



JUSTICE AND CORRECTIONAL SERVICES

SOUTH AFRICA  
YEARBOOK  
2010/11

Government is committed to the independence of the judiciary and the rule of law.

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:

- coordinating the work of the Justice, Crime Prevention and Security (JCPS) Cluster
- 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)
- facilitating the appointment of magistrates and judges following recommendations of the Magistrates' Commission and the Judicial Services Commission (JSC)
- 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) and Legal Aid South Africa; and constitutional institutions such as the South African Human Rights' Commission (SAHRC), 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 was expected to increase

at an average annual rate of 13,4%, from R5,5 billion to R11,7 billion.

## 2010 FIFA World Cup™

The Department of Justice and Constitutional Development signed a guarantee to FIFA, committing to ensure that all justice-related requirements for hosting the 2009 FIFA Confederations Cup™ and the 2010 FIFA World Cup™ would be provided.

The 2010 FIFA World Cup™ Administration of Justice Operational Plan was developed by all stakeholders of the Integrated Justice System, which included the department, the NPA, Legal Aid South Africa and the judiciary.

The primary objective of the Administration of Justice Project was to fast-track all criminal matters emanating from the events and deal with these cases in a fast and efficient way, especially where foreigners were involved, either as a complainant/witness or an accused.

The plan included the elements that were required to contribute to South Africa hosting a successful World Cup. These were court infrastructure, personnel, court administration and court security.

There were 56 dedicated court rooms in the nine host cities and 37 district and 19 regional courts. The breakdown of court allocation per province was:

- Limpopo: four district and three regional courts
- Mpumalanga: three district and one regional court
- Eastern Cape: four district and two regional courts
- KwaZulu-Natal: four district and one regional court
- Western Cape: three district and one regional court
- North West: three district and one regional court
- Free State: two district and one regional court
- Northern Cape: one district and one regional court
- Gauteng: 13 district and eight regional courts.

The following number of court officials served in the dedicated courts:

- 110 magistrates
- 260 prosecutors from the NPA
- 10 legal aid attorneys from Legal Aid South Africa
- 93 foreign-language interpreters and 110 local-language interpreters

- 1 140 court officials
- 327 court orderlies from the South African Police Service (SAPS).

Through a legacy project of recruiting volunteers, a pool of about 290 unemployed youth members were trained in the accredited Customer Service Management Course. The Safety and Security Sector Education and Training Authority funded the project with R2,2 million.

The operation period for the courts and resources took place two weeks before, during and two weeks after the tournament.

The cases were dealt with in accordance with the South African law and the Constitution.

## **Legislation**

The department administers the Constitution, over 160 principal Acts and the Legislation Branch, which is responsible for conducting legal research and drafting legislation to promote a justice system that is simple, fair, inexpensive and responsive to the needs of South Africa's diverse communities.

The branch consists of three main components, namely the research activities of the South African Law Reform Commission (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. The following Acts were passed in 2009:

- The Constitution 16th Amendment Act of 2009 amended the Constitution of the Republic of South Africa, 1996, to redetermine the geographical areas of Gauteng and North West.
- The Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act 11 of 2009), aims to modify the customary law of succession so as to provide for the devolution of certain property in terms of the law of intestate succession. The Act also clarifies certain matters relating to the law of succession and the law of property in relation to persons who are subject to customary law.

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.

The Protection of Personal Information Bill is intended to give effect to the SALRC legislative recommendation relating to privacy and data protection. The Bill aims to introduce certain minimum conditions for

the lawful processing of personal information by public and private bodies.

An independent information-protection regulator will be established in terms of the Bill to ensure compliance with its provisions.

The Prevention and Combating of Trafficking in Persons Bill 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. The Bill will offer protection to the most vulnerable in society against highly organised crime syndicates.

The Protection from Harassment Bill is intended to prohibit harassing conduct, amounting to behaviour that could generally be considered as stalking, by providing a complainant with the right to approach a court for an order in terms of which the harassing conduct must be stopped.

The Criminal Law (Forensic Procedures) Amendment Bill is intended to strengthen the criminal forensic investigative powers and capacity of the SAPS by broadening its fingerprint database. It also seeks to establish a DNA database in line with constitutional imperatives.

The Legal Practice Bill is intended to rationalise the legislation regulating the legal profession. This profession is still regulated by different outdated statutes, which are in operation in various parts of the country. The Bill will not only enhance access to the legal profession for aspirant lawyers but will also enhance access to legal services, impacting positively on access to justice in general. Cabinet approved the Bill in May 2010.

The Superior Courts Bill is intended to rationalise the structure and functioning of South Africa's superior courts (the Constitutional Court, the Supreme Court of Appeal [SCA] and the high courts). An accompanying Constitution Amendment Bill is also required.

The Constitution Amendment Bill provides, among other things, for a single High Court of South Africa and for the Constitutional Court to be the apex court.

## **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
- 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.

Justice Sandile Ngcobo is the Chief Justice of South Africa, and Justice Dikgang Moseneke is the Deputy Chief Justice of the Constitutional Court. There are nine Constitutional Court judges, excluding the Deputy Chief Justice and the 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 other than constitutional matters. It consists of the President and Deputy President of the SCA, and 23 other judges of appeal. The SCA has jurisdiction to hear and determine an appeal against any decision of a high court. Justice Lex Mpati is the President of the SCA.

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.

### 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 high courts: the Eastern Cape High Court, Grahamstown; the Eastern Cape High Court, Port Elizabeth; the Eastern Cape High Court, Mthatha; the Eastern Cape High Court, Bhisho; the Free State High Court, Bloemfontein; the North Gauteng High Court, Pretoria; the South Gauteng High Court, Johannesburg; the KwaZulu-Natal High Court, Pietermaritzburg; KwaZulu-Natal High Court; Durban; the Limpopo High Court, Thohoyandou; the Northern Cape High Court, Kimberley; the North West High Court, Mafikeng; and the Western Cape High Court, Cape Town.

### Specialist high courts

The specialist high courts that exercise national jurisdiction are the Labour Court and the Labour Appeal Court situated in Bloemfontein, Gauteng, which adjudicate over labour disputes and hear labour appeals, respectively; the Land Claims Court, situated in Randburg, Gauteng, which hears matters on the restitution of land rights that people lost after 1913 as a result of racially discriminatory land laws; the Competition Appeal Court, situated in Cape Town, which deals with appeals from the Competition Tribunal; the Electoral Court, situated in Bloemfontein, which sits mainly during elections to deal with associated disputes; and the Tax Court, situated in Pretoria, which deals with tax-related matters, including non-compliance with tax obligations.

Decisions of the Constitutional Court, the SCA and the high courts are an important source of law. These courts uphold and enforce the Constitution, which has an extensive Bill of Rights binding all state organs and all persons.

The courts are also required to declare any law or conduct that is inconsistent with the Constitution to be invalid, and develop common law that is consistent with the values of the Constitution, and the spirit and purpose of the Bill of Rights.

### Circuit local divisions

These itinerant courts, each presided over by a judge of the provincial division, periodically conduct hearings at remote areas outside the seat of the High Court designated by the Judge President of the provincial division concerned. This is with a view to enhance access to justice.

### Regional courts

Regional courts are established largely in accordance with provincial boundaries with a regional court division for each province to hear matters within their jurisdiction. There are nine regional court presidents and 351 regional court magistrates.

Regional courts hear most serious matters, including murder and rape but excluding treason. The penal jurisdiction of regional courts were increased and, similarly to the high courts, regional courts may pass life sentences.

The regional courts will, by virtue of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008), adjudicate over civil disputes. In 2010, processes were 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, which was established by Act 14 of 2008. The purpose of the institute is to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts by providing judicial education for judicial officers.

In carrying out this function, the institute is primarily directed and controlled by the judiciary. The institute will provide education and training for aspirant and newly appointed judicial officers and ongoing legal education and training for experienced judicial officers.

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 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 increase access to justice.

### Magistrates' courts

The Minister of Justice and Constitutional Development may divide the country into magisterial districts and create regional divisions consisting of districts.

By mid-2010, the country was divided into 384 magisterial districts (18 subdistricts), 384 main magistrates' offices (18 detached courts), 79 branch courts and 235 periodical courts. The magisterial districts are still informed by the pre-1994 demarcations of the defunct self-governing states and the Republic of South Africa territory. Processes are underway to align the magisterial districts in accordance with the constitutional dispensation.

By mid-2010, there were 1 914 magistrates in the country, including regional court magistrates. Magisterial districts were 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 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.

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.

## **Other courts**

### **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 2009/10, the Department of Justice and Constitutional Development appointed 113 commissioners and 84 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 May 2010, there were 206 small claims courts. The department, in partnership with representatives of the legal fraternity and the Swiss Agency for Development and Cooperation, finalised manuals for commissioners of small claims courts and for court officials, to be followed by training programmes in conjunction with the Justice College.

The department aimed to establish an additional 60 new courts by the end of the 2010/11 financial year and a further 60 by the end of the 2011/12 financial year.

## **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 (Pepuda), 2000 (Act 4 of 2000), and the Employment Equity Act, 1998 (Act 55 of 1998). The two acts work in synergy. The Pepuda, 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.

On 28 August 2009, the Minister of Justice and Constitutional Development, Mr Jeff Radebe, designated the remaining magisterial districts as equality courts for their areas of jurisdiction.

The designation increased the number of equality courts to 386 nationally, making equality courts more accessible to communities. Following the designation, the department undertook a series of initiatives to strengthen and ensure effective functioning of the equality courts. These included provincial izindaba, and awareness and outreach programmes.

In the second quarter of the 2009/10 financial year, officials from the department conducted training for the advice centres based in rural communities in the Eastern Cape and Free State. This training continued to other provinces during the course of the 2010/11 financial year.

By mid-2010, the department engaged the SAPS to include equality training in its curriculum, enabling police officers to advise complainants and make more informed referrals.

The department also collaborated with the South African Broadcasting Corporation to conduct interviews on various radio sta-

tions in the 11 official languages. The intention was to reach more remote communities so that they could learn and understand the Pepuda, 2000.

The Act has been translated in all official languages.

The department is engaged in the Access to Justice and Promotion of Constitutional Rights Programme in partnership with the European Union (EU). The Equality Act, 1998 is one of the pieces of legislation that is going to benefit from the programme.

The EU has committed €25 million (about R250 million), which will be disbursed over a period of three years. Through this programme, 45 community advice centres are expected to be established across the country.

The primary purpose of these centres will be to educate the communities on their constitutional rights, the Service Charter for Victims of Crime and how to access the different courts, including the equality courts and the small claims courts.

### Traditional courts

There are traditional courts (formerly chiefs' courts) established at traditional community areas in rural villages. The judicial functions of traditional leaders are regulated in terms of sections 12 and 20 and the Third Schedule of the repealed Black Administration Act (BAA), 1927 (Act 38 of 1927).

The BAA, 1927 was repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act 28 of 2005). However, sections 12 and 20 and the schedule had been retained through a sunset clause until the enactment of the Traditional Courts Bill, 2008 on 30 December 2010.

### Community courts

South Africa has established community courts on a pilot basis to provide speedy resolution of certain types of community offences. These courts focus on restorative justice processes, such as diverting young offenders into suitable programmes.

These courts seek to assist 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.

The business community and other civil-society formations have contributed 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 (Lensa).

Lessons from the pilot sites will assist in finalising the policy and legislative framework that will institutionalise community courts as a permanent feature of the judicial system.

### 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.

### Pilot sites for 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:



The promotion of women's access to justice was one of the key messages by President Jacob Zuma at the national Women's Day celebration, on 9 August 2010, in East London. The opportunity was used to mark the coming into operation of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008). This law aims to effectively eradicate the concept of blacks-only divorce courts.

One of these courts was the King Williams' Town Black Divorce Court, which was established in 1929 under the Black Administration Act 1927 (Act 38 of 1927). The court served Africans from the areas that constituted the Western Cape, Northern Cape and the Free State.

Other similar courts established at the same time, which would be affected, were the Central Divorce Court in Johannesburg and the North Eastern Divorce Court in Durban.

From 10 August 2010, regional courts across the country adjudicate in all forms of civil claims, including divorce matters, regardless of the race of the person seeking assistance from the court.

- 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.

With the implementation of the Jurisdiction of Regional Courts Amendment Act, 2008 in August 2010, regional courts in South Africa also have jurisdiction to hear family-law cases, including divorce matters.

The department is no longer planning the building of new family courts, but is developing a policy to prioritise family-law services, which include domestic violence, maintenance, divorce and children's court matters, in all courts.

## 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.

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 (DPP) decides in which court a matter will be heard and may even decide on a summary trial in the High Court.

Prosecutions are usually summarily disposed of in 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.

## Sexual offences

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), provides a legal framework to support an integrated approach to the management of sexual offences, thereby aiming to reduce secondary trauma to victims of such violence.

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 Intersectoral 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 (DGs) of the relevant departments meet regularly to ensure coordination.

The functions of this committee are to develop the Draft National Policy Framework.

The first DG's Intersectoral Committee on the Management of Sexual Offences con-

vened on 17 February 2009. An operational intersectoral committee was established to support the work of the Intersectoral Committee of DGs at an operational level.

These departments ensure that there are specialised services to support the victims of crime during court processes. These include intermediary services, court-preparation services, forensic services, victim-friendly rooms and counselling, and are aimed at eliminating secondary traumatisation of victims.

The department has developed the *National Register for Sexual Offenders*, which was deployed to 195 courts.

## Maintenance

The main objective of the Maintenance Act, 1998 (Act 99 of 1998), is to facilitate the securing of maintenance moneys from parents and/or other persons able to maintain maintenance beneficiaries, mainly children, who have a right to maintenance.

Parents and/or guardians must maintain children in the proportion in which they can afford. Therefore, both parents and/or sets of families need to take responsibility for the maintenance of the child or children concerned.

Project Isondlo was a specific project launched by the Department of Justice and Constitutional Development to improve services in maintenance courts, for the purpose of facilitating the legal enforcement of maintenance for children.

The numbers of new applications and orders made by maintenance courts increased by 50% during the 2009 financial year. This is because Section 28(2) of the Constitution provides that a child's best interests are of paramount importance in every matter concerning the child. This includes maintenance and a decent standard of living.

The Maintenance Act, 1998 and maintenance courts provide support towards obtaining maintenance moneys for children, through the civil enforcement of maintenance orders, which can be obtained by way of an emoluments attachment order; a warrant of execution; and/or a warrant of attachment of a debt owed by the maintenance defaulter.

The courts have also started enforcing the attachment of a maintenance defaulter's pension moneys to ensure that maintenance moneys are paid before the maintenance defaulter can disappear, leaving the children stranded.

The Justice Deposit Account System (JDAS) was deployed to all offices that

administer third-party funds, especially maintenance and bail moneys.

This is an automated system derived from the manual card system.

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 the end of 2009, the JDAS was deployed to all 480 courts that serve as child-maintenance pay points.

## Electronic Funds Transfer (EFT)

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 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, 130 000 beneficiaries received their maintenance through the EFT system.

With the addition of the "payment anywhere" functionality of the JDAS, the EFT process was further enhanced whereby the JDAS transferred the beneficiaries' money directly into their bank accounts as soon as it was deposited. This reduced delays even further with beneficiaries receiving their money within 24 hours.

The pilot phase for this functionality was completed at four courts in the North West and by mid-2010 was ready to be deployed on a national basis.

## Domestic violence

The Department of Justice and Constitutional Development is committed to supporting and promoting the rights of victims of domestic violence, especially women,



The Department of Justice and Constitutional Development wants to promote access to justice through the use of indigenous languages as languages of record in courts. In 2010, the Indigenous Language Pilot Project was implemented at 27 district courts countrywide.

Between the inception of this project in April 2009 and May 2010, a total of 890 cases was heard by these courts in indigenous languages. The lessons learnt during the pilot project will inform the policy framework for language use in courts.

children and the elderly, through the courts and criminal-justice processes. It also ensures that victims of such crimes are assisted through the Victim Empowerment Programme (VEP), led by the Department of Social Development, which aims to improve their circumstances and quality of life.

Perpetrators of domestic violence should also be brought to court so that victims can be and feel more safe and secure.

During 2009/10, the department finalised a review of the implementation of the Domestic Violence Act, 1998 (Act 116 of 1998), in courts; and submitted the findings to the JCPS Development Committee, the VEP Task Team and the Portfolio Committee on Women, Children and People with Disabilities, which gave a mandate to the department to develop the JCPS Domestic Violence Strategy to link with the broader VEP.

By mid-2010, the draft document was in its initial consultation phases and expected to be finalised in the 2011/12 financial year. To achieve this, the JCPS Cluster mandated the department to chair a task team to draft the strategy.

## **Further services on domestic-violence matters**

Various government departments have put measures in place to facilitate the implementation of the Domestic Violence Act, 1998. For instance, resources have been made available for the development of policies and programmes; outreach and education; training; the hiring of personnel; the establishment of family court centres; and the 16 Days of Activism of No Violence Against Women and Children Campaign. The Department of Justice and Constitutional Development launched and circulated guidelines in conjunction with and to support the judiciary in 2008, drafted by the Lower Court Management Committee. Recommended updates were discussed with the judiciary in 2010/11.

The Ndabezitha Project with the NPA trains traditional leaders and clerks of the court in domestic-violence matters in rural areas.

This includes the development of a safety tool and intersectoral statistical tool by the NPA and the Department of Justice and Constitutional Development, which was expected to be concluded during 2010/11.

The department engaged in research methodology called, *The 10-Year Review of Implementation of the Domestic Violence Act, 1998* aimed at taking stock of all initia-

tives and projects in courts and the Criminal Justice System (CJS) to address the reduction and prevention of domestic violence.

Electronic forms and systems were developed and approved to be piloted at two magistrates' courts after which it would be rolled out to all magistrates' courts' service points to improve the handling of domestic-violence cases.

The department was in the process of developing a booklet called *No More Violence*, aimed at teaching role players at service points as well as victims how to alleviate domestic-violence matters and the impact of such crimes on their lives.

## **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 was established.

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.

Traditional courts may hear and determine civil claims arising from indigenous law and custom, brought before them by an African against another African within his area of jurisdiction.

## **Transforming the judiciary**

The transformation of the judiciary remains one of government's key priorities. Through the efforts of the JSC, by March 2010, of the 208 permanent judges, 41% (86) were white, 39% (82) were African, 10% (20) were coloured and 10% (20) were Indian. Overall, 25% were female and 75% male.

Significant strides have been made in respect of the magistracy. Through the efforts of the Magistrates Commission, during the same period, of the 1 914 magistrates, 44% were white, 40% African, 7% coloured and 8% Indian. Overall, 36% were female and 64% male.

The following pieces of legislation were enacted to advance the transformation of the judiciary and enhance access to justice:

- The Renaming of the High Courts Act, 2008 (Act 30 of 2008), which removed the pre-1994 names used during the apartheid era by which high courts were called.
- The Jurisdiction of Regional Courts Amendment Act, 2008, which seeks to extend civil jurisdiction to regional courts as part of the transformation of the magistrates' courts.
- The JSC Amendment Act, 2008 (Act 20 of 2008), which establishes internal systems for judicial accountability.
- The Child Justice Act (CJA), 2008 (Act 75 of 2008), which establishes a CJS for children who are in conflict with the law. This is in accordance with the values and rights of children enshrined in the Constitution and in light of the obligations undertaken by the country as a UN member state and signatory to the Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child.

The JSC Amendment Act, 2008 is essential for enhancing judicial accountability. Some of the key principles introduced by the Act are the Code of Judicial Conduct and the requirement for financial disclosure by judicial officers.

The code will serve as prevailing ethical standards for judicial officers and will, among other things, set the standard of behaviour of judicial officers, including the requirement to perform judicial functions diligently, impartially and expeditiously.

The disclosure of financial interest will ensure the impartiality of judicial officers and eliminate corruption within the judiciary.

These far-reaching amendments are consistent with the trends globally to enhance the independence of the judiciary and increase public confidence in the judicial system.

The department redrafted the Constitution Amendment Bill and Supreme Courts Bill to accommodate the views of the judiciary, which emanated from the Judges Conference held in July 2009.

These Bills, which seek to consolidate the outstanding aspects relating to the transformation of the judicial system, provide, among other things, for the:

- Constitutional Court to be the apex court in South Africa
- the Chief Justice as the Head of the Judiciary to be assigned the responsibility to develop and monitor the implementation and observance of norms and standards for the effective functioning of all the courts

- rationalising of the high courts to ensure that there is equitable distribution of superior courts through the entire country
- enhancement of the capacity of the Office of the Chief Justice to be commensurate with the added responsibilities of that office.

The Bills were submitted for processing during the 2010/11 financial year.

A significant feature of the transformation of the judicial system, which will be addressed in a later Bill, relates to court administration.

A policy framework was drafted to seek ways of enhancing institutional independence commensurate with the separation of powers and the independence of the judiciary, which are the pillars of South Africa's constitutional democracy.

The transformation of the judiciary is closely linked with the transformation of the legal profession and scholarship.

The department continues to work 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 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 townships, offering affordable fees and providing speedy and empathetic services.

It also entails facilitating access to all aspects and levels of the profession by

aspirant lawyers, especially 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.

## 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 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:

- 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 Integrated Case Management System (ICMS). This system spans all disciplines of cases administered in the justice environment.

The ICMS harvests from a number of core modules to perform basic functions such as information warehousing, case numbering and document scanning. The specific functionality for each court and office are then built around these foundations.

The following offices have already started to experience the benefits of the ICMS:

- masters offices (14 masters offices, 480 service points)
- National Register for Sex Offenders and Certificate Issuance System (195 offices)
- criminal lower courts (JDAS, including "payment anywhere", 487 offices)
- civil lower courts (480 offices)
- civil high courts (12 offices)
- small claims courts (430 offices).

By mid-2010, the following systems were in their pilot phase and soon to be deployed:

- Financial Disclosures System
- Digital Court Recording System
- Document Management System
- Transcription services
- Re Aga Boswa/Court Capacitation Programme
- Case-Reduction Backlog Project.

Between November 2006 and March 2010, the project received 20 151 cases and finalised 13 441 of them (66,7%).

## Court performance

The subbranch Court Performance of the Department of Justice and Constitutional Development 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.

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 and Court Capacitation projects
- facilitating the implementation of multilingualism in courts and the development of indigenous languages in line with constitutional imperatives
- 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, and supporting initiatives for the effective management of court records.
- 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 requires 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.

## **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 cause 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 where the proper procedures were not followed

## **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, which created a single NPA.

Also vital within the CJS was the formation of the Office of the NDPP, established on 1 August 1998.

The Office of the NDPP consists of deputy NDPPs, and special DPPs who head the specialised units – the Sexual Offences and Community Affairs Unit (Soca), the SCCU, Priority Crimes Litigation Unit (PCLU) and Office for Witness Protection (OWP).

These units were established through presidential proclamations relevant to their specific focus areas such as sexual offences, special commercial crimes and priority crimes litigation. The AFU was also created to ensure that the powers in the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), to seize criminal assets are used effectively to remove the profits of crime.

Legislation governing the prosecuting authority is the NPA Act, 1998 (Act 32 of

1998). The Constitution, read with this 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.

The NPA Amendment Act, 2008 (Act 56 of 2008), and the SAPS Amendment Act, 2008 (Act 57 of 2008), provided for the dissolution of the Directorate: Special Operations (DSO). The DSO and SAPS Organised Crime Unit became a single agency known as the Directorate: Priority Crime Investigation (DPCI), within the SAPS. 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 (NPS)

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 DPPs. DPPs head the respective regional jurisdictions, which are attached to the high courts of the country.

All the public prosecutors and state advocates manning the district, regional and high courts report to the DPPs in their respective areas of jurisdiction.

### Office for Witness Protection

The OWP was created in 2001, in terms of the Witness Protection Act, 1998 (Act 112 of 1998).

The OWP provides a support service to the CJS by protecting threatened or intimidated witnesses and related persons by placing them under protection, ensuring that they testify in criminal and other defined proceedings. The OWP has maintained a proud record of no witnesses or family members in the programme being harmed or threatened since the office was established.

### Asset Forfeiture Unit

The AFU was created in 1999 in terms of the Prevention of Organised Crime Act, 1998. The unit focuses on restraining and forfeit-

ing the proceeds of crime or the property used to commit 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 the decade since the AFU's establishment, it obtained 1 679 confiscation or forfeiture orders, totalling R1,136 billion. The AFU has an 85% success rate.

### 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 effectively prosecute complex commercial crime cases emanating from the commercial branches of the SAPS. 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.

### 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 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

Soca acts against the victimisation of vulner-

able groups, mainly women and children. The unit develops strategy and policy, and oversees the management of cases relating to sexual offences, domestic violence, human trafficking, maintenance offences and children in conflict with the law. Soca aims to:

- improve the conviction rate in gender-based crimes and crimes against children
- protect vulnerable groups from abuse and violence
- ensure access to maintenance support
- reduce secondary victimisation.

One of the unit's key achievements in ensuring government's commitment to the fight against sexual offences and gender-based violence is the establishment of Thuthuzela care centres (TCCs).

The TCC concept is recognised by the UN General Assembly as a "world best-practice model" in the field of gender-violence management and response. The TCCs are one-stop facilities located in public hospitals in communities where the incidence of rape is particularly high.

The TCCs aim to provide survivors with a broad range of essential services – from emergency medical-care counselling to court preparation – in a holistic, integrated and victim-friendly manner.

In May 2010, Minister Radebe launched the 21st TCC in Bellville, in the Western Cape. The department aims to establish 35 centres by 2025.

## 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.

There are voluntary associations of advocates such as the General Council of the Bar and other formations of independent bars. There are four regional societies for attorneys, each made up of a number of provinces. A practising attorney is *ipso jure* (by the operation of the law) 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 a voluntary association established to coordinate the various regional 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 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

In October 2010, Minister Radebe and five other Cabinet ministers co-signed a delivery agreement, renewing their commitment to and strengthening their partnership in eradicating crime. The ministers promised a transparent and coordinated approach in achieving Outcome Three: All People in South Africa Are and Feel Safe.

The delivery agreement forms part of the 12 outcomes approved by Cabinet in 2010 to improve performance and service delivery.

The JCPS Cluster intends to reduce crime by between 4% and 7%. This will be achieved through improved coordinated crime intelligence; increased visible policing and crime-prevention initiatives; reducing firearms; improved strategies to arrest and charge known perpetrators; and a reduction in the number of escapes from custody.

## Integrated justice system

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 aspect includes establishing proper governance structures, effective monitoring mechanisms based on proper review findings and the integration and automation of the justice system.

The IJS Board Programme comprises the following:

- The Transversal Subprogramme which focuses on the enablement of interdepartmental information exchange and clusterwide performance-management information services through the established IJS Transversal Hub.
- Six departmental subprogrammes which focus on the modernisation of system capabilities within departments. 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.

Projects undertaken in 2010 included:

- SAPS: The e-Docket Scanning Solution had been deployed to 244 police stations by the end of March 2010.
- SAPS: Identification services: 192 digital-capturing booths to capture full-body images, facial images and the capturing of exhibits and 170 live-scan devices to

- digitally capture fingerprints (replacing the old ink fingerprint process) were rolled out.
- Department of Correctional Services: The Automated Personal Identity System, which is a photo and fingerprint biometric capturing facility, was rolled out to 16 of the 17 major correctional centres.
- Department of Social Development: By mid-2010, Part A of the *Child Protection Register* was developed and in the process of being rolled out.
- Department of Social Development: The development of the diversion and conversion registers was completed and scheduled for roll-out in the 2010/11 financial year.

## **Child justice**

The CJA, 2008 came into effect in April 2010.

The Intersectoral Committee on Child Justice (ISCCJ), comprising government departments and non-governmental bodies, was established by legislation to support policy matters and operational challenges in managing children in conflict with the law.

The CJA, 2008 introduces a CJS for children under the age of 18 years who are in conflict with the law.

Such children who allegedly commit crimes, will be handled in terms of specific procedures. For example, a preliminary inquiry is held prior to the first court appearance and takes place within 48 hours of arrest.

The preliminary inquiry is more of a inquisitorial procedure than an adversarial procedure. The magistrate, the child, the parents, the prosecutor, the probation officer and the arresting officer are present at the preliminary inquiry. A legal-aid attorney may also be present. They examine the factors that may have influenced the child to commit the crime concerned and determine ways of assisting the child to acknowledge his or her wrongdoing.

If the child shows remorse, a plan is developed to address the crime in such a way that the child does not fall into a cycle of crime and violence.

The plan could involve a diversion option for an offence committed by the child, away from the mainstream CJS. The child may be ordered to attend, among other things, a life-skills, anger-management or substance-abuse programme as a way of addressing the underlying problem that led the child to commit the crime/s.

These diversion programmes form part of the sentencing options available to the magistrate and are provided for in Chapter 10 of the CJA, 2008. Sentencing options include:

- community-based interventions – diversion programmes
- restorative justice sentences, such as family-group conferences and victim-offender mediation
- fines or alternative fines, which may include symbolic restitution, payment of compensation or any other option that the court deems fit and proper
- sentences involving correctional supervision
- compulsory attendance of a non-custodial sanctions programme
- sentences of compulsory residence in a child and youth-care centre
- direct imprisonment.

The child's compliance with the diversion order is monitored and reported on back to court.

The Act balances the rights and responsibilities of the child offender, the victim, the family and the community. It takes into consideration the impact of the offence on the victim, by means of a victim-impact statement. The statement reflects the physical, psychological, social, financial or any other consequences of the offence for the victim.

This provision allows for a healing and conciliatory process to take place and further expands and entrenches the notion of restorative justice. It also makes it easier to facilitate the rehabilitation and integration of the child offender into society.

The Department of Social Development has 33 secure-care facilities for children awaiting trial countrywide and was expected to open six more in 2010/11. Government is planning to build a further 18 facilities during the next three financial years.

Apart from the provisions of the CJA, 2008, children's interests are also protected in the Children's Act, 2005, (Act 38 of 2005), and the Sexual Offences Act, 2007 (Act 32 of 2007).

Government received R30 million to implement the CJA, 2008 during 2010/11. This will be used to appoint dedicated child-justice court clerks, prosecutors, legal-aid child attorneys, and for training and awareness campaigns.

## **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.

Two one-stop child-justice centres have been established in Port Elizabeth and Bloemfontein. Port Nolloth is mainly used as a crime-prevention centre by the Department of Social Development. With the implementation of the CJA, 2008, the various cluster departments have drafted guidelines on the establishment and management of one-stop child-justice centres, which were expected to be submitted to the ISCCJ, for approval during 2010.

With the implementation of the CJA, 2008, the departments 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.

During 2002, an average of 2 269 children were awaiting trial each month in prisons. This decreased to an average of 1 192 a month during 2007. In June 2010, only 297 children were awaiting trial in prisons.

## Implementation of the Children's Act, 2005

Child Protection Week during May 2010 marked the launch of the Children's Act, 2005, which came into effect on 1 April 2010. The Act sets out to:

- promote the preservation and strengthening of families
- give effect to certain constitutional rights of children
- give effect to the country's obligations concerning the well-being of children in terms of binding international instruments
- provide for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children
- strengthen and develop community structures, which can assist in providing care and protection for children
- protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards
- provide care and protection for children in need
- recognise the special needs of children with disabilities

- generally promote the protection, development and well-being of children.

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 believes that approaching the courts should be a measure of last resort. The department started consultations with the relevant role players in this regard in mid-2010.

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 this 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.

As defined by the JCPS Cluster, the restorative-justice concept is an approach to justice that aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families concerned and community members) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution and taking measures to prevent a recurrence of the incident. This may be applied at any appropriate stage after the incident.

Alternative dispute resolution is defined as the disposal of disputes outside the formal court proceedings. The processes and mechanisms may or may not include the restorative-justice approach.

Restorative-justice strategies, programmes and processes in the CJS are in place to try to heal the harm caused by the crime or offence, from a holistic point of view, for the victim, the offender and the community concerned, which will lead towards rebuilding broken relationships and encourage social justice and social dialogue.

Any restorative-justice option, which may include but not be limited to victim-offender mediation or a family-group conference, is always voluntary for the victim involved.

Therefore, such programmes and/or strategies will not be forced upon the victim of any crime or offence.

The JCPS Restorative-Justice Task Team, under the chair of the Department of Justice and Constitutional Development, drafted the Restorative-Justice Strategy during 2009/10, which has been approved in principle by the JCPS Development Committee; and will be submitted to the JCPS directors-general for ratification during 2011.

These documents will be consulted further with national government departments, especially relating to the implementation strategy and costing; and with civil society and non-governmental organisations concerned. Regular reports will be submitted on progress with implementation of the strategy.

## **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 department appointed intermediaries in regions to assist child witnesses in presenting evidence in court.

The Service Charter for Victims of Crime is expected to go a long way towards assisting crime victims and contributing to inter-departmental and cluster coordination and cooperation.

## **State Legal Services**

The Office of the Chief Litigation Officer is responsible for coordinating state litigation through the offices of state attorneys countrywide.

The office ensures the reliable, cost-effective and efficient management of state litigation, advice and representation service to the State and its organs. It comprises the State Attorney, Legal Services and Civil Litigation Unit.

## **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)**

South Africa was one of the proponents of the negotiation and adoption of the Rome Statute of the ICC in 1998, creating the first permanent international criminal tribunal to combat impunity for the most serious crimes of concern to the international community, namely crimes of genocide, crimes against humanity, war crimes and the crime of aggression.

South Africa promulgated the Implementation of the Rome Statute of the ICC Act, 2002 (Act 27 of 2002). The 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.

South Africa participated in the Review Conference of the ICC held in Kampala, Uganda, from 31 May 2010 to 11 June 2010.

## Services of the Master of the High Court

The Office of the Master remains one of the key service-delivery programmes as it impacts on the vulnerable members of society. The department provides appropriate skills to the staff in the masters' offices to improve turnaround times.

The Department of Justice and Constitutional Development provides for the following services of the Master of the High Court:

- 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 some 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 Health-care Act, 2002 (Act 17 of 2002), came into effect, repealing the Mental Health Act, 1973 (Act 18 of 1973).

The 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 fideicommissary 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.

The computerisation of the administration of the Guardian's Fund allows for more accurate reporting on the activities of the fund and reduces the opportunity to manipulate the system for purposes of committing fraud and corruption.

The department aims to ensure that 80% of the beneficiaries receive their entitlements within 40 days of submitting their applications from the Guardian's Fund.

## **Justice College**

The Justice College is the training branch of the Department of Justice and Constitutional Development. It has a range of training interventions, which target magistrates; prosecutors; masters of the High Court; family advocates; court interpreters; legislative drafters; registrars of the High Court; clerks; court and area court managers; administration personnel; and other legal professionals.

The college has evolved into two distinctive institutions with the coming into effect of the South African Judicial Education Institute Act, 2008.

The training offered by the college assists in capacitating Department of Justice and Constitutional Development officials both in terms of the acquisition of knowledge, as well as the demonstration of requisite skills in the workplace.

## **Office of the Family Advocate**

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

This is achieved through monitoring pleadings filed at court, conducting enquiries, filing reports, appearing in court during the hearing of the application or trial, and 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 which 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 participate in, and consult on, decisions affecting them have been entrenched and the Family Advocate is the mechanism whereby the voice of the child is heard.

## **Truth and Reconciliation Commission Unit**

The TRC was dissolved in March 2002 by way of proclamation in the *Government Gazette*. 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.

The TRC identified 21 769 people as victims of human-rights violations. Of the total identified victims, 16 837 applied for reparations. By May 2010, 15 956 beneficiaries had been paid once-off grants of R30 000 as a final reparation.

These payments 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 difficulties tracing some of the beneficiaries because of incorrect or changed addresses, or in some cases where the victims had died.

By May 2010, there were 881 outstanding beneficiaries of whom 219 were deceased and the President's Fund was attempting to establish their rightful next of kin. Government continues to search for the remaining beneficiaries.

## **Regulations status report**

Regulations providing for assistance relating to exhumations, reburials and symbolic burials were published in the *Government Gazette* in May 2010, which was also the date of commencement.

The objective of these regulations is to assist relatives of the missing persons who were reported to the TRC in respect of:

- transport, travelling and subsistence allowances in connection with exhumation
- assistance in respect of application for orders presuming the death of missing persons.

By May 2010, a total of 65 bodies had been exhumed and the TRC Unit had handed over 37 remains of exhumed individuals to their families for proper and dignified reburial.

## **Statutory bodies operating within the administration of justice**

### **Judicial Service Commission**

The JSC was established in terms of Sec-

tion 178 of the Constitution, and its function is to select fit and proper persons for appointment as judges and to investigate complaints about judicial officers. It also advises government on any matters relating to the judiciary or to the administration of justice.

When appointments have to be made, the JSC publishes a notice giving details of the vacancies that exist and calls for nominations. It 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 interviews are conducted in public, after which the JSC deliberates and makes its decisions in private. Its recommendations are communicated to the president, who then makes the appointments.

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.

## **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.

In terms of the Magistrates Act, 1993, the minister appoints a magistrate after consultation with the Magistrates' Commission. The commission also investigates grievances and complaints about magistrates and submits reports and recommendations to the minister, who in turn tables them in Parliament.

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), and advises government

on law reform. The SALRC is appointed by the President on the recommendation of the Minister of Justice and Constitutional Development.

It is chaired by a judge of the Superior Court and consists of members drawn from the judiciary, legal profession and academic institutions.

The SALRC conducts research with reference to all branches of the law to make recommendations to government for the development, improvement, modernisation or reform thereof. This includes the following functions:

- repealing obsolete or unnecessary provisions
- removing anomalies
- bringing about uniformity in the law
- consolidating or codifying any branch of the law
- making the common law more readily available.

### **Rules Board for Courts of Law**

The Rules Board for Courts of Law (Rules Board) is a statutory body, 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.

The Rules Board is constituted by experts in the procedural law drawn largely from the judiciary, the legal profession and academic institutions.

The Rules Board has an important role in ensuring that rules of procedure are simplified to promote easy access to justice.

### **South African Board for Sheriffs**

Sheriffs are officers of the court appointed in terms of Section 2 of the Sheriffs Act, 1986 (Act 90 of 1986), to serve and execute court processes and court orders. Sheriffs serve and execute civil-court processes against payment of a fee in accordance with the tariffs determined from time to time by way of rules of courts made by the Rules Board for Courts of Law.

The sheriffs are regulated by the South African Board for Sheriffs, appointed by the minister in terms of the Act.

The sheriffs' profession is one of the institutions that requires attention in terms of transformation. By March 2010:

- Of the 518 sheriffs, 71% were white, while 29% were black. Women constituted 14% of all sheriffs. This reflected a slight

change from the 84% white and 16% black ratio in 1994.

- Of the 904 deputy sheriffs, 62% were white and 38% were black.
- In the Northern Cape, all sheriffs were white, despite the fact that the province is mainly populated by coloured people.

Some of the policy initiatives undertaken by the department to transform the sheriffs' sector are:

- drafting amendments to the sheriffs' regulations to establish objective criteria for the appointment of sheriffs
- developing and implementing progressive measures to ensure that communities living in underdeveloped areas have equal access to the services of a sheriff to enjoy the equal benefit and protection of the law as required by the Constitution
- modernising the civil-justice system
- implementing training and capacity-enhancement programmes to establish an accountable and competent sheriffs' profession that respects and protects human rights and Batho Pele.

### **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 legal practitioners, and outsourcing to private lawyers (a system of judicature) and cooperation 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.

During the 2009/10 financial year, Legal Aid South Africa provided legal services at all criminal courts through its 64 justice centres and 63 satellite offices. During this period, Legal Aid South Africa delivered legal services in 416 149 new legal matters, which included assistance in 387 121 criminal legal matters and 29 028 civil legal 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 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.

## **Constitutional commissions**

### **South African Human Rights Commission**

The SAHRC is a national institution that derives its powers from the Constitution and the SAHRC 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 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 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
- the Civil-Society Advocacy Project.

The SAHRC has established standing committees to advise and assist it in its work. The SAHRC has also established provincial offices to ensure its services are widely accessible. The SAHRC continues its collaboration with the SADC region.

### **Public Protector**

The Public Protector is appointed by the President, on the recommendation of the National Assembly, in terms of Chapter Nine of the Constitution, 1996. The Public Protector is required to be a South African citizen who is suitably qualified and experienced and has exhibited a reputation for honesty and integrity.

The Constitution also prescribes the powers and duties of the Public Protector. Further powers, duties and the execution thereof are regulated by the Public Protector Act, 1994 (Act 23 of 1994).

Section 181 of the Constitution ensures that the Public Protector is subject only to

the Constitution and the law. He/she must be impartial and must exercise his/her powers and perform his/her functions without fear; favour or prejudice. No person or organ of state may interfere with the functioning of the Public Protector's office.

The Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.

Following such an investigation, the Public Protector has to report on the conduct concerned and he/she can take appropriate remedial action. Additional powers and functions are provided for by the Public Protector Act, 1994.

The Public Protector may not investigate court decisions. He/she must be accessible to all persons and communities. Other organs of state must assist and protect the institution to ensure its independence, impartiality, dignity and effectiveness.

The Public Protector is neither an advocate for the complainant nor for the public authority concerned. He/she ascertains the facts of the case and reaches an impartial and independent conclusion on the merits of the complaint.

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

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 powers and functions of the CGE are:

- 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.

On 1 July 2009, the President, in terms of Section 97 of the Constitution of the Republic of South Africa, 1996, transferred the administration, powers and functions entrusted under the CGE Act, 1996 (Act 39 of 1996) to the Minister of Women, Children and Persons with Disabilities.

## **Department of Correctional Services**

The Department of Correctional Services aims to contribute to a just, peaceful and safe society, by detaining inmates in safe custody, while maintaining their human dignity, developing their sense of social responsibility and promoting the general development of all inmates and persons subject to community corrections.

### **Policy development Correctional Services Amendment Act, 2008 (Act 25 of 2008)**

The Correctional Services Amendment Act, 2008, was gazetted on 11 November 2008. This followed a series of consultations with stakeholders to ensure broad representation by all concerned.

The amendments included substitution, amendment or deletion of certain definitions; further provisions for the manner in which correctional centres are managed; authorisation of the National Council for Correctional Services to determine, under certain conditions, the period before an offender may be placed on parole; further provision for matters relating to correctional supervision, parole boards and the Judicial Inspectorate; and provided for compliance management and monitoring of relevant prescriptions, a departmental Investigation Unit and a unit dealing with disciplinary procedures.

### **The White Paper on Corrections**

The *White Paper on Corrections* in South Africa is the principal strategic document aimed at directing the management and service provision of the department over the next 20 years and beyond.

The White Paper also sets objectives against which the people of South Africa can measure the department's performance and service delivery.

The White Paper represents the final fundamental break with a past archaic penal

system and ushered in a start to the Second Decade of Freedom where prisons became correctional centres of rehabilitation, and offenders are given new hope and encouragement to adopt a lifestyle that will result in them having a second chance to become law-abiding South African citizens.

By mid-2010, over 79 policies had been reviewed and aligned to the *White Paper on Corrections*.

### **Work of statutory bodies National Council for Correctional Services (NCCS)**

The NCCS is an advisory board with the primary aim of guiding the Minister of Correctional Services in developing policy relating to the correctional system and the sentence-management process.

In addition to this advisory function, the NCCS serves as the recommending institution to the minister in relation to parole decisions for offenders sentenced to life imprisonment. The NCCS also serves as the parole-review mechanism and meets as the Correctional Supervision and Parole Review Board.

The NCCS completed the review of the Medical Parole Policy of the department in January 2010 and presented a draft policy and recommendations to the minister. The minister convened a discussion in January 2010 to discuss the recommendations of the NCCS.

In October 2010, Cabinet approved the Correctional Matters Amendment Bill, 2010 and the draft *White Paper on Remand Detention*.

The Bill seeks to improve the administration of three key areas of corrections, namely medical parole; the parole system in general; and the management of remand detention.

The provisions of the Act limits the granting of medical parole to sentenced offenders who are in the final phase of terminal illness, putting pressure on already limited financial and HR required for meeting the healthcare needs of inmates. The new Medical Parole System will balance the medical condition of the inmate against the risk posed to society should such inmate be placed on medical parole.

### **Judicial Inspectorate of Correctional Services (JICS)**

The JICS was established in 1998, with the statutory objective to facilitate the inspection of correctional centres so that the inspecting judge may report on the treatment of

inmates and on conditions in correctional centres. The JICS is an independent office.

The Department of Correctional Services continues on its path to promote and give effect to the values of transparency, equality and fairness, as set out in the Constitution.

## Key departmental projects and programmes

### Imbeleko Project (women and children in correctional facilities)

As at March 2010, there were 129 infants and young children in detention with their mothers.

The department launched the Imbeleko Project, which seeks to provide a home-like environment in centres for children below the age of two. It also seeks to place children of two years of age and above outside correctional facilities with sustainable family structures.

The strategy of Imbeleko places babies out of correctional facilities and into the care of relatives or willing community members and improves the conditions of those living in correctional facilities by converting the “prison” environment into a child-friendly environment where babies are accommodated with their mothers.

The objectives of the project are aligned with those of the UN Convention on the Rights of the Child. The first phase of the Imbeleko Project was rolled out across all regions. This entailed the creation of a safe, humane and friendly environment for mother-child interaction.

The implementation of the first phase created an opportunity for the department to create partnerships with other stakeholders in working together to rehabilitate.

The second phase will focus on finding alternative placement for children older than two years, outside correctional facilities.

### Offender labour

Offenders continue to be awarded opportunities to participate in community development projects by providing offender labour. In an effort to enhance the utilisation of the available resources, the Department of Correctional Services has engaged various stakeholders to involve offenders in mainstream activities that could lead towards poverty alleviation within communities.

The aim of engagement was to formulate a relationship with other government departments and stakeholders so that they consider offenders as an available workforce, that can be used as some sort of reparation and pay-back to the communities they have

offended. The department has developed a draft concept document on the utilisation of offenders in meaningful work activities.

The document aims to regulate the external hiring of offenders to participate in community projects. The involvement of offenders in community projects or activities is of fundamental importance in their rehabilitation and reintegration process.

### Ministerial Task Team on Categorisation of Inmates

The ministerial task team is an independent team appointed by the minister in February 2010 to conduct an audit of certain categories of inmates within the correctional facilities.

Statistics will be collected and trends, shortcomings and best practices will be identified. The audit will assist the department to address the current state of over-crowding within facilities.

The task team audits the following categories of inmates:

- unsentenced inmates awaiting trial
- sentenced inmates – placement of certain categories of inmates on parole, correctional supervision, or the conversion of sentences to correctional supervision
- vulnerable inmates (mothers with babies, mentally ill and elderly inmates).

### Strategic priority areas

The department's strategic priority areas include:

- Improved rehabilitation and reintegration of offenders: A draft project charter was developed, as well as draft action plans for the respective work streams. The key elements of improved rehabilitation and reintegration of offenders lie in the implementation of the correctional sentence plans, the responsibilities of case-management committees and parole processes, and the refinement of job functions of correctional officials that has been part of the Occupation Specific Dispensation (OSD) process.
- Improved Remand Detention Management System: Development of the system is a departmental and cluster priority and the policy framework has been put in place. In 2009/10, the department signed the Bail Protocol with the Minister of Justice and Constitutional Development and the Minister of Police. The agreement will ensure that inmates who committed petty crimes and cannot afford bail are diverted to alternative programmes. In 2010/11, the department expected to finalise the

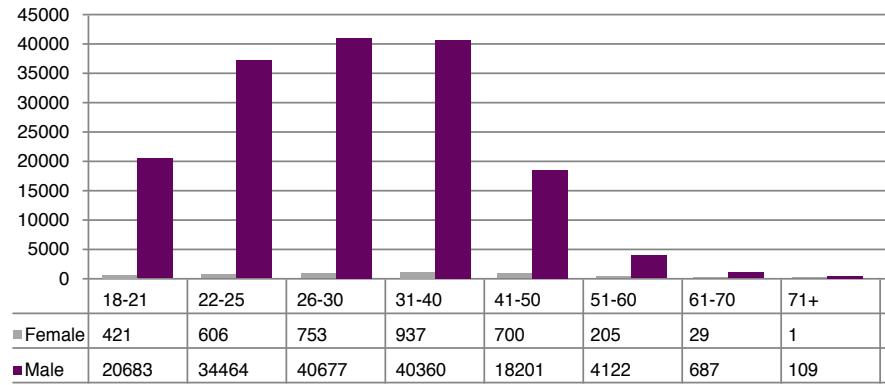
- setting up of the Remand Detention Branch and to have it fully functioning.
- Enhanced internal and public safety and security: Operation Vala is a flagship campaign which focuses on tightening security during December. The numbers of security incidents over the past five years during this time of the year was reduced significantly. In 2009/10, there was an increase against the security performance indicators when compared with the Operation Vala of the previous financial year.
  - Improved stakeholder relations: The work of the department towards establishing an all-Africa corrections body saw results with the launch in September 2008 of the Africa Correctional Services Association (ACSA). South Africa was appointed secretary of ACSA and the department has been actively involved in the SADC substructures, including interaction with counterparts on transferring foreign offenders to their countries of origin.

## Achievements

The Department of Correctional Services' achievements include:

- The Seven-Day Establishment has been implemented. It has enabled the department to comply with Section 8(5) of the Correctional Services Act, 1998 (Act 11 of 1998), which prescribes intervals between meal times for offenders. The implementation of a shift system as a component of the Seven-Day Establishment has made more time available in day programmes within correctional centres. This enabled
- more rehabilitation activities to be implemented, as well as improved offender labour programmes. The shift system also allows for compliance with legislation on basic conditions of employment as adequate rest time is available to personnel.
- Implementation of the OSD was delivered within budget. The OSD allows for improved career pathing for professions within the department. Another consequence of implementing this system of remuneration was the migration of qualified personnel to the coalface of service delivery, thereby distinguishing between administrative officials and those working with the correction of offenders.
- The department continues to win the war on fraud and corruption:
  - the anti-fraud and corruption capacity of the department is rated as the third most efficient of departments audited by the Department of Public Service and Administration
  - the measures put in place resulted in an 89% conviction rate during the 2009/10 financial year
  - R2,5 million was recovered from a R4,5-million debt owed by officials who were found guilty of defrauding the department's medical aid scheme.
- The Minister of Correctional Services, Ms Nosiviwe Mapisa-Nqakula, launched the department's Service-Delivery Charter in 2010. The charter confirms that the department will provide high-quality professional services that are responsive to all service recipient needs.

Sentenced offender statistics per age group and gender as at 31 March 2010



Source: Department of Correctional Services

- In 2009/10, the department reduced overcrowding by 4%. The reduction was a result of efforts within the department and across the JCPS Cluster, such as the completion of a new correctional centre in Kimberley, the signing of bail protocols and the application of diversion sentences in terms of the Criminal Procedure Amendment Act, 2008, by heads of correctional centres. The latter contributed to a significant drop in the number of children awaiting trial. Furthermore, a process of reclassifying some offenders reduced the number of maximum security offenders by 12%.
- Two correctional centres, namely Boksburg and Krugersdorp, were accredited to provide antiretroviral treatment to offenders, bringing the total number of such facilities across the country to 21.
- Altogether, 138 correctional officials participated in the 13th World Police and Fire Games (WPFG) held in Vancouver, Canada. The department has expressed interest in hosting the 2017 WPFG. The games attract thousands of officials from 80 countries and present about 70 different sporting codes. South African correctional officials are the gold medallists in athletics and rugby, and the athletes returned home with 216 medals.
- The department has, in partnership with the Department of Basic Education, initiated an Early Childhood Development (ECD) programme for babies and toddlers who are incarcerated with their mothers. The programme recruits unemployed community members and parolees and trains them as ECD practitioners. The ECD qualification will empower the beneficiaries with a qualification equivalent to National Qualification Framework levels four and five.
- The Pre-Adult Basic Education and Training Programme, also in partnership with the Department of Basic Education, is a mass literacy campaign that involves illiterate offenders. Volunteers from the community are recruited and trained as literacy facilitators.
- Eleven computer-based training centres for offenders were established. Computer-based 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. The department completed and implemented the national project to align presentation of the curricula with national requirements.

## Inmate profile

In March 2010, there were 164 793 inmates in 239 correctional service centres throughout the country.

Two facilities were closed in mid-2010 for renovations.

There are two private prisons in South Africa. Of the 239 correctional centres, eight are female centres, 13 are for the youth, 130 are male centres and 90 are mixed (female and male).

## Overcrowding

Overcrowding in the department continues to pose a challenge and impacts how the department functions and on its service delivery. At the close of the 2009/10 financial year, the department's facilities were overcrowded by 39%. The average cost of incarceration per offender per day was estimated at R123,37.

By mid-2010, the actual capacity in correctional facilities stood at 114 822 with 25 000 meant for remand detainees and 89 822 earmarked for sentenced offenders.

Overcrowding has an impact on the provision of programmes in that officials are often unable to reach the targets they set. It puts constraints on building infrastructure and creates a shortage of beds, thus increasing the demand for more space.

The department is working on a strategy to address overcrowding. It manages overcrowding partly through the transfer of offenders between centres and through releases resulting from sentence conversions. The construction of new centres should furthermore alleviate the pressure put on facilities and staff.

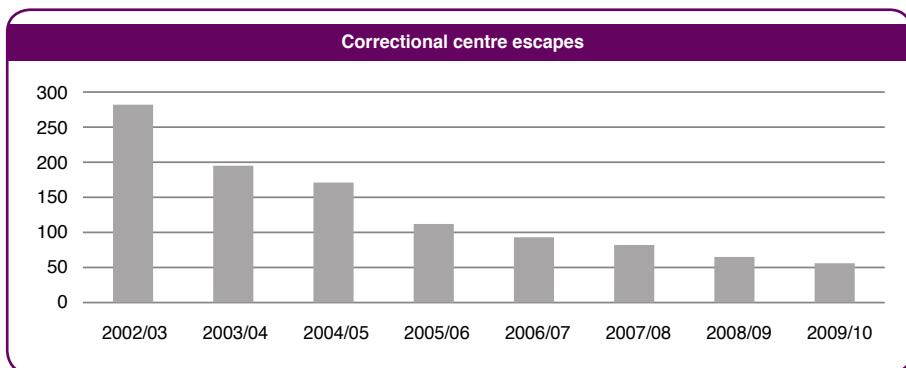
The intersectoral Management of Awaiting Trial Detention Project involves all the departments in the criminal justice sector. There are continued efforts to encourage the judiciary to utilise the Criminal Procedure Amendment Act, 2008 (Act 65 of 2008), with the view of reducing overcrowding.

In March 2010, there were 162 955 sentenced offenders in the department's correctional centres, of whom 159 303 were male and 3 652 were female.

## Service delivery

The focus of the department continues to be on improving service delivery and in 2009/10, the department strengthened a number of initiatives that will improve how the department functions and improve service delivery. These include:

- The Integrated Human-Resource Strategy: The department developed and



Source: Department of Correctional Services

launched the strategy in 2007/08 for effective work organisation, recruitment, retention and development of employees. In 2010, the three-year strategy was being implemented and will be reviewed.

- The 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 Auditor-General's reports. Delivery on the management of compliance is tracked on an annual basis with the Compliance Improvement Plan as a strategic focus area.
  - The Risk Management Framework: Significant progress has been made in the identification of risk indicators and mitigation plans. In mid-2010, the Risk Management Committee was in the process of developing indicators to assist in tracking the mitigation progress.
  - The Service Delivery Improvement Plan (SDIP): The department identified four key services to form the basis of the SDIP for 2009/10 to 2013/14. These are integrated into the department's strategic and operational plans. Regions report progress on a quarterly basis.
- They are:
- improving access of service-providers and other stakeholders into correctional centres
  - improving telephone and switchboard etiquette at all service points
  - managing the payment of bail and fines at correctional centres
  - improving the scheduling of visitations to offenders to support family ties between offenders and their families
  - Security enhancement: Security continues to receive priority attention as one of the core pillars of the department's legal mandate. Escapes from the Department of Correctional Services' centres have over the last 10 years shown a downward trend. The highest recorded number of escapes in 10 years was in 2002/03. The department escalated its measures to improve security and this included security operations, technological installations, policy developments and training of personnel. The decrease in escapes can partly be attributed to these initiatives.
  - Care and development of inmates: The department continues to improve the healthcare of inmates. The implementation of the OSD 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.

## Acknowledgements

*Beeld*  
BuaNews  
Budget Vote, 2010  
Department of Correctional Services  
Department of Justice and Constitutional Development  
*Estimates of National Expenditure 2010*, published by National Treasury  
South African Law Reform Commission

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