



## Justice and correctional services

Judicial authority 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.

Over the next five years, the Department of Justice and Constitutional Development will focus on the following three key strategic result areas: ensuring access to justice for all, modernising justice services, and transforming the justice system.

### The courts

#### Constitutional Court

This is the highest court in all constitutional matters and deals only with constitutional issues. The court's work includes deciding whether Acts of Parliament and the conduct of the President and executive are consistent with the Constitution, including the Bill of Rights.

The court's decisions are binding on all persons including organs of state, and on all other courts. It consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine Constitutional Court judges.

In June 2005, Justice Pius Langa replaced Justice Arthur Chaskalson as the new Chief Justice following Justice Chaskalson's retirement. The deputy is Justice Dikgang Moseneke.

#### Supreme Court of Appeal

The Supreme Court of Appeal is the highest court in respect

of all other matters. The court 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.

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.

### **High courts**

There are 10 court divisions and three local divisions which are presided over by judges of the provincial courts concerned.

A provincial or local division has jurisdiction in its own area over all persons 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 2004/05, high courts attained their conviction rate target of 85% for the first time.

The Land Claims Court and the Labour Court have the same status as the High Court. In the case of labour disputes, appeals are made to the Labour Appeal Court.

### **Regional courts**

Regional courts established in each regional division have jurisdiction over all offences, except treason. Unlike the High Court, the penal jurisdiction of the regional courts is limited.

Regional courts can impose a sentence of not more than 15 years' imprisonment or a fine not exceeding R300 000. Regional courts attained their conviction rate of 70% in 2004/05 for the first time since 2000.

### **Magistrate's courts**

Magisterial districts are grouped into 13 clusters. By March 2005, there were 366 magistrate's offices, 50 detached

offices, 103 branch courts and 227 periodical courts in South Africa, with 11 767 magistrates.

A magistrate's court has jurisdiction over all offences except treason, murder and rape.

### Small claims courts

Cases involving civil claims not exceeding R7 000 are heard by a commissioner in the Small Claims Court. Thirteen new small claims courts, seven of which are in rural areas and townships, were opened in 2004.

By June 2004, there were 152 such courts throughout the country. The commissioner is usually a practising advocate or attorney, a legal academic or other competent person who offers his or her services free of charge.

Neither the plaintiff nor the defendant may be represented or assisted by counsel at the hearing. There is no appeal to a higher court.

### Equality courts

These courts enforce legislation which outlaws unfair discrimination and upholds equality.

By May 2005, 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.

### Community courts

Modelled on the Hatfield Community Court in Pretoria, community courts focus on the appropriate handling of

A comprehensive human resource development strategy to widen the pool of women and black legal practitioners is expected to be finalised during 2006/07.

Of the 204 judges by February 2005, 76 were black and 23 were women, while of a total of 1 662 magistrates, 794 were black and 428 were women.





The Thuthuzela care centres are 24-hour, one-stop service centres where victims have access to all services including police, counselling, doctors, court preparation and prosecutors. The main objectives of these centres are to eliminate secondary victimisation, reduce case cycle time, and increase convictions.

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.

By September 2005, there were 13 community courts, of which four were operational. The total number of cases finalised was 9 685, with a 96% conviction rate.

### **Specialised commercial crimes courts**

These courts deal with commercial crimes such as fraud, corruption and the violation of 52 statutes.

### **Court 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 failure to provide information requested by SARS officials. It does not deal with bigger cases such as tax fraud.

### **Municipal courts**

Municipal courts are being set up in the larger centres of South Africa in conjunction with municipalities. They deal only with traffic offences and contraventions of municipal by-laws.

### **Chief's 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.

Litigants have the right to choose whether to institute an action in a 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.

## National Prosecuting Authority (NPA)

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

A priority crimes litigation unit was set up in the Office of the National Director of Public Prosecutions in 2003/04. Its mandate is to focus on serious national and international crimes, including treason, sedition, terrorism, sabotage, and foreign military crimes committed by mercenaries.

### Asset Forfeiture Unit

The AFU made 212 seizures in 2003/04, well above the target of 150. In 2003/04, 124 forfeitures were completed, resulting in the recovery of R54 million, of which R39 million was deposited in the Criminal Assets Recovery Account.

During the first eight months of 2004/05, 111 new seizures were made to the value of R164 million, 98 forfeitures were completed to the value of R137 million, and about R20 million was deposited into the Criminal Asset Recovery Account.

The Legal Aid Board has a national network of 58 justice centres, 13 high-court units and 27 satellite centres countrywide. It provides publicly funded legal advice and representation in criminal and civil matters to people in need.

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Assets valued at nearly R700 million were placed under restraint over the past five years.

### Directorate: Special Operations

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.

The DSO achieved a conviction rate of 94% in the 203 prosecutions finalised by the end of 2004. From April to December 2004, personnel successfully completed 203 prosecutions, 292 investigations and 127 high-impact cases. In the process, there were 1 117 arrests, searches, seizures and traps, with operational support providing 432 ancillary support activities. Through interdiction, R2,5 billion worth of contraband was seized.

During 2005, President Thabo Mbeki appointed a judicial commission to investigate the location of the DSO in government.

### Sexual Offences and Community Affairs Unit

Various concrete steps have been taken to give effect to the national crackdown on sexual offences:

- Multidisciplinary rape-care centres, known as the Thuthuzela care centres, have been established. Here rape investigations are speeded up and 'humanised'. A play, *Speak Out*, designed to encourage children to report sexual offences committed in the home, has been commissioned and piloted in 51 schools in KwaZulu-Natal. It was subsequently rolled out in Mpumalanga and the Free State. Some 120 359 learners saw the play.
- New child-witness rooms have one-way glass partitions enabling child witnesses to testify in a friendly and secure

environment without the risk of being intimidated.

- Some 54 sexual offences courts, with a conviction rate of 62%, have been established. A further 20 such courts were planned for 2005/06.

### **Integrated justice system**

This system aims to use technology to improve the co-ordination of the activities of departments in government's Justice, Crime Prevention and Security Cluster.

The system will entail, among other things:

- a virtual private network
- an automated fingerprint identification system and DNA database
- an integrated case-flow management system, including case, person (offender, victim and witness) and exhibits
- better tracking of people, including inmates.

### **Improving court productivity**

Court performance continues to improve. Statistics indicate that court productivity has increased, that the number of cases finalised has increased, that courts on average sit longer hours, and that conviction rates are higher, especially in the specialised courts.

Court productivity in the lower courts has shown a slight improvement.

According to the *Estimates of National Expenditure*, between July and September 2004 the integrated case-flow management centres (previously known as integrated justice court centres) yielded the following key results:

The Department of Correctional Services is expected to spend about R80 million on the installation of advanced technological equipment at 65 correctional centres. Equipment to be installed includes items such as closed-circuit television cameras, biometric readers and scanning devices.





- Court hours on average improved by 21 minutes, from four hours and two minutes to four hours and 23 minutes. The national average court hours for district courts are four hours and 14 minutes.
- Case preparation cycle time was reduced on average by 27 days, from 105 days to 78 days.
- The percentage of cases on the court rolls for fewer than 60 days increased from 54,8% to 56,5%.
- The management of trial-ready cases improved by 3% (measured against the percentage of outstanding cases on the court roll waiting to be tried), decreasing from 39,7% to 36,6%. The ideal is that between 25% and 33% of outstanding cases on the court roll should be trial-ready.

### Improving the justice system

- According to the *Estimates of National Expenditure*, some 82 maintenance investigators and 100 clerks for maintenance and domestic violence courts have led to improvements in the maintenance system.
- A short messaging service was introduced for individuals to notify the court if maintenance is not paid.
- Twenty-six additional family advocates were appointed in previously disadvantaged and rural areas.
- Some 35 673 pieces of high-court documentation (including divorce papers and settlement agreements) were scrutinised and 5 286 enquiries finalised.
- The Chief Family Advocate has been designated as the central authority in international child abduction matters in terms of The Hague Convention on the Civil Aspects of International Child Abduction. Thirty-two such applications were processed in 2003/04.
- By 2005, the department had raised the number of female officials to 7 372 compared with 4 000 in 1995. At least 33 female correctional officials were at senior management level.

## Public Protector

The Public Protector is independent of government and is responsible for investigating any improper conduct in state or public affairs.

In 2003/04, the Public Protector received 17 295 new cases, 1 627 more than in 2002/03, and 15 946 cases were finalised. Some 8 869 cases were carried forward from 2002/03 to April 2004.

## Victims' charter

The Service Charter for Victims of Crime in South Africa and minimum standards for services for victims of crime, introduced in December 2004, are important instruments elaborating and consolidating rights and obligations relating to services applicable to victims and survivors of crime in the country.

The charter identifies the following seven rights of crime victims:

- to be treated with fairness, respect, dignity and privacy
- to offer information
- to receive information
- protection
- assistance
- compensation
- restitution.

## Correctional services

The total inmate population at 28 February 2005 was 187 000, while prison capacity was 113 825. Those awaiting



The Department of Correctional Services' budget for 2005/06 amounted to R9,234 billion. It provided for the establishment of 36 000 personnel and operational costs for a daily average offender population of 192 000 incarcerated persons, as well as 76 000 community correctional supervision cases and parolees.

The Department of Correctional Services estimated that it would receive revenue of about R89,7 million during 2005/06, mostly generated through the sale of products from correctional-centre workshops, hiring out of offenders' labour and letting official personnel accommodation. Part of the income generated by offenders' labour is paid to them as a gratuity.

trial accounted for 52 000, with 135 000 sentenced offenders.

To alleviate overcrowding, unsentenced juveniles have been transferred to places of secure care, some sentences have been converted to correctional supervision, and facilities have been renovated or upgraded.

National and provincial action plans to fast-track all children awaiting trial from prisons and police cells, since October 2004, have led to a reduction in children awaiting trial, from 2 200 monthly, to 1 500 monthly.

On 21 January 2005, some 1 389 children under 18 years awaiting trial were in correctional centres nationally. This figure was reduced to 885 children by 21 June 2005.

No prisoners may be released before they have served at least half their sentence. The Criminal Law Amendment Act, 1997 provides for much harsher sentences for serious crimes. These changes are expected to place an even greater burden on prisons.

In June, 2005, government granted a maximum of six and 14 months special remission of sentence to 18 171 sentenced offenders, probationers, parolees and day parolees, irrespective of the crime category.

However, prisoners convicted of aggressive crimes – especially firearm-related, sexual and drug-related crimes – did not qualify.

This was in line with the Department of Correctional Services' newly adopted policy of correcting behaviour and development as opposed to punitive measures.

An independent judicial inspectorate regularly visits all prisons to report on conditions and prisoners' treatment.

South Africa's inmate tracking system, launched as a pilot project at the Durban Westville Correctional Centre, has been extended to the Johannesburg Medium A Correctional Centre. The main functions of this project are to accurately identify awaiting trial detainees (ATDs), to decrease the time spent in processing ATDs for court appearances and visits, and to monitor the movements of ATDs through a personal tracking device.

The building of four new-generation prisons in Kimberley, Klerksdorp, Leeuwkop and Nigel is expected to be completed by April 2007. Similar facilities are expected to be erected in East London, Allandale, KwaZulu-Natal and Limpopo. All eight prisons will have 3 000 beds each. Over the next three years, accommodation capacity in correctional services will be increased by 12 000 beds.