

**GENERAL NOTICE**  
**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**INVITATION FOR PUBLIC COMMENTS**  
**DRAFT REGULATIONS RELATING TO SEXUAL OFFENCES COURTS: CRIMINAL LAW**  
**(SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT, 2007 (ACT NO. 32**  
**OF 2007)**

1. The Department of Justice and Constitutional Development invites interested parties to submit written comments on the proposed draft Regulations relating to Sexual Offences Courts, 2017 (the draft Regulations).
2. The Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013) amends the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), to enable the Minister of Justice and Correctional Services to—
  - (a) establish, by notice in the *Gazette*, courts as sexual offences courts to deal with sexual offences cases; and
  - (b) make regulations necessary to give effect to the established sexual offences courts, including the requirements for the efficient and effective functioning thereof.
3. The draft Regulations were published for public comments on 30 September 2015 in Government Notice No. 899 of 30 September 2015. All the comments received were taken into account as well as amendments required because of the changes effected to section 55A of the Act by the Judicial Matters Amendment Act, 2017 (Act 8 of 2017). The draft Regulations furthermore needed to be reconsidered having regard to the financial constraints facing the Department. All these factors necessitated amendments to the draft regulations as was published on 30 September 2015 and therefor further consultation with interested parties.
4. The draft Regulations still focus on elements of efficiency and effectiveness of the sexual offences courts, aim to provide for protective measures for victims to be available at these courts and also focus on the needs of persons with disabilities. The draft Regulations still provide for basic requirements before a court may be established as a sexual offences court and advanced requirements, which must be realized progressively.
5. A copy of the draft Regulations is available on the website of the Department at <http://www.justice.gov.za>.
6. The comments on the draft Regulations must be submitted to Ms A Van der Walt, on or before 12 January 2018. The contact details are:
  - (a) Postal address:  
The Director-General: Justice and Constitutional Development  
Private Bag X 81  
Pretoria  
0001;
  - (b) e-mail address:  
[alvanderwalt@justice.gov.za](mailto:alvanderwalt@justice.gov.za)
  - (c) Fax nr:  
0866480963
7. Further information can be obtained from Ms A van der Walt at 012 406 4767 or Dr I Botha at 012 406 4756.

**GOVERNMENT NOTICE**  
**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R.

2017

**CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT  
ACT, 2007 (ACT NO. 32 OF 2007): REGULATIONS RELATING TO SEXUAL  
OFFENCES COURTS**

The Minister of Justice and Correctional Services has, under section 67 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) and in consultation with the Chief Justice, made the regulations in the Schedule.

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## **CHAPTER I DEFINITIONS**

### **Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates—

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"court preparation officer"** means the incumbent of a post of court preparation officer and, where applicable, the incumbent of a post of court preparation manager created on the establishment of a Director of Public Prosecutions;

**"Criminal Procedure Act"** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**"Director-General"** means the Director-General of the Department of Justice and Constitutional Development;

**"established court"** means a court designated by the Minister and at which a sexual offences court has been established in terms of section 55A(1) of the Act;

**"Executive Director"** means the Executive Director of the Independent Police Investigative Directorate, appointed in terms of section 6(1) of the IPID Act;

**"FCS Unit"** means the Family Violence, Child Protection and Sexual Offences Unit established within the South African Police Service;

**"forensic social worker"** means a qualified social worker who practices forensic work in a FCS Unit;

**"heads of the various courts"** means in respect of—

- (a) the High Court of South Africa, the Judge President of the Division;
- (b) a court for a regional division, the Regional Court President; and
- (c) a court for a district, the head of the administrative region contemplated in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

**"intermediary"** means a person appointed in terms of section 170A(1) of the Criminal Procedure Act;

**"investigating officer"** means—

- (a) an investigating officer defined in section 27 of the Act; and
- (b) an investigator as defined in section 1 of the IPID Act who must investigate a sexual offence in terms of section 28(1)(d) and (e) of that Act;

**"IPID Act"** means the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);

**"Khuseleka Centres"** means the One Stop Centres established by the Department of Social Development which provide support services to women and children who are victims of crime and violence, including victims of sexual offences;

**"Legal Aid South Africa Act"** means the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014);

**"National Commissioner"** means the National Commissioner of the South African Police Service appointed in terms of section 207(1) of the Constitution;

**"National Prosecuting Authority"** means the national prosecuting authority contemplated in section 179 of the Constitution;

**"National Qualifications Framework Act"** means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);

**"older persons"** means a person who, in the case of—

- (a) a male, is 65 years of age or older; and
- (b) a female, is 60 years of age or older;

**"relevant functionaries"** means the National Commissioner, the National Director of Public Prosecutions, the Director-General of the Department of Social Development and the Director-General of the Department of Health;

**"sexual offence"** means—

- (a) a sexual offence as defined in section 1 of the Act;

- (b) a sexual offence—
- (i) in terms of the common law; and
  - (ii) in terms of the Sexual Offences Act, 1957 (Act 23 of 1957), committed prior to the date of commencement of the Act;

**“South African Qualifications Authority”** means the South African Qualifications Authority contemplated in the National Qualifications Framework Act;

**“Thuthuzela Care Centres”** means the multi-disciplinary one-stop centres for rape care management, including other sexual offences, established by the National Prosecuting Authority and supported by relevant stakeholders;

**“the Act”** means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); and

**“witness”** means a witness for the State in a sexual offences case, excluding a complainant.

## **Application of Regulations**

2. (1) These Regulations apply to an established court.
- (2) Any volunteer or person in the employment of any non-governmental organisation may render a service provided for in these Regulations if he or she is suitably qualified and meets the requirements provided for in these Regulations and despite the fact that he or she is not in the employment of the functionary referred to in any of these Regulations.

## **CHAPTER II REQUIREMENTS FOR ESTABLISHED COURT**

### **Requirements for established court**

3. (1) An established court must comply with the following requirements:
- (a) An established court must have the facilities provided for in Chapter III;
  - (b) an established court must have the devices and equipment provided for in Chapter IV;
  - (c) the services provided for in Chapter V must be rendered at an established court;
  - (d) the persons involved in the investigation of and proceedings in respect of a sexual offence in an established court must comply with the requirements provided for in Chapter VI; and
  - (e) the proceedings in an established court must comply with the special requirements provided for in Chapter VII.
- (2) Subregulation (1) does not preclude an established court from dealing with a sexual offences case if, after its establishment, it does not comply with

any of the requirements referred to in subregulation (1) and pending the outcome of the steps referred to in subregulation (4) to ensure compliance with the relevant requirement.

(3) It is the responsibility of all the functionaries and persons working at an established court to report non-compliance with a requirement referred to in subregulation (1), to the relevant functionary, person or institution.

(4) The functionary, person or institution receiving the report referred to in subregulation (3), must take immediate steps to ensure compliance with the requirement in question.

(5) The persons or functionaries referred to in regulations 5, 8,12, 13, 16, 17, 18, 22, 24, 25, 28, 32, 34, 36, 38, 41, 42, 44, 48 and 53, must take all reasonable steps to ensure that the long term requirements provided for in these Regulations are realised progressively.

(6) In the report referred to in section 65(3) of the Act, an indication must be given as to the steps that have been taken to realise the long term requirements.

(7) The facilities referred to in these Regulations must—

- (a) be accessible to the guide dogs used by complainants and witnesses in sexual offences cases who are visually impaired; and
- (b) accommodate assistive devices of complainants and witnesses with disabilities.

### **CHAPTER III FACILITIES AT ESTABLISHED COURT**

#### **Basic requirements regarding facilities**

- 4.** An established court must have at least the following facilities:
- (a) A waiting area for child complainants as provided for in regulation 10;
  - (b) a waiting area for adult complainants as provided for in regulation 10;
  - (c) a testifying room as provided for in regulation 11;
  - (d) a court preparation room;
  - (e) an office for the designated social worker;
  - (f) an office for the prosecutor dealing with sexual offences cases; and
  - (g) a holding cell attached or adjacent to the established court.

#### **Long term requirements regarding facilities**

**5.** Subject to regulation 3(5), the Director-General must ensure that an established court has the following facilities:

- (a) Separate restrooms for complainants;

- (b) an office for the intermediary; and
- (c) a court room as provided for in regulation 12.

### **General requirements regarding facilities**

6. (1) The facilities referred to in regulations 4(a), 4(c), 4(d), and 5(a) must be child-friendly.

(2) The facilities referred to in regulations 4 and 5 must be fully accessible to persons with disabilities and comply with section 9(c) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) and must accommodate the needs of older persons.

(3) The court manager at an established court must ensure that there is proper and accessible signage of the location of the facilities referred to in regulations 4 and 5 at such a court.

(4) The court manager at an established court must ensure that the facilities referred to in regulations 4 and 5 are available, allocated, and furnished as required in terms of these Regulations.

### **Basic requirements regarding facilitation of access to facilities**

7. A court preparation officer at an established court must accompany a complainant to and from any of the facilities referred to in regulations 4 and 5 if there is no direct access to and from any of these facilities.

### **Long term requirements regarding situation of facilities**

8. (1) Subject to regulation 3(5), the facilities contemplated in regulations 4 and 5 must be in close proximity to the entrance of the building.

(2) Subject to regulation 3(5), the facilities referred to in regulation 4(a) to (f) and 5 must be situated at such a place and in such a manner that there is direct access to and from all the facilities to avoid contact with an accused person.

(3) Subject to regulation 3(5), the facilities referred to in regulations 4(a) to (f) and 5 must be situated at close proximity to each other.

(4) Subject to regulation 3(5), complainants—

- (a) with disabilities;
- (b) who are older persons;
- (c) who are children,

must have equal access and protection.



## Use of facilities

**9.** (1) (a) The facilities referred to in regulation 4(a) and (b) may only be used by—

- (i) a complainant; and
- (ii) if there is space available, the persons supporting a complainant but subject to a maximum of three persons, unless the complainant is a person with a disability or an older person or a child, in which case the limitation does not apply.

(b) The facilities referred to in regulation 5(a) may only be used by a complainant.

(c) The court preparation officer must, if there is on a particular day not sufficient space in the waiting area for adult complainants and the persons supporting them, determine, in consultation with the relevant prosecutor and after having considered the following factors, whom of the complainants may use the waiting area:

- (i) The profile of the complainant, including the age and level of vulnerability of the complainant; and
- (ii) any other factor that the court preparation officer may deem relevant for this purpose.

(d) The court preparation officer must designate a room where an adult complainant and the person supporting him or her for whom there is no space in the waiting area, can wait, and accompany that complainant and the persons supporting him or her to the said room.

(2) A court preparation officer must—

- (a) ensure that no person other than the persons referred to in subregulation (1)(a) make use of any facility referred to in that subregulation; and
- (b) direct any person not authorised to use a facility referred to in subregulation (1)(a) to leave the facility immediately.

(3) When a complainant or a witness is about to give evidence or is giving evidence in a testifying room, the intermediary must—

- (a) ensure that no person whose presence is not required in the testifying room enters the testifying room; and
- (b) direct any unauthorised person who entered the testifying room, to leave the testifying room immediately.

## Basic requirements regarding waiting areas

**10.** (1) The waiting areas for complainants referred to in regulation 4(a) and (b) must be furnished in a manner aimed at the following:

- (a) Setting a complainant and witness at ease;
- (b) ensuring proper ventilation; and
- (c) being accessible to complainants with disabilities and who are older persons.

(2) The waiting areas referred to in subregulation (1) must be furnished in a manner taking into account the following:

- (a) The different ages of child and adult complainants;
- (b) persons other than complainants, namely the persons referred to in regulation 9(1)(a)(ii), may use the waiting areas; and
- (c) complainants and the persons referred to in regulation 9(1)(a) may have to spend lengthy periods of time in the waiting areas.

(3) The court manager at an established court must ensure that in the waiting areas referred to in subregulation (1)—

- (a) information, accessible to persons with disabilities and older persons, about—
  - (i) court procedures, the role of a complainant and a witness, witness fees payable to complainants and witnesses and any other relevant court service; and
  - (ii) appropriate resources relating to victim empowerment support services; and
- (b) toys and, where possible, educational items for children, are available, having regard to the different age groups of complainants and the other persons referred to in regulation 9(1)(a)(ii) and the needs of complainants.

(4) The information referred to in subregulation (3)(a), insofar as it relates to the powers, roles and responsibilities of the National Prosecuting Authority, must be developed in collaboration with the National Director of Public Prosecutions.

### **Basic requirements regarding testifying rooms**

**11.** A testifying room referred to in regulation 4(c) must have the following features in addition to the features contemplated in section 170A(3)(a) to (c) of the Criminal Procedure Act:

- (a) It must be conducive to the proceedings;
- (b) the lay-out of the testifying room must facilitate the enhancement of the quality of the evidence and set the complainants and witnesses at ease;
- (c) it must be furnished in a manner that will not distract a complainant or a witness who is giving evidence; and
- (d) it must have sufficient lighting so that clear images can be conveyed to the court.

### **Long term requirement regarding court rooms**

**12.** (1) Subject to regulation 3(5), a court room referred to in regulation 5(c) must, in addition to the features contemplated in section 170A(3)(c) of the Criminal Procedure Act, comply with the following requirements:

- (a) The lay-out of the court room must facilitate the enhancement of the quality of the evidence of complainants and witnesses of all ages, in particular when a complainant or a witness gives evidence by means of closed circuit television or similar electronic media in terms of sections 158 and 170A of the Criminal Procedure Act;
- (b) for the purposes of a complainant or a witness who is not allowed to give evidence by means of closed circuit television or similar electronic media in terms of section 158 of the Criminal Procedure Act, the accused dock in a court room must—
  - (i) be positioned as far as possible but not less than three metres from the witness dock; and
  - (ii) where practically possible, be positioned in such a manner that a complainant or a witness does not have to walk past the accused person to get to the witness dock; and
- (c) the microphone to be used by the legal representative of the accused must not be positioned between the prosecutor and the complainant or the witness.

(2) The lay-out of a court room referred to in subregulation (1) must take into account the right of equality and dignity of persons with disabilities and older persons.

### **Long term requirements regarding court preparation rooms**

**13.** (1) Subject to regulation 3(5), the Director-General must ensure that a court preparation room referred to in regulation 4(d) has the following features in addition to the features referred to in regulation 10:

- (a) It must be designed in such a manner so as to promote privacy; and
- (b) it must not be accessible to the public, the accused and the defense.

(2) Subject to regulation 3(5), the court manager at an established court must ensure that the court preparation room referred to in subregulation (1)—

- (a) is adequately furnished;
- (b) is furnished in a child-friendly manner;
- (c) have lockable cabinets to store the court preparation devices and equipment and refreshments; and
- (d) has a large notice board on which the court preparation devices and equipment can be displayed.

(3) Subject to regulation 3(5), the court preparation room referred to in subregulation (1) must be spacious in order to accommodate the personal assistant of a complainant or a witness with a disability or an older person.

(4) Subject to regulation 3(5), the court preparation room referred to in subregulation (1) must be furnished in a manner that will not distract a complainant or a witness during a consultation with the court preparation officer.

## **CHAPTER IV DEVICES AND EQUIPMENT AVAILABLE AT ESTABLISHED COURT**

### **Basic requirements regarding devices and equipment for testifying rooms**

- 14.** (1) A testifying room referred to in regulation 4(c) must have—
- (a) the devices and equipment contemplated in section 170A(3)(c) of the Criminal Procedure Act and be installed or set up in accordance with the provisions of that section; and
  - (b) any other devices and equipment required for the giving of evidence by complainants and witnesses.

(2) The devices and equipment referred to in subregulation (1) must be of such quality so as to enable the efficient and effective giving of evidence by complainants and witnesses.

(3) When procuring and installing the devices and equipment referred to in subregulation (1) the needs and requirements of complainants and witnesses with disabilities must be taken into account in order to—

- (a) ensure the efficient and effective giving of evidence by these persons; and
- (b) avoid secondary traumatising for these persons.

### **Basic requirements regarding devices and equipment for court rooms**

**15.** (1) A court room referred to in regulation 5(c) must have the following devices and equipment:

- (a) The devices and equipment contemplated in section 170A(3)(c) of the Criminal Procedure Act; and
- (b) other devices and equipment required for the giving of evidence by complainants and witnesses.

(2) The devices and equipment referred to in subregulation (1) must be of such quality so as to enable the efficient and effective giving of evidence by complainants and witnesses.

(3) When procuring and installing the devices and equipment referred to in subregulation (1) the needs and requirements of complainants and witnesses with disabilities must be taken into account in order to—

- (a) ensure the efficient and effective giving of evidence by these persons; and
- (b) avoid secondary traumatisation for these persons.

### **Long term requirements regarding devices and equipment for court rooms**

**16.** Subject to regulation 3(5), a court room referred to in regulation 5(c) must have a one-way mirror stand on wheels to be placed between the accused and the complainant or witness when testifying in the court.

### **Long term requirements regarding devices and equipment for court preparation programme**

**17.** Subject to regulation 3(5), the National Director of Public Prosecutions must ensure that devices and equipment are provided for the purposes of the court preparation programme for complainants and witnesses, referred to in regulation 19 and are available at an established court.

### **Long term requirements regarding anatomical dolls**

**18.** (1) Subject to regulation 3(5), the court manager at an established court must ensure that there is at least one set of anatomical dolls as referred to in subregulation (2) available at the court for use by—

- (a) a prosecutor at an established court;
- (b) an intermediary appointed by an established court; and
- (c) a social worker at an established court.

(2) A set of anatomical dolls consists of the following:

- (a) A doll representing a male child;
- (b) a doll representing a female child;
- (c) a doll representing a male adult;
- (d) a doll representing a female adult;
- (e) a doll representing an aged male; and
- (f) a doll representing an aged female.

(3) Subject to regulation 3(5), the National Commissioner must ensure that every forensic social worker has a set of anatomical dolls as referred to in subregulation (2).

(4) (a) Subject to regulation 3(5), a prosecutor, an intermediary, a social worker, forensic social worker may only use an anatomic doll after having received training in the use of such dolls.

(b) The training in the use of an anatomical doll must be determined by—

- (i) the NDPP in respect of prosecutors;
- (ii) the Director-General in respect of intermediaries;
- (iii) the Director-General of the Department of Social Development in respect of social workers; and
- (iv) the National Commissioner in respect of forensic social workers, in consultation with an expert in the relevant field.

(5) An anatomical doll must be a replica of the external human body, including the genital organs.

(6) The anatomical dolls must be of different sizes depicting different ages.

(7) The hair and other facial features of an anatomical doll, which may not express any emotion, must correlate with the sex and age of the doll.

(8) The sexual features of an anatomical doll must correlate with the size of the doll and the sex and age of the person represented by the doll.

(9) An anatomical doll must be designed in such a manner and be made of material that allows the complainant or the witness to manipulate the doll in order to demonstrate what has been done to the complainant by using the doll.

(10) (a) Subject to paragraph (b), an anatomical doll must always be clothed.

(b) The clothes of an anatomical doll must be age-appropriate and must be made in such a manner so that they can be removed easily by the complainant or the witness when demonstrating to the persons referred to in subregulation (1) what has been done to the complainant at the time of the alleged sexual offence.

(c) An anatomical doll must when not in use, be placed in a lockable cabinet.

## **CHAPTER V**

### **SUPPORT SERVICES AVAILABLE AT ESTABLISHED COURT**

#### **Basic requirements regarding court preparation programme**

- 19.** (1) The National Director of Public Prosecutions—
- (a) must ensure that a court preparation programme for complainants and witnesses is available at an established court to prepare complainants and witnesses for court proceedings; and

(b) or any person delegated by him or her, must ensure that the persons involved in the criminal justice system are aware of the court preparation programme that is available.

(2) A court preparation programme must also include pre-trial and post-trial emotional containment services for complainants and witnesses in sexual offences cases.

(3) A court preparation programme must be conducted by a court preparation officer at an established court in an area which is not audible to any person other than the persons involved in the court preparation session.

(4) A court preparation officer may not conduct a court preparation programme unless he or she has received training in the court preparation programme referred to in regulation 39.

(5) (a) A court preparation officer must conduct a session with a complainant and a witness in a sexual offences case who has to testify in an established court prior to the consultation by the prosecutor with the complainant or the witness and before giving evidence.

(b) A court preparation officer must, during the session, identify the needs of the complainant and the witness and inform the—

- (i) the relevant prosecutor in a sexual offences case and if necessary, the senior public prosecutor;
  - (ii) designated social worker referred to in regulation 20; and
  - (ii) the court manager, if his or her intervention is required,
- thereof to ensure that these needs to the extent possible, are met.

(c) A court preparation officer must inform the prosecutor in a sexual offences case of—

- (i) any changes in the physical, emotional or mental status of a complainant or a witness;
- (ii) any fears or concerns of a complainant or a witness; and
- (iii) any communication challenges with a complainant or a witness.

(d) A court preparation officer may dispense with the requirement provided for in paragraph (a) if a complainant or a witness so requests.

(e) A court preparation officer, who received a request from a complainant or a witness referred to in paragraph (d), must inform the prosecutor in a sexual offences case accordingly.

(f) A court preparation officer must, after having conducted the session referred to in paragraph (a), refer any complainant or witness in a sexual offences case who is a child to the designated social worker referred to in regulation 20 in order to arrange for a social worker to determine whether the child is emotionally ready for the trial.

(6) A court preparation officer must, during the session referred to in subregulation (5)—

- (a) inform a complainant and witness about the support services and witness fees available to witnesses and how to access these services;
- (b) explain to the complainant and the witness his or her rights when in contact with the criminal justice system;
- (c) explain to the complainant and the witness the court procedures;
- (d) explain to the complainant and the witness his or her role as witnesses and that of the other persons involved in the proceedings;
- (e) inform the complainant that he or she has the right to complete a Victim Impact Statement and explain to him or her the benefits thereof;
- (f) take the complainant and the witness to the court room and, if applicable, to the testifying room where the case will be heard with the aim of familiarising the complainant and the witness with the court interior and its facilities;
- (g) explain to the complainant and the witness how the devices in the testifying room function, if a complainant or a witness is going to give evidence in a testifying room; and
- (h) explain to the complainant and the witness the role of the intermediary, if an intermediary for the complainant or the witness has been or may be appointed.

(7) A court preparation officer must without delay, in writing, inform the prosecutor in a sexual offences case of the outcome of the court preparation session and of the needs of the complainant and witness, if any.

(8) A court preparation officer must, in order to meet the needs of a complainant or a witness, be available to assist—

- (a) the prosecutor in a sexual offences case, if so requested, when the complainant or the witness is giving evidence in court but only after the court preparation session has been concluded for the particular complainant or the witness and having due regard to ethical considerations; and
- (b) an intermediary when the complainant or the witness is giving evidence in a testifying room but only once the court has adjourned and the complainant or the witness has completed giving evidence.

(9) An interpreter must be available to assist the court preparation officer, if required.

(10) A court preparation officer must facilitate the making of a Victim Impact Statement by a complainant for use by the prosecutor but in an area which is not audible to any person other than the persons involved in the court preparation session.

(11) A court preparation officer must after the complainant and witness have concluded their testimony in a sexual offences case, conduct a post-trial containment session with the complainant, witness and caregivers with a view to



containing their emotions and the impact of the court process and to provide information on the future processes of the case.

(12) A court preparation officer must facilitate the referral of a complainant or a witness to an appropriate service provider for continuum of care and in compliance with regulation 21.

### **Basic requirements relating to designated social worker**

**20.** (1) The Director-General of the Department of Social Development must designate a social worker for every established court, who must be available at that court on a full-time or part-time basis to perform the functions and duties conferred upon him or her in terms of these Regulations.

(2) The social worker designated in terms of subregulation (1) must ensure that the reports required in terms of any legislation, court order or request by the prosecutor, for the purposes of court proceedings in respect of a sexual offence, are available at the court within the required period or on the court date.

(3) A social worker designated in terms of subregulation (1) must ensure that the reports referred to subregulation (2) meet the required standards.

### **Basic requirements regarding socio-psychological support services**

**21.** (1) (a) The Director-General of the Department of Social Development must ensure that a sufficient number of qualified persons has been developed and is available who can provide trauma containment, trauma debriefing and trauma counselling to complainants and witnesses in sexual offences cases as provided for in these Regulations.

(b) Trauma containment must be provided to complainants and witnesses in sexual offences cases by—

- (i) a victim assistant officer at a Thuthezela Care Centre, if there is one at an established court; or
- (ii) a social worker in the employment of the Department of Social Development if there is not a Thuthezela Care Centre at an established court.

(c) Trauma debriefing must be provided to complainants and witnesses in sexual offences cases by social workers in the employment of the Department of Social Development.

(d) Trauma counselling must be provided to complainants and witnesses in sexual offences cases by social workers in the employment of the Department of Social Development.

(2) Assessment services and therapeutic services in respect of complainants and witnesses in sexual offences cases must be provided by a social worker in the employment of the Department of Social Development.

(3) Psychological services for complainants and witnesses in sexual offences cases must be provided by a social worker in the employment of the Department of Social Development.

(4) A social worker in the employment of the Department of Social Development must, at the request of a prosecutor in a sexual offences case, determine whether or not a particular adult complainant or witness referred to him or her by that prosecutor, is emotionally ready for the trial.

(5) (a) The Director-General of the Department of Social Development or an official delegated by him or her must compile a list of persons or institutions in the Republic providing the services referred to in subregulation (1) or (3) to complainants and witnesses in sexual offences cases, which must be submitted to the National Commissioner and the National Director of Public Prosecutions.

(b) The list referred to in paragraph (a) must—

- (i) identify the service providers rendering these services;
- (ii) indicate the service points where the services are rendered;
- (iii) the contact particulars of the service providers; and
- (iv) the hours during which the services are available.

(c) The list referred to in paragraph (a) must be updated when any of the information contemplated in that paragraph has changed and the updated list must be made available to the National Commissioner and the National Director of Public Prosecutions.

(d) A service provider identified in the list referred to in paragraph (a) must inform in writing the Director-General of the Department of Social Development of any changes in the information referred to in paragraph (b).

(6) The Director-General of the Department of Social Development or an official delegated by him or her must ensure that the services referred to in subregulation (1) are available in sexual offences cases for complainants and witnesses with disabilities in a manner accessible to them.

(7) The persons providing trauma containment, trauma debriefing and trauma counselling for complainants and witnesses in sexual offences cases must refrain from altering the perceptions of these persons about the case.

(8) The station commander of a police station must ensure that trauma containment services by appropriately qualified persons are available for complainants and witnesses in sexual offences cases lodging complaints at that police station.

(9) Members of the South African Police Service, and, where applicable, an investigator referred to in paragraph (b) of the definition of investigating officer in regulation 1, must refer complainants and witnesses in sexual offences cases to the designated social worker to arrange—

- (a) trauma debriefing; and
- (b) trauma counselling,  
services for them.

(10) The National Director of Public Prosecutions or any person delegated by him or her, must ensure that the persons involved in the criminal justice system—

- (a) are aware of the Thuthuzela Care Centres that are in operation;
- (b) know who is providing services at such Centres;
- (c) know what the roles and responsibilities of the service providers are;
- (d) know the nature of the services provided at such Centres; and
- (e) have the contact particulars of the service providers.

(12) The Director-General of Social Development or an official delegated by him or her must ensure that the head of the Khuseleka One Stop Centre is—

- (a) are aware of victim empowerment service providers;
- (b) know what the roles and responsibilities of the victim empowerment service providers are; and
- (c) have the contact particulars of the service providers.

(13) Shelter services, short-term and long term, must be provided by the appointed shelter service provider or Khuseleka One Stop Centre.

(14) The Director-General of the Department of Social Development or an official delegated by him or her must ensure that Khuseleka One Stop Centre renders Advocacy Services.

(15) The court manager must take reasonable steps, including making available witness fees by way of an advance payment on the date of the trial, but before the trial commences to prevent that any child complainant or child witness, complainant and witness with a mental disability or a complainant or witness who is an older person in a sexual offences case, is giving evidence in court on an empty stomach.

(16) The court preparation officer and the intermediary must make available water to the complainants and witnesses and any person accompanying a complainant and witness during court hours at the facilities referred to in regulation 4(a) to (d), and 5(a) and (c).

### **Long term requirements regarding socio-psychological support services**

**22.** (1) Subject to regulation 3(5), trauma containment, trauma debriefing and trauma counseling services may only be provided to complainants and witnesses in sexual offences cases if the programmes have been accredited in terms of this regulation and a valid certificate of accreditation, referred to in subregulation (2)(d), has been issued in terms of this regulation.

(2) (a) The Cabinet member responsible for social development, in consultation with the Cabinet member responsible for the administration of justice, must establish and maintain a system for accreditation of programmes for trauma containment, trauma debriefing and trauma counseling.

(b) The system for accreditation referred to in paragraph (a) must contain—

- (i) criteria for the evaluation of trauma containment, trauma debriefing and trauma counseling programmes;
- (ii) criteria for the evaluation of the content of trauma containment, trauma debriefing and trauma counseling programmes in order to ensure that they reflect a meaningful and adequate response to the harm caused by sexual offences;
- (iii) mechanisms to monitor trauma containment, trauma debriefing and trauma counseling programmes in order to ensure that the programmes are effective; and
- (iv) measures for the removal of trauma containment, trauma debriefing and trauma counseling programmes from the system, where appropriate.

(c) The Cabinet member responsible for social development must—

- (i) table the system for accreditation referred to in paragraph (a) in Parliament;
- (ii) after tabling the system for accreditation in Parliament, publish a notice in the *Gazette*, inviting applications for the accreditation of trauma containment, trauma debriefing and trauma counseling programmes, as provided for in the system for accreditation referred to in subparagraph (i); and
- (iii) ensure that all applications received are considered, be dealt with and decided on in the manner determined in the system for accreditation.

(d) The Cabinet member responsible for social development must issue a certificate of accreditation in respect of each of trauma containment, trauma debriefing and trauma counseling programmes that have been accredited in terms of this regulation.

(e) A certificate of accreditation referred to in paragraph (d) is valid for a maximum period of four years from the date of accreditation.

(3) (a) The Cabinet member responsible for social development must publish the particulars of the trauma containment, trauma debriefing and trauma counseling programmes that have been accredited or removed from the system in terms of this regulation in the *Gazette*.

(b) The Director-General of the Department of Social Development must, immediately after any publication referred to in paragraph (a), provide a copy of the publication to—

- (i) the relevant role-players falling under his or her jurisdiction; and
- (ii) the Director-General who must distribute the publication to all relevant role-players who are involved in the criminal justice system.

### **Basic requirements regarding staff and judicial trauma debriefing**

**23.** (1) The Office of the Chief Justice must ensure that trauma debriefing services are available for judicial officers presiding in sexual offences cases.

(2) The National Director of Public Prosecutions must ensure that trauma debriefing services are available for prosecutors, court preparation officers and officials of the National Prosecuting Authority working at the Thuthuzela Care Centres who are involved in the prosecution or related activities of sexual offences cases.

(3) The Director-General must ensure that trauma debriefing services are available for court officials involved in court proceedings in respect of sexual offences, other than the persons referred to in subregulations (1) and (2).

(4) The Director-General of the Department of Social Development must ensure that trauma debriefing services are available for social workers who must render services in respect of sexual offences cases in terms of these Regulations.

(5) The Director-General of the Department of Health must ensure that trauma debriefing services are available for medical practitioners or nurses who must render services in respect of sexual offences cases in terms of these Regulations.

(6) The National Commissioner and the Executive Director must ensure that trauma debriefing services are available for investigating officers defined in regulation 1 who are involved in the investigation of sexual offences cases.

(7) The trauma debriefing services contemplated in subregulations (1) to (4) must be—

- (a) rendered at least on an annual basis; and
- (b) relevant in order to ensure that they are effective.

(8) Participation in the trauma debriefing sessions contemplated in subregulations (1) to (4) is compulsory.

### **Long term requirements regarding staff and judicial trauma debriefing**

**24.** (1) Subject to regulation 3(5), trauma debriefing in respect of the persons referred to in regulation 23 may only be provided if the programme and the service provider have been accredited in terms of this regulation and a valid certificate of accreditation referred to in subregulation (2)(e) has been issued in terms of this regulation.

(2) (a) The Cabinet member responsible for social development, in consultation with the Cabinet member responsible for the administration of justice, must establish and maintain a system for accreditation of programmes and service providers for trauma debriefing.

(b) The system for accreditation referred to in paragraph (a) must contain—

- (i) criteria for the evaluation of trauma debriefing programmes;
- (ii) criteria for the evaluation of the content of trauma debriefing programmes to ensure that they reflect a meaningful and adequate response to the consequences of dealing with sexual offences cases;

- (iii) mechanisms to monitor trauma debriefing programmes in order to ensure that the programmes are effective and that the service providers have the ability to render quality service in achieving the objectives of trauma debriefing; and
- (iv) measures for the removal of trauma debriefing programmes and service providers from the system, where appropriate.

(c) The Cabinet member responsible for social development must—

- (i) table the system for accreditation referred to in paragraph (a) in Parliament;
- (ii) after tabling the system for accreditation in Parliament, publish a notice in the *Gazette*, inviting applications for the accreditation of trauma debriefing programmes and service providers, as provided for in the system for accreditation referred to in subparagraph (i); and
- (iii) ensure that all applications received are considered, dealt with and decided on in the manner determined in the system for accreditation.

(d) The Cabinet member responsible for social development must issue a certificate of accreditation in respect of the trauma debriefing programmes and the service providers that have been accredited in terms of this regulation.

(e) A certificate of accreditation referred to in paragraph (d) is valid for a maximum period of four years from the date of accreditation.

(f) A quality assurance process must be conducted in respect of each accredited trauma debriefing programme and service provider.

(3) (a) The Cabinet member responsible for social development must publish the particulars of each trauma debriefing programme and service provider that have been accredited or removed from the system in terms of this regulation in the *Gazette*.

(b) The Director-General of the Department of Social Development must, immediately after any publication referred to in paragraph (a), provide a copy of the publication to—

- (i) the relevant role-players falling under his or her jurisdiction; and
- (ii) the Director-General who must distribute the publication to all relevant role-players who are involved in the administration of the Act.

### **Long term requirements regarding services by psychologists and psychiatrists**

**25.** (1) Subject to regulation 3(5), the Director-General of the Department of Health must ensure that there is a pool of forensic psychologists and psychiatrists available for purposes of preparing reports for and giving evidence in established courts regarding any matter required by prosecutors in sexual offences cases, with the approval of the relevant Director of Public Prosecutions, during the trial of sexual offences cases.

(2) For the purposes of subregulation (1) the Director-General referred to in subregulation (1) must compile a list of the psychologists and psychiatrists available with their contact particulars which he or she must submit to the National Director of Public Prosecutions.

(3) The Director-General referred to in subregulation (1) must update the list as often as is required.

(4) The Director-General referred to in subregulation (1) must ensure that forensic psychologists and psychiatrists are available for prosecutors for purposes of the prosecution of sexual offences cases.

### **Basic requirements regarding interpreting services**

- 26.** An interpreter must be available to assist—
- (a) during any sessions conducted by the court preparation officer in terms of these Regulations;
  - (b) during a consultation by the prosecutor with a complainant and a witness;
  - (c) in respect of the translation of a victim impact statement; and
  - (d) a complainant or a witness who is illiterate,
- if so required.

### **Basic requirements regarding intermediary services for witnesses**

**27.** (1) The senior official in charge of the intermediaries at an established court must ensure that there is a pool of intermediaries, meeting the qualifications determined by the Minister in terms of section 170A(4)(a) of the Criminal Procedure Act, available who can be appointed as intermediaries in sexual offences cases at that court.

(2) The senior official referred to in subregulation (1) at an established court must take the necessary steps to recruit intermediaries to be appointed on an *ad hoc* basis, if there are not sufficient intermediaries employed at that court.

(3) In recruiting intermediaries to be appointed as provided for in subregulation (2), the senior official referred to in subregulation (1) may—

- (a) consult Government Departments who deal with persons competent to be appointed as intermediaries with a view to obtaining information about procedures and mechanisms available to contact these persons and, if available, the contact particulars of these persons;
- (b) consult professional bodies regulating the professions of persons competent to be appointed as intermediaries for the purposes referred to in paragraph (a); and
- (c) invite persons who meet the qualifications determined by the Minister in terms of section 170A(4)(a) of the Criminal Procedure Act and are willing to be appointed as intermediaries on an *ad hoc* basis, to indicate their interest by—

- (i) affixing the invitation on the notice board of the established court;
- (ii) publishing the invitation in a newspaper circulating in that area;
- (iii) publishing the invitation in a journal of any professional body referred to in paragraph (b);
- (iv) publishing the invitation in a newsletter of any Government Department referred to in paragraph (a); and
- (v) publishing or posting the invitation in any other publication or at any other place.

(4) The senior official referred to in subregulation (1) must keep a database of intermediaries who are available to provide intermediary services at an *ad hoc* basis.

(5) An intermediary must be mindful of the limitations and capacity of a complainant or a witness giving evidence, having regard to his or her form of vulnerability, age, physical and mental status and stage of development.

(6) An intermediary must request the court for a recess if it appears to him or her that a complainant or a witness who is giving evidence is fatigued or stressed.

(7) An intermediary must meet the immediate needs of a complainant or a witness who is giving evidence.

(8) (a) An intermediary must before a complainant or a witness testifies take the necessary steps to establish a rapport with the complainant or the witness.

(b) For purposes of paragraph (a), a complainant or a witness who will testify through an intermediary, must report to the court preparation officer on the date of the trial not later than 08h00 to meet with the intermediary.

(9) An intermediary must, during court proceedings, inform the court about—

- (a) any change in the physical, emotional or mental behaviour of a complainant or a witness; and
- (b) any communication problem with a complainant or a witness.

### **Long term requirements regarding intermediary services for witnesses**

**28.** (1) Subject to regulation 3(5), the senior official in charge of the intermediaries at an established court must ensure that the pool of intermediaries available to be appointed as intermediaries in sexual offences cases at that court, receive the training referred to in subregulation (3).

(2) The senior official referred to in subregulation (1) at an established court must keep a list of the intermediaries who have received training as provided for in subregulation (3), but with due regard to section 41 of the Act.



(3) Justice College must, in consultation with the Chief Justice and the National Director of Public Prosecutions—

- (a) develop the content of the training programmes, manuals and refresher courses referred to in subregulation (1); and
- (b) determine the duration thereof, where applicable.

(4) The Head of Justice College must set in motion a process to ensure registration of the training with the South African Qualifications Authority in terms of the National Qualifications Framework Act.

(5) (a) An intermediary must, before the commencement of any proceedings, ensure that the set of anatomical dolls provided for in regulation 18 is complete and in working condition.

(b) An intermediary must, if the set of anatomical dolls is not complete, or if one of these dolls is not in working condition, take the necessary steps to obtain a full set which is in working condition.

### **Basic requirements regarding operation and repairing of electronic devices in testifying and court rooms**

**29.** (1) The court manager at an established court or a person delegated by him or her must every day, before the commencement of any proceedings, verify that the devices and equipment in the testifying room and court room are functioning properly.

(2) The court manager at an established court or a person delegated by him or her must, upon discovery that a device or equipment in the testifying room or court room is not functioning properly, immediately take the necessary steps to have the problem solved.

(3) Any court official must upon discovery that a device or equipment in the testifying room or court room is not functioning properly, immediately report the matter to the court manager at an established court.

(4) The court manager at an established court must, upon receipt of a notification in terms of subregulation (3), immediately take the necessary steps to have the problem solved.

### **Basic requirements regarding available information**

**30.** (1) A court manager at an established court must ensure that educational information on sexual offences and information on resources relating to victim empowerment support services is available at an established court in all official languages of South Africa in a format accessible to all persons, including children, persons with disabilities and older persons.

(2) The Director-General of the Department of Social Development must develop the material referred to in subregulation (1).

### **Basic requirements regarding witness complaints mechanisms**

**31.** (1) The relevant functionaries and the Office of the Chief Justice must create accessible complaints mechanisms to receive complaints from complainants or witnesses in sexual offences cases where such mechanisms are not in place.

(2) An official at an established court who receives a complaint from a complainant or a witness must—

- (a) refer the complainant or the witness to the correct person who or institution which will deal with the complaint; and
- (b) provide the complainant or the witness with the necessary contact particulars of the person or institution.

(3) The person who, or the institution which, receives a complaint in terms of this regulation must, in writing inform the complainant or the witness who lodged the complaint—

- (a) on a regular basis of the status of the complaint; and
- (b) of the outcome of the complaint.

## **CHAPTER VI**

### **TRAINING OF PERSONS INVOLVED IN TRIALS OF SEXUAL OFFENCES**

#### **Long term requirements regarding general aspects relating to training**

**32.** (1) Subject to regulation 3(5), in developing the training programmes, manuals and refresher courses required in terms of this Chapter, the following aspects must, where appropriate, be considered for possible inclusion in these programmes and courses, in addition to the provisions of the Act relating to social context training and other provisions of the Act, the Regulations, the National Instructions and the Directives made under the Act:

- (a) The management of trauma generally experienced by complainants and witnesses of sexual violence;
- (b) the effects of testifying;
- (c) interacting with children and older persons;
- (d) child development;
- (e) patterns of disclosure of abuse;
- (f) restorative justice;

- (g) methods and mechanisms to manage and support complainants through the criminal justice process;
- (h) methods and mechanisms accessing the memory of complainants or witnesses;
- (i) offender management;
- (j) myths and stereotypes;
- (k) the types and characteristics of paedophiles and serial rapists;
- (l) competency testing in respect of child and complainants or witnesses with intellectual disabilities;
- (m) the needs of, working with and the reasonable accommodation of persons with disabilities, including persons with intellectual disabilities as envisaged in section 9 of the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);
- (n) the dynamics of sexual offences; and
- (o) the determination of appropriate support services.

(2) Training programmes, manuals and refresher courses required in terms of this Chapter must be developed having regard to the following:

- (a) The roles and responsibilities of the functionaries involved in the trial of sexual offences cases;
- (b) the level of experience and knowledge of the functionaries referred to in paragraph (a) in the trial of sexual offences cases;
- (c) the degree and nature of contact of the functionaries referred to in paragraph (a) with complainants and witnesses who must testify in sexual offences cases; and
- (d) the level of sensitivity which will be required of the functionaries referred to in paragraph (a) in dealing with complainants and witnesses who must testify in sexual offences cases.

(3) Training programmes, manuals and refresher courses required in terms of this Chapter may be presented in any form.

(4) The relevant functionaries and the heads of the various courts must arrange for inter-sectoral training on aspects relating to sexual offences.

(5) The training programmes, manuals and refresher courses required in terms of these Regulations must—

- (a) be developed in addition to the training courses referred to in section 66 of the Act, but may form part of the training courses contemplated in that section; and
- (b) be tabled in Parliament whether or not it forms part of the tabling in terms of section 66 of the Act.

### **Basic requirements regarding training of presiding officers**

**33.** (1) A presiding officer may only preside over cases involving sexual offences in an established court, in the case of a—

- (a) judge, if he or she, in the opinion of the Judge President of the relevant Division of the High Court of South Africa, has sufficient experience to deal with these offences and has, on account thereof, been designated for this purpose by that Judge President;
- (b) magistrate of a regional division, if he or she, in the opinion of the Regional Court President of the relevant regional division, has sufficient experience to deal with these offences and has, on account thereof, been designated for this purpose by that Regional Court President; or
- (c) magistrate, if he or she, in the opinion of the Chief Magistrate of the relevant district has sufficient experience to deal with these offences and has, on account thereof, been designated for this purpose by that head.

(2) (a) The Office of the Chief Justice must compile and keep a list of every judge who has been designated as referred to in subregulation (1)(a).

(b) The Magistrates Commission must compile and keep a list of every magistrate who has been designated as referred to in subregulations (1)(b) and (1)(c).

(3) For the purposes of determining whether a judicial officer contemplated in subregulation (1) has sufficient experience to deal with sexual offences in an established court, the following considerations must be taken into account:

- (a) the number of years of experience as a judicial officer;
- (b) the number of years of experience as a prosecutor or legal practitioner prior to his or her appointment as a judicial officer;
- (c) the number of sexual offence cases already presided over;
- (d) courses already attended relating to sexual offences and social context training; and
- (e) the track record of the judicial officer relating to reviews and appeals.

### **Long term requirements regarding training of presiding officers**

**34.** (1) Subject to regulation 3(5), a presiding officer may only preside over cases involving sexual offences in an established court if he or she has, after the commencement of these Regulations, received the training referred to in subregulation (3).

(2) (a) The Office of the Chief Justice must compile and keep a list of every judge who has been trained as referred to in subregulation (1).

(b) The Magistrates Commission must compile and keep a list of every magistrate who has been trained as referred to in subregulation (1).

(3) The South African Judicial Education Institute established in terms of section 3 of the South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008) must—

- (a) develop training programmes for the purposes of subregulation (1);
- (b) develop refresher courses referred to in subregulation (4); and
- (c) determine, where applicable, the duration of the training programmes and the refresher courses.

(4) A presiding officer referred to in subregulation (1) must attend refresher courses as often as determined by the South African Judicial Education Institute.

(5) Upon the development of the training programmes and refresher courses by the South African Judicial Education Institute, it must set in motion a process to ensure registration of the training with the South African Qualifications Authority in terms of the National Qualifications Framework Act.

### **Basic requirements regarding training of prosecutors**

**35.** (1) A prosecutor may only appear on behalf of the State in a sexual offences case in an established court if he or she, in the opinion of the relevant Director of Public Prosecutions has sufficient experience to deal with sexual offences cases and has, on account thereof, been designated for this purpose by that Director.

(2) The relevant Director of Public Prosecutions must compile and keep a list of every prosecutor who has been designated as referred to in subregulation (1).

(3) For the purposes of determining whether a prosecutor contemplated in subregulation (1) has sufficient experience to deal with sexual offences in an established court, the following considerations must be taken into account:

- (a) the number of years of experience as a prosecutor;
- (b) the number of years of experience as a legal practitioner prior to his or her appointment as a prosecutor;
- (c) the number of sexual offence cases already prosecuted; and
- (d) the courses already attended relating to sexual offences and social context training.

### **Long term requirements regarding training of prosecutors**

**36.** (1) Subject to regulation 3(5), a prosecutor may only appear on behalf of the State in a case involving a sexual offence in an established court if he or she has, after the commencement of these Regulations, received the training referred to in subregulation (3).

(2) The relevant Director of Public Prosecutions must compile and keep a list of every prosecutor who has been trained as referred to in subregulation (1).

(3) The National Director of Public Prosecutions must—

- (a) develop training programmes for the purposes of subregulation (1);
- (b) develop refresher courses referred to in subregulation (4); and
- (c) determine, where applicable, the duration of the training programmes and the refresher courses.

(4) A prosecutor referred to in subregulation (1) must attend refresher courses as often as determined by the National Director of Public Prosecutions.

(5) Upon the development of the training programmes and refresher courses by the National Director of Public Prosecutions, or a person designated by him or her, he or she must set in motion a process to ensure registration of the training with the South African Qualifications Authority in terms of the National Qualifications Framework Act.

### **Basic requirements regarding training of interpreters**

**37.** (1) The principal or senior court interpreter at an established court must, as far as possible, assign experienced interpreters permanently employed by the Department of Justice and Constitutional Development to interpret in sexual offences cases.

(2) The principal or senior court interpreter at an established court must ensure that there is a pool of interpreters in foreign languages and sign language available for appointment on an *ad hoc* basis as interpreters in sexual offences cases.

### **Long term requirements regarding training of interpreters**

**38.** (1) (a) Subject to regulation 3(5), the principal or senior court interpreter at an established court must ensure that every interpreter assigned in terms of regulation 34(1) to interpret in sexual offences cases—

- (i) receives a manual referred to in subregulation (2); and
- (ii) has acquainted himself or herself with the contents of the manual.

(b) The principal or senior court interpreter at an established court must ensure that there is a pool of interpreters, who have acquainted themselves with the contents of the manual referred to in subregulation (2), available for appointment on an *ad hoc* basis as interpreters in sexual offences cases if the assigned interpreters are not available.

(2) (a) Justice College must develop a manual for interpreters who are assigned in terms of regulation 36(1) to interpret in sexual offences cases in order to ensure that the interpreters have a basic understanding of the Act and the relevant aspects referred to in regulation 31(1).

(b) The principal or senior court interpreter at an established court must make available the manual referred to in paragraph (a), to the interpreters

referred to in regulation 37(2), to give them an opportunity to peruse the manual if circumstances permit.

### **Basic requirements regarding training of investigating officers**

**39.** (1) Only investigating officers trained as contemplated in subregulation (2), may deal with complaints relating to sexual offences cases or investigate such offences.

(2) (a) The National Commissioner must in respect of investigating officers referred to in paragraph (a) of the definition of investigating officers in regulation 1—

- (i) develop training programmes for the purposes of subregulation (1);
- (ii) develop refresher courses referred to in subregulation (4); and
- (iii) determine the duration, where applicable, of the training programmes and the refresher courses.

(b) The Executive Director must in respect of investigating officers referred to in paragraph (b) of the definition of investigating officers in regulation 1—

- (i) develop training programmes for the purposes of subregulation (1);
- (ii) develop refresher courses referred to in subregulation (4); and
- (iii) determine the duration, where applicable, of the training programmes and the refresher courses.

(3) Investigating officers who have been trained as envisaged in subregulation (2) must attend refresher courses as determined by the National Commissioner and the Executive Director.

(4) Upon the development of the training programmes and refresher courses referred to in subregulation (2) the National Commissioner and the Executive Director, or a person designated by him or her, must set in motion a process to ensure registration of the training with the South African Qualifications Authority in terms of the National Qualifications Framework Act.

### **Basic requirements regarding training of court preparation officers**

- 40.** (1) The National Director of Public Prosecutions must—
- (a) develop training programmes for court preparation officers referred to in regulation 19(3), with due regard to applicable legislation and other instruments providing for victim services;
  - (b) develop refresher courses for court preparation officers referred to in subregulation (3); and

(c) determine the duration, where applicable, of the training programmes and refresher courses.

(2) The National Director of Public Prosecutions must compile a list of the court preparation officers who have received training referred to in regulation 19(3).

(3) Court preparation officers must attend refresher courses as often as determined by the National Director of Public Prosecutions.

(4) Upon the development of the training programmes and refresher courses by the National Director of Public Prosecutions or a person designated by him or her, he or she must set in motion a process to ensure registration of the training with the South African Qualifications Authority in terms of the National Qualifications Framework Act.

### **Long term requirements regarding training of social workers**

**41.** (1) Subject to regulation 3(5), the Director-General of the Department of Social Development must ensure that social workers—

(a) who are required to submit reports referred to in regulation 20 to a court; and

(b) who are required to render services to complainants and witnesses in sexual offences cases in terms of these Regulations,

who are in his or her Department's employment, receive the necessary training to be able to carry out their responsibilities efficiently and effectively.

(2) The Director-General referred to in subregulation (1) must ensure that appropriate training programmes and refresher courses are developed for the persons referred to in subregulation (1)(a) and (b).

(3) The training required for social workers in terms of this regulation must include social context training.

## **CHAPTER VII**

### **SPECIAL ARRANGEMENTS FOR HEARINGS BY ESTABLISHED COURT**

#### **Long term requirements regarding special arrangements**

**42.** (1) Subject to regulation 3(5), the Chief Justice or a person or persons designated by him or her must, in the absence of any period determined by law, determine cycle times for the finalisation of the services done in the management of different sexual offences cases, in respect of the district, regional or high court.

(2) Different cycles times may be determined for different categories of sexual offences cases.

(3) The Chief Justice or a person designated by him or her must monitor compliance with these cycle times and—



- (a) determine any patterns of non-compliance;
- (b) in the case of non-compliance, take remedial steps, including the steps referred to in regulation 48; and
- (c) submit annual reports about that matter to the Committee established in terms of section 63 of the Act.

**Basic requirements regarding special arrangements in respect of investigating officers, forensic social workers and sign language interpreters**

**43.** (1) Only the following persons may interview a complainant or a witness in a sexual offence case and obtain his or her statement:

- (a) A forensic social worker; or
- (b) an investigating officer trained as envisaged in regulation 39.

(2) (a) The investigating officer must, whenever it is reasonably possible, assist a complainant and a witness with transport to an established court.

(b) In transporting a complainant and a witness to an established court, the needs of children, older persons and persons with disabilities, must be taken into account.

(3) A complainant and a witness may not be transported with the accused in the same vehicle.

(4) The investigating officer must, ensure that relevant bodily samples are taken or send to the laboratory at the first possible opportunity.

(5) Unless exceptional circumstances exist, a complainant and a witness in a sexual offences case must be subpoenaed to secure his or her attendance at an established court.

(6) The investigating officer must—

- (a) diarise the next court date of the case; and
- (b) diarise the date on which the police docket must be lodged at the established court.

(7) The investigating officer must ensure that the case docket is lodged at the established court at the date specified in the docket by a prosecutor or at least three working days before the next court appearance and inform the complainant thereof.

(8) (a) The immediate commander of an investigating officer must certify that the requests of the prosecutor in terms of regulation 45(6) have been complied with before a police docket is lodged at an established court.

(b) The immediate commander of an investigating officer must, where any request referred to in paragraph (a) has not been complied with, take the necessary steps to ensure compliance with the instructions in order to prevent an unnecessary postponement of the case.

(c) The investigating officer must immediately inform the prosecutor of the case in question of any request referred to in paragraph (a) that has not been complied with in order to allow the prosecutor to take the necessary steps, where possible, to prevent an unnecessary postponement of the case.

(9) The investigating officer must take reasonable steps to ensure that the reports, including ballistic, forensic and related medical reports, required for the purposes of a trial of a sexual offence or proceedings incidental thereto are available before the trial date.

(10) The investigating officer must at all times attend court proceedings in connection with that case, unless excused by the prosecutor.

(11) In assigning or appointing a sign language interpreter, the need to rotate sign language interpreters because of the physical fatigue that may result in the activity of interpreting sign language, should be taken into account.

### **Long term requirements regarding special arrangements in respect of investigating officers**

**44.** (1) Subject to regulation 3(5), the National commissioner and the Executive Director must ensure that an electronic system is created to be used by investigating officers in sexual offences cases in order to track the development of such cases.

(2) The National Commissioner and the Executive Director must maintain the electronic system created to be used by investigating officers in sexual offences cases in order to track the development of such cases.

(3) The investigating officer must use the system provided for in subregulation (1) to prevent any unnecessary postponement of cases.

(4) The investigating officer must inform the complainant of the progress made in the investigation and prosecution of the case.

(5) The investigating officer must inform the complainant if an accused has been granted bail at any stage of the proceedings, including if bail was granted pending an appeal.

### **Basic requirements regarding special arrangements in respect of prosecutors**

**45.** (1) The National Director of Public Prosecutions must ensure that a screening process is in place in order to identify timeously the sexual offences cases to be tried by an established court.

(2) A decision by a prosecutor in a sexual offences case not to prosecute a person on a sexual offences charge must be made at the earliest possible date.

(3) The withdrawal of any sexual offences charge must be done at the earliest possible date to prevent an unnecessary postponement.

(4) No sexual offences charge may be withdrawn without—

- (a) prior consultation with the complainant or his or her parent or guardian if the complainant is a child or suffers from a mental disability; and
- (b) due consideration of the consequences if it is withdrawn.

(5) The National Director of Public Prosecutions must in the directives referred to in section 66(2) of the Act, set out guidelines for the prosecutors in sexual offences cases which must be followed before a decision is made not to prosecute a sexual offences charge or before the withdrawal of a sexual offences charge.

(6) A prosecutor in a sexual offence case must, in writing, in the docket give comprehensive and clear guidance to the investigating official relating to the aspects to be investigated, the documents and statements to be obtained, the witnesses to be subpoenaed and any other matter relating to the case in order to ensure that the finalisation of the case is not delayed.

(7) A prosecutor in a sexual offences case must consult with a complainant and witness before he or she testifies and ensure that the complainant and the witness attends a court preparation session prior to the consultation.

(8) A prosecutor in a sexual offences case must monitor a sexual offences case from the date of receipt of the docket until the case has been finalised, including the finalisation of any appeal process.

(9) For the purposes of sentencing, the prosecutor in a sexual offences case must ensure that—

- (a) a victim impact statement has been obtained from a complainant or, where the complainant is a child or a person with a mental disability, from the parent, guardian, teacher of the child or the school psychologist; and
- (b) where appropriate, a Victim Impact Assessment Report from an expert witness.

(10) The allocation of prosecutors in sexual offences cases must be done with due consideration to the following:

- (a) Some cases may require that more than one prosecutor works on the case; and
- (b) consultation with witnesses and in particular complainants and expert witnesses, may be required during court hours.

(11) The Senior Public Prosecutor or a prosecutor delegated by the relevant Director of Public Prosecutions must issue a certificate of readiness for trial and ensure that a charge sheet has been completed before requesting an established court to place a matter on the roll for trial.

(12) The prosecutor in a sexual offences case must inform the senior official in charge of the intermediaries at an established court if an application is to be made in court in terms of section 170A of the Criminal Procedure Act.

(13) The prosecutor in a sexual offences case must, when proposing a date for the postponement of a sexual offences case, have regard to all relevant factors, including—

- (a) the reason for the postponement;
- (b) the number of previous postponements;
- (c) the number of additional statements to be obtained;
- (d) the whereabouts and profile of the persons from whom the statements must be obtained;
- (e) the nature of the statements to be obtained; and
- (f) the date on which the case docket will be returned to the investigating officer.

(14) The prosecutor in a sexual offences case must, for the purposes of regulation 43(3) and (4), inform the investigating officer of a sexual offences case of—

- (a) the reasons for any postponement of a sexual offences case;
- (b) the outcome of a bail application and the bail conditions imposed by the court, if any;
- (c) the reasons for not enrolling a sexual offences case on the court roll; and
- (d) the reasons if a sexual offences case has been struck off the court roll.

(15) The prosecutor in a sexual offences case must return the case docket to the investigating officer as soon as is practically possible.

### **Basic requirements regarding special arrangements in respect of legal practitioners**

**46.** (1) The Chief Executive Officer of Legal Aid South Africa, appointed under section 15 of the Legal Aid South Africa Act, must designate a legal practitioner to every established court in accordance with Legal Aid South Africa's court coverage plan.

(2) The designated legal practitioner at an established court must ensure that an accused who is charged with a sexual offences case is granted the opportunity to apply for legal aid as soon as possible.

(3) The Chief Executive Officer of Legal Aid South Africa must ensure that—

- (a) any application for legal aid is evaluated within seven working days of receipt thereof; and
- (b) when legal aid is granted, a legal practitioner is assigned to the case.

(4) (a) The Board of Directors of Legal Aid South Africa, appointed under section 6 of the Legal Aid South Africa Act, must in the manual referred to in section 24 of that Act, include guidelines on how to deal with witnesses in sexual offences cases, which must be followed by legal practitioners who are employed in terms of section 4 of the said Act.

(b) The Chief Executive Officer of Legal Aid South Africa must ensure that the legal practitioners referred to in paragraph (a) and who represent accused persons in sexual offences cases acquaint themselves with the content of the manual.

(5) The Legal Practice Council, as defined in section 1 of the Legal Practice Act, 2014 (Act No. 28 of 2014), must sensitise legal practitioners, as defined in section 1 of the said Act, about the trauma experienced by complainants and witnesses of sexual violence and the effects of testifying in order to prevent secondary traumatisation of the witnesses.

### **Basic requirements regarding special arrangements for scheduling of sexual offences cases**

**47.** (1) A case involving a sexual offence may only be set down for trial if the presiding officer in a sexual offence case is satisfied that the accused or his or her legal representative and the State—

- (a) are ready to proceed with the trial; and
- (b) are committed to the expeditious finalisation of the trial.

(2) A sexual offences case involving a child witness must be prioritised.

(3) A case involving a sexual offence may only be postponed on submission of proper motivation, and, if a postponement is granted, the reasons for the postponement must be recorded on the case record.

(4) All court functionaries are responsible for ensuring that cases involving sexual offences are finalised expeditiously and that delays are avoided.

### **Long term requirements regarding special arrangements for scheduling of sexual offences cases**

**48.** Subject to regulation 3(5), the Office of the Chief Justice must consider the issuing of guidelines to the presiding officers relating to the setting down for trial of sexual offences cases for the purposes of regulation 47(1).

### **Basic requirements regarding special arrangements for cases of negligence by persons involved in proceedings**

**49.** (1) The presiding officer must in writing report any alleged negligence which has come to his or her attention in the course of the trial by—

- (a) an investigating official;
- (b) a social worker or other official in the Department of Social Development;
- (c) an official in the Department of Health;

- (d) a prosecutor;
- (e) a legal aid or legal practitioner; or
- (f) any other official in the public service,

in the exercise of any duty conferred in terms of the Act or the Regulations or any other instrument made under the Act, to the person's supervisor.

(2) A supervisor who receives a report from a presiding officer in terms of subregulation (1), must ensure, where appropriate, that disciplinary steps are taken against the person reported, in accordance with the prescripts applicable to the person.

### **Basic requirements regarding special arrangements in respect of officials responsible for transporting accused persons to established court**

**50.** An official who is responsible for the transporting of a person accused of sexual offences to an established court must—

- (a) check the identity of the person to be transported before leaving the premise of a prison or police cell;
- (b) ensure that the person is transported timeously for purposes of the proceedings at the established court; and
- (c) where applicable, ensure that the accused is transported separately from a complainant and a witness.

### **Basic requirements regarding special arrangements in respect of social workers**

**51.** A social worker must ensure that a report required from him or her in respect of a sexual offence case is available within the period required by any law or court order or, in the absence of such a period, within a reasonable period.

### **Basic requirements regarding special arrangements when dealing with witnesses**

**52.** (1) The presiding officer, prosecutor and legal practitioner must, if an intermediary is not appointed in terms of section 170A of the Criminal Procedure Act, when interacting with a complainant or a witness—

- (a) use simple vocabulary and avoid technical terms;
- (b) inform or explain to a complainant or a witness any concept or question in a manner appropriate to his or her form of vulnerability, age, maturity and stage of development if the complainant or the witness is a child, or to a person's intellectual disability;
- (c) give enough detail so that a complainant or a witness understands the information conveyed to him or her;

- (d) allow sufficient time so that a complainant or a witness can absorb the information conveyed to him or her;
  - (e) elicit responses from a complainant or a witness by asking questions in order to ensure that he or she understands the information conveyed to him or her;
  - (f) ensure that the atmosphere is conducive to participation by a complainant or a witness; and
  - (g) be sensitive to the needs of a complainant or a witness and the fact that he or she may be confused and may be experiencing anxiety and may feel intimidated.
- (2) A complainant and witness must at all times be treated with care and understanding in line with the principles of the Victims Charter.

### **Long term requirements regarding monitoring**

**53.** (1) Subject to regulation 3(5), the heads of the various courts must put in place mechanisms to monitor the sentences imposed in sexual offences cases.

(2) The heads of the various courts must every six months consider the sentences imposed with a view to identifying patterns, if any, in the sentences imposed and make available these patterns to the presiding officers under their control.

(3) Each head of a Regional Office of the Department of Justice and Constitutional Development must, when preparing quarterly reports on the implementation of the Medium Term Strategic Framework of the Department, include in his or her implementation report, the statistics as determined by the Director-General in consultation with the National Director of Public Prosecutions and the Chief Justice relating to sexual offences cases.

(4) The National Operations Centre, must as soon as possible after receipt of the reports contemplated in subregulation (3), consolidate the statistics in question and make them available to the Office of the Chief Justice and the National Director of Public Prosecutions for purposes of monitoring the effectiveness of the courts and addressing any challenge hampering the effectiveness of the courts.

(5) A data collection method to allow for the monitoring and evaluation of the courts' effectiveness in terms of this regulation must be established by the National Operations Centre.

(6) Data collection and reporting in respect of persons with disabilities must be done separately.

### **Short title**

**54.** These regulations are called the Regulations relating to Sexual Offences Courts, 2017.