



SA YEARBOOK 2009/10
JUSTICE AND CORRECTIONAL SERVICES



The Department of Justice and Constitutional Development's mandate is to uphold and protect the Constitution and the rule of law. The department is also responsible for overseeing the administration of justice in the interests of a safer and more secure South Africa.

The Department of Justice and Constitutional Development comprises six core branches – Court Services, the Master of the High Court, Legal Advisory Services, the Litigation Unit, the Legislative Development Unit, and the Justice College – and two support branches – Corporate Services and the Office of the Director-General.

The department's responsibilities include:

- ensuring the provision of integrated court services through the establishment and maintenance of court facilities
- promoting cost-effective and quality court services
- facilitating effective case-flow management
- providing appropriate human resources (HR), including the appointment of judicial, prosecutorial and administrative staff
- facilitating the adjudication of criminal, civil and family law-related disputes.

The department facilitates constitutional development, drafts legislation, conducts research to support legislative development, provides legal advisory services to other government departments, provides litigation services to protect the organs of state, oversees the administration of deceased and insolvent estates and administers the Guardian's Fund.

The department is administratively accountable for ensuring the independence of and support to its entities, the National Prosecuting Authority (NPA); Legal Aid South Africa (previously the Legal Aid Board); and constitutional institutions such as the South African Human Rights' Commission (SAHRC), the Commission on Gender Equality (CGE), the Public Protector, the Special Investigating Unit (SIU), including the administration of the Represented Political Parties' Fund and the President's Fund.

Between 2004/05 and 2010/11, the department's budget is expected to increase at an average annual rate of 13,4%, from R5,5 billion to R11,7 billion.

2010 FIFA World Cup™

The Safety and Security Sector Education and Training Authority awarded R1 million to the De-

partment of Justice and Constitutional Development to train volunteers for the 2010 FIFA World Cup™.

The department will target mainly young, unemployed citizens from all provinces and train them in fields related to the administration of justice and equip them with skills that will be valuable beyond 2010. The volunteers' duties will include, among other things, to:

- assist in the courts designated to handle event cases with 2010 information and administration
- act as info guides in courts when event cases are activated
- capture data in courts.

To deal with all criminal cases in a fast and efficient way, especially where foreigners are involved, the following special measures will be implemented:

- at least one dedicated district court and one dedicated regional court per host city to deal with 2010-related cases
- the dedicated courts will be operational two weeks before, during and two weeks after the event
- dedicated skilled and experienced magistrates, prosecutors, Legal Aid South Africa attorneys, local and foreign court-language interpreters and other court officials will be assigned to each of the 2010 dedicated courts within each host city in each province
- all 2010-related cases outside of the host city will be prioritised and dealt with in a court with jurisdiction.

Legislation

Significant strides have been made in developing legislation in a number of important areas, including the protection of vulnerable groups, in particular, women and children. The department intended to finalise important outstanding pieces of legislation in 2009/10.

These include the Traditional Courts Bill, the Criminal Law (Forensic Procedures) Amendment Bill, the Superior Courts Bill and the Constitution Amendment Bill.

The Traditional Courts Bill is intended to regulate anew the role and functions of traditional leaders in the administration of justice in accordance with constitutional imperatives.

In finalising this Bill, extensive work is required from the department, which is represented on a

subcommittee appointed by the Portfolio Committee on Justice and Constitutional Development, consisting of representatives of various groups.

The Superior Courts Bill, presumably the only Bill that has stretched beyond the tenure of the two previous parliaments, was expected to be re-introduced during 2009/10. The Bill seeks to consolidate all outstanding aspects relating to the transformation of the judiciary, including the rationalisation of the courts, establishing an efficient court-administration model consistent with South Africa's constitutional democracy and the rationalisation and harmonisation of the rules of courts to enhance access to justice.

The Prevention and Combating of Trafficking in Persons Bill has been published for comment. The Bill is intended to give effect to the South African Law Reform Commission's (SALRC) legislative recommendations relating to trafficking in persons. It will offer protection to the most vulnerable in society, against highly organised crime syndicates. The current law is fragmented with low reporting and conviction rates. The Bill also gives effect to South Africa's international obligations as a signatory to the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Judicial system

The Constitution of the Republic of South Africa, 1996 is the supreme law of the country and binds all legislative, executive and judicial organs of 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 Eight of the Constitution provides for the following courts:

- Constitutional Court
- Supreme Court of Appeal (SCA)
- high courts, including any High Court of Appeal that may be established by an Act of Parliament to hear appeals from high courts
- magistrates' 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 magistrates' courts.

In line with this, Parliament has 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, "military courts" and equality courts.

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 that may decide on the constitutionality of any amendment to the Constitution or any parliamentary or provincial Bill. The Constitutional Court makes the final decision on whether an Act of Parliament, a provincial Act or the conduct of the President is constitutional. It consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine Constitutional Court judges.

On 1 October 2009, President Jacob Zuma announced the appointment of Justice Sandile Ngcobo as the new Chief Justice of South Africa. Chief Justice Ngcobo assumed office on 12 October 2009. Justice Dikgang Moseneke is the Deputy Chief Justice.

Supreme Court of Appeal

The SCA, 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 SCA, and a number of judges of appeal determined by an Act of Parliament. The SCA has jurisdiction to hear and determine an appeal against any decision of a high court.

Decisions of the SCA are binding on all courts of a lower order, and the decisions of high courts are binding on magistrates' courts within the respective areas of jurisdiction of the divisions. The SCA comprises 25 judges, including its president.

High courts

A high court has jurisdiction in its own area over all persons residing or present in that area.

These courts hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or to impose a penalty. Except where a minimum or maximum sentence is prescribed by law, their penal jurisdiction is unlimited and includes handing down a sentence of life imprisonment in certain specified cases

There are 13 seats of the High Court. In terms of the Renaming of the High Courts Act, 2008 (Act 30 of 2008), they are: Western Cape High Court, Cape Town; Eastern Cape High Court, Grahamstown; Eastern Cape High Court, Port

As from August 2009, 15 branch courts across the country enjoy the status of being full service courts.



Previously, these courts were set up in townships and rural areas as an extension of courts in the main towns and/or cities, and offered limited services relating mainly to criminal matters.

As a result, communities had to travel to the main courts to access services such as child maintenance, protection orders, deceased estates, adoption orders or legal remedies to any civil disputes.

The branch courts will now bring these services closer to the people. The conversion of these courts will alleviate the case loads in the main courts, resulting in improved service delivery.

Elizabeth; Eastern Cape High Court, Mthatha; Eastern Cape High Court, Bhisho; Northern Cape High Court, Kimberley; Free State High Court, Bloemfontein; KwaZulu-Natal High Court, Pietermaritzburg; KwaZulu-Natal High Court; Durban, North Gauteng High Court, Pretoria; South Gauteng High Court, Johannesburg; Limpopo High Court, Thohoyandou; and North West High Court, Mafikeng.

Circuit local divisions

These itinerant courts, each presided over by a judge of the provincial division, 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. Appeals are made to the Labour Appeal Court.

Decisions of the Constitutional Court, the SCA and the high courts are an important source of law. These courts are required to uphold and to 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, and to develop common law that is 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.

The Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008), empowers regional magistrates to preside in civil matters. Processes are underway to pave the way for the implementation of the Act. Prime among those is the need to build capacity at regional court level to deal with civil and divorce matters. The divorce courts will be subsumed under the regional-court divisions. This will address the jurisdictional challenges in terms of which litigants have to travel to remote courts to get legal redress.

The formal training of magistrates and legal practitioners around this legislation and other areas of judicial work will be the responsibility of the newly established South African Judicial Education Institute. Preparations were at an advanced stage in October 2009 for the institute to commence with its work.

The Jurisdiction of Regional Courts Amendment Act, 2008 will, in the medium to long term, reduce the workload in the high courts. In this way, divorce and other family-law matters and civil disputes of an amount determined from time to time will be within the jurisdiction of regional courts. This therefore means that attorneys will have the opportunity of representing their clients in matters where they ordinarily brief counsel. This will in turn reduce the cost of litigation and therefore increase access to justice.

There are nine regional court presidents and 343 regional court magistrates.

Magistrates' 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 has also 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 limited resources in an equitable manner; and addressed imbalances in the former homeland regions. 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 magistrates' courts (district

courts), an accused cannot appeal to a regional court against the decision of a district court; only to the High Court.

By mid-2009, there were 366 magisterial districts and main magistrates' offices, 80 branch courts and 282 periodical courts in South Africa. There were 1 906 magistrates in the country, including regional court magistrates.

In addition, full jurisdiction was conferred to courts in rural areas and former black townships that exercise limited jurisdiction and depend entirely on the main courts in urban areas to deliver essential justice services.

Criminal jurisdiction

Apart from specific provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), or any other Act, jurisdiction regarding sentences imposed by district courts is limited to an imprisonment of not more than three years 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 by 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 the circumstances pertaining to the offender, the Directorate of Public Prosecutions 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 magistrates' 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 convicted person on one or more conditions; or pass sentence, but suspend it on certain conditions.

If the conditions of suspension or postponement are violated, 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 that 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

South Africa's community courts provide timely judicial services – usually within 24 hours of an arrest of a criminal suspect. This assists in easing the country's court case backlog. Community courts, such as the Hatfield Community Court in Pretoria, are normal district magistrates' courts that assist in dealing with matters in partnership with the local community and businesses. These courts focus on restorative justice processes, such as diverting young offenders into suitable programmes.

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

Thirteen community courts have been established. Four are fully operational and had been formally launched in Hatfield, Fezeka (Gugulethu), Mitchells Plain and Cape Town.

Another nine pilot sites commenced in Durban (Point), KwaMashu, Mthatha, Bloemfontein, Thohoyandou, Kimberley, Phuthaditjhaba, Hillbrow and Protea (Lenasia).

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 operates twice a week at the Roodepoort Magistrate's Office. A tax court facility was opened in Megawatt Park, Sunninghill, Gauteng, in 2005.

Family courts

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

- provide integrated and specialised services 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.

In 2009, there was an increase in the number of appointments compared to the previous years in family-law sections of the magistrates' courts.

Many new applications were received country-wide and the number of children receiving maintenance increased. The number of new applications for child support recorded in 2009 was 32 828 while 22 806 maintenance orders were made for beneficiaries, of whom 99% were women.

Operation Isondlo (a Department of Justice and Constitutional Development initiative) has led to many children's maintenance defaulters being traced, appearing in court and paying maintenance. The following were recorded during 2008/09:

- 5 107 garnishee orders were issued
- 218 writs of execution were issued
- 3 469 criminal proceedings for maintenance default were issued
- 3 469 warrants of arrest were issued for defaulters
- the Justice Deposits Account System (JDAS) was introduced, which is used to operate a manual process and administer money received at magistrates' courts.

The JDAS provides better and faster service with shorter queues, and easy retrieval of information. Child-maintenance beneficiaries can make telephonic enquiries and get faster responses.

By mid-2009, of the 459 child-maintenance pay-points, 458 had been installed with JDAS, except Botshabelo in the Free State.

The effort of continuous identification of branch courts is progressing well with two additional branch courts, Motherwell in the Eastern Cape, and Richards Bay in KwaZulu-Natal, identified.

The JDAS was expected to be implemented in these courts during 2009.

Electronic Funds Transfer (EFT) developments

The EFT, launched in 2005, allows people to access maintenance payments through their bank accounts.

Some of the major banks assisted the department with the opening of bank accounts and the placement of automated teller machines at shops in the local communities.

This system has reduced the regular absence of women from their jobs to queue for their child maintenance during working days as they can access the money in their leisure time.

In 2009, there were 130 000 beneficiaries receiving their maintenance through the EFT system.

Mediation in maintenance matters

In dealing with maintenance, there is an inevitable link of dealing with mediation, although it is not really recognised as mediation as such. The Maintenance Act, 1998 (Act 99 of 1998), provides for an element of mediation to be used as a mechanism in resolving disputes. A need has been identified to train officials to deal with mediation as this provides an opportunity for both parties to talk things through. Both parties contribute towards the amicable resolution of maintenance and bring about restoration of dignity to the aggrieved party.

The Johannesburg Family Court and Pretoria Magistrate's Court have been identified as pilot

sites as they are centrally located. It would also be easier for the national office to monitor and maintain contact for their progress, before moving to other regions. Once this is fully operational, it will reduce high volumes of maintenance cases that block the court and reduce the high turnaround time in finalising family-law matters. The department is investigating the roll-out of mediation services to other courts.

Domestic violence

The overall strategic objective of the Domestic Violence Programme is to strengthen the effectiveness of the Domestic Violence Act (DVA), 1998 (Act 116 of 1998). This will be implemented through a series of review projects aimed at identifying challenges and best practice in the implementation of the DVA, 1998. The projects will lay the foundation for informing the development of a framework for the effective and coordinated implementation of actions aimed at providing victim-friendly court-support services. This will include a holistic approach to all implementation initiatives aimed at the eradication of domestic violence.

The Domestic Violence Programme supported and facilitated the development of the Guidelines for Implementation of the DVA, 1998. The guidelines were developed by magistrates for magistrates and will be used as reference material.

In strengthening the effective implementation of the DVA, 1998, the Department of Justice and Constitutional Development, through the Family Directorate, has entered into a partnership with the South African Safety and Security Education and Training Authority (SASSETA), the Sexual Offences and Community Affairs (SOCA) Unit and the Justice College in the establishment of a family-law learnership, which will include domestic-violence training for 100 clerks and advice-officers from non-governmental organisations.

This SASSETA-led Family Law Learnership started with the development of material, including the domestic violence module, which is in its final stages of completion.

As the implementation of domestic violence-management can only be effective from a holistic and integrated perspective, the Department of Justice and Constitutional Development is part of the Ndabezitha Project, which aims to train 80 traditional leaders and 45 domestic violence clerks on the DVA, 1998, social context of domestic violence, effective management of domestic violence, restorative justice and conflict management in domestic violence cases.

Sexual offences courts

As part of its transformation and the improvement of access to justice, particularly for vulnerable groups, and as a means of recognising the scourge of sexual violence in society, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), has provided a legal framework to provide an integrated approach to the management of sexual offences, thereby aiming to reduce secondary trauma to victims of such violence.

The Sexual Offences Programme conducted a number of projects in 2008/09 to enhance the effective implementation of the Sexual Offences Amendment Act, 2007.

In ensuring that the legal framework and the rights of victims are realised and operationalised to ensure effective service delivery, the Act prescribes in Section 62 the establishment of the Inter-Sectoral Committee for the Management of Sexual Offence Matters, a monitoring framework overseen by the most senior government officials. This structure aims to eradicate the fragmented nature of service delivery by ensuring that the directors-general of the relevant departments meet regularly to ensure co-ordination.

The functions of this committee are to develop the Draft National Policy Framework, which must include:

- implementing the priorities and strategies contained in the Draft National Policy Framework
- measuring progress on the achievement of the framework
- ensuring that the various organs of state comply with the roles and responsibilities allocated to them in the Draft National Policy Framework
- monitoring the implementation of the framework.

The first Directors-General's Inter-Sectoral Committee on the Management of Sexual Offences convened on 17 February 2009. By mid-2009,

On 1 June 2009, Justice Richard Goldstone received the prestigious MacArthur Foundation Award for International Justice.



Justice Goldstone's contribution to the Goldstone Commission was integral to the democratic transition in the country. His contribution to international criminal justice and the fight against impunity is of great pride to all South Africans. Justice Goldstone is the second recipient of this award. Former United Nations Secretary-General, Mr Kofi Annan, received the award in 2008.

the committee was considering the Draft National Policy Framework.

Equality courts

The establishment of equality courts seeks to achieve the expeditious and informal processing of cases, which facilitates participation by the parties to the proceedings. The courts also seek to ensure access to justice to all persons in relevant judicial and other dispute-resolution forums.

South Africans' rights are entrenched in and protected by the South African Constitution and its Bill of Rights. In turn, laws give effect to the various rights. The right to equality, as one of these rights, is protected by law in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), and the Employment Equity Act, 1998 (Act 55 of 1998). The two acts work in synergy.

The 2000 Equality Act, 2000 aims to:

- prevent and prohibit unfair discrimination and harassment
- promote equality
- eliminate unfair discrimination
- prevent and prohibit hate speech.

The Act also provides for:

- remedies for victims of any of the above
- compliance with international law obligations, including treaty obligations
- measures to educate the public and raise public awareness on equality.

By May 2009, the remaining magisterial districts were being designated as equality courts. The process was envisaged to be completed in 2009.

By May 2009, the department had trained 98 equality court clerks before the completion of the designation of the remaining magisterial districts as equality courts. The training was held in the Eastern Cape, Free State and Limpopo.

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 magistrates' courts were increased for both liquid and illiquid claims, from R50 000 and R20 000 respectively, to R100 000.

In addition to the considerable increase, the previous distinction between jurisdictional limits

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

Small claims courts have been established in terms of the Small Claims Court Act, 1984 (Act 61 of 1984), to adjudicate small civil claims. They are created to eliminate the time-consuming adversary procedures before and during the trial of these claims. The limit of cases involving civil claims in these courts is R7 000.

Matters within small claims courts are presided over by commissioners who are usually practising advocates or attorneys, a legal academic or other competent person. The service is voluntary as there are no fees paid to the commissioners.

In 2008/09, the department appointed 114 commissioners and 113 advisory board members to assist small claims courts.

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; only a review process is allowed.

The department has developed a national programme on re-engineering small claims courts, which aims to strengthen and roll out these courts to rural and peri-urban areas by pursuing the strategic objectives of:

- providing access for all, especially the poor and the vulnerable
- establishing systems and rules of court that are accessible and easy to understand
- providing trained administrative support staff
- attracting and retaining commissioners.

The department continues to strengthen the capacity of small claims courts.

The improvement of the functioning of the small claims courts is a key priority area. The small claims courts constitute an inexpensive tool that was created to settle minor civil disputes in an informal manner.

By June 2009, there were 188 small claims courts. The department, in partnership with representatives of the legal fraternity and the Swiss Agency for Development and Cooperation, was in the process of finalising manuals for commissioners for small claims and for court officials, to be

followed by training programmes in conjunction with the Justice College.

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 chiefs' 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.

Transforming the judiciary

A key aspect of the transformation of the justice system concerns the department's key strategic partners and stakeholders. The considerable effort put into transforming prosecution and allied services into a prestigious professional force, in accordance with the Constitution, is paying off.

By mid-2009, of the 205 judges, 45,37% (93) were white, 38,4% (78) were African, 7,80% (16) were coloured and 8,78% (18) were Indian. Overall, 20,49% were female and 79,51% male.

In terms of the lower-court judiciary, of the 1 906 magistrates, 46% were white, 39% African, 7% coloured and 8% Indian. Overall, 33% were female and 67% male.

The transformation of the judiciary is closely linked with the transformation of the legal profession and of legal scholarship. The Department of Justice and Constitutional Development has 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, prominent practitioners and relevant international organisations. This will:

- ensure the relevance of the training they offer to the practical demands 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 assists law graduates through its internship programme, which also provides 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 making judicial services accessible to the poor, the uneducated and the vulnerable. This entails establishing a physical presence in rural areas and in townships, offering affordable fees and providing speedy and empathetic services. It also entails facilitating access 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, thus making 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 seeks to achieve this in partnership with its customers, other government departments and stakeholders.

The South African Judicial Education Institute Act, 2008 (Act 14 of 2008), will, for the first time in history, introduce a state-sponsored judicial education programme for judges. The institute will provide training for both judges and magistrates.

The Judicial Service Commission (JSC) Amendment Act, 2008 (Act 20 of 2008), assented to law by the President in November 2008, was expected to come into operation in 2009. The Act establishes internal systems for judicial accountability. The JSC relies solely on its constitutional mandate to deal with any matter involving impropriety or incompetence and its mandate extended only to impeachable conduct on the part of a judge.

In 2009, the department was finalising a consolidated policy framework document to address other outstanding aspects relating to the transformation of the judicial system. These include rationalising high courts, harmonising the appointment procedures for judges and magistrates and addressing aspects relating to language use in courts.

Transforming the judicial system also includes transforming traditional courts. Traditional leaders are conferred with criminal and civil jurisdiction to exercise judicial authority in respect of certain offences and claims. The conferment is by virtue of sections 12 and 20 of the Black Administration Act, 1927 (Act 38 of 1927).

Since the Act is not consistent with the existing constitutional dispensation, it was repealed in November 2005.

Only sections 12 and 20, which deal with the establishment and functioning of traditional courts, were kept in operation until 30 September 2007. This deadline was extended by the repeal of the Black Administration Act, 1927 and Amendment of Certain Laws Amendment Act, 2008 (Act 7 of 2008), to 30 December 2009.

The extension allowed the department to formulate policy on the role of traditional leaders under a democratic dispensation, which will be followed by appropriate legislation to replace the repealed sections.

An interdepartmental task team, comprising officials of the departments of justice, former provincial and local government, and former land affairs, was appointed to draft the required policy in conjunction with the national and provincial houses of traditional leadership.

The policy was approved by Cabinet and launched in March 2008 in Nelspruit, Limpopo.

The Traditional Courts' Bill has also been introduced into Parliament.

Integrated case-flow management (CFM)

The Department of Justice and Constitutional Development is engaged in the development of an enhanced version of the CFM Framework for implementation by involving all stakeholders. In the process, participants from other partner organisations will make meaningful contributions on the issues and blockages affecting the proper implementation of CFM in the court environment. Efforts to eradicate such blockages will be proposed by adopting workable solutions. These include the following:

- continuous cooperation of stakeholders to implement and maintain CFM at all courts
- establishing judicial leadership and CFM buy-in processes in the lower and higher courts in the form of CFM forums
- facilitating and monitoring the creation of CFM governance structures to sustain productivity in the courts environment
- maintaining the CFM concept (guidelines, plans, governance, reporting and systems).

Systems that support CFM in the courts include the:

- E-Scheduler: This application is used to register criminal case information for the district court environment.
- Integrated Case-Management System: The application, an evolution from the E-Sche-

duler, is designed to provide case-management information for a number of integrated systems within the department, which include the regional criminal and civil courts; high courts (criminal and civil); district courts (civil); small claims courts; masters, specialised and family courts; and the *National Sexual Offences Register*.

- Video Remand System: The system provides for the use of technology in conducting proceedings from a venue outside the court room, which is regarded as an extension facility of the court. Amendments to the respective legislation to support this application have been approved and the associated regulations are being developed.
- Digital Court Recording System (DCRS): The DCRS has been rolled out to all courts to replace the outdated analogue recording machines.
- Document Management System: This application has been successfully pilot tested in early 2009 at the Pretoria and Krugersdorp courts. Court records are filed at an off-site location and this is supported by technology and processes to ensure the speedy recovery of court records and files, eliminating the delays associated with misfiled and misplaced files.
- Transcription services: Service-providers have been appointed to support individual provinces and assist in facilitating the provision of transcription services in a fast and efficient manner.
- Re Aga Boswa/Court Capacitation Programme: The programme focuses on the provision of resources to support regional offices and courts.
- Case Backlog Project: The project has been introduced to reduce case backlogs and to increase the performance in regional court centres. The project has created additional capacity for these centres to concentrate on the finalisation of trials.

The Case-Reduction Backlog Project has been integrated into the Review of the Criminal Justice System process, which entails that where required, in terms of interventions on an urgent basis – for example, the xenophobia matters, inquest backlogs and election criminal matters – the backlog courts will also be used.

Between November 2006 and March 2009, the project received 11 978 cases and finalised 8 855 of them (73,9%).

Actual implementation at the courts will be facilitated by the regional offices in each province. This approach will provide for a uniform CFM framework, which will be streamlined in the

entire court system. This will have the benefits of cases being managed better, the customers of the court seeing quicker results and confidence in the justice system being restored.

Court performance

The sub-branch Court Performance is responsible for the development and monitoring of processes and systems; introducing CFM that facilitates efficient and effective court and case management; developing and facilitating the implementation of a court-management policy framework; evaluating the quality of services and performance within the courts; and facilitating the development of uniform performance standards to enhance institutional performance. It is also responsible for providing effective and responsive management and administrative support for the judicial decision-making process within the court environment.

As a service-delivery improvement programme, the CFM Project seeks to put in place institutional arrangements for integrated CFM in the court system. Given the broad and large sector of the justice system, this will be done incrementally over the years. The project therefore supports the institutional arrangements in the following ways:

- establishing judicial leadership regarding CFM – as the judiciary is in control of the court, it makes sense to facilitate extending such control to judicial pre-adjudication stages to achieve a holistic CFM judicial leadership
- re-engineering CFM support structures in the courts to respond adequately to the CFM regime.

The Court Performance Programme focuses on:

- increasing capacity at regions and courts to effect service delivery
- increasing and improving skills and competencies
- continued efforts to reduce case backlogs
- reviewing outdated court procedures/processes and the regulatory framework
- facilitating organisational efficiency
- facilitating efforts to secure skills required to operate the new systems and processes.

The Directorate: Court Efficiency's key priorities include:

- facilitating integrated CFM with stakeholders
- supporting the implementation of the Re Aga Boswa Project
- facilitating the implementation of multilingualism in courts and the development of indigenous languages in line with constitutional imperatives

- supporting the Administration of Justice Project for the 2010 FIFA World Cup™
- facilitating the securing of standardised transcription services for courts across all regions
- rendering case-management business intelligence support to information system management (ISM) in the development of information technology (IT) tools and systems.

The Directorate: National Operations Centre's (NOC) key priorities include:

- ensuring the necessary technical capacity within the NOC to become the management-information hub for the Department of Justice and Constitutional Development
- expanding the NOC services to cover all branches and all departmental service points
- improving the quality of the NOC tools data and the E-Scheduler/Integrated Case-Management System data through data auditing and regular quality assessments.

Special Investigating Unit

The SIU, created in terms of the SIU and Special Tribunals Act, 1996 (Act 74 of 1996), is an independent statutory body that is directly accountable to Parliament and the President of South Africa. It was established to conduct investigations at the President's request, and to report to him on the outcomes of these.

The SIU functions in a manner similar to a commission of inquiry, in that the President refers cases to it by way of a proclamation. It may investigate any matter set out in Section Two of the SIU and Special Tribunals Act, 1996 regarding:

- serious maladministration concerning the affairs of any state institution
- improper or unlawful conduct by employees of any state institution
- unlawful appropriation or expenditure of public money or property, and any unlawful, irregular or unapproved acquisitive act, transaction, measure or practice that has a bearing on state property
- intentional or negligent loss of public money or damage to public property
- corruption in connection with the affairs of any state institution
- unlawful or improper conduct by any person who has caused to or may cause serious harm to the interest of the public or any category of the public.

The unit can also take civil action to correct any wrongdoing it uncovers during an investigation and can therefore, for example, obtain a court order to:

- compel a person to pay back any wrongful benefit received
- cancel contracts when the proper procedures were not followed
- stop transactions or other actions that were not properly authorised.

A critical factor contributing towards the success of the SIU has been the development of an integrated forensic service to state institutions that require an intervention to address allegations of corruption, maladministration and fraud, which include forensic audit and investigation; remedial legal actions encompassing civil, criminal and disciplinary action; as well as the recommendation and facilitation of systemic recommendations.

The SIU's output-driven approach to investigations is supported by an effective national presence and excellent relations with other law agencies such as the National Prosecution Service (NPS), the core prosecuting division of the NPA, and other attached divisions, such as the Specialised Commercial Crime Unit (SCCU) in the case of fraud and other related matters, and the Asset Forfeiture Unit (AFU) in cases where the powers of this unit are more suitable for recovering the proceeds of crime.

National Prosecuting Authority of South Africa

South African society post-1994 has been marked by profound political changes and the establishment of progressive legislation, policies and programmes that have served to lay the basis for a new society. Key milestones along the way have been the adoption of the Constitution in 1996 that outlined the formation of the NPA and Section 179 of the Constitution of the Republic of South Africa, 1996, that created a single NPA.

Also vital within the criminal justice system (CJS) was the formation of the Office of the National Director of Public Prosecutions (NDPP), established on 1 August 1998.

Legislation governing the prosecuting authority is the NPA Act, 1998 (Act 32 of 1998). The Constitution, read with the said Act, provides the prosecuting authority with the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings.

Over the years, various units have been added, resulting in a formidable prosecuting and crime-fighting force that has made its mark on the South African scene and has gained a reputation as a professional organisation of note. The NPA structure includes the NPS, the AFU, and specialised

units such as the SCCU, the Witness Protection Programme (WPU), the Priority Crimes Litigation Unit (PCLU) and the SOCA Unit.

In October 2008, Parliament approved the NPA Amendment Bill and the South African Police Service (SAPS) Amendment Bill, which provided for the dissolution of the Directorate: Special Operations (DSO). The DSO and SAPS Organised Crime Unit will become a single agency known as the Directorate: Priority Crime Investigation, within the SAPS. The Bills were signed into law in January 2009. The Acts are expected to strengthen the investigative capacity of the police in relation to organised and serious crime.

While the core work of the NPA will remain prosecutions and being "the people's lawyer", the NPA Strategy seeks to ensure that the organisation becomes more proactive so as to:

- contribute to economic growth
- contribute to freedom from crime
- contribute to social development
- promote a culture of civic morality
- reduce crime
- ensure public confidence in the CJS.

National Prosecutions Service

A significant majority of the NPA's prosecutors are housed in the NPS, the organisation's biggest unit. The NPS is headed by the Deputy National Director who reports to the NDPP. Directors of public prosecutions head the organisation in each region, with public prosecutors and state advocates manning the nation's district, regional and high courts.

The NPA represents and acts on behalf of the people in all criminal trials. The NPA does not seek only to secure convictions but rather to ensure that the interest of justice is served in all cases. Prosecutors are significant drivers of the CJS, controlling the speed and direction of court proceedings.

Witness Protection Programme

In 2001, the WPU was transferred from the Department of Justice and Constitutional Development to the Office of the NDPP. The office was created in terms of the Witness Protection Act, 1998 (Act 112 of 1998), to provide for temporary protection, pending placement under protection; placement of witnesses and related persons under protection; and services related to the protection of witnesses and related persons.

The Office for Witness Protection had 428 witnesses, including family members, on the programme in 2007/08. No witnesses or fam-

ily members were harmed or threatened. The definition of a walk-off was amended in 2007/08 to include all people that voluntarily left the programme before testifying, were given notice to leave the programme due to misconduct, or left the safe house without prior notice. Under the new definition, 24% of witnesses walked off the programme in 2007/08 against a target of zero. In the first half of 2008/09, 16% (27) walked off.

Asset Forfeiture Unit

The AFU was created in 1999 in terms of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998). The AFU can seize and forfeit property that was bought with 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 have a real effect in the fight against crime.

In 2009/10, the AFU made a significant impact in the fight against crime. The AFU had a good year in terms of the value of its cases and exceeded most of its targets. It had the best year ever for the number and value of deposits into the Criminal Assets Recovery Account at R66 million, the highest ever number of seizures and total orders and the highest ever number of forfeitures applied for and forfeitures completed.

Specialised Commercial Crime Unit

The SCCU was established on 1 August 1999 as a pilot project to combat the deteriorating situation pertaining to commercial crime. The SCCU aims to reduce commercial crime by the effective investigation and prosecution of complex commercial crime.

The SCCU's mandate is to accept responsibility for the investigation and prosecution of commercial crime cases emanating from the commercial branches of the SAPS in Pretoria and Johannesburg, respectively. The client base of the SCCU comprises a broad spectrum of complainants in commercial cases, ranging from private individuals and corporate bodies to state departments.

The investigation and prosecution process of the SCCU is driven through a combined prosecutor and investigator approach conducive to the methodical planning of the outcome and speedy finalisation of cases registered.

Priority Crimes Litigation Unit

The PCLU is a specialist unit mandated to tackle cases that threaten national security. The PCLU was created by Presidential proclamation and is allocated categories of cases either by the President or by the NDPP. The primary function of the PCLU is to manage and direct investigations and prosecutions in respect of the following areas:

- the non-proliferation of weapons of mass destruction (nuclear, chemical and biological)
- the regulation of conventional military arms
- the regulation of mercenary and related activities



The Women's Justice and Empowerment Initiative (WJEI) was launched in South Africa in April 2009. This follows a US\$55-million pledge made in 2005 by the United States of America towards the roll-out of the initiative. The programme intends to assist African countries such as South Africa, Zambia, Kenya and Benin to safeguard rights and provide protection to victims of sexual violence and abuse.

The victim-support component of the WJEI in South Africa is a three-year US\$11,7-million initiative funded by the United States Agency for International Development (USAID) under a bilateral agreement with the Department of Justice and Constitutional Development. It provides support to the Sexual Offences and Community Affairs (SOCA) Unit of the National Prosecuting Authority and is implemented by RTI International.

Launched in 2001 in Mannenberg, Cape Town, as part of South Africa's Anti-Rape Strategy, Thuthuzela care centres (TCCs) are multidisciplinary care facilities intended to address high levels of sexual violence against women and children, specifically rape. The centres seek to improve the process of reporting and prosecution of rape and other sexual offences in a dignified and caring environment.

USAID assistance will help advance the South African Government's programme to upgrade and expand its one-stop TCC network, a pioneering effort to better protect the rights of women and children by providing critical assistance to victims of sexual violence and abuse through the justice system.

The WJEI has four objectives:

- upgrading and expanding the TCC network
- improving care and treatment for survivors of sexual assault
- awarding targeted grants to medical, legal and psychosocial service-providers for follow-on care to survivors
- strengthening the SOCA Unit's management and communications systems for TCC sustainability.

Targeted support will expand the TCC network to a further 23 new TCCs over the next three years across all nine provinces.

- the International Court created by the Statue of Rome
- national and international terrorism
- prosecutions of persons who were refused or failed to apply for amnesty in terms of the Truth and Reconciliation Commission (TRC) processes.

Sexual Offences and Community Affairs Unit

The SOCA Unit aims to:

- reduce victimisation of women and children by enhancing capacity to prosecute sexual offences and domestic violence cases
- reduce secondary victimisation of complainants and raise public awareness of the scourge of sexual offences and domestic violence
- ensure proper management of young offenders.

SOCA acts against the victimisation of women and children, with specialised prosecutors positioned in dedicated sexual offences courts. Supporting activities operated by SOCA include its multidisciplinary Thuthuzela care centres (TCCs), recognised by the UN General Assembly as a “world best-practice model” in the field of gender-violence management and response. TCCs are one-stop facilities that have been introduced as a critical part of South Africa’s anti-rape strategy, aiming to reduce secondary trauma for the victim, improve conviction rates and reduce the cycle time for finalising cases.

TCCs are in operation in, among other things, public hospitals in communities where the incidence of rape is particularly high. They are also linked to sexual offences courts, which are staffed by prosecutors, social workers, investigating officers, magistrates, health professionals, non-governmental organisations (NGOs) and police, and located in close proximity to the centres. The centres are managed by a top-level interdepartmental team comprising various role players.

Legal practitioners

The legal profession is divided into two branches – advocates and attorneys – that 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 coordinating body of the various Bar associations. There is a law society for attorneys in each of the provinces. A practising attorney is *ipso jure* a member of at

least one of these societies, which seek to promote the interests of the profession.

The Law Society of South Africa is the coordinating body of the various independent law societies.

In terms of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), advocates can appear in any court, while attorneys may be heard in all of the 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 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, provincial administrations and 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 by 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 draft contracts for the State and also act on behalf of elected and appointed officials in the performance of their duties, e.g. civil and criminal actions instituted against ministers and government officials in their official capacities.

Human rights

The Bill of Rights is the cornerstone of South Africa's democracy. It enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom.

While every person is entitled to these rights, they also have a responsibility to respect these rights.

The Bill of Rights binds the legislature, the executive, judiciary and all organs of state.

The rights contained in the Bill of Rights are subject to the limitations contained in or referred to in Section 36 of the Constitution, or elsewhere in the Bill of Rights.

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:

- equality before the law and equal protection and benefit of the law
- freedom from unfair discrimination
- the right to life
- the right to human dignity
- the right to freedom and security of the person.

Since 1994, and in keeping with the promotion of a human-rights culture, the focus is progressively shifting from an adversarial and retributive CJS to that of a restorative justice system.

The Service Charter for Victims of Crime, approved by Cabinet, 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 by meeting victims' material or emotional needs. The Department of Justice and Constitutional Development has embarked on a programme of information sessions in all nine provinces to raise awareness of the Service Charter for Victims of Crime.

Crime prevention

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

The main responsibilities of the department in implementing 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
- coordinate and integrate the departmental activities of all role players involved in crime prevention.

Integrated justice system (IJS)

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 receiving specific attention include overcrowding in prisons and awaiting-trial prisoner problems, as well as bail, sentencing and plea-bargaining.

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

The benefits of proper alignment include:

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

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

Modernising the justice system

This includes establishing proper governance structures, effective monitoring mechanisms based on proper review findings and the integration and automation of the justice system. While each department within the JCPS Cluster must have its own IT plan to achieve its specific vision, mission and objectives, the IJS Board coordinates the broader and shared duty to integrate information flow throughout the CJS.

Child justice

The department continues to prioritise access to justice for vulnerable groups, including:

- implementing relevant legislation and enabling policy, for example, accelerating the finalisation and implementation of the Child Justice Act, 2008 (Act 75 of 2008)

- the Sexual Offences Amendment Act, 2007 which, among other things, broadens the definition of sexual assault
- ensuring assistance from prosecutors and public defenders for child maintenance
- enforcing the right of children to receive support from earning parents
- prioritising child justice and all cases involving children, especially those in prison awaiting trial.

The Child Justice Act, 2008 assists with formalising legislation and practice, many parts of which have already been successfully piloted in South Africa.

The aim of the Child Justice Act, 2008 is to:

- establish a CJS for children who are in conflict with the law and are accused of committing alleged offences, in accordance with the values underpinning the Constitution and international obligations
- create, as a central feature of this new CJS for children, the possibility of diverting children away from the CJS
- provide for the minimum age of criminal capacity of children as being 10 years of age
- make provision for child-justice courts to hear all trials of children who are charged with certain serious offences
- extend the sentencing options available in respect of children who have been convicted
- entrench the notion of restorative justice in the CJS in respect of children who are in conflict with the law
- provide for related matters.

Children awaiting trial

The national and provincial focus to fast-track all children awaiting trial in correctional centres and police cells has led to a reduction in children awaiting trial.

Specific interventions to address the backlog of cases pending trial include moving 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 one-stop child-justice centres have been established in Port Elizabeth, Bloemfontein and Port Nolloth. The National Inter-Sectoral Committee on Child Justice monitors and evaluates all child-justice issues and reports to the JCPS Cluster. This forum has also been established at regional level. With the expected implementation of the Child Justice Act, 2008 in 2010, the depart-

ments have gone ahead with practical steps to improve the lives of children going through the CJS. The number of children being diverted from the CJS during the past five years has increased every year. Statistics from the NPA indicate that 19 066 children were diverted from the CJS between April 2007 and March 2008 while 8 088 children were diverted from the CJS between April 2008 and March 2009.

Legal Aid South Africa has appointed children's units to legally represent children in conflict with the law and appearing in courts. The number of children assisted in this regard increases by 20% every year.

A time policy for children awaiting trial has further been agreed upon:

- three to six months for children's cases in district courts
- six to nine months for children's cases in regional courts
- nine to 12 months for children's cases in high courts.

Implementation of the Children's Act, 2005 (Act 38 of 2005)

The department has prioritised the planning for and implementation of the Children's Act, 2005, especially relating to the protection and care of

The sheriff profession is one of the important role players in the civil justice system. The transformation of the sheriffs sector will become a focal point of the review of the civil justice system.

The institution is entrusted with the service and execution of court processes and is a vital link in the civil justice chain.

Since the inception of democracy, they have assumed a very important role as a vital interface between the justice system and the public. Without a sheriff, it would be impossible to secure the attendance of the defendants in court or have the court decisions and orders enforced. It is therefore important that sheriffs themselves are legitimate and exercise their powers in terms of the law and the Constitution.

The finalisation and publication of the rules of courts that allow for promoting a competitive profession, enable the Minister of Justice and Constitutional Development to appoint, in deserving areas, two or more sheriffs. In all, 14 areas have been identified as possible competition sites and will be investigated by the department and the Board for Sheriffs.

The legal requirement introduced into law that sheriffs must attend a compulsory training course will bring enhanced efficiency and ensure compliance and respect for constitutional values.



children through children's court processes. The Department of Justice and Constitutional Development is working closely with the Department of Social Development to ensure an integrated and uniform approach to the Children's Act, 2005.

Forty-three of the 315 sections of the Children's Act, 2005 have been operational since 1 July 2007. These sections' tasks, among other things, are:

- lowering the age of majority from 21 to 18 years of age
- setting the best interest of the child as standard
- a child's right of participation
- the right of access to courts for children
- the right to enforcement of the rights of children through courts
- parental responsibilities and rights
- rights of unmarried fathers.

The role of the Department of Justice and Constitutional Development is to ensure that courts, and especially children's courts, are capacitated to handle disputes affecting children.

To improve general service delivery in the children's courts, the department intends to continuously train the administrative personnel in children's courts, especially in view of the new legislation.

The remainder of the Children's Act, 2005, will be put into operation once the regulations to support the Act, including regulations on children's courts, have been finalised.

Section 28(3) of the Constitution provides that a child is anyone under the age of 18 years.

All children's rights are protected through court processes, and the department therefore foresees that courts will be requested to help protect and enforce children's rights in a rights-based approach.

The department also believes that approaching the courts should be a measure of last resort. The department has started consultations with the relevant role players in this regard.

The first port of call for the protection, promotion and realisation of children's rights should be the children's families, caregivers, the community and service-delivery departments.

For the abovementioned purpose, measures to resolve disputes outside the formal court procedures have also been provided for in the Children's Courts Chapter of the Children's Act, 2005, such as family-group conferences, mediation services and pre-trial conferences.

Restorative justice

Restorative justice is a response to crime that focuses on the losses suffered by victims, holding offenders accountable for the harm they have caused and building peace in communities.

Restorative justice means the promotion of reconciliation, restitution and responsibility/accountability through the involvement of a child, the child's parent, the child's family members, communities and all interested parties in all matters of a criminal or civil nature.

Restorative justice elements in many pieces of legislation, such as the Child Justice Act, 2008, the Traditional Courts Bill and the Children's Act, 2005, will promote the use of restorative justice in the handling of matters within and outside the criminal and civil justice systems.

The JCPS Cluster ensures that the many practical steps and programmes that have been developed during the past few years, both in government and NGO sectors, will be aligned and will have an impact towards nation-building, restorative justice and the healing of past and present wounds caused by crimes.

The South African Law Reform Commission (SALRC) finalised a report on community dispute-resolution structures in 2009. The report addresses issues to be considered when establishing an effective structure for resolving community-level disputes, which will add to programmes that focus on restorative justice.

Victim-Empowerment Programme

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

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

The Service Charter for Victims of Crime is expected to go a long way towards assisting crime victims and contributing to interdepartmental and cluster coordination and cooperation. The Development Committee is mandated to align and coordinate cluster activities across the various departments, with the ultimate aim of improving service delivery, policy coordination 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 committee.

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

The E-Justice Programme has evolved into the ISM Programme, which has 25 projects in addition to the three main ones, namely the Court Process Project, Digital Nervous System Project and Financial Administration System Project. The E-Justice Programme is funded mainly by the Justice Vote and supplemented with donor funding from the European Union Commission, the Royal Netherlands Embassy and the Irish Embassy.

Legislative development

The Legislative Development Branch of the department administers the Constitution and over 160 principal Acts. The branch is also responsible for researching, developing and promoting supporting legislation, reflecting the basic constitutional ideals, which facilitates a justice system that is simple, fair, inexpensive and responsive to the needs of the diverse communities in South Africa.

The branch consists of three main components, namely the research activities of the SALRC, the Secretariat for the Rules Board for Courts of Law and the Legislative Development component.

Legislative Development researches, develops and promotes appropriate legislation affecting the department's line functions.

Apart from the legislation referred to in other sections of this chapter, the following pieces of legislation were passed in 2008:

- Regulation of Interception of Communications and Provision of Communications-Related Information Amendment Act, 2008 (Act 48 of 2008). The Act regulates the interception of communications and associated processes, such as applications for and authorisation of communications.
- The General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Act, 2008 (Act 55 of 2008). The Act, among other things, makes certain consequential amendments relating to the abolition of the so-called floor-crossing provisions.

- NPA Amendment Act, 2008, (Act 56 of 2008). This Act repeals the provisions relating to the DSO.
- Constitution 14th Amendment Act, 2008. This Act abolishes floor-crossing in the National Assembly.
- Constitution 15th Amendment Act, 2008. This Act abolishes floor-crossing in municipal councils.
- Criminal Procedure Amendment Act, 2008 (Act 65 of 2008). This Act provides for the postponement of certain criminal matters by audiovisual link and for the expungement of certain criminal records.

State Legal Services

The Office of the Chief Litigation Officer provides a reliable, cost-effective and efficient litigation, advice and representation service to the State and its organs. It comprises the State Attorney, Law-Enforcement and Civil-Litigation units.

The main functions of the branch include:

- managing the state attorney services of national, provincial and local government, departments and their officials on civil and criminal matters
- establishing competitive and professional state-litigation services
- facilitating alignment of government litigation to policy
- strengthening in-house capacity for government litigation
- tracking and interacting with Constitutional Development spurred by litigation
- providing strategic and policy leadership to the Legal Administration division, comprising Legal Process and Law Enforcement.

International legal relations

The main functions of the Chief Directorate: International Legal Relations in the Department of Justice and Constitutional Development are to identify and research legal questions that relate to matters pertaining to the administration of justice between South Africa and other states/bodies/institutions.

The chief directorate is involved in direct liaison and negotiations at administrative and technical level with foreign states to promote international legal cooperation, and for the possible conclusion of extradition and mutual legal-assistance agreements. The chief directorate also aims to establish greater uniformity between the legal systems of southern African states, especially with the Southern African Development Community (SADC).

The chief directorate coordinates human-rights issues at international level under the auspices of the UN and the African Union.

The functions of the chief directorate are divided into eight broad categories:

- regular liaison with SADC states
- coordinating 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/international bodies
- preparing Cabinet and Parliament documentation for the ratification of human-rights treaties, including report writing
- processing requests for extradition, mutual legal assistance in criminal matters, interrogatory commissions and service of process
- processing requests for maintenance in terms of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act 80 of 1963).

International Criminal Court (ICC)

As required by the Rome Statute of the ICC, South Africa 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 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 said crimes and their surrender to the ICC in certain circumstances
- enhance cooperation between South Africa and the ICC.

Legal structures Master of the High Court

The master's office's main divisions strive to protect the financial interest of persons whose assets or interests are being managed by others. These divisions are:

- deceased estates

- liquidations
- registration of trusts
- administration of the Guardian's Fund.

Each year, the value of estates under the supervision of the masters' office amounts to about R18 billion. This includes about R4 billion in the Guardian's 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
- assess estate duty and certain functions with regard to estate duty
- 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.

In 2005, legislation to repeal the Black Administration Act, 1927 was 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 ensures that all South Africans are treated equally, and that the dignity of each person is restored.

The institutional structures are the following:

- The Chief Master heads the national office and is responsible for coordinating all the activities of the masters' offices.
- There are masters' offices in Bhisho, Bloemfontein, Cape Town, Durban, Grahamstown, Johannesburg, Kimberley, Mafikeng, Polokwane, Port Elizabeth, Pietermaritzburg, Pretoria, Thohoyandou and Mthatha.
- Suboffices are located in places where the High Court does not have a seat, but where 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 service 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 Amendment Act, 2002 (Act 47 of 2002).

Curatorships

On 26 December 2004, the Mental Healthcare Act, 2002 (Act 17 of 2002), came into effect, repealing 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 was 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 that 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, missing or absent persons, or persons having an interest in the money of a usufructuary, fiduciary or fidei-commissary nature.

The money in the Guardian's Fund is invested with the Public Investment Corporation and is audited annually. Interest is calculated monthly 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.

By June 2009, the management and administration of the Guardian's Fund had been automated and the former manual system was in the final stages of being phased out. The Master's Office in Pretoria was the last office to be automated. The computerisation of the administration of the Guardian's Fund aims to allow for more accurate reporting on the activities of the fund. It is expected to reduce the opportunity to manipulate the system for purposes of committing fraud and corruption.

As part of the Right-Sizing Project, initiated a few years ago to increase capacity, 600 new posts

were created and filled nationally in 2007/08 and 2008/09.

Rules Board for Courts of Law

The Rules Board for Courts of Law is a statutory body, which was established by the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), to review the rules of courts and to make, amend or repeal rules, subject to the approval of the Minister of Justice. Details of the Rules Board's members, representations under consideration and the draft amendments for comment can be found at www.justice.gov.za/rules_board/rules_board.htm.

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. Training is integral to the department's efforts to widen and improve citizens' access to justice, enable the department to meet its strategic objectives and empower employees to heighten their performance.

The Justice College is being transformed by reviewing the governance structure, processes and systems, and revamping the curriculum to ensure that the college serves the training and development needs of all its stakeholders.

By February 2009, the college had been granted full accreditation status and was extending its scope of accreditation as a training-provider. The transformed college aims to extend training to all professionals and officials of the department, including state attorneys, masters, family advocates, registrars, court managers and interpreters, as well as all justice-sector personnel.

The college provides training in legislative drafting to officers working with legislation in the various government departments. The department recognises that well-drafted laws facilitate good governance and enhances democracy. Training is given to national, provincial and municipal officers and officers working for statutory bodies.

The training focuses on creating awareness in officers of the constitutional imperatives in legislative drafting generally, and this should minimise constitutional challenges to legislation. Focus is also put on developing policies and drafting laws that are easily understood by the target audience, thus facilitating access to justice by all. Training interpreters is a departmental priority.

The college continues presenting courses that focus on complex concepts, including but not

limited to, environmental crimes; cyber crimes; the National Credit Act, 2005 (Act 35 of 2005); and developing legal terminology in indigenous languages.

The college is developing curricula on cross-cutting, non-legal, but essential training programmes, such as management and leadership, project management, service excellence and general administrative training.

Office of the Family Advocate

The role of the Family Advocate is to promote and protect the best interests of the child in civil disputes over parental rights and responsibilities.

This is achieved through monitoring pleadings filed at court, conducting enquiries, filing reports, appearing at court during the hearing of the application or trial and through providing mediation services in respect of disputes over parental rights and responsibilities of fathers of children born out of wedlock.

The Family Advocate derives its duties and obligations from the Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987), and other related legislation. In certain instances, the Family Advocate also assists the courts in matters involving domestic violence and maintenance. The Office of the Chief Family Advocate is the designated central authority regarding the implementation of the Hague Convention on the Civil Aspects of International Child Abduction, to which South Africa became a signatory in 1996. Under this Act, the Chief Family Advocate assists in securing the return of, or access to, children abducted or unlawfully retained by their parents or caregivers.

The sections of the Children's Act, 2005 that came into operation on 1 July 2007 have significantly expanded the Family Advocate's responsibilities and scope of duties, as the Act makes the Family Advocate central to all family-law civil litigation. Furthermore, litigants are now obliged to mediate their disputes before resorting to litigation, and unmarried fathers can approach the Family Advocate directly for assistance without instituting any litigation at all.

In addition, children's rights to participation in, and consultation on, decisions affecting them have been entrenched and the Family Advocate is the mechanism whereby the voice of the child is heard.

Legal Aid South Africa

Legal Aid South Africa continues to provide legal assistance to the indigent, in accordance with the Constitution and other legislative requirements.

This is done through a system of in-house outsourcing to private lawyers (a system of *judicare*) and co-operation partners.

Legal Aid South Africa and the SAPS are working on systems that will allow legal-aid applications to be submitted electronically from police stations, to facilitate access to legal representation and ensure that arrested people have legal representation when they first appear in court. This is expected to reduce delays caused by accused people having to find attorneys.

In 2009, Legal Aid South Africa extended its national footprint by three new justice centres (in Botshabelo, Bellville and Soshanguve) to 62 justice centres countrywide and by eight satellite offices (mostly in rural areas) to 55 satellite offices.

There is demand for civil legal-aid services in the communities of South Africa and the limited capacity to render civil legal-aid work remains one of the challenges.

For example, only 7% (30 309) of new matters taken on by Legal Aid South Africa during 2008/09 were civil matters and the rest (404 613) were criminal matters.

It has prioritised the representation of children for both civil and criminal matters. About 10,5% (45 268) of new matters taken on by the Legal Aid South Africa were on behalf of children. As a result, dedicated children's units have been established at a number of justice centres to ensure specialised representation for children.

Public Protector

The Public Protector was established in terms of Chapter Nine of the Constitution to strengthen constitutional democracy. The Public Protector investigates any conduct in state affairs or public administration (including national, provincial and municipal administrations, or government entities such as Eskom and Transnet) that is suspected to be improper or that results in impropriety or prejudice. The Public Protector may not investigate court decisions.

Despite the high-profile cases involving politicians that have been investigated, most of the office's work involves complaints from people in townships, shack dwellers and those in rural areas who are struggling to access services to which they are entitled.

Some of the cases investigated include long delays in pension payouts from government and parastatals; the adverse impact of a decision or policy on individuals, institutions or groups; denial of access to information; and insufficient reasons provided for a decision taken.

With a staff complement of about 200, the Public Protector resolves about 17 000 cases per year. The bulk of the cases are resolved within three months.

The Public Protector's services are free and available to anyone who has a complaint. 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 or any political party. No person or organ of state may interfere with the functions of the Public Protector.

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

Magistrates' Commission

The Magistrates' 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 of Justice and Constitutional Development on matters such as the appointment of magistrates, promotions, salaries and legislation.

The commission has established committees to deal with appointments, 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 other things, the following functions:

- executing the law-reform programme of the SALRC by conducting legal research, including legal comparative research, by developing pro-

posals 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.

In 2009, the SALRC was investigating the following issues:

- statutory law revision (including Hindu marriages and a review of the Interpretation Act, 1957 [Act 33 of 1957])
- arbitration (specifically the areas of community dispute-resolution structures and family mediation)
- custody of and access to minor children
- aspects of matrimonial property law
- adult prostitution
- the use of electronic equipment in court proceedings
- assisting adults with impaired decision-making capacity
- prescription periods
- the law of evidence
- administration orders
- civil action in respect of consequential damages arising from hoaxes.

Cabinet has endorsed the SALRC's investigation into statutory law revision. This investigation is of considerable magnitude. The SALRC has identified the speedy completion of the review of pre-1994 statutes with a focus on statutes that are absolute, or redundant, or that blatantly violate Section Nine of the Constitution, as priority.

In 2008, the SALRC released reports on the following:

- trafficking in persons
- protected disclosures
- stalking
- customary law of succession
- international cooperation in civil matters
- administration of estates (interim report).

Judicial Service Commission

In terms of the Constitution, the President, in consultation with the JSC, appoints the Chief Justice and the Deputy Chief Justice, and the President and Deputy President of the SCA. The President appoints other judges 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 to the administration of justice.

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

The JSC shortlists suitable candidates and invites them for interviews. Professional bodies and members of the public have the opportunity to comment prior to the interviews or to 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

The SAHRC is a national institution that derives its powers from the Constitution and the South African Human Rights Commission Act, 1994 (Act 54 of 1994). It is also given additional powers and responsibilities by other national legislation. Since its inauguration in October 1995, the commission has taken up the challenge of ensuring that the noble ideals expressed in the Constitution are enjoyed by all in South Africa.

The SAHRC works with government, civil society and individuals, both nationally and abroad, to fulfil its constitutional mandate.

In terms of Section 184(1) of the 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 operations of the SAHRC consist of the following programmes:

- Strategic Management and Support Services
- Commissioners
- Education, Training and Public Awareness
- Legal Services
- Research and Documentation
- Parliamentary Liaison and Legislation and Treaty Body Monitoring

- Information and Communication
- Special Programmes
- Coordinators
- Civil-Society Advocacy Project.

Structure

The SAHRC is made up of two sections: the commission, which sets out policy; and a secretariat, which implements policy. The chairperson is overall head, and the chief executive officer is head of the Secretariat, accountable for the finances of the SAHRC and responsible for the employment of staff.

As set out in Section Five of the Human Rights Commission Act, 1994, the SAHRC has established standing committees to advise and assist it in its work. The SAHRC appoints the members of the standing committees, each of which is chaired by a commissioner. The SAHRC has also established provincial offices to ensure its services are widely accessible.

Education and Training

The objectives of the Education and Training Subprogramme are to conduct training workshops, seminars, presentations and capacity-building programmes on equality, economic and social rights, promotion of access to information and other focus areas of the SAHRC. The SAHRC continues its collaboration with the SADC region.

Legal Services

This subprogramme implements the commission's protection mandate, deals primarily with complaints of human-rights violations in pursuance of redress, monitors the agencies of the justice system, submits recommendations and conducts hearings and public inquiries.

Research and Documentation

This subprogramme implements the commission's monitoring and assessment of the observance of the human-rights mandate. It has three components: the Equality Unit, the Economic and Social Rights Unit and the Library.

Commission on Gender Equality

The CGE is one of six state institutions set up in terms of the Constitution to promote democracy and a culture of human rights in the country. The commission's role is to advance gender equality in all spheres of society and to make recommendations on any legislation affecting the status of women.

The CGE has the following powers and functions:

- developing, conducting or managing information and education programmes to foster public understanding of matters pertaining to the promotion of gender equality and the role and activities of the commission
- monitoring and evaluating the policies and practices of state organs, statutory and public bodies, as well as the private sector, to promote gender equality
- 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.

Complaints are received from the public at large and dealt with either through personal consultations, telephonically or in writing, including electronically.

In cases where the complaint does not fall within the CGE's mandate, it may be referred to a relevant institution or forum.

Truth and Reconciliation Commission Unit

The TRC was dissolved in March 2002 by way of proclamation in the *Government Gazette*. The TRC handed its final report to the President in March 2003. The TRC made recommendations to government in respect of reparations to victims and measures to prevent the future violation of human rights and abuses.

Four categories of recommendations were approved by government in June 2003 for implementation, namely:

- final reparations: the provision of a once-off individual grant of R30 000 to individual TRC-identified victims
- symbols and monuments: academic and formal records of history, cultural and art forms, as well as erecting symbols and monuments to exalt the freedom struggle, including new geographic and place names
- medical benefits and other forms of social assistance: education assistance, provision of housing and other forms of social assistance to address the needs of TRC-identified victims
- community rehabilitation: rehabilitating whole communities that were subject to intense acts of violence and destruction, and which are still in distress.

The TRC Unit, located within the Department of Justice and Constitutional Development, was

established in 2005 to monitor, coordinate and audit the implementation of the TRC recommendations.

Progress in respect of Phase One (payment of once-off individual reparations)

The TRC identified 21 769 people as victims of gross human-rights violations. Of the total identified victims, 16 837 applied for reparations. By May 2009, 15 881 beneficiaries had been paid the once-off grants of R30 000 as a final reparation.

Payments of the once-off reparation amounts are made from the President's Fund, established in terms of Section 42 of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995).

The fund is located within the office of the Chief Financial Officer in the Department of Justice and Constitutional Development.

The department has experienced some difficulties with tracing some of the beneficiaries because of incorrect or changed addresses, or in some cases, victims died.

By May 2009, there were 956 outstanding beneficiaries of which 248 were deceased and the President's Fund was attempting to establish their rightful next of kin. Government continues to search for the remaining beneficiaries.

Progress in respect of Phase Two

The following departments participate in the implementation of Phase Two:

- The former Department of Education set aside R5 million for bursaries to enable the TRC identified victims and their immediate dependants to pursue their studies. Bursary forms have been sent to them to register with the relevant higher education institutions in the country. Relevant regulations have also been drafted.
- The Department of Social Development has been rendering counselling services to the victims and their families countrywide in the wake of exhumations and reburials.
- The Department of Home Affairs assists by issuing death certificates as symbolic reparation to families. The department has also in the past assisted in the tracing of the TRC identified beneficiaries from its database.
- The Department of Health offers medical assistance to victims who were identified through the TRC process and are in need of continuous medical treatment.
- The Department of Human Settlements assists by rendering preferential treatment to identified victims in line with the TRC recommendations.

Handing over and the reburial of the remains

As at September 2008, the TRC Unit handed over 32 remains of exhumed individuals to their families for proper and dignified reburial. These are the people who were reported missing to the TRC and assumed dead.

The handover took place at the Freedom Park, Pretoria, after the remains were exhumed and identified by the Missing Persons Task Team located in the NPA.

Department of Correctional Services

The responsibility of the Department of Correctional Services is not merely to keep individuals who have committed crimes out of circulation in society, or to enforce a punishment meted out by the courts, but also to correct offending behaviour in a secure, safe and humane environment to avoid repeat offending/recidivism.

However, corrections is also a societal responsibility and rehabilitation cannot be complete or sustainable without reintegrating offenders back into their communities upon their release.

The department's parole system reflects the principles of social reintegration. While the offender on parole is under the supervision of a correctional official, the community should assume a bigger role in ensuring that lasting corrections/rehabilitation takes place.

The department strives to establish new and strengthen existing partnerships with many community organisations, NGOs and the business sector to ensure that this view becomes entrenched in the fabric of South African society.

The department structurally operates within six geographic regions. This means that some of the provinces have been lumped together to form one region. The six regions are Gauteng, Limpopo/Mpumalanga/North West, Free State/Northern Cape, KwaZulu-Natal, the Western Cape and the Eastern Cape.

Inmate profile

In March 2009, there were 165 230 inmates in correctional service centres, accommodated in 239 facilities throughout the country.

In June 2009, two facilities were closed for renovations. There are two private prisons in South Africa. Of the 239 centres, eight are female centres, 13 are for the youth, 130 are male centres and 86 are mixed (for both females and males).

Overcrowding

Overcrowding continues to pose a challenge and impacts on how the department functions and on its service delivery. At the close of the 2008/09 financial year, the department's facilities were overcrowded by 43,3% at an average cost of incarceration estimated at R123,37 per day.

In 2009, the actual capacity in the department's facility stood at 114 822 with 25 000 meant for awaiting-trial detainees and 89 822 earmarked for sentenced offenders.

Overcrowding has an impact on the provision of programmes in that officials are often not able to reach the targets they set. It puts constraints on building infrastructure and has created a shortage of beds, thus increasing the demand for more space. The department is implementing a strategy to address overcrowding.

The department partly manages overcrowding through the transfer of offenders between centres and releases resulting from sentence conversion. The construction of new centres should alleviate the pressure put on facilities and staff because of overcrowding.

There is an intersectoral team, the Management of Awaiting-Trial Detention Project and continued efforts to encourage the judiciary to use the Criminal Procedure Act, 1977 (Act 51 of 1977), to reduce overcrowding.

In March 2009, there were 49 477 awaiting-trial detainees and 115 753 sentenced offenders in the department's correctional centres.

Policy development

The Department of Correctional Services' guiding policy is the *White Paper on Corrections*, which was adopted by Cabinet in 2005. Since its adoption, the department has undergone various changes that included policy review and amendment of the Correctional Services Act, 1998 (Act 111 of 1998). By mid-2009, more than 44 policies had been reviewed and aligned to the White Paper. The department has also gone a step further to ensure implementation takes place. More than 400 officials have been trained on policy development and implementation.

Departmental achievements

Some of the department's achievements include the following:

- Between 2003 and 2009, the department was making progress in reducing the number of escapes.
- In 2008, Corrections Week was launched in Pretoria.

- In 2008, resolutions were taken and a pledge was signed to renew commitment for building a corrections community that will serve as a joint programme of action, at a stakeholder conference.
- Nineteen pharmacists were allocated to the department to undertake community service.
- Eleven computer-based training centres for offenders were established. The training forms an integral part of the subject Life Orientation within the National Curriculum Statement for grades 10 to 12 as well as the National Curriculum Vocation.
- In 2008/09, the former National Youth Commission trained 217 Adult Basic Education Training facilitators on National Qualifications Framework Level Five.
- During the 2008/09 financial year, 43 847 submissions for placement on parole, including placement under correctional supervision, were dealt with by the 52 national parole boards. Of the 48 967 cases that served before the boards, 41 677 were approved.

Improving service delivery

The focus of the department continues to be on improving service delivery and it has been enhancing a number of initiatives that will improve how it functions and enhance service delivery.

These include:

- Integrated Human-Resource (HR) Strategy
- Compliance Improvement Plan
- Risk-Management Framework
- key strategic projects
- Service-Delivery Improvement Plan
- security enhancement
- care and development of inmates.

Integrated Human-Resource Strategy

The department developed and launched the

Integrated HR Strategy in 2007/08 aimed at establishing a framework providing for effective work organisation, recruitment, retention and development of its employees. In 2008/09, this three-year strategy was in the implementation phase and was expected to be reviewed in the 2009/10 financial year. The department recognises personnel as a critical asset for the implementation of its mandate and seeks to serve as a unifying vision to develop the department as a learning organisation with a culture of respect, service and accountability. The focus areas include recruitment and retention, training and retraining, enhancing capacity to deliver, employee relations and wellness, organisational culture, career management and organisational design.

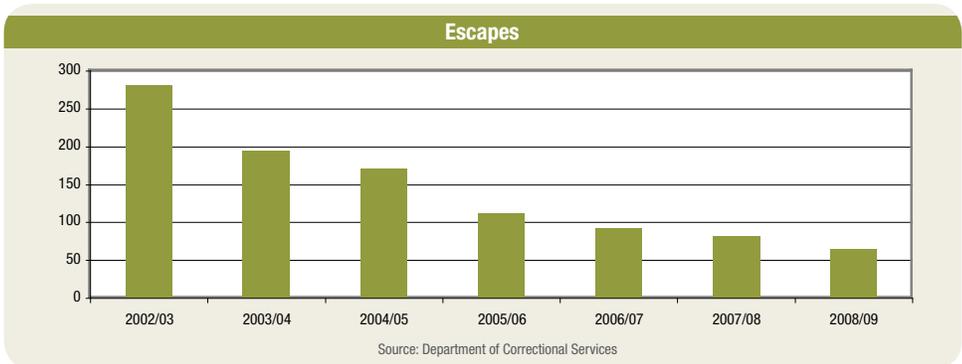
Compliance Improvement Plan

Since its inception in 2005/06, this plan has been used as a system to monitor the performance of management areas and centres on matters that have been recurring in the findings of the Auditor-General's reports.

Accountability has been built into the system by requiring regional offices to submit bimonthly certifications on the progress, which is made by different management areas under their jurisdiction.

These certifications are followed by inspections, which are quantified and recorded to monitor the performance trends of each management area and centre falling under it. Performance trends are used in the performance assessments of different regional and area commissioners. The results of these inspections are also used in quarterly progress reports to the department's Risk-Management Committee and Audit Committee.

Since 2006/07, the overall improvement in compliance had moved from 79% to 84% in 2007/08. The challenge of non-compliance has



entrenched itself over some time in the department but management is determined to change the situation around within a reasonable period. Compliance Improvement Plan inspections are monitored by the Risk-Management Committee.

Risk-Management Framework

The Risk-Management Committee, established in 2002, meets on a quarterly basis to assess the risks and progress on the mitigation of identified risk in the department. The Risk-Management Committee functioned effectively throughout the 2008/09 financial year and created a sound appetite for risk management.

Quarterly risk-mitigation reports generated from each meeting on the 2008/09 Significant and Prioritised Risk Profile were presented to the Executive Management Committee and focused on recommendations to enhance the mitigation of each risk.

The Risk-Management Committee will be focusing on the 14 prioritised risks of the 2009/10 Corporate Risk Profile.

Key strategic projects

The department has identified eight projects to deliver on its mandate as per the *White Paper on Corrections*. The aim of these projects is to prioritise objectives and deliver them within a period of one to 10 years. The projects identified are the following:

- infrastructure development: to procure and manage new facilities and maintain all facilities
- social reintegration: to strengthen the support system for the reintegration of the offenders into communities
- offender rehabilitation path: to conduct an analysis of the identified centres in terms of infrastructure, HR, policies, procedures and

budget to implement the offender-rehabilitation path requirements in the centres

- security enhancement: to improve the safety of offenders, personnel, service-providers and the public through improved safety and security
- management of awaiting-trial detainees: to improve the safety of remand detainees and Cabinet mandate proposals for strategic decision-making on the management of remand detainees in the department
- monitoring, evaluation and reporting: to develop a monitoring, evaluation and reporting system for the department
- seven-day establishment and job refinement: to provide HR capacity in the centres to align the department to the seven-day work week
- centres of excellence: to provide holistic, integrated and needs-based services aimed at producing socially responsible persons.

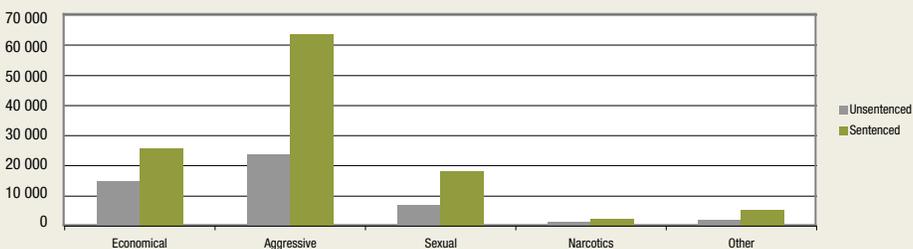
Other projects involve improvements in management and control over all critical challenges that could have a significant impact on rehabilitation. This is done through competent rehabilitation-orientated personnel who are recruited, trained, retrained and developed.

Service-Delivery Improvement Plan

The department identified service-delivery improvement projects, which rolled over in April 2009 and will continue until March 2012. They involve:

- improving the management of access of service-providers and other stakeholders to correctional centres
- improving telephones/switchboards at all service points
- managing the payment of bail and fines at correctional centres

Crime categories offenders in custody, 31 March 2009



Source: Department of Correctional Services

- improving the scheduling of visitations to offenders to support family ties between offenders and their families.

Enhancing security

Security continues to receive attention as one of the core pillars of the department's legal mandate.

As a continuation of the process of upgrading security at correctional centres, the installation of security fences with motion detection and CCTV monitors at 46 correctional centres were completed.

Special focus was also placed on ensuring adherence to security measures and procedures by staff through increased management interventions, security-compliance inspections and special security operations, which further contributed to a more secure environment with a further decrease in escape figures.

Care and development of inmates

The department continues to improve the health-care of inmates.

In 2007/08, four facilities were accredited for the provision of antiretroviral treatment, bringing to 16 the total number of facilities accredited.

The implementation of the Occupation Specific Dispensation for nurses will also ensure availability of suitably qualified nurses to take care of the health of inmates and assist in the retention strategy in relation to nurses.

In 2008, the department entered into a mass literacy programme partnership with the Department of Education to address illiteracy in the country. The programme is themed *Kha Ri Gude*, a Tshivenda expression meaning "let us learn".

By March 2009, 3 378 offenders in correctional centres countrywide were actively participating in the programme. The department also introduced the Early Childhood Development Programme in 2008 to the babies of incarcerated mothers. By March 2009, 27 babies aged between 0 to two years participated in the programme.

Acknowledgements

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BuaNews

Budget Vote, 2009

Commission on Gender Equality

Department of Correctional Services

Department of Justice and Constitutional
Development

Estimates of National Expenditure 2009, published
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Public Protector

South African Law Reform Commission

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