



# 2022/23 ANNUAL REPORT

ON THE IMPLEMENTATION  
OF **THE CHILD JUSTICE ACT,**  
2008 (ACT 75 of 2008)



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA





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## OFFICIAL SIGN-OFF

It is hereby certified that this Annual Report on the Implementation of the Child Justice Act, 2008 (Act 75 of 2008) 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 and the areas identified by section 96(1)(e) of the Child Justice Act, which fall within the mandate of the Department of Justice and Constitutional Development. It also reflects the achievements and limitations experienced by the Department as it endeavors to realize the goals of the Child Justice Act, 2008 (Act No 75 of 2008)(the Act). The Report will be submitted to the Minister of Justice and Correctional Services for submission to Parliament in compliance with section 96(3) of the Act.

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# TABLE OF CONTENTS

<b>OVERVIEW</b>	<b>8</b>
<b>CHAPTER 1: THE LEGAL FRAMEWORK IN CHILD JUSTICE</b>	<b>11</b>
1.1 The Child Justice Act, 2008 (Act No 75 of 2008)	11
1.2 Other Applicable Domestic Legislation	11
1.3 International and Regional Instruments	13
<b>CHAPTER 2: GOVERNANCE STRUCTURES</b>	<b>15</b>
2.1 Introduction	15
2.2 The Directors-General Intersectoral Committee for Child Justice (DG ISCCJ)	15
2.3 National Technical Intersectoral Committee for Child Justice (NT ISCCJ)	16
2.3.1 Workshops Conducted by the NT ISCCJ	16
2.3.2 Additional Interventions by the NT ISCCJ	17
2.4 The Provincial Child Justice Fora (PCJF)	18
<b>CHAPTER 3: THE KEY PRIORITY PERFORMANCE AREAS IN THE NATIONAL POLICY FRAMEWORK FOR CHILD JUSTICE</b>	<b>20</b>
3.1 Introduction	20
3.2 Key Performance Areas Applicable to DoJ&CD	21
3.2.1 CAPACITY BUILDING	21
3.2.1.1 Human Capacity	21
3.2.1.2 Capacity Building (Skills Training)	21
3.2.2 PRELIMINARY INQUIRIES	23
3.2.2.1 Outcomes of the Preliminary Inquiries	25
3.2.2.2 Top 10 Crimes Allegedly Committed by Children	26
3.2.2.3 Challenges in Data Management	29
3.2.3 AWAITING TRIAL, BAIL AND PLACEMENT	29
3.2.3.1 Top 10 Charges against Children Awaiting Trial	30
3.2.4 TRIALS	33
3.2.4.1 Top 9 Convictions on Charges	36
3.2.5 SENTENCING	36

3.2.6. MANAGEMENT OF INFRASTRUCTURE FOR THE IMPLEMENTATION OF THE CHILD JUSTICE ACT	38
3.2.6.1 One Stop Child Justice Centre: New PI Hearing outcomes for 2021/22	38
3.2.7. PUBLIC EDUCATION AND COMMUNICATION INTERVENTIONS	41
3.2.8. DEVELOPMENT OF AN INTEGRATED MANAGEMENT SYSTEM	41
3.2.8.1 ICMS Child Justice	42
3.2.9. QUALITATIVE AND QUANTITATIVE DATA COLLECTION IN TERMS OF THE ACT	43
3.2.9.1. Appeals and Reviews	43
<b>CHAPTER 4: THE INTEGRATED JUSTICE SYSTEM (IJS) PROGRAMME CHILD JUSTICE</b>	<b>45</b>
4.1 THE IJS PROGRAMME	45
4.2 ENABLING THE DIGITAL EXCHANGE OF INFORMATION BETWEEN DEPARTMENTS IN THE CRIMINAL JUSTICE SYSTEM	45
4.3 SUPPORTING CHILD JUSTICE THROUGH SYSTEM INTEGRATIONS	46
4.4 KEY 2022/2023 ACHIEVEMENTS	47
4.5 PROVIDING SUPPORT TO THE INTERSECTORAL COMMITTEE FOR CHILD JUSTICE	49
<b>CHAPTER 5: LEGAL DEVELOPMENTS IN CHILD JUSTICE AND CASE LAW</b>	<b>51</b>
5.1 CENTRE FOR CHILD LAW (APPLICANT) AND DIRECTOR OF PUBLIC PROSECUTIONS, JOHANNESBURG (FIRST RESPONDENT) AND OTHERS CTT 210/21	51
5.2 REVIEW OF THE MINIMUM AGE OF CRIMINAL CAPACITY	54
5.3 THE STATE V LJ	54
<b>CHAPTER 6: LIMITATIONS AND POSSIBLE INTERVENTIONS</b>	<b>56</b>
<b>CHAPTER 7: CONCLUSION</b>	<b>58</b>
ANNEXURE A: PUBLIC EDUCATION AND COMMUNICATION EVENTS	59

## LIST OF TABLES

<b>TABLE 1:</b> THE LEGISLATION THAT GOVERNS THE PROTECTION OF THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW	12
<b>TABLE 2:</b> THE DELIVERABLES OF THE NATIONAL TECHNICAL INTERSECTORAL COMMITTEE FOR CHILD JUSTICE	16
<b>TABLE 3:</b> SKILLS TRAINING: 01 APRIL 2022 TO 31 MARCH 2023	21
<b>TABLE 4:</b> AGES OF CHILDREN AT PRELIMINARY INQUIRIES (PI) REGISTERED DURING THE REPORTING PERIOD	24
<b>TABLE 5:</b> CHANGES IN THE NUMBERS PER AGES OF CHILDREN AT PRELIMINARY INQUIRIES (PI) REGISTERED DURING THE REPORTING PERIOD 2021/22 VS 2022/2023	24
<b>TABLE 6:</b> OUTCOMES OF PRELIMINARY INQUIRIES (PIS) REGISTERED DURING THE REPORTING PERIOD	25
<b>TABLE 7:</b> LIST OF TOP 10 CRIMES ALLEGEDLY COMMITTED BY CHILDREN AND THE % CONTRIBUTION TO THE NUMBER OF PRELIMINARY INQUIRIES: 2018/19-2022/2023	26
<b>TABLE 8:</b> LIST OF TOP 10 CRIMES ALLEGEDLY COMMITTED BY CHILDREN BY AGE FOR 2022/2023	27
<b>TABLE 9:</b> OUTCOMES OF THE PI HEARING FOR THE TOP 10 CHARGES:	28
<b>TABLE 10:</b> BAIL AND PLACEMENT OF CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURTS	29
<b>TABLE 11:</b> AGES OF CHILDREN PLACED WHILE AWAITING TRIAL	30
<b>TABLE 12:</b> TOP 10 CHARGES AGAINST CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURT	30
<b>TABLE 13:</b> TOP 10 CHARGES AGAINST CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURT PER AGE	31
<b>TABLE 14:</b> PREDOMINATE CRIMES ALLEGEDLY COMMITTED BY AWAITING TRIAL CHILDREN PER PROVINCE	32
<b>TABLE 15:</b> AGES OF CHILDREN REFERRED TO THE CHILD JUSTICE COURT	15
<b>TABLE 16:</b> OUTCOME OF TRIALS IN THE CHILD JUSTICE COURTS	16
<b>TABLE 17:</b> TOP 10 CHARGES WITHDRAWN IN CHILD JUSTICE COURT DURING THE REPORTING PERIOD	35
<b>TABLE 18:</b> DOMINATE POSTPONEMENT REASONS IN THE CHILD JUSTICE COURTS	35
<b>TABLE 19:</b> TOP 10 CONVICTIONS PER AGES OF CHILDREN	36
<b>TABLE 20:</b> TYPES OF SENTENCES IMPOSED ON CHILDREN PER AGE	37

<b>TABLE 21:</b> TOP 8 CONVICTIONS WHERE IMPRISONMENT WAS IMPOSED PER AGE	37
<b>TABLE 22:</b> OUTCOME OF PRELIMINARY INQUIRIES DEALT WITH AT THE ONE STOP CHILD JUSTICE CENTRES DURING 2022/2023	38
<b>TABLE 23:</b> AGES OF THE CHILDREN DEALT WITH IN PRELIMINARY INQUIRIES AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023	39
<b>TABLE 24:</b> BAIL AND PLACEMENT OF CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURTS AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023	39
<b>TABLE 25:</b> AGES OF CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURTS AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023	40
<b>TABLE 26:</b> OUTCOME OF CASES DEALT WITH IN THE CHILD JUSTICE COURT AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023	40
<b>TABLE 27:</b> SUMMARY OF THE PUBLIC EDUCATION AND COMMUNICATION INITIATIVES	41
<b>TABLE 28:</b> PRELIMINARY INQUIRY REGISTRATION WITH % OF REGIONAL DISTRIBUTION	42

## LIST OF FIGURES

<b>FIGURE 1:</b> 12 KEY PRIORITY AREAS OF REPORTING ACCORDING TO THE NATIONAL POLICY FRAMEWORK	20
<b>FIGURE 2:</b> PRELIMINARY INQUIRIES (2018/19 TO 2022/2023)	23
<b>FIGURE 3:</b> ICMS CHILD JUSTICE UTILIZATION BY COURTS PER REGION	42
<b>FIGURE 4:</b> THE IJS TRANSVERSAL HUB PROVIDES A TECHNICAL INTEGRATION PLATFORM FOR ELECTRONIC EXCHANGE OF INFORMATION BETWEEN MEMBER DEPARTMENTS	46
<b>FIGURE 5:</b> WHERE ARE THE CHILDREN? NUMBER OF CHILDREN IN CONFLICT WITH THE LAW APPREHENDED BY SAPS AS COMPARED TO NUMBER OF CHILDREN ASSESSED BY DSD (SOURCE: 2021/2022 CHILD JUSTICE ANNUAL REPORT)	46
<b>FIGURE 6:</b> ELECTRONIC INTEGRATIONS BETWEEN SAPS AND DSD	47
<b>FIGURE 7;</b> THE DSD MOBILE PCM. A FIRST FOR IJS, DSD AND SITA. THE APPLICATION OPERATES ON AFFORDABLE MOBILE TABLETS	47
<b>FIGURE 8:</b> THE CHILD JUSTICE OPERATIONS DASHBOARD PROVIDES NATIONAL, PROVINCIAL AND DISTRICT VIEW OF KEY CHILD JUSTICE RELATED METRICS	49

## OVERVIEW

The performance covered in this Report occurred post COVID-19 pandemic. All the national lockdown restrictions were lifted and the social and economic activities had resumed normally but under difficult circumstances.

The analysis of the data for the current reporting period have therefore been compared with the data from the previous period (2021/2022) and, where possible, with the data from the pre-COVID-19 reporting periods to provide a clear picture of the current trends in child offending in South Africa.

There has been a steady increase in the number of new preliminary inquiries recorded since the 2020/21 reporting period (COVID-19 lockdown) with an increase of 13% from the previous reporting period - 2021/22.

With effect from 19 August 2023, the minimum age of criminal capacity was raised from 10 years to 12 years in line with the amendment of the Child Justice Act, 2008 (Act 75 of 2008) and this contributed to the significant decreases in the number of children aged 10 and 11 years appearing at preliminary inquiries during the reporting period.

The 16 and 17 year old children accounted for 28.7% and 40.% of the new preliminary inquiries recorded during the reporting period, respectively.

The majority of 49.84% children who appeared in preliminary inquiries during the reporting period were referred to child justice courts for plea and trial followed by 30.48% children who were taken through diversion.

The seriousness of the charges that compose of the top ten charges against children appearing in preliminary inquiries explains why 49.84% of children were referred to child justice courts for plea and trial.

The top charge against children awaiting trial was assault with the intent to cause grievous bodily harm (GBH) that contributed to 20% of the overall charges against children awaiting trial followed by rape at 19% of the overall charges against children awaiting trial. Nine (9) of the top charges against children awaiting trial include an element of violence, and this is indeed a serious concern that requires the strengthening of the country's programmatic interventions against the social ill impacting on children.

During the reporting period, 72% of children awaiting trial, were released into the care of a parent/guardian/appropriate person, while 18% of these children awaited trial in child and youth care centres and 6% released on warning.

Charges of rape against children awaiting trial had the biggest percentage contribution to the total number of charges lodged in North West (43%), followed by Free State (34%), and Mpumalanga (33%). It should be noted that during the reporting period KwaZulu-Natal recorded the highest number of rape charges nationally.



The majority of children who appeared in child justice courts were between the ages of 16 and 17 years. The number of children referred to child justice court during the reporting period increased with 19% compared to the previous reporting period.

Cases of 145 children were finalized with convictions, while 513 cases were struck off the roll. A total of 1 770 charges were withdrawn and 4 754 cases were postponed.

As per the three (3) previous reporting periods the majority convictions were of rape. The youngest child sex offender convicted of rape was a 12 year old. The majority of convictions were of rape (36), followed by housebreaking with the intent to steal and theft (20), and assault with the intent to do grievous bodily harm (16).

Sentences following convictions were suspended in the majority of cases during the reporting period. Thirty one (31) sentences of correctional supervision were imposed. A total of 18 children were sentenced to terms of imprisonment.

Approximately 149 public education and communication interventions were conducted in the various provinces during this reporting period, reaching about 58 146 children and community members.

The Intersectoral Committee for Child Justice considered this Report and recommended that it be submitted to Parliament in terms of section 96(3) of the Child Justice Act, 2008 (Act 75 of 2008).



# **CHAPTER 1**

## **THE LEGAL FRAMEWORK IN CHILD JUSTICE**

# CHAPTER 1: THE LEGAL FRAMEWORK IN CHILD JUSTICE

## 1.1 THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008)

The Child Justice Act, 2008 (Act 75 of 2008) (herein after referred to as “the Act”) came into operation on 1 April 2010. This reporting period marked 13<sup>th</sup> year of the implementation of the Act.

With regard to the Constitution and the various international instruments, the UN Convention on the Rights of the Child, 1989 and the African Charter on the Rights and Welfare of the Child, 1990 ratified by South Africa, the Act aims to prevent children from being exposed to the adverse effects of the formal criminal justice system, where appropriate.

The Act also recognises the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending.

The importance of prevention and early intervention is reiterated in section 9 of the Act which provides for a mechanism to deal with children who lack criminal capacity outside the criminal justice system through the provisioning of social support services to prevent them from coming into conflict with the law when they are older. These measures are in line with the UN General Comment No.24 (2019) stating that early intervention for children who are below the minimum age of criminal responsibility requires child-friendly and multidisciplinary responses to the first signs of behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence.<sup>1</sup>

## 1.2 OTHER APPLICABLE DOMESTIC LEGISLATION

Various pieces of legislation in South Africa support the provisions of the Constitution and ensure domestication of the various international and regional instruments, ratified by South Africa, and the regional and international obligations aimed at the protection of children in conflict with the law required.

<sup>1</sup> United Nations Convention on the Rights of the Child. Committee on the Rights of the Child. General Comment No.24(2019) on Children’s Rights in the Child Justice System. 18 September 2019.

**TABLE 1: THE LEGISLATION THAT GOVERNS THE PROTECTION OF THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW**

Responsible Department	Legislation	Relevance
Department of Justice and Constitutional Development	The Constitution of the Republic of South Africa, 1996	Best interests of the child, special protection of children in conflict with the law and procedural protection relating to the criminal justice system, as encapsulated by section 28 of the Constitution.
	The Child Justice Act, 2008 (Act No. 75 of 2008)	Creates a child justice system for children in conflict with the law.
	The Criminal Procedure Act, 1977 (Act No. 51 of 1977)	Provides procedural protection to children in line with section 28 of the Constitution.
	The Criminal (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)	Special protective measures relating to children registered in the National Register for Sex Offenders
Department of Social Development	The Probation Services Act, 1991 (Act No. 116 of 1991)	Regulation of probation services
	The Probation Services Amendment Act, 2002 (Act No. 35 of 2002)	The appointment and duties of Probation Officers
	The Children's Act, 2005 (Act No. 38 of 2005),	Deals with children in need of care and protection. It also establishes child and youth care centres.
Department of Correctional Services	The Correctional Services Act, 1998 (Act No. 111 of 1998)	Protection of the right of children in correctional facilities to be kept separately from detained adults and to be treated in a manner and kept in conditions that take account of the child's age in line with section 28(1)(g) of the Constitution.

### 1.3 INTERNATIONAL AND REGIONAL INSTRUMENTS

South Africa ratified various international and regional instruments promoting the protection of the rights of children in conflict with the law, and these include:

#### INTERNATIONAL

- The Declaration of the Rights of the Child (General Assembly Resolution 1386 (XIV) on 20 November 1959);
- UN Convention on the Rights of the Child, 1989;
- UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985;
- UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL) (Havana Rules), 1990;
- UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990;
- UN Committee on the Rights of the Child General Comment No 24 of 2019 on Children's Rights in the Child Justice System;
- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002;
- UN Resolution on the Administration of Human Rights, in Particular Juvenile Justice (A/HRC/10/L.15 on 20 March 2009);
- UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) revised on 17 December 2015.
- UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), 1990.
- Regional
- The African Commission on Human and Peoples' Rights developed Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;
- The African Charter on the Rights and Welfare of the Child, 1990

#### REGIONAL

- The African Commission on Human and Peoples' Rights developed Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;
- The African Charter on the Rights and Welfare of the Child, 1990



# CHAPTER 2

## GOVERNANCE STRUCTURES

## CHAPTER 2: GOVERNANCE STRUCTURES

### 2.1 INTRODUCTION

Intersectoral collaboration by and coordination with all the Departments/ Institutions, listed in section 94 of the Act, are essential for the successful implementation of the Act. Section 94 of the Act established the Intersectoral Committee for Child Justice.<sup>2</sup> One of the responsibilities of the Intersectoral Committee for Child Justice is to submit Annual Reports on the implementation of the Act by all the relevant Departments/ Institutions to the Minister of Justice and Correctional Services for submission to Parliament, after consultation with the Cabinet members responsible for police, social development, education, and health.

The Minister submitted the 2021/2022 Annual Reports to Parliament on 30 September 2022 in compliance with section 96(3)(b) of the Act.

### 2.2 THE DIRECTORS-GENERAL INTERSECTORAL COMMITTEE FOR CHILD JUSTICE (DG ISCCJ)

Section 94(1) of the Act identifies the members of the Intersectoral Committee for Child Justice (DG's ISCCJ) as:

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

The Director-General: Justice and Constitutional Development chairs the Committee and the Department provides secretariat support to this Committee.

During the reporting period the Committee met on 6 July 2022 and 28 March 2023.

The chairperson of the Intersectoral Committee for Child Justice recommended to the Minister to submit the 2021/22 Departmental Annual Reports on the Implementation of the Child Justice to Parliament. As stated the Reports were tabled on 30 September 2022.

<sup>2</sup> Referred to as the Directors-General Intersectoral Committee for Child Justice

## 2.2 NATIONAL TECHNICAL INTERSECTORAL COMMITTEE FOR CHILD JUSTICE (NT ISCCJ)

The Directors-General Intersectoral Committee for Child Justice receives technical support in the implementation of the Act through the National Technical Intersectoral Committee for Child Justice (NT ISCCJ). The National implementing Departments/ Institutions<sup>3</sup>, chairpersons of the nine (9) Provincial Child Justice Fora (PCJF), the judiciary and non-governmental organisations (NGO's) working in the child justice sector are members of the National Technical Intersectoral Committee for Child Justice (NT ISCCJ).

The National Technical Intersectoral Committee for Child Justice (NT ISCCJ) also provide support in the resolution of challenges escalated by the Provincial Child Justice Fora (PCJF). The Department chairs the Committee and provides secretariat support to this Committee.

During this reporting period the NT ISCCJ met six (6) times in person and on virtual platforms, and executed the following resolutions:

**TABLE 2: THE DELIVERABLES OF THE NATIONAL TECHNICAL INTERSECTORAL COMMITTEE FOR CHILD JUSTICE**

DATES	AGENDA ITEMS AND RESOLUTIONS
11 May 2022	<ul style="list-style-type: none"> <li>Monitored the investigations into the discrepancies in the statistical reports shared by the reporting stakeholders and considered reports thereof.</li> </ul>
22 July 2022	
21 September 2022	<ul style="list-style-type: none"> <li>Considered the 2021/2022 Departmental Annual Reports and recommended to the DG ISCCJ the tabling thereof by the Minister in Parliament, as required by the Act.</li> </ul>
8 November 2022	
24 January 2023	<ul style="list-style-type: none"> <li>Developed and Adopted the 2022/2023 Intersectoral Workplan for the Intersectoral Committee for Child Justice.</li> </ul>
27 March 2023	
	<ul style="list-style-type: none"> <li>Monitored the progress on the readiness to implement the Child Justice Amendment Act, 2019 (Act 28 of 2019)</li> <li>Monitored the progress on court process in the case <i>LM and others</i> in the Constitutional Court and the unpacking of the judgment and its implications.</li> <li>Developed Guidelines on Alternative Measures to deal with Children Addicted to Dependency- Producing Substances</li> <li>Considered the National Preventative Measures implemented in compliance with the OPCAT by SAHRC in relation to children and the report on the visit of the SPT to South Africa in Feb - March 2023.</li> <li>Monitored the progress in the execution of the 2022/2023 Intersectoral Workplan for the Intersectoral Committee for Child Justice.</li> </ul>

**Source:** Chief Directorate of the Promotion of the Rights of Vulnerable Groups in its capacity as the Secretariat

### 2.3.1 WORKSHOPS CONDUCTED BY THE NT ISCCJ

Adoption of Annual Reports for Tabling: On 2 August 2022, the NT ISCCJ held a Workshop to consider the 2021/22 Annual Reports on the implementation of the Act. The NT ISCCJ checked compliance against the 12 Priority Areas of Reporting in the National Policy Framework for Child Justice as well as the data accuracy, analysis and completeness of each report. The NT ISCCJ adopted the Reports and escalated the Reports to the DG ISCCJ for consideration.

<sup>3</sup> As listed under section 94(2) of the Act



Development of the 2022/2023 Intersectoral Workplan for the Intersectoral Committee for Child Justice: On 8 April 2022 the NT ISCCJ developed an Intersectoral Workplan for the Intersectoral Committee for Child Justice. This Workplan was adopted by the NT ISCCJ and implementation was monitored. Reports on the activities in the Workplan form part of the Annual Reports of the relevant stakeholders for this reporting period.

Workshop to consider the 2022/23 Half Year Report

A Workshop was conducted on 23 February 2023 to consider the 2022/23 Half Year Report submitted by the various Department/ Institutions to identify gaps in preparation for the development of the 2022/23 Annual Reports on the Implementation of the Act.

### 2.3.2 ADDITIONAL INTERVENTIONS BY THE NT ISCCJ

Visits to the Provincial Child Justice Forums by the NT ISCCJ Task Team

Following the visits to the Western Cape and Northern Cape Provincial Child Justice Forum meetings the NT ISCCJ took a resolution on 21 September 2022 that the NT ISCCJ Task Team comprising of representatives of the Department of Justice and Constitutional Development (DOJ & CD), the Department of Social Development (DSD), the National Prosecuting Authority (NPA), the South African Police Service (SAPS), the Department of Correctional Services (DCS), the Department of Basic Education (DBE), the Department of Health (DOH) and Legal Aid will attend one Provincial Child Justice Forum meeting in each of the remaining Province to assist with the revival of the structures post COVID-19. The objectives of the visits included the improvement of the functioning of the structures; engagement with the members of the Provincial Child Justice Forum on issues relating to the implementation of the Act and the Probation Case Management System. The amendments to the Act were also addressed.

The visits were conducted on the dates below:

PCJF	Date	NT Task Team members
NC	30 June 2023	DOJ & CD, NPA, DSD
WC	13 July 2023	DOJ & CD, DSD
NW (workshop)	3-4 November 2022	DOH, DOJ & CD, DSD
MP	9 November 2022	DOJ & CD
FS	15 November 2022	DBE, DOJ & CD, SAPS
EC	16 November 2022	DOJ & CD
KZN	17 November 2022	SAPS, DOJ & CD, DOH
Limpopo	30 November 2022	DBE, DOJ & CD, DSD, SAPS
GP	1 December 2022	DBE, DOJ & CD

Attendance of the various stakeholders in the Provincial structures is monitored and provincial and national interventions will be activated to deal with non-attendance if and when necessary.

### Webinars on the amendments to the Child Justice Act

Three (3) webinars were conducted on 22 June 2022 (25 participants); 24 June 2022 (71 participants), and 15 July 2022 (30 participants) to share information on the amendments to the Act and the implications of the amendments to improve readiness to implement once promulgated.

Webinar on the Constitutional Court judgment: Centre for Child Law v Director of Public Prosecution, Johannesburg and Others

A Workshop was conducted on 13 December 2022 to unpack the Constitutional Court judgment and to canvas existing alternative measures to deal with children in need of care and protection due to addiction to dependency-producing substances. Possible amendments to the Act to include children using/ possessing cannabis in the provisions dealing with children who do not have criminal capacity, was also discussed. Guidelines on the information on current alternative measures to deal with children addicted to dependency-producing substances are being developed and will be finalized in the next reporting period.

## **2.4 THE PROVINCIAL CHILD JUSTICE FORA (PCJF)**

The Provincial Child Justice Forums (PCJFs) monitor and support the implementation of the Act in the provinces. These structures report to the National Technical Intersectoral Committee (NT ISCCJ). As stated above, the chairpersons of the nine (9) Provincial Child Justice Fora (PCJF) are members of the National Technical Intersectoral Committee (NT ISCCJ) and they have the responsibility of cascading interventions to the provinces to ensure the uniform implementation of the Act in the country.

The Department chairs the Provincial Committees and provides secretariat support to these Provincial Committees.



## **CHAPTER 3**

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

# CHAPTER 3: THE KEY PRIORITY PERFORMANCE AREAS IN THE NATIONAL POLICY FRAMEWORK FOR CHILD JUSTICE

## 3.1 INTRODUCTION

The National Policy Framework for Child Justice identifies twelve (12) key priority performance areas for the implementation of the Act, and these are listed below as follows:

**FIGURE 1: 12 KEY PRIORITY AREAS OF REPORTING ACCORDING TO THE NATIONAL POLICY FRAMEWORK**



## 3.2 KEY PERFORMANCE AREAS APPLICABLE TO DOJ&CD

The key performance areas applicable to the DoJ&CD reported on:

### 3.2.1 CAPACITY BUILDING

The Department's performance in capacity building is outlined below under skills development and human resource capacity:

#### 3.2.1.1 HUMAN CAPACITY

Due to the regular rotation of the clerks of the court to capacitate them to serve at all the various sections at court level there is an ongoing need to continuously train them on all the various pieces of legislation applicable to the court environment.

#### 3.2.1.2 CAPACITY BUILDING (SKILLS TRAINING)

During the reporting period the Department provided various training interventions. The following training was conducted:

**TABLE 3: SKILLS TRAINING: 01 APRIL 2022 TO 31 MARCH 2023**

Province	Total Number of officials trained	Content of the training	Expected Outcome of the training
EC	01	Train the trainer programme on how to draw reports and analyse such reports	The Admin Officer is now able to guide officials on what to do in terms of solving challenges and how to fix risks identified.
KZN	Virtual	Newly appointed court managers, supervisors and admin clerks were trained on correct capturing of CJ cases on ICMS and the CJ risk report received from the National Operations Centre (NOC) and the importance of attending to the risks identified.  To highlight the changes to the Child Justice legislation and how it affects our functions as DoJ&CD.	Court managers were sensitized on the importance of complete and accurate capturing to avoid any audit findings. They were also informed to take the training back to their supervisors and section heads. They were also advised that non-compliance could lead to higher interventions.
	25	Amendments to the Child Justice Act	The Child Justice Forum members were trained on the amendments to the CJA to understand the implications; members shared information on other aspects of the Act.

Province	Total Number of officials trained	Content of the training	Expected Outcome of the training
Limpopo	26	ICMS Child Justice	The capturing of child justice data on ICMS.  Supervisors were trained on the capturing of data and how to validate the correctness of the data captured by the clerk.
MP	80	Child Justice Act amendments, the role of clerks in the implementation of the Act and the reporting on diversion orders to DSD.	There is an improved understanding on both the functioning of the Act and on the importance of reporting the diversion orders to DSD.
NC	39	ICMS Child Justice training and Child Justice Act.	Capturing & updating of cases on the system  Knowledge on the implementation of the Child Justice Act.
NW	36	Child Justice Amendment Act  National Policy Framework  Integrated Information Management system for Child Justice	The Child Justice Forum members were trained on the amendments to the CJA to understand the implications; members shared information on other aspects of the Act.
WC	68	Child Justice Amendment Act	Educating the JCPS cluster officials on the new amendments
	45	ICMS Child Justice (practical utilization)	Court officials to have knowledge of how to use ICMS Child Justice effectively
Justice College	295	Implementation of the Child Justice Act	Improved implementation
Total trained	<b>±615</b>		

Approximately 615 officials were trained during the reporting period. Training is offered on a continuous basis to ensure seamless service delivery in the courts and to focus on changes in the legislation to ensure compliance. UN General Comment No.24 (2019) emphasises that continuous and systematic training of professionals in the child justice system is crucial to uphold children's rights to fair treatment and trials.<sup>4</sup>

<sup>4</sup> United Nations Convention on the Rights of the Child. Committee on the Rights of the Child. General Comment No.24(2019) on Children's Rights in the Child Justice System. 18 September 2019.

### 3.2.2 PRELIMINARY INQUIRIES

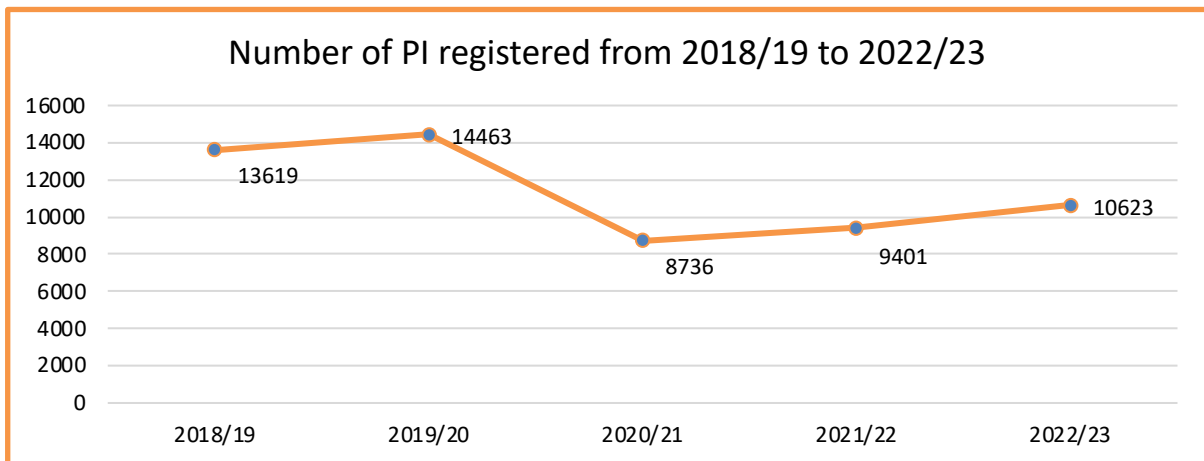
Preliminary inquiries are designed to facilitate the disposal of cases in the best interests of children. The approach followed during a preliminary inquiry allows for the inquiry magistrate to take cognizance of the individual needs and circumstances of each child appearing at the preliminary inquiry through the consideration of the assessment report compiled by the probation officer and the views of all the persons present.

With the amendment of the Act that came into operation on 19 August 2022, section 49 provides that if the inquiry magistrate is of the view that a child (between the ages of 12 to under 14 years of age) is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the inquiry magistrate may refer the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.

The Department has consistently included in the Annual Performance Plan, an indicator to improve the turnaround in the finalisation of child justice preliminary inquiries since 2017/2018. During the reporting period the target for performance was 90% child justice preliminary inquiries finalised within 90 days after the date of first appearance, and the Department recorded an achievement of 94% performance.

The number of preliminary inquiries recorded over the past five (5) reporting periods is reflected in the figure below:

**FIGURE 2: PRELIMINARY INQUIRIES (2018/19 TO 2022/2023)**



**Source:** Integrated Case Management System: Child Justice

There has been a steady increase in the number of new preliminary inquiries recorded since the 2020/21 reporting period (COVID-19 lockdown) with an increase of 13% from the previous reporting period. The numbers of new preliminary inquiries recorded have not reached the levels recorded during the pre-COVID-19 reporting periods (2018/19 and 2019/20).

**TABLE 4: AGES OF CHILDREN AT PRELIMINARY INQUIRIES (PI) REGISTERED DURING THE REPORTING PERIOD**

Financial Year	Ages of Children							
	10	11	12	13	14	15	16	17
2018/2019	38	76	186	529	1178	2 224	3 722	5 666
2019/2020	37	83	277	498	1393	2 452	4 012	5 711
2020/2021	11	33	165	339	779	1 491	2 441	3 477
2021/2022	15	35	160	391	916	1 668	2 622	3 594
2022/2023	3	12	131	384	1 012	1 777	3 051	4 253
% Contribution per age for 2022/2023	<b>0,0%</b>	<b>0,1%</b>	<b>1,2%</b>	<b>3,6%</b>	<b>9,5%</b>	<b>16,7%</b>	<b>28,7%</b>	<b>40,0%</b>

**Source:** Integrated Case Management System: Child Justice

Children aged 10 and 11 years old accounted for less than 1% of all preliminary inquiries registered during the reporting period.

Sixteen (16) and 17 year old children accounted for 28.7% and 40.% of the preliminary inquiries recorded during the reporting period, respectively.

**TABLE 5: CHANGES IN THE NUMBERS PER AGES OF CHILDREN AT PRELIMINARY INQUIRIES (PI) REGISTERED DURING THE REPORTING PERIOD 2021/22 VS 2022/2023**

Measurement	Ages							
	10	11	12	13	14	15	16	17
2021/2022	15	35	160	391	916	1 668	2 622	3 594
2022/2023	3	12	131	384	1 012	1 777	3 051	4 253
# of increase/decrease	-12	-23	-29	-7	+96	+109	+429	+659

**Source:** Integrated Case Management System: Child Justice

The minimum age of criminal capacity was raised from 10 years to 12 years with effect from 19 August 2022 with the amendment of the Act and this contributed to significant decreases in the number of children aged 10 and 11 years appearing at preliminary inquiries during the reporting period.

There were increases recorded in the number of new preliminary inquiries from 14 year old children, with the most significant increase being for 17 year old children (659). This correlates with the fact that there was a 13% increase in the number of new preliminary inquiries recorded from the previous reporting period.



### 3.2.2.1. OUTCOMES OF THE PRELIMINARY INQUIRIES

The outcomes of preliminary inquiries recorded during 2022/23 were as follows:

**TABLE 6: OUTCOMES OF PRELIMINARY INQUIRIES (PI) REGISTERED DURING THE REPORTING PERIOD**

Outcome of PI	Age of the child								Grand Total	% Contribution PI Outcomes
	10	11	12	13	14	15	16	17		
Child Justice Court	1	1	38	141	513	930	1647	2323	5594	49,84%
Children's Court	-	-	7	16	23	24	38	24	132	1,18%
Criminal Court - Adult	-	-	2	4	4	20	35	79	144	1,28%
Diversion	1	5	60	124	340	604	979	1308	3421	30,48%
PI Withdrawal	5	10	20	76	69	96	189	242	707	6,30%
Postponement		1	12	38	52	59	97	115	374	3,33%
Referred to Probation Officer	-	-	-	1	-	1	1	2	5	0,04%
Released to DSD (Deportation)	-	-	2	-	1	1	2	4	10	0,09%
Struck off Roll		1	25	44	66	84	140	244	604	5,38%
Warrant of Arrest	-	-	2	12	11	39	68	100	232	2,07%
<b>Grand Total</b>	<b>7</b>	<b>18</b>	<b>168</b>	<b>456</b>	<b>1079</b>	<b>1858</b>	<b>3196</b>	<b>4441</b>	<b>11223</b>	<b>100,00%</b>

**Source:** Integrated Case Management System: Child Justice

The outcomes reported in the table above include preliminary inquiries from the previous reporting period that were finalised during the current reporting period.

The majority of children who appeared in preliminary inquiries during the reporting period were referred to child justice courts for plea and trial (49.84%), followed by diversion (30.48%).

Only 3.33% of preliminary inquiries were postponed, indicating that preliminary inquiries were completed without unreasonable delay, as required by the Act. A total of 144 preliminary inquiries were closed because the alleged accused were adults (above the age of 18).

As stated above section 49 provides that if the inquiry magistrate is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the inquiry magistrate may refer a child (between the ages of 12 to under 14 years of age) to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act. A total of 5 children were referred to a probation officer in line with this provision during the reporting period.

A total of 132 children were referred to the Children's Court in terms of section 50 of the Act which provides that the inquiry magistrate may stop the proceedings, with a referral to the Children's Court, if it appears that the child may be a child in need of care and protection.

It is important to note that most children who come into conflict with the law – whether they are children trying to survive, petty offenders or serious offenders – are children who are facing challenges in their care and protection and in their relationships with their families, communities and society. Their lives, choices and opportunities are affected to a great extent by the social, economic and political realities in which they live. These include communities increasingly fragmented through urbanisation, chronic poverty, social and inter-personal violence, and increased pressure from commercialisation and materialism. Children cannot remain unaffected by such circumstances and negative events.

Research reports highlight the fact that many children had their first contact with child protection system before they came into conflict with the law.<sup>5</sup> These children are referred to as “crossover children”. Often there is inadequate integration with justice services and social services.

### 3.2.2.2. TOP 10 CRIMES ALLEGEDLY COMMITTED BY CHILDREN

The table below reflects the top 10 crimes allegedly committed by children who appeared in preliminary inquiries during the reporting period compared with the previous four reporting periods. It also includes the percentage of contribution to the total number of preliminary inquiries registered.

**TABLE 7: LIST OF TOP 10 CRIMES ALLEGEDLY COMMITTED BY CHILDREN AND THE % CONTRIBUTION TO THE NUMBER OF PRELIMINARY INQUIRIES: 2018/19- 2022/2023**

Offence	2018/2019		2019/2020		2020/2021		2021/2022		2022/2023	
	No of Cases	% Contribution	No of Cases	% Contribution	No of Cases	% Contribution	No of Cases	% Contribution	No of Cases	% Contribution
Assault GBH	2508	<b>18,40%</b>	2690	<b>18,60%</b>	1734	<b>20%</b>	1921	<b>20%</b>	2431	<b>22%</b>
Assault	1249	9,20%	1504	<b>10,40%</b>	796	9%	1055	<b>11%</b>	1427	<b>13%</b>
Rape	1184	8,70%	1458	10,08%	1365	<b>16%</b>	1260	<b>13%</b>	1348	<b>12%</b>
Theft	1495	<b>11,00%</b>	1604	<b>11,09%</b>	878	<b>10%</b>	976	10%	1144	10%
Housebreaking with the Intent to Steal and Theft	1177	8,60%	1117	7,72%	653	7%	655	7%	722	6%
Malicious injury to property	568	4,20%	589	4,07%	404	5%	548	6%	630	6%
Robbery	749	5,50%	705	4,87%	353	4%	384	4%	499	4%
Murder	451	3,30%	621	4,29%	168	2%	391	4%	436	4%
Robbery with Aggravating Circumstances	527	3,90%	651	4,50%	391	4%	352	4%	330	3%
Possession/Use of Drugs	1303	<b>9,60%</b>	688	4,76%	205	2%	200	2%	303	3%

Source: Integrated Case Management System: Child Justice

<sup>5</sup> Save the Children. 2023. Putting children first: A rights respecting approach to youth justice in Australia.p.19

The seriousness of the charges that compose the top ten charges against children appearing in preliminary inquiries explains why 49.84% of children were referred to child justice courts for plea and trial, as seen in table 7 above.

Despite figures showing a decrease in the percentage contribution of rape charges to overall charges over the last three years, the number of rape charges continued to climb.

With an alarming increase in the number of assault with the intent to cause grievous bodily harm (assault GBH) charges recorded at preliminary inquiries during this reporting period, assault GBH remained the most common charge levied against children at preliminary inquiries.

**TABLE 8: LIST OF TOP 10 CRIMES ALLEGEDLY COMMITTED BY CHILDREN BY AGE FOR 2022/2023**

Charge	Age of the child								Grand Total
	10	11	12	13	14	15	16	17	
Assault with the intent to do Grievous Bodily Harm	-	3	18	62	185	<b>380</b>	<b>754</b>	<b>1029</b>	2431
Assault	-	1	15	60	173	266	401	511	1427
Rape	2	<b>8</b>	<b>58</b>	<b>145</b>	<b>248</b>	240	299	348	1348
Theft	-	2	21	36	99	192	348	446	1144
Housebreaking with the Intent to Steal and Theft	2	1	22	45	78	124	210	240	722
Malicious Injury to Property	<b>3</b>	3	8	29	65	97	179	246	630
Robbery with Aggravating Circumstances	-	-	-	1	27	74	152	245	499
Murder	-	-	4	5	21	56	130	220	436
Robbery	-	-	1	5	13	56	98	157	330
<b>Possession or Use of Drugs</b>	-	-	-	<b>4</b>	<b>22</b>	<b>45</b>	<b>88</b>	<b>144</b>	<b>303</b>

Source: Integrated Case Management System: Child Justice

The top charge against children aged 15 to 17 years was assault GBH. It is noted with concern that the top charge against children aged 11 to 14 years was rape.

**TABLE 9: OUTCOMES OF THE PI HEARING FOR THE TOP 10 CHARGES:**

Charge	Child Justice Court	Children's Court	Criminal Court - Adult	Diversion	PI Withdrawal	Postponement	Referred to Probation Officer	Released to DSD (Deportation)	Struck off Roll	Warrant of Arrest	Grand Total
Assault with the intent to do Grievous Bodily Harm	<b>1068</b>	7	8	969	140	75	1	1	121	41	2431
Assault	490	9	3	<b>663</b>	117	44	1		69	31	1427
Rape	<b>1021</b>	4	17	56	91	78	1	3	65	12	1348
Theft	294	28	8	<b>541</b>	81	40	2		91	59	1144
Housebreaking with the Intent to Steal and Theft	279	25	6	<b>287</b>	42	23	-	-	47	13	722
Malicious Injury to Property	<b>248</b>	8	3	<b>249</b>	54	25	-	1	28	14	630
Robbery with Aggravating Circumstances	<b>409</b>	2	11	17	17	11	-	-	27	5	499
Murder	<b>388</b>	2	7	1	13	12	-	-	11	2	436
Robbery	<b>230</b>	4	6	58	15	3	-	-	10	4	330
Possession or Use of Drugs	111	3	1	<b>124</b>	26		-	1	25	12	303

**Source:** Integrated Case Management System: Child Justice

The table above indicates the outcomes of the preliminary inquiries for the top 10 charges:

- Assault with the intent to cause serious bodily harm - 44% referred to the child justice court, while 40% were diverted;
- Assault - 34% referred to the child justice court, while 46% were diverted, and a further 8% were withdrawn;
- Rape - 76% referred to the child justice court, while 7% were withdrawn, 5% were struck off the roll, and 4% were diverted;
- Murder - 89% referred to the child justice court, while 3% were withdrawn and struck off the roll respectively;
- The number of diversion were higher than the number of cases referred to the child justice court for the following charges: assault, theft, housebreaking with the intent to steal and theft, malicious injury to property and possession or use of drugs.

### 3.2.2.3. CHALLENGES IN DATA MANAGEMENT

As reported previously, to achieve data integrity in child justice matters, a systems integration between DoJ&CD and the NPA is essential. Little progress was made in this regard during this reporting period due to competing priorities and a lack of ICT resources.

### 3.2.3. AWAITING TRIAL, BAIL AND PLACEMENT

The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and only for the shortest appropriate period of time; and (b) no child is to be deprived of his or her liberty unlawfully or arbitrarily.

The Act requires the court to give due consideration of the options for the release of a child, and when a decision is made that the child is to be detained or is to remain in detention, a presiding officer must give preference to the least restrictive option possible in the circumstances.

The Act also provides for time limits to postponements in instances where a child is detained awaiting trial. Section 32 of the Act requires that where the child is in detention awaiting trial, the court must at every subsequent appearance of the child consider the continued detention of the child and to enter the reasons for the detention or further detention on the record of the proceedings.

The Department collected the following statistics on the placement of children awaiting trial:

**TABLE 10: BAIL AND PLACEMENT OF CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURTS**

Period	In care of parent/guardian/appropriate person	Bail	In prison	In child and youth care centre	Police lockup	On Warning	Total placements
2018/2019	3 911	29	173	958	93	371	5 535
2019/2020	4 879	57	196	1 387	126	503	7 148
2020/2021	3 320	41	49	853	40	341	4 644
2021/2022	3 329	35	58	874	23	375	4 694
2022/2023	4 038	23	133	990	59	351	5 594
	72%	0%	2%	18%	1%	6%	100%

**Source:** Integrated Case Management System: Child Justice

During the reporting period, the majority of children awaiting trial (72%), were released into the care of a parent/guardian/appropriate person. Eighteen percent (18%) of children awaited trial in child and youth care centres and 6% were released on warning.

**TABLE 11: AGES OF CHILDREN PLACED WHILE AWAITING TRIAL**

Age At Offence	Child and Youth Care Centre	In care of Parent/ Appropriate person	On Bail	On Warning	Police Lock-up	Prison	Grand Total
10	-	1	-	-	-	-	1
11	-	1	-	-	-	-	1
12	2	35	-	1	-	-	38
13	13	109	-	19	-	-	141
14	85	393	-	25	4	6	513
15	152	700	1	52	8	17	930
16	315	1149	6	110	15	52	1647
17	423	1650	16	144	32	58	2323
<b>Total</b>	<b>990</b>	<b>4038</b>	<b>23</b>	<b>351</b>	<b>59</b>	<b>133</b>	<b>5594</b>

Source: Integrated Case Management System: Child Justice

As stated above, the majority of children awaiting trial were released into the care of a parent/ guardian/ appropriate person. Fifty eight (58) 17 year old children awaited trial in correctional facilities and 990 total children in child and youth care centres.

### 3.2.3.1. TOP 10 CHARGES AGAINST CHILDREN AWAITING TRIAL

The top 10 charges against children awaiting trial are listed below:

**TABLE 12: TOP 10 CHARGES AGAINST CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURT**

No	Charges against children awaiting trial	No of charges	% Contribution
1	Assault with the intent to do Grievous Bodily Harm	1068	20%
2	Rape	1021	19%
3	Assault	490	9%
4	Robbery with Aggravating Circumstances	409	7%
5	Murder	388	7%
6	Theft	294	5%
7	Housebreaking with the Intent to Steal and Theft	279	5%
8	Malicious Injury to Property	248	5%
9	Robbery	230	4%
10	Attempted Murder	177	3%

Source: Integrated Case Management System: Child Justice

The top charge against children awaiting trial was assault GBH that contributed to 20% of the overall charges against children awaiting trial followed by rape that contributed to 19% of the overall charges against children awaiting trial. Nine (9) of the top charges against children awaiting trial include an element of violence.

The experience of violence of children in conflict with the law rarely begins with their first contact with the law. It is often a direct and major cause of their coming into conflict with the law in the first place. It is also a direct consequence of failed care and protection responses by state and communities for children “at risk” if their traditional familial protective environments have broken down.<sup>6</sup>

Violence in the family, including physical, sexual and psychological abuse as well as neglect, abandonment and discrimination, not only has a major impact on the child’s well-being and development, it fundamentally affects a child’s choices and may force him or her to fall back on coping strategies that often lead to further victimization and criminalisation.<sup>7</sup>

**TABLE 13: TOP 10 CHARGES AGAINST CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURT PER AGE**

Charge	Age of child while awaiting trial								Grand Total
	10	11	12	13	14	15	16	17	
Assault with the intent to do Grievous Bodily Harm	-	-	6	10	77	160	<b>344</b>	<b>471</b>	1068
Rape	<b>1</b>	<b>1</b>	<b>20</b>	<b>68</b>	<b>187</b>	<b>200</b>	257	287	1021
Assault	-	-	4	16	62	73	161	174	490
Robbery with Aggravating Circumstances	-	-	-	1	20	63	127	198	409
Murder	-	-	-	1	17	49	115	206	388
Theft	-	-	1	4	22	54	90	123	294
Housebreaking with the Intent to Steal and Theft	-	-	2	6	18	46	89	118	279
Malicious Injury to Property	-	-	-	7	25	38	79	99	248
Robbery	-	-	1	4	11	37	73	104	230
Attempted Murder	-	-	2	-	5	26	48	96	177

**Source:** Integrated Case Management System: Child Justice

The top charge against 10 to 15 year old children awaiting trial in the child justice court was rape and assault GBH against 16 and 17 year old children awaiting trial.

<sup>6</sup> Save the Children. 2005. The Right Not to Lose Hope. Children in conflict with the law - a policy analysis and examples of good practice. A contribution to the UN Study on Violence against Children from the International Save the Children Alliance. p. 12

<sup>7</sup> Save the Children. 2005. The Right Not to Lose Hope. Children in conflict with the law - a policy analysis and examples of good practice. A contribution to the UN Study on Violence against Children from the International Save the Children Alliance. p. 13

Adolescents' increasingly difficult and oppositional behaviour may mask and prevent attention to the maltreatment that underlies and reinforces it. Maltreated "acting-out" adolescents are less likely to receive sympathetic attention than younger children, and are more likely to run away, become homeless and engage in illegal and survival activities to bring them to the attention of police. The attention of police rather than child protection services mean that the interventions these adolescents receive are more likely to criminalise them than to treat them. Effective mental health services and evidence-informed treatment are therefore essential for older children who are being or have been maltreated.<sup>8</sup>

When children commit crimes society tend to focus on their deeds and not their needs. The focus should be on their needs not their deeds.

**TABLE 14: PREDOMINATE CRIMES ALLEGEDLY COMMITTED BY AWAITING TRIAL CHILDREN PER PROVINCE**

Province	Predominant charges	Total charges allegedly committed	Predominant charge	% Contribution
Eastern Cape	Rape	440	116	26%
Free State	Rape	222	75	<b>34%</b>
Gauteng	Assault with the intent to do Grievous Bodily Harm	543	112	21%
	Rape		112	
KwaZulu Natal	Rape	964	<b>244</b>	25%
Limpopo	Rape	365	105	29%
Mpumalanga	Rape	211	69	<b>33%</b>
North West	Rape	118	51	<b>43%</b>
Northern Cape	Rape	117	37	21%
Western Cape	Assault with the intent to do Grievous Bodily Harm	2554	514	20%

**Source:** Integrated Case Management System: Child Justice

According to the above table, charges of rape against children awaiting trial had the biggest percentage contribution to the total number of charges lodged in North West (43%), followed by Free State (34%), and Mpumalanga (33%). It should be noted that during the reporting period KwaZulu Natal recorded the highest number of rape charges nationally.

Rape charges accounted for 8% of all rape charges reported in the Western Cape. Assault GBH charges accounted for 20% of all charges registered in the Western Cape and contributed to 48% of all charges registered nationally.

<sup>8</sup> Cashmore, J. 2011. The link between child maltreatment and adolescent offending. System neglect of adolescents. Family Matters. 2011. No.89. p. 34.



Despite increasing concerns about the violent behaviour by children, including sexual violence, most criminal justice responses continue to fail to respond to the links between violence experienced and violence committed by children.<sup>9</sup>

Violence is the major root cause of children coming into conflict with the law in the first place.<sup>10</sup> Other contributing factors include maltreatment, undiagnosed disorders, domestic and family violence and mental health problems.<sup>11</sup>

### 3.2.4. TRIALS

The Act requires that trials in child justice courts must be concluded without unreasonable delay and also that postponements should be limited in number and duration.

The UN General Comment No.24 (2019) reiterates that the time between the commission of the offence and the conclusion of proceedings should be as short as possible. The longer this period, the more likely it is that the response loses its desired outcome.<sup>12</sup>

The ages of the children who appeared in child justice courts during the reporting period are reflected in the table below:

**TABLE 15: AGES OF CHILDREN REFERRED TO THE CHILD JUSTICE COURT**

Financial Year	Ages of children									Total
	10	11	12	13	14	15	16	17		
2018/2019	3	11	46	165	504	1 087	1 767	2 755	<b>6 338</b>	
2019/2020	5	19	64	162	628	1 194	2 092	2 984	<b>7 148</b>	
2020/2021	1	9	58	117	399	774	1 358	1 928	<b>4 644</b>	
2021/2022	-	4	43	124	427	881	1 329	1 886	<b>4 694</b>	
2022/2023	1	1	38	141	513	930	1 647	2 323	<b>5 594</b>	

Source: Integrated Case Management System: Child Justice

During the reporting year, the majority of children who appeared in child justice courts were between the ages of 16 and 17 years. The number of children referred to child justice court during the reporting period increased with 19% compared to the previous reporting period.

Research shows that children and young people who have progressed deeper into the child justice system are more likely to have experienced abuse and neglect, have mental health problems and be developmentally delayed.<sup>13</sup>

9 Save the Children. 2005. The Right Not to Lose Hope. Children in conflict with the law - a policy analysis and examples of good practice. A contribution to the UN Study on Violence against Children from the International Save the Children Alliance. p. 14

10 Save the Children. 2005. The Right Not to Lose Hope. Children in conflict with the law - a policy analysis and examples of good practice. A contribution to the UN Study on Violence against Children from the International Save the Children Alliance. p. 4

11 Save the Children. 2023. Putting children first: A rights respecting approach to youth justice in Australia.p.19

12 United Nations Convention on the Rights of the Child. Committee on the Rights of the Child. General Comment No.24(2019) on Children's Rights in the Child Justice System. 18 September 2019.

13 Cashmore, J. 2011. The link between child maltreatment and adolescent offending. System neglect of adolescents. Family Matters. 2011. No.89. p. 31.

The link between abuse and neglect and later offending is evident, regardless of the measures of maltreatment or offending.<sup>14</sup>

The outcomes of trials in the child justice courts recorded during the reporting period are set out below:

**TABLE 16: OUTCOME OF TRIALS IN THE CHILD JUSTICE COURTS**

<b>Court Process 2021/2022</b>	<b>Number</b>
New cases registered for 2022/23	5 594
Matters from previous reporting periods	2 193
Total	7 787
<b>Court Outcome</b>	
Sentencing	145
Not guilty	79
Withdrawn in court	1 770
Struck off the roll	513
Referred to Children's court	19
Diversions successful	206
Warrant of Arrest	260
Other	41
Postponements	4 754

**Source:** Integrated Case Management System: Child Justice

A total of 145 children were convicted during the reporting period and 513 cases were struck off the roll. A total of 1 770 cases were withdrawn and 4 754 cases were postponed during the reporting period and the details are reflected in the tables below.

<sup>14</sup> Cashmore, J. 2011. The link between child maltreatment and adolescent offending. System neglect of adolescents. Family Matters. 2011. No.89. p. 33

**TABLE 17: TOP 10 CHARGES WITHDRAWN IN CHILD JUSTICE COURT DURING THE REPORTING PERIOD**

Charges	Grand Total
Assault with the intent to do Grievous Bodily Harm	430
Rape	297
Assault	210
Malicious Injury to Property	114
Theft	102
Robbery with Aggravating Circumstances	94
Robbery	80
Housebreaking with the Intent to Steal and Theft	52
Attempted Murder	50
Murder	45

**Source:** Integrated Case Management System: Child Justice

From the table above it is clear that cases that were withdrawn were part of the top 10 charges against children awaiting trial in child justice courts reported on above in table 12.

A total of 430 charges of assault GBH and 297 charges of rape were withdrawn in child justice courts during the reporting period.

The reasons for withdrawals are not recorded on the charge sheets. Reasons for the withdrawal may include: lack of evidence; unlikelihood of proving criminal capacity; the case is de minimus (minimal, very small or trivial); the complainant does not want to proceed with the charge or the complainant cannot be traced. A case may also be withdrawn if the child complied with the diversion order.

**TABLE 18: DOMINATE POSTPONEMENT REASONS IN THE CHILD JUSTICE COURTS**

Reason	Number
Further Investigation	2 443
Trial	308
Regional Court Date	166
Plea: Plea and Trial	163
Obtain Information for PI	123

**Source:** Integrated Case Management System: Child Justice

Dominate reasons for the postponement of cases during trials in child justice courts include: further investigation, trials and awaiting a regional court date.

### 3.2.4.1. TOP 9 CONVICTIONS ON CHARGES

Children were convicted of the following top 9 charges during the reporting period:

**TABLE 19: TOP 10 CONVICTIONS PER AGES OF CHILDREN**

Charges	12	13	14	15	16	17	Total
Rape	1	4	4	9	6	12	36
Housebreaking with the Intent to Steal and Theft	-	-	-	2	3	15	20
Assault with the intent to do Grievous Bodily Harm	-	-	1	1	4	10	16
Murder	-	1	-	3	5	3	12
Robbery with Aggravating Circumstances	-	-	1	2	6	2	11
Attempted Murder	-	-	-	1	2	4	7
Theft	-	-	-	-	1	4	5
Malicious Injury to Property	-	-	-	1	1	2	4
Possession of a firearm without holding a licence, permit or authorization issued in terms of the Act to possess such firearm(s)	-	-	-	1	1	1	3
Robbery	-	-	-	-	-	3	3

**Source:** Integrated Case Management System: Child Justice

During this reporting period, one (1) 12 year old child was convicted and the conviction was on a charge of rape. The majority of convictions were on charges of rape (36), followed by housebreaking with the intent to steal and theft (20), and assault with the intent to do grievous bodily harm (16).

### 3.2.5. SENTENCING

The Act provides for a wide range of appropriate sentencing options specifically suited to the needs of children.

When considering the imposition of a sentence involving imprisonment, the child justice court must take the following factors into account:

- a) The seriousness of the offence, with due regards to:
  - (i) the amount of harm done or risked through the offence; and
  - (ii) the culpability of the child in causing or risking the harm;
- b) the protection of the community;
- c) the severity of the impact of the offence on the victim;
- d) the previous failure of the child to respond to non-residential alternatives, if applicable; and
- e) the desirability of keeping the child out of prison.

The recorded sentences imposed on children during the reporting period are as follows:

**TABLE 20: TYPES OF SENTENCES IMPOSED ON CHILDREN PER AGE**

Sentence	Age At Offence						Grand Total
	12	13	14	15	16	17	
Alternative to Fine	-	-	-	-	-	1	1
Community Service	-	--		2	1	1	4
Correctional Supervision	-	-	3	4	9	15	<b>31</b>
Imprisonment	-	-		2	3	13	18
Sentence of compulsory residence in child youth centre	-	3	1	3	2	1	10
Sentence Postponed	-	1	1	3	5	6	16
Suspended	1	3	2	9	15	35	<b>65</b>
<b>Grand Total</b>	<b>1</b>	<b>7</b>	<b>7</b>	<b>23</b>	<b>35</b>	<b>72</b>	<b>145</b>

**Source:** Integrated Case Management System: Child Justice

Sentences following convictions were suspended in the majority of cases during the reporting period. Thirty one (31) sentences of correctional supervision were imposed. A total of 18 children were sentenced to imprisonment.

The UN Committee on the Rights of the Child emphasizes in the UN General Comment No.24 (2019) that the reaction to an offence should always be proportionate not only to the circumstance and gravity of the offence, but also to the personal circumstances (ages, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of society.

**TABLE 21: TOP 8 CONVICTIONS WHERE IMPRISONMENT WAS IMPOSED PER AGE**

Charge	15	16	17	Grand Total
Assault	-	-	1	1
Assault with the intent to do Grievous Bodily Harm	-	-	1	1
Attempted Murder	-	-	1	1
Attempted Robbery with Aggravating Circumstances	-	-	1	1
Entering, remaining or departing from the Republic in contravention of the Immigration Act	-	-	1	1
Housebreaking with the Intent to Steal and Theft	-	-	1	1
Kidnapping	-	-	1	1
Murder	1	1	1	3
Rape	1	2	5	8
<b>Grand Total</b>	<b>2</b>	<b>3</b>	<b>13</b>	<b>18</b>

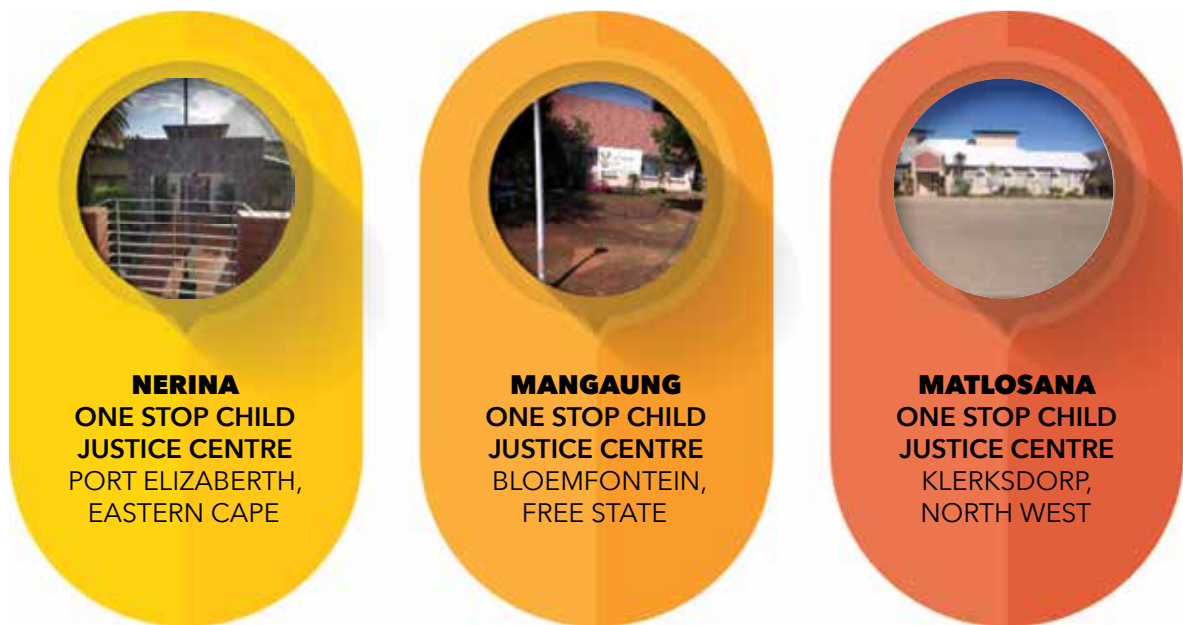
**Source:** Integrated Case Management System: Child Justice

The top crimes where imprisonment sentences were imposed on children were rape followed by murder. Two (2) 15 year old children and three (3) 16 year old children were sentenced to imprisonment during the reporting period.

### 3.2.6. MANAGEMENT OF INFRASTRUCTURE FOR THE IMPLEMENTATION OF THE CHILD JUSTICE ACT

The Act provides that the Minister may establish One-Stop Child Justice Centres, in consultation with the Ministers of Social Development and Police.

#### ONE STOP CHILD JUSTICE CENTRES



As reported in previous Annual Reports, there are three (3) One Stop Child Justice Centres operating in the country, and these are:

The Department monitors the performance of the One Stop Child Justice Centres through the data captured on the ICMS Module for Child Justice Module.

#### 3.2.6.1 ONE STOP CHILD JUSTICE CENTRE: NEW PI HEARING OUTCOMES FOR 2021/22

The performances of the One Stop Child Justice Centres are tabularised as follows:

**TABLE 22: OUTCOME OF PRELIMINARY INQUIRIES DEALT WITH AT THE ONE STOP CHILD JUSTICE CENTRES DURING 2022/2023**

Outcome Of PI	Mangaung	Matlosana	Nerina	Grand Total
Child Justice Court	20	27	<b>124</b>	171
Children`s Court	1	2	6	9
Criminal Court - Adult	-	-	1	1
Diversion	<b>55</b>	<b>28</b>	57	140
PI Withdrawal	19	6	2	27

Outcome Of PI	Mangaung	Matlosana	Nerina	Grand Total
Postponement	-	4	-	4
Referred to Probation Officer	-	-	1	1
Released to DSD (Deportation)	-	-	1	1
Struck off Roll	22	7	<b>86</b>	115
Warrant of Arrest	8	3	3	14
<b>Grand Total</b>	<b>125</b>	<b>77</b>	<b>281</b>	<b>483</b>

Source: Integrated Case Management System: Child Justice

The Nerina One Stop Child Justice Centre (OSCJC) dealt with the most cases during the reporting period compared with the other two One Stop Child Justice Centres. The majority of the children who appeared in preliminary inquiries conducted at the Nerina One Stop Child Justice Centre were referred to the child justice courts for plea and trial followed by cases struck off the roll (86). At the Mangaung and Matlosana One Stop Child Justice Centres the majority of preliminary inquiries were concluded as diversions.

**TABLE 23: AGES OF THE CHILDREN DEALT WITH IN PRELIMINARY INQUIRIES AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023**

OCJC Name	11	12	13	14	15	16	17	Grand Total
Mangaung	1	8	10	16	15	30	45	125
Matlosana	-	1	7	7	12	22	28	77
Nerina	-	8	13	29	41	91	99	281
<b>Total</b>	<b>1</b>	<b>17</b>	<b>30</b>	<b>52</b>	<b>68</b>	<b>143</b>	<b>172</b>	<b>483</b>

Source: Integrated Case Management System: Child Justice

Only one (1) child age 11 years of age appeared in preliminary inquiries in the Mangaung One Stop Child Justice Centre during the reporting period.

**TABLE 24: BAIL AND PLACEMENT OF CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURTS AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023**

Custody Status	Mangaung	Matlosana	Nerina	Grand Total
Child and Youth Care Centre	6	11	24	41
In care of Parent/Appropriate person	108	65	229	402
In Detention	-	-	1	1
On Bail	1	1		2
On Warning	6	-	20	26
Prison	4		7	11
<b>Total</b>	<b>125</b>	<b>77</b>	<b>281</b>	<b>483</b>

Source: Integrated Case Management System: Child Justice

The majority of the children who appeared in preliminary inquiries conducted at the One Stop Child Justice Centres were released into the care of a parent/ appropriate adult/ guardian. Forty one (41) children awaited trial in child and youth care centres.

**TABLE 25: AGES OF CHILDREN AWAITING TRIAL IN CHILD JUSTICE COURTS AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023**

Age At Offence	Mangaung	Matlosana	Nerina	Grand Total
12	-	1	2	3
13	1	-	6	7
14	6	3	21	30
15	1	2	17	20
16	4	11	37	52
17	8	10	41	59
<b>Total</b>	<b>20</b>	<b>27</b>	<b>124</b>	<b>171</b>

Source: Integrated Case Management System: Child Justice

No children aged 10 or 11 years of age and only two (2) 12 year old children awaited trial in any of the One Stop Child Justice Centres during the reporting period. The Nerina One Stop Child Justice Centre had the most children awaiting trial during the reporting period and the Mangaung One Stop Child Justice Centre had the fewest.

**TABLE 26: OUTCOME OF CASES DEALT WITH IN THE CHILD JUSTICE COURT AT THE ONE STOP CHILD JUSTICE CENTRE DURING 2022/2023**

Trial Outcome	Mangaung	Matlosana	Nerina	Grand Total
Diversion Successful	-	-	12	12
Merged		1	-	1
Rehabilitation centre	1	-	-	1
Struck Off Roll	-	7	22	29
Referred to Children's Court	-	-	1	1
Warrant of arrest	-	-	14	14
Withdrawal before Enrolment	-	-	1	1
Withdrawal in Court	-	9	32	41
Postponement	19	10	42	71
<b>Total</b>	<b>20</b>	<b>27</b>	<b>124</b>	<b>171</b>

Source: Integrated Case Management System: Child Justice

The Nerina OSCJC recorded the highest number of outcomes in the child justice courts. The majority of cases were postponed, withdrawn or struck off the roll.



### 3.2.7. PUBLIC EDUCATION AND COMMUNICATION INTERVENTIONS

During this period of reporting, DoJ&CD conducted more public education and communication initiatives on child justice during the reporting period due to the fact that the COVID-19 restrictions were lifted.

The following public education and communication initiatives on child justice were conducted:

**TABLE 27: SUMMARY OF THE PUBLIC EDUCATION AND COMMUNICATION INITIATIVES**

Region	Number of Initiatives	Number of people reached
Northern Cape	20	14 909
Mpumalanga	41	11 806
KwaZulu-Natal	11	5 561
Gauteng	±20	±2 404
Eastern Cape	±15	±12 600
Western Cape	7	1 350
North West	4	2 150
Free State	11	1 471
Limpopo	19	5 745
National Office	1	150
<b>Total</b>	<b>±149</b>	<b>±58 146</b>

Approximately 149 public education and communication interventions were conducted in the various Provinces during this reporting period, reaching about 58 146 community members.

### 3.2.8. DEVELOPMENT OF AN INTEGRATED MANAGEMENT SYSTEM

The Integrated Case Management System (ICMS) Child Justice module, developed to collect the qualitative and quantitative data required by section 96(1)(e) of the Act, enables the Department to effectively monitor the implementation of the Act in the courts.

### 3.2.8.1 ICMS CHILD JUSTICE

During this reporting period, the number of preliminary inquiries captured per region is as follows:

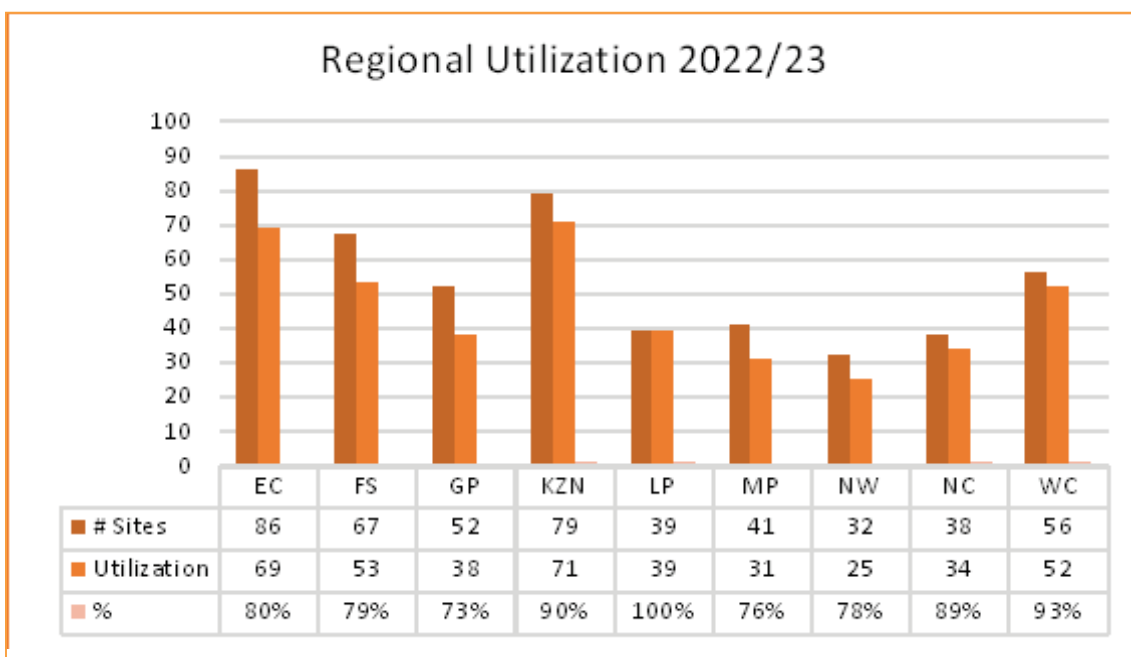
**TABLE 28: PRELIMINARY INQUIRY REGISTRATION WITH % OF REGIONAL DISTRIBUTION**

Region	No of PIs registered	Regional % Distribution
Eastern Cape	923	9%
Free State	601	6%
Gauteng	1522	14%
Kwazulu Natal	1460	14%
Limpopo	1008	9%
Mpumalanga	430	4%
North West	343	3%
Northern Cape	418	4%
Western Cape	3918	37%
Grand Total	10623	100%

Source: Integrated Case Management System: Child Justice

The majority of new preliminary inquiries captured on the ICMS Child Justice module were captured in the Western Cape Province (37%). The Gauteng and KwaZulu-Natal Provinces contributed to 14% respectively and Eastern Cape 9% to the total of new preliminary inquiries captured on the ICMS Child Justice module during the reporting period. The utilization per Region is tabularized as follows:

**FIGURE 3: ICMS CHILD JUSTICE UTILIZATION BY COURTS PER REGION**



Source: Integrated Case Management System: Child Justice

From the graph above, Limpopo (100%), Western Cape (93%), KwaZulu-Natal (90%) Northern Cape (89%) Eastern Cape (80%) recorded the highest utilization of the ICMS Child Justice system during the reporting period.

During this reporting period, the overall utilization of the ICMS Child Justice module increased from 78.6% to 84%.

The Department continues with the monitoring of the utilization of the ICMS Child Justice Module by the courts to ensure the 100% utilization of the system and most importantly, the accuracy and completeness of the data captured in this system.

### **3.2.9. QUALITATIVE AND QUANTITATIVE DATA COLLECTION IN TERMS OF THE ACT**

Additional information that the Department must collect in terms of section 96(1)(e) of the Act includes:

#### **3.2.9.1. APPEALS AND REVIEWS**

The Department amended the ICMS Child Justice module to include information relating to automatic reviews in relation to sentences of imprisonment and compulsory residence in the child and youth care centres.

This function requires the clerks of the court to capture the review number and the date on which the case was referred to the appeals and reviews section. This will ensure compliance with section 85 of the Act.

The submission of data is closely monitored by the Department.



## **CHAPTER 4**

### **THE INTEGRATED JUSTICE SYSTEM (IJS) PROGRAMME CHILD JUSTICE**

## CHAPTER 4: THE INTEGRATED JUSTICE SYSTEM (IJS) PROGRAMME CHILD JUSTICE

### 4.1 THE IJS PROGRAMME

The Integrated Justice System (IJS) programme is a government initiative that strives to improve the efficiency and effectiveness of the South African criminal justice process. It is driving a multi-departmental effort to increase the probability of successful investigation, prosecution, punishment, and ultimately the rehabilitation of offenders and their restoration back into society to realise a national objective that all South Africans are and feel safe.

The IJS programme has representation in the Directors-General Inter-sectoral Committee for Child Justice (ISCCJ) and assists in the collation of transversal performance measures to monitor the various components of the CJS. This includes children in conflict with the law and all vulnerable groups that are affected by crime. The IJS is committed to the implementation of technology systems to ensure a fair, responsive and efficient criminal justice system where all South Africans are and feel safe. This includes a justice system that is able to handle and protect the rights of all children.

### 4.2 ENABLING THE DIGITAL EXCHANGE OF INFORMATION BETWEEN DEPARTMENTS IN THE CRIMINAL JUSTICE SYSTEM

- 4.2.1 The Act requires the creation of information management tools to facilitate the collection and analysis of child justice related statistics for strategic and operational use to manage the implementation of the Act. The IJS recognised that a prerequisite to reliable information collection (statistics) is a trustworthy information source in the form of robust business applications that are used by government departments involved in the child justice process. Therefore, the IJS programme has worked together with member departments to establish electronic case management and workflow applications that support the departments' core business processes especially relevant to the criminal justice system.
- 4.2.2 To date, case management business applications have been developed and implemented for the SAPS, NPA, DSD, Legal Aid South Africa and the DoJ&CD. The ICMS module for Child Justice, has provided an essential foundation for the collection of child justice related statistics.
- 4.2.3 Integral to the enabling of inter-department integration, the successful implementation of the IJS Transversal hub has provided a platform on which the underlying criminal justice business processes may be integrated. The JCPS cluster was the first cluster within government that pursued interoperability, and the hub already provides for the electronic exchange of information between SAPS, NPA, DoJ&CD, the Department of Home Affairs (DHA), DSD, the DCS and Legal Aid South Africa, amongst others.



**FIGURE 4:** THE IJS TRANSVERSAL HUB PROVIDES A TECHNICAL INTEGRATION PLATFORM FOR ELECTRONIC EXCHANGE OF INFORMATION BETWEEN MEMBER DEPARTMENTS

### 4.3 SUPPORTING CHILD JUSTICE THROUGH SYSTEM INTEGRATIONS

4.3.1 For Child Justice to be effective, all government departments involved need to be united and operate in a cohesive manner. This is especially important at the start of the child justice process, in the first handover interface between SAPS and DSD. It is also an area requiring acute attention, as evidenced in the comparison of reported performance figures between the two departments, and a critical challenge highlighted by the Inter-sectoral Committee for Child Justice.

4.3.2 The 2021/2022 Child Justice annual report reported that 26 580 children in conflict with the law are reported as apprehended by SAPS. The Act indicates that each child should be assessed by a DSD probation officer, in order for necessary interventions, as well as suitability for diversion to be recommended. However, reported and completed assessments by the DSD



**FIGURE 5:** WHERE ARE THE CHILDREN? NUMBER OF CHILDREN IN CONFLICT WITH THE LAW APPREHENDED BY SAPS AS COMPARED TO NUMBER OF CHILDREN ASSESSED BY DSD (SOURCE: 2021/2022 CHILD JUSTICE ANNUAL REPORT)

showed that more than 50% (13 778) of these children were assessed, and only 35% (9 401) of these cases were captured as preliminary inquiries.

4.3.3 A key IJS focus has been the establishment and ongoing maintenance and monitoring of electronic integrations between SAPS and DSD. Performance management and accountability between the two role players can be established, at individual case level, by enabling traceability of the notification of child suspects from SAPS to DSD, and an electronic acknowledgement from DSD back to SAPS on assignment of the DSD Probation Officer.



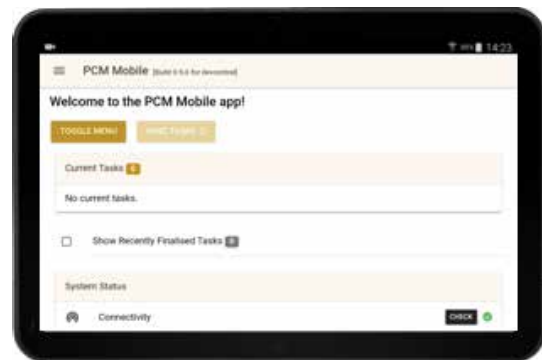
**FIGURE 6: ELECTRONIC INTEGRATIONS BETWEEN SAPS AND DSD**

4.3.4 Furthermore, any discrepancy between the reported number of children in conflict with the law that were apprehended by SAPS, as compared to the number of Child Justice assessments completed by DSD probation officers, can be identified during the reporting period, with operational reports available to DSD management to support queries and interventions.

4.3.5 Another key deliverable was the proposed integrations between NPA and DoJ&CD, which aims to integrate the child data captured between the relevant systems. The data will then be electronically integrated into the DoJ&CD environment. Initial analysis and design has been completed. Subsequent development and implementation will follow in the next financial year.

#### 4.4 KEY 2022/2023 ACHIEVEMENTS

4.4.1 During the 2019/2020 financial year, the IJS and the DSD completed the enhancement and the development of an updated version of the DSD Mobile Probation Case Management (PCM) application. Enabled by the electronic integration with SAPS, the mobile application allows DSD supervisors to receive electronic notifications as soon as a child has been apprehended by SAPS, and it also helps to ensure that there is a prompt allocation of a probation officer. These alerts are received on their smartphones or tablets, wherever applicable. Upgrades were performed in 2022/23 in order to align with the requirements of the integrated case management approach. The solution rollout has been completed in all provinces. Initial training of the probation officers and supervisors was completed, although training continues as new employees are appointed.



**FIGURE 7: THE DSD MOBILE PCM. A FIRST FOR IJS, DSD AND SITA. THE APPLICATION OPERATES ON AFFORDABLE MOBILE TABLETS.**

- 4.4.2 To support DSD operations management and management of the electronic integrations between SAPS and DSD, the IJS Transversal developed an interactive reporting dashboard that provides key metrics on the number of children apprehended by SAPS, and the response rate of DSD probation supervisors in attending to these notifications. The dashboard was adopted and signed off, and access granted to DSD officials working with the Social Crime Prevention and Information Technology departments. Reports are provided on an on-going basis.
- 4.4.3 The IJS, as part of the National Technical Intersectoral Committee for Child Justice, has been working closely with the role-players to develop a holistic and integrated ISCCJ reporting dashboard for the display of Child Justice related measures, aligned to the recently approved Child Justice National Framework. The full list of measures has been identified. Priority metrics were identified and documented. Due to project reprioritisation, further development can only commence once the proposed child justice integrations have been completed.
- 4.4.4 During the last financial year the IJS Transversal worked closely with DSD to continue with the department's Child and Youth Care Centre Application (CYCA) modernisation project. This system is essential for reliable management and data reporting related to the safe custody of children in conflict with the law, and a prerequisite to several planned inter-departmental integrations. The application has now been deployed within the DSD environment to enable user acceptance testing. User acceptance testing was completed in the last financial year; however, some issues were highlighted and corrected. Analysis and design of the CYCA mobile application will commence in the new financial year.
- 4.4.5 IJS has also been assisting DSD in implementing integrations with the DHA in order to identify and verify persons, based on predefined biometric characteristics. Gauteng province has already implemented the electronic integrations successfully. The DSD case management system module is in the process of utilising the DHA functionalities. It is anticipated that other provinces will utilise the functionality by integrating with the case management system. DSD will also be subscribing to the enhanced DHA messages, which will allow for the verification of foreign nationals as well.
- 4.4.6 IJS formed part of an analysis team for the Integrated Person Management (IPM) system implemented in the SAPS environment. The aim of the project is to capture the relevant person information in one centralised data repository. IJS assisted in ensuring that the child offender management process was correctly documented and the relevant information would be captured and included in the business process models. Development of the initial phases and functionality of the IPM system have been completed and is currently piloted at a number of SAPS facilities.



## 4.5 PROVIDING SUPPORT TO THE INTERSECTORAL COMMITTEE FOR CHILD JUSTICE

- 4.5.1 The IJS continues to provide on-going data analysis support to the Intersectoral Committee for Child Justice (ISCCJ) task team established to reconcile the discrepancies between the numbers of reported children in conflict with the law between the CJS member departments. These data reports assist the Task Team for the National Inter-sectoral Technical Committee to conduct various reconciliation activities between departments.
- 4.5.2 The ISCCJ dashboard has also been scoped and will provide the platform for systems-based reporting of additional Child Justice key performance indicators across IJS member departments, with several key child-justice integrations between the NPA and DoJ&CD already developed, where implementation will occur in the 2023/2024 financial year.



**FIGURE 8:** THE CHILD JUSTICE OPERATIONS DASHBOARD PROVIDES NATIONAL, PROVINCIAL AND DISTRICT VIEW OF KEY CHILD JUSTICE RELATED METRICS

The IJS is committed to the implementation of technology systems to ensure a fair, responsive and efficient criminal justice system where all South Africans are and feel safe. We continue to pursue this to realise a justice system that fulfils the aspirations of the Act and is able to handle and protect the rights of all children.



# **CHAPTER 5**

**LEGAL DEVELOPMENTS  
IN CHILD JUSTICE AND  
CASE LAW**

## CHAPTER 5: LEGAL DEVELOPMENTS IN CHILD JUSTICE AND CASE LAW

During this reporting period, a number of reportable legal developments in child justice were recorded in the country, and some of these include:

### 5.1 CENTRE FOR CHILD LAW (APPLICANT) AND DIRECTOR OF PUBLIC PROSECUTIONS, JOHANNESBURG (FIRST RESPONDENT) AND OTHERS CTT 210/21

The case started as the State v LM; the State v KM; the State v EM; the State v KS,<sup>15</sup> when four children from Krugersdorp tested positive for dagga at school.

The children and their parents appeared in the Krugersdorp Magistrate's Court where it was agreed they would undergo diversion programmes.

It later emerged all four children did not comply with the conditions of the diversion programmes.

They were then referred to the Department of Social Development where probation officers assessed them.

It was recommended the children be subjected to a compulsory residential diversion programme for an unspecified period.

The South Gauteng High Court has declared section 4(b) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), inconsistent with the Constitution and invalid to the extent that it criminalises the use and/or possession of cannabis by a child. The matter was referred to the Constitutional Court for confirmation.

The Constitutional Court gave judgment on 29 September 2022 in the matter Centre for Child Law v Director of Public Prosecution, Johannesburg and Others.<sup>16</sup>

The Constitutional Court emphasised that this case does not concern the legalisation and condonation of the use and/or possession of cannabis by a child. None of the parties before this Court, nor the High Court of South Africa, Gauteng Local Division, Johannesburg (High Court), argued that a child should be permitted by law to use and/or possess cannabis. Rather, this matter concerns the repercussions of the use and/or possession of cannabis by a child. In other words, the question to be answered is this: is the criminal justice system the appropriate mechanism to respond to the use and/or possession of cannabis by a child or are social systems, designed to protect and promote the rights of the child more suitable? This is the prism through which the issues may, and indeed must, be distilled and determined.

<sup>15</sup> Unreported judgment of the High Court of South Africa, Gauteng Local Division, Johannesburg Case No 97/2018; 98/2018; 99/2018; 100/2018 (5 February 2019) (review judgment).

<sup>16</sup> [2022]ZACC 35

In the judgment in the matter Minister of Justice and Constitutional Development v Prince (Clarke and Others Intervening); National Director of Public Prosecutions v Rubin; National Director of Public Prosecutions v Acton<sup>17</sup> the court legalised the use, possession and cultivation of cannabis by an adult in private for his or her personal consumption.

It is important here to distinguish between legalisation and decriminalisation. In Prince, the statutory provision was held to be invalid, and Parliament is in the process of enacting legislation specifically aimed at legalising the use and cultivation of cannabis in private by an adult. Therefore, it can be said that Prince carved out a legal space for an adult to use, possess and cultivate cannabis for their own consumption in private – this is a limited sphere in which the legalisation of cannabis is recognised. By contrast, decriminalisation does not permit the use and/or possession of cannabis, but has the consequence that the use and/or possession does not result in a criminal conviction and punishment.

The current matter is not about allowing a child to use and/or possess cannabis. The right recognised in Prince is limited to adults only. That is not an oversight by this Court. It is implausible to claim that a child has a right to the personal consumption of cannabis in private. There are valid reasons to protect children from the use of drugs and the recognition of the right of a child to use cannabis would be inconsistent with the need to protect children and, indeed, with the constitutional imperative in section 28(2) of the Constitution that a child's best interests are of paramount importance in every matter concerning the child.

The constitutional problem in this case is not one of a status offence. To legalise the private possession and use of cannabis by adults does not require that the use and/or possession of cannabis by a child should also be recognised. The use and/or possession of cannabis by a child may have adverse effects to which we do not want to expose our children.

This matter is about the consequences of the use and/or possession of cannabis by a child, and whether those consequences should be located in the criminal justice system or in social systems. Unlike the use and/or possession of cannabis by an adult (in private, for personal use, as was dealt with in Prince), if this Court confirms the order of constitutional invalidity, there can still be legal consequences for children for the use and/or possession of cannabis, albeit outside of the criminal justice system. The focus in this matter is on decriminalisation, not legalization. This is the first difference between Prince and this matter.

Another important distinguishing feature between Prince and this matter is that Prince concerned adults, while this matter concerns children. The reasoning in Prince should not be imported into this judgment without cognisance of the difference between a child and an adult. This Court has recognised that a child deserves special protection from the law. It cannot be disputed that a child has a right to privacy.

The right to privacy applies to “everyone”. However, different rules apply to children in respect of this right. The principle that children accused of committing offences should be treated differently to adults “is now over a century old”.

<sup>17</sup> [2018] ZACC 30; 2018 (6) SA 393 (CC); 2018 (10) BCLR 1220 (CC)

This is because the law is oftentimes designed to treat a child and an adult differently.

The final difficulty with importing the reasoning in Prince into this matter is that Prince legalised the use and/or possession of cannabis by an adult in private. An adult who uses and/or possesses cannabis in public can still face a criminal sanction. The High Court in this matter, when it declared section 4(b) of the Drugs Act unconstitutional, did not differentiate in the order between the private and public spheres. Accordingly, the effect of the High Court order is that it diverges from Prince. In terms of this order, it is still illegal for a child to use and/or possess cannabis (whether in public or private); however, that child cannot be arrested and/or prosecuted and/or sent to a diversion programme for contravening the impugned provision. The High Court concluded that there are other methods to deal with a child caught in those circumstances.

In the Court's view, going beyond the private arena when it pertains to the use and/or possession of cannabis by a child is necessary because this matter is not about protecting the child's right to privacy in order to use and/or possess cannabis in private. It is about choosing the most appropriate manner in which to respond to a child using and/or possessing cannabis, and this applies to the private and public spheres. Therefore, in this matter, we are not dealing with an extension of Prince to encompass children and thus this case cannot be determined through the lens of a status offence

**The order by the Constitutional Court:**

- a) The order of the High Court, declaring section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 to be inconsistent with the Constitution and invalid to the extent that it criminalises the use and/or possession of cannabis by a child, is confirmed.
- b) The operation of the order in paragraph 1 is suspended for a period of 24 months to enable Parliament to finalise the legislative reform process.
- c) During the period of suspension referred to in paragraph 2, no child may be arrested and/or prosecuted and/or diverted for contravening section 4(b) of the Drugs and Drug Trafficking Act insofar as it criminalises the use and/or possession of cannabis by a child.
- d) A child apprehended for the use and/or possession of cannabis may be referred to civil processes, including those found in the Children's Act 38 of 2005 and the Prevention of and Treatment for Substance Abuse Act 70 of 2008.
- e) Where a court has convicted a child of a contravention of section 4(b) of the Drugs and Drug Trafficking Act for the use and/or possession of cannabis, the criminal record containing the conviction and sentence in question, of that child in respect of that offence may, on application, be expunged by the Director-General: Justice and Constitutional Development or the Director-General: Social Development or the Minister of Justice and Correctional Services, as the case may be, in accordance with section 87 of the Child Justice Act 75 of 2008.

- f) If administrative or practical problems arise in the implementation of paragraph (e) of this order, any interested person may approach the High Court for appropriate relief.
- g) The second respondent must pay the applicant's costs in this Court.

As a concluding remark, the Constitutional Court emphasised the scope of this judgment. As much as the legal system sought to protect the child by criminalising such acts, there are more rights-centred approaches to responding to cannabis use and/or possession by a child. This judgment makes a finding that the criminalisation of the use and/or possession of cannabis by a child, whether in private or public, infringe on a child's rights. The Court is cognisant of the fact that there is an inherent risk with decriminalisation pertaining to a child and a potential scope for harm if the use and/or possession of cannabis by a child is not met with a social response. Therefore, the Court reiterated the need for a social response to cannabis use and/or possession by a child. In the Court's view, the response should be wholly centred on rehabilitation, support and recognising the inherent vulnerability of the child and as such, the response should not be located within the criminal justice system.

## 5.2 REVIEW OF THE MINIMUM AGE OF CRIMINAL CAPACITY

The Child Justice Amendment Act, 2019 (Act 28 of 2019) came into operation on 19 August 2022 through the Proclamation signed by the President and published in Government Gazette No. 11475 on 19 August 2022. The minimum age of criminal capacity has been raised from 10 years to 12 years from this date.

## 5.3 THE STATE V LJ<sup>18</sup>

This case (B1053/21) was before the Western Cape Division of the High Court, Cape Town on special review in terms of section 16(2) of the Child Justice Act, 2008 (Act 75 of 2008) read with section 303 of the Criminal Procedure Act, 1977 (Act 51 of 1977). The court ordered that the automatic review of cases in terms of section 85(1) of the Child Justice Act, 2008 includes all cases where the sentence involves any form of imprisonment or any sentence of compulsory residence in a child and youth care centre. This includes a sentence of imprisonment with an option of a fine and even a wholly suspended sentence.

<sup>18</sup> Case 346/22. Western Cape Division of the High Court, Cape Town



# **CHAPTER 6**

## **LIMITATIONS AND POSSIBLE INTERVENTIONS**

## CHAPTER 6: LIMITATIONS AND POSSIBLE INTERVENTIONS

The limitations reflected in this Chapter relate to the challenges experienced by the Department in the implementation of the Act and these have been listed below as follows:

CHALLENGES/LIMITATIONS	CORRECTIVE MEASURES/PROGRESS
<p><b>01</b> The Delay in the integration of the ECMS and ICMS Child Justice modules to end the current data discrepancies on diversions between DoJ&amp;CD and NPA.</p>	<p><b>01</b> The specifications for this proposed link have been developed. Renewed efforts will be made during the next reporting period to ensure data accuracy and completeness in diversions.</p>
<p><b>02</b> The discrepancies in data sets that evert accurate profiling in child justice.</p>	<p><b>02</b> IJS is finalising systems integration between the government child justice actors.</p>
<p><b>03</b> Poor data capturing and capturing of incomplete/inaccurate data at court level.</p>	<p><b>03</b> The ICMS CJ module has been amended to provide for electronic verification of captured data by supervisors at court level. This places the responsibility for complete and accurate data at court level. The implemetation thereof will be monitored in the next reporting period.</p>
<p><b>04</b> Under-utilisation of the Integrated Case Management System (ICMS) for Child Justice.</p>	<p><b>04</b> Risk monitoring sessions are held with provincial stakeholders to improve the monitoring role of the regional offices in ensuring the 100% utilisation of the ICMS: child Jistice. Other interventions will be explored.</p>





# CHAPTER 7

## CONCLUSION

## CHAPTER 7: CONCLUSION

The Department continues to improve the way in which children are tracked through the courts in the child justice system.

To demand justice for children is not just to require that they are not abused at the hands of those who are meant to enforce the law. It is to require that society recognises and addresses the reality of children's lives and the root causes of their offending and seeks to put in place real, long term solutions.<sup>19</sup>

According to the World Health Organisation, it is estimated that up to 1 billion children aged 2-17 year, have experienced physical, sexual, or emotional violence or neglect in the past year.<sup>20</sup> South Africa is no exception -it was reported that an average of three to four children are murdered in South Africa every day. In the last quarter of 2021, 394 children survived attempted murder and 2 048 children were victims of physical assault.<sup>21</sup>

Exposure to violence at an early age can result in negative coping and health risks and these children are substantially more likely to smoke, misuse alcohol and drugs, and engage in risky sexual behaviour.<sup>22</sup> Exposure to violence also impacts on opportunities and future generations since affected children are more likely to drop out of school, have difficulty finding and keeping a job, and are at heightened risk of later victimisation and/or perpetration of interpersonal and self-directed violence, by which violence against children can affect the next generation.<sup>23</sup>

Children who have been maltreated (abused and neglected) and who commit offences are regarded as "crossover children" and there is a need to deal with their needs and their deeds as one, holding children responsible for their behaviour, but taking into account and responding to their needs and trauma by ensuring that they have the necessary support and services around them.<sup>24</sup>

There is a need in South Africa to record and analyze the "crossover children" - not only those that are recorded in children's courts but also those who are regarded as "at risk" children coming into contact with the Department of Social Development including those leaving school at an early age to ensure that they receive appropriate support to prevent them from entering the child justice system.

19 Save the Children. 2005. The Right Not to Lose Hope. Children in conflict with the law – a policy analysis and examples of good practice. A contribution to the UN Study on Violence against Children from the International Save the Children Alliance. p. 5

20 World Health Organization. Violence against children. November 2022. Available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>

21 Vorster, RW. 2022. Three children are murdered every day in South Africa – we need action, not outrage. Daily Maverick, 23 November 2022.

22 World Health Organization. Violence against children. November 2022. Available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>

23 World Health Organization. Violence against children. November 2022. Available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>

24 Cashmore, J. 2011. The link between child maltreatment and adolescent offending. System neglect of adolescents. Family Matters. 2011. No.89. p. 38.

## ANNEXURE A: PUBLIC EDUCATION AND COMMUNICATION EVENTS

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>KwaZulu-Natal</b>	Date: 24 June 2022 District: Zululand District Communities visited: Ulundi @ (Multipurpose Centre)	Community sessions & events	11	300 community members
	Date: 08 August 2022 District: King Cetshwayo District Communities visited: Qomintaba Community	Community sessions & events		250 community members
	Date: 15 August 2022 District: Ethekewini South Communities visited: Umlazi Clinic	Community sessions & events		+280 community members
	Date: 18 August 2022 District: Mzinyathi Communities visited: Mzinyathi High School in Greytown	Awareness with learners		250 learners
	Date: 12 August 2022 District: Ugu District Municipality Communities visited: Phindavele High School	Awareness with learners		210 learners
	Date: 7 December 2022 District: Langalibalele municipality Communities visited: Weneen@ Mthaniya Community Hall	Community Session		150 community members
	Date: 08 December 2022 District: Langalibalele municipality Communities visited: - Estcourt kwa-Mkhize Community	Community Session		150 community members

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>KwaZulu-Natal</b>	Date: 9 December 2022 District: Estcourt Communities visited: Wembezi	Community Session		150 community members
	Date: 10 December 2022 District: Estcourt Communities visited: Loskop Ward 6	Community Session		150 community members
	Date: 20 - 24 February 2023 District: Greater Kokstad Local Municipality Communities visited: Kokstad	Community Session		3558 learners
	Date: 27 February 2023 District: Greater Kokstad Communities visited: Kokstad	Community session		113 community members
<b>Total</b>				<b>+5 561</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Eastern Cape</b>	Date: April, May, July and District: OR Tambo, Buffalo City and Nelson Mandela Communities visited: Lusikiski, Mthatha, East London	Outreach Programmes, Awareness Sessions and	More than 10	+4600 learners and 1 SGB.
	Date: 6-10 February 2023 District: Alfred Ndzo Communities visited: Bizana	Outreach/ Information Sessions at 10 schools where information were provided on GBV matters, Cyber bullying and Sexting, Child Justice Act, Maintenance and Drug and Substance Abuse, Teenage Pregnancy as well as Trafficking in Persons.		8000 learners
<b>Total</b>				<b>±12 600</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Gauteng</b>	Date: 30 May - 03 June 2022 District: Ekurhuleni & West-rand Communities	Child Protection Week	±20	1284
	Date: 12 July 2022 District: Springs Magisterial Communities Visited: Springs Methodist Retirement Village and Springs Epilepsy and Mental Disability Centre	Mandela Month Visit		63 Orphanage residence 75 Epileptic Centre
	Date: 20 July 2020 District: Boksburg Magisterial Communities Visited: Learners	Mock Court		154 Learners
	Date: 25 - 29 July 2022 District: Palm Ridge Magisterial Communities visited: Learners Date: 12 August 2022 District: Mogale City Magisterial Communities visited: Munsieville Community	Mock Court		

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Gauteng</b>		Community Dialogue		136
	Date: 27 August 2022 District: Johannesburg Magisterial Communities visited: Learners	School Competition		40
	Date: 12 - 16 September 2022 District: Johannesburg Magisterial Communities visited: Various Communities	Child Justice		378
	Date: 17 February 2023 District: Ekurhuleni North Communities visited: Learners & Inmates	Prison Tour visit		90
	Date: 24 March 2023 District: Ekurhuleni North Communities visited: Learners & Inmates	Prison Tour visit		90
	Date: 10 March 2023 District: Ekurhuleni North Communities visited: Learners & Inmates	Prison Tour visit		90
<b>Total</b>				<b>±2 404</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Western Cape</b>	Date: 30 May 2022 District: Cape metro Communities visited: School children	Information session for Child Protection week	7	100
	Date: 01 June 2022 District: Cape Metro Communities visited: School children	Information session for Child Protection week		200
	Date: 03 June 2022 District: Overberg Communities visited: School children	Information session for Child Protection week		200
	Date: 03 June 2022 District: Overberg Communities visited: School children	Information session for Child Protection week		200
	Date: 03 June 2022 District: Central Karoo Communities visited: farming community	Information session for Child Protection week		300
	Date: 25 November 2022 District: West Coast Communities visited: Laaiplek High school	Youth engagement at a high school		200
	Date: 28 November 2022 District: West Coast Communities visited: Clanwilliam Youth center	Community youth engagement		150
<b>Total</b>				<b>1 350</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Mpumalanga</b>	<p>Date: 26 April 2022</p> <p>District: Nkangala District</p> <p>Communities visited: Middelburg</p> <p>the leaners came from this schools : Eastene Combine , Middelburg Combine HTC Middelburg ,MHS Middelburg ,Phumelela High,Ekwazini High Mphanama High,Sozama High ,Sofunda High ,Tswenyane High ,LD Moetanal High.</p>	Leaners Dialogue	41	Total number of 110 Leaners was reached.
	<p>Date: 30 May- 04 June 2022</p> <p>District: Nkangala District</p> <p>Communities visited: Mhluzi, Middelburg, Nazareth, and Arnot.</p> <p>The following schools were reached: Aerorand, Beestepan Blinkpan,Ekwazini, Elusindisweni, Evergreen, Future Achievers, H/S M'burg,HTS M'burg,Ipani, Koornfontein, LD Moetanal, M'bur Prim. School, Mhluzi,MMS, Mphanama,Mthombeni, Mvuzo, Sofunda, Sozama St Peters College, Zikhuphule.</p>	School visits		A total number of 6948 learners were reached.
	<p>Date: 29 August -02 Sept 2022.</p> <p>District: Gert Sibande District</p> <p>Communities visited: Secunda and Trichardt.</p> <p>The following two schools visited; Trichardt Primary and Highveld High.</p>	School visits		A total number of 1154 leaners were reached.
	<p>Date: 25 October -28 October 2022</p> <p>District: Gert Sibande District</p> <p>Local Municipality:Msukaligwa Area :Ermelo,Lothair ,Morgenzon.</p> <p>The following schools were reached: Ubuhle bolwazi Primary, Lothair Primary,The Gem Combined, Davel Primary,Umfundla Combined, Masizakhe Secondary,Umzimvelo Combined,Bashele Primary,Ermelo Combine,Cebisa Secondary,Lindile Secondary,lthafa Secondary,Wesselton Primary,Lungelo Combined,Sizakhele Primary, Qambekile Combined,New Ermelo Primary.</p>	School visits		A total number of 3244 learners were reached.



Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Mpumalanga</b>	Date: 09 February - 2023. District: Ehlanzeni District Local Municipality :Bohlabelo School visited: Bondzeni Secondary.	School visit		A total number of 350 learners were reached.
<b>Total</b>				<b>11 806</b>
Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Northern Cape</b>	Date: 30 May 2022 District: ZF Mgcawu Communities visited: Upington Pabalello High School & AJ Ferreira High School	Child Protection Week  Learner & educators engagement	20	976
	Date: 31 May 2022 District: ZF Mgcawu Communities visited: Upington Duineveld High School & Upington High School	Child Protection Week  Learner & educators' engagement		390
	Date: 1 June 2022 District: ZF Mgcawu Communities visited: Upington Kalksloot Intermediate School & Westerkim Primary School	Child Protection Week  Learner & educators' engagement		432 713
	Date: 02 June 2022 District: ZF Mgcawu Communities visited: Upington SC Kearns High School & Saul Damon High School	Child Protection Week  Learner & educators' engagement		1028 1119
	Date: 03 June 2023 District: ZF Mgcawu Communities visited: Upington Carlton Van Heerden High School	Child Protection Week  Learner & educators' engagement		

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
Northern Cape	Date: 26 July 2022 District: ZF Mgcawu Communities visited: Kakamas Fiersdale Combined School & Kakamas Intermediate School	Community Outreach		93 113
	Date: 17 August 2022 District: ZF Mgcawu Communities visited: Louisvale Community hall	Provincial Government EXCO Community outreach- Exhibition		500
	Date: 18 August 2022 District: ZF Mgcawu Communities visited: Kenhardt KDY Projects-Youth Organisation	Kenhardt Youth		24
	Date: 21 October 2022 District: ZF Mgcawu Communities visited: Upington community Mxolisi Dicky Jacobs Stadium	Presidential Imbizo- Community  Exhibition		5000
	Date: 14 March 2023 District: Namaqua Communities visited: Springbok community	Community Outreach		124
	Date: 15 March 2023 District: Namaqua Communities visited: Steinkopf community	Community Outreach		83
	Date: 16 March 2023 District: Namaqua Communities visited: Springbok AS Van Wyk High School	School information ses- sion		33
	Date: 21 March 2023 District: Pixley Ka Seme Communities vis- ited: De Aar Jacobs Stadium	Presidential Imbizo (community)  Exhibition		3000

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Northern Cape</b>	Date: 23 March 2023 District: ZF Mgcawu Communities visited: Post-masburg Newtown Community hall	Community Outreach		95
	Date: 24 March 2023 District: ZF Mgcawu Communities visited: Danielskuil 1933 Tourism Centre	Community Outreach		105
<b>Total</b>				<b>14 909</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>North West</b>	Date: 23 May 2022 District: Ngaka Modiri Molema District Communities visited: Schools	School outreach	4	300
	Date: 24 May 2022 District: Ngaka Modiri Molema District Communities visited: School	School outreach		450
	Date: 25 May 2022 District: Ngaka Modiri Molema District Communities visited: School	School outreach		800
	Date: 26 May 2022 District: Ngaka Modiri Molema District Communities visited: School	School outreach		600
<b>Total</b>				<b>2 150</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
Free State	Date: 30 May 2022 District: Boshof  School: Aramela Combined School	Information session	11	200 learners
	Date: 31 May 2022 District: Hertzogville  School: Sensile High	Information session		100 learners
	Date: 01 June 2022 District: Steynsrus School: Tharollo Primary	Information session		100 learners
	Date: 02 June 2022 District: Arlington School: Leratswana School	Information session		350 learners
	Date: 03 June 2022 District: Vanstandensrus  School: Thapelong Secondary School	Information session		100 learners
	Date: 03 May 2022 District: Memel School: Esizibeni secondary School	Information session		194 learners
	Date: 25 October 2022 District: Trompsburg (Xhariep District)	Community Awareness campaigns		47 Community members
	Date: 25 November 2022 District: ( Tweeling) Fezile Dabi District	Community Awareness campaigns		56 Community members
	Date: 30 November 2022 District: Allanridge ( Lejweleputswa District )	Community Awareness campaigns		134 Community members
	Date: 16 March 2023 District: Xhariep Communities visited: ( Learners) Jimmy Roos School Of Industry	Information Session		57 learners
	Date: 17 March 2023 District: Mangaung Metro Communities visited: Learners ( Polokehong Primary School)	Information Session		133 Learners
<b>Total</b>				<b>1 471</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>Limpopo</b>	Date: 30 May to 03 June 2022  District: Waterberg District (Solomon Mahlangu High, Makhutjisha High, Mokhari Secondary, Letamong Combined, Settlers High, Bathopele Sec, Matamela Ramaphosa, Bela Bela high, Maope and Raeleng Secondary.	School visits- commemoration of the Child Protection week	19	2745 learners
	Date: 13 to 15 March 2023  District: Thabazimbi area Hoerskool Frikkie Meyer, Deo Gloria Primary, Mabogopedi High, Ysterberg Primary, Spitskop Special School, Kesarona primary , Laerskool Thabazimbi, Groenvlei Secondary and Naletsena Secondary	Learner dialogues		3000 learners
<b>Total</b>				<b>5 745</b>

Province	Location and date	Type of initiative	No of initiatives	Number of people reached
<b>National Office</b>	Virtual  13 December 2023	Webinar on less restrictive measures to deal with children addicted to dependency-producing substances	1	± 150 learners, stakeholders and community members
<b>Total</b>				<b>± 150</b>
<b>TOTAL</b>			<b>±149</b>	<b>±58 146</b>





**Report Written by  
Charmain Badenhorst**

Promotion of the rights of  
Vulnerable Groups.

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