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WOMEN'S LEGAL CENTRE

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON THE 2013/14 ANNUAL
REPORT OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

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Submitted by:

The Women's Legal Centre

For queries, contact:

Shireen Motara

Director

Shireen@wlce.co.za

1. Introduction

The Women's Legal Centre ("WLC") welcomes the opportunity to make submissions on the 2013/14 Annual Report of the Department of Justice and Constitutional Development ("the Annual Report").

In this brief submission the WLC will highlight the following considerations relevant to the Annual Report:

- Measures put in place in 2013/14 to deal with sexual offences
- Further considerations in relation to gender-based violence
- Progress in improvement of the maintenance system in 2013/14

2. About the Women's Legal Centre

The WLC is a non-governmental organisation whose core objective is to advance and protect the human rights of all women in South Africa. A group of women lawyers founded us in 1999, and in 2014 we celebrate our 15th year of existence. The WLC's core mandate is to conduct constitutional and impact litigation on behalf of women, in order to promote and protect women's human right and to advance gender equality in South Africa.

The WLC has participated in an extensive number of important precedent-setting cases that have extended women's human rights in relation to gender based violence, health, property rights, access to land housing and resources within relationships. Our ligation is supported by advocacy, which includes submissions to parliamentary committees.

In terms of promoting access to justice for women and girls, we provide free legal advice to women on a daily basis. We do this by making available our attorneys and paralegals to attend

to women who visit or call our office, and who email us legal queries. We also provide legal support to a range of organisations that seek to protect women's rights.

3. General comments on the Annual Report

We are encouraged by the Department's action and investment (in some areas) to deal with gender based violence ("GBV") highlighted by President Zuma in his state of the nation address earlier this year.

We are however concerned that the annual report does not recognise GBV as a major concern challenging the country, and the resulting challenges women and girls are facing in accessing justice. The establishment of court infrastructure is one major step in achieving improved access to justice, but research has shown that women abandon their pursuit to access justice because the system is failing them. This system is far more than infrastructure and includes efficiency (including time spent waiting at courts), access to adequate and accurate information, and being assisted in a manner and language that clients understand.

It would have been useful to get a sense of how the Department engages with its clients/users of the courts, and how they measure the progress with regard to effective access to justice. In this regard, we are particularly concerned that some of the targets set by the Department are primarily process orientated and quantitative, speaking more to a "tick box" approach to improved service delivery, as opposed to drawing on qualitative client/user experience. We are also concerned that some of the targets set by the Department are extremely low.

4. Measures put in place in 2013/14 to deal with sexual offences

In the 2013/14 financial year 62 649 sexual offences were reported to the South African Police Service.¹ Research indicates, however, that due to under-reporting the true incidence is likely to be far greater, and that the number of reported cases should be multiplied by between nine and 25 to get a truer sense of sexual offences in South Africa.

There is no indication in the most recent crime statistics of how many women and girls were victims of sexual offences in 2013/14. However, one can assume, looking at the trends in previous years, that women and children continue to be the main targets of these offences.

1.1 The re-establishment of Sexual Offence Courts

The WLC is greatly encouraged by the re-introduction of Sexual Offence Courts ("SOCs"). These courts have a proven record of accomplishment, and we believe that their re-introduction could impact positively on conviction rates, victim empowerment. These courts could ultimately improve the public confidence in the ability of the criminal justice system to bring to book perpetrators of sexual offences - especially against women, children, and person who experience such violence due to their sexual orientation or gender non-conformity.

It is likewise encouraging to note that by the end of the 2013/14 financial year 19 SOCs had been "completed". There is also an indication that 22 SOCs were "upgraded".²

However, we wish to express concern about the Amendment Act that allows the Minister to designate courts as SOCs, as promulgated on 20 January 2014. An audit of the Ministerial Advisory Task Team on Sexual Offences ("MATTSO")³ produced a

¹ National crime statistics, available at http://www.saps.gov.za/resource_centre/publications/statistics/crimestats/2014/crime_stats.php

² The Annual report, pg 108

³ The Annual Report, pg 38

comprehensive report⁴ that deals in detail with the resources needed to make SOCs truly specialised and victim-friendly. Recommendations were made in relation to infrastructure facilities and human resources that must be in place to ensure that SOCs are truly successful. Unfortunately, we are not confident that the Amendment Act incorporates these recommendations to a satisfactory extent. The Amendment Act allows for designation of SOCs, but fails to provide for the basic features of these courts. The Shukumisa Campaign submissions on the Amendment Act⁵ stated:

*"Specialised courts are not a new phenomenon in the South African legal context, and SOCs should receive the same level of commitment in their legal designation, design and budget as other specialised courts. Therefore, it is our submission that such basic substantive features must appear in the primary legislation."*⁶

Consequently, **the regulations to the Amendment Act are of crucial importance**, as this will be the avenue through which to secure infrastructure, norms and standards, and ultimately funding, for SOCs that are truly in line with recommendations of the MATTSO report.⁷ We look forward to the public consultation process around such regulations in what we hope will be the near future.

The MATTSO report also contains a preliminary costing re-introduction of SOCs.⁸ A zero costing of a single SOC (i.e. the cost of building a SOC from scratch) came to R 3 654 883.00. However, one cannot ascertain from the Annual Report what amount of money was spent on the establishment or upgrading of SOCs. Priorities and plans to reintroduce the SOCs only stand a chance of being realised when backed up with resources,⁹ and it is

⁴ Report on the Re-establishment of Sexual Offences Courts, Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters, August 2013

⁵ Submission to the Portfolio Committee: Justice and Constitutional Development on the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill, July 2013

⁶ Note 5, pg 6

⁷ Note 4, pg 96

⁸ Note 4, pg 94

⁹ Note 5, pg 7

crucial to have complete transparency in this regard to allow for monitoring and accountability in the resourcing and roll-out of the SOCs.

1.2 Conviction rates

The Annual Report indicates that the Department enjoyed a 66.7% conviction rate in relation to sexual offences in 2013/14.¹⁰

However, in the absence of an indication of the number of matters finalised in 2013/14, this conviction rate is not as meaningful as it should be. It would have been helpful to have an indication of the number of matters before the courts in 2013/14 and the number of matter finalized in that year, to give the public insight into the number of cases that proceed to court as a portion of the number of reported sexual offences in the same year.

For example, in the 2011/12 financial year, the South African Police Service indicated that 31 299 sexual offences had been committed against adult women. The National Prosecuting Authority reported that, of the sexual offences against all persons (not just adult women), 6 913 matters were finalised in that same year and that it had enjoyed a 65.1% conviction rate. However, in reality this translates into a mere 4 493 convictions.

For the Annual Report to speak to the national crime statistics, and to give an indication of the number of matters finalised in a particular year, would provide far greater insight into rates of case attrition, and Departmental performance in the relevant financial year.

1.3 Thuthuzela Care Centres

¹⁰ The Annual Report, pg 14

The Thuthuzela Care Centre ("TCC") model is widely recognised as a best practice model that has enjoyed great success in practice as a truly victim-centered approach to services. Civil society regularly advocates for the expansion of the geographical footprint of the TCCs, and for improved remuneration for those organisations that provide services in the TCCs, especially psych-social care, which is a crucial component of victim empowerment.

It is therefore disappointing that the national Department ostensibly failed to spend any of its own budget on increased services to survivors of sexual assault, and creating awareness and the effective use of the TCCs.¹¹ Instead, USAID provided R20 million in technical assistance to the National Prosecuting Authority.

This effectively means that the TCCs appear to be entirely dependent on donor funding, and no national budget was allocated to their maintenance and further roll out in 2013/14.

5. Further considerations in relation to gender-based violence

4.1 Domestic violence and harassment

High levels of domestic violence are a prominent feature of post-apartheid South Africa. In 1999 South Africa's female homicide rate was six times that of the global average, with half of these deaths caused by women's intimate male partners.¹² This translated into four women killed every day by the men in their lives.¹³

These exceptional figures have not declined over time. In a recent submission to this Committee on the Legal Aid Bill, the WLC indicated the challenges faced by women when

¹¹ The Annual Report, pg 83

¹² Seedat et al, 2009

¹³ Mathews et al, 2004

applying for Protection Orders in terms of the Domestic Violence Act. Domestic violence was identified as one of the most frequent reasons the WLC is approached for legal advice and assistance.

Significantly, the new Protection from Harassment Act became fully operational in 2013, and fills an crucial service delivery gaps by creating a civil remedy for those victims who are not in a domestic relationship with their harasser.

Yet, according to the Annual Report, progress in relation to domestic violence prevention and services appears to be limited. Aside from Justice College training on the subject¹⁴, there is no further indication of the achievements and challenges faced by domestic violence courts, or any significant investment in improving services. Likewise, there is no detail provided as to the successes and challenges of the implementation of the new Protection from Harassment Act, aside form a general statement that "numerous" victims are making use of it.¹⁵ We are aware that long after the new Act was implemented, very few court officials had been trained on it. Additionally, the same over-worked and under-resourced services and staff that deal domestic violence interdicts are the ones dealing with the new Protection from Harassment Act interdicts. Research and experience has shown that these services are already under severe pressure resulting in poor service.

We regard a lack of information in this regard as a significant shortcoming of the Annual Report. These pieces of legislation play a crucial role providing assistance and protection for victims of gender-based violence, and it is critical to indicate implementation successes or failures to enable proper future planning and improvement. Especially as this was the first year of implementing the new protection form Harassment Act, it appears an opportunity to establish a base line for services upon which to build in future has been missed.

¹⁴ The Annual Report, pg 57

¹⁵ The Annual Report, pg 72

Research conducted by the Tshwaranang Legal Advocacy Centre in 2012¹⁶ on accessing protection orders in courts in Gauteng revealed that women who sought protection orders had different experiences, most of them negative. The research pointed to the fact that court officials do not incorporate the Batho Pele principles of “higher levels of courtesy” and “provide more and better information”. Applicants for protection orders interviewed for the research study were not always provided with complete and accurate information. Applicants were at times treated with disrespect – yelled at or spoken to harshly when asking court officials for information. Other practical challenges highlighted in the research include:

- 77% of the applicants for protection orders did not have English as their first language, yet the application forms are not provided in any other language besides English. This situation was compounded by the fact that a large number of applicants had to complete the forms on their own. In some cases, they asked for assistance from the security guard at the court. Only two of the nine courts included in the research had two non-governmental organisations available to assist applicants.
- Applying for protection orders was time-consuming - only 23% of applicants spent less than an hour in court, the remainder waited between two to six hours or more. At one of the courts the delays were so significant that some people left the court before they were even seen to.
- Applicants were also not always guaranteed to receive assistance on the same day. This was often dependent on the availability of magistrates, however, at one of the courts clerks had also refused to assist applicants beyond a particular time (even though the Domestic Violence Act enables an applicant to apply for a

¹⁶ Criminal Justice Responses to Domestic Violence: Assessing the Implementation of the Domestic Violence Act in Gauteng, Policy Brief September 2013, Heinrich Böll Stiftung and Tshwaranang Legal Advocacy Centre, available at http://za.boell.org/sites/default/files/uploads/2013/10/criminaljusticeresponses_policybrief.pdf

protection order at any time during court operating hours - and in dire circumstances, after hours too);

- Waiting periods between applying for an interim protection order and returning to court for the final protection order hearing varied across the courts - some from as little as two weeks while at other courts the wait for the final protection order hearing could take up to six weeks or longer;
- For those employed (56% of the sample) taking time off from work to go to court was challenging and held financial implications. This was further exacerbated by delays and needing to return to court multiple times. Time-delays also held significant implications for those needing protection from abuse;
- Court clerks did not always fulfill their duties as prescribed by the Domestic Violence Act, inclusive of not always providing applicants with sufficient information on what to do or what to expect following the court's granting of the interim protection order. For example, at two courts, not all applicants were instructed to take the interim protection orders granted to the police for serving on the respondent nor did these applicants receive any other information on how the respondent would be informed of the order applied for;
- Unsuccessful applicants were not always provided with reasons for not being granted a protection order;
- Negative attitudes and lack of sensitivity to their needs was raised by applicants as concerns in their interactions with the police and at three of the courts.

We urge the Department to provide more feedback on the state of domestic violence courts and services, as well as the implementation of the Protection from Harassment Act, in future reports.

5.2 Training on gender-based violence and other gender related issues

A further area of deficiency of the Annual Report is lack of information about gender sensitivity training. Whilst training in respect of governance and management seems to have proceeded apace in 2013/14, there is very little indication of training provided on gender issues and gender sensitivity.

Whilst it is gratifying to note that the Justice College provided training in relation to maintenance, domestic violence and sexual offences,¹⁷ there is still no training taking place in relation to broader gender issues. Such training will allow officials in our justice and court system to respond sensitively not only to women, but also persons who are gender non-conforming or not hetero-sexual.

The need for such training is apparent in the types of queries received by the WLC, especially in relation to the implementation of the Sexual Offences Act and the Domestic Violence Act. Personal prejudices still intrude on the way in which clients are served, and this can result in secondary traumatising and a loss of faith in the justice system to assist and respond compassionately and professionally to all victims, regardless of their personal circumstances. There is still a great need for sensitization training to facilitate the best and least traumatizing treatment of clients and victims as they come into contact with officials in the criminal justice system, and the civil court system.

5.3 National Action Plan on crimes against the LGBTI community

¹⁷ The Annual Report, pg 57

The WLC is pleased to note that the National Task Team¹⁸ appears to have made some progress in the 2013/14 financial year. It is, however, a cause for concern that the Task team was established in May 2011, and only finalised its terms of reference in 2013/14.

The WLC is of the view that the Task Team's work must progress much faster than what is currently the case. While it is important to finalise outstanding cases that are currently in the criminal justice system, it would be useful to have further information on the broader activities of the Task Team and some indication of the impact of these activities on the South African community to date.

There is an urgent need for transformation of our society in this regard. Brutal violence is still perpetrated against members of the LGBTI community on a regular basis, and frequently reported in the press. These are crimes of hate that impact not only on the victims and their families, but on the community as whole, instilling fear and prejudice.

The Task Team, as a multi-sectoral and inter-departmental Task Team, can play a crucial role in this regard. We urge the Task team to make itself more visible, and to conduct its activities in a far more urgent and robust way.

Further in this regard, we note that a Hate Speech Bill is reported to be "in progress".¹⁹ Such legislation would be an important step towards curbing hate crime, racially and otherwise motivated, and we look forward to public consultations on this long over-due legislation in the near future.

5.4 Project 107: Report on Sexual Offences: Adult Prostitution

¹⁸ The Annual Report, pg 36

¹⁹ The Annual Report, pg 71

Whilst the WLC is pleased by the Department's initiative to ensure the finalisation of legislation and policies, we are specifically pleased with the finalisation of research relating to Project 107 on the Adult prostitution discussion paper.

However, we have noted a few concerns in relation to the process of this specific project.

We note our concerns as follows:

- The delay in issuing the discussion paper in preparation for a report and draft legislation. The process commenced in 2009 and a draft report has been finalised five years later. The report from the 2009 discussion paper was due to have been released in 2011, then 2012, and then "imminently". The report is still outstanding in 2014.
- The delay in the appointment of serving Commissioners, in order to fast-track the process of the project. The Presidency only announced the appointment of the new Commissioners in August 2013.
- The lack of response from the Department regarding a joint request by the WLC and partner organization Sex Workers Education, Advocacy Taskforce (SWEAT), and Sisonke (National Movement of Sex Workers) for the substantive submissions made in relation to the report. The SWEAT submitted a Promotion of Access to Information Act application to the Department in January 2013. To date we have not had a satisfactory response to our application.
- The greatest of our concerns is the fact that in 2014 we are still waiting for a report, which would inform draft legislation. We feel that the progress in this particular project has been immensely slow, and we are dismayed at the manner in which the Department has handled this process.

The finalisation of Project 107 is vital. Research studies have estimated the number of sex workers in South Africa to be roughly 182 000. The majority of these sex workers are

women, and a vulnerable and marginalised group within our society. Their particular vulnerability can be attributed to various factors:

- limited access to health care services;
- increased risk of contracting HIV;
- experiencing police harassment/abuse;
- stigma related to sex work;
- abuse by clients;
- sexual and other violent offences committed against sex workers; and
- increased risk of being trafficked.

All these factors have a negative impact on sex workers' access to and protection of their basic human rights, and limit sex workers' overall access to justice. We hope that the processes involved in project 107 will be prioritised and fast-tracked. The patterns of abuse that sex workers experience are the direct result of their criminal status, which increases their vulnerability to violence. The current legal framework forces sex workers to the margins of South African society, where they are easy targets for abuse at the hands of police and clients. The only remedy is to change the way in which the sex work industry in South Africa is viewed under the law, and by the institutions responsible for its administration.

6. Progress in improvement of the maintenance system in 2013/14

Many women seeking advice in relation to accessing and enforcing their rights to maintenance approach the WLC.²⁰ It is with these clients and their experiences of the maintenance system in mind that make the following comments in relation to the Annual Report.

²⁰ Approximately 1 400 women since 2007

First, the WLC would like to take this opportunity to commend the Department on introducing the system of Electronic Funds Transfer (EFT) for maintenance payments and, secondly, in progressively implementing the EFT for maintenance payments.

Since the inception of maintenance payments via EFT there has been a remarkable decrease in complaints from beneficiaries in relation to payments received. The system has improved the lives of women in that they no longer have to set aside time to approach the courts to receive their maintenance payments. One of the reasons women elect to have their payments made through the Department rather than receiving payments directly from the person making payment is to ensure *prima facie* evidence in the event that the person defaults in payments. The record keeping function of this system assists with execution in the arrear maintenance process.

However, we would like to raise the following concerns regarding the access and quality of services related to maintenance:

6.1 Locating respondents and defaulters

Women often have great difficulties in locating respondents in maintenance cases for various reasons, for example:

- The relationship with the defendant has broken down completely and any communication leads to different forms of abuse;
- The respondent is aware that the complainant intends to institute a claim for maintenance against him. As a result, he will evade all contact and communication with the complainant, which leads to the complainant not having access to any of the defendant's personal details such as his whereabouts.
- The respondent purposely moves from place to place.

When women who are uncertain of, or do not have details of the respondents whereabouts, approach the courts for assistance they are often told that the

maintenance court will be unable to assist until the complainant obtains the details of the respondent's whereabouts.

This is of great concern, as women are not informed by the clerks of the court of the services provided by the maintenance officers and maintenance investigators. Women are often turned away with no assistance or guidance from the maintenance courts and are left feeling completely helpless and disillusioned by the maintenance system. As a result, no action for maintenance will be instituted, which renders the complainant's legal right to claim maintenance empty.

6.2 Concealment of accurate financial information

The WLC has also received complaints from women that respondents fail to submit his/her correct financial information, and provide false information on what the respondent actually earns. In our experience, the maintenance officers and maintenance investigators have great difficulty verifying whether the information provided by the respondent is accurate, especially if the respondent is self-employed or employed by family members. This causes delays, obstructs the administration of justice, and infringes on children's right to be maintained.

We do not believe that sufficient funds have been allocated for the training and resourcing of maintenance investigators. In the Maintenance Turnaround Project milestones and achievements, only one training session on the tracing of defaulters was conducted. The tracing of defaulters and respondents is a much-needed skill for both maintenance officers and maintenance investigating officers. Such training must occur more frequently, and must be extended to include maintenance officer, and not be limited to investigators. The role of maintenance officers must not be under-estimated.

6.3 Service of process

The service of process of a further area of regular complaint. It is common knowledge that proper service of documents is mandatory for all legal processes. Failure to conduct proper services leads to delays, and potentially derails any legal process. Many of our

clients have experienced the consequences of no service, delayed service and improper service of legal documents to the parties by the maintenance system. We have had the following reports from clients:

- Matters are too often postponed due to the respondent not receiving any notice to appear in court. When this occurs, maintenance clerks fail to inform the complainants. As a result complainants will make arrangements (such as taking leave from work), travel to court, only to be told that the matter was removed from the court roll.
- Emoluments attachment orders, which are successfully granted against defendants, are served correctly months after the actual order were granted. This results in women having to waiting longer for their maintenance payments. In addition, this delay potentially places the defendant in arrears with maintenance payments, and raises the question of who should then be held liable for those arrears – the defendant of the inefficient system?
- Judgments in favour of women have been successfully rescinded due to improper service of documents. This results in complainants having to start the process afresh.

Over-all, we are of the view that the Maintenance Turnaround project is perhaps too process orientated. While improvement in processes is necessary, the quality of services is not being assessed from the end-user perspective, leaving doubt as to whether the Turnaround project is truly responsive to the lived experiences of women.

7. Conclusion

We would like to thank the Committee for providing us with the opportunity to make this submission. On a daily basis the WLC provides legal advice and support to many women who

struggle to access justice for various reasons, many of which could be addressed by the Department.

At the end of August 2013 Minister of Public Service and Administration, Lindiwe Sisulu, launched the Public Service Charter. According to the Minister, "we launch the Public Service Charter with a fervent intent to professionalise and encourage excellence in the public service and to improve service delivery programmes." She recognises the constitutional responsibility of the State to respect, protect, promote and fulfil the rights of citizens set out in the Bill of Rights, "and to deliver services to the citizenry commensurate with their hopes and aspirations".

We want to ask the Department as the most critical stakeholder in ensuring access to justice to heed this call, and to be responsive and open to the challenges of court users. Let the strategy, targets and achievements be informed by their needs and challenges.
