



Justice and correctional services

Administration of justice

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

In terms of Section 165 of the Constitution, the judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law.

No person or organ of State may interfere with the functioning of the courts, and an order or 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 is the mission of the Department to uphold and protect the Constitution and the rule of the law. The Department is accountable to the public and the State in rendering accessible, fair, speedy and cost-effective administration of justice in the interest of a safer and more secure South Africa. The Department aims to achieve this by promoting constitutional democracy, providing

appropriate legal services and the sound management of courts, and alternative dispute-resolution mechanisms.

It performs these functions in conjunction with judges, magistrates, the National Director of Public Prosecutions (NDPP) and the 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 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 of Justice and Constitutional Development is undergoing a restructuring process. The Department's goals are to:

- Improve service delivery to internal and external clients to enhance client satisfaction.
- Ensure that business is conducted efficiently and in a cost-effective manner, with the primary focus on courts and other

◀ The judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law.

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 leadership of the Minister of Justice and Constitutional Development, Dr Penuell Maduna:

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

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

- the Office of the Chief Financial Officer
- Human Resource Development
- Information and Systems Management, which includes information technology services
- Public Education and Communication.

National Prosecuting Authority of South Africa (NPA)

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

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

The NPA has made steady progress in achieving its priorities. Generally, productivity in courts is increasing, but this has to be viewed in the light of substantial increases in the number of new cases. Between January 2002 and December 2002, the lower courts finalised a total of 833 594 cases, of which 421 213 were withdrawn. Outstanding cases on the lower courts' rolls decreased from 195 638 in January 2002 to 180 953 by the end of December 2002. Over the same period the conviction rate was 81%. The High Courts

finalised 1 684 cases between January 2002 and the end of September 2002. Of these, 288 were rape cases referred by the lower courts, for which the High Court must give at least the minimum sentence; with 1 130 receiving a verdict of guilty (81%). There was an outstanding roll of 1 048 cases and 1 827 new cases were registered.

Office of the National Director of Public Prosecution

The Office of the NDPP is the head office of the NPA. The prosecuting authority vests in the NDPP. This authority 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

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).

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

The following three delineated areas fall within this strategic focus: organised corrup-



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

By September 2002, the DSO had finalised 210 prosecutions over a period of 18 months. Eighty-five of these were finalised in the last seven months with a 93% conviction rate. In those seven months, an additional 43 major case investigations were initiated, bringing the total number of projects on its books to 500, one-third of which had already appeared before the courts.



The Department of Justice and Constitutional Development raised more than R700 000 for civil organisations fighting women and child abuse through the National Signature Pledge held during the *16 Days of Activism for No Violence Against Women and Children* Campaign in 2002.

Over 580 000 people, including President Thabo Mbeki and several sporting and international personalities, supported the Campaign.

The money was disbursed to the different non-governmental organisations by the Foundation for Human Rights.

The Campaign was repeated in 2003.

Asset Forfeiture Unit

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

The AFU has two major strategic objectives, namely to:

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

The use of asset forfeiture to fight crime has been one of government's important innovations. By June 2003, the AFU had initiated over 300 cases and frozen nearly R500 million worth of criminal assets. There was more than R25 million in the Criminal Assets Recovery Account, which will be used to fight crime.

Special Investigating Unit

A special investigation and tribunals unit was appointed in March 1997 to probe corruption and maladministration in government.

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.

The Unit also seeks to improve the investigation and prosecution of rape cases. To this end, four multidisciplinary rape care centres, known as the Thuthuzela Care Centres, have been established.

The Centres comprise police investigators, medical personnel, social workers, prosecutors and community volunteers who assist in addressing the underreporting of rape cases.

These teams have 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.

In June 2002, the Unit began training prosecutors in the handling of domestic violence. It also recruited and trained maintenance prosecutors. In addition, prosecutors countrywide have been trained to deal with child-justice matters. Since the inception of child-justice committees co-ordinated by prosecutors, some 9 990 offenders have been diverted from the criminal justice system (CJS).

Sexual offences

By July 2003, 40 Sexual Offences Courts had been established countrywide.

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

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

Significant progress has been made in this regard. Some 35 rooms have been provided with one-way glass partitioning, while 178 closed-circuit television systems have been installed.

Twenty of the Sexual Offences Courts are blueprint-compliant while a further 20 Regional Courts are dedicated to hearing mainly sexual offences cases.

The Department of Justice and Constitutional Development, the NPA, the Department of Social Development and the SAPS have established a close working relationship and

have developed a national strategy for the accelerated roll-out of Sexual Offences Courts.

The Office of the NDPP and the Department of Justice and Constitutional Development have 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.

National Prosecuting Services

The mission of the NPS is to raise the levels of productivity in the NPA 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 verdict of guilty.

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

By mid-2003, integrated justice system (IJS) Court Centres had been established at 39 lower courts throughout the country. The IJS Project has resulted in improved case preparation and reduced case-cycle times. Court statistics show that the average cycle time of cases has declined from 110 to 74 days. The Court Management Information System (MIS) reports aspects such as the number of cases finalised per courtroom and per judicial officer, cases withdrawn as a proportion of cases disposed of, and the number of new cases per courtroom and per judicial officer. Encouraged by the initial results, the Department decided to extend the Southern Gauteng Pilot Project to the rest of the courts in Gauteng and all the courts that have IJS Court Centres.

Specialised Commercial Crime Unit

The Pretoria-based Specialised Commercial



Crime Unit was established in 1999 to bring specialisation to the investigation, prosecution and adjudication of commercial crimes.

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

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

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

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

Witness-Protection Programme

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

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

The 2003/04 budget for witness protection amounted to R36 524 million.

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

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

At the end of March 2003, there were 326 potential testifying witnesses admitted to the Programme. The total number of people in the Programme is 704, including family mem-

bers. The average gross monthly expenditure stands at R1 775 million.

Between January and March 2003, the following was realised through the involvement of the Witness-Protection Programme: some 87 cases were finalised, 114 witnesses testified, the number of accused persons stood at 183, while 141 convictions took place, 42 persons were acquitted, and the combined jail terms amounted to 2 626 years and 72 life sentences.

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 Reform Commission (SALRC) is finalising a report on Community Courts.

During 2002/03, the Department delivered new Community Courts at an unprecedented rate. Some R211 138 million was spent on establishing new courts at Botshabelo, Queenstown, Kroonstad, Khutsong, Khayelitsha, Blue Downs, Patensie and Middel-drift. Ongoing extensions at various other Courts ensured that the capital budget was put to the best possible use.

Courts for Income Tax Offenders

In October 1999, the South African Revenue Service (SARS) opened a criminal courtroom at the Johannesburg Magistrate's Office dedicated to the prosecution of tax offenders. The Court deals only with cases concerning failure to submit tax returns or to provide information requested by SARS officials. It does not deal with bigger cases such as tax fraud.

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

Discussions to decentralise and expand such a Court to the bigger centres in the country have taken place between SARS and the Department.

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 appoint suitable officials to deal exclusively with the prosecution of income-tax offenders.

Family Court Pilot Projects

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

The Family Court Blueprint was developed by the Family Court Task Team in 2002 to support the existing five pilot projects in becoming fully fledged successful Family Courts, and thereafter the rolling out of Family Courts to other magisterial districts. The establishment of Family Courts in South Africa is motivated by three broad aims, namely to:

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

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

Municipal Courts

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

They are set up in a partnership agreement in that administrative and infrastructural support is supplied by the municipality, while magistrates are provided by the Department. Pretoria, Johannesburg, Port Elizabeth and Nelspruit either have Municipal Courts already or are in the process of setting up these Courts. These Courts assist in addressing the backlogs and severe workloads of the other lower courts.

Equality Courts

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

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

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

By June 2003, 62 Equality Courts were in operation.

State Legal Services

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

- Legal Services to the State provides for the work of the State Attorney and State law advisors. The former acts as attorney, notary and conveyancer for government. State law advisors provide legal opinions, scrutinise and amend international agreements and draft legislation and attend relevant Parliamentary Portfolio Committees as legal advisors for all national departments.
- The Legislative and Constitutional Development Unit is responsible for promoting, maintaining and developing the Constitution and its values by researching, developing and promoting appropriate legislation. It



includes the research activities of the SALRC, which involve extensive reviews of wide areas of law and legal practice. The Unit established a section for statutory-law revision in 2002, which researches and develops legislation, researches possible future legislation, and develops reports for the Minister on a range of issues.

- The Master of the High Court is responsible for the administration of deceased and insolvent estates, companies and close corporations in liquidation, trusts and the Guardians Fund, as well as the property of minors, persons under curatorship and absent persons.

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.

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 17: *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

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 interaction and transition between the respective departmental responsibilities.

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. By July 2003, the project was nearing completion, the results of which are going to be used to finalise the design of the initial build of the integrated business process, for subsequent release and implementation.
- Establishment of the necessary infrastructure to enable the IJS. Each department has been tasked with the responsibility of ensuring that the required infrastructure is put in place for the deployment of the IJS elements.
- 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 (AFIS), the National Photographic Identification System (NPIS), and a database of all DNA samples. By July 2003, these systems were largely complete. However, they still have to be placed within the IJS framework to facilitate the management of the person through the justice process, which not only includes the offender, but also the victim and witnesses.

- Development of the necessary business-intelligence capacity within the Justice Cluster, which was expected to move into a new phase during 2003/04.
- Integrated Case-Flow Management System, which includes Case, the Person (offender, victim and witness) and the Exhibit business processes. These processes are seen to be the primary business capabilities which are to be supported by the main functionalities of work flow, document management, scheduling and event notification.

Improved governance was one of the most significant achievements during 2002/03 as well as the following:

- Framework development – by July 2003, the project was almost concluded.
- Business enablement – a core strategy has been developed and demonstrated.
- Reference-data management – initial requirements have been delivered.
- Business intelligence – two business areas were ready for implementation by July 2003.
- Identification service – the NPIS enhancement is nearing completion. Since its implementation in September 2002, AFIS has reduced the backlog in fingerprint searches from 84 891 to 32 169.
- Inmate tracking (offender/persons management).
- Improved database capacities.
- The Court Process Project (CPP) – a functional baseline has been established for court processes across departments.
- The CPP roll-out to 13 police stations in the Durban Magistrate's Court area is showing good progress.

The CPP provides for the automation of civil and criminal case-management systems. The objective is to implement it in all 450 Magistrate's Courts countrywide, together with the associated Community Safety Centres, prisons and social development institutions.

In relation to the Department, the 2003/04 priorities of the IJS – focusing on promoting service-delivery excellence in the CJS – are to

increase the efficiency of the courts, especially the handling of sexual-assault crimes. The Department is recruiting court managers to take over the administrative function of magistrates following the decision to separate administrative and judicial functions.

Courts are working longer hours, and between 1999 and 2001 there was a 49% increase in the number of daily court sittings. As a result, the number of cases finalised in courts has increased since 2001.

To deal with case backlogs, 3 027 Saturday and additional court days were introduced. Between January 2002 and March 2003, these courts finalised 27 570 cases. More courts are being encouraged to sit over weekends to reduce unacceptable case backlogs.

There has been a positive reversal in the ratio between sentenced and other prisoners, owing to the overall improvement in court efficiency. During 2002, 18 new permanent judges were appointed and further appointments are being processed. An amount of R20 million was set aside to increase the number of magistrates and prosecutors to cope with escalating court rolls.

For 2003/04, an amount of R229 million was allocated for capital works and R35 million for the upgrading of existing infrastructure. Construction of new court buildings is under way in Tembisa, Benoni, Boksburg, Scottburgh, Atteridgeville, Randburg, Pretoria North, Atamelang, Sasolburg and Sebokeng.

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 (DNS) Project, which entails rapid infrastructure deployment throughout all the Department's offices. The Project was scheduled for completion by December 2002, but the baseline deadline



could not be met and has been extended to 2004.

- 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. The development phases of the projects have been completed and roll-out was due to start in 2003.
- MIS, which is designed to provide essential information necessary to manage the Department. The MIS has been incorporated into and will now be a subproject of the DNS.

Legislation

In terms of the Constitution, legislative authority is vested in Parliament, which consists of the National Assembly and the National Council of Provinces (NCOP). 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 SALRC, after consultation with all interest groups.

Since April 1994, the Department has promoted more than 100 Bills. The Department's legislative programme was dominated by three main themes, namely, legislation to give effect to the spirit of the new constitutional dispensation, legislation to address the crime problem prevailing in South Africa, and legal reform.



The Department of Justice and Constitutional Development's Maintenance Outreach Programme was launched by the Deputy Minister of Justice, Ms Cheryl Gillwald, in Cape Town in March 2003.

The Outreach Programme is aimed at educating people about their rights and responsibilities with regard to maintenance and child support, appointing maintenance investigators to improve the payment of maintenance and progress in the modernisation of systems for the collection and distribution of maintenance.

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

Implementation of the Maintenance Act, 1998 (Act 99 of 1998), and the Domestic Violence Act, 1998 (Act 116 of 1998)

The Department implemented the Maintenance Act, 1998 and the Domestic Violence Act, 1998 in November 1999 to make a difference to the lives of vulnerable women and children. The Department has also started appointing contract maintenance investigators in 55 of the Maintenance Courts.

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 in 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.

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

The Promotion of Access to Information Amendment Act, 2002 (Act 54 of 2002), was published in the *Government Gazette* in January 2003. The aims of the Amendment Act are to amend the definition of 'court' in the principal Act and to provide for the training of presiding officers in Magistrate's Courts. The Department has approached the Minister to designate all Magistrate's Courts as Access of Information Courts.

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.

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

The Promotion of Administrative Justice Amendment Act, 2002 (Act 53 of 2002), was published in the *Government Gazette* in February 2003. The aims of the Amendment Act are to amend the definition of 'court' in the principal Act and to provide for the training of presiding officers in the Magistrate's Courts for purposes of the Act.

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 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 Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002 (Act 52 of 2002), was published in the *Government Gazette* in January 2003. The objectives of the Amendment Act are to further provide for the training and designation of presiding officers of Equality Courts for purposes of the Act, to provide for the designation of Magistrate's Courts as Equality Courts, to further regulate the training of clerks for Equality Courts and to provide for related matters.

The Department is in the process of approaching the Minister to designate Magistrate's Courts as Equality Courts.

Child Justice Bill

Article 40(3) of the Convention on the Rights of the Child requires State parties 'to promote the establishment of laws, procedural 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.

A Juvenile Justice Project Committee, appointed by the SALRC, drafted a comprehensive Bill. The proposed legislation will create a new system for dealing with children accused of crimes that will:

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

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

The Child Justice Bill was presented to the Portfolio Committee on Justice and Constitutional Development on 20 February 2003. Public hearings were held and several submissions were received.

Amendments to the Bill were made on the request of the Portfolio Committee. Although substantial redrafting of certain sections has been requested, the main policy direction of the Child Justice Bill remains intact. It was expected that the Bill would be passed before the end of 2003.

Constitution of the Republic of South Africa Amendment Act, 2001 (Act 34 of 2001)

This Amendment Act amends the Constitution of the Republic of South Africa, 1996 so as to change the title of the President of the Constitutional Court (CC) to that of Chief Justice; provide for the Offices of the Deputy Chief Justice, President of the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal; and provide for the extension of the term of office of a Chief Justice. The Amendment Act also makes provision for municipal borrowing powers, and to



enable a municipal council to bind itself and a future council in the exercise of its legislative and executive authority to secure loans or investments for the municipality concerned.

Criminal Procedure Second Amendment Act, 2001 (Act 62 of 2001)

The Act emanates from a report of the SALRC (as part of its investigation into the simplification of the criminal justice process) and aims to amend the Criminal Procedure Act, 1977 (Act 51 of 1977), to allow a prosecutor and an accused person to enter into a plea and sentence agreement.

Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act 70 of 2002)

This Act aims, among other things, to regulate the interception of certain communications, the monitoring of certain signals and radio-frequency spectrums, and the provision of certain communications-related information. The Act also regulates the making of applications for, and the issuing of, directions authorising the interception of communications and the provision of communications-related information under certain circumstances. It further provides for the execution of directions and entry warrants by law-enforcement officers and the assistance to be given by postal service-providers, telecommunications service-providers and decryption key holders in the execution of such directions and entry warrants.

Constitution of the Republic of South Africa Second Amendment Act, 2003 (Act 3 of 2003)

The objectives of the Amendment Act include amending the Constitution so as to simplify the process of review by the NCOP where national executive interventions have taken place in provincial affairs, and simplifying the process of review by the NCOP where

provincial executive interventions have taken place in local affairs. The Act also changed the name of the Northern Province to Limpopo.

The Republic of South Africa Third Amendment Bill, 2003

The Bill amends the Constitution of the Republic of South Africa, 1996 in two respects:

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

The amendments contained in the Bill are required in order to constitutionally sanction certain corresponding provisions of the Superior Courts Bill, 2003. The Superior Courts Bill will largely be giving effect to item 16(6) of Schedule 6 to the Constitution, in terms of which all courts must be rationalised with the view to establishing a judicial system suited to the requirements of the Constitution. This Bill aims to rationalise and consolidate the laws pertaining to the CC, the Supreme Court of Appeal and the High Courts, referred to collectively as the Superior Courts. It will also merge the Labour Court and the Labour Appeal Court with the proposed High Court of South Africa and the Supreme Court of Appeal, respectively.

Compulsory HIV-Testing of Alleged Sexual Offenders Bill, 2003

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

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

In accordance with the Bill, the HIV-testing of the alleged offender should take place within a specific period after the alleged sexual offence was committed. The victim, or any interested person on behalf of the victim, may apply to a magistrate for an order that the alleged offender be tested for HIV.

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

Criminal Procedure Amendment Bill, 2003

The purpose of the Bill is to further regulate appeals against decisions of lower courts in criminal cases. The Bill provides that any person convicted of any offence in a lower court who wishes to appeal against the conviction, sentence or order, must apply to the relevant lower court for leave to appeal against any conviction, sentence or order. The Bill further provides for a petition procedure to the High Court having jurisdiction, in the case where an application for leave to appeal has been refused.

Public Protector Amendment Bill, 2003

The main purpose of the Bill is to further regulate the appointment of the Deputy Public Protector.

The Public Protector Act, 1994 (Act 23 of 1994), provides for the appointment of Deputy Public Protectors by the Cabinet member responsible for the administration of justice. There have been arguments that this erodes the independence of that office, as such a person (Deputy Public Protector) may eventually assume the duties of the Public Protector. The amendments to the Bill propose that only one Deputy Public Protector be appointed, and that he or she, as is the case with the Public Protector, be appointed by the President with the involvement of Parliament. Amendments that regulate the remuneration and other terms and conditions of employment, vacancies in office, and removal from

office of the Deputy Public Protector, are also included in the Bill.

Sexual Offences Bill

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

According to statistics released by the Crime Information Analysis Centre of the SAPS, 52 425 rape cases were reported between April 2003 and March 2003.

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

The Criminal Law (Sexual Offences) Amendment Bill, which seeks to improve the approach to dealing with sexual offences, was adopted for submission to Parliament in July 2003.

Court and other legal structures

Constitutional Court

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

The Department of Justice and Constitutional Development aims to promote better case-flow management at the CC. Targets set



include increasing the number of cases finalised by 5%, and increasing the number of court hours worked per day.

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 and Deputy President of the Supreme Court of Appeal and a number of judges of appeal determined by an Act of Parliament. The Supreme Court of Appeal has jurisdiction to hear and determine an appeal against any decision of a High Court.

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

High Courts

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



When the post-apartheid Government came to office in May 1994, there were only one black male judge and two white female judges.

By July 2003, out of 214 judges of the Superior Courts, there were 128 white males (60%), 14 white females, 42 indigenous African males, eight indigenous African females, eight coloured males, one coloured female, 11 Asian males and two Asian females. Some 60% of the Superior Court judges are post-apartheid appointments. This result has been achieved through the application of a rigorous appointment procedure conducted by and under the auspices of the Judicial Service Commission.

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.

The Department aims to increase the number of cases finalised by the High Courts to 1 000 cases a day. The Department also hopes to increase the number of court hours worked per day.

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

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

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

By mid-2003, the rationalisation of the Labour Court was at an advanced stage, with legislation being prepared to integrate that Court and the Labour Appeal Court into the High Court and the Supreme Court of Appeal.

Circuit local divisions

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

Regional Courts

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

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

Magistrate's Courts

Magisterial districts have been grouped into 13 clusters headed by chief magistrates. This system has streamlined, simplified and provided uniform court-management systems applicable throughout South Africa, in terms of judicial provincial boundaries. It facilitated the

separation of functions pertaining to the judiciary, prosecution and administration; enhanced and developed the skills and training of judicial officers; optimised the use of the limited available resources in an equitable manner; and addressed the imbalances in the former homeland regions. The Department now communicates through cluster heads.

In terms of the Magistrates Act, 1993 (Act 90 of 1993), all magistrates in South Africa fall outside the ambit of the Public Service. The aim is to strengthen the independence of the judiciary. Although the Regional Courts have a higher penal jurisdiction than Magistrate's Courts (District Courts), an accused person cannot appeal to the Regional Court against the decision of a District Court, only to the High Court.

By March 2003, there were 370 magistrate's offices, 51 detached offices, 107 branch courts and 234 periodical courts in South Africa, with 1 772 magistrates.

The Department has set several targets aimed at promoting case-flow management in the lower courts. These include finalising 40 cases per month per District Court and 15 cases per month per Regional Court during 2003/04.

A further target set is increasing the number of court hours worked per day to five hours per District Court and four hours per Regional Court during 2003/04.

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. Thirty-five such Courts have been created since 1994, with a focus on rural and previously disadvantaged areas. By July 2003, there were 142 courts countrywide, of which 25 were designated to rural areas.

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 imposed by District Courts is limited to a period of not more than three years' imprisonment or a fine not exceeding R60 000. The Regional Court can impose a sentence of not more than 15 years' imprisonment or a fine not exceeding R300 000.

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

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

A Magistrate's Court has jurisdiction over all offences except treason, murder and rape. The Regional Court has jurisdiction over all offences except treason. However, the High Court may try all offences. Depending on the gravity of the offence and circumstances pertaining to the offender, the DPP decides in which court a matter will be heard. He 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 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 advisors 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.

The State Attorney is involved in the drafting of contracts where the State is a party, and also acts on behalf of elected and appointed officials acting in the performance of their duties, e.g. civil and criminal actions instituted against Ministers and government officials in their official capacities.

Masters of the High Court

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

The key statutory functions of the Masters are the following:

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

The computerisation of the Guardian's Fund has reached an advanced stage and will revolutionise the administration of trust funds for minors. The Guardian's Fund grew by 18% in 2003.

Master's Business Unit

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

The Unit was expected to open offices in Johannesburg, Polokwane, Durban and Port Elizabeth in 2003.

Rules Board for Courts of Law

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

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

Justice College

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

Office of the Family Advocate

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

The Family Advocate, assisted by family 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.

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

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

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

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

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

Legal aid

The Legal Aid Board is an independent statutory body established in terms of the Legal Aid Act, 1969 (Act 22 of 1969).

The Legal Aid Board provides tax-subsidised legal help to those in greatest need. It does so in accordance with the Constitution and the Bill of Rights. As a progressive and independent public defender, the Board is committed to the building of a just society where each person respects the constitutional rights of others.

The Legal Aid Board's work covers both civil and criminal cases. Its criminal work supports each person's right of innocence until proven guilty. The Constitution guarantees accused criminals the right to a fair trial and this is done through the Board. In its civil work, the Board places special emphasis on providing legal advice and protecting and defending the rights of women, children and the landless.

The Board's half-a-billion Rand budget contributes to:

- finalising over half of all matters in courts
- protecting the rights of people through timely legal advice
- defending the rights of households through impact litigation.

In civil matters, legal applicants are 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 Legal Aid Board include all matters in which substantial injustice would result if legal representation were 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, 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 more than 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 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. This has proved to be unsustainably expensive and subject to abuse. The Legal Aid Board is moving towards a scheme in which salaried legal practitioners employed by the Board provide most legal aid and representation. By the end of 2004, the Board plans to have a national network of 60 Justice Centres throughout South Africa. By the end of April 2003, 44 Justice Centres had been established.

Legal aid may also be provided through co-operation agreements with NGOs and universities which provide legal services. Co-operation agreements are an important part of the Legal Aid Board's Access to Justice Strategy. The Board is committed to rendering quality legal services and is consequently eager to participate in the further development of the justice system through continued



co-operation with its partners. It assists approximately 250 000 applicants a year.

Office of the Public Protector

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

The Public Protector 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.

The Office of the Public Protector has provincial offices in all provinces, except Gauteng, where the national Office fulfils that function. In 2002/03, the Office received 15 680 new cases and 13 108 cases were carried forward from 2001/02. Of these, 21 707 cases were finalised in 2002/03.

Magistrate's Commission

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

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

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

South African Law Reform Commission

It is generally accepted that legal systems and 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.

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 line of thinking is also evident from the community-orientated nature of the investigations included in its programmes.

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. Following the interviews, the JSC deliberates and makes its decisions in private. Its recommendations are communicated to the President, who then makes the appointments.

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 dealing with aspects such as control over discipline, leave, salaries and a complaints mechanism regarding the lower judiciary in order to strengthen the independence of the judiciary, is being prepared.

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 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 handling complaints of human rights-violations; monitoring observance of human rights; and education, training and public information.

Strategic objectives

To effectively execute the constitutional mandate and give effect to its mission statement, the strategic objectives of the SAHRC 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 in collaboration with other institutions on the continent.

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

Commission on Gender Equality (CGE)

Chapter 9 of the Constitution provides for the establishment of, among others, the CGE. Section 187 of the Constitution specifically grants the CGE powers to promote respect for gender equality, and promote 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, 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 CGE is responsible for:

- gathering information and conducting education on gender equality
- monitoring and evaluating the policies and practices of State organs, statutory and public bodies, as well as the private sector, to promote gender equality
- evaluating Acts in force, or 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 objectives of the CGE.

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

Attending to gender-inequality complaints is one of its core functions. The CGE received 904 complaints in 2001/02, of which 29% related to gender-based violence and 52% involved maintenance cases.

The flagship theme of the CGE during 2003 was *Gender and Poverty*. There are other themes for which the CGE implements programmes, namely:

- *Gender and Good Governance*
- *Gender-Based Violence*
- *Gender, Culture, Religion and Tradition*.

Some of the activities that were performed include:

- conducting research on:
 - women and access to social security
 - women and access to economic opportunities
 - monitoring the implementation of the Employment Equity Act, 1998 (Act 55 of 1998)
 - Unemployment Insurance Fund maternity benefits
 - implementation of the Maintenance Act, 1998 and addressing systemic problems
 - Spatial Development Initiatives.

One of the noteworthy activities recently finalised by the CGE is Integrated Development Planning, whereby the CGE monitored and evaluated whether or not local government has gender-responsive approaches to service provision, and developmental plans that have a positive impact on women.

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

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

Truth and Reconciliation Commission (TRC)

The TRC's date of dissolution was determined as 31 March 2002 by way of proclamation in the *Government Gazette*. The 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).

President Thabo Mbeki presented government's recommendations arising from the work of the TRC and tabled the final TRC report in Parliament on 15 April 2003.

The Department of Justice and Constitutional Development hosted a one-day consultative workshop for the business sector and civil society to discuss the various recommendations of the TRC prior to the tabling of the final report.

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

With regard to final reparations, during 2003/04, government planned to provide a once-off grant of R30 000 to those individuals or survivors designated by the TRC. This was over and above other material commitments.

A Joint Committee of Parliament considered the recommendations of the TRC and government, as presented to Parliament. The recommendations, as approved by Parliament, were referred to President Thabo Mbeki. The publication of the regulations in the *Government Gazette* will pave the way for the disbursement of final reparations to those eligible, from the President's Fund.

International affairs

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

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

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



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

The functions of the Directorate can be divided into six broad categories:

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

Extradition and Mutual Legal-Assistance (in Criminal Matters) Treaties (MLATs)

On 21 May 2003, South Africa had extradition agreements, ratified by Parliament, with the following countries:

- Botswana
- Lesotho (ratified on 7 November 2001)
- Malawi
- Swaziland
- USA (ratified on 9 November 2000)
- Canada (ratified on 3 April 2001)
- Australia (ratified on 9 November 2000)
- Israel
- Egypt (ratified on 11 November 2002)
- Algeria (ratified on 11 November 2002)
- Nigeria (ratified on 11 November 2002)
- China (ratified on 11 November 2002).

The following treaties were negotiated, but have not yet been signed:

- Zambia (Extradition and MLAT)
- Argentina (Extradition)
- Hungary (Extradition)

- Namibia (Extradition and MLAT)
- Hong Kong (Extradition and MLAT)
- Brazil (MLAT).

South Africa has MLATs with the following countries:

- Canada (ratified on 3 April 2001, entered into force on 5 May 2001)
- USA (ratified on 9 November 2000, entered into force on 25 June 2001)
- Lesotho (ratified on 7 November 2001)
- Egypt (ratified on 11 November 2002)
- Algeria (ratified on 11 November 2002)
- Nigeria (ratified on 11 November 2002)
- France (ratified on 11 November 2002).

An MLAT with China was recently signed but has not yet been ratified.

The Department is preparing for negotiations for the conclusion of extradition and MLATs with various countries including the United Arab Emirates, Iran, India, Peru, Uruguay, Thailand and Chile.

South Africa has also designated Ireland, Zimbabwe, Namibia and the UK in terms of Section 3(2) of the Extradition Act, 1962 (Act 67 Of 1962).

South Africa's accession to the Council of Europe's Convention on Extradition entered into force on 13 May 2003. A request was also directed to the Council of Europe that South Africa accede to the Convention on Mutual Legal Assistance (MLA).

The AU Convention on Extradition was finalised during a meeting of legal experts held in Ethiopia in April 2001.

Human-rights issues

Southern African Development Community

The Directorate participated in the negotiation and preparation of the establishment of the Legal Sector and the SADC Protocol on the Tribunal. Heads of State and Government signed both Protocols in August 2000. The Protocols have been submitted to Parliament for approval to ratify.

The Directorate also participated in the negotiation and the finalisation of the SADC Protocol Against Corruption. The Cabinet has approved this Protocol and it is before Parliament for ratification.

African Union

The Directorate: International Affairs hosted the 31st Ordinary Session of the African Commission on Human and Peoples' Rights in May 2002. The Protocol to Establish the African Court was signed by South Africa in June 2002.

The Directorate has prepared the First Periodic Country Report on the African Charter on Human and People's Rights.

Commonwealth

With regard to the Commonwealth Heads of Government meeting, the Directorate had to provide input on a variety of issues regarding the Senior Law Officials meeting. It also formed part of an interdepartmental committee that had to determine the substance of South Africa's input to the Commonwealth Heads of Government meeting.

United Nations

The Directorate has prepared three human-rights country reports for submission to the relevant UN Committees. The reports relate to the Convention Against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Discrimination, and the International Covenant on Civil and Political Rights (ICCPR).

The Directorate was responsible for promoting South Africa's accession to the First and Second Optional Protocols to the ICCPR.

National Action Plan (NAP)

The Directorate was part of the process of drafting an interim report on the NAP for the promotion and protection of human rights pertaining to the justice mandate.

Hague Conference

After numerous calls for South Africa to become a member of the Hague Conference on Private International Law, the Directorate prepared documents for the Cabinet and Parliament for approval to ratify the Hague Statute. South Africa became a member of the Conference on 15 February 2002.

The Hague Conference seeks to foster co-operation between states on private law matters. This is done by elaborating on conventions and inviting states to become party to these conventions.

International Criminal Court (ICC)

A South African delegation comprising the Departments of Justice and Constitutional Development and of Foreign Affairs attended the UN Preparatory Commission Sessions during April and June/July 2002, which saw the finalisation of the outstanding instruments of the ICC, in particular the Fifth Year Budget of the ICC, and the procedure for the nomination and election of judges, prosecutors and deputy prosecutors.

On 11 March 2003, the Minister of Justice and Constitutional Development and his delegation attended the inauguration ceremony of the Court in The Hague, Netherlands.

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

This Act provides for a framework to:

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



accused of having committed the said crimes and their surrender to the ICC in certain circumstances

- address co-operation by South Africa with the ICC.

South African judge Ms Navi Pillay was appointed one of the first judges of the ICC in March 2003.

Correctional services

Safe custody of prisoners

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

A re-engineering project, called *Gearing for Rehabilitation*, was introduced in 2002/03 to evaluate systems, processes and structures, and align them with the core business of the Department.

The project has moved beyond a substantial review of rehabilitation and has identified key service-delivery areas, namely:

- corrections
- development
- security
- care
- facilities
- after-care.

This comprehensive approach entails all aspects of the Department's core business, ranging from corrections, which profile and risk-assess individuals, to after-care, which focuses on pre-release reintegration programmes for offenders. This substantial undertaking also involves developing new policy for the types of rehabilitation programmes offered and the training of prison personnel.

The *Gearing for Rehabilitation* process was aligned to the broader transformation and restructuring of the Public Service.

This process saw the development of an updated departmental strategic plan and, stemming from that, a new organisational structure. The updated structure of the Department consolidated the nine provinces into six geographical regions and the previous 148 management areas into 48 such areas.

During 2003/04, the budget allocation for the Department of Correctional Services was spent as follows:

- R3 554 million on incarceration
- R398 million on the rehabilitation of offenders
- R260 million on community corrections
- R1 547 million on facility management and capital works
- R2 455 million on administration.

By 31 March 2003, the Department had a personnel force of 33 385 with 189 748 offenders incarcerated in 241 prisons countrywide. By April 2003, there were approximately 48 000 parolees and 24 500 probationers under the Department's supervision within the system of community corrections.

Incarceration

The Incarceration Programme finances the detention of prisoners in safe custody until they can be lawfully released. The Programme provides for the healthcare and physical needs of offenders in terms of norms and standards that comply with the Constitution.

Offender population and accommodation

The Department strives to provide adequate prison accommodation that complies with accepted standards. Offenders are housed in 241 prisons countrywide, which include:

- eight prisons for female offenders only
- 13 youth correctional facilities
- 134 prisons for male offenders only
- 72 prisons for both male and female offenders
- 14 prisons temporarily inactive (closed down for renovations).

In prisons where male, female and juvenile offenders are accommodated, female and

juvenile offenders are housed in separate designated sections.

Overcrowding in South Africa's active prisons is problematic. A long history of inadequate funding to renovate existing prisons and build new ones makes this problem difficult to address.

The prisons can accommodate some 111 241 offenders, but by June 2003, the prison population stood at 185 748. This constituted 127 604 sentenced and 58 144 unsentenced prisoners. Capacity then stood at 111 241, indicating overcrowding by 74 507 or about 67%. The figures showed a slight decrease in the prisoner population which may be attributed to several strategies being adopted by the Department.

To deal with overcrowding in prisons, the Departments of Correctional Services and of 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 times of awaiting-trial offenders.

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 is the use of Saturday courts to address the backlog with regard to awaiting-trial offenders. The implementation of the electronic court process will also go a long way towards streamlining court processes.

The Department will continue to release offenders 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 offending behaviour and to release offenders as productive and law-abiding citizens.

It is expected that the already overcrowded prisons will come under greater strain in the next few years as the effects of the new offender-release policy and the Criminal Law Amendment Act, 1997 (Act 105 of 1997), are felt.

In terms of the new release policy, no offender 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 prisons since it is likely to increase the average length of prison sentences.

Safety and security

In general, the Department has been quite successful in bringing down the number of escapes during the last few years. However, owing to one unfortunate incident at Bizana Prison in the Eastern Cape in December 2002, when 98 offenders escaped during an evacuation operation as a result of a serious fire threat, there was an increase in the number of escapes from 223 in 2001/02 to 281 in 2002/03.

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

Ninety-four prisoners escaped between January and August 2003, compared to 166 in the same period during 2002, representing a 43% reduction.



Classification

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

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

Categories

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

- unsentenced offenders (mainly offenders standing trial on a charge and detained in prison pending the conclusion of the judicial process)
- short-term offenders (offenders serving a sentence of less than two years)
- long-term offenders (offenders serving sentences of two years and longer)
- unsentenced children/juveniles and youths between the ages of 14 and 25
- sentenced children/juveniles and youths between the ages of 14 and 25.

Young offenders

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

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

programmes, as well as religious care, in an environment conducive to the care, development and motivation of youths to participate and to develop their potential.

Sentenced young offenders are also kept separate from unsentenced ones.

By June 2003, there were about 26 000 young people between the ages of 14 and 21 in the system, and about 49 000 between the ages of 21 and 25. The nature of serious offences committed or allegedly committed by about 4 500 children under the age of 18 who were awaiting trial or sentenced was alarming. There were 2 000 economic-related offenders under 18; 1 800 aggressive crime offenders; 500 sexually related offenders under the age of 18; and 200 for drug-related and other types of offences.

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

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

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

Mother-and-child units

Mother-and-child units have been established in eight female prisons nationally. By June 2003, there were 208 infants under the age of five in prison with their mothers. Policy on such infants clearly stipulates that mothers and children are kept in a separate unit within the prison, where the surroundings and facilities are complementary to the sound physical, social and mental care and development of children.

The policy also stipulates that the admission of an infant with a mother is permitted 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.

The privilege system

The main objectives of the privilege system are to encourage offenders to display good behaviour, engender a sense of responsibility in them, and ensure their interest and cooperation in treatment programmes.

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

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

Physical care and hygiene

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

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

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

The approach to healthcare in South African correctional facilities focuses on:

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

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

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

The Department's policy on healthcare caters for the following:



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

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

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

Nutrition

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

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

There are four types of ration scales in the Department, namely for:

- adult male and female offenders
- 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 and NGOs, before approval by management.

Provision of rehabilitation services

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

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

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

- positively combat illiteracy within the prison environment
- actively engage the community to assist with development programmes for the people entrusted to the Department's care
- develop and implement a needs-based development programme
- establish training centres at large prisons as well as capacity-building in small prisons
- market rehabilitation programmes to offenders and the community
- promote and implement restorative justice principles to ensure the involvement of offenders, victims and the community in the rehabilitation process.

On average, the budget for rehabilitation increases by 8,3% per annum from R264,8 million in 1999/00 to R427,5 million in 2005/06.

As part of the Department's rehabilitation initiatives, a total of 22 360 offenders were trained in a variety of skills in 2002. The further establishment of training centres in the various provinces is aimed at equipping offenders with basic technical skills in a variety of fields such as brick-making, brick-laying, woodwork, welding, garment-making, etc. Training is also provided in business skills to equip individuals to operate their own small businesses upon release.

Institutional Committees

Institutional Committees at each prison are responsible for ensuring a professional and co-ordinated approach towards the incarceration, treatment, training and development of all offenders. This is implemented by means of a multidisciplinary approach in which all role-players are involved, i.e. those concerned with custodial, training, 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 the safe custody of offenders, individual participation, subgroup and group programmes, as well as the prompt rewarding of positive behaviour.

Education and training of offenders

All offenders have a right to basic education and training. The aim is to enhance the education level and improve the skills of offenders to facilitate their reintegration into the community. Services are provided to sentenced and unsentenced offenders in collaboration with external partners (government institutions, training boards, NGOs, etc.) and are in line with the provisions of the South African Qualifications Authority and the National Qualifications Framework. Some 37 427 offenders were involved in education and training programmes during the 2002 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 should enhance the chances of the successful reintegration of the offender into the community and labour market.

Twelve of the 14 new training centres were completed by 31 March 2003. The two remaining training centres nearing completion are in the Odi and Polokwane Management Areas. These centres will provide training opportunities to offenders and 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 offenders, persons under correctional supervision and probationers to maintain or improve their mental health and quality of life.

The Department aims to address the needs of all sentenced offenders.

Psychologists held 4 430 individual sessions, 806 group sessions and 117 family-counselling sessions during 2002/03. In areas where there are no departmental psychologists, the Department uses the following procedures to address the emotional needs of offenders:

- external registered psychologists can be contracted in if a medical practitioner has referred the offender for psychological treatment
- offenders can see a private psychologist at their own expense



- final-year students who are busy with their MA degrees in clinical or counselling psychology provide services without remuneration under the supervision of various universities.

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.

Social Work Services

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

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

By March 2003, the Department employed 460 social workers. The social workers conducted 87 532 individual counselling sessions with juvenile and adult offenders in 2002/03. An important challenge is the growing number of people living 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 rehabilitation programmes.

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. All social workers are implementing the intervention model.

However, other structured programmes are

still being offered as a preventative measure, e.g. the programme on HIV/AIDS to young offenders.

Religious care of offenders

Religious-care services are rendered through needs-based programmes within a multi-disciplinary 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.

It also aims to contribute to changing 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 offenders, 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 Department employs full-time chaplains and part-time religious workers from various religious backgrounds.

The extent of religious counselling is reflected by the 46 719 religious services, 38 571 group sessions and 77 434 individual sessions held for offenders in 2002/03.

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 offenders abroad.

The Department 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. Religious literature, including the *Bible* and the *Qur'an*, is supplied to offenders.

In line with the Vienna Declaration on Crime and Justice, the Department has embraced the restorative-justice approach with the aim of reducing crime and promoting healing between offenders, victims and the community. The process to conduct public awareness and education campaigns has begun to raise awareness of the implementation of restorative-justice programmes and policies. This project intends to facilitate the mediation process between victims of crime and offenders, in an attempt to bring about restitution and reparation. This will be done by means of developing restorative-justice and victim-empowerment programmes.

Release of offenders

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

The Parole and Correctional Supervision 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, offenders are not considered for parole until they have served at least half of their original sentences or the non-parole period, whichever is the longer period.

The Parole and Correctional Supervision Amendment Act, 1997 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. An offender serving a life sentence may not be considered for parole until at least 25 years have been served.

Reintegration into the community

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

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

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

Community corrections

Supervision of parolees

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

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

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

The victim may also participate or be represented at the parole 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.

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

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

Correctional supervision

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

In terms of the Act, parolees must do community service. Correctional supervision aims to control and rehabilitate those who can serve their sentences in the community.

Offenders who pose a real threat to the community and who have chosen crime as a career, however, do not qualify for correctional supervision.

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

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

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

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

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

Day parole

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

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

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

Facility management and capital works

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

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

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

The Department has adopted a unit-management approach that involves dividing prisons into smaller, manageable units, which encourages the management of the offender, as opposed to the management of the prison. In line with this approach, a new concept of prison design is being implemented. It entails smaller housing units for offenders, clustered together, to ensure safe custody and control, and which enable multiskilled unit staff to be actively involved in rehabilitation programmes.

The concept of unit management was being implemented at 101 prisons by 31 January

2003, representing 41,9% of prisons. The Department aims to extend this to all prisons by 2005 to improve service delivery and the rehabilitation of offenders.

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

The Minister of Correctional Services, Mr Ben Skosana, announced in 2003 that 'new generation' prison facilities for medium- and low-risk categories will be built to add an additional 30 000 beds during the Medium Term Expenditure Framework period.

Construction started in 2003 and it is envisaged that they will be operational by 2005/06. The four new prisons will be located in Leeuwkop, Nigel, Klerksdorp and Kimberley. Repairs and renovations continue in 12 prisons in KwaZulu-Natal, Eastern Cape and the North West and accommodation will be available for 863 more offenders.

The Repair and Maintenance Programme has also been embarked upon. The Programme addresses backlogs in maintenance and inhumane conditions under which offenders are incarcerated. During 2001/02, 22 prisons were renovated.

Prisons are divided into three priority groups, each in various stages of progress. The Department identified 33 prisons in need of repair and maintenance work in 2003/04.

Administration

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

The budget of the Programme accounted for about 32% of the budget of the Department in 2003/04, and remains at approximately this level throughout the medium term. Over the medium term, the budget for administration will grow by an average of 6,6% a year,



mainly because the Department will focus on increasing its anti-corruption capacity and investment in human resource development.

Human resources

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

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

Community involvement

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

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

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

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

In 2002, the Deputy President, Mr Jacob Zuma, launched the first poverty-alleviation

programme at the Zonderwater Prison near Cullinan in Gauteng. A piece of land was identified that will be cultivated by offenders. 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.

The poverty-alleviation project at the Manguang Maximum Security Prison has provided underprivileged schools and people with disabilities in the area with more than 8,4 tons of vegetables. An amount of R12 000 was also donated to a hospice in Bloemfontein.

Anti-corruption

In 2002/03, 270 reports on corruption in the Department of Correctional Services were received. As a result, 55 officials were dismissed, 175 officials disciplined, and 23 officials criminally convicted, while 17 cases were still being finalised. 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 were received. A retired judge will be appointed to head the internal investigations on the recommendations.

The scope of the Jali Commission was extended to include the Grootvlei management area in the Free State.

The Jali Commission convened in Durban-Westville, Pietermaritzburg, Grootvlei, St Albans, Pollsmoor and Johannesburg management areas and has since brought out six interim reports which recommend the institution of disciplinary steps against a number of officials.

In Durban-Westville, seven officials were charged with drug smuggling, corruption and negligence. Six of them were dismissed and the seventh received a final warning. In Pietermaritzburg, 19 officials were dismissed for falsifying their qualifications, while at Grootvlei, 18 officials were dismissed on charges of corruption and negligence, one resigned, and hearings against two others are still outstanding.

The Department is awaiting further reports of the Jali Commission, following investigations in other areas. 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 internal 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 with ensuring an appropriate style of management to eliminate opportunities for criminal activity and corruption within the Department of Correctional Services.

Three important milestones were reached in terms of the Department's commitment to rooting out corruption, namely:

- the approval of a National Risk-Management Plan and Anti-Corruption Strategy to assist the management of the Department to focus on the continuous improvement of the efficiency and effectiveness of the Department
- the establishment of a formal Anti-Corruption Unit in the organisational structure of the Department for the sound management of the Department's Anti-Corruption Strategy
- research conducted by private consultants on the assessment of the levels of corruption and the scope and extent thereof in the Department.

Acknowledgements

BuaNews
Commission on Gender Equality
Department of Correctional Services
Department of Justice and Constitutional Development
Estimates of National Expenditure 2003, published by the National Treasury
South Africa.info
South African Law Reform Commission
www.gov.za

Suggested reading

- Abel, R. L. *Politics by Other Means: Law in the Struggle Against Apartheid, 1980 – 1994*. London: Routledge, 1995.
- Ajibola, B. and Van Zyl, D. *The Judiciary in South Africa*. Cape Town: Juta, 1998.
- Albertyn, C. and others, eds. *Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)*. Johannesburg: Witwatersrand University Press, 2001.
- Andrews, P. and Ellman, S. eds. *The Post-Apartheid Constitution: Perspectives on South Africa's Basic Law*. Johannesburg: Witwatersrand University Press, 2001.
- Asmal, K., Asmal, L. and Roberts, R. S. *Reconciliation through Truth: A Reckoning of Apartheid's Criminal Governance*. 2nd ed. Cape Town: David Philip, 1997.
- Bell, T. *Unfinished Business: South Africa, Apartheid and Truth*. Observatory: Redworks, 2001.
- Mamdani, M. ed. *Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture*. Cape Town: David Philip, 2000.
- Chanock, M. *The Making of South African Legal Culture, 1902 – 1936: Fear, Favour and Prejudice*. Cambridge: University Press, 2001.
- Chubb, K. and Van Dijk, L. *Between Anger and Hope: South Africa's Youth and the Truth and Reconciliation Commission*. Johannesburg: Witwatersrand University Press, 2001.



- Cries without Tears: An Anthology of Writings from Rehabilitating Offenders.* Johannesburg: Corrective Action Holdings and Sandton: Sizwe, 1999.
- Coleman, M. ed. *Crime against Humanity: Analysing the Repression of the Apartheid State.* Johannesburg: Human Rights Commission: Cape Town: David Philip, 1998.
- Corder, H. ed. *Democracy and the Judiciary.* Cape Town: Institute for Democracy in South Africa, 1989.
- Directory of Human Rights Organisations.* Compiler: C. Sibanyoni. Pretoria: Human Sciences Research Council (HSRC), 1999.
- Edelstein, J. *Truth and Lies: Stories from the Truth and Reconciliation Commission in South Africa.* Johannesburg: M & G Books, 2001.
- Goldstone, R. *For Humanity: Reflections of a War Crimes Investigator.* Johannesburg: Witwatersrand University Press, 2000.
- Gutto, S. *Equality and Non-Discrimination in South Africa: The Political Economy of Law and Law-Making.* Cape Town: New Africa Books, 2001.
- James, W. G. and Van de Vijver, L. eds. *After the TRC: Reflections on Truth and Reconciliation.* Cape Town: David Philip, 2000.
- Jeffrey, A. *The Truth about the Truth Commission.* Johannesburg: South African Institute of Race Relations, 1999.
- Krog, A. *Country of My Skull.* Johannesburg: Random House, 1998.
- Hund, J. ed. *Law and Justice in South Africa.* Cape Town: Centre for Intergroup Studies, 1986.
- Law of South Africa (LAWSA), Encyclopaedia of South African Law.* Durban: Butterworth, 1976 – (Continuously updated and revised.)
- Leggett, T. *The Market for Drugs and Sex in South Africa.* Cape Town: New David Philip Publishers, 2001.
- Lewis, D. *Parliamentary Support Programme: A Review, 1996 – 2001.* Cape Town: Parliamentary Support Programme, 2002.
- Lewis, S. *Dealing with Rape.* Johannesburg: Sached, 1997.
- Lobban, M. *White Man's Justice: South African Political Trials in the Black Consciousness Era.* Oxford: Clarendon Press, 1996.
- Murray, C. and Nijzinky, L. *Building Representative Democracy: South Africa's Legislatures and the Constitution.* Cape Town: Parliamentary Support Programme, 2002.
- Murray, J. *The Law in South Africa: A Practical Guide.* 5th ed. Gardenview: Legal and General Publishers, 2002.
- Ncube, W. ed. *Law, Culture and Tradition: Children's Rights in Eastern and Southern Africa.* London: Ashgate, 1998.
- Orr, W. *From Biko to Basson: Wendy Orr's Search for the Soul of South Africa as a Commissioner of the Truth and Reconciliation Commission.* Johannesburg: Contra, 2000.
- Pistorius, M. *Catch Me a Killer: Serial Murders: A Profiler's True Story.* Sandton: Penguin, 2000.
- Pistorius, M. *Strangers on the Street: Serial Homicide in South Africa.* Sandton: Penguin, 2002.
- Rautenbach, F. *Liberating South African Labour from the Law.* Cape Town: Tafelberg, 1999.
- Shaw, M. *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire.* Cape Town: David Philip, 2002.
- Steinberg, J. *Farm Murders, Crime.* Johannesburg: Jonathan Ball, 2002.
- Truth and Reconciliation Commission. Report.* Cape Town: Juta, 1998. 3 vols.
- Truth and Reconciliation Commission of South Africa Report vols 6 and 7.* Cape Town: Juta, 2003. 2 vols.
- Tshiwula, L. *Crime and Delinquency.* Pretoria: Kagiso Publishers, 1998.
- Vale, P. *Security and Politics in South Africa: The Regional Dimension.* Cape Town: University of Cape Town Press, 2003.
- Villa-Vicencio, C. and Verwoerd, W. *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa.* Cape Town: University of Cape Town Press, 2000.