

SOUTH AFRICA YEARBOOK 2017/18

# Justice and Correctional Services



The National Development Plan (NDP) highlights the need for Government to ensure that all people in South Africa are and feel safe. The NDP also emphasises that public confidence in the criminal justice system (CJS) is the most effective deterrent to criminality.

The DoJ&CD works closely with the Department of Correctional Services (DCS).

Until 1990, the two departments functioned as one entity. In late-1990, Government announced that it planned to introduce extensive reforms in the prison system.

The Prison Service was separated from the Department of Justice and renamed as the Department of Correctional Services. This triggered important changes to prison legislation.

An important milestone in this period was the introduction of the concept of dealing with certain categories of offenders within the community rather than inside prison – a system known as non-custodial “correctional supervision”. This was introduced as a more cost-effective way of dealing with offenders and a response to overcrowding, as well as dealing with prisoners in a way more suited to the country’s prioritisation of human rights.

In 2014, the two departments were merged to become the Department of Justice and Correctional Services on a ministerial level, yet still functioning as separate departments in practice as well as when reporting in official capacity and in legislative terms.

In line with the NDP, government’s Medium Term Strategic Framework 2014 – 2019 places the onus on the Department of Justice and Constitutional Development (DoJ&CD) to implement practical, short and medium-term measures to address backlogs in court cases and improve the all-round performance of the courts over the medium term.

The department’s spending over the medium term will thus be focused on improving physical access to courts, including the rationalisation of magisterial districts and the alignment of the jurisdiction of magistrates’ courts, and on improving services in courts.

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## Department of Justice and Constitutional Development

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The DoJ&CD’s plays a major and direct role in implementing the “safety for all” mandate of the NDP, which deals with the following, among other things:

- building safer communities
- promoting accountability and fighting corruption
- focusing on social protection matters
- focusing on transforming society and uniting the country.

In line with Chapter 13 and Chapter 14 of the NDP, the department has also included targets that cover departmental interventions regarding human capital development and targets to mitigate fraud and corruption, which include fraud and corruption awareness sessions and finalising the process of reviewing the Protected Disclosures Act, 2000 (Act 26 of 2000).

### Legislation and policies

The following instruments of legislation are relevant to the successful functioning of the DoJ&CD:

- Legislation providing for the establishment and functioning of the superior courts, magistrates’ courts and special courts: the Constitutional Court Complementary Act, 1995 (Act 13 of 1995), the Supreme Court Act, 1959 (Act 59 of 1959), the Magistrates’ Courts Act, 1944 (Act 32 of 1944), and the Small Claims Court Act, 1984 (Act 61 of 1984).
- Legislation providing for the appointment of judges and other

judicial officers, the conditions of service, discipline and training: the Judges Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001), the Judicial Service Commission (JSC) Act, 1994 (Act 9 of 1994) as amended, the South African Judicial Education Institute (SAJEI) Act, 2008 (Act 14 of 2008), and the Magistrates’ Act, 1993 (Act 90 of 1993).

- Legislation providing for the establishment and functioning of the National Prosecuting Authority (NPA), the Special Investigating Unit (SIU) and the Asset Forfeiture Unit (AFU); the conduct of criminal proceedings; the investigation of organised crime and corruption; and the forfeiture of assets obtained through illicit means: the NPA Act, 1998 (Act 32 of 1998), the Criminal Procedure Act (CPA), 1977 (Act 51 of 1977), the Prevention of Organised Crime Act (POCA), 1998 (Act 121 of 1998), the Special Investigating Unit and Special Tribunals Act, 1996 (Act 74 of 1996), and the Witness Protection Act, 1998 (Act 112 of 1998).
- Legislation providing for the establishment and functioning of bodies responsible for legal aid, law reform and rule-making: the Legal Aid Act, 1969 (Act 22 of 1969), the South African Law Reform Commission (SALRC) Act, 1973 (Act 19 of 1973), and the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985).
- Legislation providing for the appointment of Masters of the High Court and the administration of the Guardian’s Fund and deceased and insolvent estates: the Administration of Estates Act, 1965 (Act 66 of 1965), and the Insolvency Act, 1936 (Act 24 of 1936).
- Legislation regulating the provisioning of legal advisory services to government departments: the State Attorney Act, 1957 (Act 56 of 1957).
- Legislation relating to the promotion, protection and enforcement of certain human rights: the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), the Promotion of Access to Information Act (PAIA), 2000 (Act 2 of 2000), and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), better known as the Equality Act of 2000.
- Legislation pertaining to the protection of vulnerable groups: the Child Justice Act, 2008 (Act 75 of 2008), the Children’s Act, 2005 (Act 38 of 2005), the Criminal Law (Sexual Offences and

Related Matters) Amendment Act, 2007 (Act 32 of 2007), the Maintenance Act, 1998 (Act 99 of 1998), and the Domestic Violence Act, 1998 (Act 116 of 1998).

- Legislation providing support to Chapter 9 institutions: the Human Rights Commission Act, 1994 (Act 54 of 1994), and the Public Protector Act, 1994 (Act 23 of 1994).
- Legislation regulating the management and control of public expenditure: the Public Finance Management Act, 1999 (Act 1 of 1999).
- Legislation regulating operations in the Public Service: the Public Service Act, 1994 (Act 103 of 1994), as amended.
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2012 (Act 6 of 2012).
- Criminal Procedure Amendment Act, 2012 (Act 9 of 2012).
- Judicial Matters Amendment Act, 2012 (Act 11 of 2012).
- Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act, 2012 (Act 20 of 2012).
- Sheriffs Amendment Act, 2012 (Act 14 of 2012).
- The Criminal Law Special Investigating Unit (Forensic Procedures) Amendment Bill 2013 paves the way to regulate and promote the use of DNA in combating crime, taking into account constitutional requirements. The use of DNA evidence holds the potential to alleviate bottlenecks in the CJS. Maximising the use of DNA evidence promotes fairness, confidence and certainty in the administration of South Africa's laws.
- The Constitution 17th Amendment Act of 2013 is implemented with the Superior Courts Act, 2013 (Act 10 of 2013), which repeals the Supreme Court Act of 1959.
- The Legal Practice Act, 2014 (Act 28 of 2014) establishes a new regulatory framework for the profession, enhances opportunities to enhance access to services of attorneys and advocates, and creates mechanisms to address the spiralling cost of litigation.

### New legislation

Legislation that was finalised during the 2017/18 financial year included the following:

- The Protected Disclosures Amendment Act, 2017 (Act 5 of 2017), which was assented to in August 2017 and aims to

give greater protection to whistle-blowers in the workplace by extending the application of the Protected Disclosures Act beyond the traditional employer and employee relationship. It also criminalises deliberate false disclosures.

- The Courts of Law Amendment Act, 2017 (Act 7 of 2017) protects the poor from actions of unscrupulous persons in the debt-collection industry. By aligning the 1944 Magistrates' Courts Act with the requirements of a Constitutional Court judgment affecting emolument attachment orders (EAOs), the Courts of Law Amendment Act seeks to ensure that presiding officers considering issuing an EAO take account of factors such as the size of a debt, the circumstances in which it arose, available alternative recovery options, a judgment debtor's income; the rights and needs of vulnerable people and children likely to be affected by an EAO and how much of the debtor's income is required to meet basic living expenses and those of his/her dependents.

Legislation that was under consideration by the end of the 2017/18 financial year included the Traditional Courts Bill, the Prevention and Combating of Hate Crimes and Hate Speech Bill and the Cybercrimes and Cybersecurity Bill.

### Upcoming Bills for tabling in Parliament during the 2017/18 financial year

- The Lower Courts Bill, which aims to further regulate the structure and functioning of the lower courts and will replace the Magistrates' Court Act of 1944 and the Magistrates' Act of 1993.
- Magistrates' Remuneration and Conditions of Employment Bill, which aims to regulate the appointment, remuneration and conditions of service of judicial officers in the lower courts.
- The International Arbitration Bill, which aims to introduce a legislative framework that can be used by business to resolve their international commercial disputes and in terms of which parties can obtain arbitral awards that are legally enforceable. It is envisaged that the Bill will contribute to increased economic growth and investment as well as to build a positive image of South Africa in the rest of the world.
- The Protected Disclosures Amendment Bill, which is intended to provide greater protection to persons who report

improprieties or irregularities in the workplace.

### Human rights

The Bill of Rights is the cornerstone of South Africa's democracy. It enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. While every person is entitled to these rights, they also have a responsibility to respect them.

The Bill of Rights binds the legislature, the executive, judiciary and all organs of State.

The rights contained in the Bill of Rights are subject to the limitations contained in or referred to in Section 36 of the Constitution, or elsewhere in the Bill of Rights.

They apply to all laws, administrative decisions taken and acts performed during the period in which the Constitution is in force. In terms of the Constitution, every person has basic human rights such as:

- equality before the law and equal protection and benefit of the law
- freedom from unfair discrimination
- the right to life
- the right to human dignity
- the right to freedom and security.

### Budget and funding

The department's budget allocation for the 2017/18 financial year was R18.8 billion.

The number of posts is expected to be 27 374 at most in 2018/19. The DoJ&CD received increases in compensation of employees of R208 million in 2016/17, R543 million in 2017/18 and R669 million in 2018/19 towards the costs of the 2015 public sector wage agreement.

However, Cabinet approved budget reductions in compensation of employees of R429 million in 2017/18 and R671 million in 2018/19 as part of its decision to lower the national aggregate expenditure ceiling.

After consultation with the Department of Public Service and Administration and National Treasury, the department will develop and implement a plan to manage its personnel expenditure within its reduced personnel budget.

## Role players

### Legal Aid SA (LASA)

LASA is mandated to ensure access to justice and the realisation of the people's rights to have legal representation as envisaged in the Constitution.

To this end, LASA has identified the following priority groups: children's matters; detained persons, including sentenced prisoners; accused persons who wish to appeal or review a court's decision in a higher court; women, particularly in divorce, maintenance and domestic violence cases; and the landless, especially in eviction cases.

LASA met more than 90% of the set targets in the Business Plan for 2017/18 and spent 98.7% of the approved budget. Its staff establishment was reduced by 3.6% from 2 863 to 2 761, mainly due to budgetary constraints. The organisation was named a Top Employer in South Africa for the ninth consecutive year, as well as Industry Leader in the Public Sector for the third consecutive year as a measure of excellence in people management.

### Special Investigating Unit

The SIU is a public entity with powers of both investigation and litigation. Following the issuing of a presidential proclamation by the President, the SIU has powers to subpoena, search, seize and interrogate witnesses under oath.

The SIU was created in terms of the Special Investigating Unit and Special Tribunals Act of 1996. The SIU functions in a manner similar to a commission of inquiry in that the President refers cases to it by issuing a proclamation.

It may investigate any matter set out in Section 2 of the Special Investigating Unit and Special Tribunals Act of 1996, including:

- serious maladministration in connection with the affairs of any State institution
- improper or unlawful conduct by employees of any State institution
- unlawful appropriation or expenditure of public money or property
- any unlawful, irregular or unapproved acquisitive act, transaction, measure or practice that has a bearing on State property

- intentional or negligent loss of public money or damage to public property
- corruption in connection with the affairs of any State institution
- unlawful or improper conduct by any person who has caused or may cause serious harm to the interest of the public or any category thereof.

The SIU can also take civil action to correct any wrongdoing it discovers during an investigation. For example, it can obtain a court order to:

- compel a person to pay back any wrongful benefit received
- cancel contracts when the proper procedures were not followed
- stop transactions or other actions that were not properly authorised.

The SIU litigates its cases in the Special Tribunal, a specialised court that deals specifically with its cases. This avoids some of the delays usually associated with civil litigation.

Where criminal conduct is uncovered, it will bring the matter to the attention of its partners, the Hawks, an independent directorate in the South African Police Service (SAPS), as well as the NPA. It works closely with these institutions to ensure that there is an effective investigation and prosecution.

The SIU also works closely with the AFU in the NPA, where its powers are more appropriate or effective in recovering the proceeds of crime.

During the 2017/18 financial year:

- A total of 1 556 investigations closed out under a published proclamation.
- 15 final investigation reports were submitted to The Presidency.
- R299 million of money and/or assets potentially recoverable.
- R34 million of money and/or assets actually recovered.
- R407 million of potential loss prevented.
- The value of R 797 million of contract(s) and/or administrative decision(s)/ action(s) set aside or deemed invalid.
- The value of R2,7 billion of matters in respect of which evidence was referred for the institution or defence/opposition of civil proceedings (including arbitration or counter civil proceedings).

### South African Law Reform Commission

The SALRC is a statutory body established in terms of the SALRC Act of 1973.

The mission of the SALRC is the continuous reform of the law of South Africa in accordance with the principles and values of the Constitution to meet the needs of a changing society operating under the rule of law.

The objectives of the commission are to do research with reference to all branches of the law of the country and to study and investigate all such branches to make recommendations for the development, improvement, modernisation or reform thereof.

The SALRC is chaired by a judge and consists of members from the judiciary, legal professions and academic institutions. It conducts research with reference to all branches of South African law to make recommendations to government for the development, improvement, modernisation or reform of the law. This includes the following functions:

- repealing obsolete or unnecessary provisions
- removing anomalies
- bringing about uniformity in the law
- consolidating or codifying any branch of the law
- making common law more readily available.

To achieve its objectives, the SALRC investigates matters appearing on a programme approved by the Minister of Justice and Constitutional Development. Reports and other documents published by the commission are made available on the SALRC website for general information.

During the 2017/18 financial year, 16 research papers were completed and submitted to the SALRC for consideration and approval. These included the:

- Discussion Paper on Project 25: Statutory Law Revision: Review of Legislation Administered by the South African Police Services.
- Draft report on Project 25: The Review of Legislation Administered by the Department of Public Service and Administration.
- Draft report on Project 138: The Practice of Ukuthwala.
- Draft report on Project 25: The Review of Legislation Administered by the Department of Social Development.

- Draft report on Project 25: The Review of Legislation Administered by the Department of Trade and Industry.
- Report on Project 25: Statutory Law Revision: Review of Legislation Administered by the Department of Arts and Culture.
- Report on Project 137: Review of the Expungement of Certain Criminal Records.
- Report on Project 139: Review of the Interpretation Act 33 of 1957.
- Issue Paper on Project 140 on the Right to Knowledge of One's Own Biological Origins.
- Issue Paper on Project 141 on Medico-legal Claims.
- Issue Paper on Project 100: Review of Aspects of Matrimonial Property Law.
- Proposal Paper on Project 143: Maternity and Paternity Benefits for Self-employed Workers.
- Proposal Paper on Preliminary Investigation into the Regulatory, Compliance and Reporting Burden on Local Government.
- Proposal Paper on Preliminary Investigation into the Position of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons who are Incarcerated.
- Proposal Paper on the Development of Criminal Sanctions for Breach of the Constitution.
- Preliminary Investigation Proposal Paper on Judicial Interruption of Extinctive Prescription.

### National Prosecuting Authority of South Africa

The NPA was established in 1998 and comprises the National Director, deputy national directors of public prosecutions, special directors and other members of the prosecuting authority appointed at or assigned to the NPA, and members of the administrative staff.

The NPA has the power to:

- institute and conduct criminal proceedings on behalf of the State
- carry out any necessary functions incidental to instituting and conducting such criminal proceedings (this includes investigation)
- discontinue criminal proceedings.

The deputy national directors of public prosecutions are responsible for the following divisions:

- National Prosecuting Service (NPS)
- AFU
- Legal Affairs
- Administration and Office for Witness Protection (OWP).

Special directors of public prosecution head the following specialised units:

- Sexual Offences and Community Affairs Unit (SOCA)
- Specialised Commercial Crime Unit (SCCU)
- Priority Crimes Litigation Unit (PCLU)

The NPA continued to provide a coordinated prosecution service, ensuring that justice is delivered to the victims of crime through general and specialized prosecutions; that profit is removed from crime and that witnesses and related persons are protected

The period 2017/18 was characterized by excellent performance in many spheres of the organization, notwithstanding the budgetary and resource constraints, which remain a challenge. Increased focus in the fight against crime, especially government priorities, remained a focal point for the organization.

Great strides have been made to ensure that high conviction rates were maintained and improved on, in all court forums.

Historically, the high courts have fluctuated from 91% in 2014/15, 89.9% in 2015/16, back to 91% in 2016/17 and then to 91.7% for the period 2017/18 against a target of 87%.

The regional courts have also gradually increased from 76.6% in 2014/15 to 78.4% in 2015/16, 80% in 2016/17 and 81% in 2017/18 against a target of 74%.

In the district courts, the DoJCD increased its performance from 94.2% in 2014/15 to 94.7% and 95.6% in the years thereafter, with 96.1% in 2017/18 against a target of 88%.

### National Prosecuting Service

The NPS is a division of the NPA managing the performance of directors of public prosecutions and lower courts countrywide.

All the public prosecutors and state advocates manning the district, regional and high courts report to the directors of public prosecutions in their respective areas of jurisdiction.

### Office for Witness Protection

Under the auspices of the NPA, the OWP provides specialised services to all law enforcement agencies in South Africa, the NPA and any judicial proceedings. The OWP provides the following:

- assistance and cooperation to other countries, tribunals and special courts in the field of witness protection
- support services to vulnerable and intimidated witnesses and related persons in any judicial proceedings and in the CJS.

All OWP functions and duties are classified secret in terms of the Witness Protection Act of 1998.

The OWP maintained its performance record for the last 17 years in ensuring that no witnesses and related persons were harmed, threatened or killed whilst on the witness protection programme.

### Asset Forfeiture Unit

The AFU was established in May 1999 as a division of the NPA to focus on the implementation of Chapter 5 and Chapter 6 of the POCA of 1998. The AFU was created to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, in particular organised crime.

The AFU has set itself a number of key strategic objectives, namely to:

- develop the law by taking test cases to court and creating the legal precedents that are necessary to allow the effective use of the law
- build the capacity to ensure that asset forfeiture is used as widely as possible to make a real impact in the fight against crime
- make an impact on selected categories of priority crimes
- establish a national presence
- establish excellent relationships with its key partners, especially the SAPS, and the South African Revenue Service (SARS)
- build the AFU into a professional and representative organisation.

The AFU continued to play a critical role in the fight against

corruption and has delivered significant returns in the past few years showing that crime does not pay.

In the endeavour to curb the increase of corruption, the AFU obtained freezing orders to the value of R4.4 billion. An amount of R3.8 billion relating to corruption was frozen where the amount involved is more than R5 million.

Recoveries in terms of the POCA to the value of R302.8 million were also recorded during the financial year. In line with its operational plan, the AFU has adopted a strategy that not only seeks to extend the footprint of asset forfeiture in the fight against crime, but one that also seeks to deliver maximum impact in several identified focus areas. An overall success rate of 99,1% was recorded in the AFU.

### Specialised Commercial Crime Unit

A division of the NPA, the SCCU's mandate is to prosecute complex commercial crime cases emanating from the commercial branches of the SAPS. The client base of the unit comprises a broad spectrum of complainants in commercial cases, ranging from private individuals and corporate bodies to state departments.

The SCCU obtained a conviction rate of 94.1% in relation to complex commercial crime matters over the last year against a target of 93%.

Special focus was once again placed on the prosecution of cybercrime cases to curb this growing international phenomenon.

This is evident in the conviction rate of 98,5% in the prosecution of cybercrime cases which should be viewed against the nature and complexity of these crimes and the high level of technical evidence required in the prosecution of cybercrime cases.

Organised crime prosecution achieved a conviction rate of 93,8% and the number of convictions (346) exceeded the annual expectations of 269 convictions.

### Priority Crimes Litigation Unit

The PCLU is mandated to tackle cases that threaten national security. It was created by presidential proclamation, falling under the NPA, and is allocated categories of cases either by the President or by the National Director of Public Prosecutions.

The primary function of the PCLU is to manage and direct investigations and prosecutions in respect of the following areas:

- the non-proliferation of weapons of mass destruction (nuclear, chemical and biological)
- the regulation of conventional military arms
- the regulation of mercenary and related activities
- the International Court created by the Statute of Rome
- national and international terrorism
- prosecution of persons who were refused or failed to apply for amnesty in terms of the TRC processes.

### Sexual Offences and Community Affairs Unit

SOCA is a division of the NPA that acts against the victimisation of vulnerable groups, mainly women and children. The unit develops strategy and policy, and oversees the management of cases relating to sexual offences, domestic violence, human trafficking, maintenance offences and children in conflict with the law.

SOCA aims to:

- improve the conviction rate in gender-based crimes and crimes against children
- protect vulnerable groups from abuse and violence
- ensure access to maintenance support
- reduce secondary victimisation.

One of the SOCA's key achievements in ensuring government's commitment to the fight against sexual offences and gender-based violence (GBV) is the establishment of Thuthuzela care centres (TCCs).

TCCs are one-stop facilities located in public hospitals in communities where the incidence of sexual assault is particularly high. These one-stop facilities are aimed at reducing secondary victimisation, improving conviction rates and reducing the cycle time for the finalisation of rape cases.

Increased focus was placed on sexual offences and gender based violence matters. The improved conviction rate in sexual offences of 72,7% is an all-time high, reflecting a firm commitment to deliver justice for the most vulnerable members of society: the victims of sexual offences and GBV.

The SOCA unit established 55 operational TCCs, in support

of the victims of crime, particularly the victims of sexual offences who are mainly women and children.

Funds have been allocated from the Criminal Assets Recovery Account for the rollout of another five TCC's over the next three years. A remarkable conviction rate of 74,5%, with 1 899 convictions, was recorded in relation to TCC reported cases.

### The Family Violence, Child Protection and Sexual Offences (FCS) units

The FCS employs a network of highly skilled forensic social workers to assist with assessment of abused children and the compilation of court reports, as well as for providing an expert testimony in court.

The FCS is involved in the policing of sexual offences against children, person-directed crimes, illegal removal of children under 12 and electronic media facilitated crime. Two areas of particular concern for the FCS are child pornography and sexual offences.

The SAPS currently has 1 045 designated victim-friendly rooms at police stations and police contact points all over the country. Victim-friendly rooms are an extension of the community service centres.

The value of a victim-friendly room is that it assists in preserving the dignity of victims by making space available where a statement can be taken in privacy, in accordance with the SAPS's mandate.

At those police stations that are not yet equipped with these facilities, a room is made available for victims to be interviewed in private.

Provision has also been made to create special sexual offences courts or establish facilities for the sensitive and safe treatment of victims of sexual offences.

### Rules Board for Courts of Law

The Rules Board for the Courts of Law may review existing rules of Court to efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, high courts and magistrates' courts.

Subject to the approval of the Minister, it may enact, amend or

repeal rules for the above courts.

The board is headed by a Constitutional Court judge and includes experts in procedural law drawn from the judiciary, legal profession and academic institutions.

Its mandate includes:

- improving and modernising the rules of courts in accordance with technological changes and constitutional imperatives
- addressing challenges to the constitutionality of specific rules and effecting amendments precipitated by such challenges
- simplifying the courts' rules to promote access to justice
- harmonising rules of superior and lower courts
- reviewing the civil justice system to address inadequacies
- conducting legal and comparative research to determine viable solutions
- stimulating discussion with role players and interested and/or affected parties in the process of amending rules
- unifying and harmonising rules, regulations and procedures to transform the courts and to make justice accessible to all.

### Judicial Service Commission

The JSC selects fit and proper people for appointment as judges and investigates complaints about judicial officers. It also advises government on any matters relating to the judiciary or to the administration of justice.

When appointments have to be made, the JSC publishes a notice giving details of the vacancies that exist and calls for nominations. It shortlists suitable candidates and invites them for interviews.

Professional bodies and members of the public have the opportunity to comment prior to the interviews or to make representations concerning the candidates to the commission.

The interviews are conducted in public, after which the commission deliberates and makes its decisions in private. Its recommendations are communicated to the President, who then makes the appointments.

In terms of the Constitution, the President, in consultation with the commission, appoints the chief justice and the deputy chief justice, and the president and deputy president of the Supreme Court of Appeal.

The President appoints other judges on the advice of the

commission. In the case of the chief justice and the deputy chief justice, the leaders of parties represented in the National Assembly are also consulted.

### Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission)

The CRL Commission's role of fostering social cohesion remains relevant as democracy continues to grow in South Africa. It is incumbent upon the CRL Commission to develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities. Its mandate is to make sure that democracy manifests itself in all aspects of the lives of South Africans.

There are still communities that feel marginalised because they are not part of the accepted, mainstream South African culture. However, most South Africans have gained awareness of their rights concerning language, religion and culture, and are beginning to make demands for better recognition.

### Magistrates' Commission

The Magistrates' Commission ensures that the appointment, promotion, transfer or discharge of, or disciplinary steps against, judicial officers in the lower courts take place without favour or prejudice, and that the applicable laws and administrative directions in connection with such actions are applied uniformly and correctly.

In terms of the Magistrates' Act of 1993, the Minister appoints a magistrate after consultation with the Magistrates' Commission.

The commission also investigates grievances and complaints about magistrates and submits reports and recommendations to the Minister, who in turn tables them in Parliament.

The commission has established committees to deal with appointments, misconduct, disciplinary inquiries and incapacity, grievances, salary and service conditions, and the training of magistrates.

### South African Board for Sheriffs

Significant strides have been made in transforming the sheriff's profession in the country. Sheriffs have an important role in the

CJS, as they act as a third party to serve court process and execute the warrants and orders of the court, which are issued in terms of the regulations of the different courts.

In terms of transformation, the sheriff's profession is gradually becoming more representative. The sheriffs' profession plays an important part in justice service delivery because they serve court processes and execute warrants and orders of court.

In July 2017, some 33 sheriffs were appointed to serve a wide range of communities in our country.

The newly appointed sheriffs enhance transformation of the profession as they reflect the demographics of the country in respect of race and gender.

### South African Human Rights Commission

As the independent national human rights institution, the SAHRC was created to support constitutional democracy by promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.

The values of the SAHRC are integrity, honesty, respect, objectivity, the Batho Pele principles and equality.

Each year, the SAHRC requires relevant organs of State to provide it with information on the measures taken towards the realisation of the rights contained in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment.

The SAHRC has additional powers and functions prescribed by specific legislative obligations in terms of the Human Rights Commission Act of 1994, the PAIA of 2000 and the Equality Act of 2000.

The commission has to:

- promote awareness of the statutes
- monitor compliance with the statutes
- report to Parliament in relation to these statutes
- develop recommendations on persisting challenges related to these statutes and any necessary reform.

The SAHRC is actively involved in ensuring the ratification of international and regional human-rights instruments by advocating for the domestication of human-rights instruments.

At international level, the SAHRC is recognised by the United Nations (UN) Office of the High Commissioner for Human Rights

as an A-status national human rights institution. As an A-status institution, the SAHRC has adhered to the Paris Principles, which are the guiding principles that set out the nature and functioning of a national human rights institution.

The SAHRC deals with a wide range of human rights complaints.

### Public Protector

The President appoints the Public Protector on recommendation of the National Assembly and in terms of the Constitution, for a non-renewable period of seven years.

The Public Protector is subject only to the Constitution and the law, and functions independently from government and any political party. No person or organ of State may interfere with the functioning of the Public Protector.

The Public Protector has the power to report a matter to Parliament, which will debate it and ensure that the Public Protector's recommendations are followed.

Section 182 of the Constitution mandates the Public Protector to:

- investigate any conduct in State affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice
- report on that conduct
- take appropriate remedial action
- be accessible to all people and communities.

The Public Protector has additional legislative powers contained in about 16 statutes. It must resolve disputes or grievances involving the State through mediation, consultation, negotiation and any other remedies. It also has a mandate to enforce executive ethics, the PAIA of 2000, the Protected Disclosures Act of 2000 and the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004).

The only matters excluded from the mandate of the Public Protector are court decisions, judicial functions and matters outside the public sector.

### South African Judicial Education Institute

The SAJEI Act of 2008 established the institute to provide

independent judicial education for judicial officers.

The SAJEI is responsible for the formal training of magistrates and legal practitioners in this legislation and other areas of judicial work.

Its purpose is to promote the independence, impartiality, effectiveness, accessibility and dignity of the courts by providing judicial education for judicial officers. In carrying out this function, the SAJEI is primarily directed and controlled by the judiciary. The institute provides education and training for aspirant and newly appointed judicial officers, as well as ongoing legal education and training for experienced judicial officers.

### Court services

#### Legal practitioners

The legal profession is divided into two branches – advocates and attorneys – that are both subject to strict ethical codes.

Advocates are organised into bar associations or societies, one each at the seat of the various divisions of the High Court.

There are voluntary associations of advocates such as the General Council of the Bar and other formations of independent bars. There are four regional societies for attorneys, each made up of a number of provinces. A practising attorney is by the operation of the law a member of at least one of these societies, which promote the interests of the profession. The Law Society of South Africa is a voluntary association established to coordinate the various regional societies.

In terms of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), advocates can appear in any court, while attorneys may be heard in all of the country's lower courts and can also acquire the right of appearance in the superior courts. The Attorneys Amendment Act, 1993 (Act 115 of 1993), provides for alternative routes for admission as an attorney.

All attorneys who hold an LLB or equivalent degree, or who have at least three years' experience, may acquire the right of audience in the High Court.

State law advisers provide legal advice to ministers, government departments, provincial administrations and a number of statutory bodies. In addition, they draft Bills and assist the Minister concerned with the passage of Bills through Parliament. They also assist in criminal and constitutional

matters.

### Judicial system

The Constitution of the Republic of South Africa, 1996, is the supreme law of the country and binds all legislative, executive and judicial organs of State at all levels of Government.

The judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law. No person or organ of State may interfere with the functioning of the courts, and an order or decision of a court binds all organs of State and people to whom it applies.

The Constitution provides for the following courts:

- Constitutional Court
- Supreme Court of Appeal
- high courts, including any high court of Appeal that may be established by an Act of Parliament to hear appeals from high courts
- magistrates' courts
- any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either high courts or magistrates' courts.

Other courts include: Income Tax Court; Labour Court; Labour Appeal Court; Land Claims Court, Competition Appeal Court, the Electoral Court, Divorce Courts, Small Claims Courts, Military Courts and Equality Court.

Decisions of the Constitutional Court, the Supreme Court of Appeal and the high courts are an important source of law. These courts uphold and enforce the Constitution, which has an extensive Bill of Rights binding all State organs and all people.

The courts are also required to declare any law or conduct that is inconsistent with the Constitution to be invalid, and develop Common Law that is consistent with the values of the Constitution, and the spirit and purpose of the Bill of Rights.

In response to the constitutional requirement that everyone has the right to access to a court, the DoJ&CD will continue providing court infrastructure and improving access to courts.

### Constitutional Court

The Constitutional Court is the highest court in all constitutional matters. It is the only court that may adjudicate disputes between



organs of State in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of State, or that may decide on the constitutionality of any amendment to the Constitution or any parliamentary or provincial Bill.

The Constitutional Court makes the final decision on whether an Act of Parliament, a provincial Act or the conduct of the President is constitutional.

It consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine Constitutional Court judges.

### Supreme Court of Appeal

The Supreme Court of Appeal, situated in Bloemfontein in the Free State, is the highest court in respect of all matters other than constitutional ones. It consists of the President and Deputy President of the Supreme Court of Appeal, and 23 other judges of appeal. The Supreme Court of Appeal has jurisdiction to hear and determine an appeal against any decision of a High Court. Decisions of the Supreme Court of Appeal are binding on all courts of a lower order, and the decisions of high courts are binding on magistrates' courts within the respective areas of jurisdiction of the divisions.

Justice Mandisa Maya was appointed as President of the Supreme Court of Appeal in May 2017. She is the first woman to hold this position.

### High courts

A high court has jurisdiction in its own area over all persons residing or present in that area. These courts hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or to impose a penalty.

Except where a minimum or maximum sentence is prescribed by law, their penal jurisdiction is unlimited and includes handing down a sentence of life imprisonment in certain specified cases.

The DoJ&CD's legislative mandate provides for a high court in every province. The Mpumalanga High Court was completed in 2016/17, bringing the total of high courts in the country to 14:

- the Eastern Cape has four high court located in Grahamstown, Port Elizabeth, Mthatha and Bhisho

- the Free State High Court in Bloemfontein
- Gauteng has two high courts, one in Pretoria (North Gauteng) and one in Johannesburg (South Gauteng)
- KwaZulu-Natal also has two high courts, in Pietermaritzburg and in Durban
- the Limpopo High Court in Polokwane
- the Northern Cape High Court in Kimberley
- the North West High Court in Mafikeng
- the Western Cape High Court in Cape Town.

During the 2017/18 financial year, the High Courts received 988 new cases and finalised 971 cases, which is a decrease of 9% compared to the previous financial year.

The decrease in the number of new cases received was mainly due to an increase in the number of long and intricate trials that are being conducted in the High Court.

Notwithstanding the decrease in the number of cases finalised, 49 more new cases were received during the current financial year.

The conviction rate also increased from 91% to 91.7%, exceeding the target of 87% by 5%. A comparative analysis of the performance of previous years indicates an overall improvement in the conviction rates achieved by High Court advocates.

This confirms their dedication to improve the level of service to the victims of serious crime. As depicted in the figure below, the High Court advocates improved the conviction rate with 3% from 88.8% obtained during 2013/14 to 91.7% during the 2017/18 financial year.

The number of formal bail applications in the High Courts decreased remarkably by 41% from 56 to 33. The reason for this decrease could mainly be attributed to the increase in bail applications in the lower courts before the cases are transferred to the High Courts. The number of appeals received and finalised decreased by 9%, from 2 439 to 2 225 appeal cases finalised.

### Specialist high courts

The following specialist high courts exercise national jurisdiction:

- the Labour Court and Labour Appeal Court in Braamfontein, Gauteng adjudicate over labour disputes and hear labour

appeals, respectively

- the Land Claims Court, in Randburg, Gauteng hears matters on the restitution of land rights that people lost after 1913 as a result of racially discriminatory land laws
- the Competition Appeal Court in Cape Town deals with appeals from the Competition Tribunal
- the Electoral Court in Bloemfontein sits mainly during elections to deal with associated disputes
- the Tax Court in Pretoria deals with tax-related matters, including non-compliance with tax obligations.

### Lower courts

Regional courts, magistrates' courts and periodical courts are all lower courts. During the 2017/18 financial year, there were 33 732 criminal backlog cases in the lower courts against a target of 30 344..

### Circuit local divisions (periodical courts)

These itinerant courts, each presided over by a judge of the provincial division, periodically conduct hearings at remote areas outside the seat of the high court designated by the judge president of the provincial division concerned. This is with a view to enhancing access to justice.

### Regional courts

Regional courts are established largely in accordance with provincial boundaries, with a regional court division for each province to hear matters within their jurisdiction. There are nine regional court presidents and 351 regional court magistrates. There are more than 1 886 courtrooms dealing daily with district and regional court cases across the country.

The regional courts adjudicate civil disputes by virtue of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008).

The divorce courts were subsumed under the regional court divisions. The divorce court rules made under Section 10(4) of the Administration Amendment Act, 1929 (Act 9 of 1929), were repealed in 15 October 2010. Subsequently, regional courts started adjudicating divorce matters. This has addressed the jurisdictional challenges in terms of which litigants have to travel

to remote courts to get legal redress.

In the medium to long term, the Jurisdiction of Regional Courts Amendment Act of 2008 will reduce the workload in the high courts. In this way, divorce and other family-law matters and civil disputes of an amount determined from time to time is within the jurisdiction of regional courts.

This means that attorneys have the opportunity to represent their clients in matters where they ordinarily need to appoint and brief counsel, thus reducing the cost of litigation and increasing access to justice.

During the 2017/18 financial year, the Regional Courts enrolled 53 309 new cases compared to the previous financial year, 2 241 (4%) fewer cases were enrolled compared to the 55 550 new cases enrolled during the previous financial year.

Notwithstanding this decline in new cases received, the Regional Courts still effectively impacted on serious crime by finalising 33 246 cases, comprising 30 837 verdict cases and 2 409 alternate dispute resolution mechanism cases, as depicted in the figure below. This represents a finalisation rate of 0.6 cases per court per day.

### Magistrates' courts

Magistrates' courts form an important part of the judicial system, as it is where ordinary people come into contact with the justice system daily.

For this reason, that the bulk of the department's budget and resources are concentrated here. Jointly with the Chief Justice, the department implements programmes aimed at supporting these courts. One such intervention is backlog courts.

This is with a view to widening access to justice, as more people will be able to access the magistrate's courts where it is cheaper and faster to obtain a legal recourse compared to the high courts.

In terms of the Magistrates' Act of 1993, all magistrates in South Africa fall outside the ambit of the Public Service. The aim is to strengthen the independence of the judiciary.

Full jurisdiction was conferred to courts in rural areas and former black townships that exercise limited jurisdiction and depend entirely on the main courts in urban areas to deliver essential justice services.

By the end of February 2018, there had been an increase of 163% of black magistrates and a 249% increase of women magistrates. The number of African female magistrates has increased from 62 in 1998 to 472 in 2018 – an increase of 661%.

### Small Claims Courts

Small Claims Courts were established to adjudicate small civil claims. They were created to eliminate the time-consuming adversary procedures before and during the trial of these claims.

Small Claims Courts offer members of the public a quicker and easier way of resolving disputes that involve amounts limited to R15 000 and they can do so without the need for a legal representative.

The department continued to support and strengthen these courts. For the 2017/18 financial year, six new Small Claims Courts were established in Colenso in KwaZulu-Natal and Warden, Steynsrus, Petrus Steyn, Memel and Edenville in the Free State, bringing the total number to 411 Small Claims Courts countrywide by the end of the financial year.

In addition, nine inactive Small Claims Courts were revived between 1 April 2017 and 31 March 2018, and 14 inactive Advisory Boards were revived in the same period.

### Labour courts and labour appeal courts

The labour courts have the same status as high courts. The labour courts adjudicate matters relating to labour disputes between employers and employees. Labour courts are mainly guided by the Labour Relations Act, (Act 66 of 1995), which deals with matters such as unfair labour practices, e.g. dismissing an employee without giving notice.

Labour courts can order an employer or employee or union to stop committing an unfair labour practice. Labour courts are empowered to give jobs back to employees who have lost their jobs unfairly. Labour appeal courts hear appeals against decisions in labour courts and are the highest courts for labour appeals.

### Equality courts

The right to equality is protected by law in the Equality Act of 2000 and the Employment Equity Act, 1998 (Act 55 of 1998).

The two Acts work in synergy. The Equality Act of 2000 aims to:

- prevent and prohibit unfair discrimination and harassment
- promote equality
- eliminate unfair discrimination
- prevent and prohibit hate speech.

The Act also provides for:

- remedies for victims of any of the above
- compliance with international law obligations, including treaty obligations
- measures to educate the public and raise public awareness about equality.

### Traditional courts

There are traditional courts in traditional community areas in rural villages.

These courts have jurisdiction to hear certain matters at the level of magistrates' courts. They are designed to deal with customary issues in terms of customary law.

An authorised headman or his deputy may decide cases using indigenous law and custom (for example, disputes over ownership of cattle or lobolo), brought before him by parties within his area of jurisdiction.

These courts were formerly known as chief's courts. A person with a claim has the right to choose whether to bring it to a chief's court or in a magistrates' court. Any person who is not satisfied with the decision in a chief's or headman's court can take their matter to the ordinary courts.

The judicial functions of traditional leaders are regulated in terms of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act 28 of 2005).

The Traditional Courts Bill aims to affirm the values of customary law and customs in the resolution of disputes, based on restorative justice and reconciliation and to align them with the Constitution.

It seeks to regulate the structure and functioning of traditional courts. Traditional courts are still regulated by very old colonial legislation, namely the Black Administration Act of 1927. This legislation falls short in many respects. The result is that traditional courts currently have no statutory basis for its structure, functions and powers.

This lack of proper statutory regulation allows for all sorts of abuses and malpractices, bringing these important forums into disrepute.

### Land claims courts

It specialises in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative.

These are the Restitution of Land Rights Act, 1994 (Act 22 of 1994) the Land Reform (Labour Tenants) Act, 1996 (Act 486 of 1994) and the Extension of Security of Tenure Act, 1997 (Act 62 of 1997).

The Land Claims Court has the same status as the high courts. Any appeal against a decision of the Land Claims Court can be lodged with the Supreme Court of Appeal, and if applicable, the Constitutional Court.

The Land Claims Court can hold hearings in any part of the country if it believes this will make it more accessible and it can conduct its proceedings in an informal manner if this is appropriate, although its main office is in Randburg.

### Community courts

South Africa has established community courts on a pilot basis to provide speedy resolution of certain types of community offences. These courts focus on restorative justice processes, such as diverting young offenders into suitable programmes.

These courts seek to assist the country's court case backlog. Community courts are normal district magistrates' courts that assist in dealing with matters in partnership with the local community and businesses.

The business community and other civil-society formations have contributed significantly to the establishment and sustainability of these courts.

### Courts for income-tax offenders

In October 1999, SARS opened a criminal courtroom at the Johannesburg Magistrate's Office, dedicated to the prosecution of tax offenders.

The court deals only with cases concerning failure to submit tax returns or to provide information requested by SARS officials.

It does not deal with bigger cases such as tax fraud. Another SARS court operates twice a week at the Roodepoort Magistrate's Office.

### Criminal jurisdiction of the respective courts

Apart from specific provisions of the Magistrates' Courts Act of 1944 or any other Act, jurisdiction regarding sentences imposed by district courts is limited to imprisonment of not more than three years or a fine not exceeding R60 000.

A regional court can impose a sentence of not more than 15 years' imprisonment or a fine not exceeding R300 000.

A magistrate's court has jurisdiction over all offences except treason, murder and rape. A regional court has jurisdiction over all offences except treason. However, the High Court may try all offences.

Depending on the gravity of the offence and the circumstances pertaining to the offender, the Directorate of Public Prosecutions decides in which court a matter will be heard and may even decide on a summary trial in the High Court.

The sentencing of "petty" offenders to do community service as a condition of suspension, correctional supervision or postponement in appropriate circumstances, has become part of an alternative sentence to imprisonment.

### Sexual offences courts

Sexual offences courts were reintroduced by the DoJ&CD in August 2013 to provide specialised support services to victims of sexual offences, decrease turnaround times for finalisation of sexual offences cases and improve conviction rates in these cases.

These courts are specially designed for the delicate handling of sexual offences through the use of technology, intermediaries and an appropriate court environment for dealing with sexual offences.

An additional 17 court rooms were adapted in line with the sexual offences model and this brought the total number of court rooms adapted to 75 during the 2017/18 financial year.

Regarding child justice, 75% of preliminary enquiries for children were finalised within 90 days, against a target of 55%.

### Areas of legislation

#### Sexual offences

The Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 provides a legal framework to support an integrated approach to the management of sexual offences, thereby aiming to reduce secondary trauma to victims of such crimes.

#### National Register for Sexual Offenders (NRSO)

The department has developed the NRSO, which was established by an Act of Parliament in 2007.

It is a record of names of those found guilty of sexual offences against children and people with a mental disability.

The NRSO gives employers in the public or private sectors such as schools, crèches and hospitals the right to check that the person being hired is fit to work with children or mentally disabled people.

Information on whether a person is on the list is available on request, along with the relevant motivation, before any confirmation or information is released.

#### Maintenance

The main objective of the Maintenance Act of 1998 is to facilitate the securing of maintenance money from parents and/or other persons able to maintain maintenance beneficiaries, mainly children, who have a right to maintenance.

Parents and/or guardians must maintain children in the proportion in which they can afford. Therefore, both parents and/or sets of families need to take responsibility for the maintenance of the child or children concerned.

The Maintenance Amendment Act, 2015 (Act 9 of 2015) further ensures that maintenance systems are effective, putting the following measures in place, among others:

- A beneficiary will be able to claim maintenance where they work and not only where they live. This will make it easier for beneficiaries to go to the maintenance court during working hours.
- If the person from whom maintenance is sought cannot be located, despite all reasonable efforts, the court can grant an order directing electronic communication service providers to

provide the court with contact information.

- Maintenance courts must complete their enquiries as speedily as possible. The views of the person who is obliged to pay maintenance must be sought.
- If a person has defaulted on paying maintenance, their personal details will be submitted to all credit bureaus. This will prevent maintenance defaulters from continuing to receive credit while owing maintenance. They will effectively be blacklisted.

To reduce the maintenance queues at courts, the department installed technology to process payments through electronic financial transfers to replace the card-based manual system.

The courts are also increasingly making orders for payments to be deposited directly into the accounts of beneficiaries.

The replacement of the old Third Party Funds system with the new MojaPay system, from a technological perspective, is aimed at improving the turnaround time in the payment of maintenance beneficiaries and introducing effective financial controls for maintenance and other third party payments.

This initiative enables beneficiaries of maintenance to receive money within a few days and avoids manual intervention by DoJCD officials.

By the end of the 2017/18 financial year, the solution was implemented in eight provinces.

The Guardian's Fund is a fund created to hold and administer funds which are paid to the Master of the High Court on behalf of various persons known or unknown, for example, minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a usufructuary, fiduciary or fideicommissary nature.

Each Master of the High Court has its own Guardian's Fund. Through the Guardian's Fund, the department contributes substantially to poverty alleviation.

Sections 2, 11 and 13(b) of the Maintenance Amendment Act of 2015 were put into operation in January 2018 and provide, amongst others, that parents who default on child maintenance will have their personal information submitted to credit bureaus and face being blacklisted.

This will prevent maintenance defaulters from continuing to receive credit whilst owing maintenance.

The Guardian's Fund has grown by approximately 45% over the past five financial years to over 800 000 beneficiaries. This has necessitated investment in systems and personnel to ensure the continued safeguarding and service delivery to beneficiaries. The use of the Master's Own Verification Information Technology system in magistrates' courts increased from 183 in 2016/17 to 262 by the end of 2017/18. Completed applications for funds can be lodged directly at these offices, instead of travelling long distances to a handful of Master's offices.

### Domestic violence

The rigorous steps the Justice, Crime Prevention and Security Cluster (JCPS) cluster is taking to root out GBV is the adoption of zero tolerance towards rape, violation of the rights of lesbian, gay, bisexual, transgender and intersex people and other forms of violence towards women and children.

The Protection from Harassment Act, 2011 (Act 17 of 2011), is the first specific legislation to address sexual harassment in the Southern African Development Community (SADC) region. The essence of the Act is to provide a quick, easy and affordable civil remedy in the form of a protection order for incidences of stalking. The legislation arose out of a SALRC investigation into the legal framework governing stalking and domestic violence.

A key component of the Act is that it seeks to cover all forms of stalking, not just that involving people engaged in a relationship.

A protection order can be issued instructing the harasser to cease harassment.

The Act sets out how a complainant is to apply for a protection order and the procedure to be followed in granting one. The legislation also provides for the issuing of an interim protection order without the knowledge of the respondent, given certain conditions.

A victim of cyberstalking can apply to a court for an interim protection order even when the identity of the alleged stalker is unknown. The law will also empower the police to investigate a stalker to identify the perpetrator even before a victim launches an application for a protection order.

### Human trafficking

The Prevention and Combating of Trafficking in Persons Act,

2013 (Act 7 of 2013) defines trafficking to include the recruitment, transportation, sale or harbour of people by means of force, deceit, the abuse of vulnerability and the abuse of power for exploitation. The Act addresses the scourge of trafficking in persons holistically and comprehensively.

Besides creating the main offence of trafficking in persons, the legislation creates offences such as debt bondage; the possession, destruction and tampering with travel documents and using the services of victims of trafficking all of which facilitate innocent persons becoming victims of this modern-day form of slavery.

The legislation gives effect to South Africa's international obligations in terms of UN Protocol.

South Africa fully recognises the existence of human trafficking and smuggling activities. These crimes are mostly perpetuated by transnational syndicates, hence the calls from many states for regional and international cooperation as well as the introduction of aligned legislation and immigration procedures.

To address those challenges, UN member states require fair, responsible, ethical and efficient criminal justice systems and crime prevention strategies that contribute to sustainable economic and social development. It also imposes a responsibility on states to work together.

These scourges have also had a negative impact on the people of South Africa, and Government therefore fully supports the UN's promotion of the objectives relating to the continued and focused national and international prevention and combating of these crimes.

South Africa has become a source, transit and destination country for trafficked and smuggled men, women and children. South African girls are trafficked or smuggled for the purposes of commercial sexual exploitation and domestic servitude, while boys are trafficked or smuggled for use in street vending, food service and agriculture.

The Prevention and Combating of Trafficking in Persons Act of 2013 deals comprehensively with human trafficking in all its various forms and in particular provides for the protection of and assistance to victims of trafficking.

Persons engaged with trafficking will be liable on conviction to

a severe fine or imprisonment, including imprisonment for life or such imprisonment without the option of a fine or both.

Other existing laws being used to prosecute traffickers include the Children's Act of 2005, which provides for the criminalisation of the trafficking of children, while the Criminal Law Sexual Offences and Related Matters Amendment Act, 2007 (Act 32 of 2007), contains provisions that criminalise trafficking in persons for sexual purposes.

South Africa has also been successful in using the racketeering offences in the POCA of 1998 to deal with criminal organisations involved in trafficking.

Under the common law, depending on the circumstances of each case, persons suspected of trafficking could be charged with kidnapping, common assault, assault with intent to do grievous bodily harm, extortion, attempted murder and murder.

Those involved in acts of trafficking in persons may be prosecuted using other acts that include the Immigration Act, 2002 (Act 13 of 2002), the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), the Intimidation Act, 1982 (Act 72 of 1982), the Domestic Violence Act of 1998, and the Films and Publications Act, 1996 (Act 65 of 1996).

### State Legal Services

The purpose of this programme is to provide legal and legislative services to government, supervise the administration of deceased and insolvent estates and the Guardian's Fund, prepare and promote legislation and undertake research in support of this.

This programme is mainly aimed at transforming justice, the State and society. It deals with the following functions:

- constitutional development
- legislative development (including conducting legal research)
- the provision of legal advisory services to other organs of State (including Parliament)
- providing litigation services to protect the organs of State
- the provision of probate services
- administration of the Guardian's Fund
- regulation of insolvency and liquidation systems.

The State Legal Services Programme's objectives include:

- improving service delivery at the Master's Office service

points

- increasing efficiency in the provision of services to beneficiaries of the Guardian's Fund, trusts, and insolvent and deceased estates
- promoting constitutional development and the strengthening of participatory democracy to ensure respect for fundamental human rights
- improving the provision of legal services to State organs
- improving the policy and legislative framework for the effective and efficient delivery of justice services.

The State Legal Services Programme is divided into the following subprogrammes:

- Legislative Development, the Law Reform Commission and the Rules Boards for Courts of Law prepare and promote legislation, conduct research and administer the Constitution.
- The Master of the High Court funds the Masters' Offices, which supervise the administration of deceased and insolvent estates, trusts, curatorships and the Guardian's Fund.
- Litigation and Legal Services provides attorney, conveyance and notary public services to the executive, all State departments, parastatals and other government bodies through the Office of the State Attorney, and provides legal support to the department and the ministry.
- State Law Advisers provides legal advisory services to the executive, all State departments, parastatals and autonomous government bodies.

### Master of the High Court

The Master of the High Court serves the public in respect of:

- deceased estates
- liquidations (insolvent estates)
- registration of trusts', tutors' and curators' administration of the Guardian's Fund (minors and people with mental disabilities).

The Master's Office has five main divisions, which are all aimed at protecting the financial interests of people whose assets or interests are, for various reasons, managed by others.

The Paperless Estates Administration System (PEAS), which computerises the administration process related to deceased estates, enables people to deal with deceased estates in both the offices of the Master of the High Court and the magistrates'

courts.

This system has been implemented to expand access to justice services and to enable the processing of small estates at the nearest magistrate's court as opposed to the 15 offices of the Master of the High Court, thus bringing justice services closer to the people.

The number of magistrates' courts implementing the PEAS was increased from 206 in 2016/17 to 237 in 2017/18.

In addition to the 15 Master of the High Court offices countrywide, 237 magistrates' courts handled deceased estate matters on behalf of the Master of the High Court. This brought the services of the Master of the High Court closer to the people, particularly those in remote areas

### Office of the Family Advocate

The role of the Family Advocate is to promote and protect the best interests of the children in civil disputes over parental rights and responsibilities.

This is achieved by monitoring pleadings filed at court, conducting enquiries, filing reports, appearing in court during the hearing of the application or trial, and providing mediation services in respect of disputes over the parental rights and responsibilities of fathers of children born out of wedlock.

In certain instances, the Family Advocate also assists the courts in matters involving domestic violence and maintenance. The sections of the Children's Act of 2005 that came into operation on 1 July 2007 have expanded the Family Advocate's responsibilities and scope of duties, as the Act makes the Family Advocate central to all family-law civil litigation.

Furthermore, litigants are obliged to mediate their disputes before resorting to litigation. Unmarried fathers can approach the Family Advocate directly for assistance without instituting any litigation.

Children's rights to participate in, and consult on, decisions affecting them have been entrenched; the Family Advocate is the mechanism whereby the voice of the child is heard.

### Truth and Reconciliation Commission

The TRC was dissolved in March 2002 by way of proclamation in the Government Gazette. The TRC made recommendations

to government regarding reparations to victims and measures to prevent the future violation of human rights and abuses experienced during the apartheid years.

Government approved categories of recommendations in June 2003 for implementation, namely:

- final reparations
- TRC-identified victims
- symbols and monuments
- medical benefits and other forms of social assistance
- community rehabilitation.

The implementation of the recommendations of the TRC remains one of the important initiatives that could help bring about healing and closure for crimes committed during apartheid.

One of the key projects implemented has been education assistance for the next-of-kin of TRC-identified victims. For the academic year of 2018, a total of 1 200 beneficiaries for basic education and 457 for higher education were positively verified and referred for payment of benefits.

The Pretoria Gallows Exhumation Project which started in 2016 continued into the 2017/18 financial year. Of the remains of 83 people identified for this project, 46 remains have been exhumed, with 32 of these completed in the 2017/18 financial year.

The 32 of these included 15 UDF activists who were part of political turmoil in the Eastern Cape in 1985 and 1986.

The DoJCD plans to finalise the exhumation project in the 2018/19 financial year.

## Child justice

### Children's Act of 2005

The Department of Social Development is the lead department for the implementation of the Children's Act of 2005. The DoJ&CD's main responsibility is towards Children's Court operations relating to the Act.

Embracing information and communication technology (ICT) has allowed the DoJ&CD to extend its reach on modern-day platforms that are more accessible to children, thereby increasing access and engagement with potentially vulnerable or threatened children that would otherwise not have access to the department and, therefore, support and assistance.

The department has developed a child-friendly Frequently Asked Questions (FAQ) link on its website. In addition, the department created an email address, [children@justice.gov.za](mailto:children@justice.gov.za), which the public may use to contact the department on issues relating to children.

The Children's Court is the DoJ&CD's principal legal mechanism to intervene and assist children who are in need of care and protection. To gather statistics from the children's courts, the department developed the Children's Court Monitoring Tool. Data about matters coming to court relating to children in need of care is gathered monthly.

Section 14 of the Children's Act of 2005 states that every child has the right to bring a matter to the Children's Court.

This means that every Children's Court can serve as a direct entry point for a child to seek help and protection. Children's courts have been rendered highly accessible through the Act.

### Child Justice Act of 2008

The Child Justice Act of 2008 promotes and protects the constitutional rights of children in conflict with the law. The Act provides special measures, designed to break the cycle of crime and restore in these children a lifestyle that is law-abiding and productive.

The department established governance structures to ensure the effective intersectoral implementation of the Act. Nine provincial child justice forums are coordinating and monitoring the implementation of the Act at provincial level.

### Restorative justice

Restorative justice is a response to crime that focuses on the losses suffered by victims by both holding offenders accountable for the harm they have caused and building peace in communities.

Restorative justice strategies, programmes and processes in the CJS are in place to try and heal the harm caused by the crime or offence, from a holistic point of view, for the victim, the offender and the community concerned, which will lead towards rebuilding broken relationships and encouraging social justice and social dialogue.

Any restorative justice option is always voluntary for the victim

involved. Therefore, such programmes and/or strategies will not be forced upon the victim of any crime or offence.

Alternative dispute resolution is defined as the disposal of disputes outside formal court proceedings. The processes and mechanisms may or may not include the restorative-justice approach.

### Court performance

This subbranch of the DoJ&CD is responsible for:

- developing and monitoring processes and systems
- introducing case-flow management that facilitates efficient and effective court and case management
- developing and facilitating the implementation of a court-management policy framework
- evaluating the quality of services and performance within the courts
- facilitating the development of uniform performance standards to enhance institutional performance.

The Directorate: Court Efficiency's key priorities include:

- facilitating integrated case-flow management with stakeholders
- supporting the implementation of the Re Aga Boswa (meaning "We are Renewing") and court capacitation projects
- facilitating the implementation of multilingualism in courts and developing indigenous languages in line with constitutional imperatives
- facilitating the securing of standardised transcription services for courts across all regions
- rendering case-management business intelligence support to information system management in the development of ICT tools and systems
- supporting initiatives for the effective management of court records.

The directorate assists in court capacitation initiatives, namely:

- the UN Office on Drugs and Crime Court Integrity Project
- upgrading five pilot courts, namely Pretoria, Tembisa, Nelspruit, Mkokobela and Kimberley with notice boards, flat-screen television sets and DVD players
- providing integrity training to 120 departmental, 15 NPA and

15 judicial officers

- conducting audits on the management of court records
- facilitating activities on the Court Capacitation National Centre for State Courts Project in consultation with all other stakeholders such as chief directors and regional heads
- engaging human resources and the Safety and Security Sector Education and Training Authority and securing learnership programmes for court interpreters
- engaging in legislation development and finalising the legislative and operational framework for implementing and institutionalising the lay assessor system.

### Integrated Case-Flow Management Framework

The DoJ&CD and participants from other partner organisations is developing an enhanced version of case-flow management in the court environment.

To eradicate case-flow blockages workable solutions were adopted. These include:

- continuous cooperation of stakeholders to implement and maintain case-flow management at all courts
- establishing judicial leadership and case-flow management buy-in processes in the lower and higher courts in the form of case-flow management forums
- facilitating and monitoring the creation of case-flow management governance structures to sustain productivity in the courts' environment
- maintaining case-flow management.

Systems that support case-flow management in the courts include the Integrated Case Management System (ICMS). This system spans all disciplines of cases administered in the justice environment.

The ICMS draws on several core modules to perform basic functions such as information warehousing, case numbering and document scanning. The specific functionality for each court and office are then built on these foundations.

The further development of the ICMS Masters System aims to create a Paperless Estate Administration System for the Master's Office. This system will computerise the administration process in deceased estates, as all documentation will be scanned and stored electronically.

The DoJ&CD's aim over the medium term is to increase the percentage of new deceased estates registered on the paperless estate administration system from 95% in 2016/17 to 100% in 2019/20.

### Audio-Visual Remand System

The Audio-visual Remand (AVR) project links magistrates' courts to correctional detention centres via closedcircuit television (CCTV).

With this system, the accused person is not required to be physically brought before the court, but may appear before the court via an audio-visual link, unless the court, in the interests of justice, directs that he or she be physically brought before it.

The business benefit of using such technology has been reflected in the reduction of case delays and detentions to minimum periods. This initiative is continuously monitored and an investment was made to replace the obsolete equipment.

In the 2017/18 financial year, 48 magistrates' courts were linked to 23 correctional facilities and 17 271 criminal cases were remanded using this technology. This represents a 44% increase in the use of this technology.

### Case-Reduction Backlog Project

The JCPS cluster departments have introduced the case backlog reduction intervention, which reducing the number of backlog cases in the regional and district courts, providing additional capacity to the backlog priority sites. The backlog intervention ensures that the inflow of the number of new cases is balanced by the number of matters concluded. The project deliverables have been integrated into the outputs of the JCPS Cluster Delivery Agreement.

The department provided resources in the form of infrastructure, court personnel, the judiciary, magistrates and budget in support of the prosecution and judiciary to remove these cases from the backlog roll.

### Integrated Justice System

The Integrated Justice System aims to increase the efficiency and effectiveness of the entire criminal justice process by increasing the probability of successful investigation, prosecution,

punishment for priority crimes and, ultimately, rehabilitation of offenders. Further issues receiving specific attention include overcrowding in prisons and awaiting-trial prisoner problems, as well as bail, sentencing and plea-bargaining.

Government wants to eliminate duplication of services and programmes at all levels.

The benefits of proper alignment include:

- less duplication of services
- the effective use of scarce and limited resources and skills
- joint strategic planning and a planned approach instead of simply reacting to problems.

The JCPS cluster has structured itself to focus on two main areas of responsibility, namely operational and developmental issues relating to the justice system, and improving the safety and security of citizens.

### International legal relations

The main functions of the Chief Directorate: International Legal Relations in the DoJ&CD is to identify and research legal questions that relate to matters pertaining to the administration of justice between South Africa and other countries as well as international bodies and institutions.

The chief directorate is involved in direct liaison and negotiations at administrative and technical level with foreign countries to promote international legal cooperation, and for the possible conclusion of extradition and mutual legal-assistance agreements. The chief directorate also aims to establish greater uniformity between the legal systems of southern African countries, especially within the SADC.

The chief directorate coordinates human rights issues at international level under the auspices of the UN and the African Union.

The functions of the chief directorate are divided into eight broad categories:

- regular liaison on international legal matters with SADC countries
- coordinating all Commonwealth matters pertaining to the administration of justice
- interacting with the UN, the Hague Conference and the International Institute for the Unification of Private Law

- interacting with foreign countries outside the SADC region
- preparing Cabinet and Parliament documentation for the ratification of human rights treaties, including report-writing
- processing requests for extradition, mutual legal assistance in criminal matters, interrogatory commissions and service of process processing requests for maintenance in terms of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act 80 of 1963).

Owing to the number of departments and/or institutions involved in the execution of extradition and mutual legal assistance requests, and taking into consideration that diplomatic channels are followed to transmit documents, delays are experienced from time to time.

Provisions are included in extradition and mutual legal assistance agreements to provide for direct communication between central authorities.

The drastic reduction in the turnaround time for the processing of these requests should be a clear indication to the rest of the world that South Africa will neither be a safe haven for fugitives nor a breeding ground for transnational organised crime.

### International Criminal Court (ICC)

South Africa remains committed to the global promotion of the rule of law, and will continue cooperating with the UN system to ensure the success of the international human rights architecture.

South Africa views the ICC as an important element in a new system of international law and governance.

**I**n April 2017, the Department of Justice and Constitutional Development opened the Skukuza Regional Court. This means that South Africa's largest game reserve, the Kruger National Park, now houses a court that will combat rhino poaching.

This is one of the measures being taken in terms of the Integrated Strategic Management approach to combat rhino poaching.

The regional court in Skukuza will help to expedite the case turnaround times for rhino poaching and related cases.

Rhino-poaching has been declared a National Priority Crime, and government continues to work as a team in the implementation of the Integrated Strategic Management of Rhinoceros.

## Office of the Chief Justice (OCJ)

The mandate of the OCJ is to render support to the chief justice as the head of the judiciary, as provided for in the Constitution, read together with the Superior Courts Act of 2013.

The OCJ is also required to:

- provide and coordinate legal and administrative support to the Chief Justice
- provide communication and relationship management services, and intergovernmental and internal coordination
- develop courts administration policies
- support the development of judicial policy, norms and standards
- support the judicial function of the Constitutional Court
- support the JSC and SAJEI in the execution of their mandates.

### Legislation and policies

The OCJ derives its mandate from several pieces of legislation which include the following:

- The Public Service Act of 1994, which provides for the organisation and administration of the Public Service.
- The Public Finance Management Act of 1999, which regulates financial management in the national government.
- The Superior Courts Act of 2013, which empowers the Chief Justice to exercise responsibility over the establishment and monitoring of norms and standards for the exercise of judicial functions for all courts. The Minister of Justice and Correctional Services has, in terms of this Act, delegated certain powers and functions to the Secretary-General (SG) of the OCJ for the purposes of providing administrative support functions to the Chief Justice and the Judiciary. This Act also regulates the allocation of financial resources of the OCJ and designates the SG as the Accounting Officer.
- The Judges' Remuneration and Conditions of Employment Act of 2001, which deals with the remuneration and conditions of employment of judges.
- The JSC Act of 1994, which deals with the appointment of judges and support to the JSC.
- The SAJEI Act of 2008, which provides for further training of judicial officers.
- The Public Service Act of 1994: In March 2015, the Minister

of Public Service and Administration, in terms of this Act, determined the functions relating to the administration of the Superior Courts transferred from the DoJ&CD to the OCJ.

## Department of Correctional Services (DCS)

The mandate of the Department of Correctional Services is derived from the Correctional Services Act, 1998 (Act 111 of 1998), as amended; the Criminal Procedure Act – or CPA – of 1977; the 2005 *White Paper on Corrections*; and the 2014 *White Paper on Remand Detention Management in South Africa*.

The legislation requires the department to contribute to maintaining and promoting a just, peaceful and safe society by correcting offending behaviour in a safe, secure and humane environment, thus facilitating optimal rehabilitation and reduced repeat offending.

The strategic goals of the department are to ensure that:

- the efficiency of the justice system is improved through the effective management of remand processes
- society is protected through incarcerated offenders being secured and rehabilitated
- society is protected by offenders being reintegrated into the community as law-abiding citizens.

### Legislation and policies

In addition to its legislative mandate, the DCS is compelled by the Constitution to comply with the following rights in terms of the treatment of offenders:

- equality
- human dignity
- freedom and security of the person
- right to healthcare services
- children's rights
- right to education
- freedom of religion
- right to humane treatment and to communicate with and be visited by family and next of kin.

Section 63A, Chapter 28 and Section 299A of the CPA of 1977 are of particular importance to the department. It provides for a procedure in terms of which the court may, on application



by a head of a correctional centre and if not opposed by the Director of Public Prosecutions concerned, order the release of certain accused persons on warning in lieu of bail or order the amendment of the bail conditions imposed by that court on the accused person.

Section 63A also forms the basis of a protocol between JCPS cluster departments to encourage the use of this provision to assist accused persons who do not pose a danger to society to be released from detention in circumstances where the bail set by the court cannot be afforded by the accused person or his or her family.

Chapter 28 of the CPA of 1977 deals with sentencing and the entire chapter applies to the department's mandate. Offenders must be detained in accordance with the sentences handed down under this chapter.

The granting of parole and the conversion of sentences to correctional supervision is also done in accordance with this chapter, read together with the Correctional Services Act of 1998.

Section 299A of the CPA of 1977 regulates victim involvement in the decisions of parole boards.

The White Paper on Corrections in South Africa ushered in a start where prisons become correctional centres of rehabilitation and offenders are given new hope and encouragement to adopt a lifestyle that will result in a second chance towards becoming the ideal South African citizen.

The Second Chance Act of 2007 (borrowed from the United States) repudiates the notion that recidivism reduction is best achieved through deterrent threats alone, and calls for the delivery of services to former prisoners not in a minimal or grudging way but in a systematic, progressive fashion.

It is a re-entry movement that could be classified as therapeutic jurisprudence, restorative justice and to some extent victims' rights.

The Act provides programmes and services that will aid rehabilitation efforts and encourage positive participation in society upon release.

It eliminates "invisible punishment" by excluding access to public benefits such as social grants, general assistance, housing and jobs. The Act counters the effects of policies, which

have made it extremely difficult for ex-offenders to re-enter the normative non-criminal community, and could explain why there are so many recidivists.

The Criminal Matters Amendment Act, 2015 (Act 18 of 2015) amends the CPA of 1977. The amendments provide for changes to the law pertaining to infrastructure-related offences by making stricter provisions for the granting of bail, the sentencing of offenders and creating a new offence to criminalise damage to, tampering with or destruction of essential infrastructure that may interfere with the provision of basic services to the public.

The Act also aims to create a new offence relating to the essential infrastructure as well as amend the POCA of 1998.

### Budget

The DCS was allocated R22.8 billion for the 2017/18 financial year. During 2017/18, the DCS placed a partial moratorium on the filling of vacancies except for those posts that were regarded as critical.

Due to reductions in the baseline allocation for compensation of employees, the DCS was compelled to abolish posts by reducing the funded post establishment in line with the Human Resources Budgeting and Planning Tool.

Apart from the capacity challenges as a result of the partial moratorium on the filling of positions the DCS strived to achieve more with less. It has shown commitment in successfully implementing most of its programmes as planned.

### Role players

#### National Council for Correctional Services (NCCS)

The NCCS is a statutory body to guide the Minister of Correctional Services in developing policy relating to the correctional system and the sentence-management process.

#### Judicial Inspectorate of Correctional Services

The Judicial Inspectorate of Correctional Services was established in 1998 with the statutory objective to facilitate the inspection of correctional centres so that the inspecting judge may report on the treatment of inmates and on conditions in correctional centres. The Judicial Inspectorate of Correctional

Services is an independent office.

#### Medical Parole Advisory Board

The Correctional Matters Amendment Act of 2011 provides for a new medical parole policy and correctional supervision. A Medical Parole Advisory Board was appointed in February 2012 to look into all seriously and terminally ill inmates who have submitted reports requesting to be released on medical grounds.

#### Correctional supervision and parole board

Correctional supervision and parole boards are responsible for dealing with parole matters and matters of correctional supervision. The correctional supervision and parole boards have decision-making competency except:

- decisions regarding the granting of parole to people who are declared dangerous criminals in terms of Section 286A
  - the converting of sentences of imprisonment imposed in terms of Section 276 (A) (3) of the CPA of 1998 into correctional supervision
  - decisions with regard to those sentenced to life imprisonment.
- In cases such as the above-mentioned, recommendations are submitted to the courts that in turn will make decision in respect of conditional placement.

There are 53 correctional supervision and parole boards countrywide. These boards are chaired by community members who are regarded as suitable and capable of carrying out the responsibilities by virtue of occupation, standing or cultural reverence. The DCS provides the members with intensive training in respect of the processes, legislative implications and relative policies.

In addition, two members of the community are appointed as members of the board. Trained staff members of the DCS fill the positions of vice-chairperson and secretary.

The board can also co-opt a representative of the SAPS and a representative of the DoJ&CD. However, if the representatives of SAPS and of DoJ&CD are not co-opted to participate in a board hearing, the chairperson of the board may request such departments to provide written inputs in respect of specific serious crimes.

The views of victims of crime are important. As a result, the numbers of victims participating in parole considerations increased eightfold over the past six years, from 253 to 2 279.

As part of its mandate, the DCS aims to improve the effectiveness of the parole system by increasing the percentage of offender profiles submitted by case management committees that have been considered by correctional supervision and parole boards from a projected 89% in 2016/17 to 93% in 2019/20.

In addition, to facilitate the possibility of successful parole, over the medium term the DCS aims to improve the effectiveness of the parole system by:

- increasing the number of persons placed under the electronic monitoring system, from 870 in 2015/16 to 1 000 in 2018/19.
- increasing the percentage of parolees and probationers without violations, from 95% in 2016/17 to 97% in 2019/20.

## Programmes and projects

### The Gallows Memorial

The Gallows Memorialisation Project at the Pretoria Central Prison was initiated to honour those political prisoners who were hanged and serve as a reminder to future generations not to take their freedom for granted.

It comprises a memorial and a museum, which includes the death row block housing the gallows where an estimated 130 political prisoners were hanged between 1961 and 1989.

As part of the museum, the chapel at the gallows was renamed the Steve Biko chapel, in memory of all those who died in detention. There is also a garden of remembrance.

A roll of honour with the names of all the political prisoners can be seen at the entrance to the gallows.

### Operation Vala

The DCS's annual Operation Vala (meaning "close") security campaign results in numerous unauthorised items being confiscated from offenders, as part of search operations to counter offenders' smuggling contraband at the country's 243 correctional facilities.

Contraband items can include dagga, television sets,

music systems, kettles, cellphones, sharp objects, electrical extensions, cigarettes and alcohol.

The Department continued to implement the annual 'Operation Vala' campaign as part of ongoing interventions under the Back-2-Basics security campaign.

This is aimed at ensuring tight security during the end-of-year period: based on historical incidents indicating a spike in escapes, attempted escapes and assaults during the December period. The department has also been actively involved in the development of the government-wide, integrated National Anti-Gang Strategy managed under the auspices of the National Intelligence Coordinating Committee (NICOC).

### Mother and baby units

The mother and baby units are separate cells built for mothers incarcerated with babies in correctional centres. This is to allow children as close to normal an existence as possible even if this is under the conditions of incarceration of the mother, while at the same time providing rehabilitation programmes in a centre that enhances their capacity to care for their children.

These facilities were launched in response to the Child Justice Act of 2008. The Act created an imperative for the department to treat children incarcerated with their mothers in a humane manner.

The facilities cater for children up to two years, after which they are released to a legal guardian chosen or recommended by the mother, where possible.

### Social reintegration

The community forms an integral part of the rehabilitation of offenders on parole to reintegrate them as law-abiding citizens. Parole is used internationally to place offenders under supervision within the community.

The parole policy provides for credible members of communities to chair the correctional supervision and parole boards, which have been allocated decision-making authority.

The department wants to return rehabilitated offenders to society as healthy and responsible community members.

Parolees who obtained skills in correctional centres are being provided with work tools and start-up kits to start their own

businesses.

These include welding machines, sewing machines, car-wash machines and vacuum cleaners to create entrepreneurs and employment for parolees.

Rehabilitation activities in correctional centres include correctional programmes, skills development programmes, as well as psychological, social work and spiritual care services.

The department plans to increase the proportion of sentenced offenders assigned to correctional programmes from 72% in 2016/17 to 80% in 2018/19, and maintain the percentage of offenders participating in skills development programmes at 80% over the medium term.

This will be achieved through improving the marketing of programmes, and appointing external service providers to provide more training opportunities for offenders.

### Halfway House Pilot Project

The DCS as a parallel intervention, has also partnered with Non-Profit Organisations and established eight Halfway Houses managed by these organisations on its behalf. The Halfway Houses are aimed at assisting the department's efforts of reintegrating offenders due for parole placement.

Residents of Halfway Houses are offenders who have no verifiable residential addresses or any other related support systems at the time. Since its inception, 342 parolees and probationers have been reintegrated with their families and communities of origin.

### Victim-offender dialogue (VOD)

VODs are based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than the State. Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability.

Victim participation intended to facilitate dialogue between offenders and victims about the crimes committed has gained momentum. This is slowly but steadily resulting in the acceptance and successful reintegration of offenders into the communities from whence they come.

In this regard, the DCS has contracted an additional 50

Social Auxiliary Workers for a period of five years, to assist in the implementation of Restorative Justice Programmes. By mid-2018, a total of 6 250 targets were set for victim participation, 13 679 victims participated in the Restorative Justice programmes which represents a considerable achievement.

### Educational programmes

As part of rehabilitation efforts, the DCS has established 14 formal schools that provide education up to grade 12 in line with the curriculum of the Department of Basic Education (DBE).

During the 2017 academic year, the DCS achieved a 77% pass rate for Grade 12 with four schools maintaining a 100% pass rate. The partnership with the DBE contributes to this achievement as the department's educationists are included in training and development opportunities.

The performance information of formal education is as follows:

- Adult Education and Training: 10 014.
- Further Education and Training Mainstream Education: 982.
- Amended Senior Certificate (Old Curriculum ): 838.
- Higher Education and Training (post-matric studies): 524.
- Computer-Based Training: 453.

Therefore, the total number of offenders who participated in formal education programmes in the 2017 academic year is 12 811.

Various training interventions for educators who teach life sciences, maths and accounting were undertaken during the academic year.

### Offender labour

During 2017/18, the average offender labour per day in production workshops was 1 546 offenders, which declined with 219 offenders as compared to the performance of 2016/17 financial year.

The decline could be attributed to the vacant artisans' posts, whereas, in agriculture, it was 3 307 offender labour per day, which improved slightly by 39 offenders per day as compared with the performance of 2016/17 financial year.

The improvement could be attributed to an increase in the number of offenders that were eligible to work on farms as part of a concerted effort to market agriculture as a viable source of

income after release.

### Electronic Monitoring System (EMS)

The EMS, which was launched in July 2014, has enabled the DCS to effectively track an offender or a person awaiting trial on a 24-7-365 basis.

In addition, body-scanning equipment had been installed at Kgoši Mampuru II, Johannesburg, Pollsmoor, St. Albans, Durban Westville, Groenpunt and Barberton correctional facilities.

Cellphone detection systems were rolled out in new-generation correctional facilities including Tswelopele (Kimberley) and Brandvlei (Western Cape).

Other installations targeted the Johannesburg Management Area and Kgoši Mampuru II Management Area in Gauteng, Pollsmoor and Goodwood in Western Cape as well as Durban-Westville and Umzinto in KwaZulu-Natal. The long-term aim is to install cellphone detection in all correctional facilities.

### Automated Fingerprint and Identity System (Afis)

The department initiated the roll-out of Afis in correctional centres around the country. The department's Automated Personal Identity System, which was developed through the Inmate Tracking Project, was implemented at 32 correctional centres and 99 community corrections offices.

This interfaces with the Department of Home Affairs' database to verify the identity of offenders.

### Operational structure of correctional facilities

#### Inmates statistics

During the 2017/18 financial year, the DCS had an average inmate population of 160 583 with approved bed space of 118 723.

The department is still faced with a challenge of overcrowding within its correctional facilities, a situation that is exacerbated by the fact that it is compelled to provide accommodation for both sentenced and un-sentenced inmates within these facilities.

#### Incarceration of inmates

There was a considerable improvement in security which culminated in targets being met/ achieved by 0.030% (50/164

129) regarding escapes and 4.6% (7 474/164 129) regarding inmates injured as a result of reported assaults.

### Review of the CJS

The three main streams of core business of the department are vested in the budget programmes:

- remand detention
- incarceration and corrections
- social reintegration.

### Remand detention

The *White Paper on Remand Detention Management in South Africa* of 2014 is relevant to the mandate on remand detention and is consistent with the Correctional Matters Amendment Act of 2011 and other relevant national and international legislation and protocols.

The DCS has commenced with the operationalisation of the White Paper through the development of the overarching departmental policy and procedure manuals.

The CRA was successfully rolled out to 22 remand facilities within all six DCS regions across South Africa.

Remand detention facilities must, therefore, allow for the minimal limitation of an individual's rights, while ensuring secure, and safe, custody.

The White Paper is also a response to the challenges posed by a dramatic increase in remand detainees over the past years.

The DCS established a Remand Detention Branch, which became operational in April 2012.

Together with the Criminal Justice Review Committee, the department embarked on a process of tracking those remand detainees who have been detained the longest in correctional facilities.

The process assisted in determining the factors, which delay the finalisation of such cases, to ensure that these issues are addressed accordingly.

### Health services

In line with the NDP, which envisages a health system that is accessible to all, the DCS provides a comprehensive package of healthcare services (nutrition and hygiene services,

pharmaceutical services and primary healthcare) to the inmate population.

In compliance to the National Strategic Plan (NSP) for HIV, TB and Sexually Transmitted Infections (STIs) 2017 - 2022, the DCS continued to strengthen mitigation efforts against the above mentioned epidemics.

The fight against the spread of communicable diseases such as TB and HIV in DCS facilities has improved significantly.

The department achieved a TB cure rate of 87% (636/728) of offenders against a set target of 86% for the 2017/18 financial year, as compared to 83% (1 034/1 250) for 2016/17.

The achievement can be attributed to the collaborative effort between the DCS, support partners and the Department of Health.

It has implemented the directive on Universal Test and Treat for all HIV-positive inmates so as to ensure improved health outcomes.

Thus the number of inmates initiated on antiretroviral treatment increased by 1 936 from 24 506 in 2016/17 to 26 442 in 2017/18.

In meeting the nutritional needs of inmates, 8% (13 489/164 129) of those who qualified were prescribed therapeutic diets.

This enhanced the effectiveness of the prescribed treatment for communicable as well as non-communicable diseases.