



Photograph by Peter McKenzie/Twasa

Chapter 15

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 of South Africa is vested in the courts, which are independent and subject only to the Constitution and the law.

No person or organ of State may interfere with the functioning of the courts, and an order or decision of a court binds all organs of State and persons to whom it applies.

The Department of Justice and Constitutional Development is responsible for the administration of the courts and constitutional development.

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

The Department's responsibilities include the provision of adequate resources for the proper and efficient functioning of the criminal and civil justice systems. It provides legislation and gives administrative support for the

establishment of institutions required by the Constitution.

Transformation of the justice system

One of the biggest challenges facing government was, and still is, the successful transformation of the justice system.

Restructuring of the Department

The Department is currently undergoing a restructuring process. The Department's goals are to

- improve service delivery to internal and external customers in order to enhance customer 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 under the Minister's leadership:

- Court Services
- Masters' Offices
- Legal Services
- Legislation and Constitutional Development.

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

- the Office of the Chief Financial Officer
- Human Resources Development

◀ In 2000/01, the Department of Correctional Services' production workshops, which constitute eight wood and steel and 18 textile factories, provided 2 347 job and training opportunities for prisoners.

- Information Service Management, which will include information technology services
- Public Education and Communication.

A Board of Directors has been established, and business plans for the various core business units have been approved. The Department aims to implement the process in an integrated manner.

Citizens' Advice desks

With the help of Ireland Aid South Africa, the Department launched Citizens' Advice desks in the Durban, Pretoria and Johannesburg Magistrate's Courts as pilot projects to make the courts more user-friendly.

Sexual Offences Guidelines

The *Sexual Offences Guidelines for Handling Victims or Survivors of Sexual Offences*, compiled by an intersectoral team, were released in September 1997.

They have been widely distributed among service-providers in relevant institutions. Training is conducted on a continuous basis. The Guidelines are accompanied by a brochure targeted at the victim or survivor of sexual violence.

The Guidelines and the brochure seek to empower victims to know what to expect from service-providers and to sensitise providers to the needs of victims.

Gender Policy Statement (GPS)

The GPS was launched in March 1999. The Policy sensitises justice officials to the needs of women, while establishing a framework for eliminating sexism in the justice system. The GPS also deals with the role of the justice system in accelerating the eradication of sexism to achieve gender equality in society.

The flagship programme is the Prevention of Violence Against Women, with domestic violence and maintenance issues as focus.

Main activities include the development of a victim charter of rights and improving services for crime victims.

Draft Customer Charter for Court Users

The Charter seeks to direct the process of

improving service delivery in courts, while empowering court users with information about the level of service they may expect in courts.

National Prosecuting Authority of South Africa (NPA)

The NPA was established on 1 August 1998 in terms of Section 179 of the Constitution. The structure of the NPA consists of the NDPP and offices of DPP at High Courts.

The Office of the NDPP

The Office of the NDPP is the head office of the prosecuting authority. It consists of three Deputy National Directors, Investigating Directors and Special Directors. In addition, there are other members of the Prosecuting Authority assigned to the Office and an administrative component. The seat of the Office of the NDPP is in Pretoria.

Powers and duties of the NPA

The prosecuting authority vests in the NDPP. This authority can be and 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 (DSO)

The establishment of prosecutor-led investigations ushered in a new era where organised crime is dealt with in a more direct and uncompromising manner. The DSO, which was formed after the success of the Investigative Directorate on Organised Crime and Public Safety, brings together the different pillars of law enforcement under one command. It includes the Investigative Directorate Serious Economic Offences (IDSEO). The DSO has offices in Gauteng, KwaZulu-Natal, East-ern Cape and Cape Town.



The objectives are to

- enforce the rule of law
- identify specific projects falling within its ambit of operation
- coordinate and liaise with other institutions concerned with investigations and/or prosecutions.

The DSO has been established in terms of Section 7 (1) (a) of the Act. The DSO is part of the office of the NDPP. The main aim of the DSO is to investigate, gather, keep and analyse information, and to institute criminal proceedings against criminal or unlawful activities committed in an organised fashion. The DSO integrates intelligence, investigation and prosecution, with special investigations as its fixed component.

The Investigating Director is required to exercise or perform powers, duties and functions subject to the control and direction of the National Deputy Director, who is the head of the DSO.

The head of the DSO is responsible for the effective and expeditious investigation of serious economic offences or any criminal or unlawful activities committed in an organised fashion. A multidisciplinary approach with powers of prosecution in terms of the legislation is used.

In achieving his or her objectives, the head of the DSO continues to coordinate and liaise with other persons and/or institutions involved in the investigation of such offences, including the Asset Forfeiture Unit (AFU), forensic accountants, senior police investigators, and customs and revenue inspectors. Functions also include attempts to contribute towards law reform and to play a role in preventing suspects from fleeing the country with their assets and/or destroying relevant evidential materials.

Legislation such as the International Cooperation in Criminal Matters Amendment Act, 1996 (Act 75 of 1996), the Extradition Amendment Act, 1996 (Act 77 of 1996), and the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), remains an important tool in the fight against serious economic crimes and organised crime. The Prevention of Organised Crime Act, 1998 prescribes, among

other things, the procedure to confiscate the proceeds of crime, and also makes provision for dealing with money laundering and racketeering offences, among others.

In terms of the Act, the Investigating Director may conduct an investigation if he or she has a reason to suspect that a specified offence has been or is being committed, or that an attempt has been made or is being made to commit such an offence, whether or not it has been reported to him or her in terms of the Act.

Preparatory investigations may be held to establish if there are reasonable grounds. At any time during the investigation, the Investigating Director may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of the investigation.

For the purposes of an investigation, any person who is believed to be able to furnish any information on the subject of the investigation may be summoned for questioning. Investigators may enter any premises on or in which anything connected with that investigation is or suspected to be.

Western Cape

The projects currently driven by this unit target the major organised crime syndicates and urban terrorist organisations responsible for the incidents of violence and organised crime in the Western Cape. The unit also investigates serious economic offences and corruption.

During 2000, about 95 cases of urban terror were before court in Cape Town.

KwaZulu-Natal

The primary objective of this unit is to deal with the political violence that has beset the province. It was established in November 1998 owing to the high level of political violence in the province, coupled with findings by the High Court that accused persons could not be convicted because of the failure by the prosecution to adduce satisfactory evidence against the perpetrators.

One of the focus areas is Richmond, near Pietermaritzburg, where most of the problems emanated. During 2000, a number of signif-

icant arrests were made in connection with political murders and other crimes committed by people behind the violence.

The unit also investigates serious economic offences and corruption.

Gauteng

This unit focuses on car-hijacking, and investigates and prosecutes all matters flowing from covert operations of organised crime syndicates. It also investigates serious economic offences and corruption.

A number of syndicates that operated in the Johannesburg area have been dismantled. One of the major successes in Gauteng was the largest drug bust in South Africa.

Human Rights Investigative Unit

The Unit focuses on cases emanating from the Truth and Reconciliation Commission (TRC) process. It identifies, investigates and makes recommendations to prosecute, where applicable, perpetrators of gross human rights violations.

Asset Forfeiture Unit (AFU)

The AFU was set up to ensure that the State makes effective use of powers set out in the Prevention of Organised Crime Act, 1999 (Act 24 of 1999), to seize the assets of criminals. The AFU was established after extensive consultations with local and overseas law enforcement structures on ways to combat organised crime, corruption and money laundering.

Sexual Offences and Community Affairs Unit

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

A number of sexual offences courts were established in a number of areas country-wide.

The Unit seeks to improve the investigation and prosecution of rape cases. A multi-disciplinary rape care centre, known as

Thuthuzela Care Centre, was established in Manenberg on the Cape Flats.

The Centre comprises police investigators, medical personnel, social workers and prosecutors. It also has community volunteers who assist in addressing the underreporting of rape cases.

The team has also contributed to speeding up and humanising rape investigations, developing accurate data collection tools, and building better co-operation and communication between victims and the justice system.

Court Management Unit

Its mission is to raise the levels of productivity in the prosecuting authority and make it efficient and credible.

The Unit has to ensure proper planning of court rolls, prioritisation, proper preparation and arrangement for all hearing cases, and the avoidance of unreasonable delays.

This has resulted in the significant reduction of court rolls and case backlogs. Whereas the national average was 157 cases in District Courts in 1999, it decreased to 142 in 2000. In Regional Courts, the rolls decreased from 147 to 125 in the same period.

In addition, there has been a dramatic increase in cases finalised with a guilty verdict.

The conviction rate in the District Courts is over 80%, and in the Regional Courts approximately 70%.

Commercial Crime Unit

The approach in the criminal justice system has been to give more focused attention to violent crimes, to a certain extent ignoring the importance of dealing with commercial crimes. This resulted in backlogs in commercial crime cases.

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

In 2000 this Unit registered approximately 979 cases, 270 cases were enrolled for trial, and resulted in 119 convictions and 10 acquittals – a success rate of over 92%.

A roll-out of the successes of the Pretoria



Commercial Crime Unit to other major centres is envisaged. Discussions were held with members of the Johannesburg Bar to explore possibilities of having some of their advocates on retainer to deal with backlogs in commercial crimes in the Johannesburg area.

Witness Protection Programme

The Witness Protection and Services Act, 1998 (Act 112 of 1998), provides for, among other things, the establishment of a central office for witness protection, which functions within the Department under the control of the Minister for Justice and Constitutional Development. The office is responsible for the protection of witnesses in terms of the Act and its regulations.

It also makes provision for the placing under protection of a person related to the witness at the request of a 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.

In July 1999, it was announced that the Department of Justice and Constitutional Development intended spending R17 million on the Programme. The Programme is different from other benefits and incentives offered by the South African Police Service (SAPS) to witnesses of murder, rape, attempted murder and fraud.

By the end of October 1999, 750 people were being protected by the Programme at a cost of R15,25 million for 1999. The current cost is about R18 million.

Sexual offences courts

Specialised court structures, specifically designed for the adjudication of court cases with a sexual content, have been established at Wynberg, Pietermaritzburg, Grahamstown, Somerset West, Mossel Bay, Soweto, Bellville, Waterval, Pinetown, Atlantis, Mdantsane, Kimberley, Bloemfontein, Durban, Welkom, Johannesburg, Pretoria, Parow and Port Elizabeth.

The Office of the NDPP has identified several more areas for the creation of these courts. Similar court structures have been

included as a standard requirement for all future building projects.

Court rooms at 179 centres have been augmented with specialised audio and visual equipment for the adjudication of crimes with a sexual content. The Department of Justice and Constitutional Development plans to have the courts operational in all major centres by 2003, with 20 courts functioning by the end of 2000.

The British Government granted R3 million in January 2001 to South Africa's criminal justice system to train prosecutors for the sexual offences courts. The bulk of the funding will support the NDPP by paying for 10 extra prosecutors who were recruited from the private sector. The prosecutors will act as mentors for prosecutors in the sexual offences courts and for former homeland prosecutors.

Community courts

In May 1999, South Africa's first community court, aimed at alleviating the burden placed on the justice system by petty crimes and social disputes, was launched at the Kyalami Metro Council, Gauteng. The pilot project is guided by members of the SAPS, the Department of Justice and Constitutional Development and non-governmental organisations (NGOs). It promotes community participation in justice administration and policing.

A workshop with all relevant stakeholders was held in October 1999 to discuss a paper issued by the South African Law Commission. The Commission is finalising a report on community courts.

Municipal courts

It was announced in November 1999 that in a joint pilot project between the Cape Town City Council and the Department of Justice and Constitutional Development, a special municipal court would be established. The new system, with an initial budget of R800 000, is expected to make the enforcement of city by-laws more speedy and efficient, while freeing resources for the criminal justice system. Operations started in January 2000.

A similar court was established in Pretoria in

July 2000. It mainly deals with traffic cases. During December 2000, mobile courts (traffic courts) were established at the N1 Walmanstal off-ramp, N4 Bronkhorstspruit East off-ramp, N3 Balfour off-ramp, R59 Kliprivier off-ramp, N12 Holfontein off-ramp and the P16/1 Rustenburg-Krugersdorp.

It is envisaged that these courts will be utilised during peak holiday periods to assist with traffic-related cases.

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 prosecuting tax crimes. The court deals only with cases concerning the failure to submit tax returns or to provide information requested by SARS officials. It doesn't deal with bigger cases such as tax fraud.

Another SARS court is operating twice a week at the Magistrate's Office, Roodepoort.

Discussions to decentralise and expand such a court to the bigger centres in the country have taken place between SARS and the Department of Justice and Constitutional Development.

Family Court Pilot Projects

The Department of Justice has identified the establishment of Family Courts as a priority. Family Courts will consist of the Divorce Court, Maintenance Court, Children's Court and the Family Violence Court.

The Minister approved the implementation of Family Courts on a pilot basis in Port Elizabeth, Johannesburg, Durban, Cape Town and Lebowakgomo. A decision was taken that there should be no rolling-out of the Family Court Centre Pilot Project until the existing centre's capacity has been enhanced in order to constitute permanent structures.

Human rights

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

They apply to all laws, administrative deci-

sions 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
- life.

Implementation of the National Action Plan on the Promotion and Protection of Human Rights (NAP)

After it was lodged with the United Nations Secretary-General on 10 December 1998, NAP was distributed to the general public in the form of pocket-size booklets. The distribution process is still ongoing, coupled with public awareness campaigns.

In February 1999, Cabinet approved the establishment of the National Consultative Forum on Human Rights (NCFHR), charged with the implementation of NAP, including the monitoring of such implementation. In March 2000, Cabinet approved the NCFHR framework for terms of reference, work plan and budget, and the establishment of a permanent NCFHR Secretariat in the Department to be headed by a project manager at the level of a director.

Finland is funding the activities of the NCFHR for a period of two to three years, after which the person heading the NCFHR will be absorbed into the Department at the level of director. The implementation phase of NAP refers to rights contained in the Bill of Rights of the South African Constitution.

Progress has already been made, to a certain extent, in implementing the rights. Civil and political rights have been extended to all. However, the right to a fair trial is still enjoyed by those who can afford high legal costs, while legal aid has limited resources to cover indigent people. Similarly, socio-economic rights are enjoyed by few. These disparities raise a big challenge for government, which must ensure the equal enjoyment of these rights by all persons without discrimination on the ground of race, colour or creed. Partnerships with business and civil society are needed to eradicate such disparities. Business is lending great support to former President Nelson Mandela's



initiative of advancing children, especially in the building of schools.

Crime prevention

The Department of Justice and Constitutional Development is one of the four core departments in the criminal justice 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: *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
- creating an effective prosecution system
- creating an effective court system for the adjudication of cases
- coordinating and integrating departmental activities of all role-players involved in crime prevention.

Integrated Justice System (IJS)

The IJS Board was established in 1997 to integrate the activities of departments in the justice cluster in a coordinated manner. The underlying principle in establishing this System is the re-engineering of business processes through the necessary technology to ensure effective integration. Six major developments are being undertaken:

- The development of a common architecture, detailing the business processes that would be re-engineered in an integrated manner. This project started in March 2001 and was due for completion by December 2001.
- The establishment of the necessary infrastructure to enable the IJS. Each department has been tasked with the responsibility of ensuring that the required infrastructure has been put in place. This project is due for completion by December 2002.
- The establishment of a Virtual Private Network. This task has been assigned to

the State Information Technology Agency. The project is due for completion by January 2002.

- An Identification System has been procured and the project now consists of the scanning of old records. The project consists of an Automated Fingerprint Information System, the National Photo Images System, and a database of all DNA samples. It is expected to be completed by December 2002.
- The development of the necessary business intelligence capacity within the justice cluster is in the second phase of its development.
- The final project and component of the IJS is the Integrated Case Management System. The case, the offender/person and the exhibits will be managed through the System. The required functionalities for this System are work-flow, document management, event notification, scheduling of resources and the management of information.

This project consists of the current Court Process Project, the Case Administration System, detention control, inmate tracking systems and the Docket Management System.

The Court Process Project has been designed to provide for the automation of civil and criminal case-management systems. The Court Process Project pilot was launched in the Johannesburg and Durban Magistrate's Courts in September 2000. The objective was to implement it in all 450 magistrate's courts together with the associated community safety centres, prisons and social development institutions. The project totalled some R35 million and will be finalised by March 2002.

e-Justice

The e-Justice programme was developed to transform the Department into an equal role-player in the IJS. The Programme is a multi-year development that consists of four components. These are the

- Digital Nervous System project, which entails rapid infrastructure deployment throughout all the Department's offices. For this purpose, a tender has been pub-

lished and the project is scheduled for completion by December 2002.

- Financial Administration System, which consists of four projects involving the automation of the Guardian's Fund, bail, maintenance and the State Attorney's trust accounts.
- Management Information System, which is designed to provide essential information necessary to manage the Department.
- Court Process Project.

The budget for 2001/02 for the e-Justice programme is R184 million. This will be further supplemented by donor funds from the Netherlands and European Union.

Legislation

In terms of the Constitution, legislative authority is vested in Parliament, which consists of the National Assembly and the National Council of Provinces. South African legislation is constantly revised to meet changing circumstances in a dynamic and developing society. This is done on the advice of the legal sections of various government departments and the South African Law Commission, after consultation with all interest groups.

Enacted legislation and legislation in the pipeline fall into the following categories:

- prevention of crime
- legislation which has a bearing on the transformation of the justice system
- rationalisation
- family, gender and child-related issues.

The most important pieces of legislation promoted during the 2000/01 session of Parliament included the following:

Promotion of Access to Information Act, 2000 (Act 2 of 2000)

The Open Democracy Bill was introduced to Parliament in August 1998. Amendments were made and Parliament finally approved the Promotion of Access to Information Bill, 2000 during January 2000. The Promotion of Access to Information Act, 2000 gives the right of access to information referred to in Section 32 of the Constitution.

The Act generally promotes transparency, accountability and effective governance of all public and private bodies by, among other things, empowering and educating everyone to

- understand their rights in terms of the Act and to exercise them in relation to public and private bodies
- understand the functions and operation of public bodies
- scrutinise and participate in decision-making by public bodies that affect their rights.

The Act, with the exception of a few sections, came into operation on 9 March 2001.

Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)

The Act is aimed at the provision of lawful, reasonable and procedurally fair administrative action as contemplated in Section 33 of the Constitution.

It also ensures the right to written reasons to those adversely affected by any decision or any failure to take a decision.

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

In terms of the Constitution, Parliament had to enact by February 2000 national legislation that gives effect to the constitutional right to equality contained in the Bill of Rights. The Act was passed on 28 January 2000.

The objectives of the Act include the prevention and prohibition of unfair discrimination, redress for discrimination, the promotion of equality, and progressive eradication of discrimination.

The Act also deals with the elimination of unfair discrimination in specific sectors.

It establishes specialised equality courts to deal with cases of unfair discrimination and promotes

- the prioritisation of the elimination of unfair discrimination and promotion of equality with regard to race, gender and disability
- a strong promotion chapter in which the State and other role-players in society are enjoined to adopt positive measures, in-



cluding equality plans where appropriate, to eliminate unfair discrimination and promote equality

- the establishment of an equality review committee whose priorities include exploring the possibility of expanding the list of prohibited grounds
- the provision of sectoral examples of unfair discrimination by way of a schedule.

Draft Bill on Sexual Offences

The aim of the Draft Bill is to address mounting public concern about the high level of rape and other sexual offences in South Africa.

The country has one of the highest incidences of rape in the world, with 49 380 cases reported in 1998.

The Draft Bill proposes that all types of sexual penetration should be considered unlawful when they occur under coercive circumstances, including the application of force, threats, abuse of power or authority, or the use of drugs.

While current legislation puts the onus on rape victims to prove they did not consent to sex, the Draft Bill recommends that the accused should carry the burden of proof over consent.

The South African Law Commission presented a report on the Draft Bill to the Parliamentary Committee in June 2000.

Protected Disclosures Act, 2000 (Act 26 of 2000)

The Act came into operation on 16 February 2001. It provides for the protection of employees against occupational detriment or disadvantage as a result of having made disclosures of crime and other irregular conduct by their employers or other employees in the workplace

Recognition of Customary Marriages Act, 1998 (Act 120 of 1998)

Customary rights are now recognised in the eyes of the law. The Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), came into effect in November 2000. The Act

protects women and children in traditional marriages, and raises their status.

The Act ensures equality between men and women. In the past, the husband in a customary marriage was the administrator of the family's assets. This meant that all assets were registered in the man's name. A wife in a customary marriage can now acquire assets and register assets in her own name, and build up an estate of her own.

The Act came into operation on 15 November 2000.

Judicial Service Commission (JSC) Amendment Bill

The Bill seeks to establish disciplinary procedures to deal with complaints against judges. The Bill allows the public to lodge complaints against judges and regulates procedures to be followed where a judge's misconduct does not justify removal from office.

The JSC recommended that a complaints procedure be provided for in legislation. The Department drafted the Bill, and the JSC appointed a committee to investigate.

Draft Child Justice Bill

Article 40(3) of the Convention on the Rights of the Child requires State parties 'to promote the establishment of laws, procedure authorities and institutions specifically applicable to children alleged as, accused of or recognised as having infringed the penal law'.

The Government, having ratified the Convention on the Rights of the Child in 1995, recognised that the situation regarding such children in South Africa was unsatisfactory, and decided to bring about change in this area.

In 1996, the Minister for Justice requested the South African Law Commission to include this issue in its law reform programme.

A juvenile justice project committee appointed by the Commission drafted a comprehensive Bill, which was handed to the Minister in August 2000.

The proposed legislation will create a new system for dealing with children accused of crimes, which 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 for the system.

In the interim, there have been attempts to improve the system, both by limited alteration to the law and by a number of pilot projects to test new ways of dealing with children accused of crimes.

The Bill has been evaluated by the Department and was expected to be introduced during 2001.

Anti-terrorism Bill

The South African Law Commission released a discussion paper on the review of terrorism legislation. The old definition of a terrorist was so broad that anyone, including someone involved in a placard protest, could be classified as a terrorist. The old law also did not adequately deal with urban terrorism.

In the proposed Anti-terrorism Bill, a terrorist act is defined as one that does or may endanger the life, physical integrity or freedom of people or causes, or may cause damage to property. The definition also includes acts intended or calculated to intimidate, coerce or induce any government or persons, the general public or a section thereof, disrupt any public service, or the delivery of any essential service to the public, or create a public emergency, unrest or general insurrection in any state.

The new system starts with the right to a fair trial. The State must prove guilt without doubt in a terrorism trial. The proposed Bill empowers the police to search vehicles and

persons. It provides for various offences, including support to or membership of a terrorist organisation, hijacking an aircraft, hostage-taking and nuclear terrorism.

Special Investigating Units and Special Tribunals Amendment Act, 2001 (Act 2 of 2001)

The Special Investigating Units and Special Tribunals Amendment Act, 2001 is aimed at amending the Special Investigating Units (SIUs) and Special Tribunals Act, 1996 (Act 74 of 1996), to give effect to a judgment by the Constitutional Court (CC), which provides for the appointment of an appropriate person other than a judge to head an SIU.

Legal Practice Bill

The Bill calls for all legal practitioners to be under the regulatory control of a 20-member statutory council. The aim of the Bill is to make justice more accessible to the public, to make legal representation more affordable, and to improve access to the legal profession.

Court and other legal structures

Constitutional Court (CC)

The CC is the highest court in the interpretation, protection and enforcement of the Constitution. It deals exclusively with constitutional matters.

The CC is composed of a President, a Deputy President and nine other judges who are appointed by the President of the country on the advice of the JSC.

The Constitution provides that, at all times, at least four members of the CC must be persons who were judges at the time they were appointed to the CC, and that any person appointed to the CC must be a South African citizen.

Justice Arthur Chaskalson is President of the CC. The Deputy President is Judge Pius Langa.

Supreme Court of Appeal

The Supreme Court of Appeal, situated in Bloemfontein, is the highest court in respect

Information

Former President Nelson Mandela was awarded the International Association of Public Prosecutors Medal of Honour in September 2000 in recognition of his outstanding record on human rights and his contribution to the South African justice system.



of all other matters. It is composed of the Chief Justice, Deputy Chief Justice 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.

The Chief Justice of the Supreme Court of Appeal is appointed by the President on the advice of the JSC. Judges and acting judges are also appointed by the President. Judges are usually, but not exclusively, appointed from the Bar.

High Courts

In terms of Item 16 (6)(a) of Schedule Six 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 for Justice and Constitutional Development must, after consultation with the JSC, manage this process.

The Superior Courts Bill, which is intended to give effect to these constitutional provisions, will repeal the Supreme Court Act, 1959, the laws which established the high courts of the former Transkei, Bophuthatswana, Venda and Ciskei states, and the Constitutional Court Complementary Act, 1995 (Act 13 of 1995). The Bill provides for the structure and functioning of the CC, the Supreme Court of Appeal and the High Courts. The most important aspect of the Bill is the geographical distribution of the High Courts. The Bill proposes that

- the superior courts will be the CC, the Supreme Court of Appeal and the High Courts

- there will be a High Court named after each province
- Gauteng will have a Northern Gauteng High Court and a Southern Gauteng High Court
- one or more local divisions may be established in respect of each High Court, and any existing provincial or local division of the Supreme Court, which is not converted into the High Court of the province concerned, will, pending any amendments in future, become a local division of the High Court concerned
- each High Court will be in the capital of the province, unless the province otherwise requests and it is expedient for the administration of justice.

Presently 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 being 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 various divisions of the High Court of South Africa are an important source of law. Prior to the adoption of the interim Constitution in 1994, judges did not

Information

Eighty-eight new courtrooms at 28 court buildings were built during 2000. The majority of these projects were undertaken in previously disadvantaged rural areas.

make new laws, but interpreted, explained and applied existing common law rules and legislation. However, in many cases a judicial decision established a new rule of law by interpretation, and was thus termed a judge-made law. The 1996 Constitution now allows judges to interpret, apply and implement, as well as correct law.

The Land Claims Court and the Labour Court have the same status as the High Court. The Land Claims Court hears matters for 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.

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.

Special superior courts

When a Director of Prosecutions decides to arraign an accused person on a charge relating to the security of the State or maintenance of public order, and the Minister for Justice and Constitutional Development is of the opinion that the circumstances are such that the interests of justice or of public order would be better served if the accused was tried by a superior court specially constituted for the trial, the President may constitute such a court, which consists of three judges.

Regional courts

The Minister for 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 and in a few cases by senior 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; it enhanced and developed the skills and training of judicial officers; it optimised the use of the limited available resources in an equitable manner; and it 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.

There are 432 magistrate's courts in South Africa, with 1 453 magistrates. There are 1 938 public prosecutor posts.

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

Cases involving civil claims not exceeding R3 000 are heard by a commissioner in the small claims court. Seventeen such courts were created in 2000 with a focus on rural and previously disadvantaged areas. By December 2000, there were 137 such courts and more are planned.

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. The commissioner's decision is final and there is no appeal to a higher court.

The Department approached the Department of Finance during the reprioritisation of the budget of the Department in April and May 2001, to motivate the obtaining of extra funds for Small Claims Courts.

The matter relating to security at Small Claims Courts has been addressed by including the need for urgent security into the departmental plan and to privatise security functions at all courts. Although all Small Claims Courts could not be assisted because of budgetary constraints, the Department is investigating other possible solutions to the problem.

In some areas, for example, the SAPS has indicated their willingness to assist with court orderlies or patrols when the Small Claims Court adjourns late at night.

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 in 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 of the regional division, the court will not be deprived of such jurisdiction.

Where an accused person is alleged to have committed various offences in different districts within the areas of jurisdiction of two or more directors of prosecutions, the Minister for Justice and Constitutional Development may, in writing, direct criminal proceedings to any court with 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 Director of Prosecutions decides in which court a matter will be heard. He or 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 alternative, correctional supervision, or a suspended sentence, declaration as a dangerous criminal (regional court and High Court), a warning or caution, and 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, 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 try and 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 coordinating 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 Association of Law Societies of South Africa is the coordinating 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 Republic's lower courts and can also acquire the right of appearance in the superior courts. An attorney who wishes to represent his or 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 or 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 National Prosecuting Authority Act, 1998, State advocates and pro-



secutors have been separated from the Public Service in certain respects, notably the determination of salaries.

The State Attorney derives his or 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 or 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, for example civil and criminal actions instituted against Ministers and government officials in their official capacities.

A uniform four-year LLB course has been developed and is now offered by all universities.

The Rules Board for Courts of Law

The Rules Board is a statutory body which is 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 functional training of legal staff, including autonomous professions, such as magistrates and prosecutors. Training on, for instance, human rights and social context, is also offered.

Office of the Family Advocate

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 counsellors, 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.

Enquiries 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 of South Africa operate in the provincial and local divisions of the High Court. The Divorce Courts Amendment Act, 1997 (Act 65 of 1997), opened the Black Divorce Courts to all races, in line with the Constitution.

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 country-wide.

The Office of the Family Advocate provides support services for the Family Court Pilot Projects. 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 coordinates community outreach programmes to assist children involved in family disputes.

Legal aid

The Legal Aid Board, an independent statutory body established under the Legal Aid Act, 1969 (Act 22 of 1969), renders or makes available legal aid to indigent persons, has the power to engage legal practitioners, and lays down conditions for granting legal aid.

As from 17 October 1997, the Legal Aid Amendment Act, 1996 (Act 20 of 1996), gave the Board the additional function of providing legal assistance in terms of the Constitution, where the State must provide free legal representation to detainees, sentenced prisoners and accused persons in circumstances where substantial injustice would result should they not be represented. The Act also authorises the Board to furnish legal aid throughout South Africa.

The Board opened eight new justice centres in February 2001, two of which will operate in rural areas. Between 2001 and 2004,

the Board plans to establish 60 new offices. The centres will handle both criminal and civil matters for those who passed a means test.

The Board will employ lawyers, attorneys, paralegals and legal administrative staff. A system of internships for law graduates to be included in the long-term running of the justice centre programme will be introduced.

Office of the Public Protector

In terms of the Constitution and the Public Protector Act, 1994 (Act 23 of 1994), as amended, the Public Protector is independent of government and is responsible for investigating any conduct in State affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice. The Public Protector is required to report and take remedial action on that conduct. The purpose of the Office is to strengthen and support constitutional democracy in South Africa.

The Public Protector may investigate, on his or her own initiative or on receipt of a complaint, any alleged

- maladministration in connection with the affairs of government at any level
- abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function
- improper or dishonest act, or omission or corruption, with respect to public money
- improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function
- act or omission by a person in the employment of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

The Public Protector enjoys wide discretion regarding the manner in which any dispute is resolved and methods may include mediation, conciliation and negotiation as well as

formal methods of investigation such as the issuing of subpoenas, taking evidence under oath, and cross-examination. The Public Protector is competent, after the issuance of a warrant by a magistrate or judge, to enter any building or premises in order to investigate a complaint, and may seize anything on those premises which in his or her opinion has a bearing on the investigation. The Public Protector can make recommendations to the public body involved, and may refer any indications of a criminal offence to the relevant authority responsible for prosecutions. The Public Protector is prohibited from inquiring into the decisions of a court of law. No person or institution may hinder the Public Protector in the execution of his or her duties.

Any person may submit complaints to the Public Protector. Except in special circumstances, the Public Protector will not investigate a complaint unless it is reported within two years of the occurrence of the incident or matter concerned. Reports on the findings in any investigation are made public, unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential. The Public Protector submits annual reports to Parliament on its activities and functions. If necessary, reports on the findings of certain investigations are also submitted to Parliament.

By the end of 2000, the Office of the Public Protector had established branches in five provinces.

Magistrates Commission

The Magistrates 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 of, complaints against and misconduct investigations against magistrates. It advises and/or makes recommendations to the Minister regarding matters such as appoint-



ments 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.

Law Commission

It is generally accepted that legal systems and legal rules should be revised and reformed on a continuous basis. Law reform is necessary to ensure that the principles underlying the legal system are just and in line with governing social views and values.

Since the restructuring of the South African Law Commission in 1996, a paradigm shift has occurred within the Commission.

In essence a policy was developed, demanding that emphasis should be placed on making the Commission a community-orientated institution so that it could be seen by members of the public as a people-concerned and needs-driven body.

With a view to extending the basis for consultation and involving interested parties and the community at an earlier stage in the process of law reform, shorter documents – which precede the publication of discussion papers – are compiled for general information and comment. The object is to stimulate and activate debate in respect of relevant matters, and to give direction to the reform which is to follow. The Commission's new line of thinking is also evident from the community-orientated nature of the investigations included in its programme. The following investigations are receiving attention:

- Statute law: the establishment of a permanently simplified, coherent and generally accessible statute book (project 25)
- Islamic marriages and related matters (project 59)
- The simplification of criminal procedure (project 73)
- Sentencing (project 82)
- Aspects of the law relating to Acquired Immune Deficiency Syndrome (AIDS) (project 85)

- Customary law (project 90)
- Arbitration (project 94)
- The admissibility of computer-generated evidence (project 95)
- The Apportionment of Damages Act, 1956 (Act 34 of 1956), (project 96)
- The application of the Bill of Rights to the criminal law, criminal procedure and sentencing (project 101)
- Security legislation (project 105)
- Sexual offences (project 107)
- Computer-related crimes (project 108)
- Review of the Marriage Act, 1961 (Act 25 of 1961), (project 109)
- Review of the Child Care Act, 1983 (Act 74 of 1983), (project 110)
- The use of electronic equipment in court proceedings (project 113)
- Publication of divorce proceedings (project 114)
- The carrying of firearms and other dangerous weapons in public or at gatherings (project 116)
- The legal position of voluntary associations (project 117)
- Domestic partnerships (project 118)
- Uniform national legislation on the fencing of national roads (project 119)
- Consolidated legislation pertaining to international co-operation in civil matters (project 121)
- Incapable adults (project 122)
- Protected disclosures (project 123)
- Privacy and data protection (project 124)
- Prescription periods (Project 125).

Judicial Service Commission (JSC)

The Constitution requires that judges be appointed by the President on the advice of the JSC, which was established under Section 178 of the Constitution to perform this function. It also advises government on any matter 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 Commission and invited for interviews. The names of the candidates to be interviewed are pub-

lished, and professional bodies and members of the public are afforded the opportunity before interviews of making representations to the Commission concerning the candidates. The Commission has determined criteria and guidelines for the making of appointments, which have been made public. The interviews are conducted as public hearings, and may be attended by anyone who wishes to do so. After the interviews, the Commission deliberates and makes its decisions in private. Its recommendations are communicated to the President, who makes the appointments.

During 2000, 69 candidates were interviewed by the Commission and 24 appointments made.

In terms of Section 177 of the Constitution, a judge may be removed from office only if the JSC finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct. The Commission considered it desirable that a formal system for the handling of complaints against judges be established by legislation. After discussions with the judiciary, draft legislation has been prepared by the Department of Justice and Constitutional Development to address the issue. It is anticipated that the legislation will be enacted during 2002.

The Commission consists of 23 members.

Human Rights Commission

The Constitution makes provision for a Human Rights Commission consisting of a chairperson and 10 members. The appointment of commissioners is regulated by the Constitution.

The South African Human Rights Commission (SAHRC), launched on 21 March 1996, comprises a Commission and a Secretariat. The aim of the Commission is to promote a culture and respect for human rights; to promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights in South Africa. The SAHRC has the power, as regulated by national legislation, 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.

The Commission has established standing committees that advise and assist the Commission in its work. The committees are:

- International Standards
- NGO and Community-based Organisation Liaison
- Disability
- Children
- Government and Parliamentary Liaison.

The Secretariat implements the policy of the Commission and ensures the promotion and protection of rights by, among other things, handling complaints on human rights violations; monitoring observance of human rights; and education, training and public information. The Secretariat is divided into a number of departments, namely Education, Training and Information, Legal Services, Research and Documentation, and Finance and Administration. The Commission has restructured the Secretariat to include an Advocacy Unit that incorporates media, communication and campaigns.

Strategic objectives

In order to effectively execute the Constitutional mandate and give effect to the mission statement, the strategic objectives of the Commission are to

- raise awareness on human rights and the role of the Commission, and to provide an internal and external communication service
- contribute to the development of a sustainable culture of human rights and democracy through training, and by translating human rights standards into tangible and deliverable education and training outcomes
- investigate individual and systemic complaints of human rights violations, and provide redress
- provide a research and documentation facility designed to advance human rights, especially social and economic rights
- establish the Commission as a resource and focal point for human rights in South Africa and in collaboration with other national institutions on the African continent



- ensure that the services of the Commission are accessible to the people of South Africa
- provide efficient and cost-effective corporate support services.

Within the parameters of its business plan, the Commission has focused on the areas of

- socio-economic rights
- equality, with specific focus on child rights, Human Immunodeficiency Virus (HIV)/AIDS, disability, racism, older persons and health
- administration of justice.

Special programmes for 2001/02 include:

- human rights in farming communities
- national action plan and strategy to combat racism
- 3rd United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)
- child sexual abuse
- racism in the Department of Justice and Constitutional Development.

National Centre for Human Rights

Education and Training Centre (NACHRET)

NACHRET was established in April 2000. The Centre provides a platform for debate on human rights issues aimed at enhancing an understanding of human rights issues and practices. The Centre also serves to provide training and build capacity both in South Africa and on the continent around human rights themes, challenges and issues.

Research

In terms of Section 184 (3) of the Constitution, the Commission is tasked with monitoring government departments' implementation of socio-economic rights (i.e. environment, housing, health care, food, water, social security and education).

The Research Department is compiling the Commission's *3rd Socio-economic Rights Report*. The Report will be submitted to Cabinet towards the end of 2001.

Child hearings

The SAHRC held public hearings on child sexual offences during April and May 2001.

The hearings were piloted in Gauteng, and are envisaged to be extended to other provinces.

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)

President Thabo Mbeki requested the SAHRC to organise and host the National Conference on Racism, which was held in August 2000 in Johannesburg. This was a precursor to South Africa hosting the 3rd WCAR, held in Durban from 31 August to 7 September 2001.

An outcome of the National Conference was the adoption of the South African Millennium Statement on Racism and Programme of Action.

In terms of the Programme of Action, Parliament has declared the period 2001–2010 as the Decade for National Mobilisation Against Racism.

Commission on Gender Equality (CGE)

The CGE, established in terms of the Commission on Gender Equality Act, 1996 (Act 39 of 1996), represents the major mechanism for addressing gender issues in South Africa.

Its goal is the promotion and protection of gender equality as part of the pursuit of social justice and democracy. This will be achieved by carrying out the functions spelt out in the Act.

These include:

- monitoring and evaluating policies and practices of State organs, statutory and public bodies, as well as the private sector, in order to promote gender equality
- gathering information and conducting education
- evaluating any Act in force, or proposed by Parliament, affecting or likely to affect gender
- investigating any gender-related complaint
- liaising with institutions, bodies or authorities with similar objectives to the CGE
- conducting research to further the objectives of the Commission.

The CGE currently has nine commissioners, including a chairperson, who at present also serves as acting chief executive officer (CEO).

Staff consists of the CEO and 33 staff members at national and provincial level (in three provinces). The work of the CGE is guided by committees (Finance and Administration; Policy and Research; Public Education and Information; and Legal) consisting of commissioners, staff members and nominated people from outside the CGE. The CGE works in partnership with various civil society structures and other organisations.

Truth and Reconciliation Commission (TRC)

The report of the TRC, consisting of five volumes, each with a particular focus, was presented to former President Mandela in October 1998.

Although activities were suspended, the Amnesty Committee continued its work to deal with all applications. This Committee was finally dissolved on 30 May 2001 by the President. A final report dealing with the work of the Committee, based on amnesty hearings conducted and findings made, will be presented to the President.

A policy to deal with final reparations is receiving government's attention.

International affairs

The current activities of the Ministry and Department can be divided into the following broad categories:

- The establishment of regular liaison with Southern African Development Community (SADC) states. Matters relating to the administration of justice that demand the attention of SADC states and South Africa have been identified and are receiving attention.
- The coordination 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 Institution for the Unification of Private Law.
- Interaction with other foreign states outside SADC.
- Negotiations on extradition and mutual

- legal assistance agreements with countries.
- Preparation of Cabinet and Parliamentary documentation for ratification of human rights treaties, including report-writing.
- The processing of requests for visits abroad. In 2000/01, the Directorate was responsible for the following tasks:
 - participating in the negotiation and preparation of the establishment of the Legal Sector and the SADC Protocol on the Tribunal
 - promoting South Africa's accession to the First and Second Optional Protocols to the International Covenant on Civil and Political Rights
 - participating in the preparation of the Organisation for African Unity Protocol on the Establishment of an African Court on Human and Peoples' Rights
 - negotiating and ratifying Extradition and Mutual Legal Assistance Treaties with the following countries:
 - United States of America
 - Canada
 - Australia.
 - finalising treaties with
 - Hungary
 - Argentina
 - Lesotho
 - Brazil
 - Egypt
 - Zambia.

Correctional services

Safe custody of prisoners

The primary function of the Department of Correctional Services is to keep those detained in prison in safe custody until they are legally released.

Prisoners were housed in 238 prisons country-wide and were made up as follows:

- eight prisons for female prisoners only
- 13 youth correctional facilities
- 113 prisons for male prisoners only
- 100 prisons for both male and female prisoners
- Four prisons were temporarily inactive (closed down) for renovations. In prisons where male, female and juvenile



prisoners are accommodated, female and juvenile prisoners are housed in separate designated sections.

Classification

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

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

Accommodation

The Department strives to provide adequate prison accommodation that complies with accepted standards. A long history of inadequate funding to renovate existing prisons and to build new ones makes this policy difficult to implement.

Overcrowding in South Africa's active prisons is also problematic. The prisons can accommodate 102 048 prisoners, but on 28 February 2001 the number of prisoners in custody stood at 170 168.

Of these, 57 676 prisoners were unsentenced. During 2001/02, according to the budget allocation for correctional services, R2 572 million would be spent on incarceration, R2 176 million on administration, R454 million on the development of offenders, R551 million on the care of offenders, R54 million on the reintegration of offenders, R578 million on asset procurement maintenance and operating partnerships, and R261 million on community corrections.

It is expected that the already overcrowded prisons will come under greater strain in the next few years as the effects of the new prisoner release policy and the Criminal Law Amendment Act, 1997 (Act 105 of 1997), are felt. In terms of the new release policy, no prisoner may be considered for parole before

he or she has completed at least half of his or her sentence.

The Criminal Law Amendment Act, 1997 makes provision for much harsher sentences for serious crimes. These changes are expected to add an even greater burden to already overcrowded prisons.

It was announced in August 1999 that the Department's building plan would be changed to include the building of smaller prisons which would accommodate up to 200 inmates. Medium prisons would house between 800 and 1 500 inmates, and large prisons 2 000 and more. To expand its accommodation capacity, the Department of Correctional Services opened the new Qalakabusha Prison with a capacity for 1 392 beds at Empangeni on 4 November 2000. Other prisons to be commissioned include

- Kokstad Closed Maximum Prison for 1 536 prisoners
- Kokstad Medium Prison for 296 prisoners
- Devon Pre-Release Centre near Springs for 600 prisoners.

The Correctional Services Act, 1998 (Act 111 of 1998), empowers the Minister to enter into joint ventures with the private sector to design, construct, finance and operate any prison or part of a prison.

During 2000, the Department of Correctional Services finalised agreements for the erection of two new prisons in accordance with the Asset Procurement and Operating Partnership System, a joint venture between government and the private sector. The construction of the following prisons has already started:

- Mangaung Maximum Security Prison in Bloemfontein with a capacity for 2 928 prisoners
- Kutama-Senthumule Maximum Prison in Louis Trichardt with a capacity for 3 024 prisoners.

The concept of unit management – which seeks to individualise rehabilitation programmes for prisoners – has been implemented at 41 prisons. The Department will extend this to all prisons by 2004 to improve service delivery and the rehabilitation of prisoners.

It was announced in June 1999 that the number of escapes from prisons throughout the country had decreased over the past two years. Statistics showed that 498 inmates escaped in 1998 compared with 1 050 escapes in 1997. This figure was further reduced to 459 escapes in 1999 and 250 escapes in 2000.

The Department had put in place various measures aimed at combating escapes. These included the optimal utilisation of existing security aids and equipment, continued evaluation of security directives, upgrading of personnel training, disciplinary action against negligent personnel, rewarding prisoners who report or warn of planned escapes, and the installation of electronic fences and X-ray scanners in high-risk prisons.

To deal with the overcrowding of prisons, the departments of Correctional Services and Justice and Constitutional Development have initiated:

- releasing offenders with bail amounting to R1 000 or less. Offenders were, however, still compelled to attend their trials. These releases over a period of five months decreased the number of awaiting trial prisoners from 63 964 to 48 678.
- using a cluster approach to formulate strategies.
- advancing parole dates, through releases in Community Corrections Systems, resulting in 5 256 offenders being released for further monitoring in communities.
- transferring unsentenced juveniles to places of secure care.
- converting prison sentences to correctional supervision.
- identifying, renovating and upgrading existing facilities.
- piloted integrated action by departments to review cases and reduce the average detention cycle time of awaiting trial offenders by 40% (that is from 122 days to 87 days).

At the beginning of 2001, overcrowding stood at 64%, compared with 68% in July 2000.

Categories

There are five categories of prisoners in South African gaols, namely:

- unsentenced prisoners (mainly prisoners

standing trial on a charge and detained in prison pending their hearing or sentence)

- short-term prisoners (prisoners serving a sentence of less than two years)
- long-term prisoners (prisoners 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.

Juveniles/children and youths

In terms of the Constitution, a child is a person under the age of 18 years. The Department 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. Statistics on 20 April 2001 reflected 40 902 sentenced juveniles and 28 942 unsentenced juveniles detained in youth correctional centres as well as in designated sections of prisons in the age group between 14 and 25 years. Of this number, 1 642 sentenced children and 1 441 unsentenced children were under the age of 18 years.

There are 13 youth correctional facilities in the country, namely Hawequa, Brandvlei, Drakenstein Med. B and Pollsmoor Med. A (Western Cape); Leeuwkop, Emthonjeni and Boksburg (Gauteng); Rustenburg (North-West); Durban and Ekuseni (KwaZulu-Natal); Groenpunt and Kroonstad (Free State) and Barberton Town Prison (Mpumalanga).

The development and support of prisoners forms 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 offenders, to contribute to their behavioural change, and to 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 prisoners 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 prisoners and amongst prisoners is fostered and maintained.

Section 7(2)(c) of the Correctional Services Act, 1998 stipulates that children must be kept separate from adult prisoners and in accommodation appropriate to their age, as young offenders are predisposed to negative influence.

Sentenced children/juveniles and youths under the age of 18 years are detained separately in youth correctional centres or in designated areas in existing prisons.

The aim of this separation is the provision of distinctive custodial, development and treatment programmes, as well as religious care, in an environment conducive to the care, development and motivation of the youth to participate and develop their potential.

Sentenced young offenders are kept separate from unsentenced ones.

Humane detention and treatment of prisoners

Physical care of prisoners is regarded as an important responsibility of the Department, and includes health care, nutrition and accommodation. The Department endorses the fundamental rights and privileges of all prisoners.

In accordance with the Correctional Services Act, 1998, an independent judicial inspectorate regularly inspects all prisons and reports on conditions and treatment of prisoners. The Department's anti-corruption unit also reports to the Deputy Commissioner: Good Governance who reports directly to the Commissioner.

Privilege system

The main objective of the privilege system is to encourage prisoners towards good behaviour, to engender a sense of responsibility in them, and to ensure their interest and co-operation in treatment programmes.

The system consists of primary privileges and secondary privileges. Primary privileges are aimed at the retention, maintenance or

furthering of family ties in order 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, a prisoner may be promoted or demoted to either the A or C privilege group.

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

Health care

The main objective is to provide an ethical, clinically independent health-care service, accentuating the primary health care (PHC) strategy of preventive, promotive, curative and rehabilitative health care, which also includes health education. The approach to health care in South African prisons focuses, among other things, on

- the strict pursuance of ethical codes by health professionals in prisons
- regular health quality inspections in all prisons
- 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 in all South African prisons
- an improved system for the allocation of medical assistance devices such as hearing-aids and spectacles
- the implementation of 'Universal Precautions' in prisons to prevent the spread of HIV/AIDS and other blood-borne diseases
- building capacity with regard to the management of HIV/AIDS, sexually-transmitted diseases (STDs), tuberculosis and other health problems.

The restructuring of health services in prisons is in accordance with the rationalisation efforts of the Department of Health.

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

Prisoners needing medical attention are as far as possible treated in State hospitals. The use of private hospitals for prisoners is permitted in cases where the public hospitals are unable to provide access to health care, and only after approval by the Provincial Commissioner.

Pharmaceutical services form part of the prison health service. The Department has obtained approval from the Office of the State Tender Board to participate directly in national contracts for pharmaceutical and related supply contracts.

To change sexual behaviour amongst offenders and personnel, the Department makes condoms available and has HIV/AIDS awareness campaigns in place. Youth Day, Sports Day, World AIDS Day and Condom Week are commemorated with the focus on HIV/AIDS and STDs. Another key activity is the orientation of new inmates on HIV/AIDS, unprotected sex and tattooing.

Mother and child units

Mother and child units have been established in female prisons in eight provinces. On 31 December 2000, there were 194 infants with their mothers in prison.

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 sound physical, social and mental care and development.

The rights of the infants are also protected through this measure, and are regarded as a priority.

The policy also stipulates that the admission of an infant with a mother is permitted where no other suitable accommodation and care are available at that point, and 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.

Policy emphasises that the mother should be helped to learn good child-care practices for her self-esteem and confidence and to the benefit of the child.

Nutrition

The Department has a responsibility and commitment to provide nutritious meals for all those who are entrusted to its care. The main objectives are to

- provide all prisoners with a balanced diet on a daily basis, as prescribed
- prepare meals in adequately and suitably equipped food preparation areas, under conditions conducive to a high standard of hygiene
- distribute meals in three serving sessions
- train caterers and food handlers.

Personal hygiene and environmental health

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

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

Provision of rehabilitation services

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

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

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

- positively combat illiteracy within the prison environment
- 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 prisoners and the community
 - promote and implement restorative principles to ensure the involvement of prisoners, victims and the community in the rehabilitation process.

Case management committees

Institutional committees, established for each prison, are responsible for ensuring a professional, coordinated approach towards the incarceration, treatment, training and development of all prisoners. This is effected by means of a multidisciplinary approach in which all role-players are involved, i.e. those concerned with custodial, training, educational, 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, among other things, the safe custody of prisoners, individual participation, subgroup and group programmes, as well as the prompt rewarding of positive behaviour.

Education and training

The aim of the Directorate: Education and Training is to enhance the education level and improve the skills of prisoners to facilitate their reintegration into the community. Services are provided to sentenced and unsentenced prisoners 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 National Qualifications Framework. All prisoners have a right to basic education and training.

Some of 21 787 prisoners were involved in formal education and training programmes during the 2000 academic year.

Education and training programmes to prisoners include:

- adult basic education and training
- mainstream education (grades 10–12)
- correspondence studies
- technical studies
- vocational training
- occupational skills training
- instruction in recreation
- 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 which should enhance the chances of the successful reintegration of the prisoner into the community and labour market.

Psychological services

Psychological services are provided for sentenced prisoners, persons under correctional supervision and probationers, in order to maintain or improve their mental health and quality of life.

The Directorate: Psychological Services aims to address the needs of all sentenced prisoners. The Department, however, only has 44 registered psychologists.

They held 8 389 individual sessions, 1 121 group sessions and 184 family counselling sessions during 1999/00. The Department uses the following procedures to address the emotional needs of prisoners:

- external registered psychologists can be contracted in areas or prisons where there are no departmental psychologists and a medical practitioner or medical officer has referred the prisoner for psychological treatment
- prisoners 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 various universities.

The Institutional Committee, Correctional Supervision and Parole Board, personnel, psychiatrists, medical practitioners, and family and relatives can refer prisoners to psychologists.

Psychological support and/or treatment consists mainly of individual therapy, group therapy and/or family therapy. Some 14 634 persons were treated in 2000.

Psychologists also provide a programme intended to change old habits, attitudes and beliefs. The Investment in Excellence Programme is a non-traditional education curriculum, which enhances individual and/or group potential.

Social work services

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

Target groups include young offenders, adults, people with disabilities, people living with HIV/AIDS, pre-release prisoners and probationers.

Treatment programmes offered by the Directorate comprise structured programmes such as life skills, family care and marriage, alcohol abuse, orientation, sexual offenders, trauma, pre-release and HIV/AIDS.

The Free-To-Grow programme was established in co-operation with the National Institute for Crime Prevention and Rehabilitation of Offenders, and is provided to probationers and parolees. About 20 ex-offenders and two trainers from the Department were trained. Plans include extending anti-crime projects to all provinces, holding follow-up sessions to report on the progress of the multidisciplinary approach, and extending the Free-To-Grow programme to all provinces. External expertise is frequently used to increase the quality of service and reach a greater number of clients.

By February 2001 there were 477 social workers serving 112 492 prisoners. The Department's social workers presented 172 783 individual counselling sessions and 48 680 group social work sessions. An important challenge is the growing number of people with HIV/AIDS, as not all social workers possess the necessary qualifications or training to qualify them as HIV/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 of rehabilitation programmes.

As a result, programmes offered to offenders will be needs-based. However, other structured programmes are still being offered as a preventative measure, e.g. the programme on HIV/AIDS to young offenders.

Religious care

The Directorate: Religious Care renders religious care services through needs-based programmes within a multidisciplinary context to persons in the care of the Department. This is done in partnership with churches or faiths and other role-players with the aim of rehabilitating offenders and reintegrating them back into the community.

The Directorate aims to contribute to the changing of the offender's behaviour, based on a lifestyle which is in accordance with acceptable values and norms of their faith.

Religious care services are rendered to sentenced and unsentenced prisoners, probationers, parolees and personnel on an *ad hoc* basis.

Religious care programmes take the form of large group gatherings, small group sessions and personal interviews. Structured needs-based spiritual care programmes addressing the specific needs of offenders are provided.

The extent of religious counselling is reflected by the 59 049 group prayer sessions and 65 505 individual meetings held between religious workers and prisoners.

The Department has 30 full-time chaplains and 2 096 part-time religious workers from 71 religious backgrounds.

Quarterly meetings are held with the chaplains of the South African National Defence Force and the SAPS to discuss issues of common concern. Meetings are also held with the departments of Foreign Affairs and Social Development concerning South African prisoners abroad.



The Directorate is a member of the International Prison Chaplains Association. A working relationship also exists with Prison Fellowship International, and contact is maintained with the chaplains of Zimbabwe, Namibia, Botswana and Zambia.

Provision is made for offenders to observe the main religious festivals and holy days such as Ramadan, Passover, Good Friday and Christmas.

The Bible Society of South Africa has donated R320 000 for Bible distribution to prisoners. The Gideon Movement is also actively involved in the distribution of Bibles in prisons. All religious literature, including the *Quran*, is supplied to prisoners through religious workers.

Restorative justice as an approach to bring about healing between prisoners and victims

In line with the Vienna Declaration on Crime and Justice, the Department has embraced the restorative approach to justice with the aim of reducing crime and promoting the healing of victims, offenders and the community.

The process to conduct public awareness and education campaigns has begun to raise awareness about the implementation of restorative justice programmes and policies.

This project intends to facilitate the mediation process between victims of crime and prisoners in an attempt to bring about restitution and reparation. This will be done by means of developing restorative justice and victim empowerment programmes.

Labour

It is the ideal for all sentenced prisoners who are able to work to be involved in a suitable work programme. However, factors such as a shortage of custodial and other staff, overcrowding and limited work opportunities impact negatively on placing all inmates in work programmes.

During 2000/01, an average of 1 563 prisoners worked on building and maintenance projects per day, with a further 7 218

involved in agricultural activities and 2 313 in workshops.

The Department used an average of 25 860 prisoners per day productively. In addition, 46 welfare organisations, 13 State-supported bodies and 131 departments used prison labour during 2000/01.

Re-integration into the community

Preparation for placement and resettlement

The Department aims to equip prisoners with the skills required for effective reintegration into society after release.

Prisoners sentenced to longer than six months 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 a prisoner are prerequisites for placement in the community. Before prisoners are placed, they are assisted to obtain employment and accommodation, or at least care and support. Community involvement in supporting prisoners after placement is encouraged.

Release of prisoners

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 prisoners, serving sentences exceeding 12 months, should be granted parole or not.

In the interest of protecting the community, the Department has abolished the concept of remission of sentence.

It was announced in August 1999 that the Government planned to release electronically-tagged prisoners.

Prisoners classified as non-dangerous and who qualify for parole will be eligible for release back into their communities. Electronic monitoring involves the wearing of a bracelet or anklet linked electronically to a centre staffed by a small number of supervisors.

As soon as a wearer moves outside his designated area or tampers with the equipment, the centre is informed.

Offenders face being sent back to jail to complete their sentences if out on parole or awaiting parole.

Supervision over probationers and parolees

The Parole and Correctional Supervision Amendment Act, 1997 (Act 87 of 1997), deals with parole and correctional supervision policy and also provides for a non-parole period. In terms of the Correctional Services Act, 1998, prisoners are not considered for parole until they have served at least half of their original sentences or the non-parole period.

A prisoner serving a life sentence may not be considered for parole until at least 25 years have been served.

The Act also empowers courts 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.

A total of 45 154 prisoners were admitted to the system of Community Corrections in 2000. The average number of parolees under supervision amounted to 21 659. Parolees are subject to certain conditions as well as supervisory measures aimed at gradually re-integrating prisoners into the community.

In order to achieve these goals, parolees are allocated to a supervision official of the Department, who ensures that they are regularly monitored.

Based on their risk profile, parolees are placed in minimum, medium or maximum supervision categories.

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

Contravention of parole conditions leads to stricter conditions and increased supervision or re-imprisonment for a part or the remainder of the parole period. Volunteers from the community are encouraged to assist the Department in the monitoring of parolees.

New Parole Boards will replace the present parole system. In terms of the current parole system, only members of the Department of Correctional Services serve on the Parole Boards.

The composition of the new Parole Boards will include two permanent members from the community and one from the Department, and will be chaired by a member from the community.

Correctional supervision

The Correctional Services Act, 1998, will ensure that all probationers and parolees are subjected to the same conditions.

At present parolees do not do community service. This will, however, change in terms of the Act. Correctional supervision aims to control and rehabilitate those persons 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 do not qualify.

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 subjected 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 some of the correctional programmes.

If the set conditions are violated, the probationer could be referred to the court of first

Information

An Inmate Tracking System, which will alleviate blockages associated with the identification, verification and monitoring of prisoners in various Correctional Services, Social Development and SAPS holding facilities, will be started in the 2001/02 financial year and should be completed by March 2004.



hearing for consideration of an alternative sentence or, in certain cases, be admitted directly to prison to serve the remainder of the sentence.

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

The community corrections population versus sentenced prison population on 31 December 2000 was 43,63%.

Day parole

A small number of prisoners are placed on day parole because they are institutionalised or have a doubtful prognosis and pose a high security risk to the community.

These prisoners 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 prisoners are allowed to spend weekends at home. Inmates may temporarily leave prisons for compassionate leave, consolidation of family ties, preparation for release, and for reasons that involve re-integration of the prisoner into society.

The prisoner 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.

Resource management and utilisation

The Department has a personnel component of some 35 320 members.

The human resources component of the Department comprises the Chief Directorate: Human Resource Development (HRD) and the

Chief Directorate: Human Resource Management.

The Chief Directorate: HRD comprises the Human Resource Administration and the Academy. The Chief Directorate: Human Resource Management comprises Human Resource Maintenance, Corporate Planning, Labour Relations and Equity.

Human Resource Maintenance focuses primarily on satisfying personnel needs by rendering procurement, utilisation and benefit services.

A new service provided by the Directorate: HRD is the HRD Policy. Other services include Management Development, Functional Training, Basic Training and External Development.

The Directorate Academy's mission is to develop human resources according to key competencies by means of delivering and development services, to equip all personnel in the Department to function optimally.

The Equity Directorate's main function is to facilitate the transformation process towards substantive equality within the Department.

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, with 21 051 members, the Public Servants Association, with 11 579 members, and the Democratic Nursing Association of South Africa with 305 members (at 30 March 2001). The Corporate Planning Directorate is committed to provide management support in the following areas:

- Organisation and Work Study
- Job Evaluation
- Project Management
- Strategic Planning
- Research.

The main aim of Organisation and Work Study is to advise management and personnel about issues regarding organisational arrangements, and the design or improvement of work procedures and methods in order to enhance business efficiency.

The Job Evaluation Unit is a newly established component and is closely related to Organisation and Work Study. Job Evaluation is aimed at providing defensible information for organisational and salary structures.

In terms of the New Public Service Regulations, 1999, the Department will evaluate all

- newly defined jobs
 - vacant posts from salary level 09 and higher.
- In addition to this, the Department of Public Service and Administration has ordered that all posts from salary level 13 and higher, vacant or filled, should be evaluated. This exercise should be completed before December 2002.

The Corporate Project Office's main purpose is to provide a management tool for the dynamic allocation and management of all resources in order to achieve the strategic and operational objectives of the Department and to serve as a nodal point for all projects within the Department.

Community involvement

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

- promote co-responsibility for offender management and crime prevention

- share responsibility for the rehabilitation and re-integration of offenders into the community
- maximise the use of public and private resources.

Research

The Department undertakes research to support itself in its endeavour to realise its objectives. These include enforcing decisions of the courts in the manner prescribed by the Correctional Services Act, 1998, by detaining all offenders in safe custody, and promoting social responsibility and human development of all offenders and persons subjected to community corrections.

About 56 research projects were undertaken in 2000/01. About 29 completed research reports are available.

The trend shows that there is a great demand from students and researchers to conduct research in the Department. This is due to the fact that the Department is part of the criminal justice cluster, and that crime in South Africa is a national concern.

As a result, research is mostly focused on crime so as to formulate new interventions and strategies of how to combat crime and improve the social lives of offenders.

There are set guidelines and procedures that are prescribed in the research policy that must be adhered to by all applicants.

The procedure for conducting research in the Department requires the following:

- completing an application form
- signing an agreement regarding conditions applicable to the proposed research
- proof of registration with an educational institution
- submitting a research proposal and questionnaires (if available)
- assessment and approval by the research committee
- upon approval, communication to concerned Provincial Commissioners and Area Managers where research will be undertaken
- feedback to the applicants.

The application forms are available at the

Information

The Department of Correctional Services' Code of Conduct, launched in October 2000, aims to provide personnel of the Department with value statements that transfer into morally acceptable behaviour. It provides members with a vehicle through which they can

- understand the legislative purpose in governance and abide accordingly – performing their duties in an efficient, professional, ethical and accountable way
- come to terms with how personal conduct and interests can defeat the aim of service delivery if not managed properly
- relate to the public in accordance to acceptable norms and standards as supported by the *Batho Pele* principles
- relate with offenders and external stakeholders, so as to promote a harmonious working environment conducive to rehabilitation and development of offenders and the growth of members.



research office at the Department's Head Office or Provincial Commissioners' offices.

National Council on Correctional Services

The National Council on Correctional Services was instituted in 1999. The Council is chaired by a Judge of Appeal, Supreme Court of Appeal, and consists of specialists from the courts of justice, the SAPS, the Office of the NDPP, the Department of Correctional Services, social development authorities, the private sector and other specialists.

The primary function of the Council is to advise the Minister in developing policy with regard to the correctional system and the sentencing process.

The Minister refers draft legislation and major proposed policy developments to the Council for advice.

The Commissioner provides necessary information and resources to enable the Council to perform its primary function. The Council may examine any aspect of the correctional system and refer any appropriate matter to the Inspecting Judge.

Acknowledgements

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