

ANNUAL DEPARTMENTAL REPORT ON THE IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT 75 of 2008)

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
1 APRIL 2013 TO 31 MARCH 2014

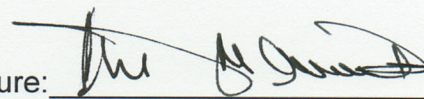


OFFICIAL SIGN-OFF

It is hereby certified that this Annual Report was developed by the Department of Justice and Constitutional Development. It takes into account the key priority areas outlined by the National Policy Framework on Child Justice, which fall within the mandate of the Department of Justice and Constitutional Development. It also accurately reflects the achievements and limitations experienced by the Department of Justice and Constitutional Development as it endeavoured to realize the goals of the Child Justice Act, 2008 (Act 75 of 2008).

Adv Praise Kambula

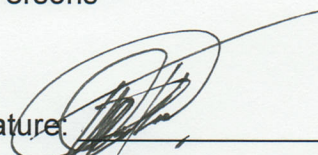
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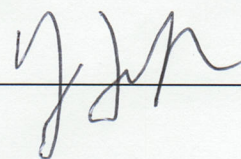
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Director- General: Department of Justice and Constitutional Development

Mr John Jeffery, MP

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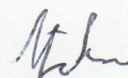


Deputy Minister of Justice and Constitutional Development

Approved by

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Signature: _____



Minister of Justice and Correctional Services

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1. INTRODUCTION

Section 96 (3) of the Child Justice Act No 75 of 2008 (hereinafter referred to as the Act) provides that the Minister of Justice and Constitutional Development, after consultation with the Cabinet members responsible for police, correctional services, social development, education, and health, to submit annual reports to Parliament, by each Department or institution expressly tasked with the implementation of the Act.

The Act therefore gives the Department of Justice and Constitutional Development (the Department) the role to lead the intersectoral implementation of the Act, both at political and administrative levels.

This is the 4th Departmental Annual Report on the implementation of the Act and it focuses on the progress that the Department made towards the implementation of the Act during the period 1 April 2013 to 31 March 2014. It delineates the annual performance of the Department in terms of the 10 key priority performance areas of reporting set out in the National Policy Framework on Child Justice, as required by section 96(1)(e) of the Act. It must, however be noted that the performance reported on will be limited to the mandate of the Department, as prescribed by the Act.

2. CHILD JUSTICE ACT, 2008 (ACT 75 OF 2008)

The Act came into operation on 1 April 2010 and its fundamental aim is to establish a child justice system that expands and entrenches the principles of restorative justice, while ensuring children's responsibility and accountability for crimes committed, but without necessarily criminalizing their conduct.

It recognises the need for proactive crime prevention by placing emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending; whilst balancing the interests of children and those of society, with due regard to the rights of victims.

It also creates special processes or procedures for children in conflict with the law by:

- raising the minimum age of criminal capacity of children from 7 years to 10 years;
- ensuring the assessment of all children in conflict with the law;
- providing for special procedures for securing attendance at court of, the release or detention and placement of, children;
- creating an informal, inquisitorial, pre-trial procedure, designed to facilitate the disposal of cases in the best interests of children;
- providing for the adjudication of matters, not diverted, in child justice courts; and
- providing for a wide range of sentencing options specifically suited to the needs of children,

The significance of the Act is not only on the establishment of a separate child justice system in South Africa, but also on the provision of legislative frameworks for various processes (such as the evaluation of criminal capacity, restorative justice, pre-sentence reports, victim impact statements and diversion) that were, until implementation, governed by either common law principles or practice, which in itself increased the risk of discriminatory applications and practices.

3. SUPPORTING LEGISLATION

The implementation of the Act is supplemented and supported by the following legislation:

- The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- The Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- The Probation Services Act, 1991 (Act No. 116 of 1991);
- The Correctional Services Act, 1998 (Act No. 111 of 1998) and the Amendment Bill, which relates to the management of children in prisons;
- The Domestic Violence Act, 1998 (Act No 116 OF 1998);
- The Maintenance Act, 1998 (Act No 99 of 1998);

- The Probation Services Amendment Act, 2002 (Act No. 35 of 2002), which provides for the appointment and duties of Probation Officers;
- The Children’s Act, 2005 (Act No. 38 of 2005), which provides for the care and protection of children, as well as the referral of children to Children’s Courts from the Child Justice Courts, if they are children in need of care and protection. The Children’s Act, 2005 further provides for the establishment, structures and norms and standards of Child and Youth Care Facilities; and
- The Criminal (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

Where it is necessary, the courts refer to these pieces of legislation with the aim of advancing the entrenchment of the child justice system in our country that promotes the protection of the constitutional rights of children.

4. GOVERNANCE STRUCTURES

The Act has placed the leadership of the management of the intersectoral implementation of the Act on the Department by tasking the Minister of Justice and Constitutional Development with the submission of the Annual Reports of the various implementing Departments to Parliament, and also requiring the Director-General of the Department of Justice and Constitutional Development to take the administrative leadership in all matters relating to the intersectoral implementation of the Act.

4.1 The Inter-Ministerial Committee

As stated, the Act places political accountability for the effective establishment and management of the child justice system in South Africa at the leadership of the Minister of Justice and Constitutional Development.

The Justice Crime Prevention and Security (JCPS) Inter-Ministerial Committee, chaired by the Minister of Justice and Constitutional Development, has the mandate to rid our society of crime by ensuring that all people in South Africa are and feel safe. This mandate automatically carries the agenda of monitoring the realization of the goals of the Act in the country. As part of its responsibilities, this Committee receives performance reports from the Directors-General Inter-Sectoral Committee on Child

Justice (DG's ISCCJ) to assist in its monitoring functions. It also carries the responsibility to adopt the Annual Reports on the Implementation of the Child Justice Act by the various implementing Departments, before they are tabled in Parliament by the Minister of Justice and Constitutional Development.

During this reporting time, this Committee considered the 3rd Departmental Annual Reports, accompanied by the Consolidated Annual Report on Child Justice, and adopted them for tabling in Parliament. The Minister of Justice and Constitutional Development tabled these reports in February 2014.

4.2 Directors-General Intersectoral Committee on Child Justice (DG's ISCCJ)

One of the major aims of the Act is to promote co-operation and collaboration between government Departments, and between government Departments and the civil society so as to establish an integrated and holistic approach in the implementation of the Act. To achieve this goal, section 94(1) of the Act establishes the Intersectoral Committee for Child Justice (DG's ISCCJ) to monitor the intersectoral implementation of the Act. The prescribed members of the Intersectoral Committee for Child Justice (DG's ISCCJ) are:

- Director-General: Justice and Constitutional Development, who is the Chairperson of the Committee;
- National Director of Public Prosecutions;
- National Commissioner of the South African Police Service;
- National Commissioner of Correctional Services;
- Director-General: Social Development, who has been elected as the deputy Chair of the Committee;
- Director-General: Education; and
- Director-General: Health.

In terms of section 95 of the Act, the Intersectoral Committee for Child Justice (DG's ISCCJ) must meet at least twice a year and also report, in writing, to the Minister of Justice and Constitutional Development progress on all matters relating to the execution of its responsibilities, functions and duties listed under section 96 of the Act. This

Committee developed terms of reference to guide governance issues relating to the monitoring of the implementation of the National Policy Framework and the Act.

During this reporting period the Intersectoral Committee for Child Justice (DG's ISCCJ) held three (3) meetings and dealt with key issues that include the following:

Table 1: Intersectoral Committee for Child Justice (DG's ISCCJ) Meetings

Date	Agenda Items
27 May 2013	<ul style="list-style-type: none"> ○ Progress on the launch of One Stop Child Justice Centre: Matlosana ○ Finalization of the 3rd Consolidated Annual Report on the Child Justice Act, 2008 ○ Progress on the research on the age of criminal capacity ○ Progress in the establishment of the IJS on Child Justice.
27 September 2013	<ul style="list-style-type: none"> ○ The Service Level Agreement for OSCJC for DGs signatures ○ Progress in the finalization of the 3rd Consolidated Annual Report and Departmental Annual Reports ○ Regular attendance of members at the ISCCJ meetings held at all levels, as well as the collection of signed minutes for each meeting for monitoring purposes; ○ Progress on the Criminal Capacity Research conducted by NPA ○ The roll out of the Integrated Case Management for System (ICMS) by DoJ&CD, and training of court personnel on how to use this system. ○ The litigation on the Bhisho Centre in the Eastern Cape
28 February 2014	<ul style="list-style-type: none"> ○ The adoption of the 3rd Consolidated Annual Report and Departmental Annual Reports for tabling in Parliament; ○ Progress on the Criminal Capacity Research ○ Progress in the litigation on the Bhisho Centre in the Eastern Cape ○ Briefing of the Select Committee for Security and Constitutional Development on the intersectoral implementation of the Act on 23 October 2013 ○ Presentation by the Department of Women, Children and People with Disabilities on country reports and indicators of monitoring children's well-being. ○ Progress in the Roll out of Integrated Case Management for System Child Justice and training of Child Justice Personnel and historic data

4.3 National Operational Intersectoral Committee on Child Justice (OP ISCCJ)

The Directors- General Intersectoral Committee for Child Justice (DG's ISCCJ) established the National Operational Intersectoral Committee for Child Justice (OP ISCCJ) to provide technical assistance, support and advice in all matters relating to the execution of its responsibilities, functions and duties outlined by section 96 of the Act.

The National Operational Intersectoral Committee for Child Justice (OP ISCCJ) consists of representatives from the National implementing Departments, chairpersons of the nine (9) Provincial Child Justice Fora (PCJF), Chapter 9 Institutions, and Non-Governmental Organisations (NGO's) and Civil Society Organisations working in the child justice sector. This Committee meets bi-monthly to execute its operational tasks mandated by the Intersectoral Committee for Child Justice (DG's ISCCJ), and is chaired by the Department of Justice and Constitutional Development. The Department of Social Development is the deputy chair of the Committee.

Operational Intersectoral Committee for Child Justice (OP ISCCJ) met eight (8) times during the period 1 April 2013 to 31 March 2014, and the resolutions taken at these meetings are tabularized as follows:

Table 2: National Operational ISCCJ Meetings and Resolutions

DATES	RESOLUTIONS
30 May 2013	<ul style="list-style-type: none"> DoJ&CD must develop Terms of Reference for the viability study on the continued establishment of the One Stop Child Justice Centre and circulate them to members for adoption The performance of NGO's must be included in the Annual report on areas which they can report on in terms of the Act A revised standardized Reporting template must be drafted by DoJ&CD and sent to members for the finalization of the compilation of the Departmental Annual Reports The need for the implementing departments to allocate dedicated budget for child justice. DoJ&CD must fast-track the transfer of the 2013/14 budget allocations to the regional offices. Draft TOR's for diversion research discussed, and a resolution taken that it must be re-circulated to all members by the secretariat office; DSD to deliver training programmes relating to matters of the under 10 year-olds
27 June 2013	<ul style="list-style-type: none"> North West Child Justice Fora to submit Service Level Agreement for Matlosana One Stop Child Justice Centre Draft 3rd Annual report was dealt with at length and it was resolved that it be circulated to members for adoption
25 July 2013	<ul style="list-style-type: none"> The Department of Women, Children and People with Disabilities to submit their 3rd Annual report for incorporation into the Consolidated Annual Report The South African Police Service and Department of Social Development to amend the Draft 3rd Annual report, as decided in the meeting and also review the accuracy of their statistics

DATES	RESOLUTIONS
	<ul style="list-style-type: none"> • Department of Justice and Constitutional Development and Department of Correctional Services to compare and review their statistical reports • DoJ&CD Secretariat to incorporate the adopted inputs received on Terms of Reference -diversion research • The chairs of the Regional Child Justice Fora to invite the membership of the Department of Women, Children and People with Disabilities into their Fora
29 August 2013	<ul style="list-style-type: none"> • Public Education and Communication Programme to be developed by the Task Team • DoJ&CD to commence with the training of court personnel on Child Justice Integrated Case Management System • Chairs of the Regional Child Justice Fora to write letters to the Health Provincial Heads concerning the non-attendance of the Health representatives at Fora meetings and feedback. Should there be no response, this matter would be escalated to the DG ISCCJ.
26 September 2013	<ul style="list-style-type: none"> • Workshop to be held on 14 October 2013 to develop a baseline report on the Viability of the Continued Establishment of the One Stop Child Justice Centres. • Committee members must identify impracticable provisions of the Act, which must be discussed during the workshop of the 14 October 2014 • National Prosecuting Authority must finalize their research report on criminal capacity • Department of Justice and Constitutional Development to chair the Public Education Task Team established to review and develop a more preventative and impactful programme of action for all stakeholders • DoJ&CD to develop a Public Education and Awareness Raising Monitoring Template and email it to members for inputs and comments • Training Task team to develop template for the monitoring of training on the Act • Diversion Research Task Team was established and given a task to identify gaps from the NOC report, and advise Committee on how they can be addressed; • Presentation of 6 months reports in the next ISCCJ meeting by the departments • Media Crisis Response Task team was established to advise the Committee on how stakeholders should collectively respond to media reports.
31 October 2013	<ul style="list-style-type: none"> • North West Forum to report on the progress in the signing of the Service Level Agreement for Matlosana One Stop Child Justice Centre by the Social Development MEC • Baseline Study report adopted by the Committee and the Department of Justice and Constitutional Development requested to report on progress to acquire researchers to conduct the Viability Study on the establishment of One Stop Child Justice Centres • Diversion Research Task Team to give further progress in the next meeting

DATES	RESOLUTIONS
	<ul style="list-style-type: none"> • Department of Justice to report back on Parliamentary briefing on the intersectoral implementation of the Child Justice Act; • Task Team on Public Education & Communication to report on the Monitoring tool • Mpumalanga Forum to report on progress on the outstanding cases in Emalahleni • IJS to present on the challenges relating to the regular submissions of statistics by the Departments • Task Team to report on the progress in the development of a training template • Departments to present on their Half Year Reports on the implementation of the Act (1 April 2013 until 30 September 2013) • 3rd Consolidated Annual Report adopted and must be escalated to the DG ISC for further adoption.
28 November 2013	<ul style="list-style-type: none"> • Department of Social Development to request political intervention on the delay in the signing of the Motlasane Service Level Agreement by the North West MEC • Department of Justice and Constitutional Development to pursue and seek intervention against the delay in the execution of the Viability Study on the establishment of One Stop Child Justice Centres • Task Team to report on further progress on the Intersectoral Public Education & Communication programme of action • ICMS to report on the remaining deployment of the ICMS Child Justice system in courts
27 February 2014	<ul style="list-style-type: none"> • Department of Social Development to make presentation on diversion services available to children in conflict with the law • Department of Justice and Constitutional Development to report back on designation of Phuthaditjaba OSCJC • Department of Social Development to report on NGO funding in KZN • Department of Health will provide the list of Health coordinators to be contacted in connection with the evaluation of criminal capacity of children • Legal Aid SA to provide list of Legal Aid SA Offices • Legal Opinion presentation on transfer of school by Department of Social Development • The final revised 3rd Consolidated Annual Report adopted for escalation to the DG ISCCJ for further adoption.

4.4 Provincial Child Justice Fora (PCJF)

The Provincial Child Justice Fora (PCJF) were established primarily to ensure the effective monitoring of implementation processes at provincial level. They report directly to the National Operational Intersectoral Committee for Child Justice (OP ISCCJ). Each forum consists of mandated representatives from the different Departmental role-

players, Institutions, Non-Governmental Organisations (NGO's) and Civil Society Organisations and other relevant stakeholders

Provincial Child Justice Fora (PCJF) meetings are held at least monthly. Issues that cannot be resolved at a Provincial level are escalated to the National Operational Intersectoral Committee for Child Justice (OP ISCCJ). This engagement leads to the Act being uniformly implemented throughout the country.

5. KEY PRIORITY PERFORMANCE AREAS IN THE NATIONAL POLICY FRAMEWORK FOR CHILD JUSTICE

The National Policy Framework for Child Justice sets out 10 key priority performance areas for the implementation of the Act, and this report will focus only on the performance areas that fall within the mandate of the Department.

5.1 Building Capacity within the Department

The implementation of the Act requires capacity building within the child justice system both in terms of human resource skills and knowledge, as well as the availability and strengthening of physical infrastructure.

Human resource capacity building further implies that the Department must prioritize the allocation of additional resources and budgets, where necessary, to appoint, train and capacitate the dedicated personnel to ensure the optimal implementation of the Act by our courts. The following is the progress made by the Department in building capacity of the court personnel:

Table 3: Training

Province	Total Number of officials trained	Content of the training	Impact of the training
KwaZulu-Natal	35 Supervisors	<ul style="list-style-type: none"> • Duties of the clerks as per the Provisions of the Act • The capturing of statistics on the NOC Tool • Daily registers 	<p>The Supervisors are now better equipped to manage their clerks more effectively as they have been taken through the duties of the clerks; they were provided with the circulars in relation to child justice that have been drafted in the Province.</p> <p>They now understand what information is required to complete the NOC Tool resulting in more accurate statistics being submitted.</p>
	31 Clerks of the Court	<ul style="list-style-type: none"> • Duties of Clerks in respect of the Child Justice Act • Capturing of stats on the NOC tool 	Clerks have a better understanding of their responsibilities and the capturing of statistics on NOC
Eastern Cape	85 Clerks of the Court	<ul style="list-style-type: none"> • Overview of the Act and its operations. This training was part of training on ICMS Child Justice Tool to assist clerks to have a clearer understanding of processes that a child goes through within the criminal justice system. 	Clerks have a better insight into the Act and the importance of collecting data
Gauteng	40 Child Justice and Court Clerks trained	<ul style="list-style-type: none"> • Integrated Case Management System 	Courts are now ready to roll out the system
Limpopo	16 Officials were trained, which include Child Justice Clerks and Domestic Violence Clerks	<ul style="list-style-type: none"> • Formal training (Justice College) for Child Justice on 25 to 26 July 2013. 	Officials have better knowledge and understanding when implementing the Acts.

Province	Total Number of officials trained	Content of the training	Impact of the training
	30 Court staff	<ul style="list-style-type: none"> Officials were trained on the deployment of ICMS Child Justice System which includes amongst others, Child Justice Court clerks, E-Schedulers, Criminal Court Clerks and other staff who are dealing with the capturing of such cases at court. Each cluster was trained for 02 days from 03-18 September 2013 at Mankweng Magistrate court. 	<p>Equip court staff with the knowledge and understanding of Child Justice Processes and ICMS Child Justice.</p> <p>Proper and correct recording of cases on ICMS system.</p>
North West	50 Court officials at Rustenburg.	<ul style="list-style-type: none"> Workshop held on issues relating to Matlosana One Stop Child Justice Centre. (Service Level Agreement) 	<p>Service Level Agreement was drafted.</p> <p>All Stakeholders are aware of their responsibilities as far as the OSCJC at Matlosana is concerned</p>
Western Cape	17 Court officials	<ul style="list-style-type: none"> Child Justice Act 	Trained officials are able to assist members of the public in a much more efficient and effective manner
Free State	76 Clerks of the Court	<ul style="list-style-type: none"> Child Justice Act 	Clerks have a better understanding of their responsibilities in terms of the Act
Mpumalanga	44 Clerks of the Court	<ul style="list-style-type: none"> The purpose of the Child Justice Act and the salient features thereof and role of clerks in Child Justice Court. Provision- by- 	<p>Equip court staff with the knowledge and understanding of Child Justice Processes and ICMS Child Justice.</p> <p>To ensure proper and correct</p>

Province	Total Number of officials trained	Content of the training	Impact of the training
		provision discussion of section 28 of the Bill of Rights on the rights of the child <ul style="list-style-type: none"> • Schedule 1 to 3 of offenses and diversion options including various sentences 	recording of cases on ICMS system.
Northern Cape	28 Court Officials	<ul style="list-style-type: none"> • Duties of Clerks in respect of the Child Justice Act • Capturing of statistics on the ICMS Child Justice 	Clerks have a better understanding of their responsibilities and the capturing of statistics on ICMS
Decentralized training conducted by Justice College	127 child justice clerks	<ul style="list-style-type: none"> • Implementation of the Child Justice Act by the clerks and other court personnel 	Better performance by clerks in courts
Training on the Act: SAJEI	15 Magistrates	<ul style="list-style-type: none"> • Implementation of the Child Justice Act 	Effective implementation of the Act by presiding officers
Total trained	594		

The following Table shows the comparative performance of the Department since the implementation of the Act in 2010:

Table 4: No of Personnel trained by the Department since the implementation of the Act

Year	2010/2011	2011/2012	2012/2013	2013/2014
No of personnel trained by the Department	692	695	517	594

Table 5: Human Resource Capacity

During this period of reporting, the Department renewed the contracts of the following personnel for Child Justice:

Province	Personnel Appointed	Number of Personnel appointed
KwaZulu-Natal	Child Justice Clerks	19
Eastern Cape	Child Justice Clerks	3
	Child Justice Forum Coordinator (Admin Officer)	1
Free State	Child Justice Clerks	11
	Child Justice Administration Officer	1
Gauteng	Child Justice Clerks	13
Limpopo	Child Justice Clerks	8
North West	Child Justice Clerks	7
	Child Justice Administration Officer	1
Western Cape	Child Justice Clerks.	18
Northern Cape	Child Justice Clerks	11
	Child Justice Administration Officer	1
Mpumalanga	Child Justice Clerks	7
	Child Justice Administration Officer	1
	Legal Administration Officer	1
Total		103

The Department's Organisational Development Design team conducted a work study for Child Justice Clerk posts with the aim of converting them into permanent posts. The creation of 113 posts (created over the four (4) years since the implementation of the Act) was consequently approved, and the Department is now in a process filling these posts.

5.2 Preliminary Inquiries

A preliminary inquiry is an informal pre-trial procedure which is inquisitorial in nature; and it may be conducted in a court or any other suitable place. The objectives of a preliminary inquiry are to:

- consider the assessment report of the probation officer, with particular reference to—

- (i) the age estimation of the child, if the age is uncertain;
- (ii) the view of the probation officer regarding the criminal capacity of the child if the child is 10 years or older but under the age of 14 years and a decision whether an evaluation of the criminal capacity of the child by a suitably qualified person referred to in section 11(3) is necessary; and
- (iii) whether a further and more detailed assessment of the child is needed.

- establish whether the matter can be diverted before plea;
- identify a suitable diversion option, where applicable;
- establish whether the matter should be referred to a children's court if the child is because he or she may be in need of care and protection;
- ensure that all available information relevant to the child, his or her circumstances and the offence are considered in order to make a decision on diversion and placement of the child;
- ensure that the views of all persons present are considered before a decision is taken;
- encourage the participation of the child and his or her parent, an appropriate adult or a guardian in decisions concerning the child; and
- determine the release or placement of a child, pending:
 - (i) the conclusion of the preliminary inquiry;
 - (ii) the appearance of the child in a child justice court; or
 - (iii) the referral of the matter to a children's court, where applicable.

A preliminary inquiry must be held in respect of every child who is alleged to have committed an offence, except where:

- the matter has been diverted by a prosecutor;
- the child is under the age of 10 years; or
- the matter has been withdrawn.

A child’s appearance at a preliminary inquiry is regarded as his or her first appearance before a lower court, in terms of section 50 of the Criminal Procedure Act, 1977 (section 43 of the Act).

During the reporting period there has been a decrease in the number of preliminary inquiries conducted during 2013/2014 when compared with the corresponding period in 2012/2013. The number of preliminary inquiries is reflected in the table below.

Table 6: Preliminary inquiries

PRELIMINARY INQUIRIES (2010-2013)			
2010/2011	2011/2012	2012/2013	2013/2014
14 471	17 822	25 517	21 563
TOTAL	69 893		

As soon as the annual reports of other Departments have been received, the decrease in the preliminary enquiries held will be compared to the number of charges against children registered by the South African Police Service and the number of assessments conducted by the Probations Officers to ascertain if the decrease is in line with the numbers recorded by them respectively. This decrease may also be linked to a possible increase in the number of children being diverted in terms of section 41 of the Act (before the preliminary inquiry for Schedule 1 offences) or to a possible decrease in the number of children entering the child justice system.

Section 50 of the Act provides for the referral of a child to the Children’s Court if it appears to the inquiry magistrate that the child is a child in need of care and protection. During the reporting period the number of children referred to the Children’s Court during the preliminary inquiry decreased in comparison to the same period in the preceding two (2) years and can be tabularized as follows:

Table 7: Number of Children referred to the Children’s Court during Preliminary inquiries

Cases Referred to the Children’s Court			
Year	2011/2012	2012/2013	2013/2014
	4 511	3 856	3 169
TOTAL	11 536		

The decrease in the number of children referred to the Children’s Court may be attributed to the decrease in the number of preliminary inquiries held in 2013/2014.

5.3 Sentencing

One of the objectives of the Act is to give effect to South Africa’s international obligations in terms of the United Nations Convention on the Rights of the Child, 1989 and to the provisions in the Constitution, by ensuring that imprisonment of children be used as a measure of last resort and only for the shortest appropriate period of time. The focus is therefore to encourage the utilization of community-based sentences and on the reintegration and rehabilitation of children in conflict with the law.

The objectives of sentencing in terms of the Act include to:

- Encourage the child to understand the implications of and be accountable for the harm caused;
- Promote an individualized response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society;
- Promote the reintegration of the child into the family and community; and
- Use imprisonment only as a measure of last resort and only for the shortest appropriate period of time.

The Act provides for various sentencing options:

- Community-based sentences;
- Restorative justice sentences;
- Fines or alternatives to fines;
- Correctional supervision;

- Postponement or suspension of passing of sentence;
- Compulsory residence in a child and youth care centre; and
- Imprisonment.

During the reporting period the sentences passed to children convicted of committing offences can be summarised as follows:

Table 8: Types of sentences

Type of Sentence	2011/2012	2012/2013	2013/2014
Community-based sentences	795	687	753
Restorative justice sentences	405	508	402
Fines or alternatives to fines	37	Fines: 34	Fines: 43
		Alternatives: 44	Alternatives: 50
Correctional supervision	302	179	188
Compulsory residence in a child and youth care centre	353	335	381
Postponement or suspension of passing of sentence	Not yet available	296	206
Imprisonment	94	98	49

From the above table it is clear that there has been a significant decrease in the number of children sentenced to imprisonment, and an increase in the number of children sentenced to compulsory residence in a child and youth care centre. These figures may be construed as indicative of the improved implementation of the Act, which promotes the imposition of non-custodial sentences against children.

The number of sentences to correctional supervision and community-based sentences has increased steadily since 2011/2012. This is encouraging and can be interpreted as an achievement towards realizing one of the aims of the Act, namely to use the detention of children as a measure of last resort.

5.4 Establishment of One Stop Child Justice Centres

Section 89 of the Act provides that the Minister of Justice and Constitutional Development, in consultation with the Ministers of Police, Social Development and Correctional Services, may establish One Stop Child Justice Centres.

As soon as the implementation of the Child Justice Act, 2008 had commenced in April 2010, the Department of Justice and Constitutional Development and other implementing stakeholders developed the National Guidelines for the Establishment of the One Stop Child Justice Centres. These Guidelines were subsequently approved by the DG's Intersectoral Committee for Child Justice. Due to the lack of adequate budget to establish One Stop Child Justice Centres, the National Guidelines required stakeholders to identify existing buildings that can be converted into One Stop Child Justice Centres. This principle has been in operation since the commencement date of the implementation of the Act. However, after the establishment and designation of 3 One Stop Child Justice Centres, the implementing Departments could not find any existing building that could be upgraded into One Stop Child Justice Centre within reasonable budget. The Provincial Child Justice Fora explored their respective provinces and found that the identified buildings would fall short of meeting the structural requirements set out by the National Guidelines for the Establishment of One Stop Child Justice Centres (OSCJC).

Thus far, the Department has succeeded to establish the following centres:

Province	Centre	Year of Establishment
Eastern Cape, Port Elizabeth	Nerina OSCJC	2010
Free State, Bloemfontein	Mangaung OSCJC	2011
North West, Klerksdorp	Matlosana	2013
TOTAL	03	

Subsequent to the unavailability of suitable existing buildings, the Department of Justice and Constitutional Development initiated a process of conducting a viability study into

the continued establishment of One Stop Child Justice Centres. Preceding the research, the National Operational Intersectoral Committee for Child Justice held a working session in November 2013, mainly to review the process of establishing One Stop Child Justice Centres with the aim of identifying challenges and possible solutions. From this session a baseline document was drafted to assist in the execution of the viability study. In the meantime, the establishment of One Stop Child Justice Centres has been halted pending the outcome of the viability study, which will be finalized in the next financial year, i.e. 2014/2015.

The viability study will focus on a review of the current process and documentation used in establishing OSCJC's to determine challenges and corrective measures, and also to investigate the viability of continued establishments of these Centres. It must be noted that section 89 of the Act is not peremptory as it gives the Minister the option of establishing the OSCJC's when it is feasible to do so.

5.5 Resources and Budgets

The Department is still the only implementing Department that allocates dedicated budget for the implementation of the Act. This budget is shared with the National Prosecuting Authority and Legal Aid South Africa. In 2013/2014 an amount of R15 105 000 was allocated towards the implementation of the Act as follows: An amount of R2 407 394 was allocated to the Chief Directorate: Promotion of the Rights of Vulnerable Groups based at the national office; R2 382 606 was allocated to the 9 Regions to execute Public Education initiatives; R 2 000 000 was allocated to the management of One Stop Child Justice Centres and other Cluster activities; R1 605 000 to the National Prosecuting Authority; and R 6 000 000 to Legal Aid South Africa to appoint legal practitioners to represent children in conflict with law. This report reflects all work done from this budget.

5.6 Public Education and Communication

Successful implementation of the Act depends, to a large extent on the support for and acceptance of children in conflict with the law by their parents and their communities. The failure to effectively inform the public and the media about the goals of the Act and

its benefits may definitely have a negative impact on the implementation of the Act. Government Departments and civil society are therefore expected to prioritize public awareness-raising and communication interventions on the new child justice system so as to gain meaningful support of the parents and communities at large.

The public education and communication initiatives held by the Department during this reporting period are as follows:

Table 9: Public education and communication events

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
KwaZulu- Natal	Prince Myisheni Hospital RK Khan Hospital Kwa Dukuza Magistrates Court	Outreach event Outreach event Advice Desk	Educate the members of the public on the Child Justice Act	600 community members
	2 events at schools during February 2014	Schools Outreach Campaign	Inform the learners on the objectives and purpose of the Child Justice Act. Advise them of their rights as children.	417 Learners
Eastern Cape	Mount Ayliff	Awareness campaign during Crime Victims' Rights Week.	The event was aimed at educating communities on their rights and included learners from 8 schools in that locality	±380 community members and learners. The perceived impact is that the information given dispelled some of the negative perceptions that people have about the Act.

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
	Nqamakwe	Awareness campaign held during the 16 days of Activism for No Violence Against Women & Children on 29 November 2013	The Regional Office partnered with the NPA to conduct a Road Show aimed at sensitizing community members of Ngcisininde, which is a high crime area. A presentation was made on the Child Justice Act highlighting factors taken into consideration for diversion in order to allay community fears that criminals are just let off the hook.	±180 community members. The perceived impact is that the information given dispels some of the negative perceptions that people have about the Act.
Free State	Clocolan Henneman Two Schools in Clocolan: Tshepang High School and Clocolan High School. Bothaville Hlaboloha School Two Schools in Henneman: Bahale High School and Kheleng High School	Child Protection Week- 30 May 2013	To inform children about the Act and to prevent child offending	500 children were reached and questions raised increased public knowledge of the Act
	19 August 2013: Ventersburg 20 August 2013 : Parys 21 August 2013 : Harrismith 22 August 2013	Access to Justice Week Awareness Campaign	To assist the children who commit crime to turn their lives around and become productive	800 public members were reached

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
	: Lady Brand 23 August 2013: Boshoff		members of society.	
	6 events at different areas	Awareness campaigns	To sensitize youth and parents on crime and how it impacts the future growth and development of our youth. Availability of our Child Justice courts/ One Stop Centres in the region. Availability of schools of industries.	1000 members of the community
Gauteng	12 events	The Gauteng Region had outreaches on Child Justice and other related Acts	Educating members of communities on issues relating to maintenance and child justice.	+/- 2000 people reached from the whole Region
		Access to Justice Week from 26 th – 30 th August 2013	Educating members of communities on the rights and obligations of citizens in terms of Child Justice and other related Acts	
		Crime Victims' Rights week from 16 th – 20 th September 2013.	Educating members of Communities on the rights and obligations of victims of crime in terms of Child Justice Act and other related Acts	
		Presentation on	Creating of	

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
		Child Justice to the Pretoria Central High school learners	awareness on the Act	
Limpopo	Bosasa Polokwane and Mavambe were visited during child protection week (27 and 30 May 2013), detainees were educated about Child Justice Act.	Detainee outreach initiative	Awareness raising on Children's Act and Child Justice Act	+171 detainees
	On the 28 May 2013 during the Child protection week, there was a campaign walk from Mankweng Magistrate Court to Mankweng Community hall	Community outreach sessions and a public march	Awareness raising on Children's Act and Child Justice Act	+ 400 community members
	During access to justice week (19-23 August 2013), at Praktiseer Magistrate Court (Gamotodi, Ribacross, Leboeng, Gautswane and Alverton) where communities members were educated about justice services and Child Justice Act.	Community Sessions and Door to door campaigns	To raise awareness about services offered by DOJ & CJ and other stakeholders in child justice	+ 2000 community members
	Restorative	Community	To empower the	--960 youth

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
	Justice week: 22 November 2013 at Moletji Moshate; Molepo Dihlopaneng on the 11 November 2013; GaMamabolo Moshate on the 15 November 2013; Musina on the 29 November 2013; Ritavi on the 22 November 2014 ; Praktiseer 22 November 2013	outreach targeting youth and elderly people:	community at larger to have knowledge of the Act and procedures followed in terms of the Act	and elderly people
	During the week of the 10-14 March 2014; 22 schools visited around Phalaborwa,.	Human rights awareness campaign at schools	Students have knowledge of their rights and how the DOJ &CD can assist in implementing the Child Just Act	+5000 students
North West	Radio interview at Motswedding FM	Public awareness via radio station	To clarify some issues to the public relating to children in conflict with the law.	Public have an insight of what the Child Justice Act is.
Northern Cape	33 public awareness events	Child Protection Week Community information sessions Partnership through exhibitions Community sessions Exhibitions on	To increase public understanding on Child related legislations, justice services and careers to the Learners and communities.	5 862 people reached, targets were reached; communities and learners are better and well informed through these sessions.

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
		16 days of activism Door to door campaigns Children Christmas session Learners sessions at four different schools(grades 7,11 and 12)		
Mpumalanga	School visits at Emalahleni municipality 10 to 14 February and 24 to 28 March 2014	Presentations to the learners on: Information sessions and school sessions in Nkangala district municipality Door to door campaign	To educate learners on: sexual offences; child justice; children's rights; anti-drug master plan and combating trafficking in persons.	10 000 Learners and educators reached Learners are now able to differentiate between their rights and responsibilities.
	On the 30 th and 31 st March 2014 training on Child Justice and other related Acts for both the communities of Pienaar (Msogwaba) and Masoyi.	Campaign organized in partnership with Pienaar SAPS cluster.		A total number 3 770 people were reached.
Western Cape	Goedegedacht Awareness Farm workers	16 days of activism	To ensure rural children are made aware of their rights	2 000 farmworker Children
	Kayamandi School	Human Rights Month Workshops held with a key focus on children.	To ensure vulnerable children including children are made aware of their rights	500 children

Province	Place	Type of initiative	Objectives / goals of the event	Number of people reached /Impact of the event
Total people reached				+36 540

5.7 Development of Necessary IT and IJS Systems to support Information Management Systems

The section 96(1)(e) of the Act requires the establishment of an integrated information management system to enable effective monitoring, analysis of trends and interventions, to map the flow of children through the child justice system and to provide qualitative and quantitative data relating to various identified areas.

In an effort to comply with this requirement, the Department of Justice and Constitutional Development has developed the Integrated Child Management System (ICMS) Child Justice which has 80+ fields and is also intended to capture all related fields that the National Prosecuting Authority is currently reporting on in terms of the Act.

The Integrated Child Management System (ICMS) Child Justice is aimed at streamlining the implementation of the Act and the reporting on the progress of such implementation. It has been in development since 2010 and was piloted during this reporting time. Some of the functionalities of the system are:

- Case Registration
- Preliminary Inquiry (Age Determination, Criminal Capacity, etc.)
- Diversion information
 - Capture, Update, Postpone & Outcome
- Trial Information
 - Hearing, Legal Reps, Postponements & Outcome.

The last production deployment done on the system was on the 8th of July 2013.

5.7.1 System Piloting

After the deployment of the system, it was rolled-out to the two Pilot Courts, i.e. Magistrate's Court, Pretoria North and Magistrate's Court, Temba. Adequate training was provided to the Child Justice Court clerks in these two courts before the use of system commenced on the 8th of July 2013.

5.7.2 Train-the-trainer workshop

The train-the-trainer workshop was conducted from the 5th to the 7th of August 2013. All the IT-Coordinators from all the regions attended, except IT Coordinators from North West, Western Cape and Kwazulu-Natal. The training was conducted as per schedule below:

Table 10: IT-Coordinator Training Schedule

Training Date	Agenda Item
5 August 2013	Business Process Overview
6 August 2013	System Training
7 August 2013	System Issues & Deployment Plan

The deployment plan was finalized.

5.7.3 End-user training sessions

End-user trainer-the-trainer was conducted as per the deployment plan. All the Regions have been trained. However, some of the courts did not attend the scheduled training sessions in their regions. The Regions have been encouraged to ensure that all their courts are trained for Child Justice.

IT-Coordinators have been trained and should be in a position to further train the end users on how to utilize the system. Follow-up site visits will be done to ensure that all courts are trained and using the system.

Table 11: Total number of court vs Courts trained and capturing on the Child Justice System

					Reporting Period: Feb 2014 - Apr 2014		
Region	Total	Trained	%Trained	Remaining Courts to be trained	Capturing	% Capturing	Not Capturing
Eastern Cape	84	78	93%	6	32	41%	46
Free State	66	59	89%	7	27	46%	32
Gauteng	47	26	55%	21	14	54%	12
KwaZulu-Natal	77	9	12%	68	13	144%	-4
Limpopo	37	36	97%	1	20	56%	16
Mpumalanga	38	24	63%	14	17	71%	7
North West	34	28	82%	6	13	46%	15
Northern Cape	35	25	71%	10	12	48%	13
Western Cape	55	38	69%	17	13	34%	25
Grand Total	473	323	68%	150	161	50%	162

68% of the courts have been trained. The regions must make sure that IT-Coordinators to train the remaining courts.

Standard Operating Procedures have been developed and finalized. System usage currently stands at 50% of the courts, and efforts are underway to ensure that all courts are capturing the data in the system.

6. QUALITATIVE AND QUANTITATIVE DATA IN TERMS OF SECTION 96(1)(e) OF THE ACT

As stated the Act requires qualitative and quantitative data on various points or areas in the child justice system in an effort to track the flow of children through the child justice system. The point or areas that fall within the Department of Justice and Constitutional Development's mandate are highlighted as follows:

6.1 Bail and Placement

The inquiry magistrate must decide on the release or placement of the child, waiting finalization of the preliminary inquiry or trial, if the matter has been referred to the child justice court for trial. If the child is to be released, the inquiry magistrate must decide whether the child may be released in the care of a parent, guardian or appropriate adult. The child may also be released on bail or on his/her own recognizance. If the child is to

be detained, the inquiry magistrate must decide whether detention should be in prison, a police lockup or in a child and youth care centre.

The bail and placement of children waiting trial conducted during the reporting period were as follows:

Table 12: Bail and placement of children alleged to have committed offences

Period	In care of parent/guardian/appropriate adult	Bail	In prison	In child and youth care centre	Police lockup
2011/2012	4 664	261	565	1 534	174
2012/2013	4 582	283	733	1 721	110
2013/2014	5 314	327	789	1 440	76
TOTAL	14 560	871	2 087	4 695	360

From the above table, it is clear that there has been a significant decrease in the overall number of children that were detained while awaiting trial. The decrease is not only recorded for children awaiting trial in child and youth care centres but also for children awaiting trial in police lockups.

There was also a significant increase in the number of children that were released in the care of a parent/guardian/appropriate adult while awaiting trial and also in the number of children released on bail.

These figures represent progress in the effective implementation of the Act, and are very encouraging since they give effect to the principle that detention of children should only be used as a measure of last resort.

6.2 Trials

If a charge was not withdrawn, diverted or referred to the Children’s Court during the preliminary inquiry, the matter must be referred to the child justice court for trial. The outcomes of trial proceedings held in the child justice court during the reporting period were as follows:

Table 13: Outcome of trials in the child justice courts

Period	Guilty	Not guilty/ acquitted	Withdrawn	Struck off the roll
2011/ 2012	1 128	794	1 637	1 000
2012/ 2013	1 443	628	1 384	1 123
2013/2014	1 179	650	1 179	949
TOTAL	3 750	2 072	4 200	3 072

From the above table it is clear that there has been a significant decrease in the number of guilty verdicts during the period 1 April 2013 to 31 March 2014 compared the previous reporting period. The number of acquittals has slightly increased. The withdrawals and cases struck of the roll have decreased. These reduced figures may be linked to the decrease in the number of preliminary inquiries and they will be compared to the number of charges against children registered by the South African Police Service and the number of assessments conducted by the Probations Officers as soon as their reports are received to ascertain if the decrease is in line with the numbers recorded by these Departments respectively.

6.2. Appeals and Reviews

Sections 84 and 85 deal with appeals and reviews respectively.

During the reporting period there were nine (9) appeals, two (2) appeals were refused and three (3) granted. There were also 65 reviews of which six (6) were confirmed.

6.3 Sexual Offences Committed by Children

The number of children alleged to have committed sexual offences during the reporting period decreased as illustrated below:

Table 14: Number of sexual offences committed by children

Sexual Offences Committed by Children		
2011/2012	2012/2013	2013/2014
2 968	3 619	3 305
TOTAL	9 892	

6.4 Children used by Adults to Commit Crime

In terms of section 92 of the Act provides that if it comes to the attention of any court official or probation officer that a child has been used by an adult to commit a crime, that adult must be reported to the South African Police Service.

Table 15: Number of children used by adults to commit crime

Children used by Adults to Commit Crime		
2011/2012	2012/2013	2013/2014
988	1 071	735
TOTAL	2 794	

During the reporting period a total of 2 794 matters were reported where a child has been used by an adult to commit a crime. During the three reporting period a decrease of 26% was recorded.

7. NEW LEGAL DEVELOPMENTS

7.1 Case Law

7.1.1 Reviewability of cases involving child offenders

There have been conflicting judgments in the Provincial Divisions of the High Court regarding the interpretation of section 85(1)(b) of the Act dealing with the reviewability of sentences of imprisonment and compulsory residence in child and youth care centres involving children 16 years or older, but under the age of 18 years. The question of the reviewability of cases involving the sentencing of children, who were legally represented, to compulsory residence in a child and youth care centre came before different Divisions of the High Court recently and conflicting judgments were handed down.

The Western Cape Division of the High Court handed down a judgment in the *S v Ruiter* (2012) ZAWCHC 265 (handed down on 14 June 2012) that due to the fact that the High Court is the upper guardian of all minors within its jurisdiction area, all cases referred to

in section 85 of the Act should always be subject to review regardless of whether or not the child was legally represented at the trial.

However, in the matter of *S v JN* (Case number 12/2012 handed down on 28 February 2012), the North West High Court, Mafikeng ordered that a sentence of imprisonment or compulsory residence imposed upon a child, as contemplated in section 85 of the Act, who was represented by a legal adviser, is not subject to automatic review. In this case the child offender pleaded guilty to three (3) counts of housebreaking with the intent to steal and theft in the Swartruggens Magistrate's Court. He was sentenced to compulsory residence in a child and youth care centre for a period of five (5) years. The child offender was legally represented throughout the proceedings.

Because of the conflicting judgments, the Magistrate, Port Elizabeth referred the matter *S v S* (Case number 100/2012 handed down on 30 March 2012) to the Eastern Cape Division of the High Court for a determination on whether or not proceedings of the same nature where the child had been legally represented should be subject to review proceedings in terms of section 85 of the Act. In this matter the child offender, aged 17 years, was charged with Using a Motor Vehicle without the consent of the owner (contravention of section 66(2) read with section 89(1) of the National Road Traffic Act, 1996 (Act 93 of 1996)) and with a count of Housebreaking with the Intent to Steal and Theft. The child offender was legally represented, pleaded guilty and was convicted on both counts. Following the recommendation in the probation officer's pre-sentence report, the child offender was sentenced in terms of section 76(1) of the Act to compulsory residence in a child and youth care centre.

The review court decided that section 85(1)(a) and (b) applies to all cases referred in these sub-sections are reviewable despite the fact that the child may have been legally represented. In this instance the court found that the proceedings were in accordance with justice and confirmed the proceeding in the Magistrate's court.

This appears to be the correct interpretation of section 85 of the Act, especially in light of the provisions of section 83 of the Act which states that a child may not waive his or

her right to legal representation when appearing before a child justice court. All children sentenced to compulsory residence in a child and youth care centre by a child justice court would have legal representation and the presence or absence of a legal representative could therefore not play a role in the reviewability of a sentence of imprisonment or compulsory residence in a child and youth care centre.

In the matter *S v LM (1) SACR 188 (WCC) 2013*, the Western Cape High Court decided:

All cases are subject to automatic review in terms of the provisions of section 85 of the Act where a child was:

- (a) below the age of 16 years, or
- (b) 16 years or older and under the age of 18 years, if the sentence to imprisonment was not wholly suspended, or to detention in a child and youth care centre, or
- (c) if sentenced to a period of imprisonment after a suspended sentence was put into operation.

This would be irrespective of:

- (i) the duration of the sentence or the length of time the judicial officer had held the rank of magistrate; or
- (ii) whether the child was legally represented; or
- (iii) whether the child was sentenced by a regional court.

7.1.2 Diversion

Section 53(2)(a) of the Act provides that level one diversion options are applicable to Schedule 1 offences. The question of the utilization of a level one diversion option in respect of a Schedule 2 or 3 offence was considered in two cases in the KwaZulu-Natal High court, Pietermaritzburg.

In the matter *S v Jonah Kissonduth* (Case number R6664/13 delivered on 8 October 2013) the 14 year old child offender appeared in the preliminary inquiry on a charge of possession of cocaine. During the preliminary inquiry, following assessment reports by

the probation officer and the diversion service provider, the inquiry magistrate ordered that the child be diverted and a supervision and guidance order was made. The matter was referred on special review by the director of public prosecutions.

A statutory offence for which the maximum penalty is imprisonment for a period exceeding 5 years falls under Schedule 3 of the Act. The possession of cocaine therefore falls within Schedule 3 of the Act since the maximum penalty is imprisonment for a period not exceeding 15 years or a fine as the court deem fit. The review court pointed out that the Act requires the Director of Public Prosecutions to indicate in writing that a Schedule 3 offence may be diverted. The review court also stated that a supervision and guidance order is a level one diversion option and therefore not suitable for a Schedule 3 offence. In terms of section 53(2) (b) of the Act level two diversion options apply to Schedule 2 and 3 offences. The assessment reports by both the probation officer and the diversion service provider failed to indicate that the child acknowledged responsibility for the offence. According to the available information the child conveyed a parcel for an adult and he only realized that there was cocaine in the parcel after the police stopped and searched him. He admitted that the cocaine was his after he was assaulted by the police, indicating that the child was unduly influenced to acknowledge responsibility. The diversion order by the inquiry magistrate was consequently set aside. This case illustrates the importance of the prosecutor and the preliminary inquiry magistrate and or the child justice court to ensure that a child offender was not unduly influenced to acknowledge responsibility for the offence.

In the matter of *S v Sibusiso Cedric Mngomezulu* (Case number R702/13 delivered 17 October 2013) the KwaZulu-Natal High court, Pietermaritzburg once again considered a special review referred by the Director of Public Prosecutions in terms of s 304(4) of the Criminal Procedure Act 51 of 1977. In this matter the 16 year old child offender was diverted on a supervision and guidance order by the inquiry magistrate during the preliminary inquiry. The charge on which the child appeared was unclear because on the written notice the charge was reflected as an attempted robbery, but according to the preliminary inquiry record the prosecutor informed the inquiry magistrate that the charge was of the pointing of a firearm. The review court considered whether the charge

was one of robbery or robbery with aggravating circumstances and therefore whether it was a Schedule 2 or Schedule 3 offence. The court concluded that it did not really make a difference since a level one diversion option may only be applied in respect of Schedule 1 offences. The review court therefore set aside the preliminary inquiry proceedings resulting in the supervision and guidance order being granted, in their totality. The duty of prosecutors to ensure that the conditions of diversion are proportionate to the crime committed was highlighted in this case.

7.2 Judicial Matters Amendment Act, 2013 (Act 42 of 2013)

The Judicial Matters Amendment Act, 2013 was signed into law and published in *Government Gazette* No. 37254 on 22 January 2014. The date of implementation will be announced in due course.

The amendments to the Child Justice Act, 2008 effected by the Judicial Matters Amendment Act, 2013 include changes to further regulate the reporting of any injury sustained or severe psychological trauma suffered by a child while in police custody; to further regulate the holding of preliminary inquiries; to effect certain textual corrections; to further regulate the automatic review of children in certain cases (to accommodate the case law referred to in paragraph 7.1 above); and lastly, to further regulate the expungement of records of certain convictions of children. These amendments are greatly welcomed by the child justice sector for they will certainly remove some of the fundamental impracticalities that hinder the impactful protection of the constitutional rights of a child.

7.3 Judicial Matters Third Amendment Act, 2014 (Act 14 of 2014)

The amendments of the Act in this Act include:

- Section 11 of the Act that deals with the evaluation of the criminal capacity of a child 10 year or older, but under 14 years of age. The amendment allows for different categories of professionals to evaluate the different aspects of the child's development. This amendment was required because psychiatrists and clinical

psychologists indicated that they are not able to assess the moral development of a child as part of the criminal capacity evaluation.

- Sections 77 and 78 of the Act were amended to give effect to the Constitutional Court's judgment in *Centre for Child Law v Minister of Justice and Constitutional Development* 2009(2) SACR 477 (CC). The Constitutional Court ruled that section 51 of the Criminal Law Amendment Act, 1997 (Act 105 of 1997) was unconstitutional as far as it is applicable to children.

Judicial Matters Third Amendment Act, 2014 (Act 14 of 2014) has been signed into law by the President with the date of implementation to be announced.

8. CHALLENGES

One of the biggest challenges facing the Department at present is the unavailability of existing buildings that could be converted into One Stop Child Justice Centres. From the few buildings that have been identified by the Provincial Child Justice Fora, it has been learned that to refurbish each building will cost the Department a considerable amount of money. As indicated earlier, efforts are underway to investigate the viability of carrying on with this mandate. As expressly noted by the Act, the Minister of Justice and Constitutional Development is not obliged to establish these One Stop Child Justice Centres, especially where circumstances do not permit. The report of this viability study will be available in the next financial year.

A further challenge for the Department is the lack of data required for the review of the minimum age of criminal capacity. In terms of section 8 of the Act this review has to be conducted by no later than 1 April 2015. In order to achieve this task, the Department has initiated a robust research study at all our courts which is expected to be finalised in 2014/2015.

The National Prosecuting Authority was tasked with the responsibility to conduct research on the minimum age of criminal capacity and has recommended that the minimum age of criminal capacity remain at 10 years and that the *doli incapax* presumption be retained for children 10 year or older but under the age of 14 years.

9. CONCLUSION

Once again, during 2013/2014 the Department has made significant inroads in the furtherance of the goals of the Act. Under the leadership of the Department, the Intersectoral Committees for Child Justice have continued to fortify collective response, prevention and monitoring in all matters relating to the establishment and strengthening of the child justice system in our country. It is through the relentless dedication of the Department to the cause of children in conflict with law that the Minister of Justice and Constitutional Development has regularly complied with the Act and tabled in Parliament the Annual Reports received from all implementing government stakeholders in the past 3 consecutive years.

It is indeed pleasing to note a further decrease in the number of imprisonment sentences imposed upon children. During the period 2010/2011 to 2013/2014, imprisonment sentences imposed upon children have been reduced from 536 to 49. This is a drastic change in the justice system that indicates that our courts are indeed effectively achieving the goals of the Child Justice Act.

The significant increase in the number of community based sentences and a decrease in the number of children sentenced to compulsory residence in child and youth care centres is further viewed as a positive move towards achieving the child justice system in our country that respects the constitutional rights of children.

The Department further considers it a breakthrough that in the next financial year 113 posts of the child justice clerks will be created as permanent posts. This is just another way of the Department contributing in the fight against the high level of unemployment in our country. It is further believed that the creation of these permanent positions will also go a long way in improving service delivery in the Child Justice Courts.

It is through robust public education initiatives that government can successfully receive the support of parents, guardians and the civil society in the re-integration of children back into their communities. During this period of reporting, the Department, once again, allocated dedicated budget for the execution of its annual programme of action in public education, and had succeeded to reach more than 36 540 people, excluding

figures of the listenership and viewership of media. Through these initiatives, the public is gradually showing support to the realization of the goals of the Act, which stand against creating a hardened criminal out of a child.