to report a complaint at these courts;
- (v) In 2014/2015 twenty three out of forty five hate crime cases were finalised. The remaining 22 cases were carried over into the 2015/2016 template and a further four cases were received from CSOs and added on the 2015/2016 template. Out of the 26 cases currently on the template, five cases were finalised with the following outcomes:
  - a. 2 life sentences for murder and rape and an additional 15 years for robbery;
  - b. imprisonment sentence of 22 years for murder and additional 12 years for rape;
  - c. imprisonment sentence of 20 years, with 2 years suspended for 5 years;
  - d. One charge was withdrawn and one case remains undetected. The SAPS will continue to recall the withdrawn and undetected cases to ascertain whether proper steps were taken before such charges were withdrawn or classified as undetected.

<sup>6</sup> Currently, these structures are chaired by the Directors: Legal Services, but plans are underway to shift this role to the regional heads

<sup>7</sup> Source: Constitutional Development Branch

- (vi) 3 quarterly LGBTI Rapid Response Team meetings were held. Through engagements with the NPA and other stakeholders, the Rapid Response Team received two finalised hate crime cases from the NPA in the Free State for inclusion on the template, with imprisonment sentences of 10 years and 25 years for rape;
- (vii) Provincial Rapid Response Teams have been established in some of the provinces and will be rolled-out in all the provinces subsequent to the hosting of the National Workshop on the Criminal Justice System. The Regional Offices together with the National Office will provide support to the process; and
- (viii) The Africa Regional Seminar on the Protection of Persons Based on Sexual Orientation, Gender Identity and Expression was held from 3-5 March 2016. The Department and DIRCO took a resolution, after numerous consultations with the Regional CSOS, to approach the South African Human Rights Commission (SAHRC) to host the seminar and that government will provide support to the process. The seminar was attended by 200 participants representing national human rights institutions, civil society organisations, academia and some government officials attending in their personal capacities. The outcome of the Seminar was a Declaration on Working together in Africa. It provides for practical solutions on ending violence and discrimination against persons based on their sexual orientation, gender identity and expression. The Declaration will be distributed to participants after it has been translated into French and Spanish.

### **2.11. Intra-Departmental Committee on the Implementation of the Act**

In 2015/2016 the DoJ&CD committee was rationalised and its work included in the agenda of the National OP ISC-SO. However, the Department continues to coordinate the engagement and collaboration of all internal role-players within the Department to ensure that their distinct roles and responsibilities in the implementation of the Act are mainstreamed throughout the Department. Collaborative efforts are achieved through bi-lateral meetings or the inclusion of the representatives of the various divisions into some of the existing committees that are already in existence within the Department.

Although the Intra-Departmental Committee on the Implementation of the Act has been disbanded, key internal units contributed to the compilation of this report.

### **2.12. Challenges**

The main challenge with internal role-player coordination is the existence of too many structures which are chaired by the Department (represented by CD: PRVG)<sup>8</sup>. The rationalisation of some of the committees created a balance between coordination of intersectoral committees and the departmental responsibilities for the implementation of the Act. The cooperation between the role-players at national level is now maintained through bilateral meetings to execute relevant roles and responsibilities.

A further challenge is the inconsistent representation by stakeholders and the junior representatives sent to the OP ISC SO and DG ISC SO without proper mandates to make critical decisions. Some of the government stakeholders have dual representation both on the OP ISC SO and the DG ISC SO. This situation seriously affects the operation of the governance structures.

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<sup>8</sup> Chief Directorate: Promotion on the Rights of Vulnerable Groups

# Chapter 3: Physical and Human Resources

SEXUAL OFFENCES

SEXUAL OFFENCES

## **CHAPTER 3: PHYSICAL AND HUMAN RESOURCES**

### **3.1. Introduction**

The Department continues to upgrade selected courts into sexual offences courts (SOCs), and this exercise requires physical resources and the progressive appointment of court personnel. This is in pursuance of the progressive realisation of the Department's goal to provide support services to victims of sexual offences, as required by the Act and the Victim's Charter. In this chapter, significant advancements and challenges are discussed.

### **3.2. Infrastructure and Other Physical Resources**

In terms of the Sexual Offences Courts Model specialised support services for victims of sexual violence must be offered in sexual offences courts, which require special infrastructure with specialized physical resources. These resources include:

- (i) A courtroom with dual-view Closed Circuit Television (CCTV) systems
- (ii) A bench monitor for the magistrate to have a close view of the victim testifying from the private testifying room
- (iii) A private testifying room with a CCTV system and a child's bed for a "nap", when necessary
- (iv) Anatomical dolls
- (v) Private waiting room for adults equipped with information screen to empower victims before they testify. This room is furnished comfortably and it also provides print educational material, available in braille, CDs and large print so as reach out to disabled victims
- (vi) Children/ Teen Private waiting room with standard furniture and child-appropriate educational material, available in audio-visual DVDs, CDs, braille and large print
- (vii) Intermediary room
- (viii) Court preparation room
- (ix) Private rest rooms, including a children's toilet with nappy change facility
- (x) An optional private kitchenette, in court buildings with enough space; and
- (xi) Microwave and bar fridge for use by victims.



The above photographs were obtained at the launch of the Atlantis Sexual Offences Courts by the Minister and the launch of the Durban Sexual Offences Courts by the former Director-General, Ms Nonkululeko Sindane.

### 3.2.1 Sexual Offences Courts Project

During this reporting period, a concerted effort was made to meet the Annual Performance Plan target of establishing 12 Sexual Offences Courtrooms, and these courtrooms are listed below as follows:

**Table 2: Physical Resources Procured for the Sexual Offences Courts**

| Province     | 2013/2014         |                    | 2014/2015       |                    | 2015/2016         |                    |
|--------------|-------------------|--------------------|-----------------|--------------------|-------------------|--------------------|
|              | Name of the Court | No. of Court Rooms | Name of court   | No. of Court Rooms | Name of the court | No. of Court Rooms |
| EC           | Butterworth       | 1                  | Port Elizabeth  | 2                  | -                 | -                  |
|              | East London       | 1                  |                 |                    |                   |                    |
| FS           | Welkom            | 1                  | Bethlehem       | 1                  | Phuthaditjhaba    | 1                  |
|              | Bloemfontein      | 3                  |                 |                    |                   |                    |
| GP           | Palm Ridge        | 2                  | Pretoria        | 3                  | Johannesburg      | 3                  |
|              |                   |                    |                 |                    | Protea            | 2                  |
| KZN          | Ntuzuma           | 1                  | Emlazi          | 1                  | Durban            | 2                  |
|              | Pietermaritzburg  | 1                  |                 |                    |                   |                    |
| Mpu          | Tonga             | 1                  | -               | -                  | Eestehoek         | 1                  |
|              | Secunda           | 1                  |                 |                    |                   |                    |
| Limp         | Lephalale         | 1                  | Mankweng        | 2                  | -                 | -                  |
|              |                   |                    | Mokerong        | 1                  |                   |                    |
| NC           | Kimberley         | 1                  | -               | -                  | Galeshewe         | 1                  |
|              |                   |                    |                 |                    | Colesberg         | 1                  |
| NW           | Potchefstroom     | 1                  | Schweize-Reneke | 1                  | Mankwe            | 1                  |
|              | Klerksdorp        | 1                  | Molopo          | 1                  |                   |                    |
| WC           | Wynberg           | 3                  | Parow           | 2                  | Atlantis          | 2                  |
| Sub-Total    |                   | 19                 |                 |                    | 14                | 14                 |
| <b>Total</b> |                   |                    |                 |                    |                   | <b>47</b>          |

It must be noted that the 2 Parow Sexual Offences Courts were established in 2013/2014, but the confirmation process delayed; as a result these courts were registered as 2014/2015 deliverables. In the previous annual report, these 2 courts were listed as 2013/2014 deliverables, but a departmental decision was taken to consider them as 2014/2015 achievements for audit purposes.

The Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO) Report of 2013 requires the Department to establish 57 courts (classified as courtrooms) in 3 years commencing in August 2013. This is phase 1 of the Sexual Offences Courts Project, which the Department intends to finalise in 2016/2017, resources permitting. According to the MATTSO Report, Phase 2 involves the upgrading of 106 regional courts into sexual offences courts over a period of 10 years. What this means is that by 2026/2028, the Department must have established 163 sexual offences courtrooms in the country.

During the commemoration of the 16 Days of Activism of No Violence against Women in 2015, the Minister launched the Atlantis sexual offences courtrooms while the former DG of Justice and Constitutional Development launched the Durban sexual offences courtrooms.



*Figure 6: Ms Nonkululeko Sindane (former DG: DoJ&CD) addressing audience on the operation of the dual CCTV system at the launch of DBN Sexual Offences Courts*

### **3.2.2. Donor Funding for Sexual Offences Courts Project**

The achievement of the project targets is subject to availability of adequate resources. Due to the prevailing economic situation, the Department has sought donor funding from UNICEF and USAID to implement the following MATTSO recommendations:

- (i) UNICEF: The development of the National Strategic Plan (NSP) for the Intersectoral Establishment and Management of the Sexual Offences Courts. At the time of the writing of this report, the NSP was taken through the intersectoral adoption process;
- (ii) UNICEF: The Baseline Victim-Satisfaction Survey was conducted at 9 regional courts that are lined up for upgrading into sexual offences courts. This survey was done to collect the baseline data with which the efficacy and effectiveness of the victim-support services offered at sexual offences courts will be measured. The survey findings will be reported in the next report;
- (iii) USAID: The research to determine the turnaround time in the finalization of sexual offences cases from the reporting time to the judgement/sentencing stage will be conducted by the Department in partnership with USAID. This research has never been done in SA before hence the lack of any baseline to measure the turnaround time in the finalization of these cases;
- (iv) USAID: The development of the Monitoring and Evaluation Strategy for sexual offences courts will commence as soon as the turnaround time research is finalised; and
- (v) USAID will also develop a sexual offences skills development programme for the judiciary in partnership with the South African Judicial Education Institution (SAJEI).

UNICEF funding agreement will end in 2017/2018 while the USAID funding is expected to run for a period of 3 years ending in 2018/2019. For 2016/2017, the UNICEF planned project activities include the following:

- (i) The review and possible amendment of the National Policy Framework on the Management of Sexual Offences Matters, as required by the Act;
- (ii) The Victim-Satisfaction Survey at the 1st 9 sexual offences courts established in 2013. The results of this survey will be compared with the 2015/2016 survey conducted at non-sexual offences courts; and
- (iii) The development of educational material accessible to the diversified victims of sexual offences.

### **3.2.3. Progress with the Achievement of the MATTSO Recommendations**

Since August 2013 the Department established the Sexual Offences Courts Project to implement the MATTSO recommendations, and the progress achieved thus far is as follows:

**Table 3: Achievement of MATTSO Recommendations**

| MATTSO Report Recommendation  | Progress  | Achieved <sup>9</sup> / In Progress/ Not started yet | Date of Achievement/ Planned date |
|---|---|--|-----------------------------------|
| 1. The DoJ&CD must give priority to the 57 regional courts and upgrade them in terms of the new Sexual Offences Courts Model against the available resources- commencing in 2013/2014.  | The DoJ&CD commenced with the Project in August 2013 <sup>10</sup> , and as at 31 March 2016, 47 regional courts were upgraded into Sexual Offences Courts in terms of the new Model. The upgrading of the 57 courts will be finalised in 2016/2017. The DoJ&CD achieved its APP <sup>11</sup> target of 12 courtrooms by upgrading 14 courtrooms | As per APP   | 2016/2017<br>(10 outstanding)     |
| 2. The DoJ&CD must secure a dedicated budget from National Treasury to establish these courts   | A request was submitted to National Treasury in 2013/2014, and response is still pending  | Done by the DoJ&CD                                   | 2026/2027                         |
| 3. The DoJ&CD must amend the Act to include an enabling provision for the establishment of sexual offences courts   | The Judicial Matters Second Amendment Act, 2013 (Act No 43 of 2013) was promulgated in Jan 2014 <sup>12</sup>   |  | 2014                              |
| 4. An investigation must conducted to determine the feasibility of merging the various specialized victim support services and one-stop centres, like the NPA TCCs <sup>13</sup> , DSD Khuseleka Centres and SAPS FCS <sup>14</sup> | The activity was adopted by the National Programme of Action monitored by the Inter-Ministerial Committee on Root Causes of Violence against Women and Children- chaired by Minister of Social Development  | N/A to the DoJ&CD                                    | N/A                               |

9 The colour codes are Green for Achieved; Amber for In progress; and Red for Not started yet

10 The Minister officially accepted and approved the MATTSO Report in August 2013, and the Department established the 1st court in the same month.

11 Annual Performance Plan

12 However, this amendment is being reviewed in consideration of the concerns raised by the regional court presidents

13 Thuthuzela Care Centres

14 Family Violence, Child Protection and Sexual Offences

| MATTSO Report Recommendation  | Progress  | Achieved <sup>9</sup> / In Progress/ Not started yet       | Date of Achievement/ Planned date |
|---|---|--|-----------------------------------|
| 5. Sexual Offences Courts Committees must be established at national, regional and local levels   | The National Sexual Offences Courts was established in 2014, but later adopted by the National Intersectoral Committee on Sexual Offences- chaired by the DoJ&CD. The regional committees are operational in all provinces and are either operating as independent structures or are incorporated into existing intersectoral sexual offences structures to avoid duplications. The Local structures are established as soon as the site is identified by the regional structure and approved by the national office. |  | Since 2013                        |
| 6. A feeding scheme for child witnesses must be investigated for possible introduction in these courts  | The investigation was conducted by the DoJ&CD with the assistance of UNICEF in 2014 and the report adopted by DG ISC SO. The report findings and recommendations were incorporated in the 2014/2015 Departmental Annual Report which was tabled in Parliament on 29 September 2016  |  | 2014                              |
| 7. The Case Flow Management for sexual offences matters must be explored by the Regional Court Presidents Forum (RCPF)  | The DoJ&CD has partnered with USAID to conduct this research with the RCPF. The funding agreement with USAID was signed in 2015, and the project is expected to commence in 2016/2017   | A RCPF task, and therefore is not applicable to the DoJ&CD | 2016/2017                         |
| 8. An integrated monitoring and evaluation framework must be developed to ensure the effective and efficient intersectoral management of the sexual offences courts | The DoJ&CD has partnered with USAID to conduct this research with the stakeholders. The funding agreement with USAID was signed in 2015, and the project is expected to commence in 2017/2018   |  | 2017/2018                         |

| MATTSO Report Recommendation  | Progress  | Achieved/ In Progress/ Not started yet | Date of Achievement/ Planned date |
|---|---|--|-----------------------------------|
| 9. The performance of each stakeholder must be assessed against a quantitative measure of time, calculated from the time the case is received up to the time the stakeholder function is finalised in relation to such case | The DoJ&CD has partnered with USAID to investigate the turnaround time in the finalization of cases from the reporting time up to judgement/ sentencing stage. The time spent by each service provider at each service point will be measured so as to set a standard time for the management and finalization of these cases. This research is done for the very first in SA, and it is expected to commence in 2016/2017. |  | 2016/2017                         |
| 10. SAQA accredited training programmes must developed for all personnel located at service points of the sexual offences value chain   | In 2015 the DoJ&CD partnered with UNICEF to conduct an empirical study into the skills needs of intermediaries. The report of this research was adopted by the DG ISC SO and later approved the DoJ&CD EXCO. Justice College has been assigned to develop the SAQA accredited learnership for intermediaries  |  | Commence in 2017/2018             |
| 11. The creation of specialist posts for personnel in sexual offences courts must be explored by all stakeholders   | In 2014, the DoJ&CD created a permanent specialist post structure for intermediaries, namely court intermediaries and assistant director (ASD) intermediaries. In 2015 adverts for 185 court intermediaries and 9 ASD Intermediaries were published, and the process of filling these posts is still in progress  | Creation of specialist posts done      | 2014/2015                         |

As can be seen from the above Table the DoJ&CD has accomplished 6 out of 9 of recommendations applicable to the Department. As at 31 March 2016, 47 of the 57 targeted sexual offences courtrooms were established, and the 2015/2016 APP target of 12 sexual offences courtrooms was exceeded by 2 courtrooms. The remaining 10 courtrooms will be delivered in 2016/2017 within the MATTSO timeframe of 3 years. The Department is therefore pleased with its progress in the implementation of the MATTSO Report recommendations.

### **3.3. Human Resources**

#### **3.3.1 Constitutional Context of Strengthening of Intermediary Services**

Pursuant to the judgment in the State v Aaron Mokoena and the State v Albert Phaswane (CC7/07 and CC 192/07) and the Constitutional Court decision in the Director of Public Prosecution v Minister of Justice and Constitutional Development (First Respondent) and Others, (Case No CCT 36/) 08 [2009] ZACC 8), the Department has been responsible for the provision of intermediary services in courts. The 2 decisions placed an obligation on the Department to provide intermediary services within the context of section 28 of the Constitution, which requires that in all matters involving children, the best interests of the child are of paramount importance. The latter court further quoted from the Economic and Social Council's Guidelines on Justice Matters involving Child Victims and Witnesses of Crime (the Guidelines) which "*provide that the child complainants and witnesses should receive special protection and assistance that they need in order to prevent hardship and trauma that may arise from their participation in the criminal justice system.*"<sup>15</sup>

It is in the light of these two court cases that the Department has adopted intermediary services as a support programme for child witnesses and victims with mental disabilities. Since 2010, the appointments of intermediaries have been incrementally made, but firstly on contract basis. The Department conducted 2 studies to explore the possibility of creating permanent posts for intermediaries and also building a personnel structure for this category. This process was finalised during 2014/2015, and it established a permanent post structure of court intermediaries and assistant director intermediaries, who will serve as cluster supervisors. For a start, 185 permanent posts of court intermediaries and 26 posts of assistant director intermediaries were created. The filling of these posts commenced in 2015/2016, and is expected to be finalised in 2016/2017, subject to the availability of a budget.

In 2015/2016, the Department allocated a budget for the appointment of 185 court intermediaries and 9 assistant director intermediaries. However, due to labour disputes, appointments in the Western Cape and Free State could not be taken to finality. At the time of the writing of this report, the Department had not yet resolved these labour disputes. In some provinces, delays were experienced due to the inability to attract experienced candidates.

With the passage of time, it has become apparent that intermediary services are not only needed in sexual offences cases, but also in proceedings where children are witnesses in court. Since 2015/2016, these services have been officially extended to all proceedings involving children, which include proceedings held in terms of the -

- (i) Domestic Violence Act, 1998 (Act No 116 of 1998);
- (ii) Maintenance Act, 1998 (Act No 99 of 1998);
- (iii) (iii) Children's Act (Act No 38 of 2005); and
- (iv) (iv) Prevention and Combating of Trafficking in Persons Act, 2013 (Act No 7 of 2013).

Section 61 (2) of the Children's Act expressly requires the use of intermediary services by stating that '*A child who is a party or a witness in a matter before a children's court must be questioned through an intermediary as provided for in section 170A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) if the court finds that this would be in the best interests of that child.*'

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<sup>15</sup> Page 42 of the Constitutional Court judgment

This provision therefore impliedly requires the Department to provide intermediary services in children’s court proceedings where a child appears as a party or witness.

It has been further argued that ageing has the potential of reducing a person’s mental ability to the level of a child. As a result intermediary services should be extended to older persons, where need arises. This matter is being considered by the Department.

It should be noted that the extension of intermediary services to other legal proceedings other than sexual offences is expected to place a greater demand and pressure on intermediaries. The need for more human capacity in this regard is therefore highly anticipated.

### 3.3.2. Intermediary Services Outputs

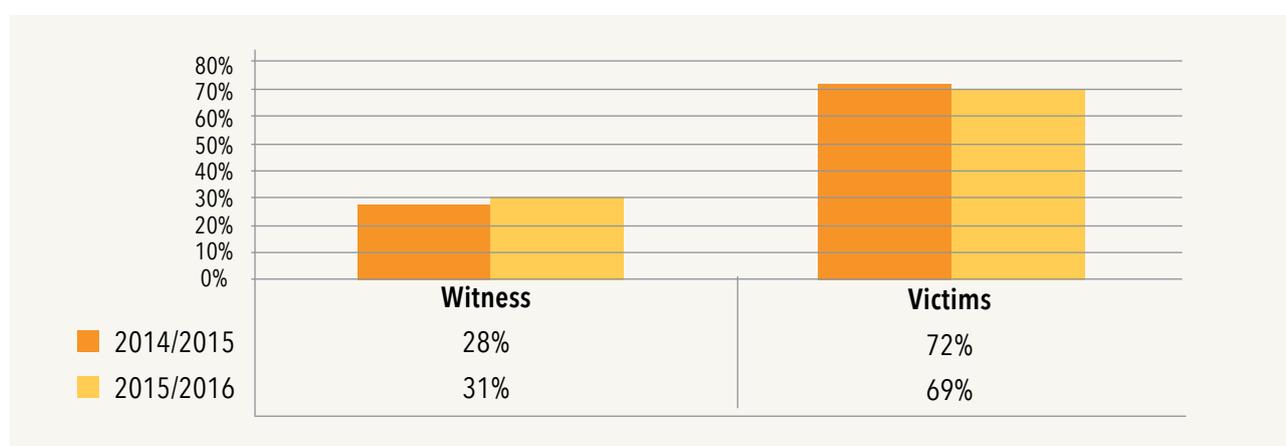
To ensure the distribution of intermediary capacity equivalent to the work demand, the Department has been collecting statistics of all cases where intermediary services were utilized. Below are the numbers of child witnesses and witnesses with mental disabilities who received intermediary services in 2015/ 2016:

**Table 4: Intermediary Services from 2014/2015 to 2015/2016**

| Financial Year     | Sexual Offences       |              | Children’s Court Matters |              | Trafficking in Persons |              |
|--------------------|-----------------------|--------------|--------------------------|--------------|------------------------|--------------|
|                    | Witness <sup>16</sup> | Victims      | Witness                  | Victims      | Witness                | Victims      |
| 2014/2015          | 6 720                 | 17 363       | 670                      | 1 294        | 29                     | 108          |
| 2015/2016          | 6 647                 | 15 182       | 299                      | 469          | 32                     | 83           |
| <b>Grand Total</b> | <b>1.1%</b>           | <b>12.6%</b> | <b>55.4%</b>             | <b>63.8%</b> | <b>-10.3%</b>          | <b>23.1%</b> |

**Figure7: Comparison of the Intermediary Services Provided between 2014/2015 and 2015/2016**

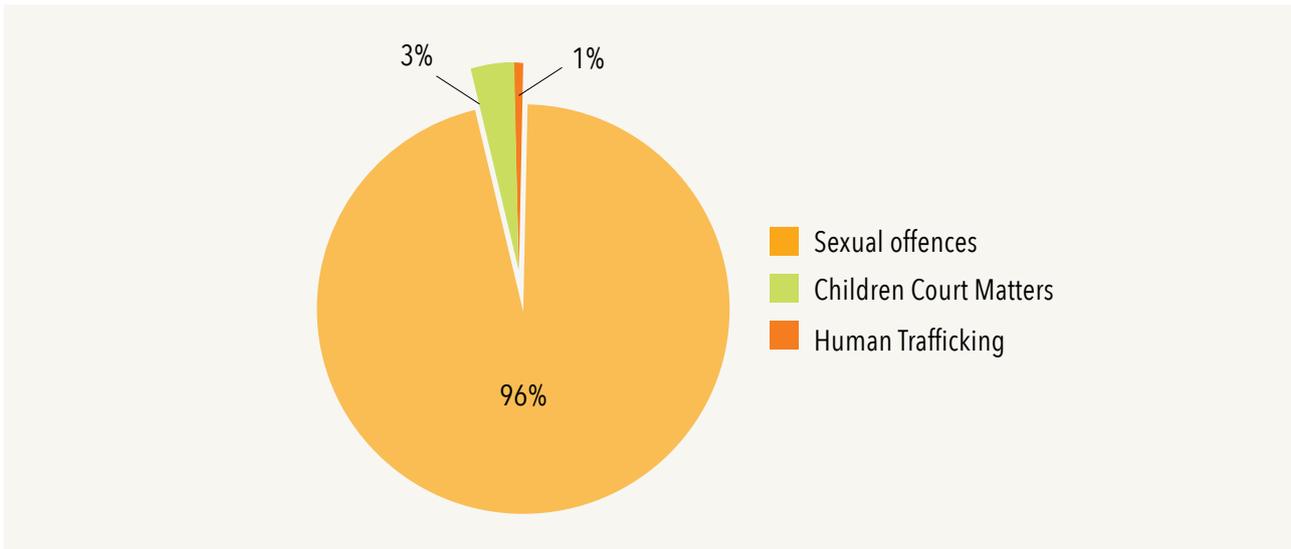
All Intermediary Services provided broken down into Witness and Victim



<sup>16</sup> In this context, the word, ‘witness’ refers to witnesses other than victims.

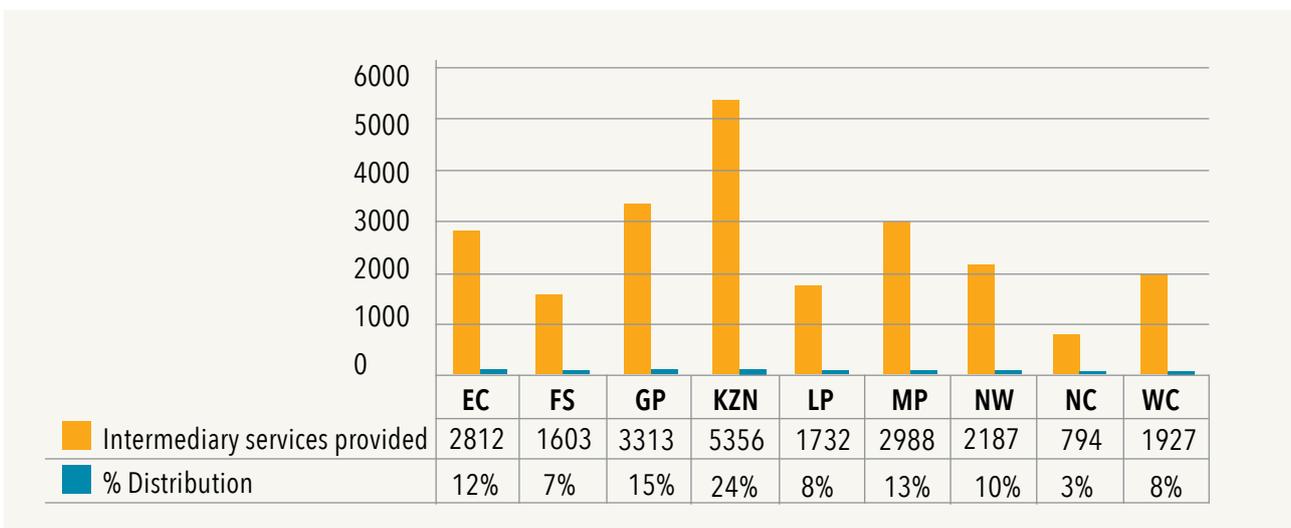
As per the graph above, most of the intermediary services were provided to victims rather than to witnesses who have come to testify, either for the State or the defence. It is also observed that the services provided to witnesses increased in 2015/2016 while the services provided to victims decreased. A positive aspect about this rise is that it may signify that more parents/ guardians are becoming aware of the intermediary services and are willing to bring their children to court to testify.

**Figure 8: Intermediary services provided for 2015/2016**



As indicated above, 96% of the intermediary services were provided in cases of sexual offences. This scenario may, however, change because, since the end of the 2015/ 2016 financial year, the Department took a decision to extend intermediary services to child witnesses (both victims and non-victims) and persons with mental disabilities appearing in proceedings held in terms of the Children’s Act, the Domestic Violence Act, Maintenance Act, and Prevention and Combating of Trafficking in Persons Act.

**Figure 9: Regional Distribution of Intermediary Services provided**



As depicted in Figure 9, KZN provides the highest percentage of intermediary services, and this might mean that the rate of violent crimes against children needs to be closely monitored.

In order to determine the impact of intermediary services, the Department commenced with the collection of data relating to the outcome of cases where intermediary services were offered. This is not to say that the success of the case is solely dependent on these services, but just to acknowledge the support value they often add to the performance of the witness. The fact that the witness testifies in a separate room away from any physical contact with the accused minimises or restricts potential trauma and keeps the witness at ease. The use of an intermediary also saves the witness from getting questions directly from court as the intermediary's role is to receive these questions via the earphones of the CCTV system and then convey them to the witness in a sensitive and age-appropriate manner. These services are therefore intended to save the witness from the potential secondary traumatization that often renders the witness ineffective in court. The statistics on the outcome of cases where intermediary services were utilized will be reported on in the next financial year. However, it might be misleading to measure the efficacy of the intermediary services with this data as the success of the evidence depends primarily on the substantive value and relevance of the evidence.

### **3.3.3. Top Languages required for Intermediary Services in 2015/2016**

The top 4 languages required by 73% of the witnesses and victims who used intermediary services during the 2015/2016 financial year are:

- (i) English = 27%
- (ii) IsiZulu = 16%
- (iii) IsiXhosa = 15%, and
- (iv) Afrikaans = 15%

27% of the service users required other official languages, including foreign languages.

### **3.3.4. Challenges**

Intermediary services are used in court upon an application made by the prosecution, and the judicial officer has a discretion to permit or refuse these services. The fact that the provision of intermediary services can be refused, to the possible detriment of the child or witness with a mental disability, is a concern to many. For this reason, the Department is now in the process of reviewing section 170A of the Criminal Procedure Act, 1977 (Act No 51 of 1977) to determine if the use of this provision should not be peremptory in all criminal cases involving child witnesses and persons with mental disabilities. The request to extend these services to older persons is also to be considered.

A man in a blue shirt is pointing at a whiteboard in a classroom setting. In the foreground, the backs of several students are visible, suggesting a lecture or training session. The overall image has a warm, golden-brown tint.

# **Chapter 4: Training and Development**

## CHAPTER 4: TRAINING AND DEVELOPMENT

### 4.1. Introduction

Dealing with cases of sexual offences constantly requires specialized skills due to the special services that victims of sexual offences often need. The Act places an emphasis on specialized training with the element of social context training so as to ensure that the dynamics of the victim of sexual violence are learned and understood. Empathy becomes imperative when dealing with these victims. It is also necessary to prevent and reduce trauma that is often experienced by service providers when they deal with these cases. This chapter therefore looks into interventions taken by the Department in 2015/2016 to ensure that skills are developed and improved for the benefit of the victim, and also that the emotional well-being of court personnel is taken care of.

### 4.2. Trauma Debriefing Programme

The Department continues to implement the Trauma Debriefing Programme for court officials dealing with sexual offences cases. During this reporting period, a total of 478 officials drawn from 7 provinces participated in this Programme, compared to the 250 officials in the previous financial year. These officials included intermediaries, interpreters, stenographers and court clerks dealing with victims of other gender-based violent crimes, such as domestic violence and harassment,

After each session, the participants reported positively about the emotional relief and the coping skills derived from the Programme. The DG ISC SO resolved that the Trauma Debriefing Programme be offered to all front line officials in all departments/institutions dealing with sexual offences cases. It was further recommended that the intersectoral sessions be introduced to promote a shared response.

The following Table lists the trauma debriefing sessions offered by the DoJ&CD in 2015/2016:

**Table 5: Trauma Debriefing Sessions for 2015/16**

| Region     | Date             | No of Intermediaries trained | No of Interpreters trained | No of Stenographers trained | Others | Total |
|------------|------------------|------------------------------|----------------------------|-----------------------------|--------|-------|
| EC         | 12 November 2015 | 12                           | 27                         | 4                           | 40     | 83    |
| GP         | 30 October 2015  | 8                            | 16                         | 13                          | 13     | 50    |
| KZN        | 18 March 2016    | 33                           | 13                         | 11                          | 6      | 63    |
| Limpopo    | 04 December 2015 | 14                           | 24                         | 18                          | 19     | 75    |
| Mpumalanga | 29 February 2016 | 9                            | 31                         | 20                          | 17     | 77    |

| Region       | Date                        | No of Intermediaries trained | No of Interpreters trained | No of Stenographers trained | Others     | Total      |
|--------------|-----------------------------|------------------------------|----------------------------|-----------------------------|------------|------------|
| NW           | 27 November 2015            | 11                           | 35                         | 14                          | 12         | 72         |
| WC           | 30 April & 26 November 2015 | 3                            | 33                         | 14                          | 8          | 58         |
| <b>Total</b> | <b>8</b>                    | <b>90</b>                    | <b>179</b>                 | <b>94</b>                   | <b>115</b> | <b>478</b> |

Note: No sessions were held in the Free State and Northern Cape due to delayed appointments of intermediaries. These sessions have been re-scheduled for the 2016/2017 financial year.

It should be noted that the NPA offers a similar programme to prosecutors and court preparation officers offering services to victims of sexual offences.

During this reporting period the Health and Wellness Policy for Magistrates was finalised. This is a policy that the Magistrates' Commission developed in conjunction with the Department. It also incorporates the trauma debriefing programme for magistrates to help them deal with trauma often suffered as a result of presiding over violent crimes.

#### 4.3 Inter-Departmental Training of Frontline Officials

During this reporting period the Department did not conduct any intersectoral training for frontline officials. A decision was taken to halt this training until a Monitoring and Evaluation Tool for training is developed. Furthermore, it was resolved that this training must comply with the MATTSO<sup>17</sup> recommendation that all training interventions on sexual offences must be SAQA compliant. The Department, together with participating stakeholders, are working towards achieving these resolutions.

#### 4.4. Departmental and Intersectoral Training Conducted by Regions

During this reporting period the regions coordinated and conducted the following training interventions or workshops:

**Table 6: Training/ Workshops conducted by Regions, Justice College and the National Office**

| Region/<br>National/<br>Justice College | Training Programme                       | Personnel Trained  | No of Personnel Trained |
|---|--|--|-------------------------|
| GP                                      | Workshop on 16 Days of Activism (Soweto) | Protea Court Personnel and Orlando Skills Development Centre (NGO) members | 32                      |
|   | Intermediary Induction Training          | Intermediaries, including ad hoc intermediaries                            | 11                      |

<sup>17</sup> In this context, the word, 'witness' refers to witnesses other than victims.

| Region/<br>National/<br>Justice College | Training Programme  | Personnel Trained                            | No of Personnel<br>Trained |
|---|---|--|----------------------------|
| <b>GP Total</b>                         |   |  | <b>43</b>                  |
| KZN                                     | 1 <sup>st</sup> Intersectoral training on sexual offences and other gender-based violent crimes held on 28-29 July 2015   | DoJ&CD officials and the JCPS stakeholders   | 45                         |
|   | 2 <sup>nd</sup> Intersectoral training on sexual offences and other gender-based violent crimes held on 25-26 August 2015   | DoJ&CD officials and the JCPS stakeholders   | 45                         |
|   | 3 <sup>rd</sup> Intersectoral training on sexual offences and other gender-based violent crimes held on 10-11 September 2015  | DoJ&CD officials and the JCPS stakeholders   | 45                         |
|   | Intersectoral training on sexual offences and other gender-based violent crimes held on 21- 22 September 2015 (Potchefstroom)   | DoJ&CD officials and the JCPS stakeholders   | 45                         |
|   | Intersectoral training on sexual offences and other gender-based violent crimes held on 29-30 September 2015 (Kokstad)  | DoJ&CD officials and the JCPS stakeholders   | 45                         |
|   | Intersectoral Training Sexual Offences and other gender-based legislation (Domestic Violence Act and Protection From Harassment Act) held on 30 September 2015 (Pietermaritzburg)                               | DoJ&CD officials, JCPS stakeholders and NGOs | 100                        |
|   | Intersectoral Training on Sexual Offences and other relevant legal framework (Domestic Violence Act; Sexual Offences Act; Victims' Charter; Protection From Harassment Act) held on 14-15 October 2015 (Eshowe) | DoJ&CD officials and JCPS stakeholders       | 45                         |

| Region/<br>National/<br>Justice College           | Training Programme  | Personnel Trained  | No of Personnel<br>Trained |
|---|---|--|----------------------------|
|   | Sexual Offences and relevant legislation ( Domestic Violence Act; Protection From Harassment Act) held on 28-29 October 2015 (Durban)   | DoJ&CD officials, JCPS stakeholders and NGOs   | 100                        |
|   | Intersectoral Training on sexual offences and other gender-based violence legal framework (Domestic Violence Act; Victims Charter Act; Protection From Harassment) held on 17-18 November 2015 (Durban PINK area) | DoJ&CD officials and JCPS Stakeholders   | 45                         |
| <b>KZN Total</b>                                  |   |  | <b>515</b>                 |
| WC  | Training on Sexual Offences and Child Justice legislation (conducted by Justice College) on 29-30 September 2015  | Court Clerks   | 33                         |
| <b>Total personnel trained by Regions</b>         |   |  | <b>591</b>                 |
| Training Conducted by Justice College             |   |  |                            |
| EC  | Training on the role of clerk in the implementation of the Act <sup>18</sup>  | Court clerks   | 14                         |
| GP  |   |  | 19                         |
| KZN   |   |  | 35                         |
| Limpopo   |   |  | 20                         |
| WC  |   |  | 35                         |
| <b>Total personnel trained by Justice College</b> |   |  | <b>123</b>                 |
| National Office <sup>19</sup>                     | NRSO <sup>20</sup> & NCPR <sup>21</sup> Training Workshop   | Judicial Officers, Area Court Managers, Court Managers, Court Clerks, Registrars, Legal Administration Officers; IT coordinators, as well as representatives from the NPA, DSD, and SAPS | 639                        |
| <b>Total personnel trained by the Department</b>  |   |  | <b>1 353</b>               |

18 Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007

19 Chief Directorate: Promotion of the Rights of Vulnerable Groups

20 National Register for Sex Offenders managed by the DoJ&CD

21 National Child Protection Register managed by the DSD

#### 4.5. Summary of Training Conducted in 2015/2016

The training programmes conducted in 2015/2016 can be summarized as follows:

**Table 7: Summary of Training Programmes/ Workshops held in 2015/2016**

| Departmental Stakeholder | Training Programme  | Personnel Trained  | No Trained   |
|--------------------------|---|--|--------------|
| Justice College          | Training on the Act   | Court clerks   | 123          |
| National Office          | Trauma Debriefing Programme   | Intermediaries, interpreters, stenographers, and other court clerks  | 478          |
|                          | NRSO and NCPR Training Workshops  | Judicial Officers, Area Court Managers, Court Managers, Court Clerks, Registrars, Legal Administration Officers; IT coordinators, as well as representatives from the NPA, DSD, and SAPS | 639          |
| Regions                  | Intersectoral training interventions; NRSO & NCPR training; Intermediary induction training | Court personnel, JCPS Cluster stakeholders, NGOs   | 591          |
| <b>TOTAL</b>             |   |  | <b>1 831</b> |

#### 4.6. Intermediary Training: Evidence-based and Empirical Investigation into the Training Needs of Intermediaries

During this reporting period the Department finalised the research report on the investigation into the training needs of intermediaries. This research was conducted to comply with the MATTSO Report which recommended that the learning programmes offered to sexual offences personnel must be reviewed and aligned to the South African Qualifications Authority (SAQA) requirements.

In 2014/2015, the Department partnered with UNICEF to conduct this empirical investigation. 40 experienced intermediaries were selected from the various provinces to participate in this study, and from the needs identified, the report recommended, *inter alia* that:

- (i) The Department must develop a 2 level course, i.e. (a) an introductory course for beginners, and (b) an advanced course for experienced intermediaries, and that both courses should be SAQA accredited; and

- (ii) The Department of Higher Education and Training must develop a qualification on intermediary services so as to promote professionalism in this specialty field;

The report further outlined the standard training topics that should be included in the proposed learning programme so as to respond to the training needs identified by the intermediaries who participated in the research.

In 2015/2016, the DG ISC SO adopted the report and requested Justice College and the Department of Higher Education and Training to implement the recommendations.

The Department's EXCO endorsed the report and the decision taken by DG ISC SO and referred it to Justice College. The matter is currently being considered by Justice College. The National Intersectoral Committee on Intermediary Services chaired by the DoJ&CD has requested Justice College to revise its training material to include the course outline recommended by the research report. This is to ensure that the newly-appointed intermediaries receive quality training whilst waiting for the development of the unit standard- based learning programme.

#### **4.7. Challenges**

Pending the filling of the 185 permanent posts of court intermediaries and 9 permanent posts of assistant director intermediaries, Justice College could not offer any training for intermediaries.

# Chapter 5: Public Education



## **CHAPTER 5: PUBLIC EDUCATION**

### **5.1 Introduction**

Outcome 14 of the National Development Plan (NDP) 2030 requires every government stakeholder to develop and implement constitutional rights awareness campaigns/ programmes targeting the public with the focus on vulnerable and marginalised groups. This Chapter deals with efforts to implement the NDP in this regard.

The Department usually takes a multi-dimensional approach to public education and uses a wide range of targeted platforms, which include broadcast media, print media, social media, and community outreach interventions. This approach optimizes the outreach and heightens awareness of sexual offences and other relevant gender-based violence legislation. The activities usually take the form of radio and TV talk shows, print publications, community imbizos and door-to-door campaigns, among others. During this reporting period, the target audience group was women, children (school learners), older persons and LGBTI persons. The focus on older persons was as a result of the spate of sexual violence against persons in this age group, which was reported on widely in media in 2014.

Public education interventions are covered mostly in all official languages. The focus is usually on sexual offences, but other related topics, such as domestic violence, abuse of older persons, trafficking in persons, child justice, child-substance abuse and the National Register for Sex Offenders are often dealt with. In some community imbizos, the audience will also bring up issues related to the Maintenance Act, 1998.

During this reporting period, the Ministry participated in a number of public education engagements. The Minister launched the Schweize-Reneke and the Atlantis Sexual Offences Courts. These events were followed by imbizos with the respective communities. The Minister further shared a platform with the Premier of North West in order to deliberate on interventions against gender-based violent crimes, sexual violence and xenophobia. Likewise, the Deputy Minister participated in a number of media interviews and community imbizos in order to educate the public on gender-based violence, LGBTI-related violence, and other related issues in respect of the Maintenance Act. In addition, the Department dedicated an episode on its flagship community radio educational programme called *Let's Talk Justice: Live Your Rights* which is intended to increase the grassroots footprint of the Department and to tangibly interact with members of the public on issues within the Department's portfolio, which includes sexual violence. This programme is coordinated by the Government Communications and Information Systems (GCIS) and is linked to 65 community radio stations nationally. In each show, approximately 1.4 million listeners countrywide are reached. The show is also recorded and made available on social media to extend its reach.

The Department is also increasingly using social media platforms such as Facebook and Twitter to reach its target audience, especially the youth. The list of the activities conducted as part of the 2015/2016 public education campaign is dealt with below.

### **5.2. Media Public Education Interventions**

Radio interviews were held to raise awareness in most of the official languages on the Constitution, the sexual offences legislation, sexual offences courts and other relevant court services. On the following page is the list of these interviews:

**Table 8: National Radio and Television Educational Campaign<sup>22</sup>**

| Medium           | Type                 | Date   | Language     | Estimated Listenership <sup>23</sup> |
|------------------|----------------------|--|--------------|--------------------------------------|
| 702              | Talk Show X 2        | 12 August 2015 - 16h10; 24 August 2015 - 16h00                             | English      | 858 000<br>858 000                   |
| SAFM             | Talk Show            | 13 August 2015<br>14h00-14h30  | English      | 518 000                              |
| MOTSWEDING FM    | Talk Show X 3        | 22 April 2015; - 21h15;<br>29 April 2015<br>21h15; 22 July 2015 -<br>07h00 | Setswana     | 2 971 000<br>2 996 000<br>2 996 000  |
| LIGWALAGWALA FM  | Talk Show X 2        | 22 July 2015 -06h45<br>24 July 2015 - 06h00                                | siSwati      | 1 424 000<br>1 424 000               |
| IKWEKWEZI FM     | Breakfast Show       | 19 August 2015 - 07h45   | isiNdebele   | 1 607 000                            |
| LESEDI FM        | Mathemalodi X 3      | 13 August 2015 - 12h15; 15 August 2015 - 06h20; 17 August 2015 - 11h15     | Sesotho      | 3 728 000                            |
| TV SHOWS         |                      |  |              |                                      |
| Carte Blanche    | TV Talk Show on NRSO | 2015   | Multilingual | Undetermined                         |
| <b>Sub-total</b> |                      | <b>13 Talk Shows</b>   |              | <b>19 380 000</b>                    |

**Table 9: Community Radio Public Education: 2015/2016<sup>24</sup>**

| Medium             | Type         | No of Interviews   | Language             | Estimated Listenership <sup>25</sup> |
|--------------------|--------------|--|----------------------|--------------------------------------|
| LET'S TALK JUSTICE | Talk Show X2 | 30 July 2015<br>18h00-19h00<br>13 August 2015<br>18h00-19h00 | English / Vernacular | 1 400 000<br>1 400 000               |
| RADIO MAFISA       | Talk Show    | 22 July 2015 - 16h00   | Setswana             | 73 000                               |
| NORTH WEST FM      | Talk Show    | 22 July 2015 - 16h30   | Setswana             | 49 000                               |

22 The interviews were on the Act, sexual offences courts, NRSO and other gender-based violence laws

23 The figures were provided by the radio stations per listenership.

24 Covering sexual offences legislation, sexual offences courts, NRSO and other gender-based violence legislation

25 Calculated per show

| Medium               | Type                                | No of Interviews                                 | Language | Estimated Listenership <sup>25</sup> |
|----------------------|-------------------------------------|--|----------|--------------------------------------|
| MAHIKENG FM          | Talk Show                           | 22 July 2015 - 07:00                             | Setswana | 93 000                               |
| UNISA RADIO          | Talk Show X2                        | 19 August 2015 - 12h05<br>24 August 2015 - 10h15 | English  | 29 000                               |
| VOICE OF THE CAPE    | Breakfast Show                      | 13 August 2015<br>07h40                          | English  | 184 000                              |
|                      |                                     |  |          |                                      |
| <b>Sub-total</b>     | <b>8 Community Radio Talk Shows</b> |  |          | <b>3 228 000</b>                     |
| <b>OVERALL TOTAL</b> | <b>21 Talk Shows</b>                |  |          | <b>22 608 000</b>                    |

### 5.3. Community Imbizos and School Campaigns

In partnership with other stakeholders, the Department held community imbizos and school campaigns. The messages communicated were aimed at educating the public and learners on the various forms of sexual offences, cyber-bullying and sexting, drugs and sexual crimes, among others. The information below indicates the areas where these interventions took place and the number of people who were reached in the areas during the reporting period.

**Table 10: School Awareness and Education Interventions**

| Province      | Schools Reached  | No of learners reached |
|---------------|--|------------------------|
| Free State    | <b>4 Schools:</b> Welkom, Odendaalsrus, Bethlehem, Seemahale (Botshabelo) on sexual offences, NRSO and cyber bullying  | 5 500                  |
| KwaZulu-Natal | <b>44 Schools:</b> (Kokstad (10 schools), Kwa-Mashu and Ntuzuma (10 schools), Edendale (1 school for the disabled), Kwa Dlangezwa; Kwa Nongoma; Umlazi; Ndwedwe, Bhamshela and Kranskrop (10 schools); Umlazi (Masibumbane Youth Organisation targeting youth) | 25 023                 |
| Limpopo       | <b>26 Primary and secondary schools:</b> 10 schools to raise awareness on the rights of LGBTI persons, including sexual offences; 19 schools were educated on harmful religious practices which often lead to, <i>inter alia</i> , sexual offences and murder. | 13 780                 |
| Mpumalanga    | <b>140 Schools:</b> Mkhonotho, Gert Sibande, Mbombela, Bohlabela, and Mjindi Municipal Areas.  | 24 462                 |

| Province     | Schools Reached  | No of learners reached |
|--------------|--|------------------------|
| North West   | <b>8 Schools:</b> 6 schools and 2 Early Learning Centres on children's rights, child protection, including sexual offences, alcohol and substance abuse, occult culture, harmful religious practices and cyber bullying. These schools were in Dingataneng Village & Madibogo Village in Ratlou Local Municipality, Ottosdal Letsopa Hall (Rural town in Tswaing Municipality) and Potchefstroom (Tlokwe Municipality) | 4 896                  |
| Western Cape | <b>School:</b> Phillipi school reached by DOJ&CD and CGE to raise awareness on gender equality and encouraged male learners about women's rights and the law. Patriarchy often leads to gender-based violence and sexual violence.   | 600                    |
| <b>Total</b> | <b>223 schools</b>   | <b>74 261</b>          |

**Table 11: Community Imbizos held in 2015/2016**

| Province     | District municipality & Metropolitan  | Estimated No of people reached |
|--------------|---|--------------------------------|
| Eastern Cape | <b>3 Educational imbizos:</b> 2 outreach campaigns were held on Sexual Offences, Trafficking in Persons and Drug Abuse at Ezibeleni and Kologa in Stutterheim in October 2015.<br>On 10 December 2015 an awareness raising session was held on sexual offences in Middledrift.                                      | 872                            |
| Free State   | <b>2 Public interventions:</b> Community awareness raising sessions were held on cyber bullying, sexting and other forms of violence against women in Warden, Petrus Steyn  | 6 000                          |
| KZN          | <b>7 Imbizos:</b> In July 2015 awareness raising sessions on sexual offences were held at Kwa-Hlabisa Community targeting senior citizens.<br>During the 16 Days of Activism for No Violence Against Women community outreaches were held at Kwa Dukuza, Empangeni, Ntuzuma, Waterloo, Madadeni, and Kwa-Maphumulo. | 1 350                          |

| Province      | District municipality & Metropolitan  | Estimated No of people reached |
|---------------|---|--------------------------------|
| Limpopo       | <p><b>14 Imbizos:</b> 8 Imbizos were held in August and December 2015. These were held at Tiyane, Olifantshoek, Mahatlani, Ribungwani Tribal Authorities and Nkunzani Community Hall and Mashishimate, Seloane and N'wamitwa Villages for community members.</p> <p>3 public education and communication sessions were held on the prevention of older persons abuse at Magona Tribal Authority, Kgoshi Mampuri and Lwamando Tribal Authorities in July and December 2015.</p> <p>2 community dialogues were held in Bela-Bela in November 2015 on LGBTI rights and on harmful religious practices that need to be modified.</p> <p>In September 2015 door-to-door campaigns, community dialogues, round table discussions, service exhibitions, and awareness raising interventions were held.</p>   | 5 285                          |
| Mpumalanga    | <p><b>60 Public education interventions:</b> 28 Community outreach sessions were held including sexual offences prevention messages in Gert Sibande, Mbombela, Mkhondo, Lekwa, Bohlabela, Steve Tshwete, Thembisile Hani, Mjindi, and Nkomazi.</p> <p>13 awareness raising sessions were held on the rights of LGBTI persons in conjunction with the Provincial LGBTI Task Team.</p> <p>In addition, awareness raising sessions and pamphlet distribution outreaches were embarked upon to educate communities on trafficking in persons. These were held during the fourth quarter in Witbank, Ermelo, Sibange, and Tonga</p> <p>13 LGBTI awareness raising sessions were held which will contribute to the prevention of sexual violence against LGBTI persons.</p> <p>6 awareness raising sessions were held on the prevention of trafficking in persons in Vosman, Ermelo, Sibange, Tonga and Ermelo.</p> | 6 700                          |
| Northern Cape | <p><b>30 Educational interventions:</b> Information sessions were held on trafficking in persons in Colesberg, Kathu, Kuruman, and De Aar.</p> <p>26 community outreaches were also held during the year. These included topics on rights of victims including rights in cases involving sexual offences and trafficking in persons.</p>  | 4 539                          |

| Province     | District municipality & Metropolitan   | Estimated No of people reached   |
|--------------|--|--|
| North West   | <b>6 Public Awareness, Dialogues and Door-to-Door Campaigns</b> were held on court services provided, including Sexual Offences Courts, Older Persons Legislation in order to address elder abuse, including sexual violence against them, alcohol and substance abuse which lead to an increase in sexual violence and on LGBTI Rights. The areas reached include Rustenburg, Madibogo Pan Village (Ratlou Municipality), Ga-Rankua (Tshwane Municipality), Molopo (Mahikeng Municipality) and Lehurutshe (Ramotshere Moiloa Municipality)  | 1 453<br><br>(94 of these were households)   |
| Western Cape | <b>33 Community Imbizos</b> on sexual offences were held with the JCPS Cluster departments/institutions in Bredasdorp, Calitzdorp, Saldanah, Philippi, Nyanga, Atlantis during the month of August 2015. HIV Testing sessions were held, in conjunction with Moasic, in Atlantis, Bishop Lavis, Bellville, Blue Downs, Cape Town, Kuils River, Khayelisha, Mitchells Plain, Paarl, and Wynberg in August 2015; 13 other awareness raising sessions were held during the 16 Days of No Violence Against Women (including the launches of two Sexual Offences Courts) in Atlantis, Tafelsig, Delft (Blikkiesdorp), Kraaifontein (Scottsville), Valhala Park, Retreat, Lingulethu, Nyanga, Philippi, Wynberg, Bluedowns, Bishop Lavis, Wynberg, and Tableview. The campaigns included the "Rock-Girls Activity" which trains girls to become community reporters. This was in Paarl, Barrydale, Port Elizabeth <sup>26</sup> and Bredasdorp. This resulted in the establishment of "Safer-Space-Bench" which is placed outside the Bredasdorp Magistrate's Court in memory of Anele Booysen, five year old Kayde Williams, and 14 year old Elda Jafta who were raped and murdered within two years in the town. | 2 958<br><br>(excluding the uncounted participants in marches and the launch of the Sexual Offences Court in Atlantis) |
| <b>Total</b> | <b>155 outreach interventions</b>  | <b>29 157</b>  |

26 Western Cape team also went to Port Elizabeth to do the same project. It is for this reason that this deliverable is listed under WC.

27 This figure includes the listenership numbers received from radio stations. These were counted per talk show.

**Table 12: Summary of Public Education Interventions: 2015/2016**

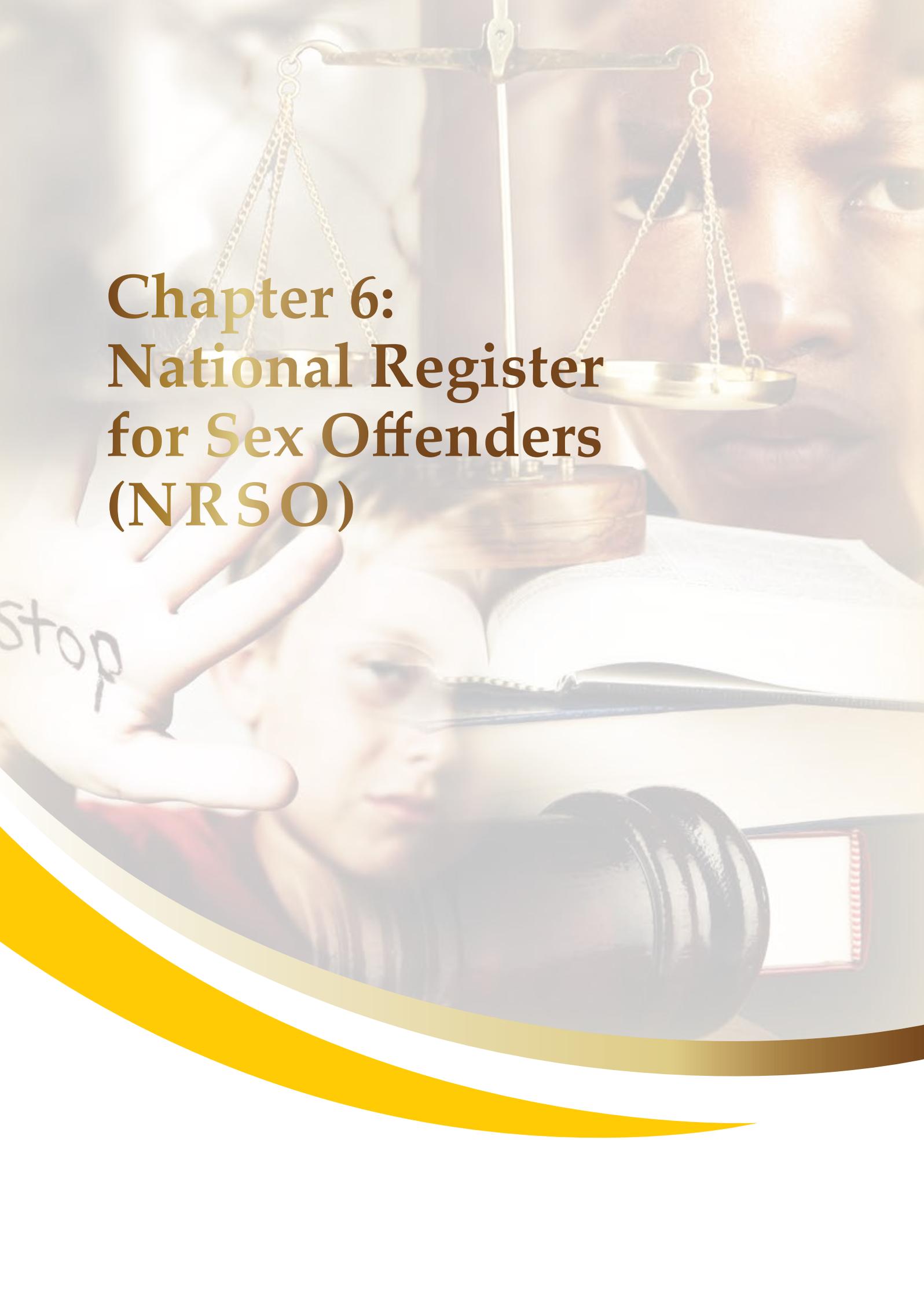
| Province   | Type of Public Education                                   | No of Interventions        | Estimated No of Listenership/ People Reached |
|--|--|----------------------------|--|
| All provinces  | National and community radio talk shows and a TV Talk Show | 21 Talk Shows              | <b>22 608 000</b>                            |
| Free State, KwaZulu-Natal, Limpopo, Mpumalanga, North West, Western Cape               | School campaigns   | 224 schools                | 74 261                                       |
| Eastern Cape, Free State, KwaZulu-Natal, Limpopo, Mpumalanga, North West, Western Cape | Community imbizos, door-to-door campaign, dialogue         | 155 outreach interventions | 29 157                                       |
| <b>Total</b>   |  | <b>400</b>                 | <b>22 711 418<sup>27</sup></b>               |

**Table 13: Printed and Distributed Public Education Materials**

| Name of Publication                                  | Quantities Produced | Distribution   |
|--|---------------------|--|
| Directory of Justice Services                        | 40 000              | Lower Courts; Community Imbizos; Schools; Public Exhibitions                 |
| Pocket Size Act                                      | 10 000              | Regions; Lower Courts; Sexual Offences Courts; JCPS Departments/Institutions |
| Intermediary Booklets                                | 75 000              | Regions; Lower Courts; Sexual Offences Courts; Public Exhibitions            |
| Braille Intermediary Booklets and Audio CDs<br>3 500 |                     | Regions; Lower Courts; Sexual Offences Courts                                |

#### 5.4. Challenges

It is still difficult to measure the impact of public education programmes, and this is a global challenge. There is a need for a public discourse on prevention of sexual violence, and the Department considers the 'Let's Talk Justice' media platform as the appropriate space to dialogue on these issues because it is interactive in nature.

A composite image featuring a woman's face, a pair of scales of justice, a hand with "Stop" written on it, and a judge's gavel.

# **Chapter 6: National Register for Sex Offenders (NRSO)**

## CHAPTER 6: NATIONAL REGISTER FOR SEX OFFENDERS (NRSO)

### 6.1. Introduction

The Department established and manages the National Register for Sex Offenders (NRSO) which came into operation on the 30 June 2009 in terms of Chapter 6 of the Act. The objects of the Register are to protect children and persons who are mentally disabled against registered sex offenders by establishing and maintaining a record of persons who have been convicted of a sexual offence against a child or a person who is mentally disabled; or who are alleged to have committed a sexual offence against a child or a person who is mentally disabled. The NRSO is intended to protect children and mentally disabled persons by restricting the registered offenders from working within environments that will expose them to these children or persons who are mentally disabled.

The Department continues to implement the NRSO, especially with regard to the inclusion of historical data, which has challenges in some respects. In addressing these challenges, the Department introduced a two pronged strategy which requires the collection of current convictions from the courts through the NRSO Integrated Case Management System (ICMS) and the collection of the historical data from SAPS, DCS and DoH, as required by the Act. To verify the historic data received from these stakeholders, the Department further established a National Manual Historic Data Verification Project to trace undetermined case details from the case records at courts' storage facilities. This Project commenced in 2015 and is still in progress.

### 6.2. Convictions Registered in the NRSO

During this reporting period, the number of registered sex offenders increased from 17 500 to **22 879**. The registration progression in the past 5 financial years is depicted as follows:

**Table 14: NRSO Registrations as at 31 March 2016**

| 2011/2012           | 2012/2013 | 2013/2014 | 2014/2015 | 2015/2016 |
|---------------------|-----------|-----------|-----------|-----------|
| 2 340               | 3 526     | 15 452    | 17 500    | 22 879    |
| Registered Increase | 1 186     | 11 926    | 2 048     | 5 379     |
| % Increase          | 50.68%    | 338.2%    | 13.25%    | 30.73%    |

In the 2015/2016 financial year **5 379** more sex offenders were registered, and this figure constitutes **424** current cases submitted manually and recorded in the Register and **2 425** verified historical convictions received from the SAPS in 2014.

During this reporting period, the Department exceeded its target of 92% in the Annual Performance Plan relating to the electronic recording of convictions in the NRSO by achieving 100% of such registrations.

### 6.3. National Manual Historic Data Verification of Historic Data Project

In 2015/2016 the Department allocated a budget of R4 036 815.90 for the appointment of 15 Data Capturers for the implementation of the National Data Verification Project. 13 Data Capturers were based in the regions, while 2 were placed at the national office of the NRSO. The Project successfully verified 2 425 historic cases which were subsequently entered into the NRSO. The remaining 9 693 historic cases will be traced manually and verified in the next financial year.

The Project requires the data capturers to peruse the old case records to determine the age and the mental status of the victim. In the case where the accused was charged with more than one charge, the charge for which he was convicted must be verified together with his or her age at the time of the commission of the alleged sexual offence(s). This assists in the determination on whether or not the person's details should be entered into the NRSO. The tracing of these cases takes long and is not an easy exercise due to different filing systems used by courts.

#### **6.4. Recent Amendments to the Act**

During this reporting period, section 15 of the Act was amended to decriminalize acts of consensual sexual penetration between adolescents, namely children who are 12 years or older but under the age of 16 years, if the perpetrator was also within the same age group or if he or she was 16 or 17 years, if the age difference (between the victim and offender) is not more than two years. Section 16, dealing with acts of consensual sexual violation, was also amended in like manner. With regard to children who were convicted in terms of sections 15 and 16 before these sections were amended, the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2015 (Act 5 of 2015) ("the Amendment Act"), provides for automatic expungement of the criminal records and removal of the names from the NRSO, where the convicted person was 12 years or older but under the age of 17 years at the time of the commission of such offence.

In respect of children who were charged in terms of section 15 or 16 after the High Court found the provisions to be unconstitutional, the NPA withdrew all the charges that were pending before the courts. The High Court judgement was largely confirmed by the Constitutional Court<sup>28</sup>.

Section 50(2)(c) was also amended at the same time to provide to the following effect:

*'If a court has, in terms of the Act or any other law, convicted a person of a sexual offence against a child or a person who is mentally disabled and that person was a child at the time of the commission of such offence, the court may not make an order that that person's particulars be included in the NRSO, unless-*

- (i) the prosecutor has made an application to the court for such an order;
- (ii) the court has considered a report by a probation officer, which deals with the probability of that person committing another sexual offence against a child or a person who is mentally disabled in future;
- (iii) that person has been given the opportunity to address the court as to why his or her particulars should not be included in the Register; and
- (iv) the court is satisfied that substantial and compelling circumstances exist based upon the report of the probation officer and any other evidence, which justify the making of such an order.

*The inclusion of the particulars of persons, who were children at the time of the commission of sexual offences, in the NRSO is contrary to the "best interest of the child" principle and therefore not justified in an open and democratic society.*

This amendment gives effect to the Constitutional Court judgment in the case of *J vs the National Director of Public Prosecutions and Others*.<sup>29</sup> This amendment requires the court to observe the principle of the best interest of the child, as enshrined in section 28(2) of the Constitution which states that *'the child's best interests are of paramount importance in every matter concerning the child.'* The Amendment Act further requires that the child be heard by the court before his particulars are entered in the Register. The Department is in the process of effecting these amendments in the Regulations on the NSRO.

<sup>28</sup> *Teddy Bear Clinic for Abused Children v the Minister of Justice and Constitutional Development and Others* [2013] ZACC 35 (the Teddy Bear case)

<sup>29</sup> [2014] ZACC 13

### **6.5 Submission of Original FORM5 Court Orders to the Registrar**

There has been some misunderstanding in some of the regions regarding the manner or procedure for the submission of the original court orders to the NSRO. In some instances, the original orders were forwarded by the Registrars of the High Court and clerks of the court to the regional offices of the Department whilst in other regions they were forwarded to the National Department of Social Development. This resulted in some of those orders being lost.

This adversely affected the immediate registration of offenders in the NRSO. It also resulted in the performance indicator being qualified by the Office of the Auditor-General during the financial year of 2014/15 in Gauteng, Mpumalanga and the North West.

The Registrar addressed this by means Circular 57 of 2015. The forms are now forwarded directly to the Registrar and since the publication of the circular the submission rate has improved significantly in all 9 regions. However, the submission procedure stipulated by the Circular will be re-considered in the next financial year as it currently excludes the monitoring role of the Regional Heads, which is in conflict with the Department's reporting protocol.

### **6.6 Development of Systems for Issuance of Clearance Certificates**

Chapter 6 of the Act prohibits certain types of employment by persons convicted of sexual offences against children and mentally disabled persons. Employers in certain categories, where persons are in charge of children or mentally disabled persons, have an obligation to apply to the Registrar to determine whether or not the details of the prospective employee are in the Register. It also requires applicants for fostering, kinship care-giving, temporary safe-care giving, adoption of children or curatorship to be cleared first with the National Registrar before they may assume any of these roles and responsibilities.

In 2015 the Department finalised the development of draft process maps for applications for certificates of clearance with the view to making the NRSO fully functional and operational. The process maps are aimed at showing the steps for the application process for individuals and employers who will submit applications to enquire whether the details of a prospective employee, who will have authority over children, are in the NRSO or not. The process maps were distributed to the NRSO Intersectoral Committee for consideration and adoption. Thereafter, the internal approval process will be finalised.

In June 2015 the NPA initiated a process for the development of annexures to the Charge Sheet on Integrated Case Management System (ICMS) Criminal. The objective of this exercise, amongst others, was to map out the provisions of the Act pertaining to the NRSO with charges. The process is on-going as there are more than 4 000 charges to be mapped into the ICMS. This will improve the common formulation of charges and the conviction rate in sexual offences.

### **6.7 Amendments to Forms Prescribed by NRSO Regulations**

The National Registrar for Sex Offenders requested certain amendments to prescribed Forms 5<sup>30</sup>, 9<sup>31</sup> and 11<sup>32</sup> of the Regulations on the National Register for Sex Offenders. The request was aimed at fast-tracking the issuing of certificates for the removal of particulars from the Register, particularly in matters relating to the expungement of historic convictions. This

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30 Court Order for the Inclusion of Particulars in the Register

31 Certificate in respect of Particulars

32 Certificate Confirming Removal of Particulars from the Register

will alleviate the frustrations of registered sex offenders who committed offences many years ago and who qualify to have their names removed from the Register.

However, the Department recommended that the prescribed Forms 9 and 11 not be amended as the concerns raised by the Registrar could be addressed by means of an *explanatory note* that can be attached by the Registrar when Forms 9 and 11 certificates are issued. There are many advantages associated with the explanatory note, and these include the fact that it–

- (i) provides information regarding certain provisions of Chapter 6 of the Act and therefore does not require an enabling provision in the Act in order to disseminate such information;
- (ii) could be used to highlight certain important provisions of Chapter 6 of the Act which should be noted by those who will be presented with such certificates;
- (iii) could be amended as and when the need arises without any unnecessary delay therefore placing the Registrar in a position to disseminate useful and important information in addition, but relevant to the Form 9 and 11 certificates.

Pursuant to the J case, the Department is now in the process of effecting the necessary amendments in the Regulations on the National Register for Sex Offenders so as to conform to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2015 (Act 5 of 2015).

#### **6.8 Research: Alignment of the NRSO with the National Child Protection Register (NCPR)**

In December 2012, the Department initiated an investigation into the viability of merging the NSRO with the National Child Protection Register established in terms of the Children's Act, 2005. In 2013 a Task Team, consisting of representatives of the Department and the DSD, was established. The Task Team had different views on the matter, which consequently impacted negatively on progress. In December 2014, a Draft Position Paper was produced by the Task Team for the collective consideration of the Minister of Justice and Correctional Services and the Minister of Social Development. In 2015 the Minister of Justice and Constitutional Development considered the matter and made his recommendations. The matter is being considered by the DSD.

#### **6.9 Capacity Building and Training**

In 2015/2016 the NRSO received an audit qualification from the Office of the Auditor-General due to the non-submission of the original Form 5<sup>33</sup> to the Registrar by certain courts based in Gauteng, Mpumalanga and North West. It was found that these courts were not submitting the prescribed original Form 5 to the Registrar which is necessary to authorise the inclusion of a sex offender's particulars in the NRSO. It was further discovered that certain clerks of the court confused the NRSO procedural requirements for registration of particulars with the requirements prescribed by the National Child Protection Register managed by the DSD. Both the Act and the Children's Act, 2005 require clerks of the court to submit court orders for registrations to both Registers. Pursuant to this qualification, the Department compiled an audit action plan to address this anomaly.

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<sup>33</sup> Form 5 is the court order for the inclusion of particulars of sex offenders in the Register and is prescribed by the Regulations on the National Register for Sex Offenders

In implementing the audit action plan, the Department, in conjunction with the DSD, conducted training workshops for clerks of the court in 8 provinces to clarify the roles and responsibilities of all the relevant stakeholders involved in the implementation of the NRSO and the National Child Protection Register. The procedural requirements for the submission of registrations were thoroughly outlined and distinguished so as to eliminate systemic deficiencies that could result in further audit queries. **405** officials were trained, and these were drawn from clerks of the lower courts, registrars of the High Court, area court managers, court managers, district court magistrates, as well as representatives from the SAPS, the NPA, and Provincial Departments of the DSD. The judiciary volunteered to participate in this training since SAJEI is exclusively responsible for the training needs of judicial officers. The training schedule gave priority to the relevant personnel of the defaulting courts. Since this training, there has been a gradual increase in the submissions of original Form 5 to the NRSO.

After the joint training workshops, the office of the Registrar conducted a further intersectoral training workshop in the Eastern Cape, which was later followed by another session in the Northern Cape. In these 2 sessions **234** officials drawn from area court managers, court managers, clerks of the court, regional data capturers, IT coordinators, prosecutors, social workers and SAPS officials were trained. The total number of officials trained on the 2 Registers during this reporting period stands at **639**.

**Table 15: Officials trained on the NRSO and National Child Protection Register as at 31 March 2016**

| Region        | No trained | Training Programme  | Personnel trained      |
|---------------|------------|---|------------------------|
| Eastern Cape  | 117        | NRSO/ National Child Protection Register and implementing the audit action plan formulated to address the audit finding issued by the Office of the Auditor-General | -Court Managers        |
| Free State    | 52         |   | -IT Coordinators       |
| Gauteng       | 80         |   | -Clerks of the Court   |
| KwaZulu-Natal | 22         |   | -E-Scheduler Clerks    |
| Limpopo       | 106        |   | -Data Capturers        |
| Mpumalanga    | 62         |   | -Administration Clerks |
| Northern Cape | 117        |   | -Magistrates           |
| North West    | 54         |   | - Prosecutors          |
| Western Cape  | 29         |   |                        |
| TOTAL         | 639        |   |                        |

Source: NRSO

## 6.10 Public Education and Communication on NRSO

### 6.10.1. Media Public Education

During this reporting period, 15 public radio talk shows and 1 Carte Blanche television talk show were undertaken to raise awareness on the NRSO and to address questions often raised by members of the public and the media. The following provides detail in this regard:

**Table 16: Radio and Television Talk Shows on NRSO**

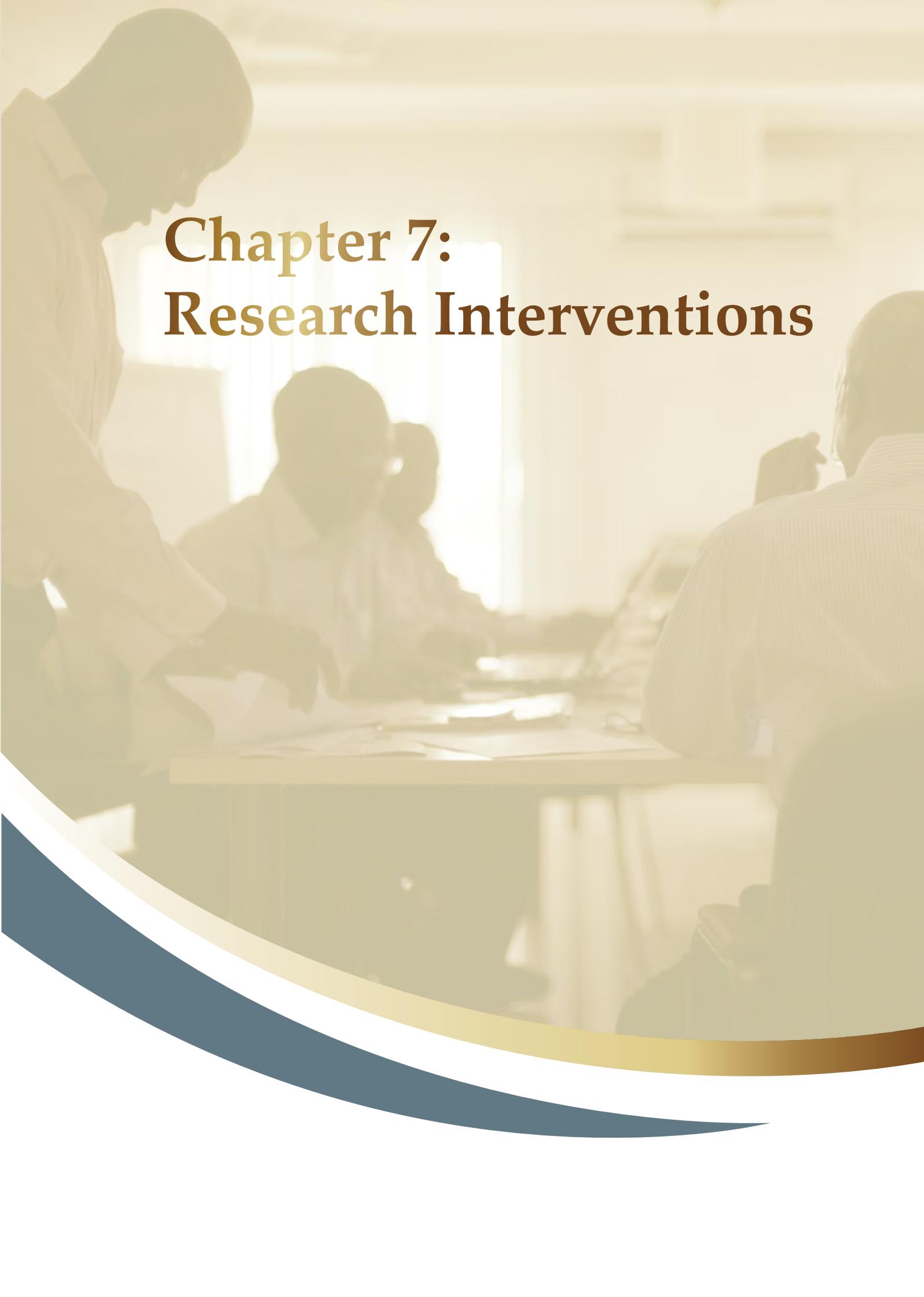
| Period    | Medium Used/Media           | Language     |  |
|-----------|-----------------------------|--------------|--|
| 2015/2016 | Motswedi FM x2              | Setswana     |  |
|           | Umhlobo Wenene FM           | Xhosa        |  |
|           | Ukhozi FM                   | Zulu         |  |
|           | Inkwenkwezi FM              | Zulu         |  |
|           | Voice of the Cape           | English      |  |
|           | Power FM x 2                | English      |  |
|           | Radio 702                   | English      |  |
|           | Radio 786                   | English      |  |
|           | Gagazi FM                   | Zulu         |  |
|           | SAFM                        | English      |  |
|           | Radio 2000                  | English      |  |
|           | Capricorn SA x 2            | English      |  |
|           | <b>TELEVISION TALK SHOW</b> |              |  |
|           | Carte Blanche               | Multilingual |  |

**Let's Talk Justice: Live Your Rights:** The NRSO also participated in the Let's Talk Justice: *Live Your Rights* Educational Radio Programme. The show is broadcasted to over 60 community radio stations across the country.

**A radio advert** was developed in conjunction with GCIS to educate and create public awareness on the NRSO, particularly among the youth. This advert was aired on 3 different radio stations (Power FM, Motswedi FM and Radio 702) on various days.

#### **6.10.2. School Educational Campaign**

One awareness raising session was held during the National Child Protection Week at the Seemahale Secondary School in Botshabelo, Free State. This session highlighted the implication of inclusion on the Register to approximately 500 learners and different stakeholders. The main focus of the messages was to educate learners about the dangers of sexting and cyber bullying.



# **Chapter 7: Research Interventions**

## **CHAPTER 7: RESEARCH INTERVENTIONS**

### **7.1 Introduction**

During this reporting period, the Department focused on research activities recommended by the MATTSO Report and Parliament. In this Chapter, these studies are outlined.

### **7.2 Provision of Food Support to Child Witnesses in Court**

In its findings, the MATTSO Report identified the lack of a feeding scheme for child witnesses as a major contributor to poor performance of child witnesses in court. The concern was that hungry children often get sleepy and forgetful in court, leading to the acquittal of sex offenders. The MATTSO Report therefore recommended that the Department conducts an investigation into the possible introduction of a feeding scheme for these witnesses.

As reported in the 2014/2015 Departmental Annual Report<sup>34</sup>, in 2014 the Department partnered with UNICEF to investigate the viability of providing food for child witnesses in sexual offences courts. The final research report was produced in March 2015, and it made startling findings, among others, that some court officials were compelled to -

- (i) Use their own money to buy food for child witnesses to avoid case postponements;
- (ii) Pack food from home to feed child witnesses;
- (iii) Share their lunch provisions with child witnesses; and
- (iv) Look for food donations from local businesses and NGOs for destitute child witnesses.

The researchers considered international and domestic trends in the provision of allowances to witnesses. They also looked into the government's policy on sponsorships and donations, and acknowledged the danger of converting the court environment into a food outlet. The current rate of R20 as a food allowance offered to witnesses was found to be inadequate to sustain a child's needs for the duration of the hours spent in court per day.

The Report recommended that -

- (i) A uniform and standardized process be introduced that will ensure that all child witnesses have access to food when they are required to be at court;
- (ii) Witness fees for children must be made available early in the morning so that food can be purchased early should the child witness require breakfast. (It has been found that certain children often arrive in court without having had any breakfast, and are required to stay until late afternoon. Research has shown that the cognitive functioning of children declines without sustenance. In addition, children have a higher brain glucose metabolism compared to adults and their glycogen levels tend to be more depleted in the morning. To maintain a higher metabolic rate, a continuous supply of food is needed throughout the day. Children must, therefore, have a proper breakfast in the morning and a healthy lunch to provide them with the energy necessary to testify);

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<sup>34</sup> P79 of the 2014/2015 of the Departmental/ Institutional Reports on the Implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007)

- (iii) The task of ensuring the early provision of witness fees to children must be allocated to the court intermediaries, who must oversee the purchase of the food and the feeding of the child, as it has been found that some parents/guardians use this money to buy groceries;
- (iv) Donations from private companies and non-governmental organisations may be used to supplement the feeding scheme, only within the parameters of the government policy; and
- (v) The Department must consider increasing the current rate of witness fees because current fees are inadequate.

In 2015 the research report was presented to the DG ISC-SO and the Committee recommended *inter alia* that:

- (i) The Department must increase the rate of witness fees;
- (ii) The witness fees must be offered to children as soon as they arrive at court;
- (iii) The status quo of the provision of witness fees should prevail, as food supply at courts might encourage corruption and contribute to more systemic deficiencies.

Pursuant to these recommendations, the Department approached the National Treasury for an increase of the rate of witnesses from R20 to R50. The matter is still under consideration. A National Circular was also issued to direct the early provision of witness fees to child witnesses. The job description of the court intermediaries has been extended to require them to monitor the early provision of witness fees to children.

### **7.3. Research on Skills Needs of Intermediaries**

In the previous reporting period, the Intermediary Training Needs Research Report was discussed in detail in the 2014/2015 Departmental Annual Report<sup>35</sup>. During the current reporting period, the Intermediary Task Team considered the Intermediary Training Needs Research Report, and recommended its adoption by the Directors-General Intersectoral Committee. The latter Committee considered and adopted the Report recommendations, and these have been discussed in Chapter 5 of this Report dealing with Training and Development.

### **7.4. Position Paper on the Merger of NRSO and NCPR**

In December 2014 the Task Team on the Merger of the NRSO and the National Child Protection Register produced a position paper after its investigation into the viability of merging the two Registers. Please refer to Chapter 6 of this Report of this Report for more information. This investigation was commissioned by Parliament.

### **7.5. The Baseline Victim-Satisfaction Survey at Non-Sexual Offences Courts**

In 2015 the Department partnered with UNICEF to conduct the Baseline Victim-Satisfaction Survey at regional courts earmarked for upgrading into sexual offences courts. This survey was inspired by the lack of baseline data to measure the satisfaction of victims in terms of the support services currently offered by non-sexual offences courts vis-à-vis the improved support services available at the newly established sexual offences courts. Without this baseline information, it would have been impossible for the Department to measure the impact of the support services built in the Sexual Offences Courts Model.

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<sup>35</sup> P80 of the 2014/2015 Departmental/ Institutional Annual Report on the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007)

**The aim of the research** was to develop a baseline of services presently available to victims of sexual violence in regional courts which are not operating as sexual offences courts. The findings from this survey will be used to develop a baseline for the future monitoring of the sexual offences courts.

**The principle objectives of the research** were -

- (i) To analyse the Victims' Charter and the MATTSO report to identify the support services that should be available to victims of sexual offences;
- (ii) To gather information from witnesses of sexual violence testifying at the 9 identified courts about the support services they have received; and
- (iii) To develop a baseline of victim support services available at courts so that this can be used as a tool to monitor the newly implemented sexual offences courts.

**The survey questionnaire focused on the following topics:**

- (i) Provision of court preparation at courts;
- (ii) Availability of pre- and post-trial debriefing by court preparation officers;
- (iii) Availability of intermediary services;
- (iv) Access to information;
- (v) Access to witness fees;
- (vi) Access to private waiting rooms for adults and children;
- (vii) Availability of *in camera* proceedings services;
- (viii) Availability of court accompaniment services; and
- (ix) Identification of gaps in services.

**The research sites:** For the purposes of this study, the target group included witnesses of sexual violence, both children and adults, who have testified at the following courts:

Zwelitsha (Eastern Cape); Tembisa (Gauteng Province); Madadeni (KwaZulu-Natal); Ga-Rankuwa (North West); Botshabelo (Free State); Paarl (Western Cape); Sibasa (Limpopo); Barkly West (Northern Cape); and Mbombela (Mpumalanga).

### **Findings and Recommendations**

A sample of 78 adult witnesses and 78 child witnesses who had testified in each site was interviewed. In March 2016, the researchers finalised the survey and produced a report for the consideration of the Department. Since the report has not been approved yet, the findings and recommendations thereof will be discussed in the Annual Report of the next financial year.

# Chapter 8: Law and Policy Development



## CHAPTER 8: LAW AND POLICY DEVELOPMENTS

### 8.1 Introduction

During 2014/2015 the Department proposed certain legislative amendments to the Act. In this Chapter, these developments are discussed.

### 8.2 Judicial Matters Second Amendment Act, 2013

The Judicial Matters Second Amendment Act (Act No.43 of 2013) (the JMSSA) was signed into law by the President in January 2014 to provide the Minister with the authority to "designate any Division of the High Court or the main seat or any local seat of a Division or Magistrate's Court as defined in section 1 of the Superior Courts Act, 2013 (Act No.10 of 2013), as a sexual offences court, exclusively for the purpose of the trial of any person or other proceedings arising out of an alleged commission of a sexual offences ..."

Whilst the JMSSA came into operation on 7 July 2015, there were objections to the new raised by the Regional Court Presidents. Further amendments to section 55A are being promoted in a Judicial Matters Amendment Bill, 2016 which is intended to be introduced into Parliament during the 2016 session of Parliament. The proposed amendments were discussed with the Regional Court Presidents Forum and other relevant stakeholders.

### 8.3. Regulations Relating to the Sexual Offences Courts: Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013)

#### 8.3.1. Intersectoral Consultations

The Judicial Matters Second Amendment Act (Act No.43 of 2013) provides for the development of regulations for the sexual offences courts. This was in response to the MATTSO Report recommendation. In 2014 the Department commenced with the development of the regulations, which were costed in 2015. In 2015 the Draft Regulations were consulted upon extensively with the OP ISC SO and the DG ISC SO. They were also distributed to all the role-player departments with the aim of providing the intersectoral committees on the management of sexual offences to provide further inputs. The process of adoption is still underway, and is expected to be finalised in 2016/2017 financial year.

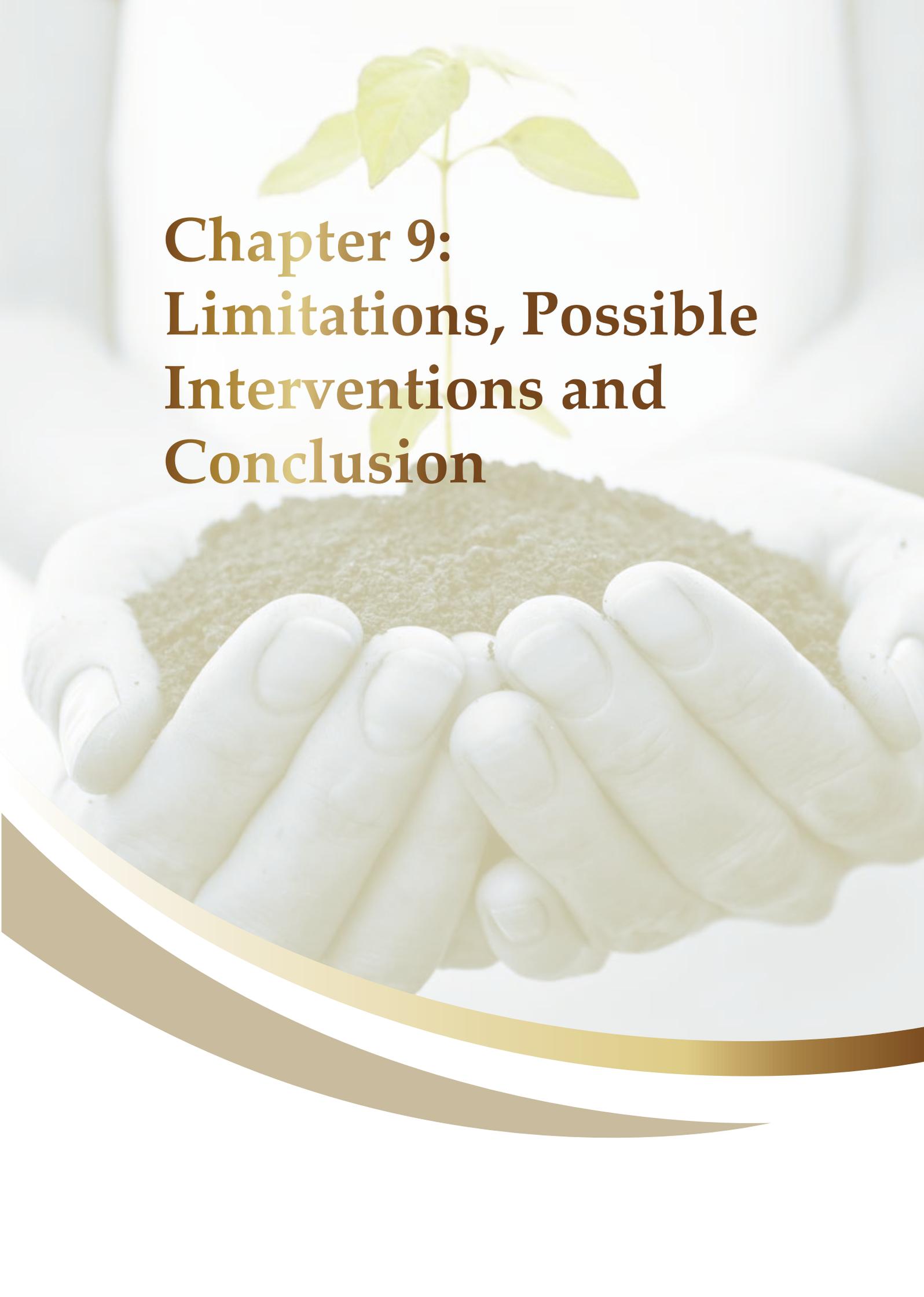
### 8.4 Amendment of sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2015 (Act 5 of 2015) ("the Amendment Act"), responded to two separate judgments of the Constitutional Court in the case of *Teddy Bear Clinic for Abused Children v the Minister of Justice and Constitutional Development and Others [2013] ZACC 35* (the Teddy Bear case), and the case of *J v The National Director of Public Prosecutions and Others [2014] ZACC 13* (the J case). In the Teddy Bear case the Constitutional Court found that sections 15 and 16 of the Act infringe on the rights of adolescents in terms of sections 10 (human dignity), 14 (privacy) and 28(2) (best interest of a child) of the Constitution. The Court declared sections 15 and 16 of the Act to be unconstitutional to the extent that they criminalise consensual sexual conduct between adolescents.

In the J case the Constitutional Court declared section 50(2) of the Act to be unconstitutional and invalid to the extent that it unjustifiably limits the right of child sex offenders to have their best interests considered as of paramount importance in every matter concerning them. The Amendment Act was signed into law and came into operation on 7 July 2015.<sup>36</sup>

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<sup>36</sup> For further information, please refer to the Chapter 6 of this Report dealing with the NRSO

A pair of hands is shown holding a mound of light brown soil. A small green plant with three leaves is growing out of the soil. The background is a soft, out-of-focus white. The text is overlaid on the upper left portion of the image.

**Chapter 9:  
Limitations, Possible  
Interventions and  
Conclusion**

## Chapter 9: Limitations, Possible Interventions and Conclusion

### 9.1. Limitations and Possible Interventions

In spite of the challenges experienced in the criminal justice system, the Department continues to make efforts to improve the implementation of this Act through a number of interventions, including bi-lateral engagements. The following are recent limitations and possible interventions, which the Department is currently considering with the intersectoral stakeholders:

**Table 17: Limitations and Possible Interventions**

| Limitations  | Possible Interventions   |
|--|--|
| The filling of 17 permanent posts of Assistant Director Intermediary was postponed due to a lack of funds. This will impact on the management of intermediary services at sexual offences courts.  | The Department will have to secure funding from National Treasury since the donor community does not usually provide funds for compensation.   |
| The increase of the witness food allowance to R50.00 is critical, not only for child witnesses but for all witnesses in criminal proceedings. This increase will create parity between the food allowances offered to both civil and criminal matter witnesses. At present witnesses in civil matters receive a food allowance of R50. | Regional Court Efficiency together with Legislative Development have revised the relevant regulations and aligned these tariffs to the inflation rates. The matter is being considered by the National Treasury. |
| Experts are usually reluctant to attend court due to low witness tariffs, and this often contributes to postponements of sexual offences cases.<br>The tariffs were last adjusted 8 years ago.   | The Department has also proposed to the Minister of Finance the amendment of tariffs for expert witnesses, for instance for psychologists, psychiatrists.  |
| The lack of adequate infrastructure to establish sexual offences courts that conform to the specifications of the Sexual Offences Courts Model.  | The Department is in the process of developing a less-resourced Model that will address the infrastructural challenges often experienced in rural courts as well as in courts which are national monuments.      |
| The lack of systems integration for the NRSO and the intersectoral implementation of the Act.  | IJS is in the process of finalizing the systems integration.   |
| The Criminal Procedure Act, 1997 (Act No 51 of 1997) is not sufficiently victim-centred  | The Department is in the process of amending the Criminal Procedure Act, 1997 to respond to the needs of the victims.  |

## **9.2 Conclusion**

The Sexual Offences Courts Model is one of the home-grown interventions that the country ought to take pride in. Many progressive countries continue to adopt this model; hence the current move to elevate it to the status of an international best practice model. It is a model equipped with support services that seeks to convert court space into a victim-centric environment, as required by the Victims' Charter. Its focus is more on addressing the emotional well-being of victims so as to bring about a confident, assertive and effective witness in court. The aim is to encourage victims not only to see but also to feel justice being done.

In 2 years, the Department has succeeded in establishing 47 courtrooms nationwide, and this is an achievement worth celebrating. As recommended by the MATTSO Report, the goal is to achieve 57 courts by the end of the next financial year, and this is the target that the Department is determined to achieve, subject to the availability of resources.

It should be noted that in 2015 the Directors-General Intersectoral Committee decided to transfer the monitoring function of the performance of the sexual offences courts to the NPA. This decision was made in view of the fact that the Department plays no direct role in the prosecution and adjudication of the offences cases. Its mandate is restricted to legal administrative support and infrastructural resourcing. It is for this reason that, unlike the previous Departmental Annual Reports, this Report deliberately excludes the input on statistical performance of these courts.

The Department is committed to improving victim-support services of the Sexual Offences Courts Model by conducting regular victim-satisfaction surveys. With the baseline data drawn from the first Baseline Victim-Satisfaction Survey<sup>37</sup>, the Department will now be able to measure the impact of these services and ensure the regular improvement thereof.

As indicated earlier in this Report, the country is presently *without* a baseline to measure the turnaround time in the finalization of sexual offences cases. This is a gap in the monitoring and evaluation of the Act, which has unfortunately attracted criticism relating to the delays in the management of these cases. The pending research on the Determination of the Turnaround Time of the Finalization of the Sexual Offences Cases from reporting to judgment/ sentencing is therefore expected to bring this anomaly to an end. It is also intended to assist the Department and the Directors-General Intersectoral Committee in monitoring the speed in the management of these cases throughout the criminal justice value chain.

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<sup>37</sup> Refer to Chapter 7 of this Report







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