

The Implementation of the Child Justice Act, 2008  
(Act 75 Of 2008)

# ANNUAL REPORT

1 April 2015 to 31 March 2016



**the doj & cd**

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





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(Act 75 Of 2008)

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1 April 2015 to 31 March 2016




**OFFICIAL SIGN-OFF**

It is hereby certified that this Annual Report was developed by the Department of Justice and Constitutional Development. It takes into account the key priority areas outlined by the National Policy Framework on Child Justice, which fall within the mandate of the Department of Justice and Constitutional Development. It also reflects the achievements and limitations experienced by the Department as it endeavours 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 tabling in Parliament in compliance with section 96(3) of the Act.

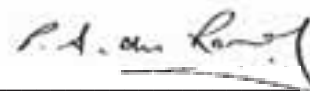
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Chief Director: Promotion of the Rights of Vulnerable Groups

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**Adv Jacob B Skosana**


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**Mr Vusi Madonsela**

Director- General: Justice and Constitutional Development

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## OVERVIEW

This is the 2015/2016 Departmental Annual Report compiled in compliance with section 96(3) of the Child Justice Act, 2008 (Act 75 of 2008) (the Act), which requires the Minister of Justice and Correctional Services to submit to Parliament annual reports received from the Departments or institutions referred to in section 94(2) of the Act, which include the Department of Justice and Constitutional Development (DoJ&CD), the National Prosecuting Authority (NPA), the Department of Correctional Services (DCS), the Department of Social Development (DSD), the Department of Health (DoH), the Department of Basic Education and the South African Police Service (SAPS).

The National Policy Framework on Child Justice lists 10 key priority areas of reporting and these are: (i) Building capacity in the sector; (ii) Ensuring the assessment of children; (iii) Preliminary inquiries; (iv) Sentencing; (v) Provision of diversion and alternative sentencing services; (vi) Establishment of child and youth care centres (also referred to as the secure care centres); (vii) Establishment of One Stop Child Justice Centres (OSCJC's); (viii) Resources and budgeting; (ix) Public education and communication; and (x) Development of necessary IT and IJS Systems to support the Information Management System.

Out of the 10 key priority performance areas this report only deals with those falling in the mandate of the Department, namely (i) Building capacity in the sector; (ii) Preliminary inquiries; (iii) Sentencing; (iv) Establishment of One Stop Child Justice Centres; (v) Resources and budgeting; (vi) Public education and communication; and (vii) Development of necessary IT and IJS Systems to support the Information Management System. Section 96(1)(e) requires the collection of qualitative and quantitative data on various points of service in the child justice system in an effort to track down the flow of children through the child justice system. Some of the required data collected at the service points that is relevant, but not falling directly under the mandate of DoJ&CD, has also been included in the Report.

Chapter 1 of the Report sets out the legislative framework applicable to child justice, which recognises the applicable international and regional instruments on the promotion and protection of the rights and welfare of the child.

Highlights on the performance of the child justice governance structures monitoring the intersectoral implementation of the Act are outlined in Chapter 2. This is in compliance with section 94(2) of the Act, which puts emphasis on the establishment and functioning of the Intersectoral Committee for Child Justice (DG ISCCJ). This structure finds technical support in operational structures located at both national and provincial levels.

The key priority performance areas that fall under the mandate of the Department are dealt with in next Chapter. This Chapter includes a narrative on the recently improved Integrated Case Management System so as to comply with section 96(1)(e) of the Act dealing with data collection. It also indicates the challenges experienced in the system as it begins to find its implementation in our courts.

Chapter 4 focuses on progress made by the government's initiative to improve the efficiency and effectiveness of the South African criminal justice system (CJS) through the Integrated Justice System (IJS) programme. The delays encountered by IJS are highlighted.

The research studies conducted by the Department are dealt with in Chapter 5, as well as the legal developments, with reference to the Judicial Matters Amendment Act, 2015 (Act 24 of 2015).

Chapter 6 of this Report gives a narrative of limitations experienced by the Department in the implementation of this Act and possible interventions.

The DG ISCCJ has considered this Report and recommended to the Minister of Justice and Correctional Services that he tables it in Parliament in terms of section 96(3) of the Act.

The background of the slide features a close-up, slightly blurred image of a hand in a white glove holding a wooden gavel. The gavel is positioned over a stack of several books, likely legal texts. The overall color palette is muted, with greens, yellows, and browns. A decorative curved border at the bottom consists of a dark green outer edge, a white middle section, and a gold inner section.

# **Chapter 1: Introduction and the Legal Framework**

## CHAPTER 1: INTRODUCTION AND THE LEGAL FRAMEWORK

### 1.1 INTRODUCTION

This is the 6<sup>th</sup> Departmental Annual Report submitted to Parliament in compliance with section 96 (3) of the Child Justice Act No 75 of 2008 (the Act). This provision requires the Minister of Justice and Correctional Services, after consultation with the Cabinet members responsible for police, correctional services, social development, education, and health, to submit annual reports to Parliament compiled by their respective Departments or institutions on the implementation of the Act. The Department of Justice and Constitutional Development (the Department) is therefore responsible for the coordination of the intersectoral implementation of the Act.

Having reached the 6<sup>th</sup> year of the implementation of this Act, the Department provides in this Report an analytical approach in outlining progress achieved and challenges encountered in the implementation of the Act. Following the 10 key priority performance areas outlined by the Child Justice National Policy Framework, the Report seeks to report on the progress made in the implementation of the child justice system in the country, particularly in our courts.

It must also be noted that the role of the Department in the implementation of the Child Justice Act is mainly to administer the Act and provide administrative support functions in courts. It is for this reason that this Report excludes performance by the judiciary, the National Prosecuting Authority and Legal Aid SA. However, the two latter stakeholders do compile their individual annual reports for tabling in Parliament in terms of the Act.

### 1.2 THE CHILD JUSTICE ACT, 2008 (ACT 75 OF 2008)

It has been 6 years since the Act came into operation.<sup>1</sup> The main object of the Act is to establish a child justice system that ingrains the culture of restorative justice, while holding children accountable for their criminal conduct without necessarily treating them as criminals. It endorses the effective rehabilitation and reintegration of children back into their communities to prevent and reduce recidivism, whilst balancing the interests of children and those of society, with due regard to the rights of victims. In so doing, it upholds the aspirations of section 28(1)(g) of the Constitution, which entrenches the right of every child not to be detained except as a measure of last resort.

In establishing a separate child justice system in South Africa, the Act provides a framework for various processes that seek to treat the child in a manner that takes into account of the child's age, and these include the evaluation of the child's criminal capacity, the use of restorative justice approaches, diversion programmes, and the consideration by court of pre-sentence reports and victim impact statements.

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<sup>1</sup> The Act came into operation on 1 April 2010



### 1.3 OTHER APPLICABLE LEGISLATION

The Act has close linkages with the following Acts of Parliament:

- (i) The Constitution of the Republic of South Africa, 1996. Section 28 (1) (g) provides every child with a right 'not to be detained except as a measure of last resort...'
- (ii) The Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (iii) The Probation Services Act, 1991 (Act No. 116 of 1991);
- (iv) The Correctional Services Act, 1998 (Act No. 111 of 1998);
- (v) The Probation Services Amendment Act, 2002 (Act No. 35 of 2002), which provides for the appointment and duties of Probation Officers;
- (vi) The Children's Act, 2005 (Act No. 38 of 2005), which provides for the referral of children to children's courts from the child justice courts, if they are children in need of care and protection. The Children's Act, 2005 further provides for the establishment, structures and norms and standards of child and youth care Centres; and
- (vii) The Criminal (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).



# Chapter 2: Child Justice Governance Structures

## **CHAPTER 2: CHILD JUSTICE GOVERNANCE STRUCTURES**

### **2.1 INTRODUCTION**

The Act requires the Department to lead the intersectoral monitoring of the implementation of the Act both at political and administrative levels. Section 96(3) of the Act places a responsibility on the Minister of Justice and Correctional Services to submit to Parliament Annual Reports of the implementing Departments, while section 94 of the Act tasks the Director-General of Justice and Constitutional Development to chair the Intersectoral Committee for Child Justice, which provides administrative oversight in the intersectoral implementation of the Act and its National Policy Framework. For the past 6 years, the following governance structures have continued to give guidance in the implementation of the Act:

### **2.2. THE JCPS MINISTERS**

The Justice, Crime Prevention and Security (JCPS) Cluster Ministers are required by section 96(4) of the Act to consider the Annual Reports before they are tabled in Parliament by the Minister of Justice and Correctional Services. These Reports are submitted by the reporting government stakeholders, which include the Department of Justice and Constitutional Development, Department of Correctional Services, the National Prosecuting Authority, the South African Police Service, the Department of Social Development, the Department of Basic Education, and the Department of Health. The co-opted stakeholder is Legal Aid of South Africa.

In ensuring that South Africa is a crime-free country where all children, in particular, are and feel safe, the JCPS Ministers further provide political oversight in the establishment of the child justice system by their respective departments/ institutions. This system seeks to prevent child-re-offending from an early age.

On 29 September 2015, the Minister of Justice and Correctional Services tabled in Parliament the 2014/15 Departmental Annual Reports.

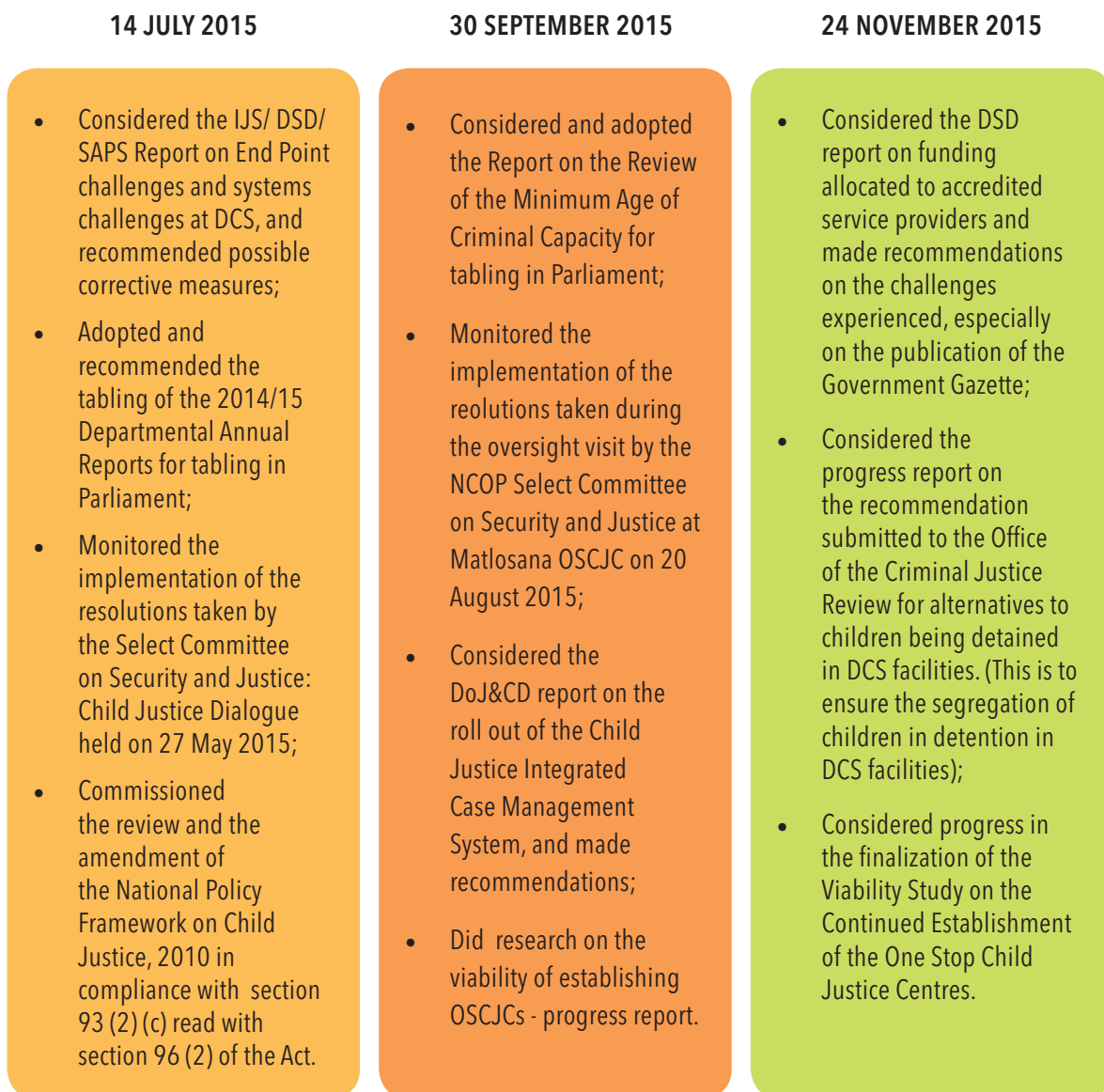
### **2.3. THE DIRECTORS-GENERAL INTERSECTORAL COMMITTEE FOR CHILD JUSTICE (DG'S ISCCJ)**

Section 94(1) of the Act establishes the Intersectoral Committee for Child Justice (DG's ISCCJ) to give oversight in the intersectoral implementation of the Act. This Committee comprises of the:

- (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
- (vii) Director-General: Health.

As required by section 95 of the Act, the Committee meets at least twice a year and reports in writing to the Minister of Justice and Correctional Services on progress made in respect of all matters relating to the execution of its responsibilities, functions and duties, as set out in section 96 of the Act. During this reporting period, the Committee held 4 meetings, one of which was a special meeting.

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



A special Intersectoral Committee meeting was held on 22 October 2015 to consider the Report on the Review of the Minimum Age of Criminal Capacity. It was during this meeting that the Committee recommended to the Minister of Justice and Correctional Services that the report be submitted to the Cabinet for approval, and thereafter be tabled in Parliament in compliance with section 96(5) of the Act. This activity was successfully done. The report was tabled in Parliament on 2 March 2016.

#### **2.4. NATIONAL OPERATIONAL INTERSECTORAL COMMITTEE ON CHILD JUSTICE (OP ISCCJ)**

The National Operational Intersectoral Committee (OP ISCCJ) serves as the technical support structure to the Directors-General Intersectoral Committee for Child Justice (DG ISCCJ). It provides technical assistance, support and advice in all matters relating to the execution of the responsibilities, functions and duties of the latter Committee, as stipulated in section 96 of the Act. In addition to the membership of the government implementing stakeholders that constitute the DG ISCCJ, the OP ISCCJ has the following representatives:

**Government: National implementing stakeholders and  
Chairpersons of the 9 Provincial Child Justice Fora**

**Chapter 9 institutions**

**NGOs: Child Justice Alliance; ChildLine; Centre for Child Law;  
Khulisa Social Solutions; NICRO**

## Diagram 2: Representatives of the OP ISCCJ

The OP ISCCJ meets bi-monthly and reports directly to the DG ISCCJ. During the reporting period, it met 6 times, and its key achievements/resolutions are set out below:

**Table 1 : National Operational ISCCJ Meetings: Agenda items and Resolutions**

| DATES          | ACHIEVEMENTS/ RESOLUTIONS   |
|----------------|---|
| 23 April 2015  | (i) Assisted the chairperson of the North West Child Justice Forum to re-establish the Forum and to finalize the Service Level Agreement for the Matlosana One Stop Child Justice Centre;   |
|                | (ii) Considered the progress report on the Viability Study on OSCJC's, and recommended that it be presented to the DG ISCCJ for adoption;   |
|                | (iii) Commissioned the development of the national logo for One Stop Child Justice Centres, and also recommended the adoption of the draft logo by the DG ISCCJ;  |
|                | (iv) Facilitated the process of securing an independent service provider to conduct an Impact Research on the implementation of Act. (It was agreed that DoJ&CD would provide funds for these services, as the lead Department. This project is expected to commence in 2016/2017); |
|                | (v) Considered the report by DSD on substance abuse programmes. DSD indicated that it does not have aftercare programmes in certain provinces;  |
|                | (vi) Considered the presentation by NICRO on the possible contributors to the decrease in number of diversions;   |
|                | (vii) Considered the report of the audit of all child and youth care centres by DSD, and made recommendations to address the identified challenges;   |
|                | (viii) Considered the presentation on data captured relating to children represented by Legal Aid SA in all provinces, and requested that this data be included by Legal Aid SA in its Annual Report, which the Minister will table in Parliament;                                  |
|                | (ix) Considered the report back on the Child Justice Radio Broadcasting Campaign spearheaded by DoJ&CD;   |
| 19 August 2015 | (x) Considered the report back on diverted cases referred to SAPS;  |
|                | (xi) Considered the report back on the possible increase of jurisdiction of OSCJCs, establishment of regional courts and children's courts by the Free State, EC and NW;  |
|                | (xii) Discussed and made recommendations on the correct placement of the oversight of children in detention;  |

| 21 October 2015 | (xiii) Considered and adopted the 5th Departmental Annual Reports recommended to the DG ISCCJ that they be tabled in Parliament by the Minister of Justice and Correctional Services;  |
|-----------------|--|
|                 | (xiv) Reviewed the National Policy Framework on Child Justice in compliance with section 93(2)(b) of the Act, and produced a draft for consideration by the DG ISCCJ in the next financial year;   |
| <b>DATES</b>    | <b>ACHIEVEMENTS/ RESOLUTIONS</b>   |
| 28 January 2016 | (xv) Considered the Report on the Review of the Minimum Age of Criminal Capacity compiled by DoJ&CD, and recommended to the DG ISCCJ that it be submitted to Cabinet for approval, which was later tabled in Parliament by the Minister of Justice and Correctional Services, as required by sections 8 and 96(5) of the Act;  |
| 10 March 2016   | (xvi) Considered the presentation on DNA legislation by SAPS to determine the linkages between this legislation and the Act;   |
|                 | (xvii) Considered the DoJ&CD report on the Cyber Bullying & Sexting schools/ public education interventions. Sexting – ‘texting’ and ‘sex’ - involves the sending of nude or semi-nude photos or videos and/or sexually suggestive messages via mobile phone texting or instant messaging. The Committee recommended that further collective interventions against cyber-bullying and sexting be held;                     |
|                 | (xviii) Considered the announcement made by the NW Provincial DSD on the “re-purposing” of the Winkie Direko Secure Care Centre into a residential facility for students, and made representations to the DG ISCCJ to intervene. (The latter Committee requested the Minister of Justice and Correctional Services to refer the matter to the attention of the Minister of Social Development for immediate intervention); |
|                 | (xix) Monitored the resolution of challenges detected at the Bhisho Child and Youth Care Centre by DSD.  |

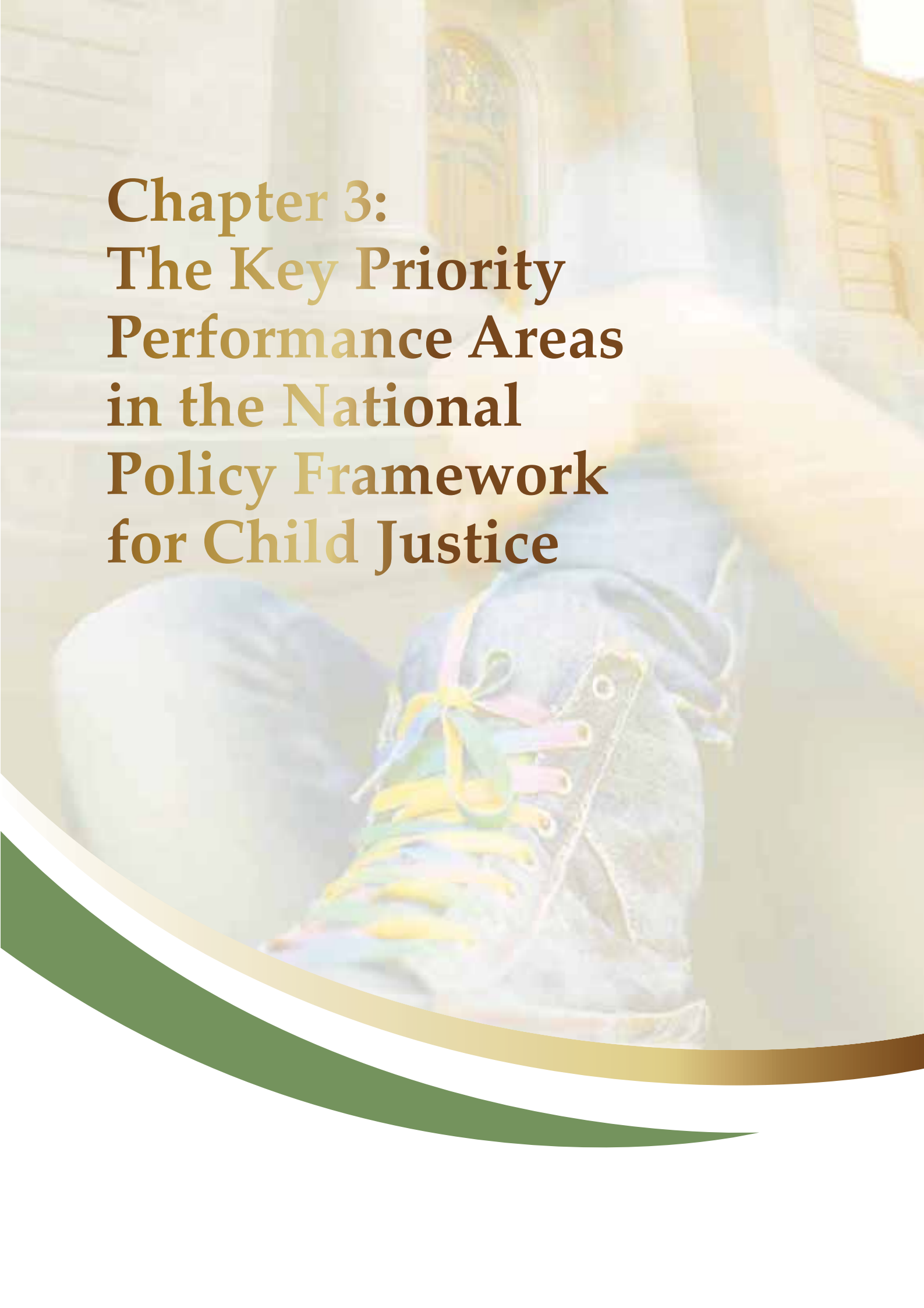
Source: Chief Directorate: Promotion of the Rights of Vulnerable Groups

## 2.5. PROVINCIAL CHILD JUSTICE FORA (PCJF)

The 9 Provincial Child Justice Fora (PCJF) monitor the implementation of the Act at provincial/regional level, and report directly to the OP ISCCJ. They are comprised of representatives of the reporting government stakeholders, NGOs and other relevant provincial stakeholders, and are chaired by the regional heads<sup>2</sup>. Most of the agenda items of the OP ISCCJ are matters cascaded down to the PCJFs.

As reported in the previous Departmental Annual Report, the OP ISCCJ assisted in the re-establishment of the North West Provincial Child Justice Forum, in order to ensure that it functions as required.

<sup>2</sup> Alternates of the regional heads are however allowed to chair these structures, but under the direct supervision of the regional head.

A photograph of a person sitting on a light-colored stone bench. The person is wearing blue denim jeans and colorful sneakers with yellow, green, and pink laces. The background shows a building with a large arched doorway and a window with a grid pattern. The image is overlaid with a semi-transparent green and gold curved graphic at the bottom.

# **Chapter 3: The Key Priority Performance Areas in the National Policy Framework for Child Justice**

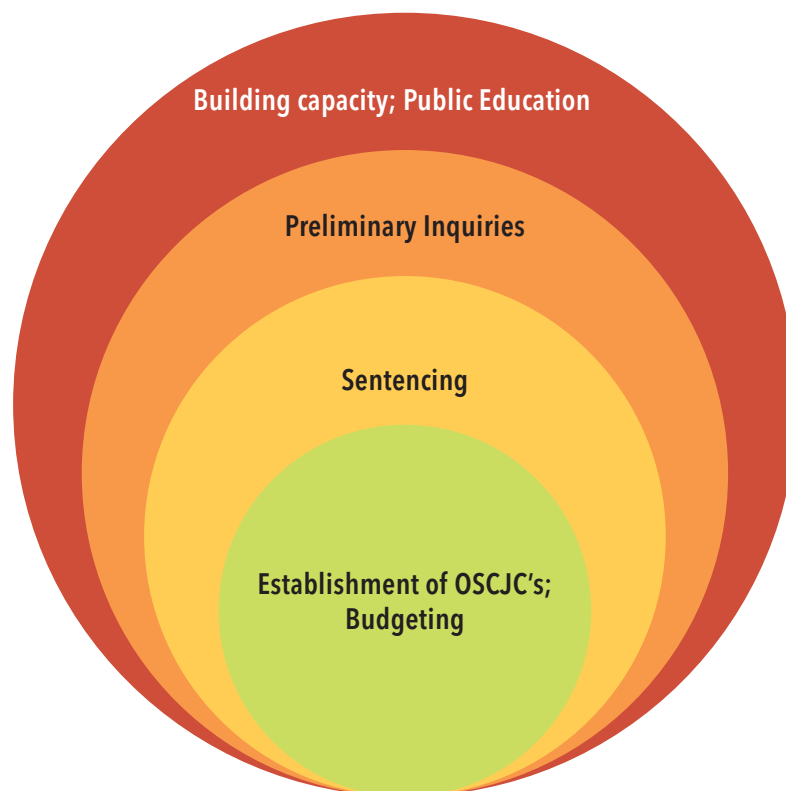


## CHAPTER 3: THE KEY PRIORITY PERFORMANCE AREAS IN THE NATIONAL POLICY FRAMEWORK FOR CHILD JUSTICE

### 3.1 INTRODUCTION

The National Policy Framework for Child Justice outlines 10 key priority performance areas of reporting some of which are relevant to the mandate of the Department.

**Diagram 3: Key Priority Performance Areas Relevant to DoJ&CD**



**The 10 key priority areas of reporting are as follows:**

- (i) Building capacity in the sector;
- (ii) Ensuring the assessment of children;
- (iii) Preliminary inquiries;
- (iv) Sentencing;
- (v) Provision of diversion and alternative sentencing services;

- (vi) Establishment of child and youth care centres (also referred to as the secure care centres);
- (vii) Establishment of One Stop Child Justice Centres;
- (viii) Resources and budgeting;
- (ix) Public education and communication; and
- (x) Development of necessary IT and IJS Systems to support the Information Management System.

Out of the above 10 key priority performance areas, this Report deals with only those which fall within the mandate of DoJ&CD.

### 3.2. KEY PERFORMANCE AREAS APPLICABLE TO DOJ&CD

The Department implements the Act in respect of the following priority areas:

#### 3.2.1. Capacity Building in the Sector

During this reporting period, the Department achieved the following in improving skills and strengthening human resource capacity:

##### 3.2.1.1. Capacity Building (Training)

Every year the Department provides specialized skills training to ensure adequate capacity in the implementation of the Act by clerks of the court. Due to the interdependencies between the child justice stakeholders<sup>3</sup>, the Department further holds integrated skills development and training interventions at provincial level to ensure improved coordination and referrals in the implementation of the Act. During this reporting period, the Department made the following departmental and intersectoral training interventions:



Figure 1: Child Justice Stakeholder Training in Cape Town

<sup>3</sup> JCPS stakeholders

**Table 2 : Skills Training and Workshops- 01 April 2015 to 31 March 2016**

| Province      | Total Number of officials trained  | Content of the training  | Expected Impact of the training   |
|---------------|--|--|---|
| Eastern Cape  | 14 JCPS Stakeholders and magistrates   | The processes of the Act from arrest until diversion and sentencing.   | Improved understanding of the child justice processes. (Participants had an opportunity to present their everyday challenges and were empowered to resolve them). |
| Free State    | 45 JCPS Stakeholders   | On the operational provisions of the Act.  | Better understanding of stakeholder roles and duties in terms of the Act, as well as interdependencies.   |
| Gauteng       | 80 JCPS Stakeholders   | Child Justice Act; National Policy Framework; and roles and responsibilities of all stakeholders in the implementation of the Act.   | Improved intersectoral implementation of the Act.   |
| KwaZulu-Natal | 15 Child and Youth Care Workers  | The provisions of the Act, with particular reference to the different age categories, preliminary inquiries, the Schedule of offences and what constitutes minor offences. | Better understanding of their work and interdependencies involved.  |
|               | 40 Prosecutors and SAPS officials  | The roles and responsibilities of the court-based stakeholders in the implementation of the Act.   | Improved coordination and referral system within the court system.  |
|               | 50 Stakeholders (NPA, SAPS, DSD, LEGAL AID SA, DoH, and NGOs (NICRO, and KHULISA)) | The roles and responsibilities of the stakeholders in the broader value chain of the child justice system.   | Improved intersectoral cooperation and referral system.   |
|               | 40 Stakeholders (NPA, SAPS, DSD, LEGAL AID SA, DoH, NICRO, KHULISA)                | The roles and responsibilities of the stakeholders in the broader value chain of the child justice system.   | Improved intersectoral cooperation and referral system.   |
|               | 60 Stakeholders (NPA, SAPS, DSD, LEGAL AID SA, DoH, Judiciary)                     | The recent case law and review judgments in order to understand shortcomings in respect of the implementation of the Act.  | Better understanding of the impact of case law in the implementation of the Act and the key aspects of stakeholder performance requiring improvement.             |

| Province      | Total Number of officials trained  | Content of the training   | Expected Impact of the training   |
|---------------|--|---|---|
| KwaZulu-Natal | 61 Stakeholders (NPA, SAPS, DSD, NGOs)                                       | Criminal capacity assessment and which category of children should be assessed; SAPS National Instructions; roles and responsibilities of probation offices; and substance abuse and the state owned facilities that are available to children. | Improved stakeholder collaboration.   |
|               | 25 Members of the Anti-Drug Forum formed by the Office of the Premier in KZN | Legal information that assists in drug raids conducted at schools to comply with the Act.   | Improved response to substance abuse and dealing at schools. This intervention also led to the identification of the need to establish the specialized drug courts in areas where prevalence in drug abuse is high. |
| Limpopo       | 34 Clerks of the court   | Training on capturing of cases on the Child Justice Integrated Case Management System (ICMS).   | Improved data capturing in the Child Justice ICMS.  |
|               | 26 JCPS Stakeholders and magistrates   | Information sharing on the Act, particularly on the roles and responsibilities of stakeholders.   | Improved stakeholder coordination and support in the implementation of the Act.   |
|               | 31 JCPS Stakeholders   | Information sharing on the Act, with particular reference to stakeholder roles and responsibilities   | Improved stakeholder coordination and support in the implementation of the Act.   |
|               | 20 Court managers, supervisors and court clerks                              | Training on capturing of cases in the ICMS for Child Justice.   | Improved data capturing in the Child Justice ICMS.  |
|               | 30 Departmental stakeholders (court managers and clerks)                     | Workshop on the Integrated Social Crime Prevention Strategy.  | Internal stakeholders identified crime hotspot areas involving children.  |
|               | 30 Departmental stakeholders (court managers and clerks)                     | Workshop on the Integrated Social Crime Prevention Strategy.  | Internal stakeholders identified crime hotspot areas involving children.  |

| Province      | Total Number of officials trained   | Content of the training  | Expected Impact of the training   |
|---------------|---|--|---|
| Limpopo       | 15 Probation officers and clerks of the court   | Training on diversion programmes and life skills programmes.   | Probation officers able to run diversion programmes for children, and the administrative role of the court clerks distinguished |
|               | 15 Child Justice stakeholders within the JCPS Cluster   | Training on diversion programmes and substance abuse.  | Stakeholders encouraged to set up prevention mechanisms against child-substance abuse, which often leads to crime.              |
|               | 15 Members of the PJCF  | On the provisions of the Act, including roles and responsibilities, as mandated by the Act.                    | Improved provincial monitoring of the Act by all Forum members.   |
| Mpumalanga    | 39 Clerks of the court  | ICMS Child Justice.  | Improved capturing of cases on Child Justice ICMS at court level.   |
| North West    | 20 Members of the PCJF  | National Policy Framework and roles and responsibilities of all stakeholders in the implementation of the Act. | Functional NW Provincial Child Justice Forum. (The Forum has begun functioning since September 2015).                           |
| Western Cape  | 51 court managers and clerks  | Administrative role of the Department in Child Justice Act.  | Insight on practical issues relating to the implementation of the Act.  |
|               | Approximately 100 front-line staff members drawn from various JCPS and child justice stakeholders | Intersectoral roles and responsibilities in terms of the Act.  | Improved coordination and support between stakeholders  |
|               | 16 Court managers and clerks  | Roles and responsibilities in the implementation of the Act.   | Enhanced service delivery.  |
|               | 32 court managers and clerks  | Data capturing on the ICMS Child Justice.  | Capacitating employees.   |
|               | 35 court managers and clerks  | Roles and responsibilities in the implementation of the Act.   | Enhancing the streamlining of court processes.  |
| Total trained | 989   |  |   |

Source: Regions

**Table 3: Training Conducted by Justice College**

| Total Number of officials trained | Content of the training                                | Expected Impact of the training     |
|-----------------------------------|--|-------------------------------------|
| 188 Clerks of the court           | Administrative roles in the implementation of the Act. | Improved implementation of the Act. |

Combined with the training conducted by Justice College, the Department reached a total of 1 177 personnel. Compared to 2014/15 financial year, the number of trained personnel increased from 913 to 1 177. The integrated training interventions were held to determine operational challenges and address skills gaps identified from the child justice value chain. The Department has further capacitated 113 newly appointed court clerks<sup>4</sup>.

### 3.2.1.2. Human Resource Capacity

Since the commencement of the Act, the Department has been increasing the human resource capacity at the courts in order to meet the requirements of the Act. It must be noted that the regional heads are responsible for the regional administrative support function to give effect to the goals of the Act in courts. Other court-based services are the responsibility of the judiciary, NPA and the Legal Aid SA.

As reported in the 5<sup>th</sup> Annual Report, the Department employed 116 clerks and 9 legal administrative officers during the previous financial year in order to improve capacity both at court and regional levels. In 2015/16, the focus was on developing skills for the newly-appointed personnel. Therefore, no additional appointments were made in the 2015/2016 financial year.

### 3.2.2. Preliminary Inquiries

A preliminary inquiry is conducted by a magistrate in a court or at any other suitable place, in order to consider the assessment report of the probation officer, with particular reference to the age estimation of the child, if the child's age is uncertain. It is also used to establish whether the matter can be diverted before a plea is taken or to establish whether the matter should be referred to a children's court if the child may be in need of care and protection. The inquiry magistrate must also ensure that the views of all persons present at the inquiry, including the child and his/her parents/guardians, are considered before a decision is taken. The preliminary inquiry is furthermore conducted to determine the release or placement of a child, pending -

- (i) the conclusion of the preliminary inquiry;
- (ii) the appearance of the child in a child justice court; or
- (iii) the referral of the matter to a children's court, where applicable.

<sup>3</sup> These clerks were appointed during 2014/15 financial year

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

- (i) the matter has been diverted by a prosecutor;
- (ii) the child is under the age of 10 years; or
- (iii) the charge has been withdrawn.

In terms of section 43(3)(c) of the Act, a child's appearance at a preliminary inquiry is considered to be his or her first appearance before a lower court.

During the reporting period a decrease in the number of preliminary inquiries conducted was registered. As may be observed in the table below, the decline has been consistent over the reflected reporting periods:

**Table 4 : Preliminary inquiries**

| PRELIMINARY INQUIRIES (2010/11 to 2015/16) |           |           |           |           |                |
|--|-----------|-----------|-----------|-----------|----------------|
| 2010/2011                                  | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 2015/2016      |
| 14 471                                     | 17 822    | 25 517    | 21 563    | 19 640    | 18 575         |
| <b>TOTAL</b>                               |           |           |           |           | <b>117 588</b> |

The above table depicts a decline in the number of preliminary inquiries conducted since 2013/2014. During this period of reporting, a further decrease of 5% was recorded. This matter was considered by the National Operational Intersectoral Committee, and a Task Team constituted by SAPS, DSD, NPA and DoJ&CD was established to inquire into the matter. Although this investigation has not yet been completed, the following is emerging:

- (i) A decrease in the number of charges against children registered by the SAPS;
- (ii) A decline in the number of assessments conducted by probations officers; and
- (iii) A decrease in the number of children entering the child justice system.

The previous data collection tool included all offenders of 18 years older but under the age of 21 years and this might have resulted in some confusion in the interpretation of section 4(2)(a) and (b). This data collection tool was withdrawn on 31 March 2015, and replaced by a more detailed tool.

A preliminary investigation conducted by the National Operational Intersectoral Committee into the cause of this decline of preliminary inquiries was commissioned by the DG ISCCJ in 2014/2015 financial year. It is, however, anticipated that the research on the impact of the Act will require further research into this aspect, and may produce further comprehensive findings. The Department commenced with the planning of the broader impact research in 2015/2016 financial year. With all resources in place, this research is expected to be finalised in the financial year of 2016/2017.

In an endeavour to improve the quality of data, the Department has reviewed its data system to include a mandatory field for the age of the child at the time of the commission of the alleged offence. The collection of this data commenced in 2015/2016 financial year, and the statistics on preliminary inquiries are reflected in the Table below:

**Table 5: Ages of children at Preliminary Inquiries**

| Age of the children at Preliminary Inquiry | Age of the Child |    |    |     |     |      |      |      |      |     |    |    |    | Grand Total  |
|--|------------------|----|----|-----|-----|------|------|------|------|-----|----|----|----|--------------|
|  | 0 to 10          | 10 | 11 | 12  | 13  | 14   | 15   | 16   | 17   | 18  | 19 | 20 | 21 |              |
| Number of Children                         | 3300             | 29 | 71 | 133 | 412 | 1169 | 2467 | 4225 | 6506 | 246 | 9  | 6  | 2  | <b>18575</b> |

From the above table there are 3 330 children registered with the age of "0", which is the result of the failure by the data capturers to indicate the age of the child. Efforts to improve the ICMS Child Justice so as to prevent the capturing of zero on age are underway.

A total of 263 offenders of the age of 18 years and older up until 21 years are included in the above table because section 4(2) of the Act allows children 18 years or older but under the age of 21 years to appear at a preliminary inquiry in respect of an alleged offence, and in accordance with directives issued by the National Director of Public Prosecutions in terms of section 97 of the Act.

From the above statistics, 35% of offences are being committed by 17 year old children.

### Outcomes of Preliminary Inquiries

The Department's data system on child justice has been further improved to include fields to register the outcomes of preliminary inquiries. During 2015/2016, the outcomes were recorded as follows:

**Table 6: Outcomes of Preliminary Inquiries (PI)**

| Outcomes of the PI    | Outcomes of Preliminary Inquiries as per Age of the Child |    |    |    |    |     |     |     |      |     |      | Grand Total |
|-----------------------|---|----|----|----|----|-----|-----|-----|------|-----|------|-------------|
|                       | 0 to 9  | 10 | 11 | 12 | 13 | 14  | 15  | 16  | 17   | 18  |      |             |
| Child Justice Court   | 26  | 1  | 5  | 11 | 61 | 223 | 477 | 864 | 1341 | 17  | 3026 |             |
| Children's Court      |   |    | 1  | 5  | 8  | 9   | 13  | 29  | 24   | 0   | 89   |             |
| Struck off Roll       | 2   |    | 2  | 6  | 10 | 18  | 51  | 86  | 148  | 208 | 531  |             |
| Warrant of Arrest     | 1   | 1  |    | 2  | 2  | 6   | 17  | 28  | 39   | 2   | 98   |             |
| Withdrawn             |   |    | 2  | 3  | 6  | 25  | 40  | 78  | 159  | 1   | 314  |             |
| Section 41 Diversion  | 227   | 3  | 15 | 19 | 68 | 237 | 557 | 969 | 1398 | 2   | 3495 |             |
| Preliminary Diversion | 8   | 1  | 2  | 8  | 26 | 80  | 175 | 280 | 383  | 26  | 989  |             |



| Outcomes of the PI | Outcomes of Preliminary Inquiries as per Age of the Child |    |    |     |     |      |      |      |      |     | Grand Total |
|--------------------|---|----|----|-----|-----|------|------|------|------|-----|-------------|
|                    | 0 to 9  | 10 | 11 | 12  | 13  | 14   | 15   | 16   | 17   | 18  |             |
| Pending Matters    | 3036  | 23 | 44 | 79  | 231 | 571  | 1137 | 1891 | 3014 | 7   | 10033       |
| Grand Total        | 3300  | 29 | 71 | 133 | 412 | 1169 | 2467 | 4225 | 6506 | 263 | 18575       |

Section 41 diversions constitute 19% of all matters dealt with during the preliminary inquiries, while 16% of all matters were referred to the child justice court<sup>5</sup> for plea and trial.

## Challenges

The recent review and amendment of the Integrated Case Management System (ICMS) on Child Justice is welcomed, but its introduction came with some operational challenges at certain courts, which left a total of 55% of the registered matters still reflected as pending on the system in respect of preliminary inquiries. Efforts to capture the outstanding outcomes of these cases on the ICMS Child Justice is in progress and the Department is further re-training the data capturers at the affected courts to circumvent a repeat of this anomaly in future.

## Top 10 Crimes Allegedly Committed by Children

The improved ICMS now further provides for the types of crimes allegedly committed by the children appearing at preliminary inquiries. Below is the Table reflecting the Top 10 crimes as follows:

**Table 7: List of top 10 crimes allegedly committed by children<sup>6</sup>**

| No | Offences                                       | Number of charges | %     |
|----|--|-------------------|-------|
| 1  | Theft  | 2 663             | 14.3% |
| 2  | Possession/Use of Drugs                        | 2 535             | 13.6% |
| 3  | Assault with intent to do Grievous Bodily Harm | 2 457             | 13.2% |
| 4  | Intent to Steal and Theft                      | 1 629             | 8.8%  |
| 5  | Rape   | 1 612             | 8.7%  |
| 6  | Assault Common                                 | 1 475             | 7.9%  |
| 7  | Robbery  | 994               | 5.4%  |
| 8  | Malicious injury to property                   | 730               | 3.9%  |
| 9  | Robbery with Aggravating Circumstances         | 476               | 2.6%  |
| 10 | Murder   | 462               | 2.5%  |

<sup>5</sup> The court operating in the One Stop Child Justice Centre in terms of section 89(4) of the Act

<sup>6</sup> Please note that these are the charges of cases registered in the court rolls. The numbers therefore differ from the charges registered by SAPS.

The table above indicates that children frequently commit theft, followed by drug-related offences and assault with intent to do grievous bodily harm. It is indeed a serious concern that children are increasingly perpetrating violent crimes and are also exposed to drug abuse. The fact that 2.5% of the children who appeared at preliminary inquiries had allegedly committed murder is also quite disturbing. It is in such instances particularly that the rehabilitation and re-integration of children should not be delayed in order to prevent these children from becoming hardened criminals.

### **3.2.3. Establishment of One Stop Child Justice Centres**

The Act makes provision for the establishment of One Stop Child Justice Centres (OSCJs) the purpose of which is to ensure that children receive integrated services under one roof. Section 89 of the Act provides that the Minister of Justice and Correctional Services, in consultation with the Ministers of Police, Social Development and Correctional Services, may establish these Centres.

Currently, there are 3 One Stop Child Justice Centres in the country, and these are:

- (iv) EC: PE- Nerina One Stop Child Justice Centre;
- (v) FS: Bloemfontein- Mangaung One Stop Child Justice Centre; and
- (vi) NW: Klerksdorp- Matlosana One Stop Child Justice Centre

#### **The infrastructure for these Centres was provided by DSD.**

As reported in 2014/15, the DG ISCCJ halted the process of the establishment of OSCJs when the Provincial Child Justice Fora reported that there were no existing buildings in any province which could be converted into OSCJs. Due to budgetary constraints, the DG ISCCJ commissioned the DoJ&CD to conduct a viability study into the continued establishment of OSCJs. The study was finalised during this reporting period and the report is currently being taken through the adoption processes by the relevant governance structures. Below is the performance of each of the 3 existing Centres:

#### **3.2.3.1 Nerina One Stop Child Justice Centre, Port Elizabeth**

This is the first Centre that was converted into a OSCJC. It provides different services offered by DoJ&CD, DSD, NPA, Legal Aid SA, the judiciary, and the NGOs. It has 2 courtrooms, one of which is used for preliminary inquiries, whilst the other operates as the child justice court where trials relating to matters that have not been diverted, mainly due to their serious nature, are conducted. The holding cells for children in detention are also within the building.

In 2014 the jurisdiction of the Nerina OSCJC was increased to include Motherwell and New Brighton magisterial districts. In 2015, an additional request was received from the Provincial Child Justice Forum, Eastern Cape to further increase the jurisdiction of the Nerina One Stop Child Justice Centre to include Uitenhage in terms of section 89(6)(b) of the Act. This process is in progress. Below are the Tables showing the performance of this Centre as follows:

**Table 8: Outcome of Preliminary Inquiries dealt with at the Nerina One Stop Child Justice Centre during 2015/2016:**

| Period    | New PI's | Referred to Children's Court | Diverted       | Transferred to Child Justice Court | Withdrawn (after diversion completed successfully) | Struck off the roll |
|-----------|----------|------------------------------|----------------|------------------------------------|--|---------------------|
| 2013/2014 | 804      | 6                            | Not available* | Not available*                     | Not available*                                     | Not available*      |
| 2014/2015 | 536      | 10                           | Not available* | Not available*                     | Not available*                                     | Not available*      |
| 2015/2016 | 693      | 2                            | 73             | 349                                | 60   | 209                 |

Source: Nerina OSCJC

\*As stated in 2014/2015 the ICMS Child Justice System was rolled out late in the year and the statistics for 2013/14 and 2014/15 were not available

There has been an increase in the number of new preliminary inquiries conducted in 2015/2016.

**Table 9: Outcome of cases dealt with in the child justice court at the Nerina One Stop Child Justice Centre during 2015/16**

| Period    | New matters | Postponed during trial | Guilty | Not guilty/ acquitted | Withdrawn | Struck off the roll | Referred to Children's Court | Diverted |
|-----------|-------------|------------------------|--------|-----------------------|-----------|---------------------|------------------------------|----------|
| 2015/2016 | 285         | 0                      | 0      | 0                     | 103       | 80                  | 3                            | 100      |

Source: Nerina OSCJC

The roll out of the ICMS Child Justice System commenced in 2015/ 2016; hence the unavailability of this data prior 2015/2016.

The Nerina One Stop Child Justice Centre is still the busiest Centre compared to the other two centres.

In 2015/2016 there has been an increase in the number of new matters registered in the child justice court. However, the unavailability of ICMS Child Justice data for the periods 2013/2014 and 2014/2015 makes further analysis impossible.

### 3.2.3.2 The Mangaung One Stop Child Justice Centre, Bloemfontein

The Mangaung Secure Care Centre was converted into a One-Stop Child Justice Centre in 2010. In January 2016, a regional court started to operate at this Centre to ensure that children who have allegedly committed serious offences are also tried within the premises, rather than transferring these cases to the ordinary courts. This is considered as yet another way of complying with the Constitution which provides that the best interests of every child are of paramount importance in every matter concerning such child. Thus far, the Mangaung One Stop Child Justice Centre is the only centre that offers proceedings at regional court level. Cases dealt with at this centre in Mangaung can be tabulated as follows:

**Table 10: Outcome of Preliminary Inquiries dealt with at the Mangaung One Stop Child Justice Centre from 2013/2014 to 2015/2016:**

| Period    | New PI's | Referred to Children's Court | Diverted | Transferred to Child Justice Court | Withdrawn (after diversion completed successfully) | Struck off the roll |
|-----------|----------|------------------------------|----------|------------------------------------|--|---------------------|
| 2013/2014 | 694      | 4                            | 474      | 216*                               | 462  | 12                  |
| 2014/2015 | 679      | 9                            | 516      | 154*                               | 509  | 7                   |
| 2015/2016 | 629      | 5                            | 453      | 176                                | 436  | 17                  |

Source: Mangaung OSCJC

The Table shows a further decline of 7.4 % in the number of new preliminary inquiries in 2015/16, when compared to the statistics registered in the previous financial years. The diverted cases during the preliminary inquiry also decreased by 12.2 %, while the number of cases transferred to the child justice court for trial increased by 14.3 %. It can therefore be deduced from these statistics that children who entered the justice system during the 2015/2016 financial year committed serious offences, which justified the institution of trial proceedings<sup>7</sup>.

**Table 11: Outcome of cases dealt with in the child justice court at the Mangaung One Stop Child Justice Centre from 2013/2014 to 2015/2016**

| Period    | New matters | Guilty | Not guilty/ acquitted | Withdrawn | Struck off the roll | Referred to Children's Court | Diverted |
|-----------|-------------|--------|-----------------------|-----------|---------------------|------------------------------|----------|
| 2013/2014 | *216        | 63     | 85                    | 19        | 4                   | 7                            | 38       |
| 2014/2015 | *154        | 57     | 23                    | 32        | 5                   | 8                            | 29       |
| 2015/2016 | 176         | 29     | 12                    | 74        | 24                  | 5                            | 32       |

Source: Mangaung OSCJC

The number of cases referred to the child justice court increased by 14.2%. This may be a positive sign that more children are being moved from the conventional criminal justice system, giving effect to one of the primary objects of the Act. There is an increase in matters withdrawn and struck off the roll. The number of cases and the outcome of the cases adjudicated in the recently established regional court will be reported on during 2016/17.

### 3.2.3.3 Matlosana One Stop Child Justice Centre, Klerksdorp

The Matlosana One Stop Child Justice Centre was launched in August 2013. It is the newest and the most resourced OSCJC. It is also accommodated within the infrastructure owned by DSD.

**Table 12: Outcome of Preliminary Inquiries dealt with at the Matlosana One Stop Child Justice Centre from 2013/2014 to 2015/2016**

| Period    | New PI's | Referred to Children's Court | Diverted | Transferred to Child Justice Court | Withdrawn | Struck off the roll |
|-----------|----------|------------------------------|----------|------------------------------------|-----------|---------------------|
| 2013/2014 | 161      | 8                            | 44       | 6                                  | 24        | 20                  |
| 2014/2015 | 286      | 41                           | 61       | 88                                 | 88        | 46                  |
| 2015/2016 | 231      | 0                            | 60       | 109                                | 16        | 12                  |

Source: Matlosana OSCJC

The above Table clearly shows a decrease of 19.2 % in the number of preliminary inquiries conducted at the Centre. No matters were referred to the children's court during the reporting period 2015/2016. Matters referred to the child justice courts increased by 23.9 %. Charges withdrawn and matters struck off the roll decreased by 81.8 % and 73.9 %, respectively.

**Table 13: Outcome of cases dealt with in the child justice court at the Matlosana One Stop Child Justice Centre from 2013/2014 to 2015/2016:**

| Period    | New matters | Postponed during trial | Guilty | Not guilty/ acquitted | Withdrawn | Struck off the roll | Referred to Children's Court | Diverted |
|-----------|-------------|------------------------|--------|-----------------------|-----------|---------------------|------------------------------|----------|
| 2013/2014 | 120         | 54                     | 0      | 1                     | 24        | 20                  | 8                            | 0        |
| 2014/2015 | 267         | 30                     | 9      | 3                     | 48        | 50                  | 41                           | 10       |
| 2015/2016 | 172         | 1                      | 14     | 3                     | 34        | 10                  | 0                            | 2        |

Source: Matlosana OSCJC

When comparing 2014/2015 and 2015/2016, the table above clearly shows a decrease of 35.6 % in the number of new matters heard in the child justice court. No children were referred to the children's court from the child justice court. However, it can be seen that matters withdrawn and struck off the roll decreased by 29.2 % and 80.0 %, respectively.

## Challenges

The Department is concerned with the performance of the OSCJs and is currently conducting an investigation to determine the blockages and how these could be addressed. This matter may form part of the next Annual Report.

### 3.2.4. Public Education and Communication Interventions

During this period of reporting, the DoJ&CD conducted the following public education and communication initiatives on child justice:

**Table 14: Public education and communication initiatives<sup>8</sup>**

| Province/ National Office | Type of Initiative <sup>9</sup>   | No of initiatives | Estimated/ Exact No of people and children reached |
|---------------------------|---|-------------------|--|
| Eastern Cape              | Awareness campaigns and community outreach  | 3                 | 625  |
| Free State                | Schools campaigns, outreach campaigns at the child and youth care centres; and community dialogues  | 9                 | 17 345   |
| Gauteng                   | Schools campaigns; community outreach events  | 13                | 1 995 (excluding viewers and radio listeners)      |
| KwaZulu-Natal             | Schools campaign and community outreach interventions   | 29                | 10 952   |
| Limpopo                   | Schools campaigns; Imbizos and other community outreach initiatives targeting parents and guardians | 12                | 7559   |
| Mpumalanga                | Campaigns at schools and community outreach initiatives   | 81                | 17 467   |
| Northern Cape             | Outreach educational campaigns at schools, community halls, and information sessions                | 28                | 3566   |
| North West                | Door to door campaigns; school campaigns  | 3                 | 348  |
| Western Cape              | Public Education Imbizos targeting parents and children   | 12                | 9385   |

<sup>8</sup> Refer to Annexure A for more details

<sup>9</sup> Topics included the Child Justice Act

| Province/ National Office | Type of Initiative <sup>9</sup>   | No of initiatives | Estimated/ Exact No of people and children reached |
|---------------------------|---|-------------------|--|
| National Department       | National awareness at schools focusing on harmful religious practices, cyber bullying & sexting | 2                 | 1000   |
| <b>Total</b>              |   | <b>192</b>        | <b>70 242</b>                                      |

Source: National Office and Regional Offices

As highlighted in the above Table, the Department continued with its performance in public education and reached 70 242 persons. However, more education is still required as some community members regard the child justice system as a soft approach to child offending, and therefore ineffective. In some instances, it has been further learned that some parents/guardians prefer the incarceration of their children due to fear of staying with them. These perceptions and realities therefore render the integration of children into their communities nearly impossible.

### 3.2.5. Development of Necessary IT and IJS Systems to support Information Management Systems

In terms of section 96(1)(e) of the Act, the Intersectoral Committee is responsible for the establishment of an integrated information management system to-

- (i) Enable effective monitoring, analysis of trends and interventions,
- (ii) Map the flow of children through the child justice system; and
- (iii) Provide qualitative and quantitative data relating to various identified areas.

In compliance with this key priority performance area, the DoJ&CD has, during this reporting period, done the following:

#### 3.2.5.1. Child Justice Integrated Case Management System (ICMS)

The Department commenced with the development of the Integrated Case Management System (ICMS) on Child Justice in 2010, and started to roll out it in 2014/2015. This system has over 80 fields to ensure comprehensive data collection. It is through this improved data system that the Department has, for the very first time, reported according to the ages of children, as well as case outcomes.

#### 3.2.5.2. End-user training sessions on ICMS Child Justice

To ensure the effective implementation of the ICMS, the Department has, since 2014/2015, been conducting training for end- users. This training is still on-going, and during this reporting period the following sessions were held:

**Table 15: Lower Courts Trained on ICMS: Child Justice**

| Region             | Total Number of Courts | Courts Received Training in 2015/2016 |
|--------------------|------------------------|---------------------------------------|
| Eastern Cape       | 86                     | 36                                    |
| Free State         | 68                     | 24                                    |
| Gauteng            | 46                     | 17                                    |
| Kwazulu-Natal      | 80                     | 34                                    |
| Limpopo            | 38                     | 21                                    |
| Mpumalanga         | 40                     | 34                                    |
| North West         | 35                     | 7                                     |
| Northern Cape      | 39                     | 21                                    |
| Western Cape       | 58                     | 16                                    |
| <b>Grand Total</b> | <b>490</b>             | <b>210</b>                            |

Source: ISM Department of Justice and Constitutional Development

It must be noted that the end-user training sessions are on-going and have been repeated at sites faced with challenges. All 490 courts have received training, but 210 of these were trained during 2015/2016.

### Cases Registered in the ICMS in 2015/2016

The Table below reflects the number of cases captured per region during this reporting period:

**Table 16 : Number of case registered in ICMS Child Justice**

|                    | Apr -15     | May -15     | Jun -15     | Jul -15     | Aug -15     | Sep -15     | Oct - 15    | Nov - 15    | Dec- 15     | Jan -16     | Feb - 16    | Mar - 16    |
|--------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| EC                 | 157         | 176         | 94          | 184         | 178         | 151         | 178         | 213         | 136         | 140         | 161         | 149         |
| FS                 | 95          | 36          | 44          | 103         | 49          | 53          | 63          | 55          | 268         | 71          | 41          | 71          |
| GP                 | 150         | 118         | 1076        | 361         | 103         | 132         | 100         | 132         | 103         | 97          | 102         | 87          |
| KZN                | 204         | 178         | 189         | 259         | 196         | 271         | 224         | 199         | 182         | 213         | 236         | 166         |
| LP                 | 125         | 97          | 101         | 102         | 116         | 104         | 114         | 86          | 82          | 124         | 89          | 56          |
| MP                 | 63          | 48          | 48          | 65          | 49          | 53          | 81          | 62          | 58          | 60          | 63          | 42          |
| NW                 | 36          | 52          | 87          | 110         | 76          | 59          | 103         | 103         | 94          | 65          | 71          | 89          |
| NC                 | 48          | 36          | 45          | 47          | 47          | 95          | 42          | 42          | 58          | 45          | 35          | 76          |
| WC                 | 417         | 496         | 335         | 366         | 345         | 302         | 449         | 449         | 601         | 645         | 434         | 338         |
| <b>Grand Total</b> | <b>1295</b> | <b>1237</b> | <b>2019</b> | <b>1597</b> | <b>1159</b> | <b>1220</b> | <b>1354</b> | <b>1354</b> | <b>1582</b> | <b>1460</b> | <b>1232</b> | <b>1074</b> |

Source: ISM Department of Justice and Constitutional Development



The Department closely monitors the utilization of the ICMS Child Justice system by the courts in order to detect areas of need.

### 3.2.6. Qualitative and Quantitative Data Collection in terms of section 96(1)(e) of the Act

The Act requires the collection of qualitative and quantitative data in respect of various points of service in the child justice system in an effort to track down the flow of children through the child justice system. The service points that are relevant, but which do not fall directly within the mandate of DoJ&CD, are the following:

#### 3.2.6.1 Bail and Placement

It is the magistrate who makes the final decision on whether to grant bail and on the placement of the child. The magistrate must decide on the release or placement of the child, pending the finalization of the preliminary inquiry or trial, i.e. where the matter has been referred to the child justice court for trial. When the decision to release a child has been made, it further becomes the responsibility of the inquiry magistrate to decide whether the child may be released into the care of a parent, guardian or any appropriate adult. The child may also be released on bail or on his/her own recognizance.

If the child is to be detained, the inquiry magistrate must decide whether such detention should be in prison, police lockup or in a child and youth care centre. During this reporting period, the ICMS recorded the following statistics on bail granted and the placement of children waiting trial as follows:

**Table 17: Bail and placement of children alleged to have committed offences**

| Period    | In care of parent/<br>guardian/<br>appropriate adult | Bail | In prison | In child and<br>youth care<br>centre | Police<br>lockup | On Warning       | Total<br>pending<br>matters <sup>10</sup> |
|-----------|--|------|-----------|--------------------------------------|------------------|------------------|---|
| 2011/2012 | 4 664  | 261  | 565       | 1 534                                | 174              | Not<br>Available | 7 198                                     |
| 2012/2013 | 4 582  | 283  | 733       | 1 721                                | 110              |                  | 7 429                                     |
| 2013/2014 | 5 314  | 327  | 789       | 1 440                                | 76               |                  | 7 946                                     |
| 2014/2015 | 5 668  | 187  | 569       | 1 621                                | 148              |                  | 8 193                                     |
| 2015/2106 | 5 550  | 29   | 887       | 266                                  | 0                | 1 548            | 8 280                                     |

The above Table shows a 2% decrease in the number of children released into the care of parent/guardian/appropriate adult while awaiting trial. However, it should be noted that 67% of the total number of children awaiting trial were released into the care of a parent/ guardian/ appropriate adult, whilst the number of children detained in prison while awaiting trial increased by 55.9%. From the Table below this increase may be explained if the charges against the children are taken into account. Most of charges against children awaiting trial are rape (16.1%), assault with intent to do grievous bodily harm (12.9%) and robbery (7.2%). These are all serious charges and the detention of children awaiting trial in these circumstances may therefore be justified.

<sup>10</sup> Please refer to the paragraph on 'Challenges' under the sub-heading: 'Outcomes of the Preliminary Inquiries' in this chapter, above

It should be noted that the total number of pending matters include cases rolled over from the previous financial year.

**Table 18: Top 8 Charges against children awaiting trial**

| No | Charges against children awaiting trial        | Number of charges | %     |
|----|--|-------------------|-------|
| 1  | Rape   | 1 334             | 16.1% |
| 2  | Assault with intent to do Grievous Bodily Harm | 1 073             | 12.9% |
| 3  | Housebreaking with intent to steal and Theft   | 933               | 11.2% |
| 4  | Theft  | 643               | 7.8%  |
| 5  | Robbery  | 594               | 7.2%  |
| 6  | Possession/Use of Drugs                        | 552               | 6.7%  |
| 7  | Robbery with Aggravating Circumstances         | 440               | 5.3%  |
| 8  | Murder   | 411               | 5.0%  |

Source: ICMS Child Justice

It must also be noted that the number of children awaiting trial keeps changing almost daily because of the orders made by courts during court days. These figures were captured as at 31 March 2016, but might have dramatically changed at the time of the writing of this annual report.

### 3.2.6.2 Trials

In instances where the charge was not withdrawn or the case was not diverted, the child must appear before the child justice court for trial. The outcomes of trials in the child justice courts during the reporting period are set out below:

**Table 19: Outcome of trials in the child justice courts**

| Period     | Postponed during trial | Guilty | Not guilty/ acquitted | Withdrawn | Struck off the roll |
|------------|------------------------|--------|-----------------------|-----------|---------------------|
| 2011/ 2012 | 7 570                  | 1 128  | 794                   | 1 637     | 1 000               |
| 2012/ 2013 | 8 623                  | 1 443  | 628                   | 1 384     | 1 123               |
| 2013/2014  | 9 583                  | 1 179  | 650                   | 1 179     | 949                 |
| 2014/2015  | 8 855                  | 637    | 328                   | 1 295     | 999                 |
| 2015/2016  | 9 995                  | 181    | 154                   | 635       | 239                 |

From the table it is clear that there has been a significant decrease of 73% in the number of outcomes recorded in the child justice courts. As stated in the 2014/2015 departmental annual report, the department aims at improving reporting by identifying those offences for which most children are charged and who are convicted. The necessary enhancements were effected on the ICMS Child Justice, as reflected in the Table below. However, these improvements resulted in delays in recording the outcomes of trials in child justice courts since the new system now requires the capturer to revisit some of the finalised cases for the purposes of updating the ICMS Child Justice. This process is being monitored closely to ensure an improvement in the integrity of the data.

As soon as the new system's challenges have been resolved, the information for 2015/16 will be reinstated and reported on in the next financial year for comparison purposes.

### 3.2.6.3. Convictions

**Table 20: Top 10 charges that children are convicted of**

| Outcome   | Number of Convictions | %   |
|---|-----------------------|-----|
| Housebreaking with Intent to steal and Theft                                    | 48                    | 27% |
| Theft   | 22                    | 12% |
| Assault with intent to do Grievous Bodily Harm (Ass GBH)                        | 16                    | 9%  |
| Rape  | 14                    | 8%  |
| Robbery   | 10                    | 6%  |
| Possession/Use of Drugs   | 9                     | 5%  |
| Housebreaking with the Intent to Rob and Robbery with Aggravating Circumstances | 8                     | 4%  |
| Robbery with Aggravating Circumstances  | 7                     | 4%  |
| Attempted Robbery with Aggravating Circumstances                                | 6                     | 3%  |
| Murder  | 6                     | 3%  |

The Table above indicates that the top 3 charges in respect of which most children were convicted are (i) housebreaking with intention to steal and theft, followed by (ii) theft, and then (iii) assault with intent to do grievous bodily harm. It is disturbing to note that many children were also convicted of rape. This is an indication that the level of violence in the offences committed by children is increasing; hence the need for more robust interventions to address this situation. This is a matter for consideration by the DG ISC<sup>11</sup> in the next financial year.

11 Directors-General Intersectoral Committee on Child Justice

**Table 21: Ages of children convicted**

| Age             | 13 | 14 | 15 | 16  | 17  | 18 | Grand Total |
|-----------------|----|----|----|-----|-----|----|-------------|
| Convicted cases | 2  | 8  | 14 | 64  | 81  | 12 | <b>181</b>  |
| % contribution  | 1% | 4% | 8% | 35% | 45% | 7% |             |

94% of the convictions were of children between the ages of 15 and 18 years. No convictions are reflected for children between the ages of 10 and 12 years.

### 3.2.6.4. Sentencing

The United Nations Convention on the Rights of the Child, 1989 and section 28(1)(g) of the Constitution require that imprisonment of children be used as a measure of last resort, and where necessary, only for the shortest appropriate period of time. The Act therefore seeks to comply with this constitutional imperative by providing for non-custodial sentencing options, which include (i) community-based sentences; (ii) restorative justice sentences; (iii) correctional supervision; (iii) postponement or suspension of passing of sentence; and (iv) compulsory residence in a child and youth care centre. The main goal of the Act is to have children rehabilitated and reintegrated into their families and communities so as to commence their lives again as good citizens.

During the reporting period, the sentences imposed on children in terms of the Act are as follows:

**Table 22: Types of sentences Imposed on Children**

| Type of sentence                                      | 2011/2012    | 2012/2013                    | 2013/2014                   | 2014/2015                   | 2015/2016                 |
|---|--------------|------------------------------|-----------------------------|-----------------------------|---------------------------|
| Community-based sentence                              | 795          | 687                          | 753                         | 543                         | 2                         |
| Restorative justice                                   | 405          | 508                          | 402                         | 179                         | 1                         |
| Fine or alternative to fine                           | 37           | Fines: 34<br>Alternative: 44 | Fine: 43<br>Alternative: 50 | Fine: 18<br>Alternative: 47 | Fine: 4<br>Alternative: 3 |
| Correctional supervision                              | 302          | 179                          | 188                         | 81                          | 15                        |
| Compulsory residence at a child and youth care centre | 353          | 335                          | 381                         | 245                         | 17                        |
| Postponement or suspension of the passing of sentence | -            | 296                          | 206                         | 190                         | 97                        |
| Imprisonment  | 94           | 98                           | 49                          | 39                          | 15                        |
| <b>TOTAL</b>  | <b>1 986</b> | <b>2 181</b>                 | <b>2 072</b>                | <b>1 342</b>                | <b>154</b>                |

## Challenges

From the above Table, it is clear that the outcomes of very few cases have been recorded on the Integrated Case Management System (ICMS) on Child Justice. Approximately 2 487 cases have been recorded as pending as at 31 March 2016, and the finalization thereof is expected to be done in the next financial year. The recent review and amendment of the Integrated Case Management System (ICMS) on Child Justice is welcomed. However, its introduction did present some operational challenges at certain courts. Efforts to capture the outstanding outcomes of the cases that were referred for trial are underway. The Department is further re-training the data capturers at the affected courts to circumvent a repeat of this anomaly in future. However, the decline of imprisonment sentences imposed on children, from 39 to 15, is welcomed as an indication of the progressive achievement of the goals of the Act, which seek to save children from the harsh realities of prisons.

### 3.2.6.5. Appeals and Reviews

Sections 84 and 85 of the Act deal with appeals and reviews, respectively. During the reporting period, 2 appeals and 227 reviews were registered. As part of the ongoing improvement of the Child Justice Integrated Case Management System (ICMS), the Department plans to collect data on the outcome of the appeals and reviews. The Table below provides a comparison of the registrations of appeals and reviews with the previous year as follows:

**Table 23: Appeals and Reviews**

| Application  | 2014/2015 | 2015/2016  |
|--------------|-----------|------------|
| Appeals      | 15        | 114        |
| Reviews      | 2         | 227        |
| <b>TOTAL</b> | <b>17</b> | <b>341</b> |

Source: ICMS CJ

### 3.2.6.6 Children used by Adults to Commit Crimes

Children tend to be vulnerable, and it is the goal of this Act to protect them against manipulative adults. Section 92 of the Act requires any court official or probation officer who learns of a child who has been used by an adult to commit a crime to report this to the South African Police Service.

The Department furnished this information in the reports of the previous financial years, but expressed reservations about its completeness and accuracy. It has therefore been resolved that reporting on these statistics be withdrawn until SAPS furnishes information on the number of charges in terms of section 141(1)(d), read with section 305(1)(c) of the Children's Act, 2005. The information about the outcome of these cases should also be furnished by the NPA so as to ensure the completeness and accuracy of the report that will guide appropriate steps of intervention. The Department therefore intends to engage with these 2 stakeholders for the purposes of reporting on this matter.

The background of the slide features a soft-focus image of hands assembling colorful puzzle pieces in shades of green, orange, and red. To the right, a pair of golden scales of justice is visible, symbolizing law and equity. The overall color palette is warm and professional.

# **Chapter 4: The Integrated Justice System (IJS) Programme**

## CHAPTER 4: THE INTEGRATED JUSTICE SYSTEM (IJS) PROGRAMME<sup>12</sup>

### 4.1. THE IJS PROGRAMME

The Integrated Justice System (IJS) programme is government's initiative to improve the efficiency and effectiveness of the South African criminal justice system (CJS). To deliver on this objective, the IJS facilitates co-operation, collaboration, and delivery across the multiple government departments involved in the CJS. One of mandates of the IJS Board is the establishment of transversal performance measures to constantly monitor the various components of the CJS. This includes children in conflict with the law and all vulnerable groups that are affected by crime.

### 4.2. THE IJS DELIVERY APPROACH

The IJS programme has adopted a multi-step execution strategy to deliver an integrated justice system in three steps:

- i. Step 1: Enable and capacitate the relevant government departments to support and automate the criminal justice processes;
- ii. Step 2: Integrate by electronically connecting these enabled CJS business processes between the respective IJS member departments; and
- iii. Step 3: Integrate the performance of the CJS with real-time capturing of the key business events as they occur in order to establish a holistic performance management capability for the cluster.

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 in order 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. These business applications should support process efficiency, effectiveness and the relevant recording of all criminal case-related events.

Therefore, aligned to this execution strategy, the IJS initially focused on enabling departmental application systems, including the Investigative Case & Docket Management Systems (ICDMS) / Case Administration System (CAS) of SAPS, the Electronic Case Management System (ECMS) of the NPA and the Integrated Case Management System (ICMS) Child Justice module of the DoJ&CD. The integration and alignment of the systems will ensure a coordinated implementation of the Act and give effect to the reporting requirements set out in the Act.

For 2015/16 the IJS expanded its focus to include the development efforts on core business applications of the DSD, while enhancing the existing system integration between SAPS, the NPA and the DoJ&CD. This included work on the DSD's Probation Case Management (PCM) application, to enable the system to receive electronic messages requesting the assignment of a probation officer when a child has been arrested.

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<sup>12</sup> As reported by IJS

### 4.3. IJS ACHIEVEMENTS FOR 2015/16

In 2015/16, the IJS commenced with the development of numerous enhancements to the DSD Child Protection Register application, which includes the application support of DSD business processes related to child justice. In the 4th quarter, the service provider was appointed and development is expected to be completed in the 2016/17 financial year.

The IJS Transversal Hub provides an electronic integration platform that allows the application systems of SAPS, the NPA, the DOJ&CD and Legal Aid SA to exchange information automatically. Departmental business processes and system enhancements are supporting inter-departmental integrations and encompass the efforts of the police, prosecutors, legal aid officials, courts, and social services, as well as various stakeholders both within and outside of the CJS. Other progressive achievements are enumerated below as follows:

- (i) While the IJS made investments in departmental systems and application in prior years, for 2015/16 there has been significant progress in the automation of business processes within the CJS;
- (ii) In March 2016 a significant milestone was achieved as new IJS system enhancements were deployed nationally (based on business requirements in the provisioning and updating of case information that emanates from the management and provision of SAPS docket information) to enable prosecutors to electronically charge an accused, enrol a case on the court roll and generate an electronic charge sheet;
- (iii) The IJS Programme also successfully implemented the first phase of system integrations for electronic sharing of case outcome information. These integrations support numerous efficiencies in the processes related to pre-adjudication and adjudication processes. Although initial efforts were aimed at modernizing the first appearance process, business requirements necessitated additional processes, for instance the automation of the adjudication phase, for example pleas, verdicts and postponements. In 2015/16 the docket and case outcome integration was deployed nationally for SAPS, the NPA and the DoJ&CD. Extending these to the IJS member departments is planned for 2016/17;
- (iv) Further successes were also achieved with the development of the Child Suspect and Probation Officer related integrations that are aimed at enhancing and supporting the child justice process where children are in conflict with the law. As at the end of the 2015/16 financial year, good progress was made towards the completion of system development for these integrations pending connectivity between DSD and the IJS Transversal. Once the procurement processes for connectivity have been concluded the development will be completed in the current financial year (2016/17).



#### 4.4. FURTHER SYSTEM ENHANCEMENTS FOR THE 2016/17 FINANCIAL YEAR

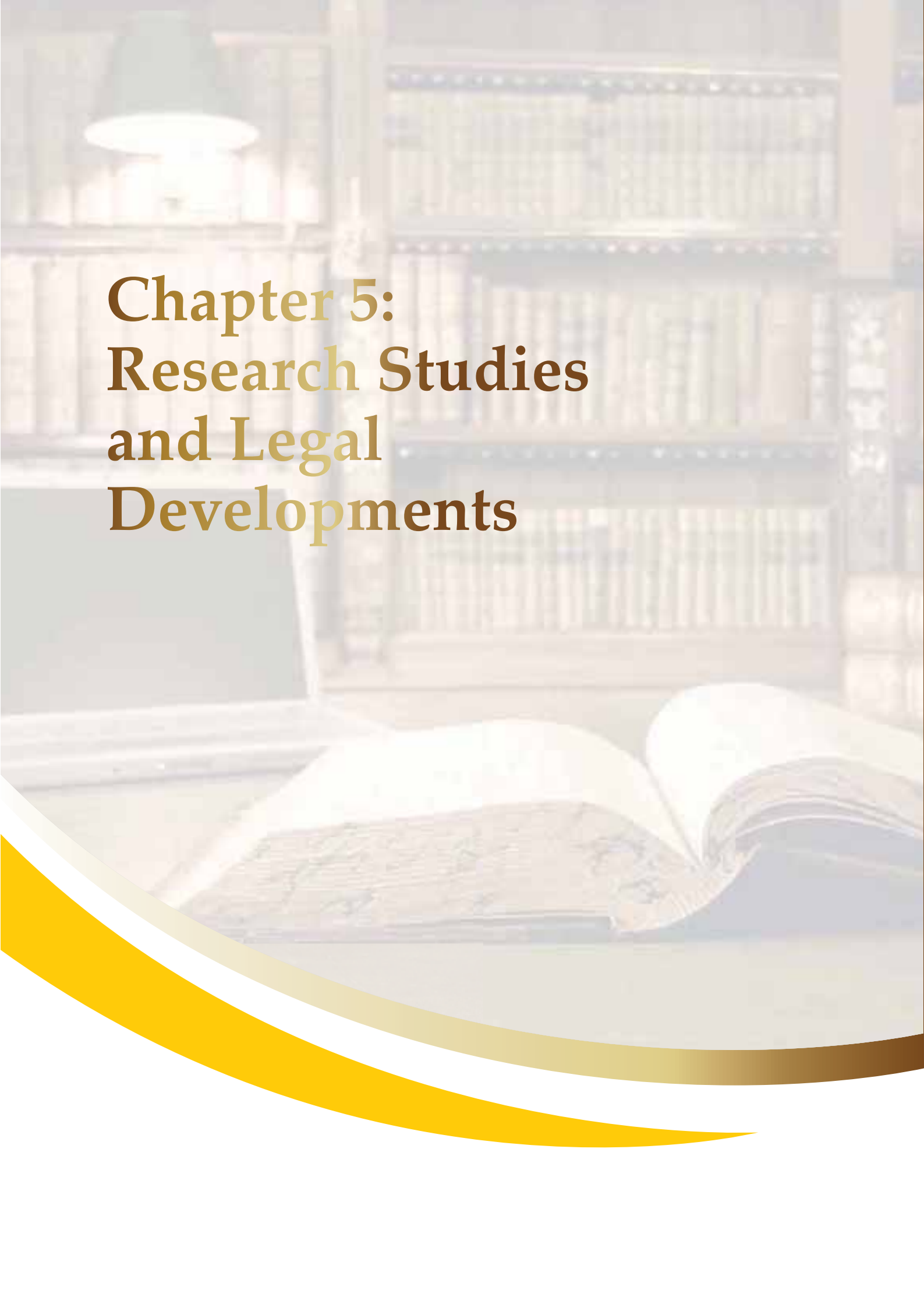
Delivery of an IJS is complex given that any delay in one department's sub-programme does not only affect that department in terms of its systems' modernisation objectives, but also often has a profound effect on all the downstream departments that rely on data from the upstream departmental development for their own systems' modernisation efforts.

As a result, the initial approach for measuring the performances of the Act across the JCPS cluster was based on a statistical accounting approach while necessary system enhancements to department application systems were underway. The underlying control registered entries are tallied to produce totals for work activities at various control points throughout the CJS. However, while this provides management with basic child justice information, it is prone to delays and potential errors associated with information capture on an "after-the-fact" basis.

Therefore, to address this, several new integrations and functions have been planned for 2016/17:

- (i) Connectivity established for the exchange of information between the DSD's Child Protection Register and Probation Case Management applications, the NPA, the DOJCD and SAPS through the IJS Transversal Hub. This integration will enable notification regarding the arrest of a child and probation officer assignment.;
- (ii) New system integrations between SAPS, the NPA, the DOJCD and the DSD to accommodate the electronic capture and exchange of preliminary inquiry information related to child justice;
- (iii) Enhancements to accommodate the exchange of information between SAPS and the NPA in order to support the decision docket processes; and
- (iv) Improved systems of recording and reporting case outcomes, aimed at updating and informing all stakeholders of progress and decisions made in terms of each case initiated as a result of an alleged offence, which also includes children in conflict with the law.

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 vulnerable persons, especially children.



# **Chapter 5: Research Studies and Legal Developments**

## CHAPTER 5: RESEARCH STUDIES AND LEGAL DEVELOPMENTS

### 5.1 INTRODUCTION

During this reporting period, the Department conducted the following research studies to determine the effectiveness of the Act:

#### 5.1.1 Viability Study on the Continued Establishment of One Stop Child Justice Centres

In March 2015, the Department commenced with a viability study into the continued establishment of OSCJC's with the assistance of an independent researcher. This study was commissioned by the DG ISCCJ in response to the report received from the Provincial Child Justice Fora that there are no existing buildings in any province suitable for conversion into the OSCJC's. In terms of the National Guidelines for the Establishment of One Stop Child Justice Centres, the Provincial Child Justice Fora are expected to identify existing buildings at high "child offending" areas which could be converted into OSCJC's. The DG ISCCJ resolved that the establishment of more OSCJC's be put on hold until the finalization of the viability study. This research was completed in 2015/2016 and the draft report is currently being taken through stakeholder adoption processes. It is anticipated that the final report will be made available in the 2016/2017 financial year.

#### 5.1.2. National Data Collection for the Review of the Minimum Age of Criminal Capacity

Section 8, read with section 96(5), of the Act requires the Minister of Justice and Correctional Services to submit a report to Cabinet to assist Parliament in determining whether or not the minimum age of criminal capacity should be raised. The Act requires the submission of this report to Parliament within five years of the implementation of the Act, namely 31 March 2015.

Section 96(4) of the Act further requires the DG ISCCJ to submit a Report of the Review of the Minimum Age of Criminal Capacity to the Minister of Justice and Correctional Services not later than 31 March 2015. This provision also sets out the statistical data that must be contained in this Report.

Initially, it was anticipated that the Integrated Case Management System (ICMS) would assist in providing the data required in terms of section 96 of the Act. The development of the ICMS took longer than anticipated. In 2014/2015, the training of data capturers and the roll out of the ICMS were still in progress. To ensure compliance with the Act, during 2014/15 the Department commenced with the National Data Collection Project in order to gather the required data. This data was gathered from the lower courts in each province which recorded the highest number of preliminary inquiries since the implementation of the Act. This Project was completed during 2015/2016, thus resulting in the delay of the submission of the report to the Cabinet for approval. As at 31 March 2015, the preliminary report was ready. A decision was taken not to submit this report to Cabinet but rather to wait until the investigations and data collection were finalized.

In compliance with section 8, read with section 96(5), of the Act, Cabinet approved the report for tabling in Parliament. On 2 March 2016 the Minister of Justice and Correctional Services tabled the report in Parliament, as required by the Act. The recommendations of the report are that-

- (i) The minimum age of criminal capacity be raised to 12 years with the retention of the rebuttable presumption for children 12 years or older but under the age of 14 years, applicable to children referred to the child justice court for plea and trial;
- (ii) The Act, particularly sections 7, 10, 11, 41, 49, 52, 58 and 67, must be amended in order to remove the requirement of establishing the criminal capacity of children 12 years or older, but under 14 years for purposes of diversion;
- (iii) Section 8 of the Act be amended and retained in the Act to provide for another review of the minimum age of criminal capacity within ten years.

It is anticipated that in 2016/2017 Parliament will call the DG ISCCJ, under the leadership of DoJ&CD, to present this report.

## **5.2 RESEARCH STUDIES IN PROGRESS**

### **5.2.1 Provision by Provision Analysis of the Child Justice Act**

As reported in 2014/2015, the Department has commenced with a provision-to-provision analysis of the Act to determine the resources required to implement the Act. This research has been prompted by reports that some of its provisions are currently being applied by NGOs with inadequate or no budget allocation from government. With this research, the Department therefore seeks to have the Act re-costed properly in order to address any resource gaps.

The process of securing the services of an independent researcher is in progress. Since this is a huge project, it is expected that its data collection will be finalized in 2016/2017, while the final report may only be furnished in 2017/2018. The Department trusts that this detailed approach to costing will provide Parliament with the required costs for the implementation of this Act.

### **5.2.2 Research on the Impact of the Child Justice Act, 2008**

The Act has been in operation for six years, and as reported in 2014/2015, the need has been identified by the OP ISCCJ to commission research into the impact of the Act since its implementation.

To ensure impartial results, the Department approached universities to assist in conducting this research with the aim of contributing to youth employment. The process of securing these services is underway, and the Department intends to have this research finalised in 2016/2017 financial year.

## **5.3. JUDICIAL MATTERS AMENDMENT ACT, 2015 (ACT 24 OF 2015)**

The Judicial Matters Amendment Act, 2015 (Act 24 of 2015) effected amendments to section 96 of the Child Justice Act, 2008, to further regulate the reporting to Parliament by the various roleplaying Departments and institutions regarding the implementation of the Child Justice Act, 2008. Section 19 requires the Cabinet members responsible for the administration of justice, safety and security, correctional services, social development, education and health each to submit annual reports on the implementation of the Child Justice Act, 2008 to Parliament. At present, in terms of the Child Justice Act, 2008, the Minister of Justice and Correctional Services is responsible for collating the reports of all implementing government stakeholders for tabling purposes. Since the implementation of the Act, this responsibility has given rise to numerous challenges, delaying the submission of the reports to Parliament due to difficulties experienced in the collection and collation of these reports for tabling in Parliament.

The Judicial Matters Amendment Act, 2015 was published in Government Gazette No. 39587 on 8 January 2016. Section 19 of the Judicial Matters Amendment Act, 2015, dealing with the new reporting requirements to Parliament, will come into operation once the regulations envisaged in this Amendment Act have been finalized.

A young boy with short dark hair, wearing a light blue school uniform sweater over a white collared shirt, is smiling and flexing his right arm. The background is a light-colored wall with vertical lines. The image is overlaid with a semi-transparent circular graphic at the bottom, featuring a dark blue outer ring and a gold inner ring.

# **Chapter 6: Limitations and Possible Interventions**

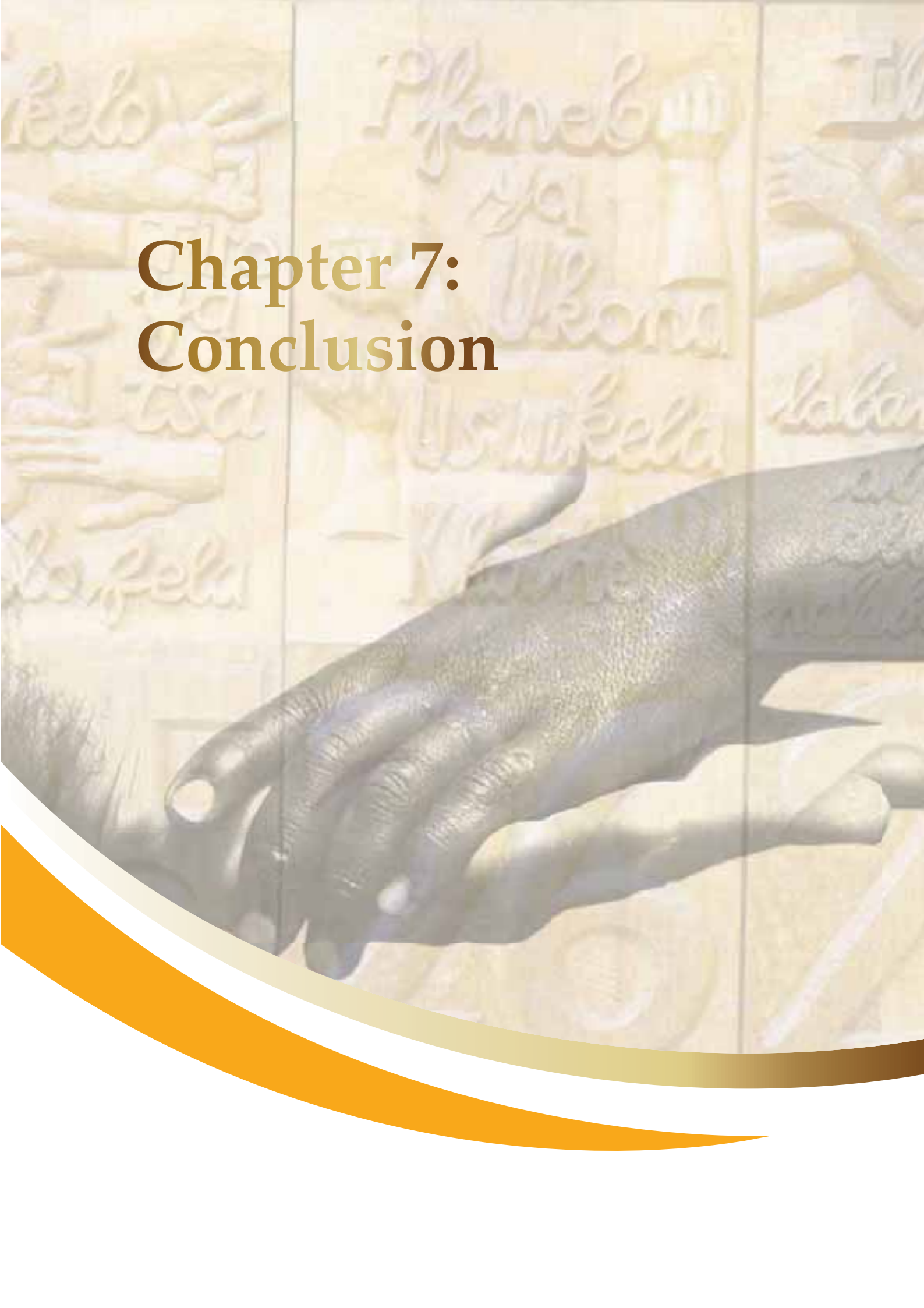
## CHAPTER 6: LIMITATIONS AND POSSIBLE INTERVENTIONS

The Department experiences the following challenges and limitations in the implementing of the Act:

**Table 24 Limitations experienced in the implementation of the Act**

| CHALLENGES/LIMITATIONS   | CORRECTIVE MEASURE/PROGRESS   |
|--|---|
| There are still no existing buildings that can be converted into OSCJC's, and possibility of securing the necessary budget to construct new buildings is remote. | The viability study into the continued establishment of the One Stop Child Justice Centres has been finalized, and the draft report is currently being taken through the stakeholder adoption processes.  |
| The reduced court performance in the Mangaung and Motlasana OSCJC's  | The Department has commenced with the study to determine the feasibility of the continued establishment of OSCJC's. This study has been finalised and is expected to reveal the challenges currently experienced by these Centres. The draft report is currently being taken through the intersectoral adoption processes.  |
| The increased number of cases of children used by adults to commit crimes  | The Department has introduced the Integrated Case Management System (ICMS) which tracks down the case from entry into the court system up to the exit. The system is expected to assist in the analysis of crime trends, which will then help the Department in developing the appropriate interventions against the use of children by adults to commit crimes. The Department further intends to work with SAPS and the NPA so as to achieve the completeness of this data. |
| The allegation that government is over-dependent on NGOs to execute the non-custodial sentences due to the poor costing of the Act                               | In 2016/17, the Department will commence with a provision-to-provision analysis of the Act to determine the resources required to implement each provision of the Act. This study is intended to assist in the re-costing of the Act.   |

# Chapter 7: Conclusion





## CHAPTER 7: CONCLUSION

The past 6 years since the implementation of the Act has seen numerous advancements in the protection of the rights of child-offenders. The integrated stakeholder collaborations, under the leadership of the DoJ&CD, continue to increase collective thinking and joint interventions with the common goal of breaking the cycle of child-offending in South Africa.

Our courts have persistently observed international obligations and our constitutional imperatives that stand against the detention of children except as a matter of last resort<sup>13</sup>. During the period 2011/2012 to 2015/2016, the number of imprisonment sentences imposed on children declined from 94 to 15. This improvement ought to be celebrated as it means that, through this Act, many children are now saved from the harsh realities of prison, which often expose them to hardened criminals.

It is also encouraging to learn that in 2015/2016 no convictions were registered against children between the ages of 10 to 12 years. 94% of the convictions were in respect of children between the ages of 15 and 18 years. This statistical depiction stands in support of the recommendation made by the Directors-General Intersectoral Committee in its Report on the Review of the Minimum Age of Criminal Capacity that the minimum age of criminal capacity be raised to 12 years with the retention of the rebuttable presumption for children 12 years or older but under the age of 14 years, applicable to children referred to the child justice court for plea and trial. This report was compiled in order to comply with sections 8 and 96 of the Act, which required a review of the minimum age of criminal capacity. It is noteworthy that on 17 February 2016 Cabinet approved this report, and this enabled the Minister of Justice and Correctional Services to table it in Parliament.<sup>14</sup>

The recent review and amendment of the Integrated Case Management System (ICMS) on Child Justice is further welcomed as a great improvement in data collection as it now generates (i) data disaggregated by age, (ii) the outcome of preliminary inquiries and (iii) the types of crime committed by children. However, like any other new system, the introduction of the revised ICMS in 2015/2016 faced some operational challenges at certain courts, which resulted in the non-capturing of case outcomes in 55% of the cases registered in the ICMS during this period. In addressing this matter, the Department has since introduced measures to re-train our data capturers on the ICMS and also to trace the outstanding outcomes of these cases. With this anomaly at hand, it would therefore not be appropriate to make any further analysis on the impact of the Act.

The Department has, however, commissioned research on the impact of the Act. This research will determine the success and possible gaps in the implementation of the Act from all service points in the child justice system. The aim is to reflect holistically on the 6 year intersectoral performance of the Act so as to jointly decide what needs to be continued, what must cease to operate, and what is new that must be introduced in order to close any performance gaps. The Department will therefore reserve its final analysis until this research has been completed.

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13 Section 28(1)(g) of the Constitution

14 The matter is now pending before Parliament.



**ANNEXURE A: Public education and communication initiatives (See Table 13)**

| Province        | Exact location and date   | Type of initiative | No of initiatives | Number of people reached |
|-----------------|---|--------------------|-------------------|--------------------------|
| Kwa Zulu- Natal | Date: 25 May 2015<br>Place: Dalmeny Primary School; Muziwabantu Primary School in Kwa Mashu | Outreach events    | 29                | 6774                     |
|                 | Date: 26 May 2015<br>Place: Sichelulwa Primary School; Sandasonke Primary School            |                    |                   |                          |
|                 | Date: 27 May 2015<br>Place: Daluxolo Primary School; Thandokuhile Primary School            |                    |                   |                          |
|                 | Date: 28 May 2015<br>Place: Mukelani Primary School; Ngazana Junior Primary                 |                    |                   |                          |
|                 | Date: 29 May 2015 -<br>Place: Zaminfundo Primary School; Maqandini Primary School           |                    |                   |                          |
|                 | Date: 19 August 2015<br>Place: Dlangezwa High School in Empangeni                           |                    |                   | 700                      |
|                 | Date: 17 August 2015<br>Place: Sojoyisa High School - Nongoma                               |                    |                   | 207                      |
|                 | Date: 18 August 2015<br>Place: Hambandlela High School - Nongoma                            |                    |                   | 138                      |
|                 | Date: 19 August 2015<br>Place: Esweni Primary School - Nongoma                              |                    |                   | 118                      |
|                 | Date: 20 August 2015<br>Place: Bangamanye Primary School - Nongoma                          |                    |                   | 150                      |

| Province                        | Exact location and date  | Type of initiative  | No of initiatives | Number of people reached |
|---------------------------------|--|---|-------------------|--------------------------|
| Kwa Zulu- Natal                 | Date: 25 January 2016<br>Places: Huba High School; Menziwa Primary School; Magoda Primary School; KwaMlamuli Primary School                | Rural School outreaches; Presentations to all the learners at each of the schools; Question and Answer sessions with the learners | 29                | 569                      |
|                                 | Date: 26 January 2016<br>Places: Sidunge Primary School; Nyambayi Primary School; Congco High School; Phatheni Primary School              |   |                   | 526                      |
|                                 | Date: 27 January 2016<br>Places: Richmond Combined School; Bernard Mtzeki Primary School; Mkhuzane Primary School; Richlea Primary School  |   |                   | 246                      |
|                                 | Date: 28 January 2016<br>Places: Malizayo Primary School; Funundu High School; Mqolombeni Primary School                                   |   |                   | 359                      |
|                                 | Date: 29 January 2016<br>Places: Umlulama Secondary School; Arden Farm Primary School; Mt Pleasant Primary School; Hopewell Primary School |   |                   | 1165                     |
| <b>Total for Kwa Zulu-Natal</b> |  |   | <b>29</b>         | <b>10 952</b>            |

| Province                      | Exact location and date                    | Type of initiative           | No of initiatives | Number of people reached |
|-------------------------------|--|------------------------------|-------------------|--------------------------|
| Eastern Cape                  | Date: 17 August 2015<br>Place: Port Alfred | Access to Justice Week event | 3                 | 25                       |
|                               | Date: 18 August 2015<br>Place: Grahamstown |                              |                   | 100                      |
|                               | Date: 27 August 2015<br>Place: Sterkspruit | Event for Women's Month      |                   | 500                      |
| <b>Total for Eastern Cape</b> |  |                              | <b>3</b>          | <b>625</b>               |

| Province   | Exact location and date   | Type of initiative   | No of initiatives | Number of people reached |
|------------|---|--|-------------------|--------------------------|
| Free State | Date:13-17 April 2015,<br>22-24 April 2015<br>Place: Odendaalsrus,<br>Welkom and Bethlehem,<br>respectively           | Information sessions   | 9                 | 2133                     |
|            | Date:25-27 May 2015<br>Place: Botshabelo,<br>Bloemfontein and Thaba-<br>Nchu  | Child Protection Week  |                   | 5506                     |
|            | Date:22-26 June 2015<br>Place: Bloemfontein,<br>different sections in<br>Botshabelo, different<br>zones in Thaba-Nchu | Youth Month  |                   | 4220                     |
|            | Date:29-30 July 2015<br>Place: Roos Jimmy and<br>Rosenhof Schools of<br>Industry.                                     | Mandela Month, visiting<br>youth offenders in schools of<br>Industry |                   | 238                      |
|            | Date: 24-28 August 2015<br>Place: Warden, Petrus<br>Steyn, Excelsior,<br>Theunissen, Trompsburg.                      | Access to Justice Week   |                   | 3507                     |

| Province                    | Exact location and date                                   | Type of initiative                    | No of initiatives | Number of people reached |
|-----------------------------|---|---------------------------------------|-------------------|--------------------------|
| Free State                  | Date: 25 November 2015-<br>Place: Sasolburg               | Awareness campaign                    |                   | 841                      |
|                             | Date: 26 November 2015-<br>Place: Rouxville               | Awareness campaign                    |                   | 700                      |
|                             | Date: 17 March 2016 –<br>Place: Bloem Secure Care Centre. | Community dialogue and art exhibition |                   | 120                      |
|                             | Date: 18 March 2016 –<br>Place: Bloem Secure Care Centre  | Human Trafficking and Child Justice   | 9                 | 80                       |
| <b>Total for Free State</b> |   |                                       | <b>9</b>          | <b>17 345</b>            |

| Province | Exact location and date  | Type of initiative  | No of initiatives | Number of people reached                              |
|----------|--|---|-------------------|---|
| Gauteng  | Date: 07 June 2015<br>Place: Soshanguve  | Cyber Bullying and Sexting  | 13                | This was a Morning Live TV show and 3 radio stations. |
|          | Date: 17 to 21 August 2015<br>Place: Johannesburg Family Court, Protea Magistrate's Court, Fochville Magistrate's Court, Sebokeng Magistrate's Court and Pretoria Magistrate's Court | Access to Justice Week  |                   |   |
|          | Date: 30 September 2015<br>Place: Maponya Mall   | Public Service month  |                   |   |
|          | Date: 18 November 2015<br>Place: Ethwathwa-Tshepo Temba Hall   | Restorative Justice   |                   |   |
|          | Date: 25 November 2015<br>Place: Daveyton Magistrate/ Rhoo Hlatswayo Community Hall  | 16 Days of Activism Against the Abuse of Women and Children–focusing on Child Justice |                   |   |
|          | Date: 27 November 2015<br>Place: Kanana / Bronkhospruit Pretoria Cluster   |   |                   |   |

| Province                     | Exact location and date  | Type of initiative   | No of initiatives | Number of people reached                                    |
|------------------------------|--|--|-------------------|---|
| <b>Gauteng</b>               | Date: 03 December 2015-<br>Place: Palmridge<br>Magistrate Court:<br>Germiston Cluster                    | 16 Days of Activism Against<br>the Abuse of Women and<br>Children-focusing on Child<br>Justice | 13                | 236   |
|                              | Date: 08 December 2015-<br>Place: Alexandra East<br>Bank Community Hall:<br>Randburg Cluster             |  |                   | 176   |
|                              | Date: 10 December 2015<br>Place: Orlando Soweto/<br>YMCA/DOCC Community<br>Hall: Johannesburg<br>Cluster |  |                   | 211   |
| <b>Total for<br/>Gauteng</b> |  |  | <b>13</b>         | <b>1995 (excluding<br/>viewers and radio<br/>listeners)</b> |

| Province                     | Exact location and date   | Type of initiative  | No of initiatives | Number of people reached |
|------------------------------|---|---|-------------------|--------------------------|
| <b>Limpopo</b>               | Date: 25-28 May 2015<br>Place: Sekhukhune                                     | School Visits (Crime<br>prevention, access to justice<br>campaigns) | <b>±12</b>        | ± 4200                   |
|                              | Date: 22 May 2015.<br>Place: Thabamoopo                                       |   |                   | ±300                     |
|                              | Date: 28 August 2015<br>Place: Makhado  |   |                   | ±300                     |
|                              | Date: 30 September 2015<br>Place: Mutale                                      |   |                   | ±200                     |
|                              | Date: 20 November 2015<br>Place: Masisi                                       |   |                   | ±100                     |
|                              | Date: 10 December 2015<br>Place: Sekgosese                                    |   |                   |                          |
|                              | Date: 10 December 2015<br>Place: Sekhukhune                                   |   |                   | ±100                     |
|                              | Date: 07-08 March 2016<br>Place: Sekhukhune<br>magisterial area(5<br>schools) | Awareness raising(school<br>visits)                                 |                   | ±100                     |
| <b>Total for<br/>Limpopo</b> |   |   | <b>±12</b>        |                          |

| Province   | Exact location and date  | Type of initiative                               | No of initiatives | Number of people reached                  |
|------------|--|--|-------------------|---|
| Mpumalanga | Date: 20 – 24 April<br>Place: Ermelo; Lothair;<br>Warburton; and Chrisiessmeer                                 | School visits                                    | 81                | 1200                                      |
|            | Date: 27 April 2015<br>Place: Kwaggafontein stadium  | Provincial freedom day                           |                   | 755                                       |
|            | Date: 25 – 29 May 2015<br>Place: Bushbuckridge, Mhala,<br>Matibidi x2a; and Mashishing                         | Community sessions                               |                   | 899                                       |
|            | Date: 18 June 2015<br>Place: Bushbuckridge   | School visit<br>School visit                     |                   | 1300                                      |
|            | Date: 19 June 2015<br>Place: Bushbuckridge   |  |                   | 850                                       |
|            | Date: 23 June 2015.<br>Place: Thembisile Hani Local<br>Municipality, Kwaggafontein                             | Africa Public Service<br>Day and exhibition      |                   | 800                                       |
|            | Date: 22-26 June 2015<br>Place: Nsikazi cluster-<br>Klau Klau, Msogwabo,<br>Matsulu, Masoyi and<br>Kanyamazane | Community session<br>Service fair youth<br>month |                   | 1500                                      |
|            | Date: 20 – 24 July<br>Place: Barberton cluster   | Community Session                                |                   | 1100                                      |
|            | Date: 30 to 31 July 2015<br>Place: Middelburg  | Youth Summit                                     |                   | 500                                       |
|            | Date: 17 - 21 August 2015<br>Place: Moutse   | School Visits                                    |                   | 20 schools visited<br>around Moutse Court |
|            | Date: 21-24 September 2015<br>Place: Amsterdam and Piet-<br>Retief   | Community Session<br>and service fair            |                   |   |
|            | Date: 21 September 2015<br>Place: Sheba Siding Village   |  |                   |   |
|            | Date: 22 September 2015<br>Place: Ext 11   |  |                   |   |
|            | Date: 23 September 2015<br>Place: Chief's place  |  |                   |   |

| Province                    | Exact location and date   | Community Session and service fair      | No of initiatives               | Number of people reached |
|-----------------------------|---|---|---------------------------------|--------------------------|
|                             | Date: 25 September 2015<br>Place: New Consort Mine  | Community Session and service fair      |                                 | 179                      |
|                             | Date: 26-30 October 2015<br>(5 events)<br>1.Piet Retief<br>2.Ndwalaza Tribal Authority<br>3.Piet Retief Library<br>4.Maphepheni<br>5.Ntombe                                   | Community Outreach and Public education |                                 | 789                      |
|                             | Date:16 -20 November 2015<br>(5 events)<br>Places:<br>1.Enkosini Village<br>2.Siyabuswa (B)<br>3.Peterskraal village<br>4.Mashiding community hall<br>5.Thabana village       |   |                                 | 502                      |
|                             | Date:30 November to<br>04 December 2015 (5 events)<br>Places:<br>1.Madubaduba Village<br>2.Vaalbank Location<br>3.Lefiswane village<br>4.Loding village<br>5. Digwale village |   |                                 | 716                      |
|                             | Date:01-04 February 2016<br>(15 schools)<br>Place:Emakhazeni local municipality   |   | School visits outreach programs |                          |
|                             | Date:22-26 Feb 2016 (30 schools)<br>Place: Steve Tshwete Local Municipality   |   |                                 | 1442                     |
|                             | Date:7-10 March 2016<br>(7 schools)<br>Place: Steve Tshwete Local Municipality  |   |                                 | 1432                     |
|                             | Date :18 March 2016<br>Place :Elukwatini Crossing Shopping Mall   | Community Outreach and Public education |                                 | 160                      |
| <b>Total for Mpumalanga</b> |   |   | <b>81</b>                       | <b>17 467</b>            |

| Province      | Exact location and date   | Type of initiative     | No of initiatives | Number of people reached |
|---------------|---|------------------------|-------------------|--------------------------|
| Northern Cape | Date: 4 June 2015<br>Place: Renielwe Primary School (Kimberley)             | School visits          | 28                | 90                       |
|               | Date: 5 June 2015<br>Place: Lucreatia Primary School (Kimberley)            |                        |                   | 119                      |
|               | Date: 5 June 2015<br>Place: Xu Kwe Combined School                          |                        |                   | 51                       |
|               | Date: 18 June 2015<br>Place: Marydale                                       | Information session    |                   | 45                       |
|               | Date: 19 June 2015<br>Place: Prieska  |                        |                   | 126                      |
|               | Date: 17 August 2015<br>Place: (Bergsig)Springbok                           | Access to Justice Week |                   | 42                       |
|               | Date: 18 August 2015<br>Place: Nababeep                                     |                        |                   | 33                       |
|               | Date: 18 August 2015<br>Place: Concordia                                    |                        |                   | 42                       |
|               | Date: 19 August 2015<br>Place: Steinkopf                                    |                        |                   | 68                       |
|               | Date: 20 August 2015<br>Place: Pofadder                                     |                        |                   | 25                       |
|               | Date: 27 August 2015<br>Place: Colesberg                                    | Information session    |                   | 79                       |
|               | Date: 15 September 2015<br>Place: Grobblershoop (Grobblershoop High School) | School visits          |                   | 85                       |
|               | Date: 15 September 2015<br>Place: Keimoes (Keimoes High School)             |                        |                   | 40                       |
|               | Date: 16 September 2015<br>Place: Kakamas (Martin Oosthuizen High School)   |                        |                   | 110                      |
|               | Date: 16 September 2015<br>Place: Kakamas (Kakamas High School)             |                        |                   | 68                       |



| Province      | Exact location and date  | Type of initiative             | No of initiatives | Number of people reached |
|---------------|--|--------------------------------|-------------------|--------------------------|
| Northern Cape | Date: 17 September 2015<br>Place: Upington (Saul Damon High School)    | School visit                   | 28                | 1200                     |
|               | Date: 23 September 2015<br>Place: Griekwastad (Combined High School)   |                                |                   | 17                       |
|               | Date: 28 September 2015<br>Place: Mothibistad (Ikheletso High School)  |                                |                   | 40                       |
|               | Date: 29 September 2015<br>Place: Upington (Frank Biggs High School)   |                                |                   | 32                       |
|               | Date: 30 September 2015<br>Place: Springbok (Namaqualand High School)  |                                |                   | 68                       |
|               | Date: 28 October 2015<br>Place: Kimberley (Diamantveld High School)    | Brochure distribution          |                   | 80                       |
|               | Date: 28 October 2015<br>Place: Kimberley (Kimberley Boys High School) |                                |                   | 90                       |
|               | Date: 8 December 2015<br>Place: Garies                                 | Information session            |                   | 45                       |
|               | Date: 8 December 2015<br>Place: Strydenberg                            |                                |                   | 60                       |
|               | Date: 4 March 2016<br>Place: Kuruman                                   | Information session at college |                   | 400                      |
|               | Date: 4 March 2016<br>Place: Kathu                                     |                                |                   | 300                      |
|               | Date: 8 March 2016<br>Place: De Aar                                    |                                |                   | 130                      |
|               | Date: 11 March 2016<br>Place: Hartswater                               | Information session            |                   | 81                       |
|               | <b>Total for Northern Cape</b>   |                                |                   |                          |

| Province                    | Exact location and date                        | Type of initiative        | No of initiatives | Number of people reached |
|-----------------------------|--|---------------------------|-------------------|--------------------------|
| <b>North West</b>           | Date: 24 February 2016<br>Place: Potchefstroom | Door to Door campaign     | 3                 | 94 households            |
|                             | Date: 25 February 2016<br>Place: Potchefstroom | Blitz campaign            |                   | 254                      |
|                             | Date: 26 February 2016<br>Place: Potchefstroom | School awareness campaign |                   | 4 schools reached        |
| <b>Total for North West</b> |  |                           | <b>3</b>          | <b>348</b>               |

| Province            | Exact location and date                      | Type of initiative   | No of initiatives | Number of people reached |
|---------------------|--|--|-------------------|--------------------------|
| <b>Western Cape</b> | Date: 25 May 2015<br>Place: Worcester        | Xenophobia Imbizo – Child Justice Act  |                   |                          |
|                     | Date: 11 August 2015<br>Place: Bredasdorp    | Imbizo in partnership with SAPS - Child Justice Act  |                   |                          |
|                     | Date: 14 August 2015<br>Place: Calitzdorp    | Imbizo- Child Justice Act  |                   |                          |
|                     | Date: 22 August 2015<br>Place: Philippi      |  |                   |                          |
|                     | Date: 27 August 2015<br>Place: Nyanga        |  |                   |                          |
|                     | Date: 24 November 2015<br>Place: Oudtshoorn  | Roadblock / Information Pamphlet drive   |                   |                          |
|                     | Date: 26 November 2015<br>Place: Oudtshoorn  | Service Delivery Imbizo led by the Department of Correctional Services- Imbizo-Child Justice Act |                   |                          |
|                     | Date: 27 November 2015<br>Place: Murraysburg | Door to door information Sessions - Imbizo-Child Justice Act                                     |                   |                          |

|                               |  |  |           |             |
|-------------------------------|--|--|-----------|-------------|
|                               | Date: 28 November 2015<br>Place: Elundini Home of the Disabled | DOJ&CD staff participated in the celebrating of Christmas and Graduation of the children - Child Justice Act |           |             |
|                               | Date: 03 March 2016<br>Place: PEP Factory, Parow Industrial    | Information Session- Child Justice Act   |           |             |
|                               | Date: 21 March 2016<br>Place: Companje Gardens, Cape Town      | Human Rights Day event - Child Justice Act   |           |             |
|                               | Date: 23 March 2015<br>Place: Lavender Hill, Mitchells Plain   | SAPS Service Delivery Imbizo on Gangsterism and substance abuse- Child Justice Act                           |           |             |
| <b>Total for Western Cape</b> |  |  | <b>12</b> | <b>9385</b> |

|                                |  |  |            |               |
|--------------------------------|--|--|------------|---------------|
| <b>TOTAL for all provinces</b> |  |  | <b>179</b> | <b>70 242</b> |
|--------------------------------|--|--|------------|---------------|


NOTES

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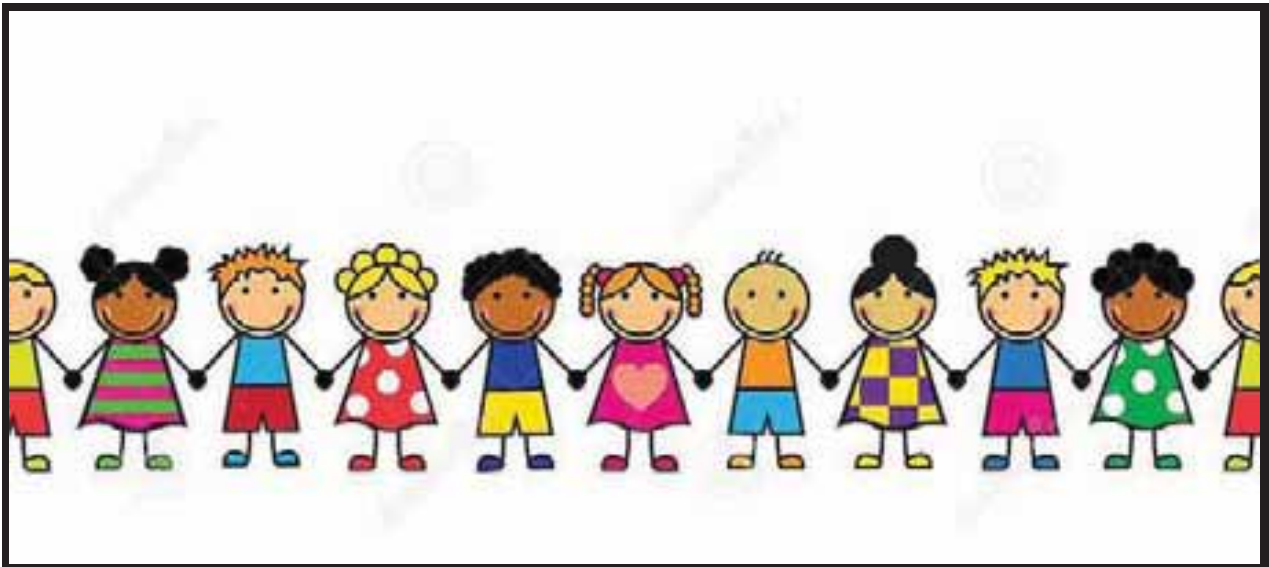


**correctional services**

Department  
Correctional Services  
REPUBLIC OF SOUTH AFRICA

**2015/2016**

**THIRD ANNUAL REPORT:  
IMPLEMENTATION  
OF THE  
CHILD JUSTICE ACT, 75 OF  
2008**



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## **ACRONYMS**

|           |   |
|-----------|---|
| AET:      | Adult Education and Training                |
| AIDS:     | Acquired Immune Deficiency Syndrome         |
| CJA:      | Child Justice Act, 75 of 2008               |
| CJS:      | Criminal Justice System                     |
| Corrcent: | Correctional Centre                         |
| CSA:      | Correctional Services Act, 111 of 1998      |
| DCS:      | Department of Correctional Services         |
| EC:       | Eastern Cape                                |
| FSNC:     | Free State and Northern Cape                |
| GP:       | Gauteng                                     |
| HIV:      | Human Immune Virus                          |
| ISCCJ:    | Inter-Sectorial Committee for Child Justice |
| KZN:      | KwaZulu Natal                               |
| LMN       | Limpopo, Mpumalanga and North West          |
| MMC:      | Medical Male Circumcision                   |
| TB:       | Tuberculosis                                |
| RD:       | Remand Detainee                             |
| STDs:     | Sexually Transmitted Diseases               |
| SRAC:     | Sport, Recreation, Arts and Culture         |
| WC:       | Western Cape                                |

## PREAMBLE

This is the departmental third annual report submitted in line with section 96(3) of the Child Justice Act [Act 75, of 2008] (CJA), which requires the Minister of Justice and Correctional Services to table in Parliament, the annual progress reports received from the departments which form part of the Inter-sectoral Committee for the Child Justice (ISCCJ).

The DCS forms part of ISCCJ which, through its secretariat, coordinates the implementation of the CJA since 2010. The Child Justice Act provides for a criminal justice system for children in conflict with the law.

The purpose of the report is to provide the departmental progress in relation to the implementation of CJA in the areas of responsibility falling within the scope of the DCS. The areas of responsibility for DCS have been summarized into a policy document titled *“Implementation Framework: Child Justice Act (Act 75, 2008)”* which was approved by the National Management Committee of the DCS on 18 February 2015 and signed off by the National Commissioner on 03 March 2015.

This report will cover a variety of topics and issues including; detention of children in DCS facilities, training of officials dealing with children, overview of children (both remand detainees and sentenced); services rendered to children, trend analysis of children and the challenges experience with the implementation of the CJA.

I wish to express my sincere appreciation to all the employees of the department for their hard work, cooperation and commitment in implementing the framework which was developed and adopted as one of the departmental policies aimed at promoting and protecting the constitutional rights of children in conflict with the law who fall under the custody of the department.



Mr JG Smalberger  
Acting National Commissioner, Department of Correctional Services  
Date: 2016/08/25.

## 1. INTRODUCTION

The purpose of this report is to provide departmental progress in relation to the implementation of the Child Justice Act (CJA) in the areas of responsibility falling within the scope of the DCS. This report covers the period from 1 April 2015 to 31 March 2016 of the 2015/2016 financial year. A comparison will also be made with the information of the previous years. An overview of the DCS population will be given which will include children as a subpopulation.

In 2015/16 the DCS detained its inmates in 243 centres which are located in six regions which are Gauteng, Western Cape, KwaZulu Natal (KZN), Eastern Cape, Free State and Northern Cape (FSNC) and Limpopo, Mpumalanga and North West (LMN); however as of 31 March 2016, of the 243 centres, eleven (11) were temporary closed for renovations.

The DCS had an average of 159 331 inmates in 2015/16 and children constituted 0.18% of the total inmate population. Remand Detainee (RD) children constituted 0.23% (99) of the RD population (41 873) and sentenced children constituted 0.15% (187) of the sentenced population (116 954). Of the children in detention, females constituted 2.79% while males constituted 97.21%. Female children constituted 0.19% of the total female population and male children constituted 0.18% of the male population. The summary of the DCS population is presented in the table below:

| Inmates  | Children<br>(14 to <18 years) |            |            | Juveniles<br>(18 to 20 years) |             |             | Youth, Adults and elderly<br>(21 and older) |               |               | Grand Total   | % against all inmates |
|--|-------------------------------|------------|------------|-------------------------------|-------------|-------------|---|---------------|---------------|---------------|-----------------------|
|  | Female                        | Males      | Total      | Females                       | Males       | Total       | Females                                     | Males         | Total         |               |                       |
| Remand Detainees   | 5                             | 94         | 99         | 87                            | 4376        | 4463        | 945   | 36366         | 37311         | 41873         | 26.28                 |
| Other unsentenced  | 0                             | 1          | 1          | 0                             | 38          | 38          | 15  | 450           | 465           | 504           | 0.32                  |
| Sentenced  | 3                             | 184        | 187        | 103                           | 4023        | 4126        | 2946  | 109695        | 112641        | 116954        | 73.4                  |
| <b>Total</b>   | <b>8</b>                      | <b>279</b> | <b>287</b> | <b>190</b>                    | <b>8437</b> | <b>8627</b> | <b>3906</b>                                 | <b>146511</b> | <b>150417</b> | <b>159331</b> | <b>100</b>            |
| %  | 0.01                          | 0.18       | 0.18       | 0.12                          | 5.30        | 5.41        | 2.45  | 91.95         | 94.41         | 100.00        |                       |
| Others: State Patients, Involuntary Mental Health Care Users and the Deportation Group |                               |            |            |                               |             |             |   |               |               |               |                       |
| <b>Table 1 Annual average for 2015/16 based on the daily unlock</b>                    |                               |            |            |                               |             |             |   |               |               |               |                       |

The population of children has been gradually reducing in DCS since the implementation of the CJA in 2010 (Trend analysis attached as **Annexure A**).

## 2. DETENTION OF CHILDREN WITHIN DCS FACILITIES

The snapshot analysis for 31 March 2016 revealed that the children were detained in 52 facilities in the DCS. RD children were detained in 30 facilities while sentenced children were detained 34 facilities. Children are detained separately from adults and males are detained separately from females and this is in line with section 7 (accommodation) of the Correctional Services Act (Act 111, 1998).

In terms of the table below which is based on a snapshot analysis for 31 March 2016, 14 facilities detained 1 RD child; 6 facilities detained 2 RD children and 1 facility detained 3 RD children. The highest number of RD children detained in one facility in one day was 28 (Durban Medium A Correctional Centre). The number of facilities that detained 1 sentenced child were 16 and the highest number of children detained in one facility was 41 (Ekuseni youth facility).

| Number of Facilities | Number of RD children in a facility |  | Number of facilities | Number of sentenced Children in a facility |
|----------------------|-------------------------------------|--|----------------------|--|
| 14                   | 1                                   |  | 16                   | 1  |
| 6                    | 2                                   |  | 3                    | 2  |
| 1                    | 3                                   |  | 3                    | 3  |
| 3                    | 4                                   |  | 2                    | 4  |
| 1                    | 6                                   |  | 3                    | 5  |
| 1                    | 10                                  |  | 1                    | 7  |
| 1                    | 15                                  |  | 1                    | 10   |
| 1                    | 17                                  |  | 1                    | 12   |
| 1                    | 19                                  |  | 1                    | 17   |
| 1                    | 28                                  |  | 1                    | 21   |
|                      |                                     |  | 1                    | 25   |
|                      |                                     |  | 1                    | 41   |

**Table 2: Number of facilities and number of children detained in a facility: Snapshot analysis for 31 March 2016**

The distribution of children in DCS facilities as per the snapshot of 31 March 2016 has been attached as **Annexure B**.

Lone RD Children that were referred to courts to be considered for alternative placement were six (6) in March 2016. The table below reflects a summary of referrals per regions and court responses. It should be taken into consideration that there is no provision in the CJA that allows for referral of lone children to court; however the concern of detaining lone children in DCS was raised at the Directors-General ISCCJ meeting in 2014/15 financial year. The judicial structures were consulted with regard to the concern and the proposal to refer such children to court to be considered for alternative placement.

| March 2016     | Number of lone children referred to Court | Continue with detention in DCS | Did not return from court |
|----------------|---|--------------------------------|---------------------------|
| Eastern Cape   | 0   | 0                              | 0                         |
| Gauteng        | 3   | 3                              | 0                         |
| Kwa Zulu Natal | 2   | 1                              | 1                         |
| LMN            | 0   | 0                              | 0                         |
| FSNC           | 0   | 0                              | 0                         |
| Western Cape   | 1   | 0                              | 1                         |
| <b>Total</b>   | <b>6</b>                                  | <b>4</b>                       | <b>2</b>                  |

*Table 3: Lone RD Children referred to Courts: March 2016*

### 3. TRAINING OF OFFICIALS

The department included the framework on the Child Justice Act in its programme of personnel induction. Forty six (46) officials from the Human Resource Development unit were trained on the framework in November 2015. These officials will further train other officials at the six regions of the department from 2016 onwards.

### 4. OVERVIEW OF CHILDREN

The overview of children will be presented in terms of remand detainees and sentenced offenders.

#### 4.1 Remand Detainees

##### 4.1.1 Trend analysis from 2010 to 2015/16

An average of five hundred and four (504) remand detainee children were incarcerated in DCS facilities in March 2010. This figure decreased to an average of 99 in 2015/16 financial year. This converts to a reduction of 80.4%.

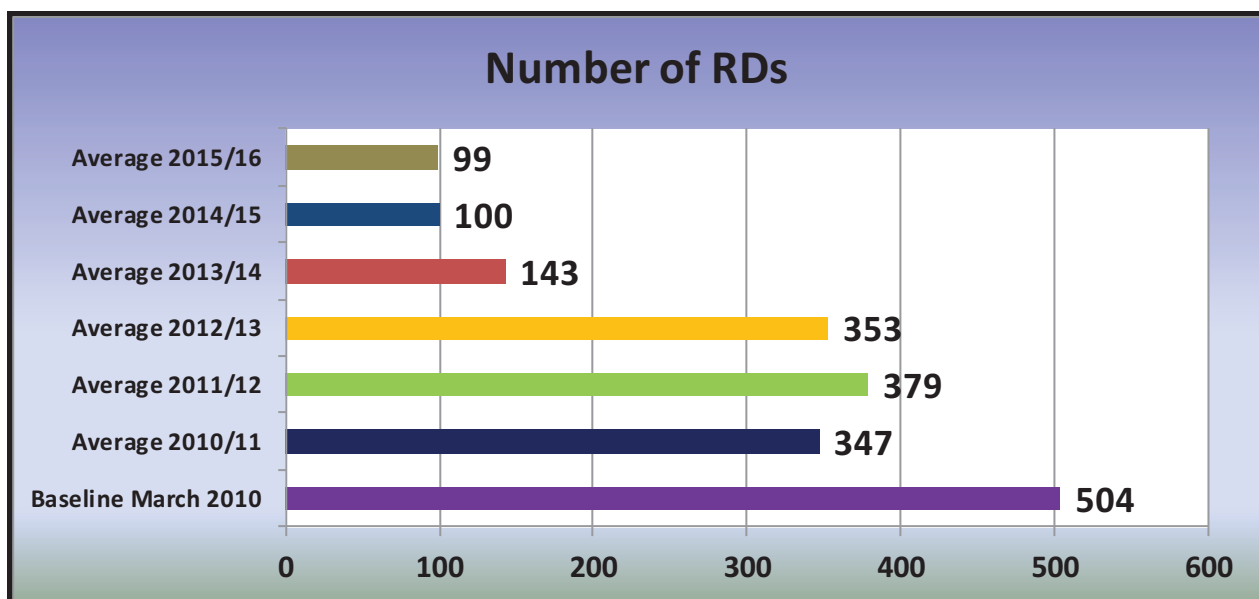


Figure 1: National Distribution of remand children in DCS

#### 4.1.2 Snapshots Analysis (31/03/2015, 30/09/2015 and 31/03/2016)

A snapshot analysis was done based on the information obtained from the databank of the department. The DCS population is constantly changing daily and the snapshots help in determining the nature of the population and subsections of the population detained in DCS facilities on a particular day.

On 31 March 2015 there were 106 remand detainee children while on 30 September 2015 and 31 March 2016 there were 103 and 136 remand detainee children respectively. This reflects a gradual increase in the number of remand detainee children that were in DCS facilities on 31 March 2016.<sup>1</sup>

Remand detainee children constituted almost 0.25% of the remand detainee population (daily unlock) on 31 March 2015 and 30 September 2015 and 0.3% on 31 March 2016.

##### 4.1.2.1 Gender

Of the remand detainee children, males constituted 97% (103) on 31 March 2015, 95% (103) on 30 September 2015 and 96.3% (131) on 31 March 2016.

<sup>1</sup>DCS daily unlock: 31 March 2015 = 42,903, 30 September = 41,480 RDs and 31 March 2016 = 45,146



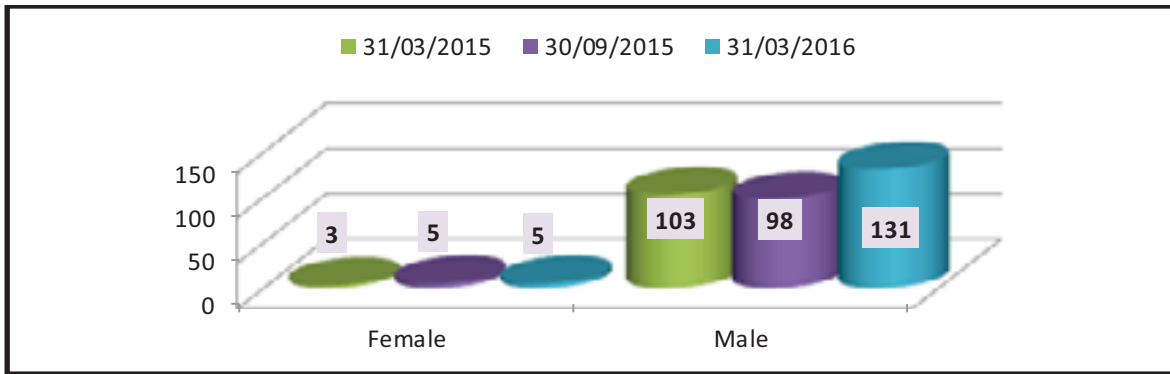


Figure 2: Snapshots Analysis of Children: Gender Distribution: Data from DCS Databank

#### 4.1.2.2 Regional Distribution

According to figure 3, on 31 March 2015, the regions with the highest number of RD children, in descending order, were Western Cape (WC), KwaZulu Natal (KZN) and Free State and Northern Cape (FSNC). The region with the lowest remand detainee children was Gauteng.

The pattern of the distribution of children changed on 30 September 2015 with KZN and Western Cape having the highest number of children (29) followed by FSNC. KZN had the highest number of children on 31 March 2016 followed by Western Cape and LMN.

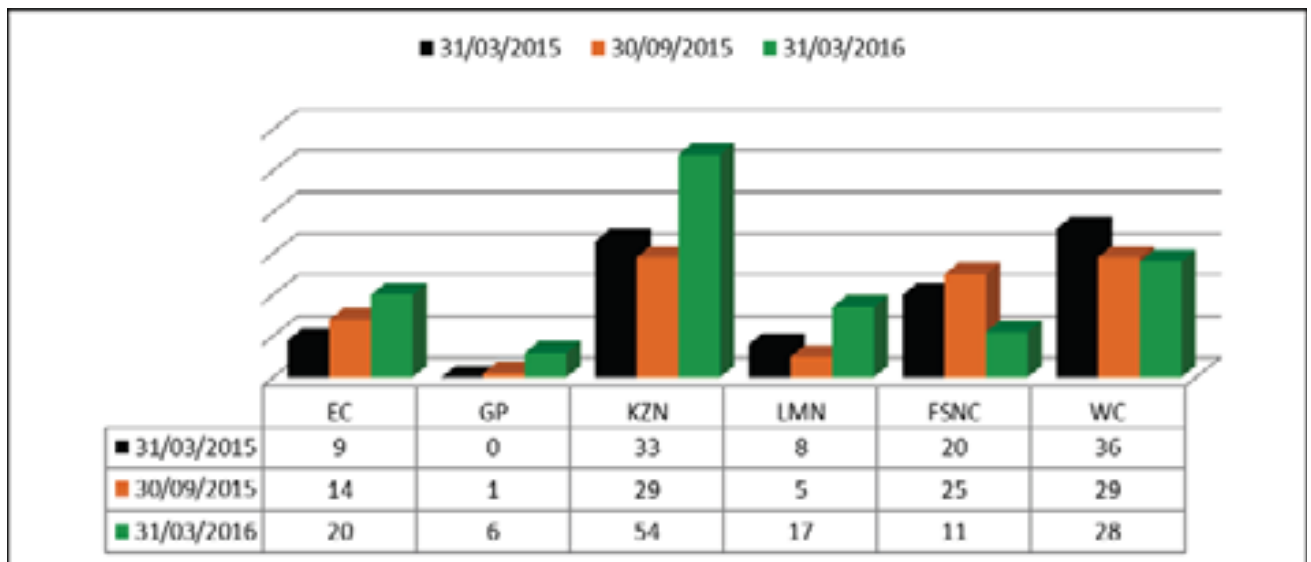


Figure 3: Snapshots Analysis of Children: Regional Distribution: Data from DCS Databank

### 4.1.2.3 Bail

Table 2 below reflects the analysis of children in terms of bail. Children with more than one (1) case with different bail related decisions are excluded from the count of bail cases because they would not qualify for release even if they manage to pay bail in one of the cases.

| Bail Amounts | 31-Mar-15  |             | 30 - Sep- 2015 |             | 31-Mar-16  |             |
|--------------|------------|-------------|----------------|-------------|------------|-------------|
|              | RDs        | Percentage  | RDs            | Percentage  |            |             |
| 0            | 98         | 92.45%      | 97             | 94.17%      | 116        | 85.29%      |
| 300          |            |             | 1              | 0.97%       | 1          | 0.74%       |
| 400          |            |             |                |             | 1          | 0.74%       |
| 500          | 3          | 2.83%       | 1              | 0.97%       | 6          | 4.41%       |
| 800          |            |             |                |             | 2          | 1.47%       |
| 1000         | 4          | 3.77%       | 2              | 1.94%       | 4          | 2.94%       |
| 1500         |            |             |                |             | 5          | 3.68%       |
| 2000         |            |             | 1              | 0.97%       | 1          | 0.74%       |
| 3000         | 1          | 0.94%       | 1              | 0.97%       |            |             |
| <b>Total</b> | <b>106</b> | <b>100%</b> | <b>103</b>     | <b>100%</b> | <b>136</b> | <b>100%</b> |

The 0 or No bail includes the following categories:

- No bail application made;
- Bail application in process and
- Bail application considered and denied

**Table 3: Snapshots Analysis of Children: Bail amounts: Data from DCS Databank**

The snapshot analysis revealed that above 90% of the RD children were detained without an option of bail for the periods 31 March 2015 to 30 September 2015, whilst 85.29% were detained without bail on 31 March 2016. Of the children detained with an option of bail, the bail amount ranged from R500 to R3 000 on 31 March 2015. On 30 September 2015 the amount ranged from R300 to R3 000 and on 31 March 2016, it ranged from R300 to R1 500. The highest amount of bail given based on the three snapshots was R3000.

### 4.1.2.4 Cases

The total number of cases for the 106 children, who were in detention on 31 March 2015, was 144. On 30 September 2015 the number of cases for 103 children was 124 and on 31 March 2016 the number of cases was 153 for 136 children.

Of the 103 RD children detained on 30 September 2015, fourteen (14) had more than one case. Of the children with multiple cases 10 had two cases each and four (4) had more than two cases (3 had 3 cases each and 1 had 4 cases).

Of the 136 children detained on 31 March 2016, twenty eight children had more than one case. Of the children with multiple cases 26 had two cases each and 2 had three cases each.

## 5. SENTENCED CHILDREN

### 5.1 Trend analysis from 2010 to 2015/16

An average of 717 sentenced children were incarcerated in DCS facilities in April 2010. This figure decreased to an annual average of 187 on 31 March 2016. This converts to a decrease of 73.92% over a period of six years.

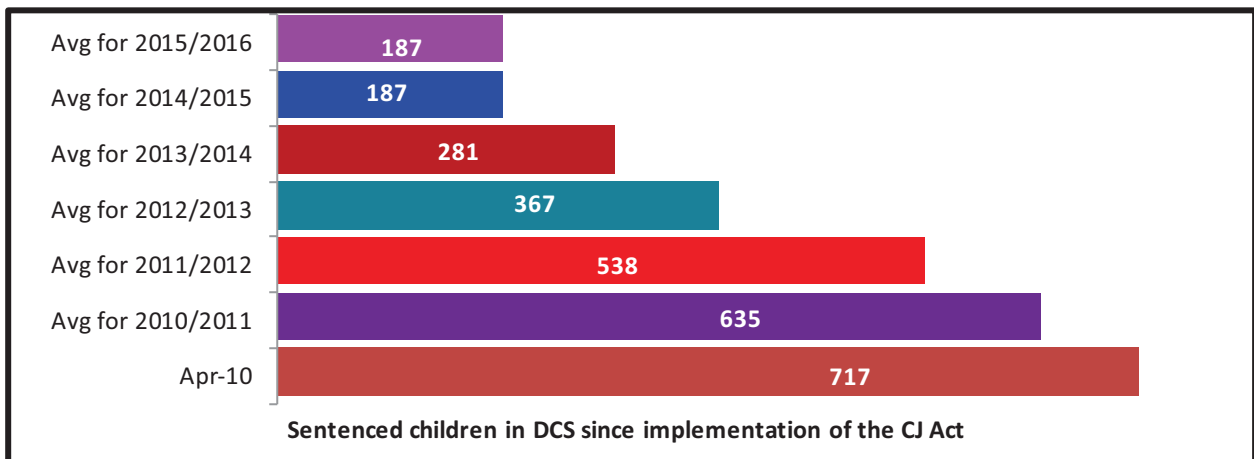


Figure 4: National Distribution of sentenced children in DCS Source: DCS Data Corporate Bank

### 5.1.2 Snapshots analysis

#### 5.1.2.1 Gender

Of the sentenced children incarcerated, males constituted 98.9% (193) on 31 March 2015 and 98.4% on 31 March 2016 (184).

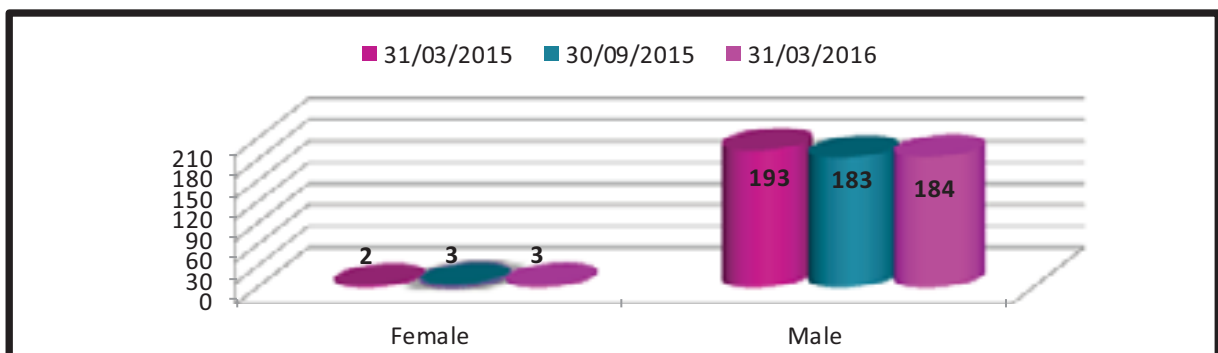


Figure 5: Snapshots Analysis of sentenced children: Gender Distribution: Data from DCS databank

### 5.1.2.2 Regional Distribution

The figure below represents the regional distribution of sentenced children as per three snapshots analysis taken.

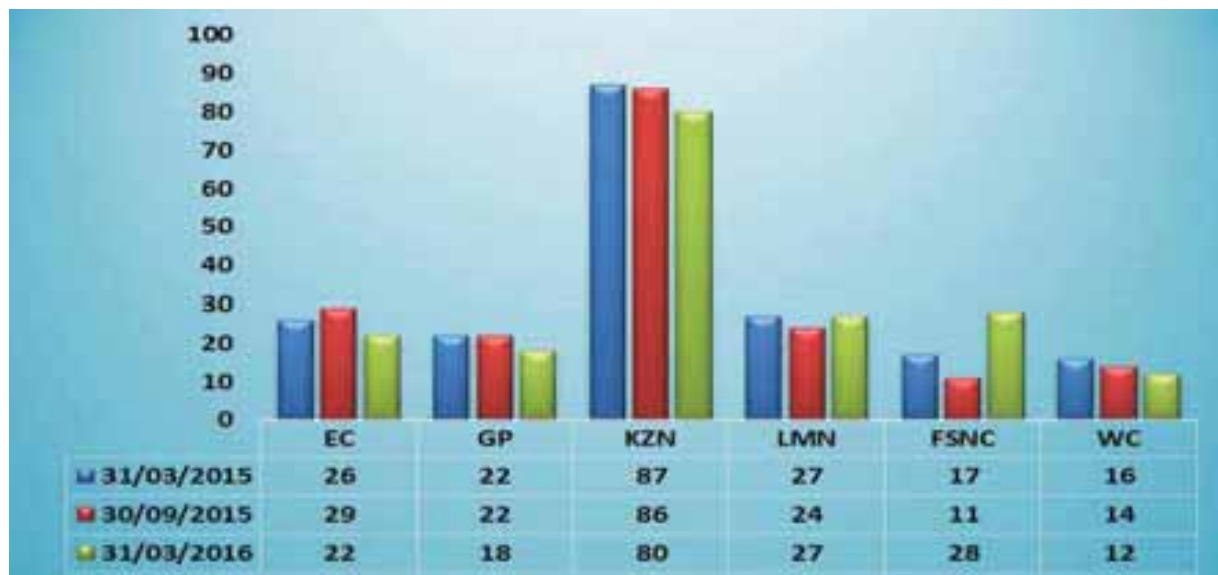


Figure 6: Snapshots Analysis of sentenced children: Regional Distribution: Data from DCS databank

The regions with the highest number of children on 31 March 2015 were KZN, followed by Eastern Cape and LMN. The region with the lowest number of children was the Western Cape. The region with the lowest number of sentenced children for 31 March 2016 was the Western Cape, followed by Gauteng. KZN and FSNC had the highest number of sentenced children for the same period. There was a decrease in the number of sentenced children in four (4) regions i.e., Eastern Cape, Gauteng, Western Cape and KZN. The number of children remained unchanged at 27 in LMN on 31 March 2015 and 31 March 2016. The number of children increased in the FSNC region by 6.25% (11).

### 5.1.2.3 Crime Charges

Of the sentenced children detained on 31 March 2015 sixteen (16) children had further charges and on 31 March 2016 only three (3) children were in detention with further charges.

The top 3 crimes that the sentenced children were convicted for are rape, murder and robbery.

## 6. PROGRAMMES/SERVICES

### 6.1 Health Care Services

Health care services are provided to all children in the form of primary health care services. Each centre has a health unit which provides services to all inmates detained in that particular facility including children. Continuous health assessment for sick children and those on acute and chronic medication are conducted in order to meet their individual health needs. Services that are rendered in the health units include prevention, promotion and curative programmes as well as referral services. All the programmes that are available and accessible to all inmates including children have been attached as **Annexure C**.

### 6.2 Social Work Services

All children have access to Social Work services; however the structured programmes are offered to sentenced children as they constitute a more stable population than the RD children. The sentenced children who attended services and programmes from the month of April 2015 to March 2016 were 385.

The structured programmes offered to sentenced children were: Anger Management, Assessment, Cool and Fit for Life, Life-Skills, Marriage and Family Care, Orientation, Sexual Offender Treatment, Substance Abuse, Supportive services, Resilience Enhancement and Trauma counselling.

| Programmes and services               | Sentenced Children |
|---------------------------------------|--------------------|
| Anger Management                      | 59                 |
| Assessment                            | 68                 |
| Cool and Fit for Life Youth Programme | 7                  |
| Life-Skills                           | 80                 |
| Marriage and Family Care              | 49                 |
| Orientation                           | 32                 |
| Sexual Offender treatment             | 30                 |
| Substance Abuse                       | 18                 |
| Supportive services                   | 22                 |
| Trauma counselling                    | 8                  |
| Resilience Enhancement                | 12                 |
| <b>Total Number of Children</b>       | <b>385</b>         |

*Table 5: Social Work Programmes: Source: Incarceration and Corrections*

### 6.3 Formal Education Programmes/services

Educational programmes and services available for children in DCS were further education and training (main stream grade 8 to 12), adult education and training and administration for continuity with studies and writing of examination for those who were involved in main stream education before detention in DCS. The latter applied mainly to RD children and sentenced children serving shorter sentences.

According to the table below, forty (40) sentenced children registered for Adult Education and Training and five (5) sentenced children registered for further education (grade 8 to 11).

| Grade /Other (specify) | Sentenced Children Number registered |
|------------------------|--------------------------------------|
| AET Level 1            | 9                                    |
| AET Level 2            | 11                                   |
| AET Level 3            | 11                                   |
| AET Level 4            | 9                                    |
| Grade 9                | 1                                    |
| Grade 10               | 2                                    |
| Grade 11               | 2                                    |
| Grade 12               | 0                                    |
| <b>TOTAL</b>           | <b>45</b>                            |

*Table 6: Formal Education: Source: Incarceration and Corrections*

The major challenge is that children find it difficult to adjust to the Adult Education and Training programme when they enter into the DCS since they come from the mainstream programme. Some children were not involved in any formal schooling before entering the DCS.

### 6.4 Sport, Recreation, Arts and Culture (SRAC)

A total of 153 children attended SRAC programmes which include sport, recreation, arts culture and libraries. Remand detainee children do not participate in outdoor sport. There are in-door games in some centres which are utilized by the children; however these games get vandalised within a short space of time and there are cost implications for their replacement.

## 6.5 Correctional Programmes

Correctional programmes appearing in the table below were offered to sentenced children in the 2015/16 financial year. The programmes include those that were facilitated by external service providers. A total of 202 children completed correctional programmes.

| Programmes and services                          | Service Provider                 | Total number of children |
|--|----------------------------------|--------------------------|
| Substance Abuse                                  | DCS                              | 22                       |
| Aggressive crime                                 | DCS                              | 17                       |
| New Beginnings                                   | DCS                              | 22                       |
| Restorative Justice                              | DCS                              | 2                        |
| Cross Roads                                      | DCS                              | 6                        |
| Economic (Theft)                                 | DCS                              | 15                       |
| Economic (Fraud)                                 | DCS                              | 2                        |
| Behaviour Modification: Gangsterism              | DCS                              | 1                        |
| Changing Lanes (Murder)                          | DCS                              | 2                        |
| Sexual offences                                  | DCS                              | 14                       |
|  | <i>External service provider</i> | 1                        |
| Pre - Release                                    | DCS                              | 95                       |
|  | <i>External service provider</i> | 3                        |
| <b>TOTAL (DCS and External service provider)</b> |                                  | <b>202</b>               |

*Table 7: Correctional Programmes: Source: Incarceration and Corrections*

The challenge experienced was that some children could not complete the full programme because of court attendance for those with further charges and attendance of health care services including admission to hospital for some offenders.

## 6.6 Spiritual Care Services

Spiritual care services are available and accessible to all children detained in DCS facilities. These programmes are offered by spiritual workers appointed by DCS, external services providers and volunteers.

| Programmes and services rendered  | Service provider                                     | Total number of children attended |            |
|---|--|-----------------------------------|------------|
|   |  | RD                                | Sentenced  |
| Church / faith service, Individual Pastoral Interviews, spiritual care group sessions | Spiritual Workers, Services Providers and Volunteers | 158                               | 942        |
| <b>TOTAL</b>  |  | <b>158</b>                        | <b>942</b> |

*Table 8: Spiritual Care Services: Source: Incarceration and Corrections*

## 6.7 Psychological Services

Psychological services are available for sentenced children and remand detainee children are referred to psychological services when a need is identified.

| Programmes and services rendered  | Total number of children attended |           |
|---|-----------------------------------|-----------|
|   | RD                                | Sentenced |
| Psychological intervention <ul style="list-style-type: none"> <li>• Individual assessments;</li> <li>• Psychotherapy;</li> <li>• Family and group therapy;</li> <li>• Anger Management; and</li> <li>• Sexual offenders programme.</li> </ul> | 0                                 | 291       |

*Table 9: Psychological Services: Source: Incarceration and Corrections*

## 7. CHALLENGE

| Challenge  | Intervention   |
|--|--|
| The department continues to detain lone children in several facilities and the remand detainees cannot be mixed with sentenced children. | There is an agreement to refer lone remand detainee children to court to be considered for alternative placement though this is not supported by existing laws and policies.   |
| No reflection of attendance of educational programmes by remand detainee children  | A sample of children for determination of their educational background will be conducted in 2016/17. This will provide guidance on the educational programme that could be provided to the remand detainee children. |

## 8. CONCLUSION

The implementation of the Child Justice Act within DCS is gradually improving since the development of the departmental framework which outlines the responsibilities of the DCS in relation to the implementation of the CJA. The department included the framework in the training modules for different categories of personnel in the department from 2015/16 financial year. The trainers that were trained will continue with the training of officials in 2016/17 and beyond and this approach will assist in reaching a broader number of correctional officials.



## ANNEXURE A: TREND ANALYSIS: CHILDREN IN DCS 2000 TO 2014

| Calendar Years                           | 14 to 17 years |           |       |
|--|----------------|-----------|-------|
|  | RD             | Sentenced | Total |
| Average for 2000                         | 2229           | 1681      | 3910  |
| Average for 2001                         | 2042           | 1711      | 3753  |
| Average for 2002                         | 2255           | 1796      | 4051  |
| Average for 2003                         | 2324           | 1802      | 4126  |
| Average for 2004                         | 1912           | 1698      | 3610  |
| Average for 2005                         | 1332           | 1233      | 2564  |
| Average for 2006                         | 1144           | 1095      | 2239  |
| Average for 2007                         | 1196           | 892       | 2087  |
| Average for 2008                         | 928            | 870       | 1799  |
| Average for 2009                         | 696            | 854       | 1550  |
| Child Justice Act (14 to below 18 years) |                |           |       |
| Average for 2010                         | 346            | 658       | 1004  |
| Average for 2011                         | 366            | 552       | 918   |
| Average for 2012                         | 367            | 417       | 784   |
| Average for 2013                         | 241            | 296       | 537   |
| Average for 2014                         | 167            | 235       | 402   |

## ANNEXURE B: SNAPSHOT: DISTRIBUTION OF CHILDREN: 31 MARCH 2016

| EASTERN CAPE                |           |           |           |
|-----------------------------|-----------|-----------|-----------|
| Facility                    | Remand    | Sentenced | Total     |
| Cofimvaba Corrcent          |           | 1         | 1         |
| Cradock Corrcent            | 4         | 17        | 21        |
| East London Med. B Corrcent | 1         |           | 1         |
| Kirkwood Corrcent           | 15        |           | 15        |
| Mqanduli Corrcent           |           | 1         | 1         |
| St. Albans Med. B Corrcent  |           | 1         | 1         |
| Umtata Max. Corrcent        |           | 2         | 2         |
| <b>Total</b>                | <b>20</b> | <b>22</b> | <b>42</b> |

| Gauteng                      |          |           |           |
|------------------------------|----------|-----------|-----------|
| Facility                     | Remand   | Sentenced | Total     |
| Boksburg Juvenile Corrcent   |          | 5         | 5         |
| Emthonjeni Juvenile Corrcent |          | 7         | 7         |
| Johannesburg Female Corrcent |          | 1         | 1         |
| Johannesburg Med. A Corrcent | 2        |           | 2         |
| Krugersdorp Corrcent         | 1        | 1         | 2         |
| Leeuwkop Juvenile Corrcent   |          | 4         | 4         |
| Pretoria Local Corrcent      | 3        |           | 3         |
| <b>Total</b>                 | <b>6</b> | <b>18</b> | <b>24</b> |

| KwaZulu Natal            |        |           |       |
|--------------------------|--------|-----------|-------|
| Facility                 | Remand | Sentenced | Total |
| Durban Female Corrcent   | 2      |           | 2     |
| Durban Juvenile Corrcent | 19     | 25        | 44    |
| Durban Med. A Corrcent   | 28     |           | 28    |
| Durban Med B             |        | 3         | 3     |
| Ekuseni Youth            |        | 41        | 41    |
| Empangeni Corrcent       | 1      | 5         | 6     |

| KwaZulu Natal            |           |           |            |
|--------------------------|-----------|-----------|------------|
| Facility                 | Remand    | Sentenced | Total      |
| Ladysmith Corrcent       | 1         |           | 1          |
| Ncome Med. A Corrcent    | 1         |           | 1          |
| Pmburg Corrcent          |           | 4         | 4          |
| Umzinto Corrcent         | 1         |           | 1          |
| Vryheid Corrcent         | 1         | 1         | 2          |
| Waterval Med. B Corrcent |           | 1         | 1          |
| <b>Total</b>             | <b>54</b> | <b>80</b> | <b>134</b> |

| LMN                         |           |           |           |
|-----------------------------|-----------|-----------|-----------|
| Facility                    | Remand    | Sentenced | Total     |
| Barberton Town Corrcent     | 1         | 12        | 13        |
| Bethal Corrcent             | 1         |           | 1         |
| Piet Retief Corrcent        |           | 1         |           |
| Potchefstroom Corrcent      | 10        |           | 10        |
| Rustenburg Med A            |           | 10        | 10        |
| Thohoyandou Female Corrcent | 4         |           | 4         |
| Thohoyandou Corrcent        |           | 3         | 3         |
| Volksrust Corrcent          | 1         |           | 1         |
| Witbank Corrcent            |           | 1         | 1         |
| <b>Total</b>                | <b>17</b> | <b>27</b> | <b>44</b> |

| FSNC                               |           |           |           |
|------------------------------------|-----------|-----------|-----------|
| Facility                           | Remand    | Sentenced | Total     |
| Bizzah Makhate D (Kroonstad Youth) |           | 21        | 21        |
| Douglas                            |           | 1         | 1         |
| Grootvlei Max. Corrcent            | 6         | 2         | 8         |
| Kimberley Corrcent                 | 1         | 2         | 3         |
| Odendaalsrus Corrcent              | 2         |           | 2         |
| Sasolburg Corrcent                 | 1         | 1         | 2         |
| Ventersburg Corrcent               | 1         |           | 1         |
| Virginia Corrcent                  |           | 1         | 1         |
| <b>Total</b>                       | <b>11</b> | <b>28</b> | <b>39</b> |

| WESTERN CAPE              |            |            |            |
|---------------------------|------------|------------|------------|
| Facility                  | Remand     | Sentenced  | Total      |
| Brandvlei Youth           |            | 5          | 5          |
| Brandvlei Max. Corrcent   |            | 1          | 1          |
| Caledon Corrcent          | 1          |            | 1          |
| Drakenstein Medium B      |            | 1          | 1          |
| Mosselbay Corrcent        | 4          | 1          | 5          |
| Pollsmoor Female Corrcent | 2          | 1          | 3          |
| Pollsmoor Max. Corrcent   | 2          |            | 2          |
| Pollsmoor Med. A Corrcent | 17         | 3          | 20         |
| Worcester Male Corrcent   | 2          |            | 2          |
| <b>Total</b>              | <b>28</b>  | <b>12</b>  | <b>40</b>  |
| <b>GRAND TOTAL</b>        | <b>136</b> | <b>187</b> | <b>323</b> |

*Table 1: Regional Distribution of children: A Snapshot for 31 March 2016*

## **ANNEXURE C: HEALTH SERVICES AVAILABLE FOR INMATES INCLUDING CHILDREN**

- Management of tuberculosis (TB) and Human Immune Virus (HIV);
- Prevention of Sexually Transmitted Diseases (STDs) by ensuring accessibility and availability of condoms (both male and female condoms);
- Provision of health education and awareness programmes on a variety of issues including HIV and Auto Immune Deficiency Syndrome (AIDS), STDs, TB, personal hygiene and healthy living;
- Access to Medical Male Circumcision (MMC);
- Implementation of HIV counselling and testing;
- Provision of mental health care services; and
- Referral to Department of Health facilities as per established criterion.

Other Health Care programmes provided to children by Health Care Professionals and the Non-Governmental Organizations are:

- Basic Health and Nutrition needs;
- Chronic Diseases (communicable and non-communicable);
- Reproductive Health;
- Mental Health Awareness; and
- Healthy living lifestyle.

The health units ensure that:

- Special dietary requirements for inmates are catered for in all the kitchens that prepare meals for inmates including children. The dietary requirements include recommended religious diets, cultural diets and health related diets; and
- Personal and environmental hygiene services are catered for to all inmates including children. They include the provision of toiletry, bedding and clothing.



**Office of the  
National Director of Public  
Prosecutions**



**INTERNAL MEMORANDUM**

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**TO: V. MADONSELA ESQ  
DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**

**FROM: ADV S. K ABRAHAMS  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**SUBJECT: NPA PROGRESS REPORT ON THE  
IMPLEMENTATION OF THE CHILD JUSTICE ACT 75  
OF 2008 FOR 2015/16 FINANCIAL YEAR**

**ENQUIRIES: ADV P SMITH**

**DATE: 20 JULY 2016**

**REF: 7/11/5/ CJ**

**1. PURPOSE**

The purpose of this memorandum is to submit to the Director General the inputs from the NPA as requested by the Department of Justice and Constitutional Development (DOJCD).

*Justice in our society so that people can live in freedom and security*



## 2. BACKGROUND

2.1 In preparation for the development of the Child Justice Act Annual Report to Parliament, herewith inputs from NPA as requested by the Department of Justice and Constitutional Development (DOJCD) from different relevant departments. This report deals with progress on the implementation of the Act for 2015/16 Financial Year in terms of the following ten key priority areas of the Child Justice National Policy Framework:

- 1) **Building Capacity in the Sector (All Departments);**
- 2) Ensuring assessment of children (Social Development);
- 3) Preliminary Inquiries (DoJCD and Magistracy);
- 4) Sentencing (DoJCD; DCS and DoBE);
- 5) **Provision of Diversion and Alternative Sentencing Services (DoJCD, DSD and DCS);**
- 6) Establishment of Child and Youth Care Centres (DSD);
- 7) Establishment of One Stop Child Justice Centres (DoJCD);
- 8) **Resources and Budgets (All Departments);**
- 9) **Public Education and Communication (All Departments led by DoJCD PEC);**
- 10) Development of necessary IT and IJS-systems to support information management systems (IJS, DoJCD ISM and all Departments).

For this period, the report will focus on Building Capacity in the Sector, Provision of Diversion, Resources & Budgets and Public Education & Communication.

2.2 With reference to **section 94 of the Child Justice Act, Act 75 of 2008** (the Act), the NPA participates in the Inter-sectoral Committee which is chaired by the Director-General of the Department Justice and Constitutional Development. In line with **section 96(3)** of the Act it is expected of the said Department to submit reports as prescribed to Parliament. Departments as members of the Committee are required to submit departmental



reports based on progress and initiatives implemented in keeping with the provisions of the Act. Herewith follows the report from the NPA as required.

## DISCUSSION

### 3. Building Capacity in the Sector

3.1 Section 97(4)(a) & (e) of the Act respectively places a responsibility on the National Director of Public Prosecutions to develop directives for prosecutors and training courses. These training courses must include training on the developed directives, also include social context training in respect of child justice and provide for and promote the use of uniform norms, standards and procedures. Ultimately with a view to ensure that all prosecutors are able to deal with child justice matters in an appropriate, efficient and sensitive manner.

3.2 The afore-mentioned directives were developed based on a consultative process with all relevant stakeholders as required by the Act. They were further adopted and approved by both houses of Parliament, and published in the *Gazette* (GG 33067) on 31 March 2010.

3.3 In line with the aforementioned Act the NPA Sexual Offences and Community Affairs (SOCA) Unit facilitated the development of a comprehensive training manual for prosecutors. For the roll-out of the training programme of the Child Justice Act for the current financial year, the NPA SOCA Unit has reviewed and updated the training material in line with the latest developments in law. The child justice training is facilitated by SOCA Unit in the schedule of trainings delivered for 2015/16.

3.4 The training curriculum covers the following topics:

- Social Context

- Criminal Capacity
- Assessments, Age Determination, Securing Attendance & Placement
- Diversion
- Preliminary Inquiry
- Trial
- Sentencing
- Legal Representation, Reviews, Appeals & Expungement
- Process Maps
- NPA Policy Directives
- Regulations developed by the Department of Justice and Constitutional Development
- Relevant Case Law in line with the Child Justice Act
- Miscellaneous Aspects of Child Law.

3.5 For the reporting financial year, we delivered 8 decentralized training sessions attended by 132 prosecutors.

3.6 Summary of training sessions conducted for prosecutors as from 2009 until end March 2016 on the Child Justice Act are:

- For 2009/2010; 11 training sessions attended by 349 prosecutors;
- For 2010/2011; 12 training sessions attended by 349 prosecutors;
- For 2011/2012; 5 training sessions attended by 128 prosecutors;
- For 2012/2013; 3 training sessions attended by 54 prosecutors
- For 2013/14, 10 training sessions attended by 185 prosecutors
- For 2014/15, 4 training sessions attended by 84 prosecutors
- For 2015/16, 8 training sessions attended by 132 prosecutors.



Totals: 53 sessions attended by 1281 prosecutors over a period of 7 financial years.

#### 4. Diversion Statistics

4.1 The total number of children diverted during the reporting financial year total, **8121** (in line with Child Justice Act).

4.2 The NPA SOCA Unit is continuing with the process of analysing trends for children diverted in accordance with the Act. It is envisioned that this analysis will *inter alia* assist with the identification of possible interventions to be implemented in affected areas for e.g. public education and awareness, training and escalation of challenges to the Operational ISCCJ and the Director General's ISCCJ. Shortcomings and challenges are also engaged with at stakeholder meetings to collectively identify solutions for implementation.

This analysis compares the number of children diverted during quarters 1 – 4 of 2015/16 with the respective quarters of the previous two financial years (2013/14 and 2014/15).

4.3 Diversion Stats between Q1 of 2013/14 – 2015/16 FY analysis:

| Indicator                                      | Q1-2013/14 | Q1-2014/15 | Q1-2015/16 |
|--|------------|------------|------------|
| Total Number of Diversions of children ito CJA | 2858       | 2424       | 2293       |

There is a decrease of 19.7% when comparing Q1 of 2015/16 FY with Q1 of 2013/14 FY. A decline of 5.4% is also noted when comparing Q1 of 2015/16 FY with Q1 of 2014/15 FY.

4.4 Diversion Stats between Q2 of 2013/14 – 2015/16 FY analysis:

| Indicator                                      | Q2-2013/14 | Q2-2014/15 | Q2-2015/16 |
|--|------------|------------|------------|
| Total Number of Diversions of children ito CJA | 2942       | 2546       | 1540       |

There is a decrease of 47.6% when comparing Q2 of 2015/16 FY with Q2 of 2013/14 FY. A decline of 39.5% is also noted when comparing Q2 of 2015/16 FY with Q2 of 2014/15 FY.

4.5 Diversion Stats between Q3 of 2013/14 – 2015/16 FY analysis

| Indicator                                      | Q3-2013/14 | Q3-2014/15 | Q3-2015/16 |
|--|------------|------------|------------|
| Total Number of Diversions of children ito CJA | 2471       | 2228       | 1904       |

There is a decrease of 22.9% when comparing Q3 of 2015/16 FY with Q3 of 2013/14 FY. A decline of 14.5% is also noted when comparing Q3 of 2015/16 FY with Q3 of 2014/15 FY.

4.6 Diversion Stats between Q4 of 2013/14 – 2015/16 FY analysis

| Indicator                                      | Q4-2013/14 | Q4-2014/15 | Q4-2015/16 |
|--|------------|------------|------------|
| Total Number of Diversions of children ito CJA | 2538       | 2015       | 1693       |

There is a decrease of 33.2% when comparing Q4 of 2015/16 FY with Q4 of 2013/14. A decline of 15.9% is also noted when comparing Q4 of 2015/16 with Q4 of 2014/15 FY.

4.7 It is clear from the aforementioned that there is a drop in the number of children being diverted. The NPA SOCA Unit embarked on a process of determining the causes of the decrease with the relevant nodal points in the provinces.

4.8 The feedback received from the nodal points in different divisions indicated the following possible reasons for the drop in diversion:

- An increase in the number of children committing more serious offences (schedule 3 of the Child Justice Act) and not meeting the requirements of diversion as stipulated in the Act.
- In some areas there are fewer children entering the Criminal Justice System, due to a lower number of cases reported (Northern Cape).
- We have also been informed that a number of child offenders are committing serious offences where there are no exceptional circumstances to allow the DPP to authorize diversion in accordance with the Child Justice Act.
- Lastly, there is generally a decrease in matters diverted also due to the limited number of accredited diversion programmes and accredited service providers (NGO's). This on its own will have a negative impact on the number of children being diverted because fewer children will be considered for diversion during preliminary inquiries and by the Child Justice Courts.

4.9 The aforementioned analysis by the NPA is done on a quarterly basis and relevant departments are constantly informed of the challenges through the DG's Inter-sectoral Committee on Child Justice (DG's ISCCJ in line with section 94 of the Act).

4.10 It must be noted that NPA collates the diversion statistics per child offender in accordance with the Act and not per charge as is collated by SAPS. This explains the discrepancy in the



diversion numbers between NPA and SAPS. Due to the fact that this methodology can unfortunately contribute to the unnecessary confusion when reports are submitted, the NPA, SAPS and DOJ are currently engaging in a discussion process to address this issue accordingly.

## **5. Resources and Budgets**

- 5.1 We are utilising NPA SOCA voted funds for the Child Justice training sessions previously reflected (pars 3.5 & 3.6).

## **6. Public Education and Communication**

- 6.1 The NPA SOCA Unit continues in delivering public awareness programmes in all 9 provinces in line with their mandate which includes a focus on child justice.

- 6.2 Once again the NPA has partnered with Tshwane TV to speak about the mandate and the work of the NPA which will *inter alia* include the Child Justice Act in particular, diversions and restorative justice.

- 6.3 A representative from NPA (SOCA Unit) was interviewed by SABC 1 Cutting Edge programme on the Child Justice Act. The programme was basically investigating the growing trend of child killers in South Africa. Predominantly, questions for us were based on the age of criminal capacity of child offenders, children used by adults to commit crimes and the diversion process as outlined by the Act.

## **7. Review of the Minimum age of Criminal Capacity**

- 7.1 The Department of Justice and Correctional Services facilitated with relevant stakeholders a discussion process towards reviewing the current minimum age of criminal capacity (section

8 read with section 96(4)) of the Act). The NPA participated in this process.

- 7.2 In addition, the NPA has embarked on a comprehensive study researching the different ages of criminal capacity utilised in other international countries which was presented to stakeholders at the DG's ISCCJ. Currently the report compiled by the Department (with inputs from NPA & other stakeholders) is submitted to Parliament for discussion.

## 8. Management of Child Justice Systems

- 8.1 During the Q3-period, as part of facilitating the management of effective and efficient child justice systems provincially and nationally, the SOCA unit has been observing the practical implementation of the CJA at the Pretoria Magistrate Court from 21 October 2015 – 21 December 2015 (Mondays & Thursdays). From this observation it transpired that the Act is properly implemented. It is envisaged to embark on a similar process in other provinces.

## 9. RECOMMENDATION

It is recommended that the NPA annual progress report herewith submitted is included in the DOJ departmental report for submission to Parliament.

Kind regards



**ADV. S K ABRAHAMS**  
**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**  
**NATIONAL PROSECUTING AUTHORITY**

DATE: 26-07-2016





social development

Department  
Social Development  
REPUBLIC OF SOUTH AFRICA

## **REPORT ON THE IMPLEMENTATION OF THE CHILD JUSTICE ACT 2008 (ACT 75 OF 2008) FOR THE FINANCIAL YEAR 2015/2016 – APRIL 2015 TO MARCH 2016**

### **1. Introduction**

The implementation of this Act is a collaboration and coordination efforts of the integrated child justice governance structures which is aimed at achieving cost effective implementation of the Act throughout the child justice sector. In compliance, the National Policy Framework has put in place a set of roles and responsibilities for all the partners in the implementation of the Act. The department of Social Development's responsibility includes:

- Making available probation officers for all issues relating to assessment of all children apprehended on allegations of having committed a criminal offence (referrals, placement and on appropriateness of diversion); express a view on criminal responsibility of children between 10 and 14 years; perform duties in court;
- Management of children placed under probation, home-based supervision or released under pre-trial supervision orders; children serving community-based sentences and diversion orders;
- Provisioning of and management of Child and Youth Care Centres for children awaiting trial; educational programmes to children awaiting trial; support to SAPS on related issues;

- Compile and submit pre-sentence reports within 6 weeks on request by the Child Justice Court; submit a report by Head of the Child and Youth Care Centre on child's completion of a compulsory residential sentence to court;
- Establishing and maintaining the registers children less than 10 years of age and another for diversion referral.
- Capacity and training for DSD practitioners, government departments and civil society organisations

## 2. Capacity Building

### 2.1 Integrated Social Crime Prevention Strategy:

The Child Justice Act emphasizes promotion of cooperation between government departments and between government departments and the non-governmental sectors and civil society to ensure an integrated and holistic approach, hence the development and implementation of the Integrated Social Crime Prevention Strategy.

For the period under review a total 3166 DSD, other government departments and civil society organisations' practitioners were trained on the Integrated Social Crime Prevention Strategy in the following provinces:

| PROVINCE      | NUMBER OF PRACTITIONERS |
|---------------|-------------------------|
| National      | 30                      |
| Western Cape  | 297                     |
| KwaZulu Natal | 478                     |
| Free State    | 292                     |
| North West    | 415                     |
| Mpumalanga    | 300                     |



|               |                           |
|---------------|---------------------------|
| Gauteng       | 394                       |
| Northern Cape | 300                       |
| Limpopo       | 366                       |
| Eastern Cape  | 294                       |
| <b>Total</b>  | <b>3166 practitioners</b> |

Analysis: As compared to 2014/15 wherein a total of 498 DSD national provincial other Government and Civil Society were trained, there has been a significant increase of practitioners trained (3166) in 2015/16. This attributed to the level of awareness created and the call holistic and integrated approach in crime prevention.

Over and above the training of practitioners, DSD also established Multi-disciplinary social crime prevention committee and launched in October 2015

- The said committee is comprised 19 National Government Departments
- 2015/16 Terms of reference Multi-disciplinary social crime prevention committee for the committee were approved by the DG of the department of Social Development
- The Multi-disciplinary social crime prevention committee met on a quarterly basis
- The 2015/16 integrated social crime prevention action plan is in place, submitted to the JCPS Cluster's Programme of Action
- Quarterly progress reports were submitted to JCPS Cluster's Programme of Action.
- Four (4) Provincial social crime prevention forums were established in KwaZulu Natal, Gauteng, Free State and Mpumalanga during 2015/16..

## 2.2 Reintegration and Aftercare strategy for Probation Services

The Child Justice Act (Act 75 of 2008) described reintegration and aftercare services as the process by which children are prepared for their return to their family and community after a period of confinement in Secure Care centers, Prisons, Reform schools and attending diversion programmes. Absence of such interventions result to most children re-entering the criminal justice system to the point of incarceration and will at many circumstances continue with criminal behavior into adulthood.

In response to this mandate a total of 290 DSD, other government departments and civil society organizations practitioners were trained on the Reintegration and Aftercare strategy for Probation Services.

| PROVINCE      | Number of Practitioners |
|---------------|-------------------------|
| Limpopo       | 37                      |
| Northern Cape | 30                      |
| Western Cape  | 30                      |
| kwaZulu Natal | 29                      |
| Gauteng       | 30                      |
| Free State    | 30                      |
| North West    | 35                      |
| Eastern Cape  | 39                      |
| Mpumalanga    | 30                      |
| <b>TOTAL</b>  | <b>290 practitioner</b> |

## 2.2. Developments

### 3. Public Education Initiatives

| PROVINCE     | ACTIVITY / EVENTS   |
|--------------|---|
| Gauteng      | <p>5520 beneficiaries reached on the provincial crime prevention awareness event in GP</p> <p>400 beneficiaries were reached through school Holiday Program Gauteng</p>   |
| Mpumalanga   | <p>5518 beneficiaries reached on the provincial crime prevention awareness event in GP</p>  |
| Western Cape | <p>1008 high risk learners reached on Conflict &amp; anger Management &amp; with anti-bullying in the Western Cape province</p> <p>8625 high risk learners reached on community-based &amp; after-school programmes in the Western Cape province</p> <p>5518 beneficiaries reached on the provincial crime prevention awareness event in WC</p> |
| Limpopo      | <p>5136 victims of crime and violence were reached through psychosocial support</p> <p>5518 beneficiaries reached on the provincial crime prevention awareness event in Limpopo</p>   |

|               |   |
|---------------|---|
|               |   |
| Northern Cape | 5518 young people were reached through provincial crime prevention awareness campaign   |
| Free State    | 5518 beneficiaries reached through crime prevention programmes and awareness campaigns.   |
| North West    | 5518 beneficiaries reached through crime prevention programmes and awareness campaigns.<br><br>2500 beneficiaries were reached through Restorative Justice Week commemoration in North West |
| <b>Total</b>  | <b>45 261 beneficiaries were reached through Public Education Initiatives.</b>  |

#### **4. Policy Framework for Accreditation of Diversion Services in South Africa**

The Policy Framework for Accreditation of Diversion Services in South Africa makes provision for three categories within which to assign a suitable status to the applying diversion programme or diversion service provider.

A government gazette on results of accredited diversion services was published on 15 May 2015, Gazette number: 38794 has reference. An

outline of accredited diversion services is reflected the preceding annual report.

Another government gazette that invites applications for 2015/16 cycle was published on 17 July 2015 and applications closed on 30 October 2015. Provincial structures have completed their site verification visits and accreditation sittings and are awaiting the issuance of certificates.

Certain sections of Section 56 of the Child Justice Act 75 of 2008 have been delegated through the Judicial Matters Amendment Act 14 of 2014. The Judicial Matters Amendment Act 14 of 2014 makes provision for the Minister of the Department of Social Development to delegate her powers to provinces. To date eight (8) provinces have accepted the delegations in writing namely: EC, NC, WC, GP, LP, MP, FS and NW. Only KZN Province remained.

Briefing sessions have been organized in all provinces and only four, namely: WC, GP, LP and NW were available to unpack the implications of delegated sections of the Act.

During 2015/16 a total of 49 Diversion service providers were awarded full accreditation whilst 13 received candidacy status. Furthermore a total of 121 Programmes were awarded full accreditation whilst 28 were awarded candidacy status. Only 18 Services providers and Programmes were declined as they did not meet the requirements. The breakdown per province is as follows:

| Province | No. of Programmes awarded full accreditation | No. of service providers awarded full accreditation | No. of programmes awarded candidacy status | No. of service providers granted candidacy | Declined Services/ withheld status |
|----------|--|---|--|--|------------------------------------|
| WC       | 18   | 2   | 4  | 4  | -                                  |

|              |            |           |           |           |           |
|--------------|------------|-----------|-----------|-----------|-----------|
| LP           | 25         | 5         | 2         | 1         | 6         |
| GP           | 22         | 16        | 4         | 2         | 6         |
| MP           | 26         | 5         | 1         | 1         | 1         |
| FS           | 6          | 4         | 2         | 2         | -         |
| NW           | 6          | 3         | 2         | 2         | 3         |
| EC           | 10         | 10        | -         | -         | -         |
| KZN          | 14         | 5         | 13        | 1         | 2         |
| NC           | 8          | 1         | 1         | 5         | 0         |
| <b>TOTAL</b> | <b>135</b> | <b>51</b> | <b>29</b> | <b>18</b> | <b>18</b> |

**Analysis:** The above table as compared to 2014/15 depicts that there has been an increase in the number on diversion services accredited. 58 more diversion programmes were awarded full accreditation status while 24 service providers were awarded full accreditation status. 32 more diversion services (both programmes and service providers) were declined a status as they did not meet requirements as per norms and standards. A slight increase is also identified on services that received candidacy status: 29 more programmes and 8 services providers were awarded in the previous cycle.

The increasing numbers could be attributed to the fact that new organizations are joining the child justice fraternity, whilst exiting organizations that received candidacy status in the previous cycles improved on their services.

In terms of developing the currently declined 18 emerging organizations, a plan is in place through partnership with experienced and established organizations to mentor and capacitate these organizations during 2016/17 financial year.

#### **4.1. Review of Policy Framework**

The Department has been implementing the Policy framework on Accreditation of diversion services since its tabling Policy in Parliament in May 2010. In terms of the Policy Framework for Accreditation of Diversion Services in SA, it has to be reviewed after five years of implementation. The process of reviewing the Policy Framework began with conducting consultative workshops which took place throughout the third and fourth quarters and ended on 11 March 2016. A draft document based on reports obtained during consultative workshops is in place.

#### **4.2 Challenges**

The accredited status of most diversion services lapsed in June 2015 and that meant that children could not be referred to unaccredited services. DSD extended the organization status With Department of Justice until fourth cycle of accreditation has been completed.

#### **4.3. Proposed solutions**

- ◆ To support provinces in marketing diversion services and accreditation processes to all emerging organizations.
- ◆ To address amongst others, the issue of rigid timeframes in Policy framework for accreditation of diversion services in SA during the review.

#### **5. Quality Assurance of Diversion Service Providers and Programmes**

Section 56 of the Child Justice Act, mandates DSD to ensure the provision and accreditation of diversion programmes and service providers. Quality Assurance has to be conducted in respect of all accredited diversion programmes and service providers by a Quality Assurance Panel appointed by the Minister in line with Regulation 32 of the Child Justice Act 75/2008.

The Minister has appointed 63 independent Quality Assurance Panel members in all nine provinces in July 2013. The panels are functional in all provinces.

#### 5.1. Monitoring of Accredited Diversion Service providers

Quality Assurance Panels have monitored and quality assured diversion service providers and programmes as follows:

| NAME OF PROVINCE | NUMBER OF DIVERSION SERVICE PROVIDERS QUALITY ASSURED | NUMBER OF DIVERSION PROGRAMMES QUALITY ASSURED |
|------------------|---|--|
| 1. Limpopo       | 7   | 22   |
| 2. Northwest     | 8   | 16   |
| 3. Mpumalanga    | 5   | 9  |
| 4. Eastern Cape  | 2   | 7  |
| 5. Northern Cape | 3   | 17   |
| 6. Kwazulu-Natal | 7   | 16   |
| 7. Free State    | 4   | 4  |
| 8. Western Cape  | 7   | 22   |
| 9. Gauteng       | 12  | 22   |
| <b>TOTAL</b>     | <b>55</b>   | <b>135</b>                                     |

**Analysis:** The above table as compared to the 2014/15 financial year shows significant improvement of conducting Quality Assurance in provinces. In 2014/15 only 24 accredited diversion service provider and 67 in all nine provinces were monitored. The reasons for having fewer Service providers and programmes being monitored includes limited budget allocated, Quality Assurance Panel members who were not readily available and lacked some more intensive skills to conduct monitoring within a



specific timeframe, and needed more time to conduct the quality assurance process. The other reasons included Organizations that were sceptical of the process, and often could not avail themselves for the monitoring.

During 2015/16, the Panels managed to monitor 55 service providers and 135 programmes. There was an increase of 31 service providers and 68 programmes. The reasons for this include the proper budget allocation in April 2015 that enabled QA panels to visit all the accredited organizations within the specified time frame. The panels were more capacitated with enough skills and knowledge to render this service more effectively and efficiently. The accredited organizations were also more exposed to this process which made it easier for them to prepare themselves and participate in the process within the developmental model. They were also more receptive of the processes.

#### **6. Departmental Information Management System**

In terms of the policy framework for accreditation of diversion in South Africa, members are to serve for one term which is equal to four years. In the first term, some committees had to replace those who terminated their services due to amongst other things, staff turnover, relocation and so forth. For those whose term was ending, a process of nominating new members had to be undertaken by provinces. Therefore update training on the system had to be provided for exiting members of accreditation structures whilst training new members on the system as well. Members from all nine provinces were trained. Quality Assurance System as a module of Accreditation of Diversion System (ADS) has been developed and finalized. 22 Master trainers selected from all nine provinces were trained on the system.

## **7. PROBATION SERVICES AS A SPECIALISED FIELD IN SOCIAL WORK:**

The Minister of Social Development has in terms of section 28(1)(g A) of the Social Services Act, Act No.110 of 1978 , on the recommendations of the South African Council for Social Services Profession (SACSSP), made the regulations relating to the registration of a speciality in probation services.

During the period under review, SACSSP appointed assessors and moderators who were trained on the assessment criteria; regulations and moderation rubric for Probation specialisation. A trial run of twenty POE's was conducted by the Council and the assessors. Formal assessment and moderation of 840 Portfolio of Evidence (POE's) from all Provinces commenced in August 2015.

Six provinces; Mpumalanga, Limpopo, Western Cape, Free State, Gauteng and Northern Cape were visited and assisted on how to compile portfolio of evidence as a result of challenges with the submitted POE's. Three hundred (300) POE's were submitted for moderation and one hundred and fifty (150) met the assessment and moderation criterion and are in the process of being registered by the Council as Probation Specialists.

## **8. SOCIAL CRIME PREVENTION THERAPEUTIC PROGRAMMES**

The Child Justice Act, 2008 and Children's Act, 2005 as Amended Act of 2015 provides for the provision of programmes. To comply with this legislative mandate the Department has embarked on a process of developing therapeutic programmes for children below ten and between ten and twelve years. During the reporting period the Department trained 119 Master in the provinces on the following programmes:

| No | Name of Programme          | Province | Target Group | Number of days for training | Number of Master trainers trained |
|----|----------------------------|----------|--------------|-----------------------------|-----------------------------------|
| 1. | Playing Through the forest | WC       | 10-12        | 3                           | 119                               |
| 2. | Stop to Start              | FS       |              | 3                           |                                   |
|    | Stop to Start              | MP       |              | 3                           |                                   |
| 3. | Stop to Start              | GP       |              | 3                           |                                   |
|    | Stop to Start              | NC       |              | 3                           |                                   |
| 4. | Stop to Start              | NW       |              | 3                           |                                   |
| 5. | Stop to Start              | LIMP     |              | 3                           |                                   |
| 6. | I am me                    | NW       |              | 4                           |                                   |
| 7. | I am me                    | LIMP     |              | 4                           |                                   |
|    | I am me                    | NC       |              | 4                           |                                   |

**Analysis:** As compared to 2014/15 the Department conducted training workshops of 134 master trainers in seven (7) Provinces on the Substance Abuse (Stop to Start) and Life Skills/ Personal Development Programmes. The number of master trainers (119) for 2015/16 financial year is lower than the last financial year which was 134. These were attributed to the clustering of provinces during training to maximize the limited resources we had. In 2015/16 the Department conducted training of master trainers on three therapeutic programmes (Substance Abuse (Stop to Start), Life Skills/ Personal Development and Sexual Offenders (I Am Me) Programmes.

Provinces have started rolling out training to all the implementers (Probation Officers) of the programmes. Actual implementation of the programmes has also commenced where children are formally referred by courts and others are enrolled by Practitioners as part of intervention plan. DSD therapeutic programmes have been submitted and presented for accreditation purposes and awaiting the outcome.

## 9 VOCATIONAL PROGRAMMES

In 2014/15 DSD developed five (5) vocational programmes. During 2015/2016 financial year, all five (5) programmes were submitted through the HWSETA for accreditation with the relevant SETAs Three (3) of the five programmes has already received Accreditation, and the remaining two (2) are in the final stages of accreditation. Table below depicts the status:

| No | Vocational Programme | Awaiting Accreditation | Accredited       |
|----|----------------------|------------------------|------------------|
| 1. | Computer             | Motor Mechanic         | Computer         |
| 2. | Furniture Making     | Welding                | Furniture Making |
| 3. | Plumbing             |                        | Plumbing         |
| 4. | Motor Mechanic       |                        |                  |
| 5. | Welding              |                        |                  |

## 10. SERVICES TO CHILDREN UNDER 18 YEARS

The department is mandated by section 34(1) to assess every child who is alleged to have committed an offence immediately after the Probation Officer has been notified by a police official that a child has been handed a written notice, served with a summons or arrested. In strengthening the

execution of the mandate the Department Social Development has developed Probation Case Management (PCM) and the Child and Youth Care Application (CYCA) Systems to enhance the reporting and management of the children. The PCM system is in the process of being integrated to the Integrated Justice System (IJS) which will ease the flow of information between the Criminal Justice System Departments that are dealing with children in conflict with the law. The systems are both web based and have been deployed on a live environment, which makes it easy for end users to function anywhere they are. These systems are linked to the programs that the children are expected to attend either in the Centre or as ordered by the court.

#### **11. CHILD AND YOUTH CARE CENTRE (SECURE CARE STATISTICS)**

The number of children in secure care centres, admission and releases has decreased compared to the 2014/15 financial year. The Table below portrays the comparison of the two financial years

| Year              | 2014/15 | 2015/16 | Variances. |
|-------------------|---------|---------|------------|
| Bed Capacity      | 17557   | 17323   | -234       |
| Overall Admission | 5453    | 5148    | -305       |
| Overall Releases  | 5462    | 4713    | -749       |

#### **12 STATISTICS FOR SERVICES TO CHILDREN UNDER 18 YEARS**

The Department is mandated in terms of section 34(1) of the Child Justice Act, Act 75 of 2008 to assess every child who is alleged to have committed an offence immediately after the Probation Officer has been notified by a Police Official that a child has been handed a written notice, served with summons or arrested.

During 2015/16 financial year; a total of 23 787 children were assessed by Probation Officers which is less with 5 040 than the previous financial year

(28 827); 8 830 children were referred to diversion programmes which is less by 2383 (11 213 from the previous year); 3 497 placed under Home Based Supervision less by 2 032 (5 529 from 2014 -2015) and 206 children below age of ten years were reported by SAPS and were assessed and placed in various intervention programmes, the number is less by 11 from the previous financial year which was 217.

The table below depicts a breakdown of children per province:

| <b>Total number of children in conflict with the law as from Apr 2015 – March 2016</b> |                 |                 |                               |                          |
|--|-----------------|-----------------|-------------------------------|--------------------------|
| <b>Provinces</b>   | <b>Assessed</b> | <b>Diverted</b> | <b>Home based Supervision</b> | <b>Children Under 10</b> |
| Mpumalanga   | 1048            | 347             | 27                            | 0                        |
| Free State   | 1061            | 466             | 7                             | 17                       |
| Gauteng  | 2721            | 1371            | 2033                          | 7                        |
| KwaZulu-Natal  | 3410            | 689             | 113                           | 29                       |
| Limpopo  | 1538            | 612             | 583                           | 62                       |
| Eastern Cape   | 4070            | 818             | 127                           | 62                       |
| Northern Cape  | 1038            | 713             | 81                            | 8                        |
| North-West   | 1107            | 516             | 70                            | 0                        |
| Western Cape   | 7794            | 3298            | 456                           | 21                       |
| <b>Total</b>   | <b>23787</b>    | <b>8830</b>     | <b>3497</b>                   | <b>206</b>               |

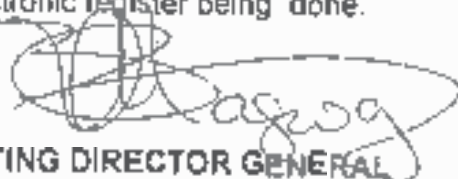
### **13 ASSESSMENTS TO CHILDREN UNDER 10**

Table below depicts children under 10 per province:

| <b>Provinces</b> | <b>Children Under 10</b> |
|------------------|--------------------------|
| Mpumalanga       | 0                        |
| Free State       | 17                       |

|               |     |
|---------------|-----|
| Gauteng       | 7   |
| KwaZulu-Natal | 29  |
| Limpopo       | 62  |
| Eastern Cape  | 62  |
| Northern Cape | 8   |
| North-West    | 0   |
| Western Cape  | 21  |
| Total         | 206 |

The number of the children under ten has decreased by 11 as compared to the previous financial year (217 to 206). Eastern Cape and Limpopo had highest number of children reported this financial year. It must be noted that need to motivate the internal and external stake holder in using the electronic system developed is very critical. The statistics from Social Development was not tallying with SAPS and it appear that the recording of the cases is not consistent as some of the children are just handed to Social Development without proper reporting and capturing on the SAPS under ten electronic register being done.



ACTING DIRECTOR GENERAL

DATE: 11/01/2016







Private Bag: X94, Pretoria, 0001

Fax No (012) 421 8216

Your reference:

My reference: 3/1/5/1/343(1)

Enquiries: Lt Gen Masiye  
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THE NATIONAL COMMISSIONER  
SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
0001

Mr Vusi Madonsela  
The Director General  
Department of Justice and Constitutional Development  
Private Bag X81  
**PRETORIA**  
0001

Dear Mr Madonsela

**SOUTH AFRICAN POLICE SERVICE ANNUAL SUBMISSION: IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008): 01 APRIL 2015 TO 31 MARCH 2016: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

1. The annual submission by the SAPS on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008), hereafter referred to the "the Act", for the period 01 April 2015 to 31 March 2016, includes the following areas of performance relevant to SAPS:

**1.1 Building Capacity - Training and recruiting additional and expert personnel**

The SAPS must provide information on the number of members trained in the Vulnerable Children (Child Justice) Learning Programme.

The number of members trained from 1 April 2015 to 31 March 2016 as recorded on the Training Administration System (TAS) is 3 701 members. Information in this regard received from the Division: Human Resource Development is attached as per **Annexure A**.

A review of the Relief Commanders' Learning Programme was conducted at the Thabong Training Academy from 14 to 18 September 2015. The challenges associated with the implementation of the Act utilizing National Instruction 2 of 2010 – Children in Conflict with the Law, were addressed.

**SOUTH AFRICAN POLICE SERVICE ANNUAL SUBMISSION: IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008): 01 APRIL 2015 TO 31 MARCH 2016: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

Provincial capacity building sessions were also conducted during the reporting period to address challenges with the implementation Act, the Older Persons Act, 2006 (Act 13 of 2006), the Children's Act, 2005 (Act 38 of 2005); and the implementation of the Safer Schools Programme. The following sessions were conducted:

- Limpopo - 18 to 21 May 2015;
- Gauteng - 01 to 08 June 2015;
- Mpumalanga - 28 to 29 September 2015; and
- North West - 22 to 26 June 2015.

**1.2 Ensuring the assessment of a child before appearance at a preliminary enquiry**

Information on designated Probation Officers and Child and Youth Care Centers was provided to all provinces and police stations.

Information on Child and Youth Care Centre facilities, (including identifying available bed space) to which children may be referred, is available on the SAPS Intranet.

The Operational Planning and Monitoring (OPAM) System was further enhanced to capture information regarding children under 10 years who are in conflict with the law as well as the notification to Probation Officers. The system now provides for serial numbers to be captured per entry, and was rolled out in all provinces.

During the period under review, Frontline Service Delivery (FSD) and Priority Police Station (Visible Policing and Detective Service Recovery Plans) visits were conducted to assess the implementation of the Act and correct identified irregularities and areas of non-compliance.

A total of 11 FSD and 55 Priority Police Stations were visited during the reporting period:

| <b>Frontline Service Delivery Police Station Visits</b> |                |                          |
|---|----------------|--------------------------|
| <b>Province</b>   | <b>Station</b> | <b>Date</b>              |
| <b>Eastern Cape</b>                                     | Butterworth    | 2015-05-26/27            |
|   |                | 2015-09-08 to 2015-09-09 |
| <b>Free State</b>                                       | Kopanong       | 2015-06-02/03            |
|   |                | 2015-09-29 to 2015-09-30 |
| <b>Gauteng</b>  | Alexandra      | 2015-05-21/22            |
|   |                | 2015-10-20 to 2015-10-21 |



**SOUTH AFRICAN POLICE SERVICE ANNUAL SUBMISSION: IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008): 01 APRIL 2015 TO 31 MARCH 2016: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

| <b>Frontline Service Delivery Police Station Visits</b> |                           |  |
|---|---------------------------|--|
| <b>Province</b>   | <b>Station</b>            | <b>Date</b>                            |
| <b>KwaZulu-Natal</b>                                    | Amangwe                   | 2015-06-08/09                          |
|   |                           | 2015-08-20                             |
|   | Ntambanana                | 2015-08-18                             |
|   | Mambuka Satellite Station | 2015-08-19<br>2015-09-17 to 2015-09-19 |
| <b>Limpopo</b>  | Thabazimbi                | 2015-05-19/20                          |
|   |                           | 2015-10-14 to 2015-10-15               |
| <b>Mpumalanga</b>                                       | Kabhekweni                | 2015-05-14/15                          |
|   |                           | 2015-09-15 to 2015-09-16               |
| <b>North West</b>                                       | Wolmaransstad             | 2015-06-05                             |
|   |                           | 2015-08-27 to 2015-08-28               |
| <b>Northern Cape</b>                                    | Hartswater                | 2015-06-04                             |
|   |                           | 2015-08-25 to 2015-08-26               |
| <b>Western Cape</b>                                     | Rondebosch                | 2015-06-23/24                          |
|   |                           | 2015-10-07 to 2015-10-08               |

| <b>Recovery Plan Police Stations Visits</b> |                      |                          |
|---|----------------------|--------------------------|
| <b>Province</b>                             | <b>Station</b>       | <b>Duration</b>          |
| <b>Eastern Cape</b>                         | Mthata               | 2016-03-07 to 2016-03-11 |
| <b>Eastern Cape</b>                         | Mount Road           | 2016-03-14 to 2016-03-18 |
| <b>Eastern Cape</b>                         | Gelvandale           | 2016-03-14 to 2016-03-18 |
| <b>Free State</b>                           | Park Road            | 2016-01-11 to 2016-01-15 |
| <b>Gauteng</b>                              | Hillbrow             | 2015-12-02 to 2015-12-08 |
| <b>Gauteng</b>                              | Honeydew             | 2015-12-02 to 2015-12-08 |
| <b>Gauteng</b>                              | Pretoria Central     | 2015-12-02 to 2015-12-08 |
| <b>Gauteng</b>                              | Sandton              | 2015-12-02 to 2015-12-08 |
| <b>Gauteng</b>                              | Johannesburg Central | 2015-12-07 to 2015-12-11 |
| <b>Gauteng</b>                              | Brooklyn             | 2015-12-14 to 2015-12-18 |
| <b>Gauteng</b>                              | Roodepoort           | 2015-12-14 to 2015-12-18 |
| <b>Gauteng</b>                              | Sunnyside            | 2015-12-14 to 2015-12-18 |
| <b>Gauteng</b>                              | Temba                | 2015-12-14 to 2015-12-18 |
| <b>Gauteng</b>                              | Tembisa              | 2015-12-14 to 2015-12-18 |
| <b>Gauteng</b>                              | Diepsloot            | 2015-12-28 to 2015-12-30 |
| <b>Gauteng</b>                              | Hillbrow             | 2015-12-28 to 2015-12-30 |
| <b>Gauteng</b>                              | Linden               | 2015-12-28 to 2015-12-30 |
| <b>Gauteng</b>                              | Olievenhoutsbosch    | 2015-12-28 to 2015-12-30 |

**SOUTH AFRICAN POLICE SERVICE ANNUAL SUBMISSION: IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008): 01 APRIL 2015 TO 31 MARCH 2016: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

| <b>Recovery Plan Police Stations Visits</b> |                              |                          |
|---|------------------------------|--------------------------|
| <b>Province</b>                             | <b>Station</b>               | <b>Duration</b>          |
| Gauteng                                     | Jeppe                        | 2016-03-07 to 2016-03-11 |
| Gauteng                                     | Garsfontein & Springs        | 2016-03-14 to 2016-03-18 |
| KwaZulu-Natal                               | Durban Central               | 2016-01-11 to 2016-01-15 |
| KwaZulu-Natal                               | Chatsworth                   | 2016-02-15 to 2016-02-19 |
| KwaZulu-Natal                               | Empangeni                    | 2016-02-15 to 2016-02-19 |
| KwaZulu-Natal                               | Marianhill                   | 2016-02-15 to 2016-02-19 |
| KwaZulu-Natal                               | Phoenix                      | 2016-02-15 to 2016-02-19 |
| KwaZulu-Natal                               | Umlazi                       | 2016-02-15 to 2016-02-19 |
| KwaZulu-Natal                               | Greenwood Park               | 2016-02-22 to 2016-02-26 |
| KwaZulu-Natal                               | Inanda                       | 2016-02-22 to 2016-02-26 |
| KwaZulu-Natal                               | KwaMashu E                   | 2016-02-22 to 2016-02-26 |
| KwaZulu-Natal                               | Pinetown                     | 2016-02-22 to 2016-02-26 |
| KwaZulu-Natal                               | Plessislaer                  | 2016-02-22 to 2016-02-26 |
| KwaZulu-Natal                               | Tonga                        | 2016-03-07 to 2016-03-11 |
| Limpopo                                     | Thohoyandou                  | 2016-01-11 to 2016-01-15 |
| Limpopo                                     | Mankweng                     | 2016-03-14 to 2016-03-18 |
| Limpopo                                     | Pienaar                      | 2016-03-14 to 2016-03-18 |
| Limpopo                                     | Seshego & Polokwane          | 2016-03-07 to 2016-03-11 |
| Mpumalanga                                  | Witbank                      | 2016-01-11 to 2016-01-15 |
| Northwest                                   | Rustenburg                   | 2016-01-11 to 2016-01-15 |
| Western Cape                                | Nyanga                       | 2016-01-25 to 2016-01-29 |
| Western Cape                                | Bellville                    | 2016-01-25 to 2016-01-29 |
| Western Cape                                | Kraaifontein & Philippi East | 2016-01-25 to 2016-01-29 |
| Western Cape                                | Mitchells Plain              | 2016-01-25 to 2016-01-29 |
| Western Cape                                | Stellenbosch                 | 2016-01-25 to 2016-01-29 |
| Western Cape                                | Cape Town Central            | 2016-02-01 to 2016-02-05 |
| Western Cape                                | Milnerton & Harare           | 2016-02-01 to 2016-02-05 |
| Western Cape                                | Paarl & Gugulethu            | 2016-02-01 to 2016-02-05 |
| Western Cape                                | Parow & Khayelitsha          | 2016-02-01 to 2016-02-05 |
| Western Cape                                | Woodstock                    | 2016-02-01 to 2016-02-05 |



**SOUTH AFRICAN POLICE SERVICE ANNUAL SUBMISSION: IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008): 01 APRIL 2015 TO 31 MARCH 2016: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**1.3 One-Stop Child Justice Centres**

The SAPS collaborates in the establishment and management of new One-Stop Child Justice Centers with stakeholders in the Criminal Justice Sector.

The SAPS sought legal opinion, which confirms that the SAPS should continue to provide support to the One-Stop Child Justice Centres.

Provincial offices will be required to assess the modalities that can be applied in respect of each Centre to ensure the most cost-effective utilisation of resources. During the reporting period, the SAPS provided input on the increase in jurisdiction of the Nerina One-Stop Child Justice Centre.

**1.4 Information Management**

In terms of Section 96 of the Act, the SAPS is responsible for submitting information regarding children in conflict with the law to the DoJCD on a monthly, quarterly, bi-annual and annual basis as part of the monitoring and evaluation system for child justice.

Statistics regarding charges against children for the period 01 April 2015 to 31 March 2016 are as follows, please refer to **Annexure B**:

- Total criminal charges against children - **42 628**; and
- Total criminal charges against children for Sexual Offences - **2 805**.

Statistics regarding the number of children charged for the period 01 April 2015 to 31 March 2016 are as follows, please refer to **Annexure B**:

- Total number of children charged – **47 644**.

A summary of the charges against children since the implementation of the Act in 2010 is as follows:

| Period                             | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 | 2015/16 |
|------------------------------------|---------|---------|---------|---------|---------|---------|
| <b>Total Charges</b>               | 75 435  | 68 078  | 57 721  | 47 274  | 50 535  | 42 628  |
| <b>Charges for sexual offences</b> | 4 671   | 4 772   | 4 960   | 2 943   | 3 560   | 2 805   |

**SOUTH AFRICAN POLICE SERVICE ANNUAL SUBMISSION: IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008): 01 APRIL 2015 TO 31 MARCH 2016: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

From the data provided above, it is clear that there has been a significant decrease in the number of charges against children since the implementation of the Act. The SAPS is currently conducting a research study to establish the actual reasons for the decline in the number of the children being arrested and charged since the inception Act.

Section 96(1)(e) of the Act also requires departments to provide data on the number of children in conflict with the law. The Director Generals' Inter-Sectoral Committee for Child Justice has resolved that the SAPS should provide data on the number of children charged on a quarterly basis, in addition to the number of charges against children, which is currently provided by the SAPS to the Committee.

The SAPS's Division: Visible Policing has engaged the Division: Technology Management Services and the Crime Registrar in this regard to ensure the provision of data regarding the number of children charged as requested by the Committee.

Kind regards



**LIEUTENANT GENERAL  
ACTING NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE  
JK PHAHLANE**

Date: 2016-08-11

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Annexure A

TOTAL NUMBER OF MEMBER TRAINED ON CHILD JUSTICE FOR THE PERIODS 2015-04-01 TO 2016-03-31 AS PER TRAINING ADMINISTRATION AS ON 2016-04-07

| TRAINED MEMBERS                 |         |      |          |     |        |    |       |    |       | COMPETENT MEMBERS               |         |      |          |     |        |    |       |    |       |
|---------------------------------|---------|------|----------|-----|--------|----|-------|----|-------|---------------------------------|---------|------|----------|-----|--------|----|-------|----|-------|
| COURSE DESCRIPTION              | AFRICAN |      | COLOURED |     | INDIAN |    | WHITE |    | TOTAL | COURSE DESCRIPTION              | AFRICAN |      | COLOURED |     | INDIAN |    | WHITE |    | TOTAL |
|                                 | F       | M    | F        | M   | F      | M  | F     | M  |       |                                 | F       | M    | F        | M   | F      | M  | F     | M  |       |
| 3519 VULNERABLE CHILDREN COURSE | 1256    | 2049 | 89       | 185 | 4      | 28 | 36    | 77 | 3724  | 3519 VULNERABLE CHILDREN COURSE | 1255    | 2035 | 87       | 181 | 3      | 27 | 36    | 77 | 3701  |
| TOTAL                           | 1256    | 2049 | 89       | 185 | 4      | 28 | 36    | 77 | 3724  | TOTAL                           | 1255    | 2035 | 87       | 181 | 3      | 27 | 36    | 77 | 3701  |

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## Charges against children - 2015/2016 financial year

## Summary

| Quarter      | Sex         |              |              |
|--------------|-------------|--------------|--------------|
|              | Female      | Male         |              |
| April - June | 1168        | 10122        | 11290        |
| July - Sept  | 1174        | 10578        | 11752        |
| Oct - Dec    | 835         | 7419         | 8254         |
| Jan - Mar    | 1104        | 10228        | 11332        |
|              | <b>4281</b> | <b>38347</b> | <b>42628</b> |

## Charges against children (Sexual Offences) - 2015/2016 financial

| Quarter      | Sex       |             |             |
|--------------|-----------|-------------|-------------|
|              | Female    | Male        |             |
| April - June | 6         | 694         | 700         |
| July - Sept  | 14        | 712         | 726         |
| Oct - Dec    | 8         | 553         | 561         |
| Jan - Mar    | 12        | 806         | 818         |
|              | <b>40</b> | <b>2765</b> | <b>2805</b> |

Total number of children charged for the 2015/2016 financial year:

| Semester           | Female      | Male         |                          |
|--------------------|-------------|--------------|--------------------------|
| April - September  | 2827        | 21703        |                          |
| October - December | 1243        | 10790        |                          |
| January - March    | 1087        | 9994         |                          |
| <b>Total</b>       | <b>5157</b> | <b>42487</b> | <b>Grand Total 47644</b> |



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Annexure A

TOTAL NUMBER OF MEMBER TRAINED ON CHILD JUSTICE FOR THE PERIODS 2015-04-01 TO 2016-03-31 AS PER TRAINING ADMINISTRATION AS ON 2016-04-07

| TRAINED MEMBERS                 |         |      |          | COMPETENT MEMBERS |        |    |       |    |       |
|---------------------------------|---------|------|----------|-------------------|--------|----|-------|----|-------|
| COURSE DESCRIPTION              | AFRICAN |      | COLOURED |                   | INDIAN |    | WHITE |    | TOTAL |
|                                 | F       | M    | F        | M                 | F      | M  | F     | M  |       |
| 3519 VULNERABLE CHILDREN COURSE | 1256    | 2049 | 89       | 185               | 4      | 28 | 36    | 77 | 3724  |
|                                 |         |      |          |                   |        |    |       |    |       |
| COURSE DESCRIPTION              | F       | M    | F        | M                 | F      | M  | F     | M  |       |
| 3519 VULNERABLE CHILDREN COURSE | 1255    | 2035 | 87       | 181               | 3      | 27 | 36    | 77 | 3701  |
| TOTAL                           | 1256    | 2049 | 89       | 185               | 4      | 28 | 36    | 77 | 3724  |
| TOTAL                           | 1255    | 2035 | 87       | 181               | 3      | 27 | 36    | 77 | 3701  |

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## Charges against children - 2015/2016 financial year

## Summary

| Quarter      | Sex    |       |       |
|--------------|--------|-------|-------|
|              | Female | Male  |       |
| April - June | 1168   | 10122 | 11290 |
| July - Sept  | 1174   | 10578 | 11752 |
| Oct - Dec    | 835    | 7419  | 8254  |
| Jan - Mar    | 1104   | 10228 | 11332 |
|              | 4281   | 38347 |       |

## Charges against children (Sexual Offences) - 2015/2016 financial

| Quarter      | Sex    |      |     |
|--------------|--------|------|-----|
|              | Female | Male |     |
| April - June | 6      | 694  | 700 |
| July - Sept  | 14     | 712  | 726 |
| Oct - Dec    | 8      | 553  | 561 |
| Jan - Mar    | 12     | 806  | 818 |
|              | 40     | 2765 |     |

Total number of children charged for the 2015/2016 financial year:

| Semester           | Female      | Male         |                    |              |
|--------------------|-------------|--------------|--------------------|--------------|
| April - September  | 2827        | 21703        |                    |              |
| October - December | 1243        | 10790        |                    |              |
| January - March    | 1087        | 9994         |                    |              |
| <b>Total</b>       | <b>5157</b> | <b>42487</b> | <b>Grand Total</b> | <b>47644</b> |



DIRECTOR GENERAL  
HEALTH  
REPUBLIC OF SOUTH AFRICA

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Mr V Madonsela  
Director-General  
Department of Justice and Constitutional Development  
Private Bag X81  
PRETORIA  
0001

Dear Colleague

**NATIONAL DEPARTMENT OF HEALTH: 2015/16 ANNUAL REPORT ON THE IMPLEMENTATION OF CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008) ("ACT")**

This letter serves to submit the report on the implementation of the Act as required.

The 2015/16 annual report has been compiled and is attached for your attention.

The capacity to conduct criminal capacity assessments required in terms of the Act, is located in 64 health establishments designated in terms of Section 5 of Mental Health Care Act, 2002 (Act No. 17 of 2002).

Although limited, 33 psychiatrists and 20 Clinical Psychologists in the private sector indicated their willingness to conduct these assessments to augment the human resource capacity in the public health sector. However, the current process of finalising the review of the tariffs for remuneration of these health professionals needs to be expedited in order to attract more from the private sector.

A training programme for psychiatrists and psychologists in the public sector on criminal capacity assessments is being developed to improve the skills challenges in this area of work.

I am looking forward to further collaboration in this area.

Yours sincerely

MS MP MATSOSO  
DIRECTOR-GENERAL: HEALTH  
DATE: 25/7/2016



## **NATIONAL DEPARTMENT OF HEALTH: ANNUAL REPORT (APRIL 2015 – MARCH 2016) ON THE IMPLEMENTATION OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008) ("ACT")**

### **BACKGROUND**

1. The Child Justice Act (Act No 75 of 2008) came into effect in 2010. The Act provided for the development of the national policy framework which set out ten key priorities for implementation, monitoring and evaluation by all key sectors. The National Policy Framework further delineates roles and responsibilities for each of the sectors. There is a legal mandate and obligation on departments and institutions that implement the Act to ensure that the objects of the Act are realized.
2. The Act established a child justice system that respects the values and ethos of our Constitution in relation to the protection of the rights of children in conflict with the law. Section 28 of the Constitution expressly guarantees every child special protection and enjoyment of certain rights. In no particular order, this includes the right:
  - Not to be detained, except as a measure of last resort, and if detained, only for the shortest appropriate period of time;
  - To be treated in a manner and kept in conditions that take into account the child's age;
  - To be kept separately from adults, and to separate boys from girls, while in detention;
  - To be protected from maltreatment, neglect, abuse or degradation;
  - To family, parental or appropriate alternative care;
  - Not to be subjected to practices that could endanger the child's wellbeing, education, physical or mental health, or spiritual, moral or social development.



## MANDATE/ROLES AND RESPONSIBILITIES

3. Section 11(a) of the Act states that:

- 3.1 The state must prove beyond reasonable doubt that the capacity of a child who is 10 years or older, but under the age of 14 years to appreciate the difference between right and wrong at the time of the commission of an alleged offence and act in accordance with that appreciation;
- 3.2 In making a decision regarding the criminal capacity of the child in question-
  - (a) the enquiry magistrate, for the purposes of diversion; or
  - (b) if the matter has not been diverted, the child justice court, for the purpose of a plea and trial, must consider the assessment report of the probation officer referred to in section 40, and all evidence placed before the enquiry magistrate or a child justice court prior to diversion or conviction, as the case may be, which evidence may include a report of an evaluation to subsection (3) below.
- 3.3 An enquiry magistrate or child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, ***order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitable qualified person, which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child (Section 11 of the Act is attached as Annexure A).***
- 3.4 The evaluations of criminal capacity are conducted by Psychiatrist and Clinical Psychologists at the request of the presiding Magistrate or Judge. The capacity to provide this service in the public sector was met with human resources capacity challenges hence the involvement of the private sector practitioners to complement the public sector.
- 3.5 The Department of Health participated actively in the process to review the criminal capacity age and expansion of categories competent to conduct criminal capacity assessment. The implication of the current age for criminal capacity of between age 10 and not older than 14 years has increased a need for child and adolescent mental health services and outcomes of the assessments largely indicated that children of these age groups lacked criminal capacity. The Department concurred with the review of categories of persons competent to conduct criminal capacity assessments to include Educational and Counseling Psychologists to the current group comprising of psychiatrists and clinical psychologists, which will increase access to forensic mental health services.

4. The National Policy Framework on Child Justice sets out the following key priority areas to guide the implementation of the Act:
- (i) Building capacity in the sector;
  - (ii) Ensuring assessments of children;
  - (iii) Preliminary Inquiries;
  - (iv) Sentencing;
  - (v) Provision of Diversion and Alternative Sentencing Services;
  - (vi) Establishment of Child and Youth Care Centres;
  - (vii) Establishment of One Stop Child Justice Centres;
  - (viii) Resources and Budgets;
  - (ix) Public Education and Communication; and
  - (x) Development of Necessary IT and IJS Systems to support Information Management Systems.
5. This report is submitted in compliance with Section 96(3) of the Act requires that the Minister of Justice and Constitutional Development to table in Parliament individual annual reports compiled by his department, the National Prosecuting Authority, SAPS, Department of Correctional Services, Department of Social Development, Department of Education and the Department of Health.

## REPORT

6. The main focus of the report by the National Department of Health is on building capacity in the public health sector regarding evaluations of children's criminal capacity as required in terms of Section 11 of the Act.

### Activities

- 6.1. To invite psychiatrists and Clinical Psychologists in the private sector interested in conducting the criminal capacity assessments of children.

There is no legal provision for the Department of Health to invite private psychiatrists and clinical psychologists who are prepared to conduct criminal capacity assessment of children. Because the Department of Justice and Constitutional Development referred these cases to the professionals who were enlisted for mental observations in terms of section 79 of Criminal Procedure Act, the Department of Health decided to advertise and invited professionals in the private sector who were prepared to conduct the criminal capacity assessments of children during 2016/17. There was a slight increase of 33 psychiatrist and 20 Clinical psychologists who submitted their details to be included in the current list. It is envisaged that this numbers will increase once the tariffs for remuneration for this work are finalized. It is recommended that the

requirement for the Department of Health to invite interested professionals to do the criminal capacity assessments of children be included in the amendment of the Regulations to the Child Justice Act.

- 6.2 To improve the skills capacity of professionals in the public sector on criminal capacity assessments.

The skills gap identified regarding the capacity of health professionals to implement section 11 of the Act included; conducting the assessments, compilation of assessment reports and presenting expert evidence in court. A training programme is being developed in collaboration with the Justice College in order to address this limitation.

- 6.3. To designate health establishments to serve as psychiatric hospitals, where the criminal capacity assessments of children are conducted.

A total of 64 health establishments have been designated as psychiatric hospitals in terms of section 5 of the Mental Health Care Act No 17 of 2002. This includes specialized and psychiatric units attached to general hospitals in provinces. The criminal capacity assessments of children between 10-14 years are provided in these hospitals as part of the mental health service package.

## CONCLUSION

7. Although the Department of Health has made some progress on the implementation of Section 11 of the Act in respect of increasing capacity in the public health sector to comply with the legislative requirements, work still needs to be done to maintain compliance with the legislative requirements. Currently, there is no waiting list for criminal capacity assessments of children.
8. The capacity of the health sector to implement the Act is limited due to shortage of Psychiatrists and Clinical Psychologists in the public sector. The Department submitted inputs on the amendment of the Regulations to the Child Justice Act to the Department of Justice and Constitutional Development, particularly on broadening the categories of psychologists to conduct criminal capacity assessments to include Educational and Counseling psychologists over and above the Clinical psychologists and psychiatrists prescribed in the Act. The amendment process is underway at the Department of Justice and Constitutional Development.
9. The shortage of health professionals in the public health sector to conduct criminal capacity assessments should be augmented by utilizing private sector

health practitioners, remunerated by the Department of Justice and Constitutional Development. However, the current remuneration tariffs set for health professionals who conducted the criminal capacity assessments of children and other forensic evaluations remain low and unattractive. The Department of Justice and Constitutional Development is in the process of revising these tariffs to make them more market related, with an aim of attracting more private health practitioners to do forensic work, but the process is very slow.

10. The departmental progress report is detailed in the table below.



NATIONAL DEPARTMENT OF HEALTH: 2015/16 ANNUAL REPORT ON THE IMPLEMENTATION OF CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)

APRIL 2015-MARCH 2016

| STRATEGIC OBJECTIVE   | ACTIVITY   | PERFORMAN CE INDICATOR   | BASELINE      | TARGET 2015/16   | ACTUAL PERFORMANCE  | CHALLENGES EXPERIENCED   | REMEDIAL ACTION UNDERTAKEN   |
|---|--|--|---------------|--|---|--|--|
| 5<br>Build capacity in the Health Sector to implement the legal mandate emanating from the Child Justice Act No 75 of 2008. | Compile a list of psychiatrists and psychologists in the private sector prepared to conduct the criminal capacity assessments. | A 2016/17 list of psychiatrists and psychologists in the private sector prepared to conduct criminal capacity assessments. | 2015/16 list. | A 2016/17 list of psychiatrists and psychologists in the private sector prepared to conduct criminal capacity assessment compiled and submitted. | The 2016/17 list of Private Psychiatrists and Psychologists willing to conduct criminal capacity assessments in terms of the Child Justice Act was compiled and submitted to the Department of Justice and Constitutional Development. The numbers of professionals are limited (33 psychiatrists and 20 Clinical psychologists were enlisted). | Limited number of clinicians willing to do the work due to low and unattractive tariffs set by the Department of Justice and Constitutional Development. | The Department of Justice and Constitutional Development to finalise the review of tariffs in order to attract more clinicians to do the assessments.                                    |
|   |  |  |               |  |   | Limited capacity to conduct the criminal capacity assessments by professionals   | The Department of Health is in the process of developing a training programme in collaboration with Justice College to increase the skill capacity of health professionals in this area. |

|  |  |  |  |  |              |              |
|--|--|--|--|--|--------------|--------------|
| <p>Designate psychiatric hospitals in terms of the Mental Health Care Act to render the full package of mental health services including criminal capacity assessments of children referred by the Courts in terms of the Child Justice Act.</p> | <p>Total number of designated psychiatric hospitals</p>                          | <p>64 hospitals are designated in terms of Mental Health Care Act, 17 of 2002 Section: 5(1) as psychiatric hospitals, care and rehabilitation centres.</p> | <p>Designated psychiatric hospitals providing a full package of mental health services including criminal capacity assessments of children referred by the Courts in terms of the Child Justice Act.</p> | <p>A total of 64 hospitals are designated as psychiatric hospitals in terms of the Mental Health Care Act. These hospitals include general hospitals with psychiatric units attached. New psychiatric hospitals are being constructed in North West Province (Bophelong hospital) and in Northern Cape Province (Kimberley psychiatric hospital). These psychiatric hospitals will increase the capacity of the health sector for criminal capacity assessments of children.</p> | <p>None.</p> | <p>None.</p> |
| <p>Hold a 2015/16 biennial interdepartmental forensic mental health seminar.</p>   | <p>A biennial 2015/16 interdepartmental forensic mental health seminar held.</p> | <p>A 2012/13 biennial seminar report with recommendations.</p>   | <p>Recommendations from stakeholders from the seminar to improve forensic mental health including implementation of the Child Justice Act.</p>   | <p>A biennial interdepartmental forensic mental health seminar was held on 16-17 March 2015 at Saint George Hotel and Conference Centre. A report with recommendations was compiled and distributed to all stakeholder</p>   | <p>None.</p> | <p>None.</p> |

|                                  |  |   |  |  |   |  |  |
|----------------------------------|--|---|--|--|---|--|--|
| Ensuring assessments of children | Conclude all referred cases for criminal capacity assessments of children referred by the Courts | Number of criminal capacity assessments for children conducted. | Referrals for assessment of criminal capacity of children. | All referrals to designated psychiatric hospitals for criminal capacity assessments concluded. | <p>departments for implementation. The main seminar recommendations included capacity building and standardization of reporting formats on the Child Justice Act. A costed implementation plan on the seminar recommendations is being developed.</p> <p>A total of 135 criminal capacity assessments were conducted. There is no backlog of children referred for criminal capacity assessments.</p> | Data currently only collected from the 10 designated hospitals conducting mental observations. | The current data collection tool is currently under review to improve data collection, verification and reporting. |
|----------------------------------|--|---|--|--|---|--|--|



MS MP MATSOSO  
 DIRECTOR-GENERAL: HEALTH  
 DATE: 25/7/2016







# basic education

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Department:  
Basic Education  
**REPUBLIC OF SOUTH AFRICA**

## **Department of Basic Education's inputs on the 2015/ 2016 Annual Report on the implementation of the Child Justice Act 2008**

The Department of Basic Education (DBE) is co-responsible for awareness-raising amongst school-going children, of the dangers of crime to support crime prevention, as well as what children's rights and responsibilities are when they are involved with crime.

The National School Safety Framework (NSSF) was approved by the Minister of Basic Education in April 2015. The NSSF is a guiding strategy that creates a system to improve schools to respond to violence. The NSSF contains tools to identify gaps in schools in relation to the minimum safety requirements. It monitors school progress in dealing with violence, and supports existing policies, acts and regulations. The DBE has trained Provincial Master Trainers in all nine provinces as from June to August 2015 towards the implementation of the NSSF. In total, 45 training workshops were conducted and 1353 provincial and district master trainers were trained in all nine provinces.

In terms of the Collaborative Partnership Protocol between the Department and South African Police Services (SAPS) and the DBE, 17 325 from a total of 24 491 schools have been linked to local police stations nationally. The Eastern Cape, Kwa-Zulu Natal, North West and the Free State have finalised their Provincial Partnership Protocols with SAPS. During 2015/2016 the DBE together with the Liquor Board in the Department of Trade and Industry and SAPS initiated an operation "Val'i Gontjie" through the National Joint Committee (NATJOC) to close shebeens/taverns in close proximity of schools.

The DBE supported the Department of Social Development (DSD) with the implementation of the Commemoration of the International Day against Drug Abuse and Illicit Drug Trafficking. The event took place at Eersterus Sports Grounds on 02 July 2015. The DBE displayed an exhibition station, providing information about services the Directorate: School Safety is offering as well as speaking on behalf of the Department at the main event. There was great interest shown especially by NGOs requesting access to material that the Department has developed especially the Guidelines to Drug Testing and the National Strategy on the Prevention and Management of Alcohol and the National Strategy on the Prevention and Management of Alcohol and drug use amongst learners in schools.

On 07-11 October 2015, the University of Pretoria in collaboration with the Department of Basic Education, the Department of Justice and Constitutional Development (DoJ &CD), the University of Venda and the University of Western Cape, the Foundation for Human Rights and the Law Society of South Africa, hosted a successful Fifth National Schools Moot Court Competition at the Constitutional Court, in Johannesburg.

Currently, the DBE continues to serve as a member of the National Steering Committee and supports the programme as a co-ordinating partner. The Department assists by registering learners, convening essay writing workshops, and monitoring both the Provincial and National competition finals in all nine Provinces.

Whilst the programme caters for learners in secondary schools from Grade 10-11, the Grade 8-9 learners are accommodated in the competition to ensure exposure to constitutional literacy and maximum participation. The final oral rounds are held at the Constitutional Court of South Africa in Johannesburg annually during the October month. The National Schools Moot Court Competition, which is aimed at enlightening learners about everyone's inherent right to be treated equally and with dignity, has become one of the prestigious annual events of the Department. The Moot Fact and the use of real-life court settings encourage learners to be well conversant with human rights concepts, values and principles of the Constitution in relation to daily life activities. It further advocates awareness on the supremacy of the Constitution and the rule of law.



The DBE has a National Co-ordinator and assigned nine Provincial Co-ordinators to work in collaboration with the Moot Court partners. Their roles include attending meetings, organising the oral workshops, developing schedules, planning and monitoring the Provincial Rounds and the National Finals. Currently, the process of establishing the Provincial Moot Court structures is unfolding across the nine Provinces. Once these structures are in operation, they are to work together and communicate information on essay writing, oral workshops and host the Provincial Rounds.

The DBE, working together with the Foundation for Human Rights, DoJ & CD and the University of Pretoria, will carry out an oversight role to ensure that the Provincial rounds and National finals are successful. The above structure will also support Provinces to host the Human Rights Moot Court Festival that will assist learners in writing the essay and preparing for the oral argument. The University of Pretoria, which has consistently been able to formulate exceptional hypothetical problem statements, will craft the Moot Fact for 2016.

The Deputy Minister, Mr ME Surty, MP, in consultation with the Deputy Minister for the Department of Justice and Constitutional Development, Mr J Jeffrey, MP, has approved and endorsed the theme for 2016. The Provincial National Schools Moot Court structures play a critical role in hosting the Provincial rounds. While all key role players continue to offer their services, the hosting of the National Finals remains the responsibility of the University of Pretoria.

### **Progress report on transfer of Reform schools and Schools of Industry**

In the provinces, the Schools of Industry and Reform Schools should have been transferred to the provincial Department of Social Development (DSD) as Child and Youth Care Centres (CYCC's). These schools are not Schools of Industry or Reform schools anymore. They are now Child and Youth Care Centres with schools on the premises.

The transfer of all four Centres in Western Cape has not taken place yet. There was an intention to transfer the function but a moratorium was put on the process as the

Justice Alliance of South Africa (JASA) and the School Governing Body of Ottery Child and Youth Care Centre instituted a High Court appeal to halt the process. The judgement on the Justice Alliance of South Africa case was delivered on 31 August 2015.

A summary of the order by Judge was as follows:

1. A national strategy referred in section 191(1) of the Children's Act No. 38 of 2005 is to be produced by the Department of Social Development (DSD) within 6 months.
2. A provincial strategy referred to in section 191(2) of the Children's Act no. 38 of 2005 is to be produced within 4 months thereafter.
3. Ottery, Wellington and Die Bult are regarded as being Child and Youth Care Centres providing a residential care programme in terms of section 191(2)(i) of the Children's Act.
4. Eureka is regarded as being a Child and Youth Care Centre in terms of section 191(2)(j) of the Children's Act.
5. As from 1 April 2012, Ottery, Wellington, Die Bult and Eureka became the responsibility of DSD.
6. DSD is required to forthwith consider afresh the placements of Children's Act children at its Outeniqua, Vredelus, Horizon and Clanwilliam Youth Care Centres
7. No order as to costs.

There was an appeal by the Provincial Government of the Western Cape via the First and Second Respondents, The Minister and the Head of Department of Social Development against points 3 – 6. Leave to appeal was granted by the High Court.

Mpumalanga was the first province in which the transfers of the schools took place. Vaalrivier remains with Provincial Department of Education as a school. The rest of the schools in this province viz. George Hofmeyer, Ethokomala and Vikelwa have been transferred and registered as CYCC's by the Dept. of Social Development.

In the Eastern Cape the two Schools of Industry, GaliTembani and Bhishe Centre have been transferred to the Department of Social Development. The MOUs



between the departments for the transfer process of these schools are in place in Free State and North West.

At the Newcastle School of Industry in KZN, there is still discussion between the departments to facilitate the transfer of the centre.

## APPROVAL

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The report is a true reflection of the information from the Department of Basic Education.

**2015/ 2016 Annual Report on the implementation of the Child Justice Act 2008**

Signed by H.M. MWELI at PRETORIA  
on 01/01/2016



MR HM MWELI

**DIRECTOR-GENERAL: BASIC EDUCATION**





**CONSOLIDATED ANNUAL REPORT ON THE IMPLEMENTATION OF THE CHILD  
JUSTICE ACT, 75 OF 2008**

**01 April 2015 – 31 March 2016**

## INTRODUCTION

1. The mandate of Legal Aid SA includes amongst others, giving content to the rights contained in s35(3)(g) of the constitution by providing legal representation at state expense, to arrested, detained and accused persons, where substantial injustice would otherwise result. Legal Aid SA provides legal representation in the majority of cases that go through our courts. We do this by allocating a practitioner to each court room, thereby ensuring that all accused persons who require legal representation, but are not in a position to pay for the services of their own legal representative, have ready access to one of our lawyers.
2. During the 2015/2016 Financial Year, Legal Aid SA provided legal representation in 388 692 criminal matters, of which 11 978 matters were children's matters.
3. Section 28 of the Constitution gives special protection to the rights of children, including children in conflict with the law. The constitutionally entrenched right of a child to legal representation at state expense is clearly enunciated in s82 of the Child Justice Act. Section 80 of the Act furthermore sets out specific requirements to be complied with by any legal representative representing a child in criminal proceedings, and sets out the consequences of non-compliance with the section.
4. Experience from dealing with high numbers of cases in the criminal courts has shown that an inter-sectorial approach is most effective in dealing with issues that may impact negatively on the smooth flow of cases through the courts as well as the speedy finalization of cases. For this reason, Legal Aid SA participates in all activities of the ISCCJ with a view to understanding the challenges that exist and helping to shape the solutions necessary to ensure the best protection of the rights of children in conflict with the law.

## CAPACITY BUILDING

### A. Training.

1. Extensive training on the Child Justice Act was conducted with all Legal Aid SA practitioners prior to the 1st April 2010 date of commencement of the Child Justice Act to prepare practitioners on the new regime for dealing with cases involving children in conflict with the law. In addition, 2 practitioners per Justice Centre were trained as trainers to provide training capacity for the Child Justice Act, at local level.
2. Currently, training is conducted at Justice Centres based on the training needs identified at the particular Justice Centre or based on new developments in the law. Training covers various aspects of child justice litigation.
3. All Candidate Attorneys commencing their employment with Legal Aid SA have to undergo a beginner training course. The CA Beginner Training Program includes, among other subjects,



a module on the Child Justice Act. All our Candidate Attorneys are therefore fully prepared to handle cases involving children in conflict with the law, by the time they start appearing in courts.

4. Furthermore, Legal Aid SA has introduced e-learning as an additional method to train practitioners. There are various e-learning modules on our intranet that cover child justice related topics. Practitioners complete these modules in their own time and have to complete a competency test at the end. Completion of identified e-learning modules, including all modules on the Child Justice Act, is compulsory for all categories of legal practitioners who attend to the criminal courts.

|                     | Total Number of practitioners trained  | Content of the training   | Impact of the training  |
|---------------------|--|---|---|
| <b>Legal Aid SA</b> | 1 028 practitioners attended training on aspects relating to the representation of children in conflict with the law. This number represents the total number of practitioners who received CJA related training during the financial year and is not cumulative from the commencement of the CJA. | Training is provided on different aspects of child justice litigation This includes among others: <ul style="list-style-type: none"> <li>- Preliminary enquiries</li> <li>- Age determination</li> <li>- Sentencing</li> <li>- Diversion and restorative justice</li> </ul> | All training is designed to better equip practitioners to effectively represent children in conflict with the law. We are confident that all our practitioners at all experience levels are well versed on the application of the CJA |

## B. Human Resource Capacity.

1. Since every court hearing criminal matters is a Child Justice Court, all our practitioners and managers deployed to the criminal courts are capacitated to deal with child justice matters. Our coverage of these matters is therefore similar to our coverage of all criminal courts. We currently have 1794 production posts within our organization that are directly involved with the delivery of criminal legal aid. All our practitioners are available to assist with preliminary enquiries, whenever requested by the courts to assist. There have been no reported challenges with regard to the representation of children at the various courts. The tables below show our criminal court coverage capacity for the reporting period for both the district court and the regional court which was 88% and 97% respectively. Whilst it is less likely for a CJA matter to be tried in the Higher Courts, legal aid is available to all accused who require legal aid in these courts, and our High Court Units are available to assist any child who may be unfortunate enough to have their matters tried in these courts.

| Court Coverage - FY 2015/16 |             |              |                 |                  |                  |                    |              |
|-----------------------------|-------------|--------------|-----------------|------------------|------------------|--------------------|--------------|
| District Court              |             |              |                 |                  |                  |                    |              |
| Region                      | Court Seats | Court Rooms  | Days Court Sits | Reception Courts | Total Court Days | Days Court Covered | Coverage (%) |
| EC                          | 106         | 177          | 2,816           | 11               | 3,036            | 2,638              | 87%          |
| FS & NW                     | 111         | 172          | 2,434           | 11               | 2,654            | 2,398              | 90%          |
| GP                          | 53          | 140          | 2,675           | 17               | 3,015            | 2,612              | 87%          |
| KZN                         | 103         | 175          | 3,066           | 11               | 3,286            | 2,752              | 84%          |
| LP & MP                     | 147         | 192          | 2,578           | 10               | 2,778            | 2,471              | 89%          |
| WC & NC                     | 150         | 245          | 3,477           | 8                | 3,637            | 3,302              | 91%          |
| <b>Total</b>                | <b>670</b>  | <b>1,101</b> | <b>17,046</b>   | <b>68</b>        | <b>18,406</b>    | <b>16,173</b>      | <b>88%</b>   |

| Court Coverage - FY 2015/16 |             |             |                 |                  |                    |              |
|-----------------------------|-------------|-------------|-----------------|------------------|--------------------|--------------|
| Regional Court              |             |             |                 |                  |                    |              |
| Region                      | Court Seats | Court Rooms | Days Court Sits | Total Court Days | Days Court Covered | Coverage (%) |
| EC                          | 74          | 98          | 1,087           | 1,087            | 1,087              | 100%         |
| FS & NW                     | 67          | 100         | 1,151           | 1,151            | 1,147              | 100%         |
| GP                          | 37          | 106         | 2,011           | 2,011            | 1,865              | 93%          |
| KZN                         | 40          | 78          | 1,466           | 1,466            | 1,430              | 98%          |
| LP & MP                     | 56          | 67          | 886             | 886              | 847                | 96%          |
| WC & NC                     | 84          | 134         | 1,409           | 1,409            | 1,366              | 97%          |
| <b>Total</b>                | <b>358</b>  | <b>583</b>  | <b>8,010</b>    | <b>8,010</b>     | <b>7,742</b>       | <b>97%</b>   |

### C. Infrastructure

|                     | Infrastructure improvements  | Limitations  | Plan of Action/Corrective Measures   |
|---------------------|--|--|--|
| <b>Legal Aid SA</b> | Legal Aid SA does not have any special infrastructure requirements for the purpose of representing children in conflict with the law.<br>Legal Aid SA's Justice Centres do have suitable consultation facilities to consult with children. | Challenges are experienced in some places with regard to consultation facilities both in courts and places of detention. This is however, not limited to child justice matters only. | A protocol was entered into between DCS and Legal Aid SA, which addresses in part, the issue of consultation facilities at DCS facilities. |



## RESOURCES AND BUDGETS

|                     | Available Resources and Budgets   | Limitations  | Plan of Action/Corrective Measures  |
|---------------------|---|--|---|
| <b>Legal Aid SA</b> | Funding was previously provided to Legal Aid SA for the implementation of the Child Justice Act. These funds were utilized to create additional criminal court practitioner positions for the various courts that we serve. | Currently, our practitioner resources do not allow us to cover district courts in particular, at 100%. The majority of child justice matters are allocated to these courts. Furthermore, another demand on our capacity stems from the need to attend to preliminary inquiry matters in addition to their normal daily court roll. We also have limited relief capacity to deal with situations where our practitioners are absent from work for any reason. | Proposals to address resource gaps are submitted as part of our MTEF additional funds proposals to National Treasury. |

## PUBLIC EDUCATION AND COMMUNICATION

Legal Aid SA has a comprehensive communication program aimed at reaching all communities. Communication events are planned to address identified issues that are relevant for the particular community. Child justice issues are addressed at these events. In addition, each Justice Centre holds a "Fair Play" event once a year at a local school. These events are aimed at educating young children about the values of playing fairly in all one's dealings in life, and thereby reduce the incidence of child offending. We also distribute Child Rights posters to educate children about their rights. We have, in addition, introduced a *Child Rights Art Competition* which was rolled out to schools.

As a leading provider of legal aid services, Legal Aid SA has as one of its strategies, the provision of assistance to developing legal aid systems, particularly on the African continent. We regularly host delegations from different countries, to share with them our experiences and expertise in the delivery of legal aid services. During August 2015, Legal Aid SA attended a capacity building conference for the Legal Aid Directorate of Zimbabwe, which was hosted by the Zimbabwean Department of Justice and Constitutional Affairs. One of the topics we presented on was the provision of assistance to children in criminal matters. Although Zimbabwe does not have an equivalent to our Child Justice Act, we were able to share valuable insights into this area of legal practice. This also presented an opportunity to canvass with our neighbours the value of adopting an inter-sectorial approach to child justice issues, and to share the experiences we gained from being part of the Inter-Sectorial Committee on Child Justice.

## DEVELOPMENT OF IT AND IJS-SYSTEMS

|                     | Progress in the development of IT and IJS-System   | Limitations  | Plan of Action/Corrective Measures  |
|---------------------|--|--|---|
| <b>Legal Aid SA</b> | Legal Aid SA has a developed IT system called <i>Ad Infinitum (AI)</i> since 2004. It is also involved in efforts to integrate systems across the CJS cluster, such as the planned integration with the SAPS CAS system. | Our IT platform is currently at the end of its lifespan. | A project is currently under way to implement a new IT system called eLAA (electronic legal aid administration system). A service provider was appointed for this project, but the contract was terminated when they failed to deliver the project on time. This has caused a delay in the implementation of the new system. An alternative service provider has now been sourced to continue with the project. |

## NUMBER OF CHILDREN REPRESENTED BY LEGAL AID SA

- The table below indicates Legal Aid SA represented 3 441 children at preliminary enquiries and finalized 3 303 of these enquiries during the period under review.

| Preliminary Inquiry Matters - FY 2015/16 |            |            |              |            |            |            |            |              |              |              |
|--|------------|------------|--------------|------------|------------|------------|------------|--------------|--------------|--------------|
| Region                                   | Q1         |            | Q2           |            | Q3         |            | Q4         |              | YTD          |              |
|  | New        | Finalised  | New          | Finalised  | New        | Finalised  | New        | Finalised    | New          | Finalised    |
| EC                                       | 162        | 154        | 175          | 200        | 148        | 99         | 158        | 216          | 643          | 669          |
| FS/NW                                    | 181        | 168        | 143          | 133        | 125        | 108        | 84         | 138          | 533          | 547          |
| GP                                       | 66         | 64         | 129          | 105        | 118        | 95         | 119        | 107          | 432          | 371          |
| KZN                                      | 97         | 94         | 124          | 112        | 135        | 58         | 77         | 133          | 433          | 397          |
| L/MP                                     | 23         | 26         | 64           | 21         | 37         | 30         | 43         | 67           | 167          | 144          |
| WC/NC                                    | 267        | 293        | 473          | 265        | 246        | 218        | 247        | 399          | 1,233        | 1,175        |
| <b>Total</b>                             | <b>796</b> | <b>799</b> | <b>1,108</b> | <b>836</b> | <b>809</b> | <b>608</b> | <b>728</b> | <b>1,060</b> | <b>3,441</b> | <b>3,303</b> |
| <b>% of Total</b>                        | <b>23%</b> | <b>24%</b> | <b>32%</b>   | <b>25%</b> | <b>24%</b> | <b>18%</b> | <b>21%</b> | <b>32%</b>   |              |              |



2. The table below indicates that Legal Aid SA assisted 11 978 children in criminal matters during the Financial Year.

| Children Criminal Matters - YTD FY 2015/16 |                |               |               |               |               |                |                 |
|--|----------------|---------------|---------------|---------------|---------------|----------------|-----------------|
| Region                                     | 2014/15        | Q1            | Q2            | Q3            | Q4            | YTD            | % of FY 2014/15 |
| GP   | 1, 259         | 311           | 367           | 404           | 334           | 1, 416         | 112%            |
| EC   | 1, 913         | 455           | 432           | 415           | 422           | 1, 724         | 90%             |
| FSNW                                       | 1, 349         | 416           | 457           | 366           | 364           | 1, 603         | 119%            |
| KZN  | 1, 735         | 389           | 457           | 479           | 402           | 1, 727         | 100%            |
| L/MP                                       | 809            | 181           | 214           | 196           | 208           | 799            | 99%             |
| WCNC                                       | 4, 586         | 1, 227        | 1, 144        | 1, 051        | 1, 287        | 4, 709         | 103%            |
| <b>Total</b>                               | <b>11, 651</b> | <b>2, 979</b> | <b>3, 071</b> | <b>2, 911</b> | <b>3, 017</b> | <b>11, 978</b> | <b>103%</b>     |

## MONITORING AND TRACKING OF CHILDREN IN CUSTODY

One of our priority programs within Legal Aid SA, is the monitoring of children awaiting trial in custody (CAT). Our Justice Centres make use of a dedicated web page to track and report on the status of all children awaiting trial in custody. This way, we are able to report on the reason for the continued incarceration of each individual child, and to decide on the most appropriate interventions to ensure that the child's matter is finalized without delay. Top priority is given to children who are held in custody within the facilities of the Department of Correctional Services. All effort is made to ensure that these children are detained in facilities that are specifically designed for the detention of children in conflict with the law.

As is the case with all children's cases, our practitioners are trained to seek all opportunities for the child to be diverted away from the criminal justice system.

During the 2015/2016 Financial Year, we monitored 475 new children awaiting trial in custody. 533 children awaiting trial in custody were reported as finalized in our tracking systems due to the children being released, or their cases being finalized.

| Children Awaiting Trial (> 1 Month) - YTD FY 15/16 |            |            |          |           |          |               |
|--|------------|------------|----------|-----------|----------|---------------|
| Region   | New        | Finalised  | Pending  |           |          |               |
|  |            |            | ≤ 3      | > 4       | ≤ 4      | Total Pending |
| Eastern Cape                                       | 84         | 96         | 1        | 3         | 3        | 7             |
| Free State & North West                            | 59         | 74         |          | 4         | 2        | 6             |
| Gauteng  | 25         | 27         |          | 8         |          | 8             |
| Kwazulu Natal                                      | 123        | 142        |          | 6         |          | 6             |
| Limpopo & Mpumalanga                               | 17         | 24         |          | 2         |          | 2             |
| Western Cape & Northern Cape                       | 167        | 170        |          | 32        | 3        | 35            |
| <b>Total</b>                                       | <b>475</b> | <b>533</b> | <b>1</b> | <b>55</b> | <b>8</b> | <b>64</b>     |

## REPRESENTATION OF CHILDREN IN IMPACT MATTERS AND MATTERS OF CONSTITUTIONAL IMPORTANCE

Within Legal Aid SA, we have a unit called the Impact Litigation Unit (ILU). This unit is involved in the litigation of cases that have a high impact in that they involve the resolution of cases that affect large groups of people, or cases that involve the interpretation of constitutional rights. The work of the unit is also important in that many cases are taken to court to clarify the interpretation of certain legislation and, in cases where legislation is clearly unconstitutional, to strike down the unconstitutional provisions. While the unit is involved in the litigation of many different types of cases, a number of cases that have an impact on children in conflict with the law have been litigated. The table in Annexure 1 gives a summary of some of the cases that were dealt with by the ILU in the past.



**Vidhu Vedalankar**  
Chief Executive Officer  
Legal Aid South Africa



## Legal Aid South Africa

### CASES IMPACTING ON THE RIGHTS OF CHILDREN

| No | Case name  | Court        | Case Description  | Importance of Case  |
|----|--|--------------|---|---|
| 1  | Ms P S v The State   | SGHC         | The young female offender had pleaded guilty to, and was convicted of theft. It was assumed at the start of her trial, that she was 18 years old, but it later turned out that she was in fact 17 years old at the time of the commission of the offence. The magistrate refused to refer the matter to the High Court on review and as a result Legal Aid SA brought an application to compel him to do so. On review, the conviction was set aside and the child was diverted away from the criminal justice system.  | This matter emphasized the need for courts to follow s16(2) of the CJA where there is an error made regarding the age of the child. The child in this case had a previous conviction for the same offence but the court remarked that 2 criminal convictions before the age of 18 is the very kind of problem which the Act seeks to address. |
| 2  | The Shoe glue matter   | Not in court | This is an exploratory matter in which Legal Aid SA, acting on behalf of Twilight Home for street children, is investigating the possibility of litigation against The National Adhesive and Sealant Manufacturers Association (NASMA). Many street children suffer from ailments associated with the sniffing of common shoe adhesive glue which is freely available over the counter. Long term exposure to Toluene, a compound used in these adhesives, results in serious adverse physiological and psychological effects. There has been widespread research on the subject and in some countries, legislation has been passed to prevent or limit the use of toluene in adhesives.  | We have held negotiations with NASMA who have undertaken to research the matter with a view to find substitutes for Toluene. We have also made contact with the DTI as well as the Department of Health. This holds out hope of eradicating the widespread abuse of shoe glue and related products.   |
| 3  | Anna Jonker v The Manager & others                                       | ECGHC        | Mrs Jonker's grandson had been placed in foster care at the JJ Serfontein school. A decision was taken to close this school and transfer all the children to the Bisho CYCC. As the Bisho CYCC holds children in conflict with the law, it would mean that the child would be subjected to the same stringent security measures that are applied at the more restrictive Bisho CYCC. We assisted Mrs Jonker in bringing an application to halt the transfer of the children. It was our argument that any movement of children in need of care to a more restrictive environment would have to be ratified by the Children's Court as provided for in s171(6)(b) of the Children's Act.   | The court ruled that because the intended move of children in need of care to a more restrictive environment had not been ratified by the Children's Court, it was in contravention of the Children's Act and was therefore unlawful. This decision has an obvious impact on any future considerations to relocate children in need of care.  |
| 4  | Lusikisiki CAT matrices  | Not in court | 31 matrics in a rural school in the Eastern Cape were enrolled for Computer studies (CAT). The Department of Basic Education alleged that they had picked up irregularities in the answer sheets for the final examination of all the learners. Without conducting any disciplinary proceedings, the department suspended all the learners from school for a year, and withheld their results. We engaged the department on several occasions to correct the situation.   | Our involvement in this case was to protect the rights of the learners to just administrative action. The department cannot take steps that are prejudicial to the learners without following a fair and just administrative process.   |
| 5  | Manana & others v Presiding officer of the Children's Court, Krugersdorp | SGHC         | We partnered with the Black Sash in this matter to take the decision of the Children's Court on appeal. Mrs Manana was caring for a number of the children of her deceased daughter. She could not apply for a foster care grant because the Children's Court refused to appoint her as foster parent to one of her grandchildren. The Children's Court took the view that as she owed a duty of support to the grandchild, she did not qualify as a foster parent. The High Court found that a caregiver who owed a duty of support to a child may be appointed as a foster parent and was entitled to a foster care grant.  | This judgment has now established the principle that children do not have to be separated from their families to qualify for foster care grants.  |
| 6  | State v P M  | JHB RC       | The accused in this case was a Zimbabwean born child who was charged with murder together with three adults. He was kept at a Child and Youth Care Centre when an incident happened there and age assessments were ordered. These assessments involved taking X-rays of the wrist. The magistrate, having been informed that our client was an adult, ordered that he be kept with adults in a correctional centre. This was in spite of the fact that the child's father had produced the child's Zimbabwean birth certificate. We challenged the X-ray evidence on the basis that this method of age assessment was archaic, was race specific, and did not take into account socio-economic factors. The child was eventually placed back in a CYCC. | The CJA contains provisions for the determination of age, if this should become an issue, but it does not set out what factors should be prioritised when making this determination. This case therefore presented an opportunity for us to address the issue of what should be considered 'best evidence' in such cases.                     |
| 7  | State v TS Mthombeni   | SGHC         | The accused in this matter is charged with the murder of a fellow learner whom he shot using a service pistol belonging to his mother, a Metro Police officer. The reason for the shooting was alleged bullying of our client by the deceased. Several negotiations were conducted with the NPA for the client to be diverted. These were however, unsuccessful. The matter went to trial where our client pleaded guilty to culpable homicide and was sentenced to a suspended sentence.   | The sentence imposed by the court in this case has to some extent, established a precedent on how to deal with the so-called school bullying cases.   |

| No | Case name                      | Court | Case Description   | Importance of Case   |
|----|--------------------------------|-------|--|--|
| 8  | S v LM                         | WCHC  | This case involved a 15 year old who was convicted of possession of a small quantity of dagga And whose sentence was postponed for a year on certain conditions. He was legally represented. In terms of the Criminal Procedure Act, certain orders of the Magistrates Court are subject to review by the High Court. The question which arose in this matter was whether the review provisions of the CPA are applicable to children and also, if children's cases are subject to review even if the child was legally represented.   | The High Court in this matter found that the CJA creates a separate and distinct system of criminal justice for children, the legal mechanisms and processes of which may be different from those set out in the CPA. Therefore, in the case of children, the case would be reviewable notwithstanding the fact that the child was legally represented.  |
| 9  | S v L Stuurman                 | WCHC  | The accused was 14 years old when he stabbed another child to death. It was subsequently found that he suffered from mental impairment and had the mental capacity of a 4 year old. We challenged the constitutionality of Section 77 (6) (a) (i) of the Criminal Procedure Act which leaves the magistrates with no option other than to have an accused who is unable to understand the proceedings, detained as a state president's patient.  | The section was held to be unconstitutional. The Constitutional Court has confirmed the unconstitutionality of the section. Without this victory, children in the position of the accused in this matter would languish in institutions for long and indeterminate periods of time.  |
| 10 | S v T Smit                     | WCHC  | The child was 13 years old when she was charged with the murder of her stepfather. She suffers from borderline retardation. She pleaded guilty but the conviction was set aside on review. Despite this, the child was kept in custody as the DPP decided they want to charge the child with culpable homicide. We brought an application on an urgent basis for the release of the child, and this was granted. We would also like to bring an application for a permanent stay of prosecution.   | Our urgent application brought to an end the abuse of process in keeping the child in custody, even though her conviction had been set aside.  |
| 11 | C Goosen v Bisho Reform School | ECHC  | This matter involves children who are kept at the Bisho CYCC. There was general lawlessness at the facility and staff had deserted it. The children had taken over the facility and vandalised the infrastructure. They were also in conflict with the surrounding community, who wanted to exact vengeance on the children for transgressions committed against the community. The Port Elizabeth Justice Centre obtained an interdict and the children were moved to Kirkwood CYCC.  | A structural interdict was granted which saw the return of some order at the Bisho CYCC.   |
| 12 | Ivan Johannes v The State      | CC    | The accused was convicted on his guilty plea on 3 counts of rape and one count of assault GBH, committed while he was 14 years old. He was sentenced to compulsory residence in Eureka Child and Youth Care Centre for a period of 5 years in terms of the provisions of Section 76 (1) of the Criminal Procedure Act (CPA) in addition he was sentenced to 3 years imprisonment after the completion of the 5 years compulsory residence in terms of Section 76 (3) of the Child Justice Act. Furthermore an ancillary in terms of Section 50 (2) of the Sex Offences Act was made, which had the effect that the accused's name would be entered into the National Register for Sexual Offenders. The matter came up for automatic review before 3 judges and the question was raised whether it was competent for the court to make an order in terms of Section 50 (2) of the Sexual Offences Act, if regard is had to the provisions of Section 2 and 3 of the Child Justice Act as well as Section 28 of the Constitution. | The Constitutional Court handed down judgment declaring section 50(2)(a) of the Criminal Procedure(Sexual Offences and Related Matters) Amendment Act unconstitutional. The Court held that s50(2)(a) of the Sexual Offences Act infringes on the rights of child offenders to have their best interests considered of paramount interest in terms of section 28(2) of the Constitution. In the result, the name of a child offender cannot be entered in the National Register for Sex Offenders. |