





Justice and correctional services

The Department of Justice and Constitutional Development aims to uphold and protect the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and the rule of law. It also aims to render accessible, fair, speedy and cost-effective administration of justice in the interest of a safer and more secure South Africa.

The department has four core branches at national level, namely Court Services, Master of the High Court, Legal Advisory Services and Legislation and Constitutional Development. There are four support branches, namely Human Resources, Public Education and Communication, Information Systems Management and Financial Management. The National Prosecuting Authority (NPA) forms a separate programme on the department's vote.

To ensure the efficiency of its service and enhance accessibility, the NPA, Court Services and the Master of the High Court have established provincial and local structures linked to courts to co-ordinate the implementation of national policy. Legal Advisory Services has also established state attorney offices in Pretoria, Johannesburg, Cape Town, Bloemfontein and Durban to provide services at a decentralised level.

The following constitutional institutions form part of the department:

- the South African Human Rights Commission (SAHRC) promotes and monitors the observance of human rights in South Africa
- the Commission on Gender Equality (CGE) aims to create a society free from gender discrimination and any other forms of oppression
- the Public Protector investigates any conduct in state affairs, or in public administration in any sphere of government, that is alleged to be improper, or which results in any impropriety or prejudice.

The department administers the following public entities:

- the Special Investigating Unit (SIU) provides professional forensic investigating and litigation services to all state institutions at national, provincial and local level to combat maladministration, corruption and fraud, and to protect state assets and public money
- the Legal Aid Board provides legal aid and representation to as many indigent people as possible at the State's expense.

The department's Medium Term Expenditure Framework (MTEF) baseline allocation will grow from R5,072 billion in 2005/06, to R5,598 billion in 2006/07 and to R6,046 billion in 2007/08. This equates to an average increase of 9,2% over the MTEF period.

Judicial system

The Constitution 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.

Chapter 8 of the Constitution makes provision for the following courts:

- Constitutional Court
- Supreme Court of Appeal
- high courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from high courts
- magistrate's courts
- any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either high courts or magistrate's courts.

In line with this, Parliament also established special income tax courts, the Labour Court and the Labour Appeal Court, the Land Claims Court, the Competition Appeal Court, the Electoral Court, divorce courts, consumer courts, 'military courts' and equality courts.

By June 2005, the Minister of Justice and Constitutional Development, Ms Brigitte Mabandla, was leading a process to rationalise high courts. The Superior Courts Bill, which was introduced in Parliament in 2005, will abolish the last remnants of the homeland-based supreme courts and usher in new provincial divisions of the High Court in each province. Their jurisdiction and capacity will be determined in accordance with people's needs. This will result in the opening of high courts in Mpumalanga and Limpopo, which are currently serviced by the Pretoria High Court.

Constitutional Court

The Constitutional Court, situated in Johannesburg, is the highest court in all constitutional matters. It is

the only court that may adjudicate disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state or decide on the constitutionality of any amendment to the Constitution or any parliamentary or provincial Bill. The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional. It consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine Constitutional Court judges.

Justice Pius Langa was appointed the Chief Justice of South Africa with effect from 1 June 2005, following the retirement of Chief Justice Arthur Chaskalson. Justice Dikgang Moseneke became Deputy Chief Justice.

Supreme Court of Appeal

The Supreme Court of Appeal, situated in Bloemfontein, in the Free State, is the highest court in respect of all other matters. It consists 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 high courts are binding on magistrate's courts within the respective areas of jurisdiction of the divisions.

High courts

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

There are also three local divisions: the Witwatersrand Local Division (Johannesburg),

Durban and Coast Local Division (Durban) and South-Eastern Cape Division (Port Elizabeth). These courts are presided over by judges in the provincial courts concerned.

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

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.

Other high courts

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.

Decisions of the Constitutional Court, 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 state organs 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.

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 per

province at one or more places in each regional division to hear matters within their jurisdiction. Unlike the High Court, the penal jurisdiction of 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 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 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 2005, there were 366 magistrate's offices, 50 detached offices, 103 branch courts and 227 periodical courts in South Africa, with 1 767 magistrates.

The department expected to appoint 40 new magistrates in 2005/06 and fill 1 000 vacancies at courts in support of the judiciary and the prosecution.

Criminal jurisdiction

Apart from specific provisions of the Magistrate's Courts Act, 1944 (Act 32 of 1944), or any other Act, jurisdiction regarding sentences imposed by district courts is limited to a period of not more than three years' imprisonment or a fine not exceeding R60 000. A 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. A regional court has jurisdiction over all offences except treason. However, the High Court may try all offences. Depending on the gravity of the offence and circumstances pertaining to the offender, the Director of Public Prosecutions (DPP) decides in which court a matter will be heard and 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 courts and high courts)
- committal to an institution established by law
- a fine with or without imprisonment as an alternative, correctional supervision or a suspended sentence
- declaration as a dangerous criminal (regional courts and high courts)
- 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 offenders prove that circumstances beyond their control, or any other good and sufficient reason, prevented them 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.

Community courts

In line with President Thabo Mbeki's directive during the State of the Nation Address in February 2005, the establishment of community courts will be accelerated beyond the pilot projects. Unlike normal courts, these operate with flexible hours, like the Hatfield Community Court in Pretoria.

The business community and other formations of civil society continue to contribute significantly to the establishment and sustainability of these courts.

By May 2005, 13 community courts had been established. Four were fully operational and had been formally launched. They were Hatfield, Fezeka (Gugulethu), Mitchell's Plain and Cape Town. Another nine pilot sites commenced in Durban (Point), KwaMashu, Umtata, Bloemfontein, Thohoyandou, Kimberley, Phutaditjaba, Hillbrow and Protea (Lenasia).

By June 2005, 9 685 cases had been finalised since the start of the first Community Court in April 2004, with a 96% conviction rate.

Courts for income tax offenders

In October 1999, the South African Revenue Service

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

Another SARS court is operating twice a week at the Magistrate's Office in Roodepoort. Discussions to decentralise and expand such courts to the bigger centres in the country have taken place between SARS and the Department of Justice and Constitutional Development. These courts will be established on request of SARS.

Family court pilot project

A specialised family court structure and extended family advocate services are priority areas for the department. The establishment of family courts in South Africa is motivated by three broad aims, namely to:

- provide wide and specialised protection and assistance to the family as the fundamental unit in society
- facilitate 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 existing pilot projects. The department is implementing these recommendations as part of the overall restructuring of 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 Magistrate's Commission, with the support of the department.

One court is envisaged per major centre per province.

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 magistrate's and high courts, each to be presided over by an equality court presiding officer. The Act further authorises the Minister of Justice and Constitutional Development to appoint the Equality Review Committee to monitor the implementation of the Act's provisions.

By May 2005, 220 equality courts were in operation.

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

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



In 2004/05, district courts managed a conviction rate of 87%.

Regional courts attained their conviction rate target of 70% for the first time since 2000, while the high courts also attained their conviction rate target of 85% for the first time.

jurisdictional limits regarding 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 courts

The limit of cases involving civil claims is R7 000. By June 2004, there were 152 small claims courts throughout the country. The Commissioner of Small Claims is usually a practising advocate or attorney, a legal academic or other competent person, who offers his/her services free of charge.

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

By May 2005, a national plan of action to transform and re-engineer small claims courts throughout South Africa had been established to ensure greater access to civil justice. A dynamic partnership with the Swiss Agency for Development and Co-operation, the South African Law Society and tertiary institutions had also been formed to pursue the blueprint for small claims courts.

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.

Towards transforming partnerships

A key aspect of the transformation of the justice system concerns the department's key strategic

partners and stakeholders. The considerable effort put behind transforming prosecution and allied services into a prestigious professional force, in accordance with the Constitution, is paying off.

At the end of February 2005, of the 199 judges, 54% (108) were white, 29% (58) were African, 8% (15) were coloured and 9% (18) were Indian. Overall, 14% were female and 86% male. In terms of the lower court judiciary, as at the end of February 2005, of the 1 767 magistrates, 49% (861) were white, 38% (672) were African, 6% (103) were coloured and 7% (131) were Indian. Overall, 30% were female and 70% male.

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

The transformation of the judiciary is intimately linked with the transformation of the legal profession and of legal scholarship. The department has already worked in partnership with law schools in transforming the curriculum of the basic law degree to bring it in line with modern best practices. In addition to encouraging law schools to widen access to students from previously disadvantaged communities, these institutions will further be encouraged to forge linkages with leading law firms, with prominent practitioners and with relevant international organisations. This will:

- ensure the relevance of the training they offer to the practical demands of the cutting edge of the profession
- expose students, especially those from previously disadvantaged communities, to the profession and vice versa to facilitate professional training prospects
- engage the legal profession in the evolution of a new legal system that fully expresses the constitutional and cultural aspirations of the new dispensation.

The department will play its part in assisting law graduates through its internship programme. The internship programme will also provide research training to give much-needed assistance to state legal officers, prosecutors, public defenders, the judiciary and the magistracy.

Transformation of the legal profession includes ensuring that judicial services are accessible to the poor, the uneducated and the vulnerable. This entails physical presence in rural areas and in townships, as well as affordable fees and speedy and empathetic services. It also entails active assistance in opening up accessibility of all aspects and levels of the profession to aspirant lawyers, especially to those from previously marginalised backgrounds.

The provision of alternative dispute-resolution mechanisms is another key aspect of transforming justice services. This helps make justice more accessible and more affordable.

The department gives prominence to integrating and modernising justice services through technology. It seeks to evolve simplified, cheaper and faster processes geared for the poor and vulnerable in townships and rural areas. It wants to achieve this in partnership with its customers, with other government departments and with stakeholders.

Capacitating courts and restructuring the court system

The department is implementing its five-year courts turnaround strategy, through the *Re Aga Boswa* ('We are rebuilding') Project to enhance court efficiency. It will complete the restructuring programme for courts. The project also institutionalises a new customer-focused court-management model that ensures that court managers are entrusted with managing courts and that judges and magistrates invest more time in their judicial work. This will result in increased court hours and better-quality judgments.

The rationalisation of high courts and the re-demarcation of magisterial districts are also part of the restructuring programme. This entails the rationalisation of service areas of the supreme courts in the former homelands and self-governing states to bring them in line with the new constitutional order. In 2004, the Minister of Justice and Constitutional Development proclaimed new magisterial districts aligned to the new municipal boundaries.

Saturday courts and other additional courts were established to assist with decreasing the backlog of cases. This came to an end in September 2004.

Between 2001 and 2004, Saturday courts finalised 76 836 cases. Twenty additional courts that dealt mainly with sexual offences continued until the end of 2004/05. At least 47 new regional court posts were created and filled, impacting positively on decreasing case backlogs.

The department operates 46 integrated justice court centres throughout the country to improve co-operation between criminal justice role-players in case management. This initiative led to a reduction in the case cycle from 105 to 78 days between 2001 and 2003.

National Prosecuting Authority of South Africa

Section 179(1) of the Constitution established a single NPA, which consists of the National Director of Public Prosecutions (NDPP), who is the head of the NPA, DPPs and prosecutors as determined by an Act of Parliament.

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 (SOCA) Unit, the Specialised Commercial Crime Unit, the Priority Crimes Litigation Unit and the Integrity Management Unit.

In terms of the NPA Act, 1998 (Act 32 of 1998), the DSO is a distinct and autonomous directorate.

In May 2005, President Mbeki appointed the Commission of Inquiry into the Mandate and Location of the DSO.

Office of the National Director of Public Prosecutions

The Office of the NDPP is the head office of the NPA. The prosecuting authority vests in the NDPP and the DPP. This authority has been delegated to other members of the NPA. They have the power to:

- institute and conduct criminal proceedings on behalf of the State
- carry out any necessary functions incidental to instituting and conducting such criminal proceedings
- discontinue criminal proceedings.

Directorate: Special Operations

The DSO pursues its objectives and complies with its legislative mandate through the application of numerous legislative tools. In addition to the NPA Act, 1998, 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 objective of the DSO is to prioritise, investigate and prosecute particular manifestations of serious and organised crime that threatens the South African democracy and economy.

Consequently, focus areas have been defined to include complex financial crime, syndicated organised crime and high-level corruption affecting business integrity and state administration. The core business of the DSO has been layered by a selection of investigations, where racketeering, money laundering and the forfeiture of the proceeds of crime form the main activities.

The primary client of the DSO is government, which has a fundamental interest in combating and suppressing insidious (and apparently victimless) organised crime. Equally, complainants from the private sector and regulatory bodies (for example the SARS, the Financial Services Board and the South African Reserve Bank) base their expectations on how the DSO deals with financial crimes.

Individual complainants, who are rare, form part of the DSO's client and customer base, when they are affected by large-scale money rackets or organised violence.

The DSO renders services that include the determination, investigation and prosecution of crime to restore justice, enhance public confidence in governance and reduce crime through deterrence.

Products are realised through accurate assessments of crime threats, impact-driven and opportune investigations, successful prosecutions, confiscation of contraband, forfeiture of ill-gotten gains and compensations, where warranted.

In 2004/05, the DSO achieved a conviction rate of 93%, well over the 80% target for the year. Proceeds of crime value for the year ending February 2005 was R255,7 million.

Asset Forfeiture Unit

The AFU was created in 1999 in terms of the Prevention of Organised Crime Act, 1998. The AFU can seize and forfeit property that was bought from the proceeds of crime, or property that has been used to commit a crime.

The AFU has two major strategic objectives, namely to:

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

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

Between January and August 2005, the AFU completed more than 132 cases and seized assets worth R184 million. The money is held in a special 'criminal assets recovery account', established under the Prevention of Organised Crime Act, 1998, which empowers the Cabinet to make special disbursements only for law enforcement or victim empowerment.

More than R66 million was paid to victims of financial crime in 2005 – most of it in the form of compensation to 35 defrauded workers.

Special Investigating Unit

The broad legislative mandate of the DSO has been reduced to four crime focus areas to enable the DSO to carry out its mandate successfully:

- organised crime
- organised corruption
- serious and complex financial crime
- racketeering and money laundering.

Sexual Offences and Community Affairs Unit

The SOCA Unit was established in September 1999 through a Presidential proclamation and with a specific mandate that includes:

- formulating policy regarding capacity-building, sensitising and scientific functional training in respect of the prosecution of sexual offences and gender-based violence

- co-ordinating the establishment of special courts for the adjudication of sexual offences and gender-based violence
- facilitating and/or formulating research techniques for the prosecution of sexual offences, gender-based violence, maintenance and child justice
- developing and implementing community awareness programmes and plans for the participation of non-governmental organisations (NGOs) in the processes and procedures aimed at the prevention or containment of sexual offences
- developing training, plans and mechanisms regarding the prosecution of sexual offences, gender-based violence, maintenance and child justice from the President, the Minister of Justice and Constitutional Development and the NDPP.

The unit received two prestigious achievement awards in acknowledgement of the interventions regarding sexual offences management, namely the Impumelelo Innovations Trust Award and the Standard Bank Innovations Award. It was also nominated for a United Nations (UN) award and the head of the unit was appointed as an innovations ambassador.

The Department of Justice and Constitutional Development, in conjunction with the South African Police Service (SAPS) and the departments of social development and of health, have established several Thuthuzela care centres for victims of sexual offences.

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

Specially trained police investigators, medical personnel, community volunteers, social workers and prosecutors work together. They ensure that the victim is not further traumatised in the process of reporting the incident, and that the information needed to secure a prosecution and conviction is passed seamlessly from one person to another.

These multi-purpose centres render the services of these departments to communities where these

services either do not exist, or do exist but are not easily accessible (especially in rural areas).

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

Sexual offences courts

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

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

Intermediaries act as buffers against hostile and potentially protracted cross-examinations of child witnesses in an open court, particularly necessary in cases of sexual victimisation. Most intermediaries are social workers by profession, and fulfil their intermediary functions on a part-time basis or as volunteers. Given the specialised nature of the work and the scarcity of the resource, the department has decided to appoint about 53 full-time intermediaries. The Draft Criminal Law (Sexual Offences) Amendment Bill, 2003, aims to provide intermediaries to all vulnerable witnesses in sexual-offence cases, where appropriate. While awaiting the finalisation of the legislation and the workstudy-investigation into the post-class of 'intermediary', the department appointed 53 intermediaries on contract in especially dedicated and additional sexual offences courts.

By May 2005, 54 sexual offences courts, with a conviction rate of 62%, had been established. Twenty-six of the 54 courts are blueprint-compliant and attention is given to provide the infrastructure to make the remainder blueprint-compliant. Permanent positions will be created in conjunction with the Magistrate's Commission to capacitate the approved sexual offences courts.

National Prosecuting Services

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

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

Specialised Commercial Crime Unit

The Pretoria-based Specialised Commercial Crime Unit was established in 1999 as a pilot project to bring specialisation to the investigation and prosecution of commercial crimes emanating from the commercial branches of the SAPS in Pretoria and Johannesburg, respectively.

Three new courts and offices were established in the Johannesburg and Pretoria central business districts for specialised commercial crime cases. Similar courts were created during 2004 in Durban and Cape Town.

The Specialised Commercial Crimes Unit continues to achieve an above-average conviction rate.

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.

The office aims to:

- combat and reduce crime
- create a culture of civil morality
- enhance public confidence in the office and the criminal justice system (CJS)
- enhance prosecutions through the evidence of vulnerable and intimidated witnesses.

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

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

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

Legal practitioners

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

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. Attorneys who wish to represent their clients in the High Court are required to apply to the registrar of a provincial division of the High Court. Such an attorney may also appear in the Constitutional Court. 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 persons who intend to be admitted as attorneys and who have satisfied certain degree requirements prescribed in the Act are exempted from service under articles or clerkship. However, such persons must satisfy the society concerned that they have at least five years' appropriate legal experience.

State law advisers give legal advice to ministers, government departments and provincial administrations, as well as to a number of statutory bodies. In

addition, they draft Bills and assist the minister concerned with the passage of Bills through Parliament. They also assist in criminal and constitutional matters.

Other legal practitioners

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

State attorneys derive their power from the State Attorney Act, 1957 (Act 56 of 1957), and protect the interests of the State in the most cost-effective manner possible. They do this by acting on behalf of the State in legal matters covering a wide spectrum of the law.

State attorneys are involved in the drafting of contracts where the State is a party, and also act 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.

Human rights

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

They apply to all laws, administrative decisions taken, and acts performed during the period in which the Constitution is in force. In terms of the Constitution, every person has basic human rights such as:

- freedom from unfair discrimination
- a right to life.

Since 1994 and in keeping with the cultivation of a human-rights culture, the focus is gradually shifting from an adversarial and retributive CJS to that of a restorative justice system. The Service Charter for Victims of Crime seeks to consolidate the present legal framework in South Africa relating to the rights of and services provided to victims of crime, and to eliminate secondary victimisation in the criminal justice process.

The ultimate goal is victim empowerment through meeting victims' needs, whether material or emotional.

Crime prevention

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

The main responsibilities of the department in the implementation of the NCPS are to:

- promote legislation to create an effective CJS
- create an effective prosecution system
- create an effective court system for the adjudication of cases
- co-ordinate and integrate the departmental activities of all role-players involved in crime prevention.

Integrated justice system (IJS)

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

The IJS, approved in 2002, aims to increase the efficiency and effectiveness of the entire criminal justice process by increasing the probability of successful investigation, prosecution, punishment for priority crimes and ultimately rehabilitation of offenders.

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

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

Government at all levels wants to eliminate duplication of services and programmes. The need for strategic alignment of cluster activities was also raised at a series of other governmental meetings and fora.

Benefits of proper alignment include:

- less duplication of services
- effective use of scarce and limited resources and skills
- joint strategic planning and programmatic approach instead of reacting to problems.

During the latter half of 2002, the IJS Board responded to the challenge and initiated a process to co-ordinate and align activities beyond the IJS. In response to this, a development committee was established in 2003 and mandated to align the shared objectives of cluster departments.

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

Modernisation of the justice system

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

Key projects already receiving attention are:

Criminal Justice Review Commission

The 2004 Cabinet Lekgotla identified, as one of government's priorities, the need for a comprehensive audit and review of the CJS. The review is intended to look at how the CJS works and to establish whether processes underway and steps undertaken are feasible and in line with international best practice. By September 2005, the Cabinet had endorsed proposals by the JCPS Cluster to review the CJS.

The review of the CJS will also design a programme for the empowerment of the NPA as a key pillar with respect to the dispensation of social justice in South Africa. A development committee was formed to facilitate cluster co-operation and co-ordination with respect to the IJS.

Integration and automation of the Criminal Justice System

While each department within the JCPS Cluster must have its own Information Technology (IT) Plan to achieve the vision, mission and departmental specific objectives, the IJS Board co-ordinates the broader and shared duty to integrate the information flow throughout the CJS.

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

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

Child justice

Key activities include:

- Implementing the Child Justice Bill, once enacted.
- Trend analyses of children at risk and in custody – improving the situation of children awaiting trial in practice by monitoring their numbers monthly, which has resulted in about 2 500 children monthly awaiting trial in jail in 1998, being reduced to 1 381 in May 2005.
- A plan of action to fast-track the processing of children in the justice system.
- Standardising diversion programmes for children.
- Reviewing 60 places of safety and secure-care facilities.
- Establishing one-stop child justice centres – at least one in each province by 2009. A draft policy has been finalised and draft guidelines are receiving urgent attention.
- Training in restorative justice and family-group conferencing.

Victim-Empowerment Programme (VEP)

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

The NPA has 66 court-preparation officials on contract who provide support to crime victims, especially abused children, in preparing them for

court proceedings. By June 2005, 41 077 victims had been prepared for court by the court-preparation officials.

Establishing dedicated courts

Immediate priorities are the establishment of special commercial crimes courts and sexual offences courts. Environmental courts also received attention with two being established at Hermanus and Port Elizabeth respectively to deal with syndicated crimes pertaining to the environment in particular.

On 29 November 2004, the Minister of Justice and Constitutional Development launched the Specialised Commercial Crimes Court in Durban.

Integrated justice case-flow management centres

Case-flow management centres provide an integrated solution to managing cases through the court system, facilitated by IT that allows the monitoring of aspects such as case cycle time and court rolls. The aim is to facilitate co-ordination between the IJS partners around case-flow management, and ensure the development of case-management capacity at court level.

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

Contributing to interdepartmental and cluster co-ordination and co-operation

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

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

Children awaiting trial

National and provincial action plans to fast-track all

children awaiting trial in prisons and police cells, have led to a reduction in children awaiting trial from 2 200 a month, to 1 500 a month since October 2004.

Specific interventions to address the backlog of cases pending trial, include the shifting away from placing children who are in trouble with the law in correctional detention centres. Children awaiting trial will be placed under home-based supervision, in places of safety or in the care of parents or caregivers. Three child justice centres have been established in Port Elizabeth, Bloemfontein and Port Nolloth respectively.

e-Justice Programme

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

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

The e-Justice Programme has evolved into the Information and Systems Management Programme which has 25 projects in addition to the three main projects, i.e. Court Process Project (CPP), Digital Nervous System (DNS) Project and Financial Administration System (FAS) Project. The e-Justice Programme is funded mainly by the Justice Vote Account, but is supplemented with donor funding from the European Union Commission, the Royal Netherlands Embassy and the Irish Embassy.

By June 2005, the e-Justice Programme had achieved the following:

- successful completion of the DNS I project which provided Information and Communications Technology (ICT) infrastructure, connectivity, ICT equipment (desktops, printers, etc.), e-mail and training to 221 sites
- computer literacy training to an estimated 10 000 users
- the department's Intranet
- successful roll-out of the Guardian's Fund system to all master's offices

- development and implementation of the State Attorneys System.
- development of a monitoring and evaluation framework for the department.

Court Process Project

The CPP, which was initiated in 2000, seeks to re-engineer the way in which court services are delivered. It is aimed at providing courts with the necessary tools to deal with caseloads and general management in a more effective manner. This project also links, for the first time, the police, prosecutors, courts, prisons and social-welfare facilities at selected pilot sites. It incorporates the flow of processes that affect departments in the IJS, namely the departments of safety and security, of correctional services, of social development and of justice and constitutional development and the NPA.

Its benefits include:

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

Financial Administration System

The FAS is tasked with automating and administering trust accounts in the magistrate's courts, the State Attorneys' offices and the Guardian's Fund in the master's offices. The FAS comprises the following projects:

- The Guardian's Fund administers monies kept in trust for persons including minors, state patients, unborn heirs, and persons having usufructuary, fiduciary or fideicommissary interests.
- The Justice Deposit Account System administers monies received at court in lieu of maintenance,

bail, admission of guilt, civil cases, contributions, court cases and estates.

- The State Attorneys' System assists state attorneys with registering and administering case files, collecting money and administering payments to applicable parties, and the handling of litigation processes.
- The Masters' Administration System for Estates and Insolvencies enables officials to manage cases and track records. It has also resulted in better service delivery through quick and efficient response times to queries.

Legislative and constitutional development

The Legislative and Constitutional Development Branch of the Department of Justice and Constitutional Development is responsible for promoting, maintaining and developing the Constitution and its values by researching, developing and advancing appropriate legislation.

It includes research activities of the South African Law Reform Commission (SALRC), which involve extensive reviews of wide areas of law and legal practice.

The legislative development component of the branch is, among other things, responsible for researching, developing and promoting appropriate legislation that has a bearing on the line functions of the department.

The constitutional development component of the unit is also responsible for promoting the independence and effectiveness of chapter 9 institutions and administering the Constitution, which includes monitoring the implementation of the Constitution and the Bill of Rights.

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

By May 2005, legislation to repeal the Black Administration Act, 1927 (Act 8 of 1927), and to bring the Customary Law of Succession in line with the Constitution was being finalised.

During 2005, a draft Bill intended to address the concerns raised by the Constitutional Court in the case involving the attachment of low-cost housing, was also being finalised.

Legislation

Some important legislation that is being promoted by the department includes:

Child Justice Bill

The proposed Child Justice Bill will create a new system for dealing with children in trouble with the law.

By May 2005, the Bill had been redrafted and submitted to Parliament.

Superior Courts Bill

The Bill is intended to rationalise the structure and functioning of South Africa's superior courts.

Compulsory HIV-Testing of Alleged Sexual Offenders Bill

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

Criminal Law (Sexual Offences) Amendment Bill

The Criminal Law (Sexual Offences) Bill emanates from an investigation by the SALRC and proposes a comprehensive review of existing legislation dealing with sexual offences. It aims to bring this area of law into line with the new constitutional dispensation and to provide greater protection to victims of sexual offences.

Maintenance Act, 1998 and the Domestic Violence Act, 1998

The department implemented the Maintenance Act, 1998 (Act 99 of 1998), and the Domestic Violence

Act, 1998 (Act 116 of 1998), in November 1999 to improve the lives of vulnerable women and children.

By mid-2005, maintenance investigators had been appointed to 140 maintenance courts. Maintenance clerks were also appointed in hot-spot courts. Constant monitoring of the situation on ground level ensures that service delivery and access to justice improves for all vulnerable groups, especially children, women, people with disabilities, the elderly and victims of crime.

Promotion of Access to Information Act, 2000

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

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

Promotion of Administrative Justice Act, 2000

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

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000

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

Prevention and Combating of Corrupt Activities Act, 2004

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

State Legal Services

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

State Legal Services provides for the work of the State Attorney and state law advisers. The former acts as attorney, notary and conveyancer for government.

State law advisers provide legal opinions, scrutinise and amend international agreements, draft legislation and attend relevant parliamentary portfolio committees as legal advisers for all national departments. The component hosts the National Forum Against Racism and facilitates South Africa's participation in the International Court for Criminal Justice.

Plans to establish a constitutional litigation unit in the department are at an advanced stage.

International affairs

The functions of the Directorate: International Affairs in the Department of Justice and Constitutional Development are mainly to identify and research 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 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). It thus promotes and establishes 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 UN and the African Union (AU).

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

- regular liaison with SADC states
- co-ordinating all Commonwealth matters pertaining to the administration of justice
- interacting with other international bodies, such as the UN, the Hague Conference and the International Institute for the Unification of Private Law
- interacting with foreign states outside the SADC region

- negotiating extradition and mutual legal-assistance agreements with other countries
- preparing Cabinet and Parliament documentation for the ratification of human-rights treaties, including report-writing.

International Criminal Court (ICC)

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

This Act provides for a framework to:

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

Legal structures

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.

Each year, the value of estates under the supervision of the masters' offices amounts to about R18 billion. This includes about R2,5 billion in the Guardians' Fund.

The key statutory functions of the masters' offices are to:

- control the administration of deceased and curatorship estates
- control the administration of insolvent estates and the liquidation of companies and close corporations

- control the registration and administration of both testamentary and *inter vivos* trusts
- manage 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
- assess estate duty and certain functions with regard thereto
- accept and take custodianship of wills in deceased estates
- act as an office of record.

Deceased estates

On 15 October 2004, the Constitutional Court declared Section 23 and regulations of the Black Administration Act, 1927 unconstitutional.

By mid-2005, legislation to repeal the Black Administration Act, 1927 was being finalised.

This decision implied that the Master of the High Court takes over the powers of supervision in all deceased estates, and that all estates have to be administered in terms of the Administration of Estates Act, 1965 (Act 66 of 1965), as amended. All intestate estates must be administered in terms of the Intestate Succession Act, 1987 (Act 81 of 1987), as amended.

This will ensure that all South Africans are treated equally, and that the dignity of each person is respected.

The institutional structures are:

- The Chief Master heads the national office and is responsible for co-ordinating all the activities of the masters' offices.
- There are 14 masters' offices: Bisho, Bloemfontein, Cape Town, Durban, Grahamstown, Johannesburg, Kimberley, Mafikeng, Polokwane, Port Elizabeth, Pietermaritzburg, Pretoria, Thohoyandou and Umtata.
- Suboffices are located in places where the High Court does not have a seat, but workloads require the presence of at least one assistant master.
- At service points, officials attached to the Branch: Court Services deliver services on behalf of, and under the direction of, the master. Each magistrate's court is a service point. Each ser-

vice point has at least one designated official, who is the office manager or a person of equal rank. They only appoint masters' representatives in intestate estates of R50 000 or less, in terms of Section 18(3) of the Administration of Estates Amended Act, 2002 (Act 49 of 2002).

Curatorships

On 26 December 2004, the Mental Healthcare Act, 2002 (Act 17 of 2002), came into operation recalling the Mental Health Act, 1973 (Act 18 of 1973).

The new Act provides that where a person falls within the ambit of this Act, the master can appoint an administrator to handle the affairs of the person. The administrator, in this instance, replaces the appointment of a curator, as done in the past.

In terms of the Prevention of Organised Crime Act, 1998, the master also appoints curators in these estates to administer the assets of persons and legal entities attached by the AFU, in terms of a court order.

Guardian's Fund

The fund holds and administers funds which are paid to the master on behalf of various persons known or unknown. These include minors, persons incapable of managing their own affairs, unborn heirs and missing or absent persons or persons having an interest in the money of an usufructuary, fiduciary or fideicommissary nature.

The money in the Guardian's Fund is invested with the Public Investment Commission and audited annually. Interest is calculated on a monthly basis at a rate per year determined from time to time by the Minister of Finance. The interest is compounded annually at 31 March. Interest is paid for a period from a month after receipt up to five years after it has become claimable, unless it is legally claimed before such expiration.

After a lapse of five years after the money has become claimable, the master pays the unclaimed money to the Receiver of Revenue Payment Register. This does not mean that the owner of the money cannot claim the money from the Guardian's Fund. However, after a lapse of 30 years after the money has become claimable, the money is forfeit-

ed to the State. Every year in September, the master advertises unclaimed amounts in the *Government Gazette*.

Rules Board for Courts of Law

The rules board is a statutory body empowered to make or amend rules for high courts, the Supreme Court of Appeal and the lower courts.

It also develops rules and court procedures 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 provides vocational training to all officials of the Department of Justice and Constitutional Development. It also presents training to autonomous professions such as magistrates and prosecutors.

Office of the Family Advocate

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

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

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

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

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

The Office of the Family Advocate provides support services for the family court pilot project. Most

offices are involved in mediation training for a large contingent of social workers and other mental-health professionals.

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

The Children's Bill provides for the extension of the role of the family advocate to areas such as mediation and the facilitation of family-group conferences.

Legal Aid Board

The Legal Aid Board has completed the roll-out of a national infrastructure of four regional offices, 57 justice centres and 35 satellite offices. They employ more than 1 500 staff of whom more than 1 000 are legal professionals.

The board continues to provide legal assistance to the indigent, in accordance with the Constitution and other legislative requirements. This is carried out through a system of in-house outsourcing to private lawyers (a system of *judicare*) and co-operation partners.

With its national infrastructure in place, the board focuses on improving access to clients and communities, and on improving the quality of delivery of legal services.

Public Protector

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

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

Complainants' names are kept confidential as far as possible.

The President appoints the Public Protector on recommendation of the National Assembly and in terms of the Constitution, for a non-renewable period of seven years.

The Public Protector is subject only to the Constitution and the law, and functions independently from government and any political party.

No person or organ of state may interfere with the functioning of the Public Protector.

The Public Protector has the power to report a matter to Parliament, who will debate on it and ensure that the Public Protector's recommendations are followed.

Magistrate's Commission

The Magistrate's Commission ensures 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

The SALRC is an independent statutory body, established by the SALRC Act, 1973 (Act 19 of 1973). The SALRC and its secretariat are responsible for research in respect of the law of South Africa with a view to advising government on the development, improvement, modernisation and reform of the law of South Africa in all its facets by performing, among others, the following functions:

- executing the law-reform programme of the SALRC by conducting legal research, including legal comparative research, by developing proposals for law reform and, where appropriate, by promoting uniformity in the law
- preparing legislative proposals
- establishing a permanent, simplified, coherent and generally accessible statute book, complying with the principles of the Constitution
- consolidating or codifying any branch of the law
- assisting parliamentary committees during the

deliberation of draft legislation emanating from the SALRC

- advising ministers and state departments on proposed legislation and recommendations of the SALRC.

Judicial Service Commission (JSC)

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

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

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

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

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

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

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

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

South African Human Rights Commission

In terms of Section 184(1) of South Africa's Constitution, the SAHRC must:

- promote respect for human rights and a culture of human rights
- promote the protection, development and attainment of human rights

- monitor and assess the observance of human rights in South Africa.

The work of the commission is divided into the following programmes:

- Strategic Management and Support Services
- Commissioners
- Legal Services
- Research and Documentation
- Education and Training
- Provincial Offices.

Strategic Management and Support Services ensures that the operations of the commission comply with constitutional and legislative imperatives, guides the functioning of the commission to align with its strategic objectives and national priorities, and positions the commission favourably within the human-rights field regionally, nationally and internationally.

Commissioners raise the profile of the SAHRC, make strategic interventions, provide leadership in relation to human-rights issues and contribute to the development of human-rights-related and organisational policy.

The commission plays a special role in the development of human rights in Africa through work with the relevant organs of the SADC, AU and the African Commission on Human and People's Rights. It is a member of the International Co-ordinating Committee of African National Human Rights Institutions, hosts the Secretariat of the committee and has been instrumental in setting up other national human-rights institutions in Africa.

Legal Services investigates individual and systemic human-rights violations and provides appropriate redress. Some 12 124 individual complaints of human-rights violations were received in 2004/05. Mediations, decisions, findings and opinions of the commission and litigation are used to secure redress for individuals and communities.

An important mechanism through which the commission addresses systemic violations of human rights is through the convening of public inquiries and hearings.

Research and Documentation monitors and assesses the observance of human rights, in particular economic and social rights, the right to equality and the right of access to information. In

addition, the programme monitors and intervenes in the legislative process and liaises with Parliament. It maintains a leading human-rights library and documentation centre.

The commission is mandated by the South African Constitution to request annual reports from government on progress made in the realisation of economic and social rights. This function is carried out by the Economic and Social Rights Unit.

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 gives the commission specific responsibilities in addition to its overall mandate to secure the right to equality. The Equality Unit functions as the focal point for the commission's activities in this area. The unit monitors equality courts and contributes to legislative developments and reform. Once the promotional aspect of the Act comes into place, the programme will receive and analyse equality plans, request regular reports relating to the number of cases adjudicated by the equality courts, and submit an annual report to Parliament.

The Promotion of Access to Information Act, 2000 places specific obligations on the commission. It co-ordinates implementation in this arena, including monitoring and research, making recommendations for the improvement and development of the Act, and providing an annual report to Parliament.

Education and Training conducts educational interventions on human rights and the commission's focus areas, conducts community outreach and awareness programmes, develops human-rights education and training material, and ensures the institutionalisation of human-rights education.

Public outreach activities within the commission focus on poverty-stricken communities in rural and peri-urban areas. The commission has developed the Omnibus Outreach Programme. The omnibus is a multifaceted tool for engaging with communities, encompassing a large range of educational interventions ranging from workshops, seminars, presentations, site visits and walkabouts to widespread campaigns, events and advocacy initiatives.

SAHRA's head office is based in Gauteng. It also has provincial offices in all provinces except North West, which is served by the adjacent offices.

Provincial offices implement the programmes of the commission at provincial and local level.

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

The NACHRET was established in April 2000. The centre provides a platform for debate on human-rights issues aimed at enhancing an understanding of these issues and practices. The centre also provides training and builds capacity both in South Africa and on the African continent regarding human-rights themes, challenges and issues.

Commission on Gender Equality

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

The CGE is responsible for:

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

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

Most complaints are handled telephonically or are referred. Others are conveyed personally for face-to-face intervention and are later referred to relevant institutions. By the end of March 2005, the

CGE had handled 429 cases. Of these, 189 were maintenance cases; 121 gender-based violence; 25 labour; eight culture, tradition and religion; 16 social security; 15 inheritance; 26 court processes; and 29 sexual harassment.

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

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

Truth and Reconciliation Commission (TRC)

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

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

President's Fund

In 2003, government announced the creation of the President's Fund, from which victims of apartheid, as declared by the TRC, would be granted a once-off R30 000 as part of the reparations.

Correctional services

The Department of Correctional Services contributes towards maintaining and protecting a just, peaceful and safe society by enforcing court-imposed sentences and detaining inmates in safe custody while maintaining their human dignity.

It is also responsible for facilitating the correction of offending behaviour and the general development of all offenders as part of their rehabilitation, including those subject to community corrections.

In pursuing these objectives, the department has developed the *White Paper on Corrections* that embodies its long-term strategic policy and operational framework. These recognise corrections as a

societal responsibility and puts rehabilitation at the centre of all the department's activities.

The White Paper on Corrections, which was approved by Cabinet in February 2005, is the culmination of a protracted process that included extensive consultations, both within the organisation and in the external environment.

The department has identified 36 correctional centres countrywide for inclusion in a White Paper implementation project. These centres will be known as centres of excellence. The project aims to develop best practice in the implementation of the White Paper under ideal, well-managed, and well-resourced circumstances and roll it out to other correctional centres. The intervention programmes which are designed to address the offending behaviour of individual inmates will also be rolled out at the centres of excellence.

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

The key to the realisation of the objectives of the White Paper is the department's ability to ensure a secure, safe and enabling environment within correctional centres and the transformation of its staff members from prison warders to correctional officials.

To this end, the department has initiated intensive training of junior and middle managers to empower them to successfully carry out their responsibilities.

The White Paper on Corrections recognises the role of the family and community institutions in correcting offending behaviour among its own members before it turns into criminal activities that lead to imprisonment.

The ultimate solution to crime and to the severe overcrowding of correctional centres lies in the prevention of criminal activity. The responsibility for this lies primarily within the family unit and community institutions.

Budget and scope of work

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

- R2,707 billion on security
- R503 million on corrections
- R765 million on care
- R1,622 billion on facilities
- R318 million on after-care
- R407 million on development
- R2,707 billion on administration.

By 31 January 2005, the department had a staff complement of 33 076, with 187 446 offenders incarcerated in 238 correctional centres countrywide. By 31 October 2004, there were 50 220 parolees and 26 918 probationers within the system of community corrections.

Strategies have been adopted to balance the need for security with the need for conditions that are conducive to rehabilitation. The Gearing Department of Correctional Services for Rehabilitation Project was introduced in 2002/03. It involved a substantial review of rehabilitation, and identified key service-delivery areas: corrections, development, security, care, facilities and after-care.

This comprehensive approach entails all aspects of the department's core business. It requires developing new policy regarding the types of correction programmes offered and the recruitment and training of prison personnel.

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

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

The department has implemented a seven-day-week regime to save money for the recruitment of more correctional officials. Weekend work was previously regarded as overtime, costing the department R916 million in 2004/05 alone.

The department plans to recruit 8 311 officials over a three-year period. About R270 million was

set aside for the recruitment of 3 000 new members in 2005/06.

Offender accommodation

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

- eight correctional centres for female offenders only
- 13 youth correctional facilities
- 141 correctional centres for male offenders only
- 72 correctional centres for both male and female offenders
- four temporarily inactive correctional centres (closed down for renovations).

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

Overcrowding in prisons

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

By 31 January 2005, South Africa's correctional centres collectively housed 187 446 inmates, while accommodation was available for only 113 825. This means that the general overcrowding was in the region of 164%. Of the total population, 52 326 inmates were unsentenced.

The daily average prisoner population is projected to increase to 195 300 in 2005/06 and 202 400 in 2006/07.

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

- The building and staffing of new correctional centres, designed cost-effectively.
- The finalisation of prison procurement models.
- The Department of Correctional Services is co-operating with other departments in the IJS, notably the Department of Justice and Constitutional Development, on a range of projects to reduce the number of prisoners.
- The department is also promoting awareness in the IJS of alternative sentencing options and diversion programmes.

- The JCPS Cluster Task Team on Overcrowding, established at the end of 2002, monitors the CJS to identify and eliminate blockages that result in increased prisoner numbers.
- Since 1994, 10 new prisons have been constructed and two rebuilt to address the problem of overcrowding. Two of the 10 prisons are public-private partnership prisons. They have a combined capacity of 5 952.

Four new-generation prisons in Kimberley, Klerksdorp, Leeuwkop and Nigel are expected to be completed by April 2007. Similar facilities are expected to be built in the Eastern Cape, Western Cape, KwaZulu-Natal and Limpopo. All eight prisons will have 3 000 beds each.

Over the next three years, accommodation capacity in correctional services is expected to increase by 12 000 beds.

Safety and security

One of the core objectives of the department is to ensure that every correctional centre has a secure environment with a correcting influence. This does not only refer to the prevention of escapes from custody but also to the creation and maintenance of an environment in which there is a significantly low prevalence or absence of inmate abuse, violence, corruption and negligence.

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



A permanent exhibition in the women's jail and the new head offices of the Commission on Gender Equality at Constitution Hill was launched on 2 August 2005.

The exhibition in the women's jail, once a place of incarceration and oppression of women, consists of permanent and temporary displays informed by generations of women who fought for their basic human and gender rights.

offenders who report or warn of planned escapes, and the installation of electronic fences and X-ray scanners in high-risk prisons.

Through the implementation of national and regional escape prevention strategies, the department succeeded in reducing the number of escapes from 195 in 2003/04 to 171 in 2004/05.

To protect society by preventing escapes and supervising offenders, expenditure increased to R2,7 billion in 2004/05, and is expected to reach R4,2 billion by 2007/08.

The bulk of the increase is linked to the initial increase in operating costs associated with appointing additional personnel to implement the seven-day working week.

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

From 2005/06, special emphasis will be placed on measures to prevent dangerous weapons and firearms from entering correctional facilities.

To achieve this, R80 million was expected to be spent in 2005 on the installation of advanced technological equipment at the 36 centres of excellence and 30 other identified high-risk centres.

Equipment to be installed includes items such as closed-circuit television cameras, biometric readers and scanning devices. In addition, the National Security Plan and minimum security standards for correctional centres were expected to be implemented during 2005.

In November 2004, the Minister of Correctional Services, Mr Ngconde Balfour, launched South Africa's inmate tracking system at the Durban Westville Correctional Centre.

The pilot project has since been extended to the Johannesburg Medium A Correctional Centre. The main functions of the project are to accurately identify awaiting-trial detainees (ATDs), to decrease the

time spent in processing ATDs for court appearances and visits, and to monitor the movements of ATDs through a personal tracking device.

The system has the added advantage of being able to pinpoint the whereabouts of inmates at the time of a transgression being committed inside the monitored area, which should ease investigative work.

The pilot project has assisted in identifying weaknesses in the system, especially regarding the tracking device that is attached to the wrists of ATDs. However, the tracking system has greatly benefited identifying ATDs on a daily basis through the use of the biometric fingerprint reader and the electronic facial photograph facility. The pilot project at Johannesburg has yielded positive results, but consideration will only be given to extending its use after the completion of an intensive evaluation of the current pilot projects.

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 all offenders is reviewed regularly, and if their behaviour, or any other aspect affecting their security risk, justifies it, reclassification takes place.

Categories

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

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

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

Young offenders

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

Section 7(2)(c) of the Correctional Services Act, 1998 (Act 111 of 1998), stipulates that children must be kept separate from adult offenders and in accommodation appropriate to their age, as young offenders are predisposed to negative influence.

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

The nature of serious offences committed or allegedly committed by children under the age of 18 who were awaiting trial or sentenced is alarming. A breakdown of the nature of the crimes of those in custody on 31 January 2005 revealed that there were 604 economic-related offences, 804 aggressive offences and 230 sexual offences. A further 93 were detained for drug-related and other offences.

Of the crimes committed by 57 760 sentenced youths between the ages of 18 and 25, 29 103 were aggressive, 17 239 economical, 7 466 sexual, and 3 952 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 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, are fostered and maintained.

Mother-and-child units

Mother-and-child units have been established in eight female correctional centres nationally. By 31 March 2005, there were 173 infants under the age of five in correctional centres with their mothers. Policy on such infants clearly stipulates that mothers and children are kept in a separate unit within the correctional centre, where the surroundings and facilities are complementary to the sound physical, social and mental care and development of children.

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

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

The privilege system

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

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

among other things, facilitate reintegration into the community. These privileges are divided into A, B and C groups. The entry level for all new admissions is the B group and, depending on behaviour, an offender may be promoted or demoted to either the A or the C privilege group.

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

Healthcare services

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

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

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

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

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

The Department of Correctional Services provides a system in which offenders are treated in the same

way as other patients in the State sector through PHC principles.

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

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

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

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

The department's HIV and AIDS Policy caters for:

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

Expenditure under the Healthcare Programme was expected to increase from R777 million in 2004/05

to R1,2 billion in 2007/08. This will fund the department's commitment to managing HIV- and AIDS-related diseases and making available health services previously provided as free by provincial health departments. The department plans to improve these services by upgrading healthcare facilities in correctional centres and appointing medical practitioners, pharmacists and nursing personnel.

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 objective is to provide all offenders with three nutritious meals per day and to provide for therapeutic and special diets when prescribed by a medical doctor. The system also allows for religious and cultural diets.

In its efforts to ensure compliance in this regard, a contract was negotiated with an external service-provider to render catering services to the offenders and to train staff and offenders who work in the kitchens.

Because of budgetary constraints, the department decided on phased implementation. The first phase has seen implementation at seven large management areas, which benefit about one third of the inmate population. An added advantage is that trained offenders will on release be able to participate effectively in the catering arena.

Rehabilitation

Rehabilitation aims to provide treatment and development programmes to offenders in partnership with the community. This will enhance personal and social functioning, and prepare them for reintegration into the community as productive, well-adapted and law-abiding citizens.

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

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

- positively combat illiteracy within the prison environment
- 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.

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 following their release.

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

In March 2005, the Department of Correctional Services, in conjunction with the Department of Arts and Culture, launched the Arts Against Crime Project. The project involves artists visiting correctional centres and engaging with offenders to impart their love of the various art forms. It also aims to assist offenders in discovering and honing their own artistic skills. The Department of Correctional Services believes that exposure to, and participation in, the various art forms by offenders is of therapeutic value to them.

Institutional committees

Institutional committees at each prison are responsible for ensuring a professional and co-ordi-

nated 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 life skills programmes.

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

Education and training of offenders

All offenders have a right to basic education and training. The aim is to enhance the education level and improve the skills of offenders to facilitate their reintegration into the community.

Services are provided to sentenced and unsentenced offenders in collaboration with external partners (government institutions, training boards, NGOs, etc.) and are in line with the provisions of the South African Qualifications Authority and the National Qualifications Framework.

Education and training programmes include:

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

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

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

During 2004/05, 8 876 offenders benefited from the ABET Programme, while 5 205 and 5 723 respectively participated in Further Education and Training (FET) studies (grades 10 – 12 and N 1 – 3 business and engineering) and 1 710 in the Higher Education and Training field (certificate, diploma and degree studies).

Offenders who are of school-going age are provided with formal school education opportunities to complete their General Education and Training Certificate (Grade 9) to further their studies within the FET band.

Partnership agreements and formal working relationships were established with external service-providers of voluntary services in relation to formal education and skills development.

Within the Department of Correctional Services, the READY (Reintegration and Diversion for Youth) Programme is presented to young offenders by correctional officials. During 2004/05, 1 797 young offenders between the ages of 18 and 25 years competed in at least one of the three programme levels, i.e. bronze, silver and gold. From these, 97 young offenders were awarded gold certificates, representing the Western Cape, Free State, Northern Cape and Gauteng regions.

Some 300 offenders were trained during the 2004 academic year by 238 Readucate instructors, in a project facilitated by the Readucate Trust. The core of the Readucate approach is to teach literate prisoners how to become Readucate instructors, who in turn will teach functionally and/or totally illiterate prisoners how to read. This programme contributes towards the literacy tuition programme and serves as a conduit to the ABET programmes of the Department of Correctional Services.

Inmates are trained in 14 of the department's training centres throughout the country in various fields such as IT, brick-laying, woodworking, welding, etc. In 2004, about 11 government departments purchased a range of items produced in the department's workshops, generating revenue of about R3 million.

These training facilities are also available to members of the neighbouring communities to empower themselves. The Vukukhanye Youth

Development Project in the Western Cape is a prime example where trainees from Paarl and Franschoek graduated with technical skills in garment-making, cabinet-making, upholstery and other fields in early 2005.

Psychological services

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

By May 2005, there were 25 permanent psychologists within the department. The department has registered with the Department of Health as an institution for psychologists who have to do one year of compulsory community service. Thirty-three psychologists completing a compulsory one-year community service joined the department in 2005. This positively impacted on the rendering of services in 2005. This venture is also supporting the Department of Correctional Services' rehabilitation drive and serves as a solution for continual recruitment.

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

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

Social Work Services

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

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

On 30 April 2005, the department employed 462 social workers. The increasing number of people living with HIV and AIDS is a major challenge, as not all social workers are trained HIV and AIDS counsellors.

Research on the rehabilitation of offenders shows that rehabilitation interventions should be systematic and needs-based. A framework/model of intervention to assist in the consistent and intensive assessment and evaluation of offenders' needs and rehabilitation programmes, was subsequently developed.

All social workers in the department received training on the intervention model to assist in the consistent assessment of offenders and the provision of needs-based rehabilitation programmes.

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

Spiritual care of offenders

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

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

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

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

The extent of religious/spiritual counselling is reflected by the 43 437 spiritual services, 71 595 group sessions and 71 841 individual sessions held for offenders in 2004/05.

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

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

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

Release of offenders

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

The Minister of Correctional Services inaugurated the correctional supervision and parole boards (CSPBs) in July 2005.

The new boards mark a historic departure from the past as key decision-making powers will be vested with community representatives appointed to chair the boards. All applications from offenders for parole will be considered and approved by CSPBs, with the exception of decisions on some categories of crimes committed by offenders as outlined in the Criminal Procedure Act, 1977 (Act 51 of 1977).

By July 2005, 42 chairpersons of the CSPBs had assumed duties. Fifty-two CSPBs will be established countrywide.

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

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

Courts are empowered to build a non-parole period into the sentence of any convicted criminal. This period may be as much as two-thirds of the total sentence. A person declared a habitual criminal may not be considered for parole before having served at least seven years in prison. Offenders serving a life sentence may not be considered for parole until they have served at least 25 years of their sentence.

Reintegration into the community

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

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

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

Community corrections

Plans are being implemented to make community correction offices more accessible to the majority of offenders and the community, especially in rural areas. The final location and decentralisation of the offices is envisaged by the end of 2006/07. On 31 March 2005, there were 172 fully functional offices and 21 suboffices.

By mid-2005, a revised classification system for offenders subject to community corrections was being developed. The intention is to align offenders' classification with the principles of rehabilitation, requiring more interaction between offenders and their supervision officials.

Supervision of parolees

Parolees are subject to certain conditions as well as

supervisory measures aimed at gradually re-integrating 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. The conditions for parole may include periods of house-arrest, restriction to a specific magisterial district, compulsory attendance of treatment programmes and the rendering of compulsory community service.

Persons awaiting trial may also be placed under correctional supervision. Because little is known about their criminal record prior to conviction, they are classified under the maximum supervision category.

Monitoring includes visits to the parolee's home and workplace, telephonic liaison and reports to the Community Corrections Office.

The department aims to increase the number of personnel responsible for managing and controlling persons sentenced to community corrections.

Correctional supervision

Correctional supervision, an alternative sentencing option available to law courts, entails that upon conviction, offenders are sentenced to a period of correctional supervision. Correctional supervision provides the opportunity to deal with some offenders outside the walls of correctional centres. 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, probationers can be referred to the court of first hearing for consideration of an alternative sentence or, in certain cases, be admitted directly to correctional centres to serve the remainder of their sentences.

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

On 31 October 2004, the community corrections population, comprising parolees and probationers, totalled 77 138 compared with the 184 871 sentenced offenders who were serving their sentences inside correctional centres at the same time.

Day parole

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

Offenders whose parole has already been approved may under certain circumstances be allowed to spend weekends at home for the consolidation of family ties, preparation for release, or for reasons that involve the reintegration of the offender into society. Offenders may also be granted compassionate leave under certain circumstances, such as attending burials of close family members.

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.

Administration

The Administration Programme funds the overall management of the department. It includes policy formulation by the minister, the national commissioner, and other members of senior management, and facilitates prison inspections by the inspecting judge.

The programme accounted for about 28% of the budget of the department in 2005/06, and increases by about 5% each year.

Employee organisations

Employees of the Department of Correctional Services subscribe to the Labour Relations Act, 1995 (Act 66 of 1995). Two labour unions are active in the department, namely the Police and Prisons' Civil Rights Union and the Public Servants' Association.

Because the department renders an essential service, its members are not allowed to embark on strike action. Participation in illegal strikes led to the dismissal of 462 staff members during 2004/05.

Social responsibility

The department actively participates in the initiative of the NCPS to establish community safety centres. These centres aim to provide integrated services in South Africa's disadvantaged communities. The departments of correctional services, health, social development, justice and constitutional development and the SAPS provide these integrated services to the community under one roof.

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. The majority of prisons had engaged in projects by May 2005. In 17 areas they have managed to realise surplus produce in agriculture, which is donated to needy entities in the community, such as old-age homes, children's homes and orphanages.

Anti-corruption

A three-pronged anti-corruption strategy was approved by Cabinet in 2002. The strategy focuses on:

- corruption prevention
- investigation of corruption, fraud and serious maladministration
- disciplinary sanction of members found to be involved in corruption, fraud or serious mismanagement.

In implementing the strategy, it was necessary to forge a partnership with the Special Investigating Unit (SIU) that was called into being earlier by President Mbeki. The aim was to bolster the department's own investigative capacity and to deploy an independent specialist investigating agency.

While serious gains have been made in cleansing the department of corruption over the past three years, it requires a sustainable and prioritised anti-corruption programme to seriously impact on corruption. In the process, the mandate of the SIU was extended to allow it to investigate all incidents up to and including November 2004.

The department in the interim established its own Departmental Investigation Unit (DIU). It is a fully fledged agency with three main divisions whose scope of work follows the three-pronged anti-corruption strategy, namely prevention, investigation and sanctioning.

During 2004, 161 cases were investigated. Of these, 96 were for corruption, 28 for theft and 37 for fraud. Ninety-nine were finalised with 62 still under investigation. Sanctioning resulted in 30 dismissals and six final written warnings, while two staff members resigned prior to the conclusion of disciplinary proceedings.

Other DIU successes include:

- an understanding of the most common manifestations of corruption within the department
- an internal capacity to effectively deal with corruption
- a whistle-blowing policy
- training of managers on anti-corruption awareness
- training aimed at ensuring consistent application of the department's Disciplinary Code and Procedure
- a database of corruption and maladministration-related information.

International co-operation

The department of Correctional Services has established relations with organisations such as the American Correctional Association, the IPCA and the International Corrections and Prisons Association (ICPA).

The department endorsed the Charter of Fundamental Rights for Prisoners at the 11th UN Congress on Crime Prevention and Criminal Justice in April 2005. It will continue to participate in multilateral fora such as the ICPA, the Conference of Commissioners for East and Southern Africa and the UN.

In conjunction with other African states, the department is developing a programme that will result in full compliance with the UN minimum standards on the treatment of offenders. Participation in binational commissions and joint commissions of co-operation has resulted in the department hosting several delegations from various countries, as well

as the Commission on Human and Peoples' Rights under the AU.

Ministers responsible for prison management and correctional services in SADC countries are continuing efforts to implement the July 2003 Johannesburg Declaration on Corrections. The declaration seeks to include the field of corrections in the work of regional and continental multilateral structures.

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

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

Acknowledgements

Beeld

BuaNews

Commission on Gender Equality

Department of Correctional Services

Department of Justice and Constitutional Development

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South African Law Reform Commission

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