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# Justice and correctional services

## Administration of justice

The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), is the supreme law of the country and binds all legislative, executive and judicial organs of the State at all levels of government.

In terms of Section 165 of the Constitution, 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 deci-

sion of a court binds all organs of State and persons to whom it applies.

The aim of the Department of Justice and Constitutional Development is to uphold and protect the Constitution and the rule of law, and to render accessible, fair, speedy and cost-effective administration of justice in the interest of a safer and more secure South Africa.

It performs its functions in conjunction with judges, magistrates, the National Director of Public Prosecutions (NDPP) and the Directors of Public Prosecutions (DPPs), who are independent.



## Transformation of the justice system

During 1994/95, following the amalgamation of the national Department and the former homeland departments, consultative meetings with various stakeholders took place.

The result was Justice Vision 2000 – a strategic plan to transform the administration and implementation of justice and State legal affairs in South Africa.

Justice Vision 2000, which was launched in October 1997, identified seven key result areas, namely:

- the Department of Justice and Constitutional Development

- courts and other structures that administer justice
- crime, safety and security
- access to justice
- human resource development (HRD)
- the legal profession
- State legal and legislative services.

Since 1994, the Department has had numerous successes in these key result areas. Significant progress has been made with regard to employment equity, which has been funded to the amount of R1,642 million.

In 1994, of the 166 judges, there were 162 White males, two White females, three Black males and no Black female judges.

In 2003, there were 61 Black male, 12 Black female, 13 White female and 128 White male judges. Consisting of less than 2% Black judges in 1994, the judiciary was 34% Black by June 2004. Of the 53 new judges appointed since 1994, 89% were Black while the magistracy was nearly 50% Black and 30% female.

As far as the courts and service delivery are concerned, the Department's flagship project *Re Aga Boswa* (meaning We Are Restructuring/Rebuilding), is aimed at capacitating the courts and empowering them to perform to their full potential. The Model Court Blueprint has also been developed.

Mitchell's Plain in the Western Cape is the first court to benefit, and all future court planning and upgrading is being done in line with the Blueprint's prescribed minimum standards.

The Department has launched the Service-Delivery Improvement Programme (SDIP), which aims to integrate all initiatives dealing with improving court productivity and service delivery.

The most important aim of the Programme is to improve the experience and perception of the public with regard to the service being rendered by the court system. The intention is to develop a number of templates containing procedures for the implementation of the aspects of each project within the SDIP. Individual projects can then be implemented in phases.

The projects include the establishment of local Integrated Justice System (IJS) governance structures, the use of court-management information, case-flow management, plea-bargaining, pre-trial services, actions to reduce the number of awaiting-trial prisoners, video arraignment and court-user surveys.

The Department has also been instrumental in restructuring and transforming the various institutions and bodies involved in the administration of justice. These include the Legal Aid Board, the South African Law Reform Commission (SALRC), the Magistrate's Commission, the Board for Sheriffs and the Rules Board for Courts of Law.

Some of the major challenges the Department still faces include:

- aligning the court structure with the Constitution
- reducing case backlogs

- extending access to justice to the poorest and most remote areas
- re-engineering the maintenance system and the effective implementation of the Domestic Violence Act, 1998 (Act 116 of 1998),
- increasing capacity among justice personnel to effect service-delivery excellence, in line with the principles of *Batho Pele* (People First)
- promoting a culture of good governance and human rights in line with constitutional imperatives.

### Restructuring of the Department

The Department of Justice and Constitutional Development is undergoing a restructuring process to:

- Improve service delivery to internal and external clients to enhance client satisfaction.
- Ensure that business is conducted efficiently and in a cost-effective manner, with the primary focus on courts and other services rendered to the State and the public. This includes improving productivity in the courts and making justice more accessible and affordable.

For the purpose of restructuring, the following core business units have been identified:

- Court Services
- Master's Offices
- Legal Services
- Legislative and Constitutional Development.

Various other units have been identified in support of these business units, namely:

- the Office of the Chief Financial Officer
- HRD
- Information and Systems Management, which includes Information Technology (IT) services
- Public Education and Communication.

In 2003/04, court managers were appointed to individual courts, freeing the judiciary from administrative functions and giving effect to the constitutional principle of the separation of powers. The realigned roles of clerks of the court and registrars will in future focus more on supporting cases through the various court processes.

The judiciary continues to play an active role in restructuring the court system. On the judiciary's agenda are moves towards a single judiciary and

judicial training syllabi, improving racial and gender representivity, and improving accountability and the judiciary's active participation in budgetary processes.

## **National Prosecuting Authority of South Africa (NPA)**

The NPA structure includes the National Prosecuting Services (NPS), the Directorate: Special Operations (DSO), the Witness-Protection Programme, the Asset Forfeiture Unit (AFU) and specialised units such as the Sexual Offences and Community Affairs Unit, and the Specialised Commercial Crime Unit.

In terms of the NPA Amendment Act, 2000 (Act 61 of 2000), the DSO is a distinct and autonomous agency.

By the end of December 2003, the outstanding roll of cases for the District Courts were 149 539, 43 573 for the Regional Courts, and 1 012 for the High Courts. To address the issue of backlogs, Saturday and Additional Courts were introduced in 2001.

The NPA has made steady progress in achieving its priorities.

Between February 2001 and March 2004, a total of 75 214 cases were handled by these Courts. Some 72 Courts participated in the project during 2003. Some improvements were also realised with regard to court hours. During the same period, the conviction rate for Additional Courts was 84% for District Courts and 68% for Regional Courts; while in the Saturday Courts, it was 65% for District Courts and 76% for Regional Courts.

Additional Courts will be scaled down, while the Saturday Courts were to be operational until the end of September 2004, as courts are now reasonably resourced to deal with these cases in a permanent court arrangement.

The concept of Night Courts is being considered.

### **Office of the National Director of Public Prosecution**

The Office of the NDPP is the head office of the NPA. The prosecuting authority vests in the NDPP. This authority has been delegated to other members of the NPA. They have 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
- discontinue criminal proceedings.

### **Directorate: Special Operations**

The DSO pursues its objectives, and complies with its legislative mandate through the application of numerous legislative tools. In addition to the NPA Act, 1998 (Act 32 of 1998), other statutes include the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), International Co-operation in Criminal Matters Amendment Act, 1996 (Act 75 of 1996), and the Extradition Amendment Act, 1996 (Act 77 of 1996).

The DSO is committed to the investigation of matters that are national in scope, and concentrates on those crimes that threaten national security and economic stability. The more complex and protracted the investigations and higher up the criminal target, the more appropriate the matter would be for DSO selection. In many instances, these high-impact investigations fall outside the scope and capacity of the South African Police Service (SAPS).

The DSO pioneered a new approach, which combines intelligence, investigation and prosecution. With the DSO's success in high-profile cases, public confidence grew in the Directorate's ability to impact on organised crime. Money laundering and racketeering were added to its priorities and the DSO succeeded in obtaining the first-ever convictions for racketeering in South Africa.

By February 2004, the DSO had completed 653 cases, comprising 273 investigations and 380 prosecutions.

Of the 380 prosecutions, 349 resulted in convictions, representing an average conviction rate of 93,1%. At the beginning of 2004, there were 588 ongoing cases (investigations and prosecutions).

### **Asset Forfeiture Unit**

In terms of chapters 5 and 6 of the Prevention of Organised Crime Act, 1998, the AFU can seize and

forfeit property that was bought from the proceeds of crime, or property that has been used to commit a crime.

The AFU has two major strategic objectives, namely to:

- develop the law by taking test cases to court and creating the legal precedents necessary to allow for the effective use of the law
- build capacity to ensure that asset forfeiture is used as widely as possible to make a real impact in the fight against crime.

The use of asset forfeiture to fight crime has been one of government's most important innovations.

Since 1999, the AFU has had a success rate of more than 91%.

The AFU is ensuring that the powers contained in the Prevention of Organised Crime Act, 1998 to seize criminal assets, are used to maximum effect. In the last nine months of 2003/04, the AFU returned more than R100 million to victims of crime and froze assets valued at R78 million, involving more than 170 cases.

### **Special Investigating Unit (SIU or Scorpions)**

In the last nine months of the 2003/04 financial year, the Scorpions confiscated drugs worth more than R1,2 billion.

The SIU has highlighted the benefits of its multi-disciplinary approach through its work with bodies such as the AFU, the SAPS and the DSO. During 2002/03, the SIU made significant savings and recoveries to the value of R123,1 million. This consisted of savings and preventions of R88,8 million, and R34,3 million in cash recoveries.

### **Sexual Offences and Community Affairs Unit**

This Unit focuses on violent and indecent offences committed against women and children, family violence, and child support and justice. It ensures that these cases are prioritised, monitors the quality of delivery and ensures that victims and witnesses receive decent treatment in courts.

The Unit also seeks to improve the investigation and prosecution of rape cases.

The Department of Justice and Constitutional Development, in conjunction with the SAPS and the departments of Social Development and of Health, have established several *Thuthuzela* Care Centres for victims of sexual offences.

These multi-purpose Centres render the services of these departments to communities where these services either do not exist, or do exist but are not easily accessible (especially in rural areas).

The Centres are situated at Thembaletu (George, Western Cape), Nsimbi (Umbumbulu, KwaZulu-Natal), Leboeng (Praktiseer, Limpopo), Khutsong (Oberholzer/Carletonville, Gauteng), Tshidilamolomo (Molopo, North West) and Centane (Eastern Cape).

Other Centres receiving attention are Thabong (Welkom, Free State) and Augrabies (Kakamas, Northern Cape).

### **Sexual Offences Courts**

The fight against sexual offences is a national priority. The Department is providing facilities at courts where child witnesses, especially in child-abuse cases, can testify in a friendly and secure environment without the risk of being intimidated.

New child-witness rooms are furnished with one-way glass partitions adjacent to the courtrooms. Where it is impossible to provide such rooms in existing buildings, other rooms away from the courts are utilised by providing a closed-circuit television link.

Intermediaries act as buffers against hostile and potentially protracted cross-examinations of child witnesses in an open court, particularly necessary in cases of sexual victimisation. Most intermediaries are social workers by profession, and fulfil their intermediary functions on a part-time basis or as volunteers. Given the specialised nature of the work and the scarcity of the resource, the Department has decided to appoint about 30 full-time intermediaries. The Draft Criminal Law (Sexual Offences) Amendment Bill, 2003 aims to provide intermediaries to all vulnerable witnesses in sexual-offence cases.

The performance of the special Sexual Offences Courts improved during the first three quarters of

2003/04. The number of cases finalised rose from 1 814 to 2 998.

This corresponds with the increase in the roll-out of these special Courts. The conviction rate of 62% in these Courts in 2003/04 exceeded the *2002 Estimates of National Expenditure* target of 60%.

By May 2004, 50 Sexual Offences Courts had been established countrywide. During the next five years, government aims to establish at least 10 such Courts a year.

### **National Prosecuting Services**

The mission of the NPS is to raise the levels of productivity in the NPA and make it efficient and credible.

It has to ensure proper planning of court rolls, prioritisation, proper preparation and arrangement for all cases to be heard, and the avoidance of unreasonable delays.

By mid-2003, IJS Court Centres had been established at 47 lower courts throughout the country. The IJS Project has resulted in improved case preparation and reduced case-cycle times. Court statistics show that the average cycle time of cases has declined from 110 to 74 days. The Court Management Information System (MIS) reports aspects such as the number of cases finalised per courtroom and per judicial officer, cases withdrawn as a proportion of cases disposed of, and the number of new cases per courtroom and per judicial officer. Encouraged by the initial results, the Department has extended the Southern Gauteng Pilot Project to the rest of the courts in Gauteng and all the courts that have IJS Court Centres.

### **Specialised Commercial Crime Unit**

The Pretoria-based Specialised Commercial Crime Unit was established in 1999 to bring specialisation to the investigation, prosecution and adjudication of commercial crimes.

Three new courts and offices were established in the Johannesburg and Pretoria central business districts for specialised commercial crime cases.

The Johannesburg and Pretoria courts will eventually be followed by similar courts in Durban and Cape Town.

Before the establishment of Specialised Commercial Crime Courts, only 6% of all perpetrators prosecuted were convicted, compared with the 23% conviction rate at the Pretoria Court.

The Specialised Commercial Crimes Unit achieved a conviction rate of more than 95% in 2002.

### **Witness-Protection Programme**

The Office for Witness Protection falls under the auspices of the NPA. The Office is responsible for the protection of witnesses in terms of the Witness Protection Act, 1998 (Act 112 of 1998), and its regulations.

It also makes provision for placing a person related to the witness under protection at the request of the witness, prospective witness or a person who has given evidence or is required to give evidence in criminal proceedings or before a commission of inquiry.

The Programme does not offer incentives such as those offered by the SAPS to witnesses of serious crimes.

Instead, the Programme offers sustenance in the form of a food allowance; replacement of salary if employment has been lost; free accommodation, including all municipal services; a clothing allowance; transport; a housing allowance for school-going children; medical expenses, etc.

### **Community Courts**

During 2003/04, the Department delivered new court buildings in communities at an unprecedented rate.

President Thabo Mbeki announced in the State of the Nation Address in May 2004 that government would establish at least two Community Courts in each of the nine provinces in the 2004/05 financial year.

These Courts will be modelled on the Hatfield Community Court in Pretoria.

The Court focuses on the appropriate handling of lower court cases from the area, specifically offences such as handbag and cellphone theft, offences relating to drug and alcohol abuse, municipal by-law offences and petty offences.

### **Courts for Income Tax Offenders**

In October 1999, the South African Revenue Service (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 is operating twice a week at the Magistrate's Office in Roodepoort.

Discussions to decentralise and expand such courts to the bigger centres in the country have taken place between SARS and the Department of Justice and Constitutional Development. These courts will be established on request of SARS.

### **Family Court Pilot Project**

A specialised Family Court structure and extended Family Advocate services are priority areas for the Department.

The establishment of Family Courts in South Africa is motivated by three broad aims, namely to:

- provide wide and specialised protection and help to the family as the fundamental unit in society
- bring about access to justice for all in family disputes
- improve the quality and effectiveness of service delivery to citizens who have family law disputes.

The Family Court Blueprint recommended that 17 interim projects be established to strengthen the existing pilot projects. The Department is implementing these recommendations as part of the Courts' restructuring.

As part of the Department of Justice and Constitutional Development's aim of prioritising and improving services to vulnerable groups such as women and children, the services rendered by the Family Courts in Durban, Cape Town, Port Elizabeth, Lebowakgomo and Johannesburg are being improved. The Department planned to legislate the Family Court concept in 2004/05, and to roll-out the pilot project to other court districts.

### **Municipal Courts**

Municipal Courts are being set up in the larger centres of South Africa in conjunction with municipalities.

They are Magistrate's Courts but deal only with traffic offences and contraventions of municipal by-laws.

They are set up in a partnership agreement in that administrative and infrastructural support is supplied by the municipality, while magistrates are provided by the Magistrate's Commission, with the support of the Department.

By mid-2004, Pretoria, Port Elizabeth, Nelspruit and Potchefstroom were receiving attention, with one court envisaged per province.

These Courts assist in addressing the backlogs and severe workloads of the other lower courts.

The establishment of Municipal Courts to hear traffic and municipal cases frees the criminal courts to attend to their core function.

### **Equality Courts**

The role of Equality Courts, which are to be rolled out countrywide, is to enforce the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000).

The Act outlaws unfair discrimination and allows for the creation of Equality Courts within the Magistrate's and High Courts, each to be presided over by an Equality Court presiding officer.

The Act further authorises the Minister of Justice and Constitutional Development to appoint an Equality Review Committee to monitor the implementation of the Act's provisions.

By May 2004, 220 Equality Courts were in operation. By mid-2004, 75 cases had been heard, including 31 complaints of racial discrimination; 23 of hate speech; 17 of sexual harassment; and four of discrimination against people with HIV and AIDS.

A monitoring and evaluation system for these cases has been established.

More than 800 magistrates have been trained in equality matters. The training will be extended to include more magistrates so as to ensure that all Equality Courts have a sufficient number of trained presiding officers.

### **State Legal Services**

State Legal Services provides government with legal services and facilitates constitutional amendments through three subprogrammes.

- State Legal Services provides for the work of the State Attorney and State law advisers. The former acts as attorney, notary and conveyancer for government. State law advisers provide legal opinions, scrutinise and amend international agreements, draft legislation and attend relevant Parliamentary Portfolio Committees as legal advisers for all national departments. The Department's resolution to centralise all legal services in the Legal Advisory Services component has gained momentum. The component hosts the National Forum Against Racism and facilitates South Africa's participation in the International Court for Criminal Justice.
- From 1 April 2003 to 30 November 2003, 21 pieces of legislation were introduced in Parliament. Eight of these were passed. This compared well with 2002/03, when 14 pieces of legislation were passed. Plans to establish a Constitutional Litigation Unit in the Department to litigate on constitutional matters on behalf of government, are at an advanced stage.
- The Master of the High Court is responsible for the administration of deceased and insolvent estates, companies and close corporations in liquidation, trusts and the Guardian's Fund, as well as the property of minors, persons under curatorship and absent persons.

## Human rights

Human rights, in terms of Chapter Two (Bill of Rights) of the Constitution, bind all legislative and executive bodies of State at all levels of government.

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:

- freedom from discrimination
- a right to life.

## Crime prevention

The Department of Justice and Constitutional Development is one of the four core departments in

the Justice, Crime Prevention and Security (JCPS) Cluster that has been tasked with the implementation of the National Crime Prevention Strategy (NCPS). This is government's official strategy to combat, control and prevent crime. (See chapter 17: *Safety, security and defence*.)

The main responsibilities of the Department in the implementation of the NCPS are:

- promoting legislation to create an effective criminal justice system (CJS)
- creating an effective prosecution system
- creating an effective court system for the adjudication of cases
- co-ordinating and integrating the departmental activities of all role-players involved in crime prevention.

## Integrated Justice System

In recent years, departments within the JCPS Cluster have taken significant steps towards modernising and integrating the CJS. Following government's approval of the NCPS in 1996, the IJS Board was formed in 1997 to integrate the activities of departments in the Cluster in a co-ordinated manner.

The IJS Programme, approved in 2002, 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.

A second version of the IJS Programme was published in May 2003.

Issues that are receiving specific attention include overcrowding of prisons and awaiting-trial prisoner problems (currently dealt with by the Department of Correctional Services), as well as bail, sentencing and plea-bargaining (currently dealt with by the Department of Justice and Constitutional Development).

During the latter half of 2002, the IJS Board initiated a process to co-ordinate and align activities beyond the IJS Programme. In response to this, a development committee was established in 2003



and mandated to align the shared objectives of the Cluster departments.

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

The Development Committee is mandated to align and co-ordinate Cluster activities across the various departments, with the ultimate aim of improving service delivery, policy co-ordination and planning.

It consists of senior representatives from each of the partner departments participating in the IJS and is chaired by the Department of Justice and Constitutional Development. The National Treasury, the judiciary and the Department of Home Affairs are also represented on the Development Committee.

Based on the existing priorities of the JCPS Cluster, together with government's *Towards a 10-Year Review*, the Development Committee has drafted its first programme plan and identified the following primary objectives:

### **Modernisation of the justice system**

This includes the establishment of proper governance structures, effective monitoring mechanisms based on proper review findings, as well as the integration and automation of the justice system.

Key projects already receiving attention are:

#### **Criminal Justice Review Commission**

The July 2003 Cabinet *Lekgotla* identified, as one of government's priorities, the need for a comprehensive audit and review of the CJS. The review is intended to look at how the CJS works and to establish whether processes underway and steps undertaken are feasible and in line with international best practice.

#### **Integration and automation of the Criminal Justice System**

While each department within the JCPS Cluster must have its own Information Technology (IT) Plan to achieve the vision, mission and departmental specific objectives, the IJS Board co-ordinates the

broader, shared duty to integrate the information flow throughout the CJS.

This governing body provides critical leadership in IJS strategic planning. Its initial responsibilities include articulating a vision, defining the scope and establishing objectives for the integrated System.

Key activities include:

- aligning business processes
- establishing a Centre of Excellence (CoE)
- rolling out a CoE Model (ongoing activity)
- establishing business intelligence
- establishing and maintaining a programme management and support capability.

### **Effective and efficient management of cases and persons through the justice chain**

This goal focuses specifically on women, children and vulnerable groups, as well as improved court and case administration. Key projects include:

#### **Child justice**

Key activities include:

- implementing the Child Justice Bill, once enacted
- trend analyses of children at risk and in custody
- a plan of action to fast-track the processing of children in the justice system
- standardising diversion programmes for children
- reviewing 60 places of safety and secure-care facilities
- establishing one-stop Child Justice Centres – at least one in each province
- training in restorative justice and family-group conferencing.

#### **Victim Empowerment Programme (VEP)**

This Programme aims to improve services rendered to victims of crime.

#### **Establishment of specialist courts**

Immediate priorities are the establishment of Special Commercial Crimes Courts and Sexual Offences Courts. Priority Crime Courts will be established based on a proper needs and impact analysis of crime statistics.

### **Integrated Justice System Court Centres**

The IJS Court Centres provide an IT-driven system to facilitate co-ordination between the IJS partners around case-flow management, and ensure the development of case-management capacity at court level.

Some 46 Court Centres have been established, which has led to reductions in case cycle times, increased court hours, increased number of cases finalised, reductions in awaiting-trial prisoners and reductions in outstanding court rolls.

The Court MIS has been extended to include all the courts in southern Gauteng as well as IJS Court Centres.

The System was expected to be rolled out to courts in 2004/05.

### **Effective and efficient cluster co-ordination and co-operation**

This includes the establishment of structures at provincial, area, and local levels to further promote co-operation and co-ordination between cluster departments.

The Integrated Case-Flow Management Project seeks to unblock blockages in the flow of cases through the court system to ensure expedient case handling.

It necessitates the redefinition of the role of Registrars of Courts and the introduction of Registrar's posts at lower courts to focus on case processing, improving the services of language practitioners, and facilitating the introduction of a case-flow management system to assist the judiciary and other role-players in managing the workload effectively.

The new court structures provide for a dedicated capacity to take responsibility for case-flow management to ensure that case backlogs and cycle times are addressed separately from matters pertaining to facilities management.

### **Saturday and Additional Courts**

To increase the capacity of existing resources, reduce the number of outstanding cases on the roll, and shorten the cycle time of cases in the court

process, 72 courts participated in this project during 2003.

### **Children awaiting trial**

As part of the Overcrowding Task Team's work, the Intersectoral Child Justice Steering Committee has developed a plan of action to fast-track children through the justice system, including an interim protocol for the management of children awaiting trial.

A Standardisation of Diversion Programmes for Children workshop took place on 18 February 2004. The first report was expected in November 2004.

The Department assisted the Department of Education with the development of a protocol to deal with detained children awaiting placement in reform schools. Intersectoral co-operation is facilitated to improve progress in this regard.

The NPA is fast-tracking cases involving detained children awaiting trial.

Intersectoral planning for the implementation of the Child Justice Bill continues. In anticipation of the Bill, the establishment of Integrated Child Justice Centres continued.

These Centres provide an integrated, intersectoral one-stop focal point for children in trouble with the law.

Children's Courts, on the other hand, concentrate on the social-welfare needs of abused and neglected children, requiring close interaction between the social welfare and the justice sectors.

The Department of Justice and Constitutional Development will receive R7,0 million per year from 2004 to 2007 to enable it to fulfil its obligations in terms of the Child Justice Bill.

### **e-Justice Programme**

The e-Justice Programme supports the fundamental reforms necessary to establish a more fair, accessible and efficient justice system in South Africa.

The purpose of the e-Justice Programme is to reform and modernise the administration and delivery of justice through re-engineering work processes by using technologies, strengthening strategic planning and management capacity, organisational development and human resource interventions.

The multi-year Programme was launched in 2000 and comprises the following specialised projects:

### **Court Process Project (CPP)**

The CPP is one of the keystone projects of the e-Justice Programme.

The CPP incorporates the flow of processes that affect departments in the IJS, namely the departments of Safety and Security, Correctional Services, Social Development, Justice and Constitutional Development, as well as the NPA.

The CPP essentially seeks to re-engineer the way in which court services are delivered and is aimed at providing courts with the necessary tools to deal with both caseloads and general management in a more effective manner. This Project also links, for the first time, the police, prosecutors, courts, prisons and social-welfare facilities at selected pilot sites.

The CPP will bring innumerable benefits to all justice officials as well as society at large. These include:

- improved administration and tracking of dockets and case files
- reduced delays leading up to trials
- reduced duplication of data entry
- improved access to information
- timeous notification of events
- verification of identities
- reduced number of lost case dockets
- reduced postponement of cases due to misplaced files/exhibits
- improved administration of prisoner admissions and releases
- improved docket/exhibit administration.

The CPP, which was initiated in 2000, was the first project to deal with an integrated criminal case-management system as well as a civil solution. The Project was the first serious attempt to bring advanced IT functionality and support to the courts.

### **Digital Nervous System (DNS)**

The aim of this project is to deploy IT infrastructure and related services to the Department of Justice and Constitutional Development.

Since the project's inception in 2000, more than 7 000 officials have been provided with basic IT infrastructure.

### **Financial Administration System (FAS)**

The FAS is tasked with automating and administering trust accounts in the Magistrate's Courts, the State Attorneys' offices, and the Guardian's Fund in the Master's Offices. The FAS comprises the following projects:

- The Guardian's Fund administers monies kept in trust for persons including minors, State patients, unborn heirs, and persons having usufructuary, fiduciary or fideicommissary interests.
- The Justice Deposit Account System administers monies received at court in lieu of maintenance, bail, admission of guilt, civil cases, contributions, court cases and estates.
- The State Attorneys' System assists State Attorneys with registering and administering case files, collecting money and administering payments to applicable parties, and the handling of litigation processes.
- The Masters' Administration System for Estates and Insolvencies enables officials to manage cases and track records. It has also resulted in better service delivery through quick and efficient response times to queries.

## **Legislation**

The Legislative and Constitutional Development Unit is responsible for promoting, maintaining and developing the Constitution and its values by researching, developing and promoting appropriate legislation.

It includes research activities of the SALRC, which involve extensive reviews of wide areas of law and legal practice.

The Constitutional Development component of the Unit is, among other things, responsible for promoting the independence and effectiveness of Chapter 9 institutions and administering the Constitution, which includes monitoring the implementation of the Constitution and the Bill of Rights.

The Legislative component of the Unit is, among other things, responsible for researching, developing and promoting appropriate legislation.

The main function of the component is to promote new or amended legislation through the Parliamentary process.

Between 1994 and 2004, the Department promoted more than 108 Bills. The Department's legislative programme was dominated by three main themes, namely, legislation to give effect to the spirit of the constitutional dispensation, legislation to address the crime problem prevailing in South Africa, and legal reform.

The most important pieces of legislation promoted in recent years include the following:

#### **Maintenance Act, 1998 and the Domestic Violence Act, 1998**

The Department implemented the Maintenance Act, 1998 (Act 99 of 1998), and the Domestic Violence Act, 1998 in November 1999 to make a difference in the lives of vulnerable women and children.

By mid-2004, maintenance investigators had been appointed at 62 Maintenance Courts. It was envisaged that 122 more investigators would be appointed in 2004/05, as well as 100 maintenance clerks in hot-spot courts.

#### **Promotion of Access to Information Act, 2000**

The Promotion of Access to Information Act, 2000 (Act 2 of 2000), grants the right of access to information referred to in Section 32 of the Constitution.

The Act generally promotes the transparency, accountability and effective governance of all public and private bodies.

#### **Promotion of Administrative Justice Act, 2000**

The Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), is aimed at the provision of lawful, reasonable and procedurally fair administrative action as contemplated in Section 33 of the Constitution.

#### **Promotion of Equality and Prevention of Unfair Discrimination Act, 2000**

The objectives of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 include prevention and prohibition of unfair discrimination, redress for discrimination, promotion of equality, and progressive eradication of discrimination.

In 2003/04, some 220 Magistrate's Courts were designated as Equality Courts.

#### **Constitution of the Republic of South Africa Amendment Act, 2001**

The Constitution of the Republic of South Africa Amendment Act, 2001 (Act 34 of 2001), amends the Constitution so as to change the title of the President of the Constitutional Court (CC) to that of Chief Justice; provide for the Offices of the Deputy Chief Justice, President of the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal; and provide for the extension of the term of office of a Chief Justice. The Amendment Act also makes provision for municipal borrowing powers, and to enable a municipal council to bind itself and a future council in the exercise of its legislative and executive authority to secure loans or investments for the municipality concerned.

#### **Child Justice Bill**

The proposed Child Justice Bill will create a new system for dealing with children accused of crimes that will:

- set a minimum age of criminal capacity
- ensure individual assessment of each child
- establish procedures to divert as many children as possible away from courts and institutions
- set up new Child Justice Courts with trained personnel
- provide a creative range of sentencing options
- develop a system of review and monitoring.

The Bill encourages the release of children into the care of their parents and entrenches the constitutional injunction that prison should be considered as the last resort.

The Child Justice Bill was presented to the Portfolio Committee on Justice and Constitutional Development on 20 February 2003.

Amendments to the Bill were made at the request of the Portfolio Committee. Although substantial redrafting of certain sections has been requested, the main policy direction of the Child Justice Bill remains intact.

Updated costing and implementation planning of the Bill was done for submission to the Portfolio

Committee on Justice and Constitutional Development in August 2004.

It was expected that the Bill would be passed before the end of 2004.

### **Constitution of the Republic of South Africa Amendment Bill, 2003**

The Bill amends the Constitution in two respects:

- provision is made for a single High Court of South Africa, consisting of the divisions, with the areas of jurisdiction, as determined by an Act of Parliament
- provision is made for the appointment of a second Deputy President for the Supreme Court of Appeal.

The amendments contained in the Bill are required to constitutionally sanction certain corresponding provisions of the Superior Courts Bill, 2003.

The Superior Courts Bill will largely be giving effect to Item 16(6) of Schedule 6 to the Constitution, in terms of which all courts must be rationalised to establish a judicial system suited to the requirements of the Constitution.

It aims to rationalise and consolidate laws pertaining to the CC, the Supreme Court of Appeal and the High Courts, referred to collectively as the Superior Courts. It will also merge the Labour Court and the Labour Appeal Court with the proposed High Court of South Africa and the Supreme Court of Appeal, respectively.

### **Compulsory HIV-Testing of Alleged Sexual Offenders Bill, 2003**

The purpose of the Bill is to provide a speedy and uncomplicated mechanism whereby a victim of a sexual offence can apply to have the alleged offender tested for HIV and have the test results disclosed to the victim.

The Bill emanates from the SALRC's fourth interim report on *Aspects of the Law Relating to AIDS*. In its report, the Commission noted the vulnerability of women and children being infected with HIV as a result of rape and other sexual offences.

In accordance with the Bill, the HIV-testing of the alleged offender should take place within a specific period after the alleged sexual offence

was committed. The victim, or any interested person on behalf of the victim, may apply to a magistrate for an order that the alleged offender be tested for HIV.

The application may also be made as soon as possible after a charge has been laid, and may be made before or after an arrest.

### **Criminal Law (Sexual Offences) Amendment Bill**

The Criminal Law (Sexual Offences) Bill emanates from an investigation by the SALRC. The aim of the Bill is to address mounting public concern about the high levels of rape and other sexual offences in South Africa.

According to statistics released by the Crime Information Analysis Centre of the SAPS in September 2004, 52 733 rape cases were reported in 2003/04.

The Bill was adopted for submission to Parliament in July 2003.

Amendments to the Bill were made on the request of the Portfolio Committee. The Bill was expected to be passed before the end of 2004.

### **Constitution of the Republic of South Africa Amendment Act, 2003**

The Constitution of the Republic of South Africa Amendment Act, 2003 (Act 2 of 2003), amended the Constitution of the Republic of South Africa to provide for the floor-crossing of members of political parties.

### **Public Protector Amendment Act, 2003**

The Public Protector Act, 1994 (Act 23 of 1994), provides for the appointment of Deputy Public Protectors by the Cabinet member responsible for the administration of justice. There have been arguments that this erodes the independence of that office, as such a person (Deputy Public Protector) may eventually assume the duties of the Public Protector. The Act amended the principal Act so as to provide that only one Deputy Public Protector be appointed, and that he/she, as is the case with the Public Protector, be appointed by the President with the involvement of Parliament. The Act also contains

amendments to the principal Act relating to the Office of the Public Protector, and regulates the remuneration and other terms and conditions of employment, vacancies in office, and removal from office of the Deputy Public Protector.

### **Criminal Procedure Amendment Act, 2003**

The Amendment Act, 2003 (Act 42 of 2003), amends the Criminal Procedure Act, 1977 (Act 51 of 1977), to among other things, introduce leave to appeal and petition procedures in respect of decisions of the lower courts.

### **Prevention and Combating of Corrupt Activities Act, 2004**

The Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), provides, among other things, for the strengthening of measures to prevent and combat corruption and corrupt activities.

## **Court and other legal structures**

### **Constitutional Court**

The CC is situated in Johannesburg and is the highest court in all constitutional matters. It deals only with constitutional matters and issues connected with decisions on constitutional matters, including whether Acts of Parliament and the conduct of the President and Executive are consistent with the Constitution, including the Bill of Rights. Its decisions are binding on all persons, including organs of State, and on all other courts. The Court consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine other justices. Justice Arthur Chaskalson is the Chief Justice and Justice Pius Langa is the Deputy Chief Justice.

President Thabo Mbeki officially opened the new building housing the CC on Human Rights Day, 21 March 2004.

The new Court building forms part of the new Constitutional Hill precinct, which is built on the site of Johannesburg's notorious old Fort Prison complex.

The precinct, which is open to members of the public, aims to tell South Africa's story of transition and democracy. (See chapter 5: *Arts and culture*.)

### **Supreme Court of Appeal**

The Supreme Court of Appeal, situated in Bloemfontein, in the Free State, is the highest court in respect of all other matters. It is composed of the President and Deputy President of the Supreme Court of Appeal and a number of judges of appeal determined by an Act of Parliament. 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 the High Courts are binding on Magistrate's Courts within the respective areas of jurisdiction of the divisions.

### **High Courts**

In terms of Item 16(6)(a) of Schedule 6 to the Constitution, 'all courts, their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the Constitution'. The Minister of Justice and Constitutional Development must, after consultation with the Judicial Service Commission (JSC), manage this process.

There are 10 court divisions: Cape of Good Hope (with its seat in Cape Town), Eastern Cape (Grahamstown), Northern Cape (Kimberley), Orange Free State (Bloemfontein), Natal (Pietermaritzburg), Transvaal (Pretoria), Transkei (Umtata), Ciskei (Bisho), Venda (Sibasa), and Bophuthatswana (Mmabatho). Each of these divisions, with the exception of Venda, is composed of a Judge President and, if the President so determines, one or more Deputy Judges President, and as many judges as the President may determine from time to time.

There are also three local divisions: the Witwatersrand Local Division (Johannesburg), Durban and Coast Local Division (Durban) and South-Eastern Cape Division (Port Elizabeth). These courts are presided over by judges in the provincial courts concerned.

A provincial or local division has jurisdiction in its own area over all persons residing or present in that area. These divisions hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or impose a penalty. Except where minimum or maximum sentences are prescribed by law, their penal jurisdiction is unlimited and includes life imprisonment in certain specified cases.

Decisions of the CC, the Supreme Court of Appeal and the High Courts are an important source of law. These Courts are required to uphold and enforce the Constitution, which has an extensive Bill of Rights binding all organs of State and all persons. The Courts are also required to declare any law or conduct that is inconsistent with the Constitution to be invalid to the extent of that inconsistency, and to develop the common law in a manner consistent with the values of the Constitution and the spirit and purpose of the Bill of Rights.

The Land Claims Court and the Labour Court have the same status as the High Court. The Land Claims Court hears matters on the restitution of land rights that people lost after 1913 as a result of racially discriminatory land laws. The Labour Court adjudicates matters relating to labour disputes, and appeals are made to the Labour Appeal Court.

By mid-2003, the Department was engaged in consultations with the judiciary and key stakeholders regarding the rationalisation of the High Courts in terms of the Superior Courts Bill. The objective is to ensure that High Courts are distributed in accordance with political and constitutional boundaries.

The Superior Courts Bill and the Constitutional Amendment Bill were tabled before the Portfolio Committee on Justice and Constitutional Development during 2004.

The Superior Courts Bill is intended to rectify legal discrepancies by rationalising the former Supreme Court of South Africa and the High Courts of the former Transkei, Bophuthatswana, Venda and Ciskei states. It also deals with the integration of the Labour Court and Labour Appeal Court into the High Court system.

The Bill was expected to be passed in 2004.

## **Circuit local divisions**

These are itinerant courts, each presided over by a judge of the provincial division. These courts periodically visit areas designated by the Judge President of the provincial division concerned.

## **Regional Courts**

The Minister of Justice and Constitutional Development may divide the country into magisterial districts and create regional divisions consisting of districts. Regional Courts are then established at one or more places in each regional division to hear matters within their jurisdiction.

Unlike the High Court, the penal jurisdiction of the Regional Courts is limited by legislation.

## **Magistrate's Courts**

Magisterial districts have been grouped into 13 clusters headed by chief magistrates. This system has streamlined, simplified and provided uniform court-management systems applicable throughout South Africa, in terms of judicial provincial boundaries. It facilitated the separation of functions pertaining to the judiciary, prosecution and administration; enhanced and developed the skills and training of judicial officers; optimised the use of the limited available resources in an equitable manner; and addressed the imbalances in the former homeland regions. The Department now communicates through cluster heads.

In terms of the Magistrates Act, 1993 (Act 90 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. Although the Regional Courts have a higher penal jurisdiction than Magistrate's Courts (District Courts), an accused person cannot appeal to the Regional Court against the decision of a District Court, only to the High Court.

By March 2003, there were 370 magistrate's offices, 51 detached offices, 107 branch courts and 234 periodical courts in South Africa, with 1 776 magistrates.

## **Civil jurisdiction**

Except when otherwise provided by law, the area of

civil jurisdiction of a Magistrate's Court is the district, subdistrict or area for which the Court has been established. South African law as applied in the Western Cape is in force on Prince Edward and Marion islands which, for the purpose of the administration of justice, are deemed to be part of the Cape Town magisterial district.

On 1 May 1995, the civil jurisdictional limits of Magistrate's Courts were increased for both liquid and illiquid claims, from R50 000 and R20 000 respectively, to R100 000. In addition to the considerable increase, the previous distinction between jurisdictional limits with regard to the different causes of action was abolished.

Unless all the parties in a case consent to higher jurisdiction, the jurisdiction of a Magistrate's Court is limited to cases in which the claim value does not exceed R100 000 where the action arises out of a liquid document or credit agreement, or R50 000 in all other cases.

### **Small Claims Court**

The limit of cases involving civil claims heard by the Small Claims Court was increased from R3 000 to R7 000 with effect from 1 April 2004.

By June 2004, there were 152 Small Claims Courts throughout the country.

The Commissioner of Small Claims is usually a practising advocate or attorney, a legal academic or other competent person, who offers his/her services free of charge.

Neither the plaintiff nor the defendant may be represented or assisted by counsel at the hearing. The Commissioner's decision is final and there is no appeal to a higher court.

### **Other civil courts**

An authorised African headman or his deputy may hear and determine civil claims arising from indigenous law and custom, brought before him by an African against another African within his area of jurisdiction. Courts constituted in this way are commonly known as Chief's Courts. Litigants have the right to choose whether to institute an action in the Chief's Court or in a Magistrate's Court.

Proceedings in a Chief's Court are informal. An appeal against a judgment of a Chief's Court is heard in a Magistrate's Court.

### **Criminal jurisdiction**

Apart from specific provisions of the Magistrate's Courts Act, 1944 (Act 32 of 1944), or any other Act, jurisdiction with regard to sentences imposed by District Courts is limited to a period of not more than three years' imprisonment or a fine not exceeding R60 000. The Regional Court can impose a sentence of not more than 15 years' imprisonment or a fine not exceeding R300 000.

Any person charged with any offence committed within any district or regional division may be tried either by the Court of that district or the Court of that regional division. Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.

Where, by any special provision of law, a Magistrate's Court has jurisdiction over an offence committed beyond the limits of the district or regional division, the Court will not be deprived of such jurisdiction.

A Magistrate's Court has jurisdiction over all offences except treason, murder and rape. The 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 circumstances pertaining to the offender, the DPP decides in which court a matter will be heard. He/she may even decide on a summary trial in the High Court.

Prosecutions are usually summarily disposed of in Magistrate's Courts, and judgment and sentence passed. The following sentences may, where provided for by law, be passed upon a convicted person:

- imprisonment
- periodical imprisonment
- declaration as a habitual criminal (Regional Court and High Court)
- committal to an institution established by law
- a fine with or without imprisonment as an alternative, correctional supervision or a suspended sentence
- declaration as a dangerous criminal (Regional Court and High Court)



- a warning or caution
- discharge.

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.

Where a court convicts a person of any offence other than one for which any law prescribes a minimum punishment, the court may, at its discretion, postpone the passing of sentence for a period not exceeding five years and release the person convicted on one or more conditions, or pass sentence but suspend it on certain conditions.

If the conditions of suspension or postponement are not fulfilled, the offender may be arrested and made to serve the sentence. This is done provided that the court may grant an order further suspending the operation of the sentence if the offender proves that circumstances beyond his or her control or any other good and sufficient reason prevented him or her from complying with the conditions of suspension.

### Other criminal courts

In terms of statutory law, jurisdiction may be conferred upon a chief or headman or his deputy to punish an African person who has committed an offence under common law or indigenous law and custom, with the exception of certain serious offences specified in the relevant legislation. The procedure at such trials is in accordance with indigenous law and custom. The jurisdiction conferred upon a chief and a magistrate does not affect the jurisdiction of other courts competent to try criminal cases.

### Legal practitioners

The legal profession is divided into two branches – advocates and attorneys – who are subject to a strict ethical code.

Advocates are organised into Bar associations or societies, one each at the seat of the various divisions of the High Court. The General Council of the Bar of South Africa is the co-ordinating body of the various Bar associations. There is a law society for

attorneys in each of the provinces. A practising attorney is *ipso jure* a member of at least one of these societies, which seek to promote the interests of the profession.

The Law Society of South Africa is the co-ordinating body of the various independent law 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. An attorney who wishes to represent his/her client in the High Court is required to apply to the registrar of a provincial division of the High Court. Such an attorney may also appear in the CC. 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.

The Attorneys Amendment Act, 1993 (Act 115 of 1993), provides for alternative routes for admission as an attorney. One of these routes is that a person who intends to be admitted as an attorney and who has satisfied certain degree requirements prescribed in the Act is exempted from service under articles or clerkship. However, such a person must satisfy the society concerned that he/she has at least five years' appropriate legal experience.

State law advisers give legal advice to Ministers, government departments and provincial administrations, as well as to 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.

In terms of the NPA Act, 1998, State advocates and prosecutors are separated from the Public Service in certain respects, notably the determination of salaries.

The State Attorney derives his/her power from the State Attorney Act, 1957 (Act 56 of 1957), and protects the interests of the State in the most cost-effective manner possible. He/she does this by acting on behalf of the State in legal matters covering a wide spectrum of the law.

The State Attorney is involved in the drafting of contracts where the State is a party, and also acts

on behalf of elected and appointed officials acting in the performance of their duties, e.g. civil and criminal actions instituted against Ministers and government officials in their official capacities.

## **Masters of the High Court**

The Masters of the High Court are involved with the administration of justice in estates of deceased persons and those declared insolvent, the liquidation of companies and close corporations, and the registration of trusts.

The key statutory functions of the Masters are the following:

- controlling the administration of deceased and curatorship estates
- controlling the administration of insolvent estates and the liquidation of companies and close corporations
- controlling the registration and administration of both testamentary and *inter vivos* trusts
- managing the Guardian's Fund, which is entrusted with the funds of minors, mentally challenged persons, unknown and/or absent heirs, and creditors for administration on their behalf
- assessing estate duty and certain functions with regard thereto
- the acceptance and custodianship of wills in deceased estates
- acting as an Office of Record.

## **Master's Business Unit**

The Master's Business Unit was launched in Pretoria in October 2002, creating a structure for the Master's Division of the High Court. The Unit is responsible for the overall control of Master's Offices in the country, creating uniformity in Master's Offices; overall control of the Guardian's Fund; strategy and research; and the opening of new offices.

Four new Master's Offices were opened during 2003/04.

## **Rules Board for Courts of Law**

The Rules Board is a statutory body, empowered to make or amend rules for the High Courts, the Supreme Court of Appeal and the lower courts.

It also develops rules and court procedure to ensure a speedy, inexpensive civil justice system, which is in harmony with the Constitution and technological developments, and accessible to all South Africans.

## **Justice College**

The Justice College is tasked with the vocational training of all officials of the Department. The College also presents training to autonomous professions such as magistrates and prosecutors.

## **Office of the Family Advocate**

The Office of the Family Advocate functions in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987).

The Family Advocate, assisted by family counselors, reports to the court and makes recommendations which will serve the best interest of children in cases where there is litigation relating to children in divorce actions or applications for the variation of existing divorce orders.

Inquiries take place at the request of the court, one or both parties to the litigation, or on the initiative of the Family Advocate, in which case authorisation of the court must be obtained.

Family advocates operate in the provincial and local divisions of the High Court.

The Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act 72 of 1996), came into effect in October 1997 and the Natural Fathers of Children Born out of Wedlock Act, 1997 (Act 86 of 1997), in September 1998. The promulgation of these Acts extended the service delivery of the Office of the Family Advocate countrywide.

The Office of the Family Advocate provides support services for the Family Court pilot project. Most offices are involved in mediation training for a large contingent of social workers and other mental-health professionals.

The Office of the Family Advocate co-ordinates community-outreach programmes to assist children involved in family disputes.

The Draft Children's Bill provides for the extension of the role of the Family Advocate to areas such

as mediation and the facilitation of family-group conferences. To assist family advocates in multidisciplinary enquiries about custody, access and guardianship disputes involving children, about 40 family counsellors (social workers) were expected to be appointed in 2004/05.

## **Legal Aid Board**

Established by the Legal Aid Act, 1969 (Act 22 of 1969), the Legal Aid Board provides publicly funded legal advice and representation in criminal and civil matters to individuals and communities in need.

The Legal Aid Board, through its public campaigns and partnerships, is committed to promoting a just society where constitutional rights and the rule of law are respected.

The Legal Aid Board's criminal work supports the constitutional guarantee of a criminal accused's right to a fair trial. In its civil work, the organisation places special emphasis on providing legal advice to protect and defend the rights of women, children and the rural poor.

The Legal Aid Board aims to extend its services to as many indigent persons in South Africa as possible. From time to time, matters arise in which the opportunity exists to undertake or fund litigation or other legal work which has the potential to affect the lives of large numbers of indigent persons in a positive way.

This is done through:

- cases in which opportunity exists to establish a legal precedent that will be followed in dealing with indigent persons in similar matters
- class-action suits or litigation in a small number of matters, calculated to bring about the settlement of a much larger group of disputes
- the strategic intervention and rendering of non-litigious legal services where the potential exists to materially improve the lives of a group or a significant segment of a group of indigent persons.

In civil matters, legal-aid applicants need to qualify in terms of a means test. The merits of an application are also considered.

In criminal matters, the means test is used as a point of departure, but the final test is whether or not the accused is able to afford the cost of his/her own legal representation and would suffer substantial injustice if not provided legal representation at State expense.

The Legal Aid Board's services are provided by salaried legal practitioners employed in its 58 justice centres and 20 satellite offices, by legal practitioners in private practice through the Judicare Scheme and through non-governmental organisations (NGOs) with which the Board has entered into co-operation agreements.

The Legal Aid Board aims to have its justice centres provide most of its legal assistance to indigent people.

In 2003/04, a total of 236 282 new matters were taken on by justice centres, 166 298 of which were finalised.

A total of 46 613 matters were handled by Judicare lawyers. A further 10 965 matters were handled by co-operation partners.

The Legal Aid Board's mission is to provide legal aid to as many indigent people as possible within its limited budget. It does this in an independent manner to enhance access to justice, and public confidence in the law and administration of justice, promoting the entrenchment of a rules-based society.

## **Public Protector**

The Public Protector receives and investigates complaints from the public against government or its officials, and has the power to recommend corrective action and to issue reports.

The Public Protector's services are free and available to everyone.

Complainants' names are kept confidential as far as possible.

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 on it and ensure that the Public Protector's recommendations are followed.

In 2003/04, the Office of the Public Protector received 17 295 new cases, while 7 520 cases were brought forward from 2002/03. Of the 24 815 cases, 15 922 were finalised in 2003/04, leaving 8 280 to be carried forward to 2004/05.

Additional staff have been appointed to deal with the increased workload and backlog.

### **Magistrate's Commission**

The Magistrate's Commission was established to ensure 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.

The Commission also attends to grievances, complaints and misconduct investigations against magistrates. It advises the Minister on matters such as the appointment of magistrates, promotions, salaries and legislation.

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

### **South African Law Reform Commission**

To remain relevant and useful to the community it serves, and to provide government with pragmatic advice, law reform must be supported by extensive research and effective public consultation. Consultation is required to ensure that the law reform process is consistent with the principles of participatory democracy where the law is influenced by those it affects.

A number of measures have been implemented to develop public participation in the SALRC's activities.

Since 1999, the SALRC has submitted 29 reports containing draft legislation to the Minister of Justice and Constitutional Development.

These include reports on critical areas such as compulsory HIV-testing of persons arrested in sexual-offence cases, traditional courts, security legislation, juvenile justice, review of legislation affecting children, Islamic marriages, a compensation fund for victims of crime, the repeal of the Black Administration Act, 1927 (Act 38 of 1927), and customary law of succession.

### **Judicial Service Commission**

In terms of the Constitution, the Chief Justice and the Deputy Chief Justice, and the President and Deputy President of the Supreme Court of Appeal are appointed by the President after consulting with the JSC. Other judges are appointed by the President on the advice of the JSC.

In the case of the Chief Justice and the Deputy Chief Justice, the leaders of the parties represented in the National Assembly are also consulted.

The JSC was established in terms of Section 178 of the Constitution to perform this function.

It also advises government on any matters relating to the judiciary or the administration of justice.

When appointments have to be made, the Commission gives public notice of the vacancies that exist and calls for nominations.

Suitable candidates are short-listed by the JSC and invited for interviews. Professional bodies and members of the public are afforded the opportunity to comment before the interviews or make representations concerning the candidates to the Commission.

The JSC has determined criteria and guidelines for appointments, which have been made public.

The interviews are conducted as public hearings and may be attended by anyone who wishes to do so. Following the interviews, the JSC deliberates and makes its decisions in private. Its recommendations are communicated to the President, who then makes the appointments.

During 2003, some 68 candidates were interviewed by the Commission and 27 appointments made. The Commission consists of 23 members.

## **South African Human Rights Commission (SAHRC)**

The SAHRC, inaugurated on 2 October 1995, comprises a Commission and Secretariat. The aim of the Commission is to promote a culture of respect for human rights; to enhance the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in South Africa.

According to the Constitution, the SAHRC has the power to:

- investigate and report on the observance of human rights
- take steps to secure appropriate redress where human rights have been violated
- carry out research and educate
- require relevant State organs to provide the Commission with information on measures that they have taken towards realising the rights set out in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment.

The Secretariat implements the programmes of the Commission and ensures the promotion and protection of rights by handling complaints of human-rights violations; monitoring observance of human rights; and through education, training and the dissemination of public information.

Some 9 464 complaints were received in 2003/04. The 78% increase in complaints received can be attributed to sustained education and training initiatives.

In response to thematic complaints, the Commission has conducted inquiries into:

- sexual offences against children
- human-rights violations in farming communities
- the accessibility of the built environment for people living with disabilities
- practices of financial institutions in relation to HIV and AIDS
- healthcare services in the Eastern Cape.

## **National Centre for Human-Rights Education and Training (NACHRET)**

The NACHRET was established in April 2000. The Centre provides a platform for debate on human-

rights issues aimed at enhancing an understanding of these issues and practices. The Centre also provides training and builds capacity both in South Africa and on the African continent with regard to human-rights themes, challenges and issues.

## **Commission on Gender Equality (CGE)**

Chapter 9 of the Constitution provides for the establishment of the CGE. Section 187 of the Constitution specifically grants the CGE powers to promote respect for, and to protect, develop and attain gender equality. The composition, functions and objectives of the CGE are outlined in the CGE Act, 1996 (Act 39 of 1996).

The CGE comprises seven commissioners, one chairperson and 33 members of the Secretariat who fall within four departments and are based in six provinces. The other three provinces are serviced from the head office based in Johannesburg. It was envisaged that two more offices would be established in two provinces in the 2004/05 financial year.

The CGE is responsible for:

- gathering information and conducting education on gender equality and the human rights of women
- monitoring and evaluating the policies and practices of State organs, statutory and public bodies, as well as the private sector, to promote gender equality
- evaluating Acts in force, or Acts proposed by Parliament, affecting or likely to affect gender and women's human rights
- investigating any gender-related complaints received or on its own initiative
- liaising with institutions, bodies or authorities with similar objectives
- conducting research to further the objectives of the CGE.

The CGE works in partnership with various civil-society structures and other organisations with similar objectives.

During 2003/04, the CGE received 2 127 complaints relating to discrimination, 45% of which were concluded and 30% referred to other institutions.

Statistics on the nature of complaints are as follows:

- 32% of the complaints received were from men and the rest from women
- gender-based violence and maintenance-related complaints constituted 50% of complaints
- welfare and employment complaints constituted more than 5% each
- the rest related to customary law, media and court processes.

As a result of the nature of complaints received in previous years, the CGE embarked on evaluation, monitoring and research on gender-based violence and maintenance.

The CGE supports strategic interventions in litigation, with the aim of encouraging law reform.

The CGE also monitors most Bills that are introduced in Parliament to ensure that gender sensitivity is considered and that the rights of women are integrated.

## **Truth and Reconciliation Commission (TRC)**

The TRC was established in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995), to help deal with human rights abuses that were perpetrated under South Africa's Apartheid Government.

According to the TRC, some 22 000 individuals or their surviving family members appeared before the Commission. Of these, 19 000 required urgent reparations, and virtually all of them, where the necessary information was available, were attended to as proposed by the TRC with regard to interim reparations.

## **President's Fund**

The President's Fund was established in terms of Section 42 of the Promotion of National Unity and Reconciliation Act, 1995.

In February 2004, government decided to deal with the regulations on reparations in two phases. Phase One dealt mainly with the payment of once-off individual reparation grants of R30 000.

By February 2004, the President's Fund was giving effect to these provisions. By 12 February 2004,

the status of the payments was as follows:

- number of persons paid – 11 735
- amount paid – R353 million
- number of persons still to be paid – 3 739.

The persons still to be paid included beneficiaries of deceased victims who, in terms of the regulations, had to be referred to courts, and their names displayed on notice boards for a period of 30 days. This was done to invite persons who might have a higher preference to the claim than the beneficiary who received the interim reparation to come forward.

Included in the creditors still to be paid were persons who did not supply their banking details, as well as some whose bank accounts had been automatically closed due to inactivity.

Phase Two of the regulations will deal with programmes that will provide for medical benefits, education assistance, housing, and other social benefits, as well as symbols and monuments.

## **International affairs**

The functions of the Directorate: International Affairs in the Department of Justice and Constitutional Development consist mainly of identifying and researching legal questions that relate to matters pertaining to the administration of justice between South Africa and other states.

The Directorate is involved in direct liaison and negotiations at administrative and technical levels with foreign states in an effort to promote international legal co-operation, and for the possible conclusion of extradition and mutual legal-assistance agreements.

The Directorate also aims to establish greater uniformity between the legal systems of southern African states, especially the Southern African Development Community (SADC), and thus promote and establish an efficient administration of justice in the southern African region.

The Directorate co-ordinates human rights issues at international level under the auspices of the United Nations (UN) and the African Union.

The functions of the Directorate are divided into six broad categories:

- the establishment of regular liaison with SADC states
- the co-ordination of all Commonwealth matters pertaining to the administration of justice
- interaction with other international bodies, such as the UN, the Hague Conference and the International Institute for the Unification of Private Law
- interaction with foreign states outside the SADC region
- negotiation of extradition and mutual legal-assistance agreements with other countries
- preparation of Cabinet and Parliament documentation for the ratification of human-rights treaties, including report-writing.

### International Criminal Court (ICC)

As required by the Rome Statute of the ICC, South Africa has promulgated the Implementation of the Rome Statute of the ICC Act, 2002 (Act 27 of 2002).

This Act provides for a framework to:

- ensure the effective implementation of the Rome Statute of the ICC in South Africa
- ensure that South Africa conforms with the obligations set out in the Statute
- address the crime of genocide, crimes against humanity, and war crimes
- address the prosecution in South African courts of persons accused of having committed the said crimes in South Africa and beyond the borders of South Africa in certain circumstances
- deal with the arrest of certain persons accused of having committed the said crimes and their surrender to the ICC in certain circumstances
- address co-operation by South Africa with the ICC.

## Correctional services

The *Draft White Paper on Corrections* embodies the Department of Correctional Services' long-term strategic policy and operational framework that recognises corrections as a societal responsibility and puts rehabilitation at the centre of all the Department's activities.

The Department is required to deliver focused quality services to all persons under its care, ef-

fectively manage correctional officials and substantially improve its management of relations with accredited external stakeholders and oversight authorities.

The Department recognises the enormous challenge it faces: to change the profile of the correctional official from that of a prison warden to that of a role model and rehabilitator. Developing the final White Paper and delivering services according to its principles will be a key priority over the next three years.

The acknowledged and intended functions of the Department as detailed in the Draft White Paper will require substantial resources and innovative approaches to correction, development, care, reintegration and aftercare of offenders. The establishment of centres of excellence in various regions as sustainable service-delivery points will enable the Department to phase in interventions and services to promote excellence, taking advantage of the best practices within and outside the system. The White Paper Implementation Plan details the activities to be realised.

The White Paper roll-out is a deliberate effort aimed at promoting partnership, ownership, and participation from correctional staff, NGOs, government departments, individuals and collectives.

The Department has undergone extensive restructuring in the last two years to realign itself with the Draft White Paper.

### Safe custody of prisoners

The aim of the Department of Correctional Services is to contribute towards maintaining and protecting a just, peaceful and safe society by enforcing court-imposed sentences, detaining offenders in safe custody, and promoting the social responsibility and human development of all offenders and persons subject to community-correction programmes.

During 2004/05, the budget allocation for the Department of Correctional Services was spent as follows:

- R2 707 million on security
- R503 million on corrections
- R765 million on care
- R1 622 million on facilities

- R318 million on after-care
- R407 million on development
- R2 707 million on administration.

By 31 March 2004, the Department had a personnel force of 32 786, with 187 903 offenders incarcerated in 241 prisons countrywide. By 31 March 2004, there were 51 281 parolees and 26 257 probationers within the system of community corrections.

Strategies have been adopted to balance the need for security with the need for conditions that are conducive to rehabilitation. The Gearing Department of Correctional Services for Rehabilitation Project was introduced in 2002/03, which involved a substantial review of rehabilitation, and identified key service-delivery areas: corrections, development, security, care, facilities and after-care. This comprehensive approach entails all aspects of the Department's core business, and requires developing new policy regarding the types of correction programmes offered and the recruitment and training of prison personnel.

In line with the Vienna Declaration on Crime and Justice, the Department has embraced the restorative-justice approach aimed at reducing crime and promoting healing between offenders, victims and the community.

The process to conduct public education campaigns has begun to raise awareness of the implementation of restorative-justice programmes and policies. This project intends to facilitate the mediation process between victims of crime and offenders, in an attempt to bring about restitution and reparation. This will be done by means of developing restorative-justice and victim-empowerment programmes.

### **Offender accommodation**

The Department strives to provide adequate prison accommodation that complies with accepted standards. Offenders are housed in 238 prisons countrywide, which include:

- eight prisons for female offenders only
- 13 youth correctional facilities
- 141 prisons for male offenders only
- 72 prisons for both male and female offenders

- four temporarily inactive prisons (closed down for renovations).

In prisons where male, female and juvenile offenders are accommodated, female and juvenile offenders are housed in separate designated sections.

### **Overcrowding in prisons**

The problem of prison overcrowding remains the most important influence on the Department's budget and performance, especially in relation to rehabilitation.

Figures on overcrowding in South Africa's prisons released in February 2004, indicated that the prison population at the time was 187 065. This figure consisted of 54 750 unsentenced prisoners and 132 315 sentenced prisoners.

The prison's capacity on 30 April 2004 stood at 114 787, meaning that at the time, the country's prisons were overpopulated by 64%.

The daily average prisoner population is projected to increase to 188 100 prisoners in 2004/05, 195 300 in 2005/06 and 202 400 in 2006/07.

A notable contributing factor is the awaiting-trial and awaiting-sentence prisoner population. Despite decreases in this population in the last three years, at the end of April 2004 there were some 53 880 prisoners awaiting trial and prisoners awaiting sentencing in South Africa's prisons – representing about 28,7% of the total prison population of 187 903 as at 30 April 2004.

To address these challenges, the Department is implementing a number of strategies:

- The building and staffing of new prisons, designed cost-effectively.
- The finalisation of prison procurement models.
- The Department of Correctional Services is co-operating with other departments in the IJS, notably the Department of Justice and Constitutional Development, on a range of projects to reduce the number of prisoners.
- The Department is also promoting awareness in the IJS of alternative sentencing options and diversion programmes.
- A JCPS Cluster Task Team on overcrowding, established at the end of 2002, monitors the CJS to identify and eliminate blockages that result in increased prisoner numbers.



- In September 2003, Cabinet approved the advance by nine months of the parole date of certain categories of sentenced prisoners, to alleviate overcrowding. This immediately reduced the prisoner population by about 7 000 inmates.

Since 1994, 10 new prisons have been constructed and two rebuilt to address the problem of overcrowding. Two of the 10 prisons are public-private partnership prisons. They will have a combined capacity of 5 952.

Members of the JCPS Cluster are working together to reduce the awaiting-trial population by speeding up court processes through Saturday Courts and the free participation of the Law Society of South Africa in dealing with court cases to promote plea-bargaining.

This resulted in a drastic reduction of the prison population in 2003.

Work has begun on the construction of four new prisons in Leeuwkop, Nigel, Klerksdorp and Kimberley under the 'new generation' concept. The first prison is expected to be completed by January 2007. Each of these prisons will be able to accommodate about 3 000 prisoners. By mid-2004, Phase One of the upgrading of and additions to the existing prison at Klerksdorp was completed and the prison handed over to the Department.

In terms of the new release policy, no offender may be considered for parole before he/she has completed at least half of his/her sentence.

The Criminal Law Amendment Act, 1997 makes provision for much harsher sentences for serious crimes.

These changes are expected to place an even greater burden on prisons as it is likely to increase the average length of prison sentences.

## **Safety and security**

From 1 January to 31 December 2003, there were 234 escapes from South Africa's prisons. There were 391 escapes in 1999/00, 241 in 2000/01, 233 in 2001/02 and 281 in 2002/03.

The Department has put in place various measures aimed at combating escapes. These include the optimal utilisation of existing security aids and

equipment, continued evaluation of security directives, upgrading of personnel training, disciplinary action against negligent personnel, rewarding offenders who report or warn of planned escapes, and the installation of electronic fences and X-ray scanners in high-risk prisons.

The Department is in the process of upgrading and intensifying the use of equipment to increase the level of security in prisons, thereby ensuring the protection of offenders, officials and the public. The Department has created a culture of security awareness among its staff. All managers are involved in monitoring and ensuring adherence to security policies and procedures, through strict supervision, control mechanisms and disciplinary action against negligent officials.

Progress has been made with the development of the inmate tracking system. The aim is to identify and track persons in prison more effectively, reducing both prisoner delays in court attendance, and escapes. The pilot project in the Durban Westville Correctional Centre started in January 2004.

## **Classification**

Offenders undergo safe-custody classification upon admission to determine the level of security required to detain them.

Offenders are classified into minimum, medium or maximum custodial categories. Variables taken into account include the type of crime committed, the length of the sentence, and previous convictions. The safe-custody classification of every offender is reviewed regularly, and if his/her behaviour, or any other aspect affecting his or her security risk, justifies it, reclassification takes place.

## **Categories**

There are five categories of offenders in South African prisons, namely:

- unsentenced offenders (mainly offenders standing trial on a charge and detained in prison pending the conclusion of the judicial process)
- short-term offenders (offenders serving a sentence of less than two years)
- long-term offenders (offenders serving sentences of two years and longer)

- unsentenced children/juveniles and youths between the ages of 14 and 25
- sentenced children/juveniles and youths between the ages of 14 and 25.

### **Young offenders**

In terms of the Constitution, a child is a person under the age of 18 years. The Department of Correctional Services regards a person between the ages of 14 and 25 years as a youth. The Department is responsible for the detention, treatment and development of sentenced juveniles.

Section 7(2)(c) of the Correctional Services Act, 1998 (Act 111 of 1998), stipulates that children must be kept separate from adult offenders and in accommodation appropriate to their age, as young offenders are predisposed to negative influence. The aim of this separation is the provision of distinctive custodial, development and treatment programmes, as well as spiritual care, in an environment conducive to the care, development and motivation of youths to participate and to develop their potential.

The nature of serious offences committed or allegedly committed by some 4 158 children under the age of 18 who were awaiting trial or sentenced is alarming. In 2003/04, there were 1 844 economic-related offenders under 18; 1 627 aggressive crime offenders; 511 sexual offenders under the age of 18; and 176 drug-related and other types of offences.

Likewise, of the crimes committed by 36 311 sentenced youths between the ages of 18 and 25, a total of 12 440 were aggressive, 15 100 economic, 5 395 sexual, and 3 376 drug-related and other types of offences.

The crimes allegedly committed by 26 783 unsentenced youths between the ages of 18 and 25 consisted of 13 148 aggressive, 8 404 economic, 3 682 sexual and 1 549 drug-related and other types of offences.

There are 13 youth correctional facilities in the country, namely Hawequa, Brandvlei, Drakenstein Medium B and Pollsmoor Medium A (Western Cape); Leeuwkop, Emthonjeni and Boksborg (Gauteng); Rustenburg (North West); Durban and Ekuseni (KwaZulu-Natal); Groenpunt and

Kroonstad (Free State); and Barberton Prison (Mpumalanga).

The development and support of youth offenders form an essential part of their incarceration. The aim of rendering professional services (education, reskilling, learning a trade, moral and spiritual enlightenment, and personal development) is to rehabilitate youth offenders, contribute towards their behavioural change, and prepare them for their reintegration into the community.

The focus is on the promotion and development of leadership qualities. A holistic approach is followed in which:

- young offenders are motivated to actively participate in their own development and the realisation of their potential
- a culture and atmosphere of development prevails
- sound discipline and co-operation between personnel and offenders, and among offenders, is fostered and maintained.

### **Mother-and-child units**

Mother-and-child units have been established in eight female prisons nationally. By 31 March 2004, there were 210 infants under the age of five in prison with their mothers. Policy on such infants clearly stipulates that mothers and children are kept in a separate unit within the prison, where the surroundings and facilities are complementary to the sound physical, social and mental care and development of children.

The policy also stipulates that the admission of an infant with a mother is permitted only if no other suitable accommodation and care are available at that stage, and that it should be regarded as a temporary measure.

The right of the mother to have her child with her during admission promotes a positive relationship between mother and child. The policy emphasises that the mother should be taught good child-care practices for her own self-esteem and self-confidence, and for the benefit of the child.

### **The privilege system**

The main objectives of the privilege system are

to encourage offenders to display good behaviour, engender a sense of responsibility in them, and ensure their interest and co-operation in treatment programmes.

The system consists of primary and secondary privileges. Primary privileges are aimed at the retention, maintenance or furthering of family ties to, among other things, facilitate reintegration into the community. These privileges are divided into A, B and C groups. The entry level for all new admissions is the B group and, depending on behaviour, an offender may be promoted or demoted to either the A or the C privilege group.

Secondary privileges are aimed at leisure-time activities such as participation in sports and watching television. No sentenced offenders are allowed to receive food from outside prison or to use private electrical appliances.

### **Healthcare services**

The healthcare of offenders is regarded as an important responsibility of the Department, and includes nutrition, personal care, environmental hygiene and pharmaceutical services. The Department endorses the fundamental rights and privileges of all offenders.

In accordance with the Correctional Services Act, 1998, an independent judicial inspectorate regularly inspects all prisons and reports on its conditions and the treatment of offenders.

The policy and administrative framework for the maintenance of an adequate, affordable and comprehensive healthcare service is based on the principles of Primary Healthcare (PHC). The service includes mental, dental and reproductive health, supplementary healthcare, health-promotion management of communicable diseases (including HIV, AIDS and sexually transmitted infections [STIs]) and referrals where necessary, through the acknowledgement of national and international norms and standards, within the limited available resources.

The approach to healthcare in South Africa's correctional facilities focuses on:

- the strict pursuance of ethical codes by health professionals

- regular health-quality inspections
- strict compliance with rules of confidentiality and privacy with regard to the medical records of patients
- the continuous evaluation and upgrading of medical emergency services.

The Department of Correctional Services provides a system in which offenders are treated in the same way as other patients in the State sector through PHC principles.

Offenders in need of further healthcare are, as far as possible, treated in State hospitals. The use of private hospitals for offenders is permitted in cases where public hospitals are unable to provide access to healthcare and only after approval by the Provincial Commissioner of Correctional Services.

The Department's objective is to maintain a high standard of personal hygiene by ensuring that the following are provided to offenders:

- toilet and bathing amenities with warm water
- suitable clothing and comfortable shoes
- adequate bedding
- a clean and healthy environment
- safe water-supply
- the promotion of a smoke-free prison environment.

To provide prisoners with access to medical care, the Department concluded service level agreements with the Western Cape in 2003/04 and envisaged concluding such agreements with the remaining provinces during the 2004/05 financial year.

The Minister of Correctional Services approved the Department's HIV and AIDS Policy in October 2002. The Department will be involved in the roll-out of government's antiretroviral implementation plan to HIV-positive prisoners during the medium term.

The Department's HIV and AIDS Policy caters for the following:

- prevention, which involves the promotion of safe sexual practices, management and control of STIs, provision of condoms and access to voluntary counselling and testing
- treatment, care and support
- respect for human rights

- awareness campaigns and the commemoration of HIV and AIDS calendar events
- partnerships with other government departments, the private sector, NGOs and educational institutions
- peer-led education programmes to introduce behavioural changes among peers
- the appointment of employee-assistance practitioners to implement employee-wellness programmes
- principles of universal precautions, which provide personnel and offenders with guidelines and procedures regarding the handling of all body fluids.
- actively engage the community to assist with development programmes for the people entrusted to the Department's care
- develop and implement a needs-based development programme
- establish training centres at large prisons as well as capacity-building in small prisons
- market rehabilitation programmes to offenders and the community
- promote and implement restorative justice principles to ensure the involvement of offenders, victims and the community in the rehabilitation process.

### **Nutrition**

The Department is committed to maintaining the health and strength of those entrusted to its care by satisfying their nutritional needs according to the Recommended Daily Allowance for food intake. The main objectives are to provide:

- all offenders with three nutritious meals per day, and with a therapeutic diet when prescribed by a medical doctor
- religious and cultural diets.

### **Rehabilitation services**

The aim of rehabilitation is to provide treatment and development programmes to offenders in partnership with the community to enhance personal and social functioning, and to prepare them for reintegration into the community as productive, well-adapted and law-abiding citizens.

A multidisciplinary team, consisting of social workers, psychologists, chaplains, educators, correctional officers and others (the external community), addresses the basic needs of offenders by means of comprehensive assessments and various needs-based programmes.

The development and rehabilitation processes, which enable offenders to improve their mental health, social functioning, competencies, knowledge, skills and spiritual well-being, are focused on the following key strategies, namely to:

- positively combat illiteracy within the prison environment

The further establishment of training centres in the various provinces is aimed at equipping offenders with basic technical skills in a variety of fields such as brick-making, brick-laying, woodwork, welding, garment-making, etc. Training is also provided in business skills to equip individuals to operate their own small businesses upon release.

The Department is in the process of researching, designing and developing needs-based correctional programmes to target and address the offending behaviour of individual offenders.

During the 2004/05 financial year, the Department was set to design, develop and implement policy, guidelines, instruments, processes and procedures on risk assessment and profiling, including monitoring and evaluation mechanisms. Various work sessions between management and the National Council on Correctional Services took place to clarify the roles and responsibilities of members of the various remission and parole boards. As soon as the appointments are finalised, training will begin, and 52 new boards aligned with the new legislative requirements were expected to come into operation during 2004/05.

### **Institutional committees**

Institutional committees at each prison are responsible for ensuring a professional and co-ordinated approach towards the incarceration, treatment, training and development of all offenders. This is implemented by means of a multidisciplinary approach in which all role-players are involved, i.e. those concerned with custodial, training, education-

al, psychological, religious-care and social-work functions, recreational sport and library projects, as well as self-sufficiency and skills programmes.

Institutional committees have statutory decision-making competency with regard to the safe custody of offenders, individual participation, subgroup and group programmes, as well as the prompt rewarding of positive behaviour.

### **Education and training of offenders**

All offenders have a right to basic education and training. The aim is to enhance the education level and improve the skills of offenders to facilitate their reintegration into the community. Services are provided to sentenced and unsentenced offenders in collaboration with external partners (government institutions, training boards, NGOs, etc.) and are in line with the provisions of the South African Qualifications Authority and the National Qualifications Framework.

Education and training programmes include:

- Adult Basic Education and Training (ABET)
- mainstream education (Grades 10 to 12)
- business and engineering
- correspondence studies
- technical studies
- vocational training
- occupational skills training
- instruction in recreation and sport
- arts and culture programmes
- life-skills training and development
- entrepreneurial skills training
- computer-based training.

The main emphasis is on the provision of literacy and numeracy programmes, which include training in occupational, life and entrepreneurial skills, and should enhance the chances of the successful reintegration of the offender into the community and labour market.

Inmates are encouraged to take part in sport, recreation, arts and culture activities as far as possible.

By February 2004, 8 375 inmates had benefited from the ABET Programme. As some of the prisoners are of school-going age, they are given the opportunity to study.

Partnership agreements and formal working relationships were established with external service-providers of voluntary services in relation to formal education and skills development. During 2003, a total of 347 bursaries (for 329 prisoners and 18 officials) were granted for ABET practitioner training within the Department of Correctional Services, sponsored by the University of South Africa and the United Kingdom's (UK) Department for International Development. A total of 204 prisoners were trained during the 2003 academic year, as reading, communication and life skills instructors, in a project facilitated by the Re-educate Trust. The Department of Labour (National Skills Fund) allocated some R13,1 million for the training of prisoners in basic occupational skills.

By February 2004, about 12 400 inmates had been trained in 14 of the Department of Correctional Service's training centres throughout the country in various fields such as computers, brick-laying, woodwork, welding, etc. Between 2002 and 2003, about 13 government departments purchased 6 640 of the items produced in the Department's workshops, generating revenue of about R6,8 million.

These training facilities are also available to members of the neighbouring communities to empower themselves. The *Vukukhanye* Youth Development Project in the Western Cape is a prime example – 78 trainees from Paarl and Franschoek graduated with technical skills in garment-making, cabinet-making, upholstery and other fields in early 2004.

Spending on development is expected to increase by an annual average of 13,8% per year over the period 2000/01 to 2006/07.

### **Psychological services**

Psychological services are provided for sentenced offenders and persons subject to community corrections, to maintain or enhance their mental health and emotional well-being.

The number of psychologists decreased from 31 to 23 in 2004 which impacted on the rendering of services. Psychologists held 3 560 individual therapy sessions, 403 group sessions and 46 family sessions.

The Department intends to alleviate the shortage of psychologists by utilising community psychologists on an annual basis in co-operation with the Department of Health. This venture will also support the Department of Correctional Services' rehabilitation drive and serve as a solution for continual recruitment.

In areas where there are no departmental psychologists, the Department uses the following procedures to address the emotional needs of offenders:

- external registered psychologists can be contracted in if a medical practitioner has referred the offender for psychological treatment
- offenders can see a private psychologist at their own expense
- final-year students who are busy with their MA degrees in Clinical or Counselling Psychology provide services without remuneration under the supervision of their respective universities.

### **Social Work Services**

Social Work Services aims to provide professional services to help offenders cope more effectively with their problems with social functioning, and to prepare them for reintegration into the community.

Treatment programmes offered by Social Work Services comprise structured programmes on issues such as life skills, family care and marriage, alcohol and drug abuse, orientation, sexual offences, trauma, pre-release, and HIV and AIDS.

In May 2004, the Department employed 489 social workers.

An important challenge is the growing number of people living with HIV and AIDS, as not all social workers possess the necessary training to qualify them as HIV and AIDS counsellors.

Research on the rehabilitation of offenders found that there was a need for rehabilitation interventions to be systematic and needs-based. This led to the development of a framework/model of intervention that aims to assist in the consistent and intensive assessment and evaluation of offenders' needs and rehabilitation programmes.

All social workers in the Department have received training on the model of intervention to

assist in the consistent assessment of offenders and provision of needs-based rehabilitation programmes. All social workers are implementing the intervention model.

However, other structured programmes are still being offered as a preventative measure, e.g. the programme on HIV and AIDS offered to young offenders.

### **Spiritual care of offenders**

Spiritual-care services are rendered through needs-based programmes within a multidisciplinary context to persons who are in the care of the Department. This is done in partnership with churches or faith-based organisations (FBOs) and other role-players with the aim of rehabilitating offenders and reintegrating them into the community.

It also aims to contribute to changing the offenders' behaviour, based on a lifestyle which is in accordance with the acceptable values and norms of their faith.

Spiritual-care services are rendered to sentenced and unsentenced offenders, probationers, parolees and personnel on an *ad hoc* basis.

During 2003, a survey was conducted to determine the spiritual needs of offenders.

The Department employs full-time chaplains and part-time spiritual workers from various religious backgrounds.

The extent of religious/spiritual counselling is reflected by the 45 245 spiritual services, 39 371 group sessions and 71 841 individual sessions held for offenders in 2003/04.

Quarterly meetings are held with the chaplains of the South African National Defence Force and the SAPS to discuss issues of common concern.

The Department is a member of the International Prison Chaplaincy Association (IPCA). A working relationship also exists with FBOs like Prison Fellowship International, Alpha, New Life Behaviour Ministries and Kairos.

Provision is made for offenders to observe the main religious festivals and holy days such as Ramadan, Passover, Good Friday and Christmas. Religious and spiritual literature, such as the *Bible* and the *Qur'an*, is supplied to offenders.

### **Release of offenders**

The Correctional Services Act, 1998 provides for the creation of independent regional correctional supervision and parole boards throughout the country, with greater powers to consider and approve which offenders, serving sentences exceeding 12 months, should be granted parole. In the interest of protecting the community, the Department has abolished the concept of remission of sentence.

The parole and correctional-supervision policy deals with and also provides for a non-parole period. In terms of the Correctional Services Act, 1998, offenders are not considered for parole until they have served at least half of their original sentences or the non-parole period, whichever is the longer.

Courts are empowered to build a non-parole period into the sentence of any convicted criminal. This period may be as much as two-thirds of the total sentence. A person declared a habitual criminal may not be considered for parole before having served at least seven years in prison. An offender serving a life sentence may not be considered for parole until he/she has served at least 25 years of his/her sentence.

### **Reintegration into the community**

The Department aims to equip offenders with the skills required for effective reintegration into society after release. Offenders sentenced to longer than six months' imprisonment undergo a basic pre-release programme before release. Aspects receiving attention include how to secure employment, personal finance management and street law.

Specialists from the community are also involved in the presentation of the programme. Care and support for an offender are prerequisites for placement in the community. Before offenders are placed, they are assisted with obtaining employment and accommodation, or at least care and support. Community involvement in supporting offenders after release is encouraged.

Offenders are provided with financial and material assistance before they are released from prison.

By mid-2004, the Department was drafting an after-care policy to facilitate the social acceptance

and reintegration of offenders into the community, and involve the community in the process. The policy is expected to be implemented during the 2005/06 financial year after approval by the Minister of Correctional Services.

### **Community corrections**

Plans are being implemented to make community correction offices more widely accessible to the majority of offenders and the community, especially in rural areas. The final location and decentralisation of the offices is envisaged by the end of 2006/07. In 2004, there were 175 fully functional offices and 21 suboffices.

A revised classification system for offenders subject to community corrections is being developed. The intention is to align offenders' classification with the principles of rehabilitation, requiring more interaction between offenders and their supervision officials. This system was expected to be phased in during 2004/05.

The Department managed to increase the percentage of absconders traced, from 40,5% in 2001/02 to 68,2% in 2002/03. This was achieved through an increase in the personnel responsible for managing and controlling offenders under community corrections.

### **Supervision of parolees**

Parolees are subject to certain conditions as well as supervisory measures aimed at gradually reintegrating them into the community.

To achieve these goals, parolees are allocated to a supervision official of the Department, who ensures that they are regularly monitored. Contra-vention of parole conditions leads to stricter conditions and increased supervision or reimprisonment for a part of or the entire remainder of the parole period.

Volunteers from the community are encouraged to assist the Department in the monitoring of parolees.

Based on their risk profile, parolees are placed in minimum, medium or maximum supervision categories. These supervision categories are also applicable to probationers. Awaiting-trial persons under community corrections are classified under the maximum supervision category.

Parolees are confined to their homes according to their monitoring categories. Monitoring includes visits to the parolee's home and workplace, telephonic liaison and reports to the Community Corrections Office.

Parliament approved amendments to the Correctional Services Act, 1998 to address concerns about the lack of community involvement in the parole system. According to the amendments, the composition of the new parole boards includes three permanent members from the community: the chairperson, members from the departments of Correctional Services and of Justice and Constitutional Development, as well as the SAPS.

The victim may also participate or be represented at the parole hearing, to allow, for the first time, the direct participation of victims in the justice system instead of them being called upon only as prosecution witnesses.

The Department aims to increase the number of personnel responsible for managing and controlling persons sentenced to community corrections, in order to decrease the number of probationers and parolees each officer must supervise.

In 2002/03, some 5 413 parole absconders were traced. They were either referred back to court to receive alternative sentences or sent back to prison to serve the remainder of their sentences.

### **Correctional supervision**

The Correctional Services Act, 1998 ensures that all probationers and parolees are subject to the same conditions.

In terms of the Act, parolees must do community service. Correctional supervision aims to control and rehabilitate those who can serve their sentences in the community. Offenders who pose a real threat to the community and who have chosen crime as a career, however, do not qualify for correctional supervision.

A person sentenced to correctional supervision is placed under the control of a correctional supervision official. This official ensures that the probationer complies with whichever of the following conditions he or she may be subject to:

- house arrest
- community service, rendered free of charge
- victim's compensation
- restriction to a magisterial district
- prohibition on alcohol usage or abuse
- participation in certain correctional programmes.

If the set conditions are violated, the probationer can be referred to the court of first hearing for consideration of an alternative sentence or, in certain cases, be admitted directly to prison to serve the remainder of his/her sentence.

Section 117(e) of the Correctional Services Act, 1998 makes it an offence for a probationer or parolee to abscond from the system of community corrections. If found guilty, they may receive an additional sentence of up to 10 years' imprisonment.

The community corrections population, comprising parolees and probationers, versus the sentenced prison population on 31 March 2003 was 38%.

### **Day parole**

A small number of offenders are placed on day parole either because they are institutionalised or they have a doubtful prognosis and pose a high security risk to the community. These offenders are gradually resettled into the community as a bridging measure, instead of being released upon termination of sentence. Day parolees have to comply with certain conditions. Contravention leads to withdrawal of privileges, stricter conditions or suspension of day parole.

Certain categories of offenders are allowed to spend weekends at home. Inmates may temporarily leave prison for compassionate leave, consolidation of family ties, preparation for release, or for reasons that involve the reintegration of the offender into society.

The offender has to observe strict conditions, which include abstaining from drugs and alcohol, being in the care of a specific person and at a specific address, personally accepting liability for any event that might result in expenses for the State, and not being found guilty of any misconduct.



## **Facility management and capital works**

The Correctional Services Act, 1998 empowers the Minister of Correctional Services to enter into joint ventures with the private sector to design, construct, finance and operate any prison or part of a prison.

Two such prisons were procured by the Department of Public Works on behalf of the Department of Correctional Services, using private-sector capital and expertise for their financing, designing, construction, operation and maintenance.

The first privately operated prison is the 2 928-bed Mangaung Maximum Security Prison near Bloemfontein. The 3 024-bed Kutama Sinthumule Maximum Prison at Makhado (formerly Louis Trichardt) in Limpopo, is the second facility to be built and operated by a private-sector company in South Africa.

Construction started on four new prisons in 2003/04. It is envisaged that these will be completed by 2005/06, providing accommodation for an additional 12 000 offenders.

The Repair and Maintenance Programme has also been embarked upon. The Programme addresses backlogs in maintenance and inhumane conditions under which offenders are incarcerated.

Forty-three prisons were repaired as part of the Department's Repair and Maintenance Programme during the 2002/03 financial year, against an initial target of 44.

## **Administration**

The Administration Programme funds the overall management of the Department. It includes policy formulation by the Minister, the National Commissioner, and other members of senior management, and facilitates prison inspections by the Inspecting Judge.

The Programme accounted for about 32% of the budget of the Department in 2004/05, and will remain at approximately this level throughout the medium term. Over the medium term, the budget for administration will grow by an average of 6,6% a year, mainly because the Department will focus on increasing its anti-corruption capacity and investment in HRD.

## **Human resources**

Employees of the Department of Correctional Services are not entitled to strike and conditions of employment have to be negotiated with labour unions in a bargaining council.

The major unions active in the Department are the Police and Prisons' Civil Rights Union, the Public Servants' Association and the Democratic Nursing Association of South Africa.

## **Community involvement**

The Subdirectorate: Community Involvement facilitates the involvement of members of the community in correctional matters and provides expanded capacity for the Department. The objectives of the Subdirectorate are to:

- promote co-responsibility for offender management and crime prevention
- share responsibility for the rehabilitation and reintegration of offenders into the community
- maximise the use of public and private resources.

The Department actively participates in the initiative of the NCPS to establish Community Safety Centres. The aim of these Centres is to provide integrated services in South Africa's disadvantaged communities. The departments of Correctional Services, Health, Social Development, Justice and Constitutional Development and the SAPS provide these integrated services to the community under one roof. Two Community Safety Centres were opened at Nsimbini in KwaZulu-Natal and at Leobeng in Limpopo.

The Department has embarked on a poverty-alleviation programme that entails the deployment of offender-generated goods and services for poverty alleviation, disaster relief and rural development.

Since the launch of the Programme, the majority of prisons have engaged in projects, but in 17 areas they have managed to realise surplus produce in agriculture which is donated to old-age homes, school children, the disabled, orphanages and poor community members living in the vicinity of the country's prisons.

The Department has managed to reach 83% self-sufficiency in the production of pork, 67% in vegetable production, 53% in the production of

eggs and 45% in the production of chickens. Efforts are being made to raise the levels of self-sufficiency in the production of other foodstuffs.

### **Anti-corruption**

Since the Department intensified its anti-corruption measures in 1996, more than 500 various cases were handled. The measures include the approval of a National Risk Management Plan and Anti-Corruption Strategy as well as the establishment of a formal Anti-Corruption Unit to manage the Strategy.

The Department has its own anti-corruption unit. The Chief Directorate: Legal and Special Operations has been created, under which the Departmental Investigation Unit (DIU) and the Directorate: Code Enforcement reside.

The DIU is responsible for the prevention and investigation of corrupt elements, fraud and maladministration within the Department.

There are three desks in this Directorate, namely Investigations, Prevention and Integrity. The Investigations Desk conducts and manages all the investigations in the Unit. The Prevention Desk is responsible for developing corruption-prevention mechanisms and conducting trend analyses. The Integrity Desk conducts vetting of employees and investigations emanating from breach of security by members.

The DIU is spearheading the implementation of the Anti-Corruption Strategy.

The Department is increasing the capacity of the

DIU. It works in partnership with the SIU, SAPS and the DSO in a concerted effort to root out corruption.

### **International co-operation**

During 2003, officials from the Department of Correctional Services visited several countries such as Algeria, the UK, the Netherlands, the United States of America and others to raise the country's profile and to create an atmosphere for a healthy exchange of ideas on corrections.

The Department has established relations with organisations such as the American Correctional Association, the IPCA and the International Corrections and Prisons Association.

The Department hosted a meeting of Ministers in the SADC responsible for corrections in Johannesburg. The aim of the meeting was to exchange views on how to create a corrections and justice forum to enhance co-operation in these matters within the region.

The Department is considering the development of policy guidelines to enable government to enter into Prisoner Transfer Agreements with other countries. This policy advocates for the return of prisoners sentenced in foreign countries to enable them to complete their sentences closer to their families and the communities they will be released into. This affects both South Africans in foreign prisons as well as foreigners in South African prisons.

The policy has yet to go through normal government processes for final approval by Cabinet.

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