

Pro Bono & Human Rights

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SOUTH AFRICA

The National Register for Sex Offenders:
Nowhere left to hide



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The National Register for Sex Offenders: Nowhere left to hide

On 18 November 2024 the Human Sciences Research Council (HSRC) released and handed over to the Department of Women, Youth and Persons with Disabilities (DWYPD) a groundbreaking national study on gender-based violence (GBV), which revealed the extent of the crisis that continues to devastate individuals and communities across our country. It showed, among other things, that 33,1% of women in South Africa aged 18 years and older had experienced physical violence in their lifetime – which translates to an estimated 7,310,389 women – and that 9,9% of women had experienced sexual violence in their lifetime, which translates to 2,150,342 women across the country.

It is against this backdrop – and indeed years of ever-increasing GBV statistics – that several public interest organisations have tirelessly petitioned Government to make the National Register for Sex Offenders (NRSO) publicly available. In a recent announcement by the Minister of Justice and Constitutional Development (Minister), Mmamoloko Kubayi, it was confirmed that by the end of February 2025 the NRSO will be published and made available to the public – a decision that has been met with both support and caution.

The NRSO: Its purpose and accessibility to date

The NRSO was established in 2007 and is a cornerstone of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. The NRSO is a record of names of those found guilty of sexual offences against vulnerable people – understood in this context to be children and mentally disabled people – whether the sexual offence was committed in or outside the Republic. It is intended to protect children and people who are mentally disabled from sexual offenders, and to prevent exposure to them.

Accordingly, the NRSO creates an obligation on employers both in the public and private sector to check whether a person being hired is fit to work with vulnerable people and requires the employer to vet the individual to be hired against the NRSO. In addition, individuals listed on the NRSO are barred from fostering or adopting children. The office of the Minister recently confirmed that the NRSO had 32,501 active offenders listed, with a further 10,325 individuals being considered for inclusion.

The NRSO lists the name and personal details of the offender; their contact details; their ID/passport/license number; the type of sexual offence the offender was convicted of and against whom; the court where the trial took place; and the case number. Since its establishment, the NRSO has not been available to the public and has



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been kept confidential, and access to the information found in the NRSO could only be obtained on application to the relevant Provincial Registrar for Sex Offenders in the prescribed manner, and on issuance of a clearance certificate granting the requested access.

Additionally, applications for access to the NRSO could be made only in limited circumstances by: employers; an individual in respect of their own particulars; an individual applying to become a foster parent, applying for kinship caregiving, applying for temporary safe caregiving or to adopt a child; and an individual applying for a license or approval to manage or operate an entity. It was a criminal offence for anyone to disclose or publish information contained in the NRSO.

Now, come the end of February 2025, the landscape will shift when the NRSO becomes publicly available.

A new era

The Minister's announcement of the NRSO's imminent public availability has been met with both support and caution.

On the one hand, many public interest organisations welcome this development and consider it a step in the right direction in achieving accountability and safer communities, and serving as an effective deterrent to potential offenders who may think twice before committing sexual crimes, knowing their names will be made public. Several NGOs have reported that gaining information from

the NRSO up to now has been a slow and cumbersome process; in most cases taking six weeks to receive a clearance certificate confirming the outcome of an application for access. Parents having no way to easily check if the people they trust with their children have a history of sexual crimes, perpetrators and repeat offenders remaining hidden, and survivors feeling silenced and powerless only served to fuel our country's GBV crisis. For many, its public availability addresses some of these concerns and is a step in the right direction in increasing accountability and curbing the scourge of GBV.

However, in order for the NRSO to serve its intended purpose, the Department of Justice and Constitutional Development must ensure the register is comprehensive, up to date and error free. There has also been caution that corruption could undermine the register, allowing offenders to bribe their way out of accountability.

Further concerns have been expressed regarding the potential impact on the families of perpetrators, especially their children, who may face stigma and backlash for crimes they did not commit. In addition, the NRSO cannot be considered sufficient as a standalone measure. Ultimately, it is what is made of the information contained in the NRSO that is most important. Improved checks and stronger systems to prevent those listed on the NRSO from holding positions that could endanger children and vulnerable people are crucial in ensuring the NRSO serves its purpose.



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Conclusion

Public awareness and publicly available information related to GBV statistics are important to our constitutional democracy and in upholding basic human rights. However – as with all laws and legal developments – it is primarily through proper, consistent and effective implementation that the ideals of our constitution are upheld. And so, while we welcome this development in relation to the NRSO, we eagerly await clarity on the manner in which the NRSO will be made publicly available and accessible, and developments regarding what is made of the information it contains. State departments, the criminal justice system and the private sector alike will all be key in ensuring the information now publicly available is used effectively to ensure safer spaces for us all.

Brigitta Mangale and Thobeka Nomazizi Dhlamini

Chambers Global 2024 Results

Pro Bono & Human rights

Chambers Global 2021–2024 ranked our
Pro Bono & Human Rights practice in:
Band 3: Administrative & Public Law.

Jacque Cassette ranked by
Chambers Global 2021–2023 in
Band 3: Administrative & Public Law.



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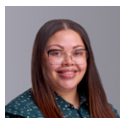
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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