

DOJ&CD: REPORT ON THE IMPLEMENTATION OF CRIMINAL LAW  
(SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF  
2007: 01 April 2013 to 31 March 2014



Correctional Services  
Health  
Justice and Constitutional Development  
Social Development

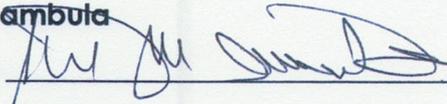


# OFFICIAL SIGN-OFF

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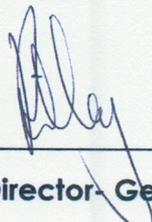
It is hereby certified that this Annual Report was developed by the Department of Justice and Constitutional Development. It outlines the performance of the Department on the key priority areas outlined by the National Policy Framework (NPF) on the Management of Sexual Offences Matters, and also highlights the achievements and limitations experienced to realise the goals of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No.32 of 2007. The reporting period for this Annual Report is from 01 April 2013 to 31 March 2014.

**Adv. PM Kambula**

Signature: 

**Chief Director: Promotion of the Rights of Vulnerable Groups**

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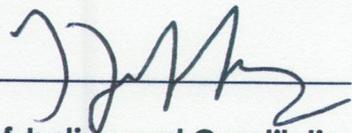
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**Mr J Jeffery, MP**

Signature: 

**Deputy Minister of Justice and Constitutional Development**

**Approved by**

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Signature: 

**Minister: Justice and Correctional Services**

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# LIST OF ACRONYMS

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CARA	Criminal Assets Recovery Account
CCTV	Closed-Circuit Television
CD PRVG	Chief Directorate: Promotion of the Rights of Vulnerable Groups
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
COGTA	Department of Co-operative Governance and Traditional Affairs
CPO	Court Preparation Officer
CRC	Convention on the Rights of the Child
DBE	Department of Basic Education
DCS	Department of Correctional Services
DDG	Deputy Director General
DEVCOM	Development Committee
DG-ISC	Directors-General Inter-sectoral Committee
DOH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DPP	Director of Public Prosecutions
DPSA	Department of Public Service Administration
DSD	Department of Social Development
DWCPD	Department of Women, Children and People with Disabilities
DoW	Department of Women
ICMS	Integrated Case Management System
ISC	Intersectoral Committee
JCPS	Justice, Crime Prevention and Security Cluster
JSSP	Justice Sector Strengthening Programme
LASA	Legal Aid South Africa
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MATTSO	Ministerial Advisory Task Team on the Adjudication of Sexual Offences

NCPR	National Child Protection Register
NGO	Non-Governmental Organisation
NHTL	National House of Traditional Leaders
NICC TIP	National Inter-sectoral Committee on Combating Trafficking in Persons
OPS ISC	National Operational Inter-sectoral Committee
NOC	National Operations Centre
NPA	National Prosecuting Authority
NPF	National Policy Framework
NRSO	National Register for Sex Offenders
ODD	Organisational Design Department
PEC	Public Education and Communications
PEP	Post-exposure Prophylaxis
SAPS	South African Police Service
SOCA	Sexual Offences and Community Affairs Unit
SORMAA	Criminal Law Amendment (Sexual Offences and Related Matters) Act 32 of 2007
TCC	Thuthuzela Care Centre
TIMS	Thuthuzela Information Management System
TIP	Trafficking in Persons
UNICEF	United Nations Children's Emergency Fund
VC	Victims' Charter
VEP	Victim Empowerment Programme

# Chapter 1: INTRODUCTION

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The Department of Justice and Constitutional Development (the Department) is the lead Department in the intersectoral implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007)- hereinafter referred to as the Act. Section 65 of the Act requires the Minister of Justice and Constitutional Development (now referred to as the Minister of Justice and Correctional Services) to table in Parliament annual reports on the implementation of the Act received from the various reporting stakeholders, as listed under section 63 of the Act. Section 62 further establishes the Directors-General Intersectoral Committee on the Management of Sexual Offences Matters under the leadership and chair of the Director-General of the Department of the Justice and Constitutional Development. Representation to this Committee includes the Directors-General of the Departments of Justice and Constitutional Development (DoJ&CD), Social Development (DSD) and Health (DoH), as well as the Heads of the National Prosecuting Authority (NPA), Correctional Services (DCS), and the South Africa Police Service (SAPS).

This report gives the annual performance of DoJ&CD in the implementation of the Act. It is the third report that will be tabled in Parliament in terms of section 65(3) of the Act, and it covers the period 01 April 2013 to 31 March 2014.

Among the key legislative responsibilities of the Department is the coordination and monitoring of the intersectoral performance in the implementation of the Act and its National Policy Framework (NPF). In addition to the Directors-General Intersectoral Committee (DG ISC) overseeing the implementation of the Act, further governance structures such as the National Operational Intersectoral Committee on Sexual Offences (OPS ISC) provides technical support to the DG ISC. At regional level, there are Provincial Intersectoral Committees chaired by the Department, which

mainly give oversight in the regional implementation of the Act. These committees have the representation of all the reporting stakeholders at regional level, and are reporting to the OPS ISC. Like other stakeholders, the Department also has the Intra-Departmental Committee which is mainly tasked to integrate and monitor the departmental performance in the implementation of the Act and its National Policy Framework. This Committee is chaired by the Chief Directorate: Promotion of the Rights of Vulnerable Group (CD: PRVG) based at the national office.

The report presents the initiatives undertaken by the Department in the effective implementation of the Act. It further outlines achievements and challenges experienced in the various key focus areas of implementation, which are tabulated in terms of the chapters.

# Chapter 2: Legal Framework

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## 2.1. Introduction

This report is compiled in compliance with section 65 (3) of the Act which requires the Minister of Justice and Constitutional Development (now the Minister of Justice and Correctional Services) to table reports by the departments responsible for the implementation of the Act. The objects of the Act are mainly to:

- (i) afford complainants of sexual offences the maximum and least traumatising protection that the law can provide;
- (ii) give full effect to the provisions of the Act with the aim of combating, and ultimately eradicating the relatively high incidence of sexual violence in South Africa; and
- (iii) protect complainants of sexual offences and their families from secondary victimisation and trauma by establishing a cooperative response between all government stakeholders involved in the implementation of an effective, responsive and sensitive criminal justice system in the fight against sexual violence.

The Act therefore requires the DoJ&CD to establish in the justice system intervention mechanisms aimed at responding to and preventing sexual violence in our communities. It is the collective legislative role of DoJ&CD to ensure that the protective provisions of the Act come to life every woman, child, older person, person with disabilities, and Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) person everywhere in the country. Through justice intervention means, our courts should be providing an environment defined by victim- support services that seek to eradicate secondary victimization. Our court services is sought to be designed to make the law more accessible and effective to all victims of sexual violence as they engage with the court system.

In the execution of its role, the Department considers the relevant international protocols, our Constitution, as the supreme law of the country, as well as other relevant laws and national policies. A brief enumeration of the relevant legal framework is given below as follows:

## **2.2. International Protocols**

The South African laws on gender-based violence find roots and guidance from the international protocols and the Constitution. Since 1994, our country has signed and ratified a number of key international and regional protocols to address the incidence of sexual violence and gender-based violence in our society. Under the leadership of the Department of Women, Children and Persons with Disabilities (now referred to as the Department of Women (DoW)), all government stakeholders report to the DoW on their individual performance in terms of achieving international and regional obligations, and these inputs are consolidated into country reports for submission to the respective United Nations Committees. The DoJ&CD is no exception in this regard. Over the years, the Department has participated in structures responsible for the drafting of these country reports.

In ensuring compliance with the global trend in the intervention process against gender-based violence and sexual violence, South Africa has signed and ratified the following international protocols:

- (i) **The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)**, which sets out the principles of access to justice and fair treatment, restitution, compensation and assistance as the key basic principles of justice to be observed by states when dealing, particularly with victims of power-based crimes, e.g. sexual offences. The preamble of the Act seeks to comply with this protocol when it requires a justice system that affords complainants of sexual offences with the maximum and least traumatising protection that the law can provide;
- (ii) **The United Nations Convention on the Rights of the Child (1989)** requires in Article 3(1) that “in all official actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration”;
- (iii) This obligation is consistent with section 28(2) of the South African Constitution, which states that the child’s best interests are of paramount importance in every matter concerning the child;
- (iv) **The Convention on the Elimination of All Forms of Discrimination against Women (1995)** requires state parties to ensure that laws against sexual

violence promote the establishment of a victim-centred criminal justice system that appropriately responds to the special needs of these victims. The re-establishment of Sexual Offences Courts can be seen as compliance with this obligation;

- (v) **The Beijing Declaration and Platform for Action (1995)** requires signatory states to provide women who are subjected to violence with access to the mechanisms of justice, as well as just and effective remedies for the harm they have suffered.<sup>1</sup> It further requires the creation and strengthening of institutional mechanisms that provide a safe and confidential environment to victims of gender-based violence, free from the fear of penalties or retaliation.<sup>2</sup>
- (vi) **The Convention on the Rights of Persons with Disabilities (2007)** requires state parties to protect persons with disabilities from all forms of exploitation, violence and abuse. Article 13 of this Convention further requires state parties to ensure effective access to justice for persons with disabilities on an equal basis with others, through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, both at investigative and other preliminary stages. The Department is progressively providing our courts with ramps, electric wheelchairs, voice-command lifts and braille public education material to reach out to court-users with disabilities. To ensure appropriate leadership in the improvement of court services, the Department is also in the process of establishing a specialized component within the national branch of Court Services and Policy Development that will deal, inter alia, with the provision of court-based support services for disabled victims of gender-based violence, including sexual offences; and
- (vii) **The Regional Protocols:** The African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights and on the Rights of Women in Africa, and the Southern African Development Community (SADC) Protocol on Gender and Development are the regional instruments signed and ratified by South Africa. Through these instruments, South Africa is able to join hands with Africa in all efforts aimed at addressing the epidemic of gender-based violence and sexual violence, in particular. These protocols further require state parties to condemn and uproot all harmful cultural practices that promote violence against women and children. It is for this reason that the Department partnered with the National House of Traditional Leaders and the National Prosecuting Authority to implement Programme Ndabezitha in rural communities. This Programme mainly seeks to uproot all forms of violent

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<sup>1</sup> Par 124(h).  
<sup>2</sup> Par 124(l).

cultural practices that could lead to domestic violence and sexual violence. The Department also undertook some initiatives against the unlawful practice of certain cultural customs, such as 'ukuthwala custom'. Public awareness- raising was done amongst traditional leaders and rural communities, especially those that are hardest hit with this scourge, as well as the development of stakeholder relations to report, investigate and prosecute such actions which are against the acceptable cultural practice, and which amounts to kidnapping, rape and forced marriage of young girls.

The establishment of governance structures on the management of sexual offences and other gender-based violent crimes is indicative of South Africa's firm commitment to compliance with the international and regional instruments aimed at eradicating all forms of violence against women, children, older persons and persons with disabilities.

### **2.3. The Constitution**

The South African Constitution proclaims South Africa as a state founded on the values of human dignity, equality and the advancement of human rights and freedoms; as well as non-racialism and non-sexism. As the custodian of the Constitution, the Department carries a mandate to ensure that our country respects, protects, promotes and fulfills the constitutional rights of women, children, older persons, persons with disabilities, as well as the LGBTI persons. The most prominent rights infringed by sexual violence include:

- (i) **Section 9(1):** 'Everyone is equal before the law and has the right to equal protection and benefit of the law'. Section 9(3) further state that 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.'
- (ii) **Section 10:** "Everyone has inherent dignity" and everyone has the right to "have their dignity respected and protected".
- (iii) **Section 11:** Everyone has the right to life.
- (iv) **Section 12:** Everyone has the right to freedom and security of the person, which includes the right to be free from violence from either public or private sources. In addition, everyone has the right to bodily and psychological integrity.
- (v) **Section 14:** Everyone has a right to privacy
- (vi) **Section 31(1):** Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community -
  - a) *to enjoy their culture, practise their religion and use their language; and*

b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2): The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

(vii) **Section 32(1):** Everyone has the right of access to (a) Any information held by the state, and (b) Any information that is held by another person and that is required for the exercise or protection of any rights.

Sexual violence is universally recognized as a serious violation of human rights. In the next chapters, interventions undertaken by the Department during this period of reporting to uphold these rights will be dealt with.

## **2.4. Other relevant Laws and Policies**

Since 1994 the South African Parliament has passed a number of progressive pieces of legislation to address and fight the scourge of gender-based violence in the country. These are the laws that seek to uphold the value system and the human rights culture of our democratic society, while also striving to comply with the international and regional obligations applicable to the country. To name but a few:

### **2.4.1. Domestic Violence Act, 1998 (Act No. 116 of 1998)**

The Domestic Violence Act was developed by the DoJ&CD and passed by Parliament. Among other things, it targets sexual abuse between parties who have a domestic relationship. It allows the victim of sexual abuse to apply for a protection order against the abuser, and further advises such victim to lay a criminal charge in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

This Act also recognizes trauma that is often suffered by the abused victims, and provides protective measures to minimize secondary traumatization. In terms of section 11 of this Act, court proceedings can be held *in camera* (in private), and the victim is entitled to bring to court not more than 3 support persons so as to ease anxiety while testifying. It is also an Act that prohibits direct cross-examination of the victim by an undefended abuser, mainly to

save the victim from any possible intimidation. This Act works hand in hand with the sexual offences legislation not only to bring victims increased access to justice, but also to ensure firmer legislative intervention against all forms of abuse, including sexual violence.

It may be noted that the Department is in the process of proposing amendments to the Domestic Violence Act, mainly to address the practical gaps in its implementation.

#### 2.4.2. Employment of Educators Act, 1998 (Act No. 76 of 1998)

This is the Department of Basic Education-led Act, which seeks to strengthen the intervention measures against sexual offences committed at schools by educators. It outlines procedures to be followed when the educator is charged with misconduct for an alleged sexual offence, amongst other offences. Section 17 of the Education Laws Amendment Act No. 53 of 2000 further provides that an educator must be dismissed if he or she is found guilty of committing a sexual assault against a learner, student or other employees, and/or having a sexual relationship with a learner of the school where he or she is employed amongst other forms of misconduct.

#### 2.4.3. Children's Act, 2005 (Act No. 38 of 2005)

The Children's Act protects children from any form of sexual abuse. It is an Act that falls under the leadership of the Department of Social Development (DSD). In terms of section 111 of the Act, the Director-General of the Department of Social Development is required to keep and maintain the National Child Protection Register (NCPR), which records the details of all offenders convicted on criminal charges involving the abuse or deliberate neglect of a child. Section 120 of the Act further allows the court to make a finding that a 'person is unsuitable to work with children in instances where such person has been convicted of murder, attempted murder, rape,

indecent assault or assault with intent to do grievous bodily harm with regard a child'.

Our Department has requested the Department of Social Development to request Parliament to amend certain provisions of this Act so as to align them with the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. This is to ensure that the Children's Act expressly recognizes the provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, which protect children against sexual violence. These include Chapter 3 of the latter Act which lists out more sexual offences committed against children than the Children's Act, 2005. These include statutory rape, sexual exploitation of children, sexual grooming of children, using children for or benefiting from child pornography, etc. Section 54(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act also criminalizes any failure to report knowledge of a sexual offence committed against a child, and imposes a penalty of a fine or imprisonment for a period not exceeding five years or both a fine and such imprisonment. These are some of the fundamental provisions that the Children's Act must expressly adopt so as to ensure uniformity in all laws applicable to sexual offences.

It is further anticipated that the amendment of the Regulations to the Children's Act will also facilitate the establishment of an appropriate process of collation and submission of all the relevant convictions of sexual offences to the National Child Protection Register (NCPR) for registration.

The issue of the merger of the NCPR and the National Register for Sex Offenders will be dealt with later in this report.

#### 2.4.4. Older Persons Act, 2006 (Act No 13 of 2006)

The Older Persons Act finds leadership from DSD. It seeks to protect older persons from certain forms of abuse, including sexual abuse. Section 30 of the

Act criminalises and penalizes any sexual abuse of an older person. The Act further defines 'sexual abuse' as meaning 'any conduct that violates the sexual integrity of an elder person.' Section 31 of the Act also prescribes preventative measures, which require the Minister of Social Development to keep a National Register of Abuse of Older Persons. Like the NCPR and NRSO, this Register is intended to restrict access to older persons by persons convicted of the abuse of older persons.

It has been reported that the Department of Social Development is finalizing the process of developing the electronic National Register for Abuse of Older Persons. In the meantime, DoJ&CD is collecting statistics on the Act, which will be submitted to the Department of Social Development as soon as the Register has started to operate. DoJ&CD has also requested the Department of Social Development to request Parliament to review Chapter 5 of the Act dealing with the 'PROTECTION FOR OLDER PERSONS' to determine the viability of prescribing Regulations and Forms for the effective execution of this Chapter by our courts.

At the moment, there is no statutory provision which enjoins courts to report offenders to the Older Persons Abuse Register, kept by the Department of Social Development.

#### 2.4.5. The Protection from Harassment Act, 2011 (Act No 17 of 2011)

This Act was developed by DoJ&CD, and passed by Parliament. It condemns sexual harassment, amongst other forms harassment, and allows victims to apply for a Protection Order or lay a criminal charge in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 if such act of harassment constitutes a sexual offence, as defined by the Act.

## **2.5. Relevant Laws Passed by Parliament in 2013/2014**

During this reporting time, Parliament passed the following pieces of legislation that contribute in strengthening our response prevention interventions against sexual violence:

### **2.5.1. Prevention and Combating of Trafficking in Persons Act, 2013 (Act No 7 of 2013)**

On 29 July 2013 the Prevention and Combating of Trafficking in Persons Act was promulgated into law. This Act was developed by DoJ&CD and passed by Parliament. The implementing Departments/ institutions such as the DoJ&CD, DSD, NPA, SAPS, Department of Correctional Services (DCS), Department of Health (DoH), Department of Home Affairs (DOHA), and the Department of Labour are in a process of finalizing their respective National Directives and National Instructions for tabling in Parliament in terms of the Act. The commencement date of the implementation of the Act will be issued in the next reporting time.

### **2.5.2. Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013)**

The Department recommended and the Portfolio Committee on Justice and Constitutional Development (now called the Portfolio Committee on Justice and Correctional Services), developed and passed the Judicial Matters Second Amendment Act, which was promulgated on 22 January 2013. This amendment provides for the insertion of 'Part 1A Sexual offences courts' in Chapter 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. Section 55A of the Act states that '*the Minister may by notice in the Gazette designate any Division of the High Court or the main seat or any local seat of a Division or Magistrate's Court, as defined in section 1 of the Superior Courts Act, 2013 (Act No. 10 of 2013, as a sexual offences court exclusively for the purposes of the trial of any person or other proceedings arising*' from an alleged commission of a sexual offence.

Previously, sexual offences courts were established at regional court level. However, the Judicial Matters Second Amendment Act, 2013 has extended the establishment of these courts to any Division of the High Court. This will, in essence, provide career –path for regional court magistrates who aspire to preside over these cases at High Court level.

The designation of courts as sexual offences courts is also largely seen in a positive light as it gives these courts the legislative status and identity that was not there previously.

The Act further requires the National Commissioner of the South African Police Services, the National Director of Public Prosecutions, the Director-General: Health, and the Director- General: Social Development to amend their respective National Directives and National Instructions, to include the prescribed guidance or procedure that the officials must follow in carrying out their responsibilities and duties in relation to designated sexual offences courts. At the time of reporting, these stakeholders were still in the process of finalizing these amendments.

Section 67 of the Act also gives the Minister of Justice and Correctional Services the mandate to develop Regulations, mainly to guide the intersectoral implementation of this Act, if he so wishes. The Department has already issued the draft Regulations to the various implementing stakeholders for comments and inputs. It is anticipated that these Regulations will be tabled in Parliament in the next reporting period.

It has, however, been noted that there may be practical challenges with certain provisions of the Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013). For instance, section 55 A of the Act needs to state unequivocally whether the designation of a sexual offences court refers to the

entire court building or to the courtroom dealing exclusively with sexual offences matters within the court building.

## **2.6. National Policies on Sexual Offences**

### **The National Policy Framework on the Management of Sexual Offences**

Section 65(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 requires the Directors-General Intersectoral Committee (DG ISC), under the leadership of the Director- General: Justice and Constitutional Development, to develop a national policy framework that sets out guidelines mainly for the intersectoral implementation and monitoring of the Act.

In 2013, the Department published the National Policy Framework on the Management of Sexual Offences in a Government Gazette Notice No 3684 dated 6 September 2013. Initiatives to popularize this Policy Framework will unfold in the next reporting period. It must, however, be noted that the DG ISC developed this National Policy Framework with the participation of all implementing stakeholders, including civil society.

# Chapter 3: Governance

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The Act promotes the intersectoral response to and prevention of sexual violence in the country. It establishes governance structures to encourage coordinated planning, resourcing, implementation, monitoring and evaluation of all initiatives aimed at uprooting sexual offences from South Africa. DoJ&CD, as the lead Department in the implementation of the Act, participates in and/or chairs the following governance structures:

## **3A. Ministerial Governance Structures**

### **3.1. Justice, Crime Prevention and Security Inter-Ministerial Committee**

Section 65(3) of the Act requires the Minister, after consultation with the Ministers responsible for Police, Social Development and Health, as well as the National Director of Public Prosecutions, to table in Parliament annual reports by each of the specified implementing Departments/ institutions. The implementing Departments also include DoJ&CD and DCS. The Justice, Crime Prevention and Security Cluster Inter-Ministerial Committee (JCPS IMC) is convened and chaired by the Minister. It is a Ministerial Committee that exercises its oversight role in the execution of the JCPS Delivery Agreement. Outcome 3 is entitled: "All people in South Africa are and feel safe", and includes government interventions against sexual offences. It therefore became the appropriate platform for the Minister to comply with section 65 of the Act.

During this time of reporting, the JCPS IMC considered for tabling in Parliament the Departmental Annual Reports and the Consolidated Annual Report on Sexual Offences for the period 01 January 2012 to 31 March 2014. Before the May 2014 elections, the former Minister of Justice and Constitutional Development tabled the Departmental Reports, accompanied by the Consolidated Report, but the tabling had to be withdrawn to re-

consider statistics. In order to ensure accuracy, manual counting had to be done in the affected provision to verify the identified discrepancies.

In July 2014, and after the establishment of the new Parliament, the new Minister of Justice and Correctional Services tabled these reports in compliance with section 65(3) of the Act.

### **3.2. The Ministerial Task Team on the Adjudication of Sexual Offences Matters**

In August 2013, the Ministerial Task Team on the Adjudication of Sexual Matters (MATTSO) officially handed over to the former Minister of Justice and Constitutional Development the investigation Report on the Re-Establishment of the Sexual Offences Courts.

MATTSO was established by the former Minister to investigate the viability of re-establishing the Sexual Offences Courts. It was constituted by the representatives selected from the Department, Regional Court Presidents Forum, NPA, the Justice Sector Strengthening Programme (JSSP), Legal Aid South Africa, and the Foundation for Human Rights (FHR).

In September 2013, this Task Team ceased to operate after it had submitted its Report to the former Minister. The findings and recommendations of its investigation will be discussed later in this report.

### **3.3. National Council Against Gender-based Violence**

The National Council is chaired by the former Minister of Women, Children and Persons with Disabilities (and now by the Minister of Women). In 2011, the Cabinet approved the establishment of this National Council to provide leadership, coordination and accountability in the multi-sectoral intervention against gender-based violence. In terms of its mandate, it must:

- (i) Drive the implementation of the 365 Days Action Plan for No Violence Against Women and Children;

- (ii) Advise government on policy and intervention programmes;
- (iii) Strengthen national partnerships in the fight against gender-based violence;
- (iv) Create and strengthen international partnerships; and
- (v) Monitor and report progress on initiatives aimed at addressing gender-based violence.

During the time of reporting, the National Council finalized the drafting of foundational documents for its operations and monitoring. It also appointed the Chief Executive Officer to drive the management of the National Council, in consultation with Executive Committee (EXCO).

### **3.4. The Inter-Ministerial Committee on the Root Causes of Violence against Women and Children**

The Minister is a member of this Committee, which the Cabinet commissioned in 2012 under the leadership of the Minister of Social Development. The mandate of this Committee is to investigate the root causes of violence against women and children in the country. The Department is further participating in the Technical Task Team attached to the Committee to provide it with technical support in the execution of its mandate. During this period of reporting, the Committee drafted the National Action Plan that was approved by the Cabinet. DSD coordinates the implementation of this Plan. The Committee is currently conducting a national research into the root causes of violence against women and children.

## **3B. Administrative Governance**

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

Section 63 of the Act establishes the Intersectoral Committee under the chair and leadership of the Director-General of Justice and Constitutional Development. Its members consist of the Directors-General of Social Development and Health, as well as the National Commissioners of the South

African Police Service and Correctional Services, and the National Director of Public Prosecutions. To ensure a more coordinated and collective management of sexual offences matters, the DG ISC further co-opted the Department of Women, Children and Persons with Disabilities (now referred to as the Department of Women), Department of Basic Education (DBE), Legal Aid South Africa (Legal Aid SA) and the Department of Co-operative Governance and Traditional Affairs (COGTA). These additional stakeholders were co-opted in the 2010/11 financial year. However, the participation of COGTA has not been regular.

Section 65(1) of the Act outlines the responsibilities, functions and duties of the DG ISC, which mainly focus on the monitoring of the intersectoral implementation of the Act and its National Policy Framework. During this period of reporting the DG ISC achieved the following key deliverables:

- (i) Met four times (i.e. on 27 May 2013, 24 October 2013, 28 February 2014 and 26 March 2014) in compliance with section 64 of the Act, which requires it meet at least twice a year.
- (ii) Monitored the process of gazetting the National Policy Framework (NPF) on the Management of Sexual Offences Matters. The NPF was published in the Government Notice on 06 September 2013;
- (iii) Considered the quarterly and annual performance reports submitted by the implementing Departments and institutions;
- (iv) Monitored the development of the Consolidated Annual Report for the period 01 Jan 2012 to 31 March 2013, and then presented it to the JCPS IMC for adoption and tabling in Parliament. This was to ensure the achievement of the Ministerial consultation required by section 65(3) of the Act;
- (v) Facilitated the tabling of the Departmental Annual Reports- accompanied by the Consolidated Annual Report for the period 01 January 2012 to 31 March 2013; and

(vi) Considered the draft Departmental Annual Reports for the period 01 April 2013 to 31 March 2014 in preparation for tabling in Parliament in compliance with section 65(3) of the Act.

### **3.6. The National Operational Intersectoral Committee on Sexual Offences (OPS ISC)**

The DG ISC established the OPS ISC, mainly to provide technical support in the execution of the responsibilities, duties and functions of the DG ISC. This committee has the operational representatives drawn from the stakeholders that form the DG ISC. It is chaired by the Department, and is now in a process of co-opting representation from the NGO's that specialize in the intervention against sexual offences.

During this reporting period, the OPS ISC met on 14 May 2013 and 17 July 2013 and delivered technical support towards the achievement of all DG ISC deliverables listed above.

### **3.7. Regional Heads Forum**

The Regional Heads Forum (RHF) is chaired by the Acting Deputy Director-General: Court Services and Policy Development Branch, and carries the representation of 9 Regional Heads of all regional offices of the DoJ&CD. It is a forum that gives oversight in the performance of all courts in the country. Amongst its regular agenda items is the departmental implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. During this period of reporting, the RHF met 10 times, i.e. once a month for 2 consecutive days, except for the months of December 2013 and January 2014. The agenda of the first day of Forum included the monitoring of the re-establishment of Sexual Offences Courts. The Forum contributed in the procurement of certain resources and the monitoring of the local intersectoral structures tasked with the establishment of these courts. The project of the Sexual Offences Courts will be discussed later in the report.

### **3.8. National Intermediary Committee**

This Committee is chaired by the Chief Directorate: Promotion of the Rights of Vulnerable Groups and it draws national representation from the NPA (represented by the Court Preparation Component), Justice College, Human Resource Branch (represented by (i) Chief Directorate: Human Resources Organizational Design and Development, and (ii) the Employee Health and Wellness Directorate. Initially, the Regional Court Presidents Forum was represented in this Committee, but had to withdraw its representation soon after the implementation of the Superior Courts Act No 10 of 2013. Section 8(4) (c) of this Act shifted the coordination of the judicial functions of the Magistrate's Courts to the Judge Presidents.

The mandate of this Committee is to establish the permanent structure of intermediaries within the Department and address all challenges relating to the execution of the functions of the intermediaries. During 2013/2014, this Committee met four (4) times, i.e. on 23 May 2013, 05 July 2013, 07 October 2013 and 30 October 2013 and achieved the following deliverables:

- (i) Finalized an investigation into the viability of establishing permanent posts of intermediaries within the Departmental structure. The findings thereof resulted in the development of Job Description for Intermediaries.
  
- (ii) Facilitated the creation of the permanent structure for intermediaries, and recommended the progressive permanent appointment of 185 court intermediaries, 21 Area Intermediaries and 09 Regional Intermediaries. The approval of this recommendation is currently pending at the Department of Public Service and Administration (DPSA).

(iii) Drafted an amendment of the Government Notice: DETERMINATION OF PERSONS OR CATEGORY OR CLASS OF PERSONS WHO ARE APPOINTED AS INTERMEDIARIES IN TERMS OF SECTION 170A (4) OF THE CRIMINAL PROCEDURE ACT, 1977 to ensure an enlarged, but competent categories of persons who could provide these services. This Draft Amendment is currently being taken through the intersectoral adoption, and will be submitted to the Minister for approval as soon as all the comments and inputs of the relevant stakeholders (including NGO's) have been received.

(iv) Drafted a Trauma Debriefing Programme for the intermediaries, and piloted it with 28 intermediaries based in the Western Cape and 15 intermediaries who serve at the Free State regional courts. The Programme covers an emotional impact session, the coping skills empowerment session, as well as the session for the self-help physical exercises to debrief the participants of vicarious trauma- often drawn from the daily traumatic experiences of the victims of sexual offences. It must also be noted that this Programme was developed in response to the recommendations of the MATTSO Report on Sexual Offences Courts. Currently, the Committee is customizing the Programme to respond to the special needs of the Intermediaries. The Plan is to roll out this Programme in 2014/2015 to court clerks, court interpreters, court preparation officers, and prosecutors based at the Sexual Offences Courts nationwide.

During the next financial year, the Committee planned to co-opt the membership of National DSD since this Department continues to supplement intermediary services at certain courts.

### **3.9. The National Task Team on LGBTI Issues**

#### **3.9.1. Introduction**

South Africa was the first state worldwide that placed sexual orientation under the protection of constitutional law. Section 9 of our Constitution guarantees

every citizen of South Africa the right to equal protection and benefit of the law, and expressly prohibits all forms of discrimination on the ground of sexual orientation. This is a constitutional guarantee that has recently placed the South African Government under the spotlight of the international community as it takes the trendsetting steps in addressing criminal actions against the marginalised LGBTI persons.

In March 2011, the media began to report increasingly on the new wave of sexual violence perpetrated mostly against black lesbians. Socially, this crime is termed, 'Corrective Rape', and it can be informally defined as a crime of rape that is unlawfully committed by heterosexual men against lesbian women with the intent to 'correct' the sexual orientation of lesbian women. 'Curative Rape', as referred to sometimes, is motivated by the belief that lesbian women 'pretend' to be 'men', and by dating women, they are 'stealing' women who are naturally available to heterosexual men; hence the need to 'cure' their unnatural sexual choices.

It was during this period when the Minister was petitioned by Luleki Sizwe, which is a local NGO based in a township in Cape Town, mainly to intervene. In response, the Minister mandated the establishment of a National Task Team to explore ways of intervention, and develop a National Intervention Strategy to end homophobic crimes perpetrated against the LGBTI persons. In 2011, the Task Team was established.

### **3.9.2. Progress made by the National Task Team (NTT)**

The NTT is constituted by the Department of Justice and Constitutional Development, South African Police Service, National Prosecuting Authority, Social Development, Correctional Services, Cooperative Governance and Traditional Affairs, Women, Children and People with Disabilities and GCIS, Chapter 9 institutions and civil society organisations. During this reporting time, it developed the following documents:

- (i) The Terms of Reference of the National Task Team;
- (ii) The Terms of Reference of the Rapid Response Team;
- (iii) The National Intervention Strategy (NIS) 2014-2016;
- (iv) An information pamphlet on Frequently Asked Questions regarding LGBTI persons; and
- (v) The Communication Plan.

With the support of the NTT, the Department is in the process of finalizing a television advertisement raising awareness and tolerance of the LGBTI persons. This advertisement will appear on a number of Television stations in 2014/2015.

### **3.10. Intra-Departmental Stakeholders**

The following are the Departmental stakeholders that contribute in the implementation of the Act:

- **Chief Directorate: Promotion of the Rights of Vulnerable Groups:** Responsible for coordination of the Departmental and Intersectoral implementation of the Act. It also provides secretariat functions to all governance structures, including the DG ISC;
- **Chief Directorate: Constitutional Development:** Responsible for ensuring compliance with the Constitution of the Republic of South Africa 1996). The function of coordinating the LGBTI Task Team sits in this Chief Directorate;
- **Chief Directorate: Legislative Development:** Responsible for the drafting of legislation, regulations and proposed amendments to the Act; as well as providing legal advice to the DG ISC regarding all proposed amendments to the Act;
- **Justice College:** Responsible for the development of training programmes and the annual training of court clerks and prosecutors on the Act;
- **Chief Directorate: International Relations:** Responsible for ensuring compliance with the International Protocols relevant to sexual offences.

It also collates departmental data for the drafting of country reports, working in collaboration with the Department of Women;

- **Chief Directorate: Public Education and Communication:** Responsible for public awareness raising, education and communication on all legislation protecting the rights of women, children, persons with disabilities, and older persons;
- **Chief Directorate: Facilities Management:** (Responsible for provision and maintenance of facilities in courts. This Unit became instrumental in the re-establishment of sexual offences courts;
- **Chief Directorate: Human Resources Organizational Design and Development:** (Responsible for facilitating the establishment of posts to ensure compliance with the implementation of the Act. The Unit is currently conducting job evaluation for the creation of permanent posts for intermediaries;
- **Chief Directorate: Information and Systems Management:** Responsible for the development of technological systems related to the management of information, including the Sexual Offences Integrated Case Management System (ICMS) and the NRSO ICMS, as well as the integration of the systems between the different departments through the Integrated Justice System (IJS);
- **Gender Directorate:** Responsible for gender-mainstreaming in the Department. This directorate serves as the gender focal point for the Department, and is situated in the Branch: Office of the Director-General;
- **The Regional Offices:** Responsible for chairing the regional/ provincial intersectoral structures dealing with sexual offences; execution of the legislative mandate of the Department at regional/ provincial level; submission of performance reports to the national office, etc.

The overall performance of the Department in the implementation of the Act is coordinated and managed by the Chief Directorate: Promotion of the Rights of Vulnerable Groups.

### **3.11. Challenges**

The lack of an established component in this Chief Directorate to deal with the intersectoral stakeholder management continues to delay performance in areas relating to the collection, collation and management of the intersectoral data. The Department is in the process of reviewing the organizational structure of this Unit.

# Chapter 4: Physical and Human Resources

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## 4.1. Introduction

There can be no effective implementation of any Act without adequate resources. The Department progressively increases both the physical, infrastructural and human resources to improve service delivery in the sexual offences value chain at the courts. In this Chapter, improvements achieved in this regard will be briefly enumerated and discussed.

## 4.2. Infrastructural/ Physical Resources

### 4.2.1. Sexual Offences Courts Project

During period 01 August 2013 to 31 March 2014, the Department commenced with the Sexual Offences Courts Project, and established 21 Sexual Offences Courtrooms compliant with the new Sexual Offences Courts Model developed by MATTSO.

In August 2013, MATTSO officially handed the investigation report to the former Minister of Justice and Constitutional Development. The report recommended the re-establishment of the Sexual Offences Courts, and provided a new Sexual Offences Court Model that must be followed. It further identified 57 regional courts that are resourced closest to the Model, and recommended that these courts be upgraded into Sexual Offences Courts over a period of 3 years commencing in the 2013/2014 financial year. From the costing done by MATTSO, the 57 regional courts were counted as 'courtrooms' to ensure proper resource allocations.

**NOTE:** The MATTSO Report is attached hereto as Annexure 'A' to avoid duplication of its content in this report.

### 4.2.2. The Revised Sexual Offences Courts Model

It must be noted that the concept of Sexual Offences Courts is a South African home-grown concept that consequently earned universal recognition as the international best practice model.

MATTSO conducted an international comparative analysis of the Sexual Offences Courts Model and found the former NPA Blueprint for Sexual

Offences Courts still relevant and more advanced than the Models of other

progressive countries. Nevertheless, the Blueprint was reviewed and revised to close certain gaps identified from the review, and most importantly to give an improved response to the special needs of the victim. Chapters 3 and 4 of the attached MATTSO Report outline the Revised Model in detail. However, a brief detail of the physical resources required by the Model is given below:

#### **4.2.2.1. Courtroom**

The Revised Sexual Offences Court Model requires the courtroom to be equipped as follows:

- (i) **A two-way closed circuit television** system to enable the child to identify the accused from the private testifying room, when required to do so. Previously, courts were using the One-Way CCTV system where a child witness would be forced to enter the courtroom when required to identify the accused. This approach would invariably expose the child to secondary trauma, and therefore defeat the very purpose of the private testifying room and in camera (closed) proceedings. With the new system, the intermediary can zoom the courtroom at 360 degrees radius. It is also possible to zoom the face or any body part of the accused to assist the child to identify a scar that could have been missed at a distance;
- (ii) **A 42 inch size monitor in the testifying room** for purposes of allowing the victim to identify the accused, when required to do so;
- (iii) **A 9 inch monitor** for the presiding officer to ensure increased visibility of the image and control of the system. Through this monitor, the presiding officer can have a close view of the Testifying Room to assist him/her to capture the demeanour of child and be able to see if the child is distracted, tired or can no longer concentrate. With this innovation, the Presiding Officer can no longer rely only on the Intermediaries' indication in determining whether or not the child witness needs an adjournment.
- (iv) **A large screen monitor** for the other members of the court, which could be tilted to all directions to suit the needs of the viewers;
- (v) **A high resolution camera in the testifying room** which is positioned so that the child can be clearly seen on the monitor in the courtroom; etc.

#### 4.2.2.2. Private Testifying Room

This room allows a child witness, person with mental disability or a traumatized witness to testify *in camera* (i.e. in a private room) and in a secured and private environment. According to the revised Model, it must:

- (i) Have lighting suitable for the filming of the child;
- (ii) Provide a less noisy air-conditioner; and
- (iii) Provide comfortable seating and furniture appropriate for children;

Note: The photograph was taken from the Butterworth Private Testifying Room.



No toys or items that could divert the focus of a child are displayed in this room. Minimal furniture must also be used to create calmness for the witness.

The Testifying Room is usually adjacent to the court, and its main purpose is to obviate the need for the child witness to provide evidence in an open courtroom in the physical presence of the accused person(s). The aim of this room is also to put the witness at ease to allay the possible fears of giving evidence in court.

#### 4.2.2.3. Private Waiting Room for Children/ Teens

The waiting room should contain the following:

- (i) Furniture suitable for children and teenagers;
- (ii) An information screen to educate and entertain the children;
- (iii) Toys available for the children to play with.
- (iv) Secured with lockable doors
- (v) Provision of food and water for children, etc.



In achieving these specifications, the Department designed standard furniture that accommodates the needs of both children and teenagers, and it has the following items:

- (i) A child's bed to allow child's nap when need arises;
- (ii) A child reading seater with a built-in book-shelf;
- (iii) A two-seater couch for the child's parent, guardian or accompaniment;
- (iv) 2 x Ottoman for teens;
- (v) 1 x Information screen and DVD player;
- (vi) 1 x bar fridge to keep child's refreshments;
- (vii) 1 x microwave;
- (viii) 1 x toy cabinet;
- (ix) 1 x set of children's drawing table and chairs; etc.



The above photograph was taken from the warehouse, and it shows some of the items of the standard furniture for the Private Waiting Room for children/teens. The bottom photograph was taken from the Potchefstroom Children/ Teen Waiting Room.

The Court Preparations Officer (employed by NPA) is responsible for manning this room and also carrying out the child-minding role in cases where the parent or guardian is in court.

#### **4.2.2.4. Private Adult Waiting Room**

- (i) Walls must be painted in soothing colours.
- (ii) The lighting must be bright and suitable for comfortable reading;
- (iii) The room must contain an air-conditioner;
- (iv) Comfortable and durable furniture must be provided, i.e. chairs, couch and a coffee table;
- (v) Information screen to provide educational information about court services;
- (vi) Printed educational material,
- (vii) Secured and lockable doors; etc.

The purpose of this private room is to reduce the potential for re-

traumatisation of the victim by the accused or secondary traumatization that is sometimes suffered by the victims when they engage with the court system. The value add of this facility is the availability of educational information to empower the witness with the court processes and witness role in court so as allay any potential fear of testifying in court. Information given in this room builds the confidence of the witness, which may lead to an effective performance in court.

#### **4.2.2.5. Anatomically Correct Dolls**

Usually children do not have the appropriate terminology for the sexual organs or the sexual act. Through these dolls, they are assisted to demonstrate the alleged sexual act or identify the sexual organs. For this reason, the Model requires these dolls to give the general replica of a human body and include sexual body parts. For instance, the male doll must depict an erect male sexual organ.

#### **4.2.2.6. Challenges**

##### **Standard furniture**

The procurement of the standard furniture for children delays the upgrading process since it has to be manufactured. It has also proven difficult to get service providers who could produce the design with reasonable costs. The delays of the tender process are also impacting on the timelines set for delivery. The Department is now in the process of reviewing the design of the furniture to address these challenges.

##### **Provision of food to child witnesses**

Despite the fact that the Department has made provision of a microwave oven and a bar fridge for each Children's Waiting Room, food provision for child witnesses is still a challenge. Currently, court personnel are providing food for destitute children from their personal earnings. In some courts, NGO's are providing food for these children. To address this challenge, the Department, in partnership with UNICEF, is conducting an investigation to determine the viable system of providing this food without attracting theft and misconduct.

##### **Witness Fees**

In the meantime, a National Circular has been issued to ensure that child witnesses and their parent/ guardian receive the prescribed subsistence and travel/transport allowance as soon as they arrive in court to avoid potential hunger during testimony. The purpose of this subsistence allowance is to compensate the witnesses for any inconvenience experienced by being

required to appear in court. Part of the fees payable is to provide for the procurement of sustenance/ food for the day at court.

#### 4.2.3. Available Physical Resources

As at December 2012, there were **322** CCTV systems, **98** One-Way Mirrors and **220** Witness Testifying Rooms. The re-establishment of the Sexual Offences Courts has therefore increased the physical resources by adding the following:

**Table 1: Physical Resources for 21 Sexual Offences Courtrooms – 2013/ 2014**

Physical Resources						
Sexual Offences Courts Established during the Period 01 August 2013 to 31 March 2014						
Region	Dual View CCTV System	Testifying Rooms	Private Child/Teen Waiting Rooms	Private Adult Waiting Room	Bar Fridge	Micro Wave Oven
Eastern Cape	2	2	3	3	3	3
Free State	4	4	2	2	2	2
Gauteng	2	2	2	2	1	1
KZN	2	2	2	2	2	2
Limpopo	1	1	1	1	1	1
Mpumalanga	2	2	2	2	2	2
Northern Cape	1	1	1	1	1	1
North West	2	2	2	2	2	2
Western Cape	5	5	2	2	2	2
<b>TOTAL</b>	<b>21</b>	<b>21</b>	<b>17</b>	<b>17</b>	<b>18</b>	<b>18</b>

Source: CD: PRVG

#### 4.2.4. Premier (Model) Sexual Offences Courts

In its Annual Performance Plan (APP) of the Medium Term Strategic Framework (MTSF), the Department targeted 09 regional courts for upgrading into Sexual Offences Courts. These courts were identified as Premier Sexual Offences Courts to serve as model courts for the project. The Table below enumerates the 9 Premier Sexual Offences Courts:

**Table 2: Premier/ Model Sexual Offences Courts (2013/2014)**

Premier Sexual Offences Courts		
Region	Regional Court	Number of Courtrooms
Eastern Cape	Butterworth	01
Free State	Welkom	01
Gauteng	Palm Ridge	01
KZN	Ntuzuma	01
Limpopo	Lephalale	01
Mpumalanga	Tonga	01
Northern Cape	Kimberly	01
North West	Potchefstroom	01
Western Cape	Wynberg	01
<b>TOTAL</b>		<b>09</b>

Source: CD: PRVG

#### 4.2.5. Additional Sexual Offences Courts

During this period of reporting, the Department exceeded the Annual Performance Plan target of 09 Sexual Offences Courts by upgrading **12** additional regional courtrooms into Sexual Offences Courts- compliant with the new Sexual Offences Courts Model. These courtrooms are listed as follows:

**Table 3: Additional Sexual Offences Courts Achieved in 2013/2014**

Additional Sexual Offences Courts		
Region	Regional Courts	Number of Courtrooms
Eastern Cape	East London	01
Free State	Bloemfontein	03
Gauteng	Palm Ridge	01
KZN	Pietermaritzburg	01
Limpopo	-	-
Mpumalanga	Tonga	01
Northern Cape	-	-
North West	Klerksdorp	01
Western Cape	Wynberg	02
	Parow	02
<b>TOTAL</b>		<b>12</b>

**Source: PRVG**

The total regional courtrooms upgraded into Sexual Offences Courts are 21, and all of them are fully functional. From the 57 courts, the Department is now left with 36 courtrooms, which must be established during the period 2014/2015 to 2015/2016.

It must be noted that other regional courts are continuing to hear sexual offences matters. In other words, the adjudication of sexual offences matters is not left with the Sexual Offences Courts only. There are other regional courts that deal with these cases.

### **4.3. Human Resources**

#### **4.3.1. Intermediaries**

In terms of section 170 A of the Criminal Procedure Act No 51 of 1977, a child witness may testify via a closed-circuit television (CCTV) system in a private testifying room with the assistance of an intermediary. The role of the intermediary is to convey questions from court to a child witness in an age-appropriate manner, and vice versa. In carrying out this duty, the intermediary must protect the child against hostile cross-examination and assist the child in understanding the questions posed. Throughout the court proceedings, the child only talks via the intermediary to protect him/her from secondary traumatization.

During this reporting time, the Department commenced with the re-establishment of the Sexual Offences Courts pursuant to the recommendation made by MATTSO. To capacitate the Phase 1 Sexual Offences Courts, **29** additional contract appointments of intermediaries were made to bring the total number of contract intermediaries to **185**. The newly-appointed intermediaries were deployed to courts of extreme need. In addition to contract intermediaries, the Department has a pool of **48** ad hoc intermediaries, who are randomly utilized at certain courts, whenever the need arises. This is to ensure the speedy finalization of cases involving child witnesses. In some courts, social workers employed by DSD continue to provide intermediary services to complement the capacity of the Department. The number of these social workers still stands at **46**.

Below is the Table that shows the progressive appointments of the intermediaries at provincial and national levels.

**Table 4: Appointed Intermediaries as at 31 March 2014**

Region	2012/2013	2013/2014	Ad hoc intermediaries	DSD Social Workers	Total
<b>Eastern Cape</b>	15	19	1	6	26
<b>Free State</b>	11	14	4	0	18
<b>Gauteng</b>	13	16	33	15	64
<b>KZN</b>	29	33	5	5	43
<b>Limpopo</b>	16	19	0	2	21
<b>Mpumalanga</b>	12	15	1	9	25
<b>Northern Cape</b>	11	14	0	6	20
<b>North West</b>	23	26	0	1	27
<b>Western Cape</b>	26	29	4	2	35
<b>TOTALS</b>	156	185	48	46	279

Source: HR

As indicated in the above Table, there is the greater use of ad hoc intermediaries than those in contract employment in the Gauteng Province. This is due to the fact that the Department of Social Development and the local NGO's continue to complement the Gauteng regional courts with intermediary services. This province carries the highest sexual offending rate in the country, and is therefore among the Department's priority focus areas. During this time of reporting, the Department conducted a situational analysis on the provision and effectiveness of intermediary services in the country.

From the findings of this investigation, the need for the appointment of more intermediaries for Gauteng was highlighted. The Department has planned to address this matter in 2014/2015 by progressively converting the ad hoc posts into permanent posts.

#### **4.3.2. Challenges**

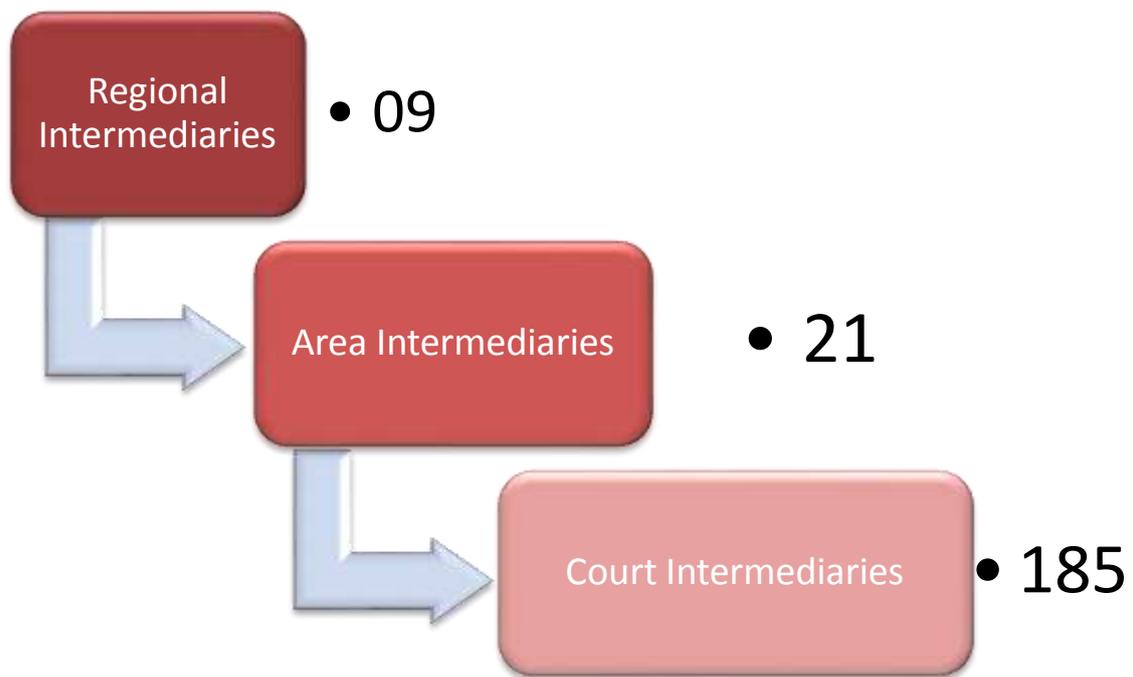
Since 2010, the Department has been appointing contract intermediaries due to the fact that their current job description gives them limited performance that usually falls short of an eight hour performance required by the recruitment prescripts. Due to the temporary status of the employment of the intermediaries, the Department has been experiencing high turnover of the intermediaries, and consequently losing budget spent on training them.

In 2013, the Department conducted research to investigate the viability of the permanent employment of the intermediaries. This was the second research study after the 2011 study that could not bring any feasible solution to the challenge.

From this study, the Department, through the assistance of the National Intermediary Committee, was able to expand the job description of the intermediaries to proceedings involving child witnesses/ persons with mental disabilities, and held in terms of the Children's Act, Domestic Violence Act, Prevention and Combating of Trafficking in Persons Act, etc.

The Department developed an extended Job Description and personnel structure for intermediaries, which seeks to create posts for court intermediaries, area intermediaries and regional intermediaries. This is to ensure the reporting structure and career-pathing in this field, which the research study found lacking at present. The approval of this recommendation is still pending with the DPSA. The diagram below shows the proposed career-path model for intermediaries:

**Diagram 1: Proposed Career-path Model for Intermediaries**



The figures attached to this structure represent the current need of personnel, as revealed by the research study. As soon as this structure is approved, the Department will need an estimated budget of R99 914 983 to execute it. The Department is currently finalizing the Business Process Improvement (BPI) work-study for the creation of these permanent posts.

# Chapter 5: Training and Development

## 5.1. Introduction

Victims of sexual offences usually have special needs that require special services. Specialized skills training programme is therefore required to build these services. Justice College is currently providing training on Sexual Offences for clerks and intermediaries. However, the need to upgrade this training has been identified.

## 5.2. Intersectoral Training Programme

During this reporting time the Department delivered training to 180 frontline personnel located at the frontline service points at the sexual offences value chain. This is an intersectoral training programme offered in conjunction with the Department of Social Development. The programme includes, *inter alia*, custom-made etiquette training, social context training and training on the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. The frontline participants were drawn from DoJ&CD, Department of Social Development, Department of Correctional Services, and certain NGO's providing victim- support services- mainly for the courts. An NGO based in Gauteng- called the Youth in Trust Drama School also participated in this programme- mainly to equip its members to deal with sexual offences matters at community level. Below is the Table that details the execution of this training programme:

**Table 5: Sexual Offences Training for Frontline Officials (2013/2014)**

Province	Venue	Dates	No of sessions held	No of officials trained
North West	Mafikeng	17-19 July 2013	3	50
KwaZulu-Natal	Durban	14 – 16 August 2013	3	55
Gauteng (Including Youth in Trust Drama School (State	Pretoria	5 & 6 September 2013	2	40

Province	Venue	Dates	No of sessions held	No of officials trained
<b>Theatre)</b>				
<b>Gauteng</b> (Including DSD officials)	Johannesburg	October 2013	2	15
<b>Gauteng</b> (Including DCS officials)	Johannesburg	12-14 February 2014	3	20
				<b>180</b>

Source: CD: PRVG

### 5.3. Challenge

Although not accredited yet, this training programme has been positively welcomed by stakeholders as it takes a simple and practical approach to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. It also deals with issues of etiquette when dealing with cases of sexual offences.

Through Justice College, the Department is planning to develop Unit Standards for this training programme to ensure that learners receive a certificate of competence at the end of the course, as against the certificate of attendance that carries no credits.

### 5.4. Debriefing and Stress Management for Intermediaries

The MATTSO Report recommends, amongst other things, that all court personnel must undergo a Trauma Debriefing Programme to minimize and eliminate the vicarious trauma that they often suffer from dealing with cases of sexual offences on daily basis. The Department developed a Debriefing Programme for the intermediaries, and tested it with **43** intermediaries based in the Western Cape and Free State regional courts. KZN also held the Debriefing workshop for intermediaries, but using a slightly different approach. Below are the details of these sessions:

**Table 6: Pilot of Trauma Debriefing Programme: 2013/2014**

Pilot of Trauma Debriefing Programme: 2013/2014		
Province	Court Personnel	No of Participants
<b>Western Cape</b>	Intermediaries	28
<b>Free State</b>	Intermediaries	15

<b>Pilot of Trauma Debriefing Programme: 2013/2014</b>		
Province	Court Personnel	No of Participants
<b>KZN</b>	Intermediaries	25
<b>TOTAL</b>		68

**Source: CD: PRVG**

The Programme covers an emotional impact session, the coping skills empowerment session, as well as the session for the self-help physical exercises to debrief the participants of the vicarious trauma- often drawn from the daily traumatic experiences of the victims of sexual offences.

The success drawn from the pilot has led to a decision to customize the Programme for sexual offences and then roll it out to all provinces in 2014/2015. The court personnel who must participate in this Programme include court interpreters and court clerks, in addition to intermediaries.

The NPA will use the same Trauma Debriefing Programme for the prosecutors, court preparation officers, TCC's coordinators, case managers, victim assistance officers, etc.

The South African Judicial Education Institute (SAJEI) will also provide Trauma Debriefing for judicial officers presiding over cases of sexual offences. This Programme will commence in 2014/2015 under the management of the Office of the Chief Justice. The Department continues to engage with SAJEI and the Regional Court Presidents Forum in this matter. It is an agenda item of the National Intermediary Committee.

### **5.6. Other Skills Development Programmes on Sexual Offences**

During this period of reporting, the Department has further delivered the following training programmes to improve services in sexual offences:

**Table 7: Other Skills Training on Sexual Offences: 2013/2014**

<b>Training on Sexual Offences</b>			
Province	Training Programme	Personnel	No. trained
FS, KZN, NC , Gauteng, Limpopo, WC	NRSO Integrated Case Management System skills course	IT coordinators, court clerks, court managers	688
KZN	Trafficking in Persons	JCPS Cluster officials	130

<b>Training on Sexual Offences</b>			
<b>Province</b>	<b>Training Programme</b>	<b>Personnel</b>	<b>No. trained</b>
	& Sexual Offences		
FS	Advanced Intermediary Training	Intermediaries	11
Mpumalanga	Intermediary training for Sexual Offences Courts	Intermediaries	09
NC	Victims Charter training (also to benefit victims of sexual offences)	Health professionals	113
Limpopo	Sexual Offences	Community Development Workers	72
	The roles of DoJ&CD, SAPS, NPA and DoH in the implementation of the Act	Provincial Sexual Offences Forum members	19
KZN, Limpopo, Mpumalanga, and EC	LGBTI Civil Society Organizations Alliance Building Workshops to address violence against LGBTI persons	JCPS Cluster Department and others, Chapter 9 institutions, LGBTI NGO's and other civil society organizations	65
WC, NC, FS			125
<b>TOTAL</b>			<b>1 232</b>

**Source: Regional offices of DoJ&CD**

### **5.7. Challenges Identified from the LGBTI Workshops**

- (i) Some of the religious leaders and traditional leaders have stereotypes about LGBTI persons and refuse to accept them within their communities and/ or grant them access to resources. It must, however, be noted that the LGBTI National Task Team enjoys the support of the Department of Co-operative Governance and Traditional Affairs (COGTA) in its endeavours to execute its mandate.
- (ii) Prevalence of “corrective rape” of lesbian women and violent crimes against all LGBTI persons (rape, murder) is a serious concern. However, the newly established Sexual Offences Courts are expected to bring some relief in this regard;
- (iii) Some of the LGBTI persons still face discrimination in the workplace;
- (iv) Lack of knowledge and expertise about the rights of and issues affecting LGBTI persons among certain government officials;

- (v) Lack of funding and resources for LGBTI organizations from government
- (vi) Inadequate research studies on LGBTI issues and interest. However, in 2012, the Department finalized a situational analysis at the courts to determine the extent in which the needs of the LGBTI victims are addressed by the court system. The findings assisted in the development of the national intervention strategy;
- (vii) LGBTI people lack information about their rights. The Department developed a brochure on Frequently Asked Questions about the rights of LGBTI persons. This brochure is currently available at our courts for distribution to court users.
- (viii) Inadequate representation of LGBTI groups from all the provinces on the NTT;
- (ix) Lack of or very slow progress on reported hate crimes cases within the criminal justice system. This matter is being attended by the Department and its stakeholders

The Department, working in collaboration with the NTT, is ensuring that these concerns are addressed by the stakeholders concerned.

# Chapter 6: Public Education

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## 6.1. Introduction

Public education initiatives are globally recognized as powerful vehicles of driving the message of crime prevention to the grass root level of a society. Education is known for building power and confidence to exercise one's rights and responsibilities timeously, appropriately, and effectively.

In following this universal trend, since 2012/2013 the Department allocates dedicated budget to participate in the execution of the 365 Days Public Education Campaign. The stimulus and the driver of this campaign is to build a culture in our society where 'Everyday is an education day to save a life from gender-based violence'.

In 2013/2014, the Department allocated to the 9 regions a budget of R6 390 000 to conduct public education and awareness in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Domestic Violence Act, Older Persons Act, Maintenance Act, Child Justice Act, Children's Act, and the Services for Victims of Crime (Victims' Charter). This budget excludes the budget allocation used by the national office for the same.

It must also be noted that in addition to the Chief Directorate: Promotion of the Rights of Vulnerable Groups, the Department has the Public Education and Communications Unit dedicated to send educational messages to the public.

During this reporting period, the Department conducted the following public education initiatives:

## 6.2. Public Education Interventions in Rural Communities

The Ndabezitha Izimbizo initiative is part of the broader Ndabezitha programme initiated by the NPA, in partnership with the DOJ&CD and the National House of Traditional Leaders (NHTL) to reach out exclusively to rural communities. During the 2013/14 financial year and under the leadership of the Department, the Ndabezitha Izimbizo events were held as follows:

**Table 8: Public Education in Rural Communities: 2013/2014**

Ndabezitha Izimbizo in Rural Communities			
Province	Rural Communities	Stakeholders	Rural people reached
Northern Cape	Gamorona village	DoJ&CD, Traditional leaders, NPA, local NGO's	1 900
Free State	Thibella Village		
North West	Pitsidisulejang Village		
Mpumalanga	Matsamo village		

**Source: CD: PRVG**

The Izimbizo's were targeting rural community people, especially Men and Boys, to raise awareness of cultural practices that may lead to domestic violence. However, issues of sexual violence are an integral part of the definition of domestic violence, and therefore could not be excluded from these izimbizos. For instance, marital rape is often considered rife in rural communities due to cultural beliefs attached to sex in a marriage. Forced cultural marriages also have the potential of leading to sexual offences due to lack of consent by one of the parties. In these izimbizos, men and boys are empowered to end harmful cultural practices that could lead to gender-based violence.

### **6.3. Media Public Education Interventions**

During this reporting period, the Department participated in a number of radio and television media interviews to increase public awareness on the Criminal Law (Sexual Offences and Related Matters) Amendment Act (including the newly established Sexual Offences Courts) and the National Register for Sex Offenders (NRSO). Community radio stations were utilized in order to reach semi-urban and rural communities.

On the 6<sup>th</sup> August 2013, the former Minister of Justice and Constitutional Development, Mr Jeff Radebe, held a media briefing on the findings and recommendations of the MATTSO Report regarding the viability of re-establishing the Sexual Offences Courts in the country. During the briefing, the Minister reflected on the recommendations and accepted the recommendation proposing the re-establishment of Sexual Offences Courts as one of the fundamental strategies that should be adopted to reduce the

levels of sexual offences in the country. The re-introduction of Sexual offences Court indicates the Department's commitment to uproot sexual violence from our communities.

This announcement attracted extensive coverage in various print, television and electronic media. Generally, the coverage was positive and welcomed by most political parties and NGO's, as well as the general public. The Department was praised for its decision to re-introduce Sexual Offences Courts. The re-launch was also supported by the President, the Minister of Social Development, and the former Minister of Women, Children and Persons with Disabilities during their speeches in celebration of Women's Month.

However, despite the positive reception of the reports, some analysts criticized the system for having failed many victims; hence the low reporting of these cases. It is therefore in this light that the Department should continue to use media and other initiatives to raise awareness on the victim-support services and other benefits brought by Sexual Offences Courts in an effort to encourage reporting.

**33** print media coverage, **19** radio and TV interviews were achieved to raise awareness in almost all official languages on Sexual Offences Courts. Listed below is the list of these interviews, including other media coverage achieved during this reporting period:

### 6.3.1. Radio and Television Public Awareness on Sexual Offences

**Table 9: Media Public Awareness- 2013/2014**

Medium	Type	Date	Language
<b>POWER FM</b>	Talk Show	06 August 2013 18:05-18:30; 07 August 2013 07:20	English
<b>LESEDI FM</b>	Talk Show	07 August 2013 06:30-06:55 17 August 2013	Sotho
<b>702 Radio</b>	Talk Show John Robbie Show	07 August 2013 07 August 2013 10:30-11:00	English
<b>CAPE TALK Radio</b>	Keno Kammis Show	07 August 2013 07:10	English
<b>SAFM</b>	Talk Show	07 August 2013 10:30-11:00	
<b>VOICE OF THE CAPE FM</b>	11h06: 12:00 MorningXpresso	18 August 2013	English
<b>UKHOZI FM</b>	08:10	20 August 2013	Zulu

### 6.3.1. Radio and Television Public Awareness on Sexual Offences

**Table 9: Media Public Awareness- 2013/2014**

Medium	Type	Date	Language
IKWEKWEZI FM	Vuka Mzansi Breakfast Show		
	07:45	08 August 2013	Nguni/Ndebele/Zulu
	Sivukile Breakfast Show	21:30	
		19 August 2013	
Umhlobo Wenene	Talk Show	08 August 2013 06:10	Xhosa
<b>TELEVISION PUBLIC EDUCATION</b>			
Soweto TV	Talk Show	06 August 2013 13:30	English/Xhosa/Zulu
ETV	Talk Show	06 August 2013 18:00	
SABC TV News	News	06 August 2013 News	English/ Zulu
SABC News Channel	News	07 August 2013 10:00	English
SABC 1 YILUNGELO LAKHO/IT'S YOUR RIGHT	Talk Show	16 August 2013	English/ Vernacular
Radio & TV	Media Briefing: Walking the Path of Victim of Sexual Offences	16 August 2013	English
<b>TOTAL</b>		<b>19</b>	
<b>NRSO</b>	<b>TYPE</b>	<b>No of Interviews</b>	<b>Language</b>
SABC 2 FOCUS	Talk Show	01	English
SAFM	Talk Show	02	English
Lesedi FM	Talk Show	03	Sesotho
Capricon FM	Talk Show	01	English
Power FM	Talk Show	02	English
Inanda Radio	Talk Show	01	Zulu
Mosupatsela FM	Talk Show	01	Sesotho/Tswana
Kangala Community Radio	Talk Show	01	Zulu/ Ndebele
Moutse Community Radio	Talk Show	01	Sesotho
<b>TOTAL</b>		<b>13</b>	
<b>Overall Total Sexual offences &amp;NRSO</b>		<b>32 Interviews</b>	

Source: PEC

#### 6.4. Justice Brought to People

**Table 10: Public Education Events- 2013/2014**

<b>Justice Brought to the People</b>			
<b>Province</b>	<b>Type of Event</b>	<b>No of Events</b>	<b>No of People Reached</b>
<b>FS</b>	Child Protection Week: Schools Campaign	06	800
	Access to Justice awareness raising	01	1 500
	Crime Victims Right Week launch at Vrede hosted by Department in partnership with JCPS Cluster Departments and religious sector to raise awareness of rights of victims of crime, particularly victims of gender-based violence. Survivors of rape were taken through debriefing programme	01 (launched by Deputy Minister)	+1 000
	16 Days of Activism: Rights of victims of gender-based violence, including sexual offences	01	1 000
<b>KZN</b>	Community Crime Prevention: Sexual Offences; Drug Abuse; Dumping of infants (Albert Park)	01	200
	Child Protection Week & Youth Month Schools Education Campaign on Sexual Offences, Ukuthwala, HIV/AIDS and NRSO held at 5 schools in Chatsworth and KRANSKOP	04	2 896
	Youth Empowerment through Arts Outreach program on Date/ Youth rape & NRSO held at Kwa-Mashu and Umlazi townships:	02	655
	Lancers Road Clinic: Sexual Offences & related illnesses	01	150
	Sexual Abuse of Older Persons: Issy Geshen Old Age Home in Lamontville	01	55
	Plessieslaer Stakeholder Outreach on Sexual Offences	01	150

<b>Justice Brought to the People</b>			
<b>Province</b>	<b>Type of Event</b>	<b>No of Events</b>	<b>No of People Reached</b>
<b>WC</b>	Women's Month events were held in different parts of the province to sensitize women about their rights and the services available in the Department to safeguard such rights. The topics covered included sexual offences since WC has the 3 <sup>rd</sup> highest sexual offending rate in the country.	22	3 600
	Public Izimbizo on Sexual Offences at Goedverwacht, Stawelklip, Bridgeton, New Horizon, Bongolethu, Khayelithsa, Worcester, Conville and Mitchell's Plain. The latter event was hosted by the Deputy Minister	09	2 800
	Human Rights Celebration Month: Public education events were held to sensitize communities on constitutional rights and issues relating to gender-based violence as violation of certain rights. Topics covered sexual offences as one of the rife offences in the province	13	2 000
<b>Limpopo</b>	Child Protection Week: Information Session on sexual offences at Schools in Moletji and Mogoshi Circuit	22	+2 000
	Public March against Sexual Violence in Makweng and Lephalale	02	+ - 1 500
	Access to Justice Week: Raising awareness on the rights of victims of sexual offences, in collaboration with JCPS Cluster and local NGO;s in Praktiseer	01	+ - 2 000
	16 Days of Activism: Raising	01	+ - 300

<b>Justice Brought to the People</b>			
<b>Province</b>	<b>Type of Event</b>	<b>No of Events</b>	<b>No of People Reached</b>
	awareness of the rights of victims of GBV and justice services available to them in Ga-Mashau		
	Information session on victims' rights and justice services held in Lulekane Phalaborwa Namakgale	03	+ - 5 000
<b>NC</b>	Public education events on GBV, including sexual offences	14	1 423
<b>NW</b>	Door-to-door campaign on Trafficking in Persons, Domestic Violence and Sexual Offences- reaching out to people at Taxi-Rank, Street Intersections, Schools and Shopping Malls. It was held at Mafikeng and Ramatlabama Border Posts and surrounding areas; Makgobistad; Mafikeng; and Molopo	05	+ -12 000
<b>GP</b>	Door-to-door campaign during the Crime Victims Week held at Tokoza in Ekurhuleni and at the pension pay points to raise awareness on sexual violence	03	+ - 4 000
	Awareness raising events on the rights of vulnerable groups (including victims of sexual offences) held during the Access to Justice Week in Mohlakeng, Duduza, Ekangala and Kliptown. The Questions and answers sessions assisted the Department to address some of the challenges experienced by the communities at the events' sites	4	3 500
	Imbizo was hosted by the Minister	1	2 000

<b>Justice Brought to the People</b>			
<b>Province</b>	<b>Type of Event</b>	<b>No of Events</b>	<b>No of People Reached</b>
	at Kagiso to address public on issues relating to sexual offences, maintenance, and drug abuse		
<b>TOTAL</b>			<b>43 324</b>

**Source: Regional Offices of the DoJ&CD**

### **6.5. Other Public Educational Initiatives**

The new Sexual Offences Courts Model requires the private waiting areas to be converted into an empowering environment for the victims. While waiting, the victims must be educated about court services and be prepared for their role as witnesses in court. During this reporting period, print and audio-visual educational material was developed for use in the private waiting rooms for victims, and these include:

- (i) 80 000 copies of Intermediary Educational Booklets. These booklets target children, parents, guardians and care givers of children to sensitize them to the role of the Intermediary in court proceedings. The booklets are distributed to all courts presiding over sexual offences matters.
- (ii) Two Information Digital Versatile Disks (DVD) i.e. the children's animated DVD titled "Busi Goes to Court", which seeks to prepare the child for his/ her role as witness in court. This is done in a child-appropriate manner, and it educates the child witness of the various role-players in court and familiarises him/her with the court environment to build the child's confidence when he or she testifies in court. Similarly, the Adult Information DVD prepares and educates adult witnesses of their role as witnesses in court. It also covers available court services and assists the victim to access such services.

# Chapter 7: National Register for Sex Offenders

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## 7.1. Introduction

The National Register for Sex Offenders came into operation on the 30<sup>th</sup> of June 2009 in terms of Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007. The objects of the Register are to protect children and persons who are mentally disabled against sex offenders by establishing and maintaining a record of persons who have been convicted of a sexual offence against a child or a person who is mentally disabled; or are alleged to have committed a sexual offence against a child or person who is mentally disabled. The rationale behind this is to curb the high incidence of sexual violence perpetrated against these two categories of persons by restricting the registered offenders from working at environments that will expose them to these victims, namely children and mentally disabled persons.

## 7.2. Registered Convictions

During this reporting period, the Department made improvements in the registration of sex offenders. As at 31 March 2014, **15 545** names of convicted sex offenders appear in the Register. The registration progression in the past three (3) financial years is as follows:

**Table 11: NRSO Registrations- 2013/2014**

<b>NRSO REGISTRATIONS</b>		
<b>2011/2012</b>	<b>2012/2013</b>	<b>2013/2014</b>
2 340	3 526	15 452

**Source: NRSO**

The latter figure clearly indicates a steep progressive increase of **12 019** offenders registered in this financial year. It must be further noted that this number includes **8 376** historical convictions, i.e. convictions made prior to the implementation of Chapter 6 of the Act. Worth noting is also the fact that, during this reporting period, the Department made an over-achievement of 100% electronic recording of convictions, as against the target of 74%.

### **7.3. Historical Convictions**

Phase two deals with the receipt of historic convictions from the South African Police Service (SAPS), Department of Correctional Services and the Department of Health, as provided for in terms of the Act, and the issuing of clearance certificates. The issuing of Clearance Certificates has not been commenced with because not all historical convictions received from SAPS were captured. This is due to the fact that SAPS Criminal Record Centre had historically captured details of offenders and not the information of victims. It must be noted that the need for the age and the mental status of the victim was not a legislative requirement previously.

This led to the initiation of a project to verify the cases received from the SAPS Criminal Record Centre against the original court files and police dockets, so as to confirm who the victims were. To execute this project, contract posts for nine (9) Data Capturers are in the process of being advertised.

The verification of historical data project was piloted at the Pretoria Magistrate's court. Out of 1 775 identified cases for Gauteng, only 45 source documents could be retrieved from Pretoria Magistrate's Court.

Once all source documents retrieved from the courts are verified against submitted records from SAPS Criminal Record Centre; this process will inform capturing in the National Register for Sex Offenders. The findings of the piloted project will also inform the pace of the rollout to all courts.

The historical data from the Department of Correctional Services and the Department of Health is still pending. Meetings are on-going with these two (2) to try and establish a fast-tracking mechanism.

### **7.3. The Alignment of the NRSO and NCPR**

In December 2012, the Department initiated an investigation into the viability of recommending the merging of the National Register for Sex Offenders with the Child Protection Register, and in 2013 a Task Team was established with the representation of the Department of Social Development. The following intervention actions were taken in an attempt to avoid the duplication of resources:

- (i) A Preliminary Research document was compiled by the Department and submitted to the Department of Social Development with a request to jointly deliberate on the viability of aligning or assimilating the two registers.
- (ii) A Draft Legislative Amendment Proposal for the Alignment of the two

registers was formulated by the Department and submitted to the Department of Social Development for consideration and inputs. The Task Team is now in the process of finalizing its investigation, and is expected to produce its report before the end of September 2014.

#### **7.4. Capacity building and Training**

The Department conducted NRSO training sessions in all 9 provinces/ regions to address challenges on the implementation of the Register and also to address the deficiencies in the Electronic submission. As a result of this initiative, **688** officials were trained. These were the Area Court Managers, the Court Managers and IT Coordinators.

#### **7.5. Public Education on NRSO**

The NRSO also developed information booklets, brochures and banners and circulated them throughout the lower courts. During this reporting period, twelve (12) public radio interviews and, talk shows and 1 television interview were undertaken with the National Registrar for Sex Offenders to raise awareness on the NRSO and to address enquiries by the public at SABC 2 FOCUS, SAFM (English), Lesedi FM x3 (Sesotho), Capricorn FM (English), Power FM x2, (English), Inanda Radio (Zulu), Mosupatsela FM (Sesotho/Tswana), Kangala Community Radio (Zulu/Ndebele), Moutse Community Radio (Sesotho).

#### **7.6. Challenges**

- (i) The interface of the electronic data systems between DoJ&CD, SAPS, DCS and DOH is still in progress; hence the delay in obtaining data of historic convictions. It may also be mentioned that regular meetings with the Integrated Justice System (IJS) are being held, to fast-track and report on this process;
- (ii) The issuing of clearance certificates for the purpose of approving the appointment of a person as a foster parent, kinship care-giver, temporary safe care-giver, an adoptive parent or curator in terms of the Children's Act, 2005 (section 48(1)) was suspended on the 4<sup>th</sup> December 2009 by the North Gauteng High Court, Pretoria, pursuant an agreement between Child Welfare SA (the applicant) and the Registrar for the National Register for Sex Offenders and the Minister of Justice and Constitutional Development.
- (iii) About 12 000 cases of historic convictions received from SAPS could not be captured in the NRSO ICMS due to missing details of the victim. In response, the Department has commenced with the Data Verification Project to manually trace and verify these cases from the archives.

# Chapter 8: Research and Policy Development

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The Department conducts research studies, whenever the need arises, mainly to address challenges identified in the implementation of the Act. During this time of reporting, the following research studies were conducted:

## **8.1. Investigation on the Viability of the Re-establishment of Sexual Offences Courts**

Over the past year, Parliament has raised numerous concerns regarding the demise of Sexual Offences Courts in South Africa. These concerns were triggered to a large extent by the media focus on the unacceptably high rate of sexual violence perpetrated against women, children, persons with disabilities, older persons, and especially against certain marginalized groups, such as the LGBTI community and persons with disabilities. This was exacerbated by severe criticism from the United Nations Committee on the Convention on the Elimination of Discrimination against Women in January 2011 in response to the 'closure' of the Sexual Offences Courts, since these courts had been recognised as an international best practice.

In June 2012, the former Minister of Justice and Constitutional Development established the Ministerial Task Team on the Adjudication of Sexual Offences Matters (MATTSO) to investigate the feasibility of re-establishing Sexual Offences Courts in South Africa. This Task Team had the representation of the Department (Chief Directorate: Promotion of the Rights of Vulnerable Groups), NPA (SOCA Unit), Regional Court Presidents Forum, Legal Aid South Africa, Justice Sector Strengthening Programme (JSSP) and the Foundation for Human Rights (to represent the interests of the civil society). In the execution of its mandate, MATTSO successfully conducted the following research studies:

- (i) **The literature research** into the establishment and the functioning of the former Sexual Offences Courts. This research took an analytical approach to the functionality, successes and limitations of the operation of these courts, as experienced in the past. It further examined the efficacy of the Blueprint for Sexual Offences Courts with the aim of determining the feasibility of strengthening it in areas of weakness;
- (ii) **The field study** involved the collection of information to determine

- the current status of the sampled Sexual Offences Courts, and identified current flaws and the possible intervention actions that may be undertaken;
- (iii) **The International Comparative Study on the Sexual Offences Court Model** was conducted to address gaps identified from the blueprint, whilst strengthening the key areas of success; and
  - (iv) **The National Resource Audit** of all regional courts (including the circuit courts) to determine resources available to support the re-establishment of the Sexual Offences Courts. It is also intended to guide costing process of the re-establishment of these courts.

From these studies, MATTSO made a major recommendation that South Africa urgently needs the re-introduction of the Sexual Offences courts, and that the re-establishment process should unfold as follows:

- (i) 57 regional courts that are resourced closest to the new Sexual Offences Courts Model must be upgraded into Sexual Offences Courts over a period of 3 years commencing in 2013/2014; and thereafter
- (ii) 106 regional courts must be upgraded into Sexual Offences Courts, as per the new Sexual Offences Courts Model.

It must be noted that the resource costing conducted by MATTSO counted these courts as courtrooms for budget allocation purposes, and this has been a pattern followed in this Sexual Offences Courts Project.

MATTSO officially handed their investigation report to the former Minister on the 6<sup>th</sup> August 2013. In following the recommendations of the MATTSO Report, the Department commenced with the process of re-establishment of Sexual Offences Courts in August 2013, and had as at 31 March 2014 established a total of 21 sexual offences courtrooms. Please refer to Chapter 4 of this report to get the list of these courtrooms.

For the full findings and recommendations made by MATTSO, please further refer to the attached 'ANNEXURE 'A' which is the MATTSO Investigation Report titled: 'REPORT ON THE RE-ESTABLISHMENT OF SEXUAL OFFENCES COURTS, August 2013'.

## **8.2. Costing of Sexual Offences Courts**

In 2013, the Department assisted MATTSO and conducted a mini-research to determine the estimated costs of establishing a zero-resourced sexual offences court with all its infrastructural and victim support services. The costing was done on the establishment and operation of this court over a

period of three (3) years, and the findings were as follows:

**Table 12: Sexual Offences Courts Preliminary Cost Per Courtroom**

Preliminary Costing of a Zero-resourced Courtroom			
ITEM	YEAR 1	YEAR 2	YEAR 3
<b>Assets</b>	87, 241	0	0
<b>Human capacity</b>	2 217, 846	2 339, 828	2 480, 218
<b>TOTAL COST</b>	2 305, 088	2 339, 828	2 480, 218

**Source: Costing Unit**

It must be noted that, thus far, the Department is upgrading courtrooms that already have some of the required resources. During this period of reporting, R11, 052, 860 was spent in upgrading 21 regional court rooms into Sexual Offences Courtrooms.

### **8.3. The National Strategic Plan for Sexual Offences Courts**

In November 2013, the Department signed an agreement with UNICEF to co-develop a National Strategic Plan (NSP) for the intersectoral establishment and management of sexual offences courts.

As stressed by the MATTSO Report, the Sexual Offences Courts Project must involve the collective planning, establishment and the management of the stakeholders of the sexual offences sectors- under the leadership of the Department. The MATTSO Report found the inadequate intersectoral approach as one of the major contributors to the demise of these courts. It is therefore in this context that the need for the Intersectoral National Strategic Plan was identified.

During this reporting time, the Department and UNICEF produced the Draft National Strategic Plan to guide both the establishment and management of these courts. This document will be finalised in 2014/2015. It identifies activities by the different government stakeholders and requires the sharing of resources between such stakeholders. Through this document, it is anticipated that the implementing Departments will be able to know what is expected of them and to plan and budget for such.

# Chapter 9: Monitoring and Evaluation

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## 9.1. Introduction

The Department developed the Integrated Case Management System (ICMS) for Sexual Offences to collect statistics on sexual offences. The aim is to monitor the performance of courts in the prosecution and adjudication of these cases.

It must be noted that statistics between Departments/ institutions still differ to a certain extent due to the different methodologies and tools used by the various stakeholders. This scenario continues to present a risk against securing reliable statistical data in the country.

Although the Department is mainly collecting statistics on the offences created in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, there are still few old cases that are still being dealt with in terms of the former Sexual Offences Act No 23 of 1957 or common law. These are the cases that were registered before the promulgation of the new Act, and could not be finalized at the time due to various reasons, which include the unavailability of state/ defence witnesses, the delayed execution of a warrant for the arrest of the accused, the lack of adequate evidence, etc. It is therefore through these limitations that the reliability of statistics remains a challenge.

Using the ICMS, the Department is able to identify the trends of offending, the provinces that have the highest figures of offending rates, the prevalent charges of sexual offences, etc. Through the statistics, appropriate interventions are channelled to where they are needed most. The Department is consistently improving the ICMS to enhance the quality of the data.

## 9.2. Summary of Sexual Offences Statistics: 2012/2013 and 2013/2014

The table below provides the summary of sexual offence cases reported and dealt with during the financial years 2012/2013 and 2013/2014 in the regional courts.

**Table 13: Summary of Statistics of Sexual Offence Cases**

Financial year	New Cases	Finalised			Removed from the roll					Cases Disposed	Outstanding Cases
		Guilty	Not Guilty	Other: Finalised	Other: Removed from the roll	Struck Of Roll	Transferred	Warrant of Arrest	Withdrawn		
2012/2013	10 806	4 698	3 276	255	55	1 993	235	808	6 568	17 888	11 217
2013/2014	10 875	4 401	2 990	200	152	1 794	454	674	5 478	16 143	10 750
% Change	0.64	-6.32	-8.73	-21.57	176.36	-9.98	93.19	-16.58	-16.60	-9.76	-4.16

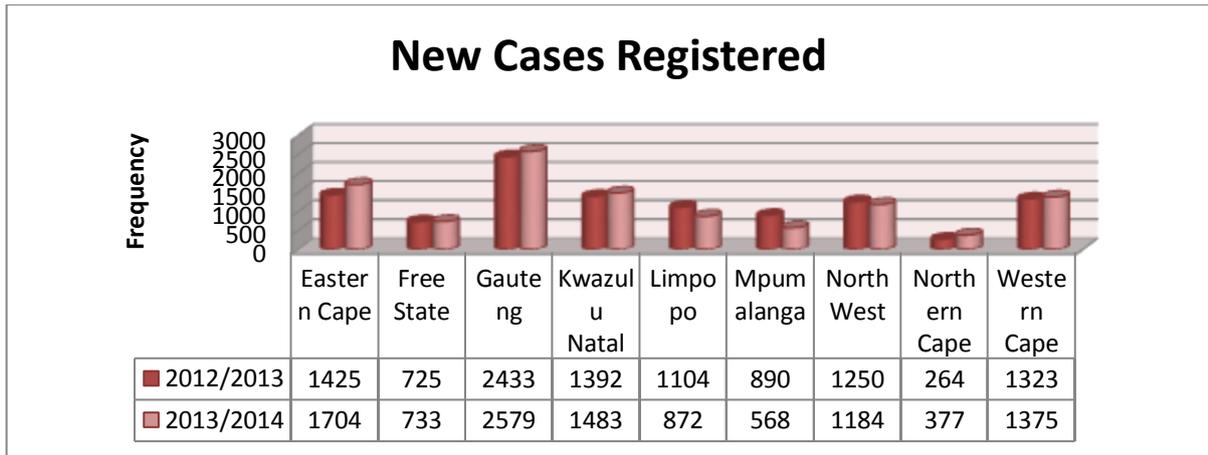
**Source: NOC**

The Table above compares the statistics of two financial years (2012/2013 and 2013/2014). The Total Case Load for the 2013/14 financial year was 22 092. Out of the 7 591 finalised cases, 4 401 cases had the guilty verdict. This means that 57.9% of the finalised cases secured convictions. This must be viewed in a positive light since the achievement of convictions in these cases has been a historical challenge.

### 9.3. New Cases Registered

**Figure 1: Total number of New Cases Registered at Regional Courts**

The increase in the number of new cases registered may be construed as an indication that more victims of sexual offences are coming forward to report these cases than in the past. As it is known, the under-reporting in cases of sexual offences has been a challenge for many years; hence it might not be possible for our country to know the exact figure of sexual offending in every community.

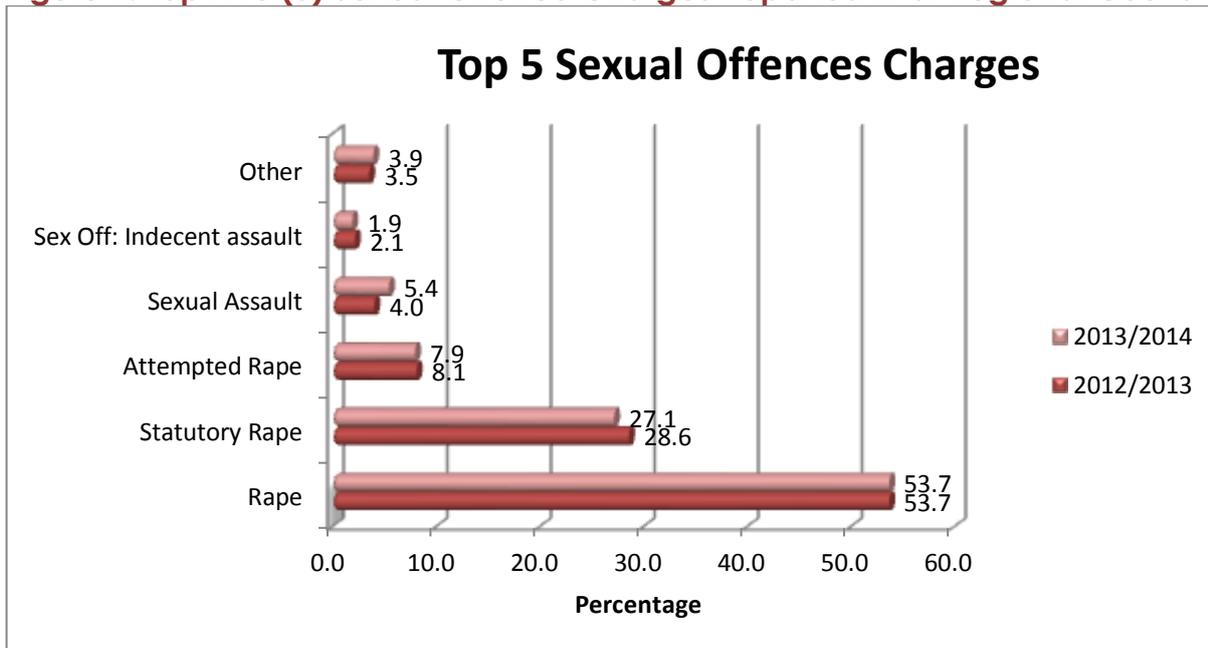


Source: NOC

Figure 1 compares the total number of New Cases Registered at Regional Courts per province between 2012/2013 and 2013/2014 reporting periods. Gauteng Region recorded the highest number of cases followed by the Kwa-Zulu-Natal and Western Cape. According to the 2011 population statistics, Gauteng and Kwa-Zulu Natal have comparative population rates of about 12 million and 10 million people, respectively. It has also been noted that, despite the fact that Western Cape Province has about 5.9 million people, it continually records a relatively high figure of new registered cases.

#### 9.4. Top 5 Reported Charges of Sexual Offences

Figure 2: Top Five (5) Sexual Offence Charges Reported in at Regional Courts



Source: NOC

The above Figure shows that “Rape” is the most predominant sexual offence charge reported with more than a half (53.7 %) in both financial years, followed by “Statutory Rape” with more than a quarter (28.6 %) and 27.1 % in 2012/2013 and 2013/2014, respectively.

### 9.5. Top 10 Courts with High Volume of New Sexual Offences Cases

**Table 14: Top Ten (10) Regional Courts that Reported High Volume of New Cases**

Regional Court	2012/2013	Regional Court	2013/2014
Mbombela	368	Soweto	351
Johannesburg	350	Pretoria	286
Zwelitsha	306	Johannesburg	285
Bloemfontein	274	Paarl	266
Pretoria	262	Mthatha	254
Wynberg [WC]	251	Mount Frere	245
Durban	247	Zwelitsha	237
Mthatha	228	Ga-Rankuwa	234
Paarl	225	Wynberg [WC]	231
Polokwane	213	Tembisa	225

**Source: NOC**

During this reporting period, the regional court in Soweto received the highest number of 351 new cases. As a result, the Department plans to upgrade this court into a Sexual Offences Court in 2014/2015. The Pretoria and Johannesburg regional courts are also in the 2014/ 2015 list of courts that will be upgraded.

It must also be noted that during this reporting period, three (3) regional court rooms of Bloemfontein were converted into Sexual Offences Courts, while 3 more regional courtrooms of Wynberg were also upgraded into Sexual Offences Courts.

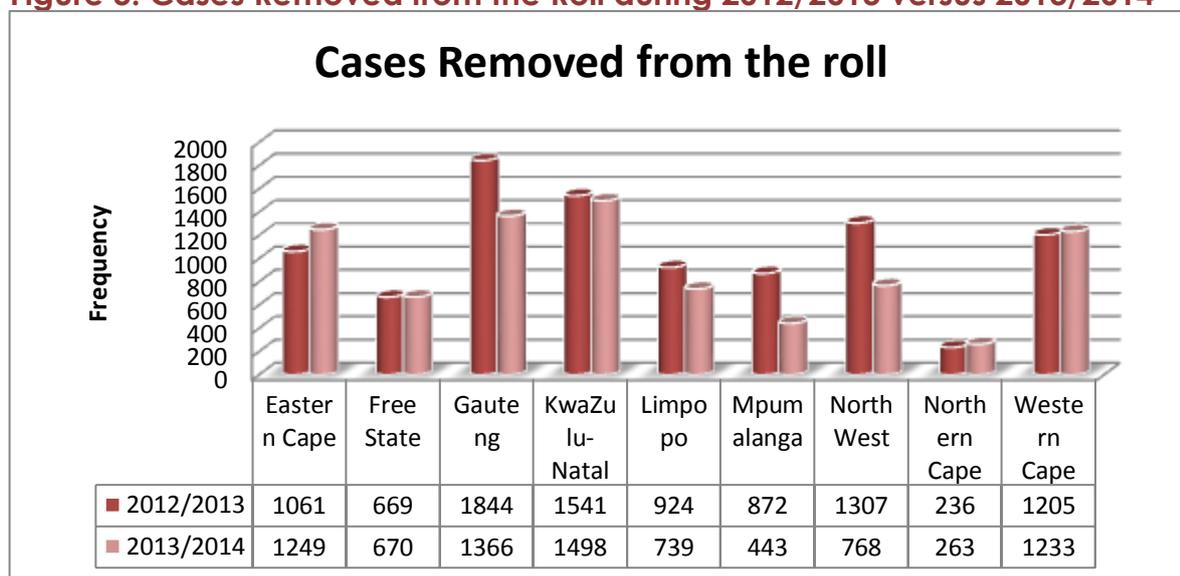
**Challenge:** The Umtata regional court was among the list of courts identified for upgrading in 2013/2014; however the lack of adequate infrastructure to accommodate the specifications of the new Sexual Offences Courts Model became the biggest hindrance. The Department has, nevertheless, kept this court in the list with the aim of finding a solution.

### 9.6. Cases Disposed of

Cases disposed of refer to cases that were finalized and those removed from the court roll for various reasons, including cases where the accused or complainant disappeared after the court had recorded the plea of the accused or where the State could not proceed with the case due to insufficient evidence. The following Table illustrates the total number of cases

disposed of (i.e. cases removed from the roll and cases finalized) in the regional courts during the financial years of 2012/2013 and 2013/2014:

**Figure 3: Cases Removed from the Roll during 2012/2013 versus 2013/2014**



**Source: NOC**

Figure 3 indicates that on average, there was a decrease in the number of cases removed from the roll between 2012/2013 and 2013/2014. However, the Department considers the current volume of cases struck off the roll as a concern; as a result this matter will be investigated in 2014/2015.

**Table 15: Top Ten (10) Regional Courts that Disposed of High Volume of Cases**

Regional Court	2012/2013	Regional Court	2013/2014
Wynberg [WC]	513	Wynberg [WC]	430
Bloemfontein	494	Johannesburg	366
Port Elizabeth	445	Mthatha	335
Durban	435	Zwelitsha	315
Johannesburg	409	Bloemfontein	310
Zwelitsha	400	Pietermaritzburg	307
Mbombela	394	Ga-Rankuwa	301
Pietermaritzburg	368	Pretoria	294
Soweto	335	George	291
Temba	327	Mbombela	276

**Source: NOC**

The above Table indicates the newly-established Wynberg Sexual Offences Court as the court that disposed the highest number of cases during both financial years. Three (3) Bloemfontein and two (2) Pietermaritzburg regional courtrooms were also upgraded into Sexual Offences Courts.

## 9.7. Outstanding Cases

Tables below illustrate the total number and percentages of pending / outstanding Sexual Offences Cases as at 31<sup>st</sup> March 2013 and end of 31<sup>st</sup> March 2014 in Regional courts.

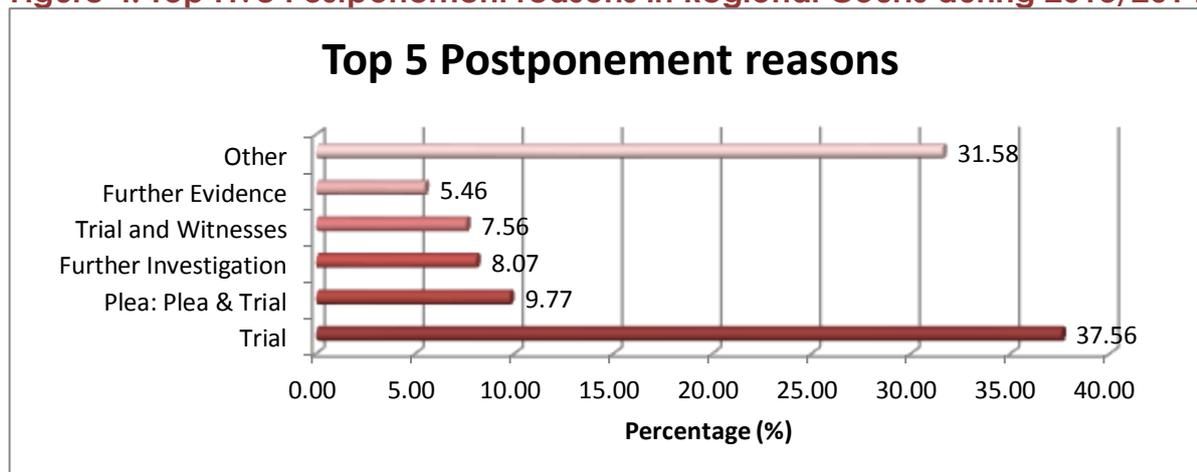
**Table 16: Comparison of Outstanding cases in Regional courts**

Province	2012/2013	2013/2014	% Change
Eastern Cape	1 627	1 578	-3.01
Free State	803	588	-26.77
Gauteng	2 033	1 902	-6.44
KwaZulu-Natal	1 886	1 842	-2.33
Limpopo	975	802	-17.74
Mpumalanga	867	695	-19.84
North West	1 290	1 320	2.33
Northern Cape	340	382	12.35
Western Cape	1 396	1 641	17.55
<b>Grand Total</b>	<b>11 217</b>	<b>10 750</b>	<b>-4.16</b>

**Source: NOC**

Table above indicates the percentage change of outstanding cases in all provinces. The Western Cape had an increase of 17.55 percent in outstanding cases. In total, the outstanding cases in all Regional Courts decreased from 11 217 to 10 750 cases, i.e. -4.16 percentage change. This reduction may be attributed to the establishment of 21 Sexual Offences Courts during this period.

**Figure 4: Top Five Postponement reasons in Regional Courts during 2013/2014**



**Source: NOC**

Figure above indicates five (5) Postponement reasons of cases of sexual offences during the 2013/2014 financial year. It shows that over a third (37.6 percent) cases were postponed for trial.

**Table 2: Top ten Regional Courts which had the highest volume of Outstanding Cases**

<b>Regional Court</b>	<b>2012/2013</b>	<b>Regional Court</b>	<b>2013/2014</b>
<b>Bloemfontein</b>	444	Wynberg [WC]	283
<b>Mbombela</b>	345	Zwelitsha	264
<b>Johannesburg</b>	338	Johannesburg	263
<b>Mthatha</b>	305	Paarl	247
<b>Wynberg [WC]</b>	287	Pretoria	244
<b>Ga-Rankuwa</b>	277	Mthatha	238
<b>Zwelitsha</b>	261	Pietermaritzburg	226
<b>Pretoria</b>	244	Ga-Rankuwa	224
<b>Pietermaritzburg</b>	237	Bloemfontein	213
<b>Madadeni</b>	202	Klerksdorp	212

**Source: NOC**

Table 5, above indicates ten (10) regional courts which had the highest volume of outstanding cases as at the end of the two (2) financial years. The Bloemfontein regional court had the highest number of outstanding cases as at the end of 31<sup>st</sup> March 2013, while Wynberg regional court had the highest number of outstanding cases as at the end of 31<sup>st</sup> March 2014. It must be noted that these are courts that also registered the highest numbers of new cases during both financial years.

NOTE: The Department is in a process of collecting separate statistics in the new Sexual Offences Courts so as to compare their performances with other regional courts which also deal with sexual offences cases.

# Chapter 10: Legal and Policy Developments

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The Department has the Legislative Development Unit that is mainly responsible for legislative development and reviews. During this reporting period, this Unit has achieved the following:

## **10.1. Publication of the Sexual Offences National Policy Framework (the NPF)**

In September 2013, the Department published the revised National Policy Framework (NPF) on the Management of Sexual Offences by notice in the gazette No 36804 dated 6<sup>th</sup> September 2013. This process was delayed by the fact that the Department was awaiting a response from Parliament after the Minister had tabled the NPF in August 2012. The Department subsequently found that there was nothing precluding such publication in terms of section 62 of the Act. In execution of the resolution made by the DG ISC in a meeting held on 26 March 2013, the Department published the NPF.

## **10.2. Judicial Matters Second Amendment Bill 51 of 2013**

One of the recommendations of the MATTSO Report on the Re-establishment of the Sexual Offences Courts is that the establishment of the Sexual Offences Courts must be supported by the legislation. As a result, the Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013) was signed into law in January 2014. It amends the Act by inserting section 55A to provide the Minister with the authority to designate a court as a Sexual Offence Court for the purpose of hearing cases of sexual offences.

## **10.3. Pending Amendments of sections 15 and 16 of the Act**

The Teddy Bear Clinic for Abused Children and RAPAN v Minister of Justice and Constitutional Development and Another (73300/10) [2013] ZAGPPHC1 (Teddy Bear case) challenged the constitutionality of sections 15 and 16 of the Act on the basis that these provisions criminalized consensual sex of children between who are of the age 12 and those who are older, but younger than 16. The basis of the arguments presented by the Centre for Child Law on behalf of the applicant hinged on the extent to which these sections infringed on children's rights, especially the right to dignity. The High Court declared the provisions as unconstitutional. This matter will be considered by the Constitutional Court to determine the unconstitutionality of the provisions i.e. to decide whether or not to confirm the order of the High Court. The Legislative Development unit of the Department is in the process of re-crafting the provisions to align them to the Constitution.

#### **10.4. The Constitutionality of section 50(2) (a) of the Act**

Section 50(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 reads:

*'(2) (a) A court that has in terms of this Act or any other law-*  
*(1) Convicted a person of a sexual offence against a child or a person who is mentally disabled and, after sentence has been imposed by that court for such offence, in the presence of the convicted person; or*  
*(2) Made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was, by reason of mental illness or mental defect, not criminally responsible for the act which constituted a sexual offence against a child or a person who is mentally disabled, in the presence of that person,*  
*must make an order that the particulars of the person be included in the Register,*  
*(b) When making an order contemplated in paragraph (a), the court must explain the contents and implications of such an order, including section 45, to the person in question.'*

The constitutionality of section 50 (2) (a) of the Act was challenged in the case of *J v National Director of Public Prosecutions and Another* (CCT 114/13) (6 May 2014). The Constitutional Court declared the section unconstitutional.

The section provides that when a person is convicted of a sexual offence against a child or person who is mentally disabled, a court must make an order to include the offender's particulars on the National Register for Sex Offenders (NRSO).

The challenge in this case is that the effect of the provision could automatically lead to the inclusion of a child in the NRSO where he or she is convicted of an offence against a child or a mentally disabled person. The fact that the child is not given the opportunity to respond to his or her inclusion in the NRSO was one of the argument presented.

As a result of these two cases, the Department is in consultation with the other stakeholders to investigate the possibility of recommending the amendment of the affected provisions.

# Chapter 11: Limitations

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## 11.1. Introduction

This report evidently shows the progressive achievements made by the Department in the intervention against sexual offences. The major highlights are the finalization of the MATTSO investigation into the viability of sexual offences courts and the quick commencement by the Department to implement the MATTSO recommendations. The former Minister of Justice and Constitutional Development officially received the MATTSO Report on the 6<sup>th</sup> August 2013, and in the same month, he launched the first Sexual Offences Court in Butterworth. As at 31 March 2014, 21 Sexual Offences Courtrooms have been successfully established throughout the country. The fact that, during this reporting time, the total outstanding cases at regional courts have decreased from 11 217 to 10 750 cases, ought to be viewed as an indication of the speedy finalization of these cases by the recently established sexual offences courts.

## 11.2. Limitations and Possible Solutions

However, the implementation of the Act continues to experience some limitations in the following areas:

LIMITATIONS	POSSIBLE RESOLUTIONS
The outdated organizational structure of the Chief Directorate: Promotion of the Rights of Vulnerable Groups, which currently operates with one deputy director.	The urgent revision of the structure to provide adequate human capacity for the sexual offences component. As the Department is the lead Department in the intersectoral implementation of the Act, the revised structure must also provide a component to deal with stakeholder management and functions related to the intersectoral monitoring of the implementation of the Act
High turnover in intermediary services due to the fact that the Department operates with contract intermediaries.	The finalization of the job evaluation and creation of permanent posts for intermediaries within the Department. The approval of the creation of these posts is currently pending at DPSA.
The lack of interface between the	The Integrated Justice System (IJS) is

LIMITATIONS	POSSIBLE RESOLUTIONS
data capturing systems between the implementing departments/ institutions. This leads to imbalanced reporting on statistics.	attending to this matter, in consultation with the Department.
The Judicial Matters Second Amendment Act 43 of 2013 needs to bring clarity as to whether it is the entire court building or a particular regional courtroom that may be designated into a sexual offences court	The Department has commenced with stakeholder consultation process to address this matter.
The delays in the submission of national reports by some of the implementing departments/ institutions sometimes leads in delayed compliance with section 65(3) of the Act by the Minister (i.e. the tabling of these reports in Parliament by the Minister)	It is recommended that section 65(3) be reviewed to address this matter.
There is no dedicated budget for the re-establishment of sexual offences courts	National Treasury has been approached to assist in this regard.
It is presently difficult to measure the impact of public education initiatives due to lack of indicators	The development of national indicators for public education interventions is currently in the agenda of the National Council on Gender-based violence. The Council is based at the Department of Women, and the Department is represented at Council's EXCO.
The possible duplication of resources in the management of separate NRSO and NCPR	The Department established a Task Team with DSD to investigate the feasibility of merging the two national registers.