



# 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 Public Prosecutions (DPPs), 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 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 of Justice and Constitutional Development's leadership:

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◀ Offenders are rehabilitated and prepared for reintegration into society through services such as education, reskilling, learning a trade, moral and spiritual enlightenment, and personal development.

- 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 Resource Development
  - 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.

The Guidelines 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 survivors 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, which focuses on domestic violence and maintenance issues. 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 progressive development of the NPA structure means that it now includes the National Prosecuting Services (NPS), the Directorate: Special Operations (DSO), the Witness Protection Programme, the Asset Forfeiture Unit (AFU), and specialised units such as the Sexual Offences and Community Affairs Unit and the Specialised Commercial Crime Unit.

In terms of the NPA Amendment Act, 2000 (Act 61 of 2000), the DSO is a distinct and autonomous agency. It is currently engaged in finalising the protocols and regulations required for its operations.

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

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 headed by a Chief Executive Officer. 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**

In his opening address to Parliament on 25 June 1999, the President committed the DSO to effectively deal with all national priority crimes, including corruption.

The NPA Act, 2000 (Act 61 of 2000), came into force on 12 January 2001 and introduced significant changes to the existing investigating directorates. These included:

- integrating the former Investigating Directorate: Serious Economic Offences, the Investigating Directorate: Organised Crime and Public Safety (IDOC) and the Investigating Directorate: Corruption (IDCOR) into the DSO
- establishing the DSO as an investigating entity mandated to prioritise and investigate particularly serious criminal or unlawful conduct committed in an organised fashion, or certain offences or unlawful conduct, with the object of prosecuting
- the multifaceted functioning of the DSO in relation to investigation, intelligence analysis and prosecution, in the context of its limited investigative capacity, which is a distinguishing feature of the institution.

The current high approval rating of the DSO is based on key successes at critical stages of South Africa's development.

In the Western Cape, the forerunner to the DSO (IDOC) has successfully quelled the urban terror phenomenon, which had gripped Cape Town for a considerable period. During 2000, the unit brought 95 cases of urban terror against key targets before court.

In KwaZulu-Natal, a number of significant arrests by the DSO have contributed to an indictment of the political upheaval, which had beset the province before and during the first democratic election in 1994.

The Gauteng unit of the IDOC and IDSEO

focused its attention on car-hijacking and other organised crime syndicates. Their efforts contributed to the dismantling of numerous organised crime syndicates and culminated in the seizure of the largest quantity of mandrax tablets (at the time) in South Africa.

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

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

The following three delineated areas fall within this strategic focus: organised corruption, transnational organised crime and serious and complex financial crime.

The DSO has specifically initiated investigations in respect of transnational drug syndicates, such as west African and Chinese drug syndicates, with strong international links. It has developed operational liaison with international law enforcement agencies such as the United States (US) Federal Bureau of Investigation and Drug Enforcement Administration, United Kingdom's (UK) Scotland Yard, and UK Customs and Excise, which allows for international collaboration.

In the area of serious and complex financial crime, current DSO investigations are evidence of its intention to penetrate crime markets that have in recent years been out of the reach of traditional law enforcement. The DSO has initiated investigations into organised public

office corruption. The DSO has developed an ambitious, though realistic strategy, based on a customised model of successful overseas anti-corruption programmes.

In the Eastern Cape, the number-one priority is breaking the stronghold of organised corruption networks on some provincial departments. This programme follows the successful combating of organised taxi violence in the province.

In executing its mandate, the DSO has developed a set of case selection guidelines, which guides the selection of new investigations. This ensures a prudent application of resources, proper focus of investigations and diligent execution of its legislative mandate.

The fusion of the intelligence, investigative and prosecution capacities, under the singular auspices of the Head of the DSO, signifies a break from traditional and conventional methods of dealing with organised crime.

### **Asset Forfeiture Unit**

The AFU is a specialist unit established in the NPA in 1999 to focus on the seizure of assets from criminals.

In terms of Chapter 5 and 6 of the Prevention of Organised Crime Act, 1998, the AFU can seize and forfeit property that is proceeds of crime, or property that has been used to commit a crime.

The AFU has two major strategic objectives, namely to:

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

The AFU has managed to establish itself rapidly and its staff complement has grown to over 50.

By August 2002, it had taken nearly 200 cases to court, and restrained nearly R400 million worth of property.

Some R13 million has been paid into the Criminal Asset Recovery Account, and it was

expected that a further R30 million would be deposited by the third quarter of 2002. The law stipulates that these funds must be used to fight crime.

### **Special Investigating Unit**

A special investigation and tribunals unit appointed in March 1997 by former President Nelson Mandela to probe corruption and maladministration in government was the subject of a Constitutional Court (CC) ruling during 2000.

In November 2000, in a case initiated by the South African Association of Personal Injury Lawyers, the CC ruled that it was unconstitutional for the Special Investigations Unit to be headed by a judge. The Court held that to have a judge performing executive functions serves to corrupt the principle of the separation of powers, and that to require a judge to perform these functions clearly compromises the independence of the judiciary.

Government accepted the Court's decision and Parliament amended the legislation that had allowed for a judge to head the Unit. The Head of the AFU was subsequently appointed to head the Unit.

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

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

A number of sexual offences courts have been established in a number of areas country-wide and this process is continuing.

The Unit also seeks to improve the investigation and prosecution of rape cases. To this end, three multidisciplinary rape care centres, known as the Thuthuzela Care Centres, have been established in Manenberg (Western Cape) and Umdantsani and Lebode (Eastern Cape).

The Centres comprise police investigators, medical personnel, social workers, prosecu-



tors and 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.

### **National Prosecuting Services (NPS)**

The NPS' 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 cases to be heard, and the avoidance of unreasonable delays.

Between 2000 and 2002, District court rolls decreased to 127 per court, and to 106 in Regional courts.

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

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

### **Specialised Commercial Crime Unit**

The approach in the criminal justice system (CJS) has been to pay more 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 Specialised Commercial Crime Unit was established in 1999 to bring specialisation to 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.

### **Witness Protection Programme**

The Office for Witness Protection now falls under the auspices of the NPA. The Office is responsible for the protection of witnesses in

terms of the Witness Protection Act, 1998 (Act 112 of 1998), and its regulations.

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

The 2002/03 budget for witness protection amounts to R27 million. The Programme is different from other benefits and incentives offered by the SAPS to witnesses of murder, rape, attempted murder and fraud.

By the end of August 2001, there were 341 potential witnesses. The number of witnesses and family members totalled 695. The current average monthly gross expenditure amounts to R1,2 million.

### **Sexual Offences courts**

Twenty specialised court structures, specifically designed for the adjudication of court cases with a sexual content, have been established. This will be increased to 30 in 2002/03.

The Office of the NDPP has identified several additional 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.

### **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 in 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.

The South African Law Commission is finalising a report on community courts.

### **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 offenders. The court deals only with cases concerning failure to submit tax returns or to provide information requested by SARS officials. It does not deal with bigger cases such as tax fraud.

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

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

In terms of Section 22(8) of the NPA Act, 1998, the NDPP may authorise any competent person to conduct prosecutions in respect of statutory offences. Representatives from the NPA and SARS are engaged in discussions to have suitable officials appointed to deal exclusively with the prosecution of income tax offenders.

### **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 existing capacity has been enhanced 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 decisions taken and acts performed during the

period in which the Constitution is in force. In terms of the Constitution, every person has basic human rights such as:

- freedom from discrimination
- a right to life.

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

After it was lodged with the United Nations (UN) Secretary-General on 10 December 1998, the NAP was distributed to the 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 thereof. 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.

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 of Justice and Constitutional Development.

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 these 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 through 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 CJS
- creating an effective prosecution system
- creating an effective court system for the adjudication of cases
- co-ordinating 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 co-ordinated 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, namely the:

- development of a framework, detailing the business processes that will be re-engineered in an integrated manner. This project started in March 2001 and by August 2002 considerable progress had been made.

- 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 was due for completion by December 2002.
- establishment of the Virtual Private Network. This task has been assigned to the State Information Technology Agency.
- Identification System that has been procured. The project consists of an Automated Fingerprint Information System, the National Photo Images System, and a database of all DNA samples. It was expected to be completed by December 2002.
- development of the necessary business intelligence capacity within the Justice Cluster, which is in the second phase of its development.
- Integrated Case Flow Management System. The case, the offender 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 pilot was launched in the Johannesburg and Durban Magistrate's courts in September 2000. The objective is to implement it in all 450 Magistrate's courts country-wide together with the associated community safety centres, prisons and social development institutions. The project totalled some R35 million and the pilots are in an advanced stage of completion.

The IJS Court Centre has been implemented at 22 Magistrate's courts around the country as an interim measure to improve court and case management. The concept is being rolled out at a rate of two courts per

month. It has two components as the project changes the way that the Court is managed by bringing together the SAPS, the prosecution and Correctional Services to more effectively prepare cases for court, and ensures that prisoners attend court. The other component is a basic computer programme that assists court personnel to track and monitor the progress of each case on the roll and performs automatic court scheduling. The project has led to a reduction in case cycle time at implemented sites.

### 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. The Project was 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 was 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, grants 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 these rights 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 force on 9 March 2001. On 15 February 2002, sections 10, 14, 16 and 51 of the Act came into force. Comprehensive regulations were published on the same date.



## 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. The Act, with the exception of sections 4 and 10, came into force on 30 November 2000.

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

In terms of the Constitution, Parliament had to enact national legislation by February 2000 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:

- prioritisation of the elimination of unfair discrimination and promotion of equality with regard to race, gender and disability
- establishment of an equality review committee whose priorities include exploring the possibility of expanding the list of prohibited grounds
- 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 reported in the world. According to statistics released by the Crime Information Analysis Centre of the SAPS, 37 711 rape cases were reported for the period January to September 2001.

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.

In December 2001, the South African Law Commission released a discussion paper on the procedural law relating to sexual offences.

## Protected Disclosures Act, 2000 (Act 26 of 2000)

The Act came into force 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 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 an estate of her own.

The Act came into force 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 1996, the Minister of 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 was introduced into Parliament in August of 2002.

### **Anti-terrorism Draft 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 Draft 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.

On 29 August 2002, the Minister of Justice and Constitutional Development, Dr Penuell Maduna, received the Draft Bill and final report on anti-terrorism from the South African Law Commission.



## The Constitution of the Republic of South Africa Second Amendment Act, 2001 (Act 61 of 2001)

The Amendment Act addresses a range of practical difficulties that are encountered regarding certain financial issues provided for in the Constitution of the Republic of South Africa, 1996. The Amendment Act came into force on 26 April 2002.

## Cross-border Insolvency Act, 2000 (Act 42 of 2000)

On 15 December 1997, the General Assembly of the UN adopted a resolution, co-sponsored by South Africa, recommending that states review their legislation on cross-border insolvency and, in that review, give favourable consideration to the Model Law on Cross-border Insolvency of the UN Commission on International Trade Law (UNCITRAL), bearing in mind the need for international harmonised legislation governing instances of cross-border insolvency.

The enactment of the Model Law was considered by the South African Law Commission as part of its comprehensive review of the law of insolvency.

In line with the *Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency*, as few changes as possible have been made to the Model Law, as contained in the Act, to strive for a satisfactory degree of harmonisation and certainty. However, the Model Law has been adjusted to suit South African law. The principal objects of the Act are to promote:

- co-operation between the courts and other competent authorities of South Africa and foreign States involved in cases of cross-border insolvency
- greater legal certainty for trade and investment
- fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor
- protection and maximisation of the value of

- the debtor's assets
  - facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.
- The Act came into force on 28 February 2002.

## Court and other legal structures

### Constitutional Court

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

### Supreme Court of Appeal

The Supreme Court of Appeal, situated in Bloemfontein, is the highest court in respect of all other matters. It is composed of the President, Deputy President and a number of judges of appeal determined by an Act of Parliament. The Supreme Court of Appeal has jurisdiction to hear and determine an appeal against any decision of a High Court.

Decisions of the Supreme Court of Appeal are binding on all courts of a lower order, and the decisions of the High Courts are binding on Magistrate's courts within the respective areas of jurisdiction of the divisions.

### High courts

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

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

the Constitution and the spirit, purpose and object of the Bill of Rights.

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

### **Circuit local divisions**

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

### **Regional courts**

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

Unlike the High Court, the penal jurisdiction of the regional courts is limited by legislation.

### **Magistrate's courts**

Magisterial districts have been grouped into 13 clusters headed by chief magistrates 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.

By August 2002, there were 370 magistrate's offices, 50 detached offices, 98 branch courts and 228 periodical courts in South Africa, with 1 662 magistrates.

### Civil jurisdiction

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

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

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

### Small Claims Court

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 June

2002, there were 139 courts country-wide.

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.

### 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 of 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
- discharge.

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

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

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

### Other criminal courts

In terms of statutory law, jurisdiction may be conferred upon a chief or headman or his deputy to 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 co-ordinating body of the various Bar associations. There is a law society for attorneys in each of the provinces. A practising attorney is *ipso jure* a member of at least one of these societies, which seek to promote the interests of the profession.

The Law Society of South Africa is the co-ordinating body of the various independent law societies.

In terms of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), advocates can appear in any court, while attorneys may be heard in all of the country's lower courts



and can also acquire the right of appearance in the superior courts. An attorney who wishes to represent his 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 NPA Act, 1998, State advocates and prosecutors 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.

### Information

Durban hosted the International Bar Association (IBA) Conference in October 2002. It was the first time that the Conference was hosted on the African continent.

Some 30 000 legal practitioners from around the world attended the week-long Conference, which focused in particular on the impact of international terrorism and the law's response to this growing phenomenon.

A special task force on international terrorism set up by the IBA also presented preliminary findings during the Conference.

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.

## Masters of the High Court

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

Their role is of fundamental and strategic importance to the efficient and proper management of estates as it ensures the protection of the financial and proprietary rights of absent persons and those affected by death, insolvency and legal incapacity, i.e. minors and mentally challenged persons.

The key statutory functions of the Masters are the following:

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

These functions originate from and are regulated by, *inter alia*, the following Acts of Parliament:

- Administration of Estates Act, 1965 (Act 66 of 1965), as amended
- Intestate Succession Act, 1987 (Act 81 of 1987), as amended
- Wills Act, 1953 (Act 7 of 1953), as amended
- Insolvency Act, 1936 (Act 24 of 1936), as amended
- Companies Act, 1973 (Act 61 of 1973), as amended
- Close Corporation Act, 1984 (Act 69 of 1984), as amended
- Trust Property Control Act, 1998 (Act 57 of 1998), as amended
- Estate Duty Act, 1955 (Act 45 of 1955), as amended.

Major challenges facing the Masters Business Unit are the effective regulating of the insolvency industry and the elimination of discrimination in the administration of the estates of black persons who die intestate.

### 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 vocational training of all officials of the Department of Justice and Constitutional Development. The College also presents training to autonomous professions such as magistrates and prosecutors. Included in the training programmes of all officials are tuition on new constitutional legislation, human rights and social context issues.

### 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 co-ordinates community outreach programmes to assist children involved in family disputes.

### Legal aid

The Legal Aid Board is an independent statutory body established in terms of the Legal Aid Act, 1969 (Act 22 of 1969). Its objectives are to provide legal services to indigent persons and to provide legal representation to those constitutionally entitled thereto. The details of the legal aid scheme are set out in the Legal Aid Guide.



Criminal defense work makes up the bulk of legal services provided by the Board. Other priorities which the Board has identified, are:

- vulnerable groups, especially women and children
- the landless and rural poor.

In civil matters, a legal applicant is obliged to qualify in terms of a means test. In criminal matters, the means test is used as a point of departure but the final test is whether or not the accused is able to afford the cost of his/her own legal representation.

Criminal matters handled by the Board include all matters in which substantial injustice would result if legal representation is not provided at State expense. Subject to the ability of the accused to provide his/her legal representation, all matters in the High Court, all matters in the Regional courts and many matters in the District and Magistrate's courts and less serious matters where the accused, if convicted, would be unlikely to be sentenced to an excess of three years imprisonment, are excluded from the scheme.

Minor civil claims, the institution of claims sounding in money (for which contingency fee arrangements are legal) and civil claims which do not have a reasonable prospect of success, are also excluded from the civil legal aid scheme.

The Board used to provide legal aid and representation mostly by instructing legal practitioners in private practice. The scheme has proved to be unsustainably expensive and subject to abuse. The Board is moving towards a scheme in which most legal aid and most legal representation are provided by salaried legal practitioners employed by the Board. By 2004, the Legal Aid Board plans to have a national network of 60 offices throughout South Africa.

## 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 investi-

gating 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 may, after the issue of a warrant by a magistrate or judge, enter any building or premises 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.

At the end of 2001, the Office of the Public Protector was planning the final phase of its expansion into the remaining three provinces: Free State, Limpopo (formerly the Northern Province) and the Northern Cape. The Free State and Northern Cape offices were operational by mid-2002.

### 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, complaints and misconduct investigations against magistrates. It advises to the Minister regarding matters such as the appointments 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.

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:

- statutory law revision
- Islamic marriages and related matters
- simplification of criminal procedure
- sentencing
- customary law
- arbitration
- admissibility of computer-generated evidence
- Apportionment of Damages Act, 1956 (Act 34 of 1956),
- security legislation
- sexual offences
- computer-related crimes
- review of the Child Care Act, 1983 (Act 74 of 1983),
- use of electronic equipment in court proceedings
- publication of divorce proceedings



- carrying of firearms and other dangerous weapons in public or at gatherings
- domestic partnerships
- uniform national legislation on the fencing of national roads
- consolidated legislation pertaining to international co-operation in civil matters
- incapable adults
- protected disclosures
- privacy and data protection
- review of the rules of evidence.

### Judicial Service Commission

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

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

The JSC was established in terms of Section 178 of the Constitution to perform this function, and also advises government on any matters relating to the judiciary or the administration of justice.

When appointments have to be made, the Commission gives public notice of the vacancies that exist and calls for nominations. Suitable candidates are short-listed by the Commission and invited for interviews. Professional bodies and members of the public are afforded the opportunity to comment before interviews or make representations concerning the candidates to the Commission. 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 JSC deliberates and makes its decisions in private. Its recommendations are communicated to the President, who makes the appointments.

During 2001, 53 candidates were interviewed by the Commission and 20 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 was expected that the legislation would be enacted during 2002.

### South African Human Rights Commission (SAHRC)

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 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 of 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**

To effectively execute the Constitutional mandate and give effect to its 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 continent
- ensure that the services of the Commission are accessible
- provide efficient and cost-effective corporate support services.

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

- socio-economic rights

- equality, with specific focus on child rights, HIV/AIDS, disability, racism, older persons and health
- administration of justice.

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

### **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.

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

Chapter 9 of the Constitution provides for the establishment of, among others, the CGE.

Section 187 of the Constitution specifically grants the CGE powers to promote respect for gender equality and the protection, development and attainment of gender equality. The composition, functions and objectives of the CGE are outlined in the CGE Act, 1996 (Act 39 of 1996).

The CGE comprises 11 Commissioners and one Chairperson and 37 members of the Secretariat who fall within four departments and are based in six provinces. The other three provinces are serviced from the Johannesburg office. The main purpose of the



CGE is to promote and protect gender equality as part of the pursuit of social justice and democracy. This will be achieved by carrying out the functions as spelt out in the CGE Act, 1996:

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

The CGE works in partnership with various civil society structures and other organisations with similar objectives. In 2002, the CGE developed and agreed on the following strategic objectives, namely to:

- develop effective mechanisms to monitor public and private institutions to ensure the appropriate implementation of gender sensitive policies, strategies and programmes.
- develop a standard monitoring tool that can be used to regularly monitor different institutions around issues of access to justice, protection of gender equality and the women's budget.
- ensure effective co-ordination and alignment between and within national and provincial programmes, taking into account provincial dynamics.
- ensure gender equity and mainstreaming in government departments. This will be done through effective positioning and institutionalisation of gender focal points at all levels of government in collaboration with gender machinery.
- create strategic linkages regionally, nationally and internationally to ensure mutual support, effective collaboration and recognition of the need to promote and protect gender equality. This will be achieved by

developing a collaboration strategy around international instruments with the gender machinery.

- mainstream human resources as one of the key departments of CGE and develop a human resources strategy.
- develop a solid and effective funding strategy that ensures adequate allocation by government as well as supplementary funding from donor agencies and the private sector.
- develop effective and efficient internal organisational systems that will support the work of CGE.

## Truth and Reconciliation Commission (TRC)

The TRC's date of dissolution was determined as 31 March 2002 by way of proclamation in the *Government Gazette*. Such dissolution was ordered by the President in terms of Section 43(3)(b) of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995).

## International affairs

The activities of the Ministry and Department of Justice and Constitutional Development 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 the SADC and South Africa have been identified and are receiving attention.
- The co-ordination of all Commonwealth matters pertaining to the administration of justice.
- Interaction with other international bodies, such as the UN, the Hague Conference and the International Institution for the Unification of Private Law.
- Interaction with other foreign states outside the SADC.

- Negotiations on extradition and mutual legal assistance agreements with other 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: International Affairs 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 of 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 US, Canada and Australia
- finalising treaties with Hungary, Argentina, Lesotho, Brazil, Egypt and 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 are housed in 241 prisons country-wide:

- eight prisons for female prisoners only
- 13 youth correctional facilities
- 134 prisons for male prisoners only
- 72 prisons for both male and female prisoners
- 14 prisons 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.

### 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 109 106 prisoners, but by March 2002 the prisoner population was at an all-time high at 178 998 of which 55 500 were unsentenced and 123 498 were sentenced prisoners.

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

- transferring unsentenced juveniles to places of secure care
- converting certain prison sentences to correctional supervision
- identifying, renovating and upgrading existing facilities
- placing awaiting-trial persons under community corrections
- piloting 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).

Apart from these initiatives, the Department is addressing overcrowding on a continuous basis in conjunction with the other role-players in the CJS. One strategy utilised by the Department of Justice and supported by Correctional Services is the use of Saturday courts to address the backlog with regard to awaiting-trial prisoners. The implementation of the electronic court process – piloted in the Johannesburg and Durban courts – will go a long way in streamlining court processes.

The Department will continue to release prisoners serving minor offences after they have served a set minimum sentence. It will further enhance rehabilitation by placing it at the centre of all activities, striking a balance between rehabilitation and safe custody. The



aim is to provide education, skills development, personal development and spiritual enlightenment to address the offending behaviour and to release prisoners as productive and law-abiding citizens.

The Repair and Maintenance Programme has also been embarked upon. The Programme addresses backlogs in maintenance and inhumane conditions under which prisoners are incarcerated. A total number of 33 prisons were identified through a need and risk analysis conducted and these are being upgraded. Correctional facilities at Pollsmoor, Johannesburg and Pretoria will also be upgraded.

During 2002/03, the budget allocation for Correctional Services will be spent as follows:

- R3 206 million on incarceration
- R2 232 million on administration
- R352 million on the rehabilitation of offenders
- R272 million on community corrections
- R1 326 million on facility management and capital works.

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 place an even greater burden on the already overcrowded prisons since it is likely to increase the average length of prison sentences.

To expand its accommodation capacity, the Department of Correctional Services opened:

- Ebongweni Closed Maximum Prison at Kokstad for 1 440 prisoners
- Kokstad Medium Prison for 325 prisoners
- Devon Pre-Release Centre near Springs for 632 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.

A R345-million Maximum Security Prison was officially opened at Louis Trichardt in Limpopo on 1 February 2002. The 3 024-bed Kutama Sinthumule Maximum Prison is the second facility to be built and operated by a private-sector company in South Africa and is reputed to be among the largest prisons in the world. The first privately operated prison to open its doors was the Mangaung Maximum Security Prison near Bloemfontein that became operational during July 2001.

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

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

Over the past few years, the number of escapes from prisons has decreased. Statistics show that 498 inmates escaped in 1998 compared to 205 in 2001.

The Department has 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 personnel training, disciplinary action against negligent personnel, rewarding prisoners who report on or warn of planned escapes, and the installation of electronic fences and X-ray scanners in high-risk prisons. During 2002/03, special emphasis will be placed on the enhancement of security risk assessment tools and the reviewing of existing security systems.

### **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 committed, 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.

### Categories

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

- unsentenced prisoners (mainly prisoners standing trial on a charge and detained in prison pending the conclusion of judicial processes)
- 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 of Correctional Services regards a person between the ages of 14 and 25 years as a youth. The Department is responsible for the detention, treatment and development of sentenced juveniles.

Section 7(2)(c) of the Correctional Services Act, 1998 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.

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 also kept separate from unsentenced ones.

Statistics released on 20 April 2001 reflected 40 902 sentenced juveniles and 28 942 unsentenced juveniles detained in the age group between 14 and 25 years in youth correctional centres as well as in designated sections of prisons. Of this number, 1 642 (sentenced) and 1 441 (unsentenced) were under the age of 18 years.

There are 13 youth correctional facilities in the country, namely Hawequa, Brandvlei, Drakenstein Medium B and Pollsmoor Medium 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 form an essential part of their incarceration. The aim of rendering professional services (education, reskilling, learning a trade, moral and spiritual enlightenment, and personal development) is to rehabilitate offenders, contribute towards their behavioural change and prepare them for their reintegration into the community.

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

- young 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 among prisoners are fostered and maintained.

### 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 the treatment of prisoners.

### Privilege system

The main objective of the privilege system is to encourage prisoners towards good behaviour, engender a sense of responsibility in them and 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 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 to use private electrical appliances.

### Health care

The Directorate: Health and Physical Care provides the policy and administrative framework for the maintenance of an adequate, affordable and comprehensive health-care service based on the principles of Primary Health Care (PHC).

The service includes mental, dental and reproductive health, ancillary health care, health promotion management of communicable diseases (including HIV/AIDS and sexually-transmitted infections [STIs]) and referrals where necessary, through the acknowledgement of national and international norms and standards within the limits of available resources.

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.

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 programme.

Prisoners in need of 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 of Correctional Services.

The Department's policy on health care caters for the following:

- prevention, which involves promotion of safer sexual practices, management and control of STIs, provision of condoms and access to voluntary counselling and testing
- treatment care and support
- respect for human rights
- awareness campaigns and commemoration of HIV/AIDS calendar events
- established partnerships with other government departments, the private sector, NGOs and educational institutions
- peer-led education programmes to introduce behavioural changes among peers
- the appointment of employee assistance practitioners to implement employee wellness programmes
- principles of universal precautions, which provide personnel with guidelines and procedures regarding the handling of all body fluids.

### Mother and child units

Mother and child units have been established in eight female prisons nationally. On

31 December 2001, there were 194 infants in prison with their mothers.

Policy on such infants clearly stipulates that mothers and children are kept in a separate unit within the prison, where the surroundings and facilities are complementary to the sound physical, social and mental care and development of children.

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

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 taught good child-care practices for her own self-esteem and self-confidence and for the benefit of the child.

### **Nutrition**

The Department has a responsibility and commitment to maintain the health and strength of those entrusted to its care by satisfying their nutritional needs according to the Recommended Daily Allowance for food intake.

The main objectives are to:

- provide all prisoners with three nutritious meals per day
  - provide offenders with a therapeutic diet when prescribed by a medical doctor
  - provide religious and cultural diets.
- There are four types of ration scales in the Department, namely for:
- adult male and female prisoners
  - pregnant and breast-feeding women
  - children
  - babies.

The proposed ration scales are compiled and amended by a nutritionist and evaluated by qualified and registered dieticians at the Department of Health as well as NGOs, before approval by management.

### **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, and to prepare them for reintegration into the community as productive, well-adapted and law-abiding citizens.

A multidisciplinary team consisting of social workers, psychologists, chaplains, educators, correctional officers and others (external community) addresses 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, 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 at each prison are responsible for ensuring a professional and co-ordinated approach towards the incarceration, treatment, training and development of all prisoners. This is implemented 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

All prisoners have a right to basic 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 the National Qualifications Framework. Altogether 27 111 prisoners were involved in formal education and training programmes during the 2001 academic year.

Education and training programmes include:

- adult basic education and training
- mainstream education (grades 10 to 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.

The building of 14 new training centres will be completed during 2002/03. These centres will provide training opportunities to prisoners and will equip them with skills not only to be employable, but also to enable them to start their own small businesses after their release.

### Psychological services

Psychological services are provided for sentenced prisoners, persons under correctional supervision and probationers 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 40 registered psychologists. They held 10 139 individual sessions, 901 group sessions and 259 family counselling sessions during 2000/01. In areas where there are no departmental psychologists, the Department uses the following procedures to address the emotional needs of prisoners:

- external registered psychologists can be contracted in if a medical practitioner 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.

Some 16 242 persons were treated in 2001. Psychologists also provide a programme intended to change old habits, attitudes and beliefs. The Investment in Excellence Programme, a non-traditional education curriculum that enhances individual and/or group potential, is also presented.

The Institutional Committee, Correctional Supervision and Parole Board, personnel, psy-

chiatrists, medical practitioners, and family and relatives can refer prisoners to psychologists.

### **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 to 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 on issues such as life skills, family care and marriage, alcohol and drug abuse, orientation, sexual offenders, trauma, pre-release and HIV/AIDS.

By February 2002, there were 454 social workers serving 177 893 prisoners. The Department's social workers presented 186 573 individual counselling sessions. An important challenge is the growing number of people with HIV/AIDS, as not all social workers possess the necessary 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.

This model of intervention is the basic helping cycle that represents a systematic way of looking at professional practice in a value-based context. All social workers in the Department have been trained on the model of intervention to assist in the consistent assessment of offenders and provision of needs-based rehabilitation programmes. At this stage, all social workers are implementing the model of intervention.

As a result, programmes offered to offenders will be needs-based. However, other structured programmes are still being offered as a pre-

ventative 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 who are 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 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 the 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 73 940 group meetings and 78 846 individual meetings held between religious workers and prisoners during the 15-month period ending on 31 March 2001. The Department employs 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 of Social Development concerning South African prisoners abroad.

The Directorate: Religious Care 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. All religious literature, including the Bible and the Qur'an, is supplied to prisoners.

Restorative justice as an approach brings 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 production workshops.

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

### **Reintegration into the community**

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

to longer than six months' imprisonment undergo a basic pre-release programme before release. Aspects receiving attention include how to secure employment, personal finance management and street law.

Specialists from the community are also involved in the presentation of the programme. Care and support for 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.

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

### **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.

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, whichever may be the longer period.

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

### **Supervision of probationers and parolees**

A total of 39 368 parolees were admitted to the system of Community Corrections in 2001. The average number of parolees under supervision amounted to 27 975. Parolees are subject to certain conditions as well as supervisory measures aimed at gradually reintegrating prisoners into the community.

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

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

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

Towards the end of 2001, Parliament approved amendments to the Correctional Services Act, 1998 to address concerns about the lack of community involvement in the parole system.

According to the amendments, the composition of the new Parole boards includes two permanent members from the community, members from the departments of Correctional Services and Justice and Constitutional Development as well as the SAPS.

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

### **Correctional supervision**

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

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

A person sentenced to correctional supervision is placed under the control of a correctional supervision official. This official ensures that the probationer complies with whichever of the following conditions he or she may be 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 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 for a probationer or parolee to abscond from the system of community corrections. If found guilty by court, they may receive a sentence of up to 10 years' imprisonment.

The community corrections population versus the sentenced prison population on 31 December 2001 was 28,2%.

### **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 reintegration 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 35 281 members.

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).

## 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 reintegration of offenders into the community

- maximise the use of public and private resources.

The Department participates actively in the NCPS' initiative to establish community safety centres. The aim of these centres is to provide integrated services to the disadvantaged communities in South Africa. The departments of Correctional Services, Health, Social Development and Justice and the SAPS provide these integrated services to the community under one roof.

A major milestone during October and November 2001 was the opening of two community safety centres in South Africa at Nsimbini in KwaZulu-Natal and at Leobeng in Limpopo. These projects will contribute substantially towards improving service delivery to the communities and offenders in rural areas.

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

During April 2002, the Minister of Correctional Services, Mr Ben Skosana, invited the Deputy President, Mr Jacob Zuma, to launch the first poverty-alleviation programme at the Zonderwater Prison near Cullinan in Gauteng. A piece of land was identified that will be cultivated by prisoners and the produce will go to a needy old-age home, an orphanage and a local school-feeding scheme.

A similar project was subsequently launched at Thohoyandou Prison at Vondwe Village, Limpopo. Here, the Department also assisted a local primary school by supplying the labour and expertise for the building of three additional classrooms, the repainting of the school and the renovation of school benches.

## Research

The Department undertakes research 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.

Research is mostly focused on crime so as to formulate new interventions and strategies on how to combat crime and improve the social lives of offenders.

### **Anti-corruption**

In 2001/02, 236 reports on corruption in the Department of Correctional Services were received. As a result, 23 officials have been dismissed, 76 officials disciplined and 14 officials criminally convicted. At the request of the Minister, the President appointed an independent commission of inquiry, the Jali Commission, to investigate corruption, maladministration, violence and intimidation in nine management areas. Two interim reports on Westville prison have been received. A retired Judge will be appointed to head the internal investigations on the recommendations.

The scope of the Commission has since been extended to include the Grootvlei management area in the Free State.

The Commissioner is ensuring that the response to the interim recommendations results in the development of a sustainable and clean investigative and disciplinary capacity within the Department, to ensure that inter-

nal regulatory policies are complied with, and that corruption, gross negligence and crime are eradicated. Since no investigative unit can solve the situation alone, management has been tasked to ensure an appropriate style of management to close the space for criminal activity and corruption within the Department of Correctional Services.

### **National Council for Correctional Services**

The National Council for Correctional Services was instituted in 1999. The Council is chaired by a Judge of the 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 on 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 the 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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Department of Justice and Constitutional Development  
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