



# Justice and Correctional Services

The Department of Justice and Constitutional Development (DoJ&CD) derives its legislative mandate from a number of different Acts, which cover all the categories of the department's functions. These include:

the establishment and functioning of the Superior Courts, Magistrates' Courts and Specialised Courts; the appointment of judges and other judicial officers, their conditions of service, discipline and training; the establishment and functioning of the National Prosecuting Authority (NPA), the Special Investigating Unit (SIU) and the Asset Forfeiture Unit (AFU), the conduct of criminal proceedings, the investigation of organised crime and corruption, and the forfeiture of assets obtained through illicit means; the establishment and functioning of bodies responsible for legal aid, law reform and rule making; the appointment of masters of the high courts and the administration of the Guardian's Fund and deceased and insolvent estates; the regulation and provisioning of legal advisory services to government departments; the promotion, protection and enforcement of certain human rights; the protection of vulnerable groups; and support to Chapter 9 institutions.

The strategic goals of the department relate to ensuring safer communities, fighting corruption and enhancing accountability for all people in South Africa to feel and be safe (Outcome 3).

The department aims to strengthen its leadership role and ensure the effective coordination of the justice, crime prevention and security (JCPS) cluster in the delivery of this outcome.

The department facilitates the effective and efficient resolution of disputes by providing accessible, efficient and quality administrative support, thereby improving the finalisation rates of cases; helping to clear the backlogs of criminal, civil and family matters by the courts and justice service points; providing access to quality guardian and probate services for citizens; and giving the state better access to legal

The DoJ&CD directs its attention to the provision of effective and cost efficient State legal services that anticipate, meet and exceed stakeholder needs and expectations, thereby reducing the exposure of government to legal risk.

The developmental function of the department is to promote the ability of citizens to exercise their constitutional rights by assisting other departments to comply with the Promotion of Administrative Justice Act 3 of 2000.

The strategic goal of the NPA is to improve the delivery of justice for victims of crime.

## Department of Justice and Constitutional Development

The DoJ&CD's mandate from the Constitution provides a framework for the effective and efficient administration of justice and to promote constitutional development through the development and implementation of legislation and programmes to advance and sustain constitutionalism and the rule of law. At the same time, the department also provides an enabling environment for the judiciary and constitutional institutions to exercise their constitutional powers and functions freely and independently.

### Legislation and policies

In January 2015, the Minister of Justice and Correctional Services introduced the Judicial Matters Amendment Bill in Parliament which intends to enhance organisational efficiency and improve the application of different Acts of Parliament that fall within the justice portfolio.

The amendments contained in the Bill are mostly technical in nature and their impact collectively will contribute to an improved administration of justice.

Some amendments will also bring about cost savings. Others will eliminate prevailing uncertainties that have been identified in practice, while others will give impetus to the independence of the Office of the Chief Justice.

The department administers the Constitution and over 160 principal Acts.

The categories of functions emanating from different legislative instruments relevant to the department are:

- Legislation providing for the establishment and functioning of the Superior courts, Magistrates' courts and Special courts: the Constitutional Court Complementary Act, 1995 (Act 13 of 1995), the Supreme Court Act, 1959 (Act 59 of 1959), the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the Small Claims Court Act, 1984 (Act 61 of 1984).
- Legislation providing for the appointment of judges and other judicial officers, the conditions of service, discipline and training: the Judges Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001), the Judicial Service Commission Act, 1994 (Act 9 of 1994) as amended, the South African Judicial Education Institute (SAJEI) Act, 2008 (Act 14 of 2008), and the Magistrates' Act, 1993 (Act 90 of 1993).
- Legislation providing for the establishment and functioning of the National Prosecuting Authority, the Special Investigating Unit and the Asset Forfeiture Unit; the conduct of criminal proceedings; the investigation of organised crime and corruption; and the forfeiture of assets obtained through illicit means: the NPA Act, 1998 (Act 32 of 1998), the Criminal Procedure Act, 1977 (Act 51 of 1977), the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), the SIU and Special Tribunals Act, 1996 (Act 74 of 1996), and the Witness Protection Act, 1998 (Act 112 of 1998).
- Legislation providing for the establishment and functioning of bodies responsible for legal aid, law reform and rule-making: the Legal Aid Act, 1969 (Act 22 of 1969), the South African Law Reform Commission (SALRC) Act, 1973 (Act 19 of 1973), and the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985).
- Legislation providing for the appointment of Masters of the High courts and the administration of the GF and deceased and insolvent estates: the Administration of Estates Act, 1965 (Act 66 of 1965), and the Insolvency Act, 1936 (Act 24 of 1936).
- Legislation regulating the provisioning of legal advisory services to government departments: the State Attorney Act, 1957 (Act 56 of 1957).
- Legislation relating to the promotion, protection and enforcement of certain human rights: the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), the Promotion of Access to Information Act (Paia), 2000 (Act 2 of 2000), and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), better known as the Equality Act of 2000.
- Legislation pertaining to the protection of vulnerable groups: the Child Justice Act, 2008 (Act 75 of 2008), the Children's Act, 2005 (Act 38 of 2005), the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), the Maintenance Act, 1998 (Act 99 of 1998), and the Domestic Violence Act, 1998 (Act 116 of 1998).
- Legislation providing support to Chapter 9 institutions: the Human Rights Commission Act, 1994 (Act 54 of 1994), and the Public Protector Act, 1994 (Act 23 of 1994).
- Legislation regulating the management and control of public expenditure: the Public Finance Management Act, 1999 (Act 1 of 1999).
- Legislation regulating operations in the public service: the Public Service Act, 1994 (Act 103 of 1994), as amended.
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2012 (Act 6 of 2012).
- Criminal Procedure Amendment Act, 2012 (Act 9 of 2012).
- Judicial Matters Amendment Act, 2012 (Act 11 of 2012).
- Repeal of Black Administration Act and Amendment of Certain Laws Amendment Act, 2012 (Act 20 of 2012).

- Sheriffs Amendment Act, 2012 (Act 14 of 2012).
- The Criminal Law (Forensic Procedures) Amendment Bill 2013 paves the way to regulate and promote the use of DNA in combating crime, taking into account constitutional requirements. The use of DNA evidence holds the potential to alleviate bottlenecks in the Criminal Justice System (CJS). Maximising the use of DNA evidence promotes fairness, confidence, and certainty in the administration of South Africa's laws.
- The Constitution 17th Amendment Act of 2013 is implemented with the Superior Courts Act, which repeals the Supreme Court Act of 1959.
- The Legal Practice Bill will bring an end to the long tradition of self-regulation by the legal fraternity. It will replace bar associations with a single council, which the Minister of Justice can dissolve if he loses confidence in it. The Bill also allows the Minister to designate three of the 22 members of the council. The 120-clause Bill transforms the legal profession and improves access to justice.

### 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 them.

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.

### Budget and funding

A total budget of R17,9 billion was allocated to the DoJ&CD for the 2014/15 financial year. Of this budget allocation R6,1 billion was allocated to the Court Services programme, R3,2 billion is for the NPA and R2,1 billion for Public Entities and Chapter 9 Institutions.

The increase in the budget baseline amounts to R101,6 million for 2014/15, R102,7 million for 2015/16 and R413,9 million for 2016/17.

### Role players

#### Legal Aid South Africa

Legal Aid SA provides legal aid or makes legal aid available to indigent people within the budget allocated to it by the State. For 2013/14, 447 301 new legal matters were undertaken by Legal Aid SA, of which 390 121 were criminal matters and 57,183 were civil matters, representing a 3,4% growth in civil matters.

#### Special Investigating Unit

The SIU is an independent statutory body that is accountable to Parliament and the President. The SIU, the Anti-Corruption Task Team (ACTT), the AFU and the Hawks have made notable progress in the quest to combat corruption in the public sector. The work of these agencies complements efforts of the Department of Public Administration and other entities outside the public sector such as Corruption Watch, which aim to rid the country of corruption. Not only does corruption erode the fruits of South Africa's hard-earned democracy, but it also tarnishes the country's good name locally and internationally and discourages foreign investment.

The SIU was created in terms of the SIU Act of 1996. The SIU functions in a manner similar to a commission of inquiry in that the President refers cases to it by issuing a proclamation. It may investigate any matter set out in Section 2 of the SIU Act of 1996, including:

- serious maladministration in connection with 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
- 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 or may cause serious harm to the interest of the public or any category thereof.

The SIU can also take civil action to correct any wrongdoing it discovers during an investigation. For example, it can obtain a court order to:

- compel a person to pay back any wrongful benefit received
- cancel contracts when the proper procedures were not followed

- stop transactions or other actions that were not properly authorised.

The SIU litigates its cases in the Special Tribunal, a specialised court that deals specifically with its cases. This avoids some of the delays usually associated with civil litigation.

The focus of the SIU is the public sector, but it also deals with private-sector accomplices.

It can investigate private-sector matters that cause substantial harm to the interest of the public.

As the focus of the SIU is on civil litigation, it does not have the power to arrest or prosecute suspects. When it uncovers evidence of criminal activity, it hands a court-ready docket to the South African Police Service (SAPS) and/or the Hawks.

The SIU works closely with the NPA to ensure that prosecutions take place as soon as possible.

It also works with the AFU in cases where the powers of this unit are more suitable for recovering the proceeds of crime.

## South African Law Reform Commission

The SALRC is a statutory body established in terms of the South African Law Reform Commission Act, 1973 (Act 19 of 1973).

The mission of the SALRC is the continuous reform of the law of South Africa in accordance with the principles and values of the Constitution to meet the needs of a changing society operating under the rule of law.

The objectives of the commission are to do research with reference to all branches of the law of the country and to study and investigate all such branches to make recommendations for the development, improvement, modernisation or reform thereof, including the repeal of obsolete or unnecessary provisions; removal of anomalies; bringing about of uniformity in the law in force in the various parts of the country; consolidation or codification of any branch of the law; and steps aimed at making the common law more readily available.

The SALRC is chaired by a judge and consists of members from the judiciary, legal professions and academic institutions. It conducts research with reference to all branches of South African law to make recommendations to government for the development, improvement, modernisation or reform of the law. 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 common law more readily available.

To achieve its objectives, the SALRC is drawing up a programme in which matters requiring consideration are included and submitted to the Minister for approval. Recent SALRC programmes included:

- statute law: establishing a simplified, coherent and accessible statute book
- statutory law revision: redundancy, obsolescence and constitutionality of legislation
- reviewing the Interpretation Act, 1957 (Act 33 of 1957)
- arbitration
- family mediation
- family law and the law of persons
- custody of and access to minor children
- review of aspects of matrimonial property law
- Hindu marriages
- sexual offences: adult prostitution
- assisted decision-making for adults with impaired decision-making capacity
- prescription periods
- review of the law of evidence
- hearsay and relevance
- electronic evidence
- review of administration orders
- specific civil action in respect of consequential damages arising from hoaxes
- administration of estates
- review of witchcraft legislation
- multidisciplinary legal practices
- expungement of certain criminal records
- the practice of ukuthwala (child abduction and forced child marriages).

## National Prosecuting Authority of South Africa

In a Constitutional state such as South Africa, all citizens have a right to enjoy a better quality of life – free from fear and free from crime. As a key partner in the criminal justice system, the NPA plays a critical role in ensuring that perpetrators of crime are charged and held responsible for their criminal actions. While the core work of the NPA will remain prosecutions and being a lawyer of the people, our strategy seeks to ensure that the organization becomes more pro-active so as to:

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

The Office of the National Director of Public Prosecutions was established on 1 August 1998, in terms of section 179 (1) of the Constitution. The NPA comprises the National Director, directors of public prosecutions; investigating directors

and special directors; other members of the prosecuting authority appointed at or assigned to the NPA; and members of the administrative staff. The NPA has the power to:

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

Also vital within the CJS was the formation of the Office of the National Director of Public Prosecutions, established in 1998. The Office of the National Director of Public Prosecutions consists of deputy national directors and special directors of public prosecution who head the following specialised units:

- Sexual Offences and Community Affairs Unit (Soca)
- Specialised Commercial Crime Unit (SCCU)
- Priority Crimes Litigation Unit (PCLU)
- Office for Witness Protection (OWP)
- Asset Forfeiture Unit (AFU)
- National Prosecuting Service (NPS).

### **National Prosecuting Service (NPS)**

The NPS is a division of the NPA managing the performance of Directors of Public Prosecutions (DPPs) and Lower Courts countrywide.

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

### **Office for Witness Protection**

The OWP provides specialised services to all Law Enforcement Agencies in South Africa, NPA and any judicial proceedings. The OWP provides

- assistance and cooperation to other countries, tribunals and Special Courts in the field of witness protection
- support services to vulnerable and intimidated witnesses and related persons in any judicial proceedings and in the CJS.

All OWP functions and duties are classified secret in terms of the Witness Protection Act.

### **Asset Forfeiture Unit**

The AFU was established in May 1999 in the Office of the National Director of Public Prosecutions to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998). The AFU was created to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly, organised crime.

The AFU has set itself a number of key strategic objectives, namely to:

- develop the law by taking test cases to court and creating the legal precedents that are necessary to allow the effective use of the law
- build the capacity to ensure that asset forfeiture is used as widely as possible to make a real impact in the fight against crime
- make an impact on selected categories of priority crimes
- establish a national presence
- establish excellent relationships with its key partners, especially the South African Police Service (SAPS), and the South African Revenue Service (SARS)
- build the AFU into a professional and representative organisation.

### **Specialised Commercial Crime Unit**

The SCCU's mandate is to prosecute complex commercial crime cases emanating from the commercial branches of the SAPS. The client base of the unit 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 mandated to tackle cases that threaten national security. It was created by presidential proclamation and is allocated categories of cases either by the President or by the National Director of Public Prosecutions.

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 Statute of Rome
- national and international terrorism
- prosecution 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 vulnerable 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 Soca'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).

TCCs are one-stop facilities located in public hospitals in communities where the incidence of rape is particularly high. These one-stop facilities are aimed at reducing secondary victimisation, improving conviction rates and reducing the cycle time for the finalisation of rape cases.

### **The Family Violence, Child Protection and Sexual Offences (FCS) units**

The FCS unit, which was re-launched in 2010 after being absorbed into the greater SAPS in 2006, has since doubled its resources and now has 176 units and close on 2 500 members nationwide. The FCS employs a network of highly skilled forensic social workers to assist with assessment of abused children and the compilation of court reports, as well as for providing an expert testimony in court.

The FCS is involved in the policing of sexual offences against children, person-directed crimes, illegal removal of children under 12 and electronic media facilitated crime. Two areas of particular concern for the FCS are child pornography and Sexual Offences.

Crime against children has decreased year on year from 48 718 reported cases for 2012/13 to 45 230 for 2013/14. The conviction rate is up to 75%, and since the re-establishment of the FCS in 2010, the unit has secured over 1 832 life sentences for heinous crimes against women and children.

In addition to an ongoing drive to raise awareness in schools, churches and other institutions around the country, the SAPS is involved in several community programmes including the nationwide Adopt-a-School project – where at least four SAPS members are assigned to a school and are charged with raising awareness among the teachers and learners on issues like child abuse, exploitation and the crime in general.

The SAPS is also leading an outreach programme in Diepsloot, Gauteng, where young parents are being educated on how to be good parents. In addition, the FCS is working with the department of social development and justice to create child protection awareness around the country.

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

The Rules Board for the Courts of Law may review existing rules of Court to efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, High Courts and Magistrates' Courts.

Subject to the approval of the Minister, it may enact, amend or repeal rules for the above courts.

The board is headed by a Constitutional Court judge and includes experts in procedural law drawn from the judiciary, legal profession and academic institutions.

Its mandate includes:

- improving and modernising the rules of Courts in accordance with technological changes and constitutional imperatives
- addressing challenges to the constitutionality of specific rules and effecting amendments precipitated by such challenges
- simplifying the Courts' rules to promote access to justice
- harmonising rules of superior and Lower Courts
- reviewing the civil justice system to address inadequacies
- conducting legal and comparative research to determine viable solutions
- stimulating discussion with role players and interested and/or affected parties in the process of amending rules
- unifying and harmonising rules, regulations and procedures to transform the Courts and to make justice accessible to all.

### **Judicial Service Commission (JSC)**

The JSC selects fit and proper people for appointment as judges and investigates 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 commission 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 commission, appoints the chief justice and the deputy chief justice, and the president and deputy president of the Supreme Court of Appeal.

The President appoints other judges on the advice of the commission.

In the case of the chief justice and the deputy chief justice, the leaders of parties represented in the National Assembly are also consulted.

### **Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission)**

The CRL Commission's role of fostering social cohesion remains relevant as democracy continues to grow in South Africa. It is incumbent upon the CRL Commission to develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities. Its mandate is to make sure that democracy manifests itself in all aspects of the lives of South Africans.

There are still communities that feel marginalised because they are not part of mainstream religions. However, most South Africans have gained awareness of their language rights and are beginning to make demands for better recognition.

### **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 of 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 Board for Sheriffs**

Significant strides have been made in transforming the sheriff's profession in the country. Sheriffs have an important role in the CJS, as they act as a third party to serve court process and execute the warrants and orders of the court, which are issued in terms of the regulations of the different courts.

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

As the independent national human rights institution, the SAHRC was created to support consti-

tutional democracy by promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.

The values of the SAHRC are integrity, honesty, respect, objectivity, the Batho Pele principles, and equality.

Each year, the SAHRC requires relevant organs of State to provide it with information on the measures taken towards the realisation of the rights contained in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment.

The SAHRC has additional powers and functions prescribed by specific legislative obligations in terms of the Human Rights Commission Act of 1994; the Paia of 2000, and the Equality Act of 2000.

The commission has to:

- promote awareness of the statutes
- monitor compliance with the statutes
- report to Parliament in relation to these statutes
- develop recommendations on persisting challenges related to these statutes and any necessary reform.

The SAHRC is actively involved in ensuring the ratification of international and regional human-rights instruments by advocating for the domestication of human-rights instruments.

At international level, the SAHRC is recognised by the UN Office of the High Commissioner for Human Rights as an A-status national human rights institution. As an A-status institution, the SAHRC has adhered to the Paris Principles, which are the guiding principles that set out the nature and functioning of a national human rights institution.

The SAHRC deals with a wide range of human rights complaints.

### **Public Protector**

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

The Public Protector is subject only to the Constitution and the law, and functions independently from government and any political party. No person or organ of State may interfere with the functioning of the Public Protector.

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

Section 182 of the Constitution mandates the Public Protector 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

- report on that conduct
- take appropriate remedial action
- be accessible to all people and communities.

The Public Protector has additional legislative powers contained in about 16 statutes. It must resolve disputes or grievances involving the State through mediation, consultation, negotiation and any other remedies. It also has a mandate to enforce executive ethics, the Paia of 2000, the Protected Disclosures Act, 2000 (Act 26 of 2000), and the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004).

The only matters excluded from the mandate of the Public Protector are court decisions, judicial functions and matters outside the public sector.

## South African Judicial Education Institute

The SAJEI Act of 2008, established the institute to provide independent judicial education for judicial officers.

The SAJEI is responsible for the formal training of magistrates and legal practitioners in this legislation and other areas of judicial work.

Its purpose 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 SAJEI is primarily directed and controlled by the judiciary. The institute provides education and training for aspirant and newly appointed judicial officers and ongoing legal education and training for experienced judicial officers.

## Court services

### 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 by the operation of the law a member of at least one of these societies, which 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. The Attorneys Amendment Act, 1993 (Act 115 of 1993), provides for alternative routes for admission as an attorney.

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.

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.

## 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.

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 people to whom it applies.

The Constitution provides for the following Courts:

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

Other courts include: Income tax Courts, the Labour Court and the Labour Appeal Court, the Land Claims Court, the Competition Appeal Court, the Electoral Court, divorce courts, small claims courts, Military courts and equality courts.

Decisions of the Constitutional Court, the Supreme Court of Appeal 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 people.

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.

### Constitutional Court

The Constitutional Court 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.

### Supreme Court of Appeal

The Supreme Court of Appeal, situated in Bloemfontein in the Free State, is the highest court in respect of all matters other than constitutional ones. It consists of the President and Deputy President of the Supreme Court of Appeal, and 23 other judges of appeal. The Supreme Court of Appeal has jurisdiction to hear and determine an appeal against any decision of a High Court. Justice Lex Mpati is the President of the Supreme Court of Appeal.

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

In June 2015, President Zuma appointed Justices Nambitha Dambuzza and Rammaka Mathopo to the Supreme Court of Appeal in Bloemfontein.

### 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 has four branches, located in Grahamstown, Port Elizabeth, Mthatha and Bisho
- the Free State High Court in Bloemfontein
- Gauteng has two high courts, one in Pretoria

(North Gauteng) and one in Johannesburg (South Gauteng)

- KwaZulu-Natal also has two High Courts, in Pietermaritzburg and in Durban
- the Limpopo High Court in Thohoyandou
- the Northern Cape High Court in Kimberley
- the North West High Court in Mafikeng
- the Western Cape High Court in Cape Town.

In June 2015, the President appointed Justice Achmat Jappie as the new Judge President of the KwaZulu-Natal Division of the High Court in Pietermaritzburg. Justice Ephraim Makgoba was appointed the next Judge President of the Limpopo division of the High Court in Polokwane. Advocate Gerald Bloem also started his job as a judge of the Eastern Cape Division of the High Court in Grahamstown. Advocate Selby Mbenenge was appointed as a judge of the Eastern Cape division of the High Court in Bisho.

### Specialist high courts

The following specialist high courts exercise national jurisdiction:

- The Labour Court and Labour Appeal Court in Braamfontein, Gauteng, which adjudicate over labour disputes and hear labour appeals, respectively.
- The Land Claims Court, 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.
- The Tax Court, situated in Pretoria, which deals with tax-related matters, including non-compliance with tax obligations.

### Circuit local divisions

These itinerant Courts, each preside 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 enhancing 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.

The regional courts by virtue of the Jurisdiction

of Regional Courts Amendment Act, 2008 (Act 31 of 2008), adjudicate civil disputes.

The divorce courts were subsumed under the Regional Court divisions. The Divorce Court rules made under Section 10(4) of the Administration Amendment Act, 1929 (Act 9 of 1929), were repealed from 15 October 2010. The regional courts therefore started adjudicating divorce matters from 15 October 2010. This has addressed the jurisdictional challenges in terms of which litigants have to travel to remote courts to get legal redress.

In the medium to long term, the Jurisdiction of Regional Courts Amendment Act of 2008, will 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 is within the jurisdiction of regional courts. This means that attorneys have the opportunity to represent their clients in matters where they ordinarily brief counsel, thus reducing the cost of litigation and increasing access to justice.

### Magistrates' Courts

Magistrates' courts form an important part of the judicial system as it is where ordinary people come into contact with the justice system daily.

For this reason, that the bulk of the department's budget and resources are concentrated here. Jointly with the Chief Justice, the department implements programmes aimed at supporting these courts. One such intervention is backlog courts. In the DoJ&CD's Strategic Plan 2013 – 2018, 24 of the 90 Branch Courts were identified for rehabilitation into full-service courts by 2014.

The department increased the civil jurisdiction of magistrates' courts and regional courts beyond their R100 000 and R300 000 thresholds, respectively.

This is with a view to widening access to justice as more people will be able to access the magistrate's courts where it is cheaper and faster to obtain a legal recourse compared to the high courts.

In terms of the Magistrates' Act 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.

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.

New equipment included the digital court system for recording of proceedings in active court rooms and an audio visual remand system, which links to the DCS for facilitation

of postponements and other matters via video conference.

The Regional and High Court rooms are fitted with CCTV equipment, two-way facilities and waiting rooms for facilitation of sexual offences cases involving minors.

The new court building will bring dignity to the manner in which justice services are administered in the communities of Inanda, Phoenix, KwaMashu, Ntuzuma and surrounding areas, especially since services at the old Court site were limited.

Through the construction of courts, the right of everyone to have any dispute resolved by the application of the law in a fair public hearing before a Court is guaranteed.

### Small claims courts

Small claims courts were established to adjudicate small civil claims. They were 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 R15 000.

By August 2015, there were 345 small claims courts.

The vast majority of the new courts and places of sitting are in rural areas and former black group areas.

The goal of having a Small Claims Court in every magisterial district is in sight. Gauteng and Mpumalanga have already achieved this.

The number of people enjoying the benefits of access to justice through small claims courts has increased steadily.

Establishing these courts depends partly on the number of dedicated women and men who volunteer their services as commissioners or as Advisory Board members.

The Small Claims Court Model is an effective dispute resolution mechanism, which contributes towards the realisation of the department's mandate to ensure access to justice for all.

### Labour courts and labour appeal courts

The labour courts have the same status as high courts. The labour courts adjudicate matters relating to labour disputes between employers and employees. Labour courts are mainly guided by the Labour Relations Act, which deals with matters such as unfair labour practices; for example: dismissing an employee without giving notice.

Labour courts can order an employer or employee or union to stop committing an unfair labour practice. Labour courts are empowered to give jobs back to employees who have lost their

jobs unfairly. Labour appeal courts hear appeals against decisions in labour courts and they are the highest courts for labour appeals.

### Equality courts

The right to equality is protected by law in the Equality Act of 2000 and the Employment Equity Act, 1998 (Act 55 of 1998). The two Acts work in synergy. The Equality Act of 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 about equality.

The department is engaged in the Access to Justice and Promotion of Constitutional Rights Programme.

This programme was developed under the framework of the *European Union (EU)/South Africa Country Strategy Paper and National Indicative Plan*, which set out South Africa's development strategy between 2007 and 2013 and identifies the areas to be funded by the EU.

The aim of the programme is to contribute to the promotion, protection and realisation of rights established in the Constitution through the following three key performance areas:

- improving access to justice
- raising awareness of rights
- strengthening participatory democracy.

### Traditional courts

There are Traditional Courts (formerly chiefs' courts) in traditional community areas in rural villages. The judicial functions of traditional leaders are regulated in terms of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act 28 of 2005).

### Land claims courts

It specialises in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative.

These are the Restitution of Land Rights Act, 1994 (Act 22 of 1994) the Land Reform (Labour Tenants) Act, 1996 (Act 486 of 1994) and the Extension of Security of Tenure Act, 1997 (Act 62 of 1997).

The Land Claims Court has the same status as the high courts. Any appeal against a decision of the Land Claims Court can be lodged with the Supreme Court of Appeal, and if applicable, the

Constitutional Court.

The Land Claims Court can hold hearings in any part of the country if it believes this will make it more accessible and it can conduct its proceedings in an informal manner if this is appropriate, although its main office is in Randburg.

### 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 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 were formally launched in Hatfield, Gauteng; and Fezeka (Gugulethu), Mitchells Plain and Cape Town in the Western Cape.

Another nine pilot sites commenced in Durban (Point) and KwaMashu in KwaZulu-Natal; Mthatha, Eastern Cape; Bloemfontein and Phuthaditjhaba in the Free State; Thohoyandou in Limpopo; Kimberley in the Northern Cape; and Hillbrow and Protea (Lenasia) in Gauteng.

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, 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.

### Criminal jurisdiction of the respective courts

Apart from specific provisions of the Magistrates' Courts Act of 1944 or any other Act, jurisdiction regarding sentences imposed by District Courts is limited to 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.

A Magistrate's Court has jurisdiction over all offences except treason, murder and rape. A Regional Court has jurisdiction over all offences except treason. However, the High Court may try all offences.

Depending on the gravity of the offence and the circumstances pertaining to the offender, the Directorate of Public Prosecutions decides in which court a matter will be heard and may even decide on a summary trial in the High Court.

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.

## Sexual offences courts

In responding to the problem of sexual offences, special sexual offences courts were set up across the country. They are built in a way that children and victims get the necessary care, respect and support at the court.

There is a waiting room to make sure that the woman or child, who is a victim of rape, does not come in contact with the accused. Toys are also available to make sure a relaxed atmosphere is created for a child. In some cases television is used to make sure that evidence by the victim is given in a comfortable way.

## Areas of legislation

### Sexual offences

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 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 crimes.

### National Register for Sexual Offenders (NRSO)

The department has developed the National Register for Sexual Offenders (NRSO), which was deployed in 195 courts. The NRSO was established by an Act of Parliament in 2007.

It is a record of names of those found guilty of sexual offences against children and mentally disabled people.

The NRSO gives employers in the public or private sectors such as schools, crèches and hospitals the right to check that the person being hired is fit to work with children or mentally disabled people. The NRSO is not open to the public and is kept confidential. Anyone found guilty of sexual offences against children and mentally disabled people is put on the NRSO.

## Maintenance

The main objective of the Maintenance Act of 1998 is to facilitate the securing of maintenance money 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.

From the 369 maintenance courts nationwide, the department registers about 200 000 new maintenance complaints a year. To reduce the maintenance queues at courts, the department installed technology to process payments through electronic financial transfers to replace the card-based manual system. The courts are also increasingly making orders for payments to be deposited directly into the accounts of beneficiaries.

Through the Guardian's Fund, the department contributes substantially to poverty alleviation.

### Maintenance Turnaround Strategy: Project Kha Ri Unde

Project Kha Ri Unde is one of the subprojects of the Maintenance Turnaround Strategy. This is a three-year project aimed at reducing the turn-around times in service delivery from the entry point into the maintenance system up to the issuing of a maintenance order.

### Socio-economic Justice programme

The department, in partnership with the EU, launched the Socio-Economic Justice programme in December 2014.

The programme's focus is on the socio-economic rights as set out in the Bill of Rights. Known as "Amarightza", the programme ensures that citizens know their rights, how to access them and where to go when their rights are violated. The programme targets the marginalised and vulnerable groups.

The new programme draws on the NDP – Vision 2030 goals which include: Promoting a Constitutional Democracy built on the values of human dignity, equality and fundamental freedoms.

The launch unveiled ways in which government intends to realise its mandate as outlined in section 7.2 of the Constitution.

### Domestic violence

The rigorous steps the JCPS cluster is taking to root out gender-based violence is the adoption of zero-tolerance towards rape, violation of the rights of lesbian, gay, bisexual, transgender and intersex

people and other forms of violence towards women and children. The department has, after engaging with Regional Court presidents, identified 57 Regional Courts across the country for use as dedicated Sexual Offences Courts.

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 DoJ&CD.

The department engaged in research methodology called the 10-Year Review of Implementation of the Domestic Violence Act of 1998 aimed at taking stock of all initiatives and projects in courts and the CJS to address the reduction and prevention of domestic violence.

The Protection from Harassment Act, 2011 (Act 17 of 2011), is the first specific legislation to address sexual harassment in the Southern African Development Community (SADC) region. The essence of the Act is to provide a quick, easy and affordable civil remedy in the form of a protection order for incidences of stalking. The legislation arose out of a SALRC investigation into the legal framework governing stalking and domestic violence.

A key component of the Act is that it seeks to cover all forms of stalking, not just that involving people engaged in a relationship.

A protection order can be issued instructing the harasser to cease harassment.

The Act sets out how a complainant is to apply for a protection order and the procedure to be followed in granting one. The legislation also provides for the issuing of an interim protection order without the knowledge of the respondent, given certain conditions. A victim of cyberstalking can apply to a Court for an interim protection order even when the identity of the alleged stalker is unknown. The law will also empower the police to investigate a stalker to identify the perpetrator even before a victim launches an application for a protection order.

### Human trafficking

Human trafficking has become a focus of attention in the country following the introduction of the new visa requirements for children travelling through South Africa's ports of entry in June 2015. A new Act aimed at preventing trafficking defines trafficking to include the recruitment, transportation, sale or harbour of people by means of force, deceit, the abuse of vulnerability and the abuse of power for exploitation.

South Africa has for the first time a single statute, which addresses the scourge of trafficking in persons holistically and comprehensively.

Besides creating the main offence of trafficking in persons, the legislation creates offences such as debt bondage; the possession, destruction and tampering with travel documents and using the services of victims of trafficking all of which facilitate innocent persons becoming victims of this modern day form of slavery.

The legislation gives effect to South Africa's international obligations in terms of a UN Protocol.

### Transforming the judiciary

The department has made significant strides in its quest to transform the judiciary.

By 2014, of the 243 judges in South Africa, 79 are females. There are 35 African females, 25 white females, 12 Indian females, and eight coloured females.

It is anticipated that the Legal Practice Bill will overhaul the current structure of the legal profession, which is inherently prejudicial to any woman who wishes to pursue a career as lawyer.

### State Legal Services

The purpose of this programme is to provide legal and legislative services to government, supervise the administration of deceased and insolvent estates and the Guardian's Fund, prepare and promote legislation and undertake research in support of this.

This programme is mainly aimed at transforming justice, the State and society. It deals with the following functions:

- constitutional development
  - legislative development (including conducting legal research)
  - the provision of legal advisory services to other organs of State (including Parliament)
  - providing litigation services to protect the organs of State
  - the provision of probate services
  - administration of the Guardian's Fund
  - regulation of insolvency and liquidation systems.
- The State Legal Services Programme's objectives include:
- improving service delivery at the Master's Office service points
  - increasing efficiency in the provision of services to beneficiaries of the Guardian's Fund, trusts, and insolvent and deceased estates
  - promoting constitutional development and the strengthening of participatory democracy to ensure respect for fundamental human rights
  - improving the provision of legal services to State organs
  - improving the policy and legislative framework for the effective and efficient delivery of justice services.

The State Legal Services Programme is divided

into the following subprogrammes:

- Legislative Development, the Law Reform Commission and the Rules Boards for Courts of Law, prepare and promote legislation, conduct research and administer the Constitution.
- The Master of the High Court funds the Masters' Offices, which supervise the administration of deceased and insolvent estates, trusts, curatorships and the Guardian's Fund.
- Litigation and Legal Services provides attorney, conveyance and notary public services to the executive, all State departments, parastatals and other government bodies through the Office of the State Attorney, and provides legal support to the department and the ministry.
- State Law Advisers provides legal advisory services to the executive, all State departments, parastatals and autonomous government bodies.

### Master of the High Court

The Master of the High Court serves the public in respect of:

- deceased estates
- liquidations (insolvent estates)
- registration of trust's, tutor's and curator's administration of the Guardian's Fund (minors and mentally challenged persons).

The Master's Office has five main divisions, which are all aimed at protecting the financial interests of people whose assets or interests are, for various reasons, managed by others.

As part of the Turnaround Strategy in the Master's Office, there has been a special focus on training frontline officials. The Master's Office is also investigating methods to deliver a more efficient and effective service to the public through the Internet.

### 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 by 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 the parental rights and responsibilities of fathers of children born out of wedlock.

In certain instances, the Family Advocate also assists the courts in matters involving domestic violence and maintenance. The sections of the Children's Act of 2005 that came into operation on 1 July 2007 have 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 obliged to mediate their disputes before resorting to litigation. Unmarried fathers can approach the Family Advocate directly for assistance without instituting any litigation. 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

The TRC was dissolved in March 2002 by way of proclamation in the *Government Gazette*. The TRC made recommendations to government regarding reparations to victims and measures to prevent the future violation of human rights and abuses experienced during the apartheid years.

Government approved four categories of recommendations in June 2003 for implementation, namely:

- final reparations
- TRC-identified victims
- symbols and monuments
- medical benefits and other forms of social assistance
- community rehabilitation.

### Child justice

#### Children's Act of 2005

The Department of Social Development (DSD) is the lead department for the implementation of the Children's Act of 2005. The DoJ&CD's main responsibility is towards Children's Court operations relating to the Act.

The department developed a child-friendly Frequently Asked Questions (FAQ) link on its website. In addition, the department created an email address, [children@justice.gov.za](mailto:children@justice.gov.za), which the public may use to contact the department on issues relating to children.

The Children's Court is the DoJ&CD's principal legal mechanism to intervene and assist children who are in need of care and protection. To gather statistics from the children's courts, the department developed the Children's Court Monitoring Tool. Data about matters coming to court relating to children in need of care is gathered monthly.

Section 14 of the Children's Act of 2005 states that every child has the right to bring a matter to the Children's Court.

This means that every Children's Court can serve as a direct entry point for a child to seek help and protection. Children's courts have been rendered highly accessible through the Act.

### Child Justice Act of 2008

The Child Justice Act of 2008, promotes and protects the constitutional rights of children in conflict with the law. The Act provides special measures, designed to break the cycle of crime and restore in these children a lifestyle that is law-abiding and productive.

The department established governance structures to ensure the effective intersectoral implementation of the Act. Nine provincial child justice forums are coordinating and monitoring the implementation of the Act at provincial level.

### Restorative justice

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

Restorative justice strategies, programmes and processes in the CJS are in place to try and 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 encouraging social justice and social dialogue.

Any restorative justice option 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.

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

### Court performance

This sub-branch of the DoJ&CD is responsible for:

- developing and monitoring processes and systems
- introducing case-flow management 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
- facilitating the development of uniform performance standards to enhance institutional performance.

The Directorate: Court Efficiency's key priorities include:

- facilitating integrated case-flow management with stakeholders
- supporting the implementation of the *Re Aga Boswa* (meaning "We are renewing") and Court Capacitation projects

- facilitating the implementation of multilingualism in courts and developing 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 in the development of information technology (IT) tools and systems, and supporting initiatives for the effective management of court records.

The directorate assists in Court capacitation initiatives, namely:

- the UN Office on Drugs and Crime Court Integrity Project
- upgrading five Pilot Courts, namely Pretoria, Tembisa, Nelspruit, Mkobola and Kimberley with notice boards, flat-screen television sets and DVD players
- providing integrity training to 120 departmental, 15 NPA and 15 judicial officers
- conducting audits on the management of court records
- facilitating activities on the Court Capacitation National Centre for State Courts Project in consultation with all other stakeholders such as chief directors and regional heads
- engaging human resources and the Safety and Security Sector Education and Training Authority and securing learnership programmes for court interpreters
- engaging in legislation development and finalising the legislative and operational framework for implementing and institutionalising the lay assessor system.

### Integrated Case-Flow Management Framework

The DoJ&CD and participants from other partner organisations is developing an enhanced version of case-flow management in the court environment.

To eradicate case-flow blockages workable solutions were adopted. These include:

- continuous cooperation of stakeholders to implement and maintain case-flow management at all courts
- establishing judicial leadership and case-flow management buy-in processes in the lower and higher courts in the form of case-flow management forums
- facilitating and monitoring the creation of case-flow management governance structures to sustain productivity in the courts' environment
- maintaining case-flow management.

Systems that support case-flow management in the courts include the Integrated Case Management System (ICMS). This system spans all disciplines of cases administered in the

justice environment.

The ICMS draws on several 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 on these foundations. The following offices have started experiencing the benefits of the ICMS:

- ICMS Civil is deployed in all lower courts and 13 high courts
- ICMS Criminal is deployed in all lower courts
- ICMS Small Claims is used in all small claims courts and designated lower courts
- ICMS Masters has been introduced in all 14 Masters' Offices and all 402 service points.

The further development of the ICMS Masters System is in progress. This creates a Paperless Estate Administration System for the Master's Office. This system will computerise the administration process in deceased estates, as all documentation will be scanned and stored electronically.

### Audio-Visual Remand System

The Video Remand Solution has been implemented at 47 courts and 22 correctional facilities. The development in this area of support to case-flow management for the courts has brought about a significant improvement in the movement of cases through the use of technology.

### Case-Reduction Backlog Project

The JCPS cluster departments have introduced the case backlog reduction intervention, which reducing the number of backlog cases in the Regional and District Courts, providing additional capacity to the backlog priority sites. The backlog intervention ensures that the inflow of the number of new cases is balanced by the number of matters concluded. The project deliverables have been integrated into the outputs of the JCPS Cluster Delivery Agreement.

The department provided resources in the form of infrastructure, court personnel, the judiciary, magistrates and budget in support of the prosecution and judiciary to remove these cases from the backlog roll.

### Integrated Justice System

The Integrated Justice System 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. Further 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 benefits of proper alignment include:

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

The JCPS cluster 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.

### International legal relations

The main functions of the Chief Directorate: International Legal Relations in the DoJ&CD is to identify and research legal questions that relate to matters pertaining to the administration of justice between South Africa and other countries/bodies/institutions.

The chief directorate is involved in direct liaison and negotiations at administrative and technical level with foreign countries 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 countries, especially within the SADC.

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

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

- regular liaison on international legal matters with SADC countries
- coordinating all Commonwealth matters pertaining to the administration of justice
- interacting with the UN, the Hague Conference and the International Institute for the Unification of Private Law
- interacting with foreign countries outside the SADC region
- 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).

Owing to the number of departments and/or institutions involved in the execution of extradition and mutual legal assistance requests, and taking into consideration that diplomatic channels are followed to transmit documents,



delays are experienced from time-to-time.

Provisions are included in extradition and mutual legal assistance agreements to provide for direct communication between central authorities.

The drastic reduction in the turnaround time for the processing of these requests should be a clear indication to the rest of the world that South Africa will neither be a safe haven for fugitives nor a breeding ground for transnational organised crime.

### International Criminal Court (ICC)

South Africa remains committed to the global promotion of the rule of law, and will continue cooperating with the UN system to ensure the success of the international human rights architecture.

South Africa views the ICC as an important element in a new system of international law and governance.

### Department of Correctional Services

The strategic goals of the department are to ensure that:

- the efficiency of the justice system is improved through the effective management of remand processes
- society is protected through incarcerated offenders being secured and rehabilitated
- society is protected by offenders being reintegrated into the community as law-abiding citizens.

In this way, the department contributes to ensuring that all people in South Africa are and feel safe.

The Service Charter for Victims of Crime consolidates 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.

This department has been in existence for 102 years. DCS marks the end of a life of crime, and the beginning of restoration. The department must deliver justice for victims and ensure that offenders make restitution both to society for their crimes, and leave correctional centres with better skills and prospects.

The DCS remains committed to placing humane and safe detention and rehabilitation at the centre of service delivery. In doing so, the department promotes corrections as a societal responsibility, contributing to enhanced public safety and reducing reoffending.

In this regard there is a close link with govern-

ment's Outcome 3, namely that all people in South Africa should be and feel safe. The strategic focus of the department is situated in four key deliverables, namely:

- reducing the average length of time in remand detention
- increasing the number of offenders in rehabilitation programmes
- increasing the number of victims who participate in parole hearings
- increasing the number of parolees without parole violations.

The department is committed to contributing to reducing reoffending through offender management and rehabilitation intervention and adding to the social reintegration of offenders through management of non-custodial sentences and parole.

The DCS has various offender rehabilitation programmes, which focus on restorative justice, skilling, training, reading and offender reintegration. The department has also adopted various orphanages and old age homes, and continues to donate excess products to disadvantaged communities.

### Legislation and policies

The DCS derives its mandate from the Correctional Services Act, 1998 (Act 111 of 1998), as amended, the Criminal Procedure Act, 1977 (Act 51 of 1977) and the 2005 White Paper on Corrections. The legislation requires the department to contribute to maintaining and promoting a just, peaceful and safe society by correcting offending behaviour in a safe, secure and humane environment, thus facilitating optimal rehabilitation and reduced repeat offending.

The department is compelled by the Constitution to comply with the following rights in terms of the treatment of offenders:

- equality
- human dignity
- freedom and security of the person
- right to healthcare services
- children's rights
- right to education
- freedom of religion
- rights to humane treatment and to communicate

The Equal Access to Justice for Persons with Disabilities Conference was held in November 2014. The main objective of the conference was to give stakeholders a platform to deliberate on and find possible solutions to the barriers and challenges that prevent persons with disabilities from accessing justice services. The conference also provided the opportunity for stakeholders to understand the challenges that people with disabilities face in accessing services.

with and be visited by family and next of kin. The department is mandated by the following legislation: Correctional Services Act, 1998 (Act 111 of 1998); Correctional Services Amendment Act, 2008 (Act 25 of 2008); and Criminal Procedure Act (CPA), 1977 (Act 51 of 1977).

Section 63A, Chapter 28 and Section 299A of the CPA of 1977 are of particular importance to the department. It provides for a procedure in terms of which the court may, on application by a head of a correctional centre and if not opposed by the Director of Public Prosecutions concerned, order the release of certain accused on warning in lieu of bail or order the amendment of the bail conditions imposed by that court on the accused.

Section 63A also forms the basis of a protocol between JCPS cluster departments to encourage the use of this provision to assist accused who do not pose a danger to society to be released from detention in circumstances where the bail set by the court cannot be afforded by the accused or his or her family.

Chapter 28 of the CPA of 1977 deals with sentencing and the entire chapter applies to the department's mandate. Offenders must be detained in accordance with the sentences handed down under this chapter.

The granting of parole and the conversion of sentences to correctional supervision is also done in accordance with this chapter, read together with the Correctional Services Act of 1998.

Section 299A of the CPA of 1977 regulates victim involvement in the decisions of parole boards.

The *White Paper on Corrections in South Africa* ushered in a start where prisons become correctional centres of rehabilitation and offenders are given new hope and encouragement to adopt a lifestyle that will result in a second chance towards becoming the ideal South African citizen.

The Second Chance Act repudiates the notion that recidivism reduction is best achieved through deterrent threats alone, and calls for the delivery of services to former prisoners not in a minimal or grudging way but in a systematic, progressive fashion.

It is a re-entry movement that could be classified as therapeutic jurisprudence, restorative justice and to some extent victims' rights.

The Act provides programmes and services that will aid rehabilitation efforts and encourage positive participation in society upon release.

It eliminates "invisible punishment" by excluding access to public benefits such as social

grants, general assistance, housing and jobs. The Act counters the effects of policies, which have made it extremely difficult for ex-offenders to re-enter the normative non-criminal community, and could explain why there are so many recidivists.

## Budget

The overall budget for 2014/15 for the DCS was R19,721 billion.

## Role players

### Portfolio Committee on Corrections

The DCS has a similar body to the Parliamentary Portfolio committees and it keeps the department in check with regard to the humane treatment of offenders and fair labour practice for its workforce, among other pressing matters.

### National Council for Correctional Services (NCCS)

The NCCS is a statutory body to guide the Minister of Correctional Services in developing policy relating to the correctional system and the sentence-management process.

### Judicial Inspectorate of Correctional Services

The Judicial Inspectorate of Correctional Services 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 Judicial Inspectorate of Correctional Services is an independent office.

### Medical Parole Advisory Board

The Correctional Matters Amendment Act, 2011 (Act 5 of 2011) provides for a new medical parole policy and correctional supervision. A Medical Parole Advisory Board was appointed in February 2012 to look into all seriously and terminally ill inmates who have submitted reports requesting to be released on medical grounds.

### Correctional Supervision and Parole Board

Correctional Supervision and Parole boards are responsible for dealing with parole matters and matters of correctional supervision. The Correctional Supervision and Parole boards have decision-making competency except:

- decisions regarding the granting of parole to people who are declared dangerous criminals in terms of Section 286A of
- the converting of sentences of imprisonment imposed in terms of Section 276 (A) (3) of the CPA of 1998 into correctional supervision

- decisions with regard to those sentenced to life imprisonment.

In such cases, recommendations are submitted to the courts that in turn will make decision in respect of conditional placement.

There are 52 Correctional Supervision and Parole Boards countrywide. These boards are chaired by community members who are regarded as suitable and capable of carrying out the responsibilities. The DCS provides the members with intensive training in respect of the processes, legislative implications and relative policies.

In addition, two members of the community are appointed as members of the board. Trained staff members of the DCS fill the positions of vice-chairperson and secretary. The board can also co-opt a representative of the SAPS and a representative of the DoJ&CD. However, if the representatives of SAPS and of DoJ&CD are not co-opted to participate in a board hearing, the chairperson of the board may request such departments to provide written inputs in respect of specific serious crimes.

## Programmes and projects

### Service Delivery Improvement Plan (SDIP)

Four key services form the basis of the SDIP. These are integrated into the department's strategic and operational plans. Regions report quarterly on:

- improving access of service providers and other stakeholders to 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 visits to offenders to support family ties between offenders and their families.

Each year the department honours officials who excel in their tasks and go beyond the call of duty to ensure that quality service is delivered through the annual National Corrections Excellence Awards.

The DCS was also part of the development of the *Training Manual on Innovation* at the Public Administration Leadership and Management Academy, in collaboration with the Centre for Public Service Innovation.

### The Gallows Memorial

The Gallows Memorialisation Project at the Pretoria Central Prison was initiated to honour those political prisoners who were hanged and serve as a reminder to future generations not to take their freedom for granted.

It comprises a memorial and a museum, which

includes the death row block housing the gallows where an estimated 130 political prisoners were hanged between 1961 and 1989.

As part of the museum, the chapel at the gallows was renamed the Steve Biko chapel, in memory of all those who died in detention.

There is also a garden of remembrance.

A roll of honour with the names of all the political prisoners can be seen at the entrance to the gallows.

### Operation Vala

Operation Vala (meaning "close") is a 50-day special festive-season security plan, which includes:

- tightening security
- limiting offenders' externally focused activities to essential services
- curtailing goods and products brought to facilities by families and friends
- conducting impromptu searches to eliminate illegal substances
- maintaining appropriate staffing levels as informed by local threat assessments by heads of correctional centres and area commissioners.

Without security, no rehabilitation can take place. The department adopted a minimum security standards policy with six key pillars, namely personnel, technology, information, operational, physical and management supervision of security.

### Operation Funda

Operation Funda (meaning "learn") is one of the DCS's flagship projects to enhance offenders' access to education and training to equip them for effective and sustainable social reintegration.

Young people between the ages of 18 and 25 constitute 69% of the offender population. There are 13 dedicated youth facilities nationally.

The purpose of the correctional system is not punishment, but protection of the public, promotion of social responsibility and enhancing human development to prevent repeat offending or the return to crime. The department insists that people who leave correctional centres must have appropriate attitudes, and competencies for them to successfully integrate back into society as law-abiding and productive citizens.

From April 2013, it was compulsory for every inmate to complete Adult Basic Education and Training levels 1 to 4.

### Mother and baby units

The mother and baby units are separate cells built for mothers incarcerated with babies in correctional centres. This is to allow children as

close to normal an existence as possible even if this is under the conditions of incarceration of the mother, while at the same time providing rehabilitation programmes in a centre that enhances their capacity to care for their children.

These facilities were launched in response to the Child Justice Act of 2008. The Act created an imperative for the department to treat children incarcerated with their mothers in a humane manner.

The facilities cater for children up to two years, after which they are released to a legal guardian chosen or recommended by the mother.

## **Imbeleko Project**

The department, through its Imbeleko Project, facilitates a soft landing for children older than two years whose mothers do not have proper family structures. It also has accredited childcare facilities to which some of these children are released.

The objectives of the project are aligned with those of the UN Convention on the Rights of the Child and the Child Justice Act of 2008.

The implementation of the first phase focused on what happens to a child released from a child-friendly mother and baby unit after reaching the limited two years.

It creates a harmonious environment between social workers from the DSD and those from the DCS to track the progress of the child who has to maintain contact with the mother through the foster parents. It calls for continuous interaction between the baby, mother and the foster parent before the child is given away.

## **Halfway House Pilot Project**

The halfway houses offer an opportunity to offenders who meet all the requirements to be placed on parole but do not have fixed addresses that can be monitored to which they can return to in communities.

Halfway houses reduce such offenders' potential to reoffend because they are given a second chance to experience a home-like environment. A halfway house is considered the final part of an offender's rehabilitation process.

## **Victim-offender dialogue (VOD)**

VODs are based on a theory of justice that considers crime, and wrongdoing, to be an offence against an individual or community, rather than the State. Restorative justice, that fosters dialogue between victim and offender, shows the highest rates of victim satisfaction and offender accountability.

Ultimately, every correctional centre will have a VOD Representative Forum.

The VODs provide an opportunity for offenders to meet with victims and account for their crimes, thereby rebuilding the nation. Through the VODs, parole boards and other structures, the department is working towards democratisation and creating more opportunities for people to join the fight against crime.

## **Correctional Services Learnership Programme**

In August 2014, 446 learners of the 999 learners completed the Correctional Services Learnership and received Corrections Services certificates NQF level 4 at Zonderwater Training College.

The Further Education and Training Learnership in Corrections is one of the department's flagship skills development programmes.

The department's learnership is a prime example of work-integrated learning, encouraged by the Department of Higher Education and Training, where learners get an opportunity to engage in both theoretical (three months), and practical (nine months), learning.

As part of government's programme of action to address unemployment, and expand opportunities for greater employment and empowerment of youth in the country, the learnership is a successful partnership between the DCS and the Safety and Security Sector Education and Training Authority (Seta) to train young people as correctional officials.

## **Offender labour**

Offenders across the country are giving back to communities and demonstrating remorse for the crimes they committed against them.

Empowering offenders with skills to function effectively in society upon their release is essential to rehabilitation.

It is equally important to ensure that offenders are actively involved in productive activity while they serve their sentences.

A trading entity will have a positive effect on the use of offender labour.

By means of the trading entity the DCS will offer their customer base consisting of government, the private sector and non-governmental organisations a wide variety of products and services, such as furniture, clothing, steel works, to food products and agriculture.

The department will continue donating products to disadvantaged communities from time to time to help alleviate poverty.

In line with the National Framework on Offender Labour, the department is increasing the number of offenders who participate in offender labour and skills development, programmes.

Ten DCS workshops will manufacture school

furniture.

The obligations of the DCS include:

- manufacture and delivery of school furniture
- rehabilitation of school furniture
- construction of school infrastructure
- maintenance, and refurbishment, of schools
- establishment of school gardens.

### Electronic monitoring

The DCS launched a GPS electronic monitoring device for awaiting-trial detainees in November 2013, a move that enhances public safety through electronic monitoring.

The GPS electronic monitoring device could help to prevent potentially volatile situations involving offenders.

The watch-like gadget is strapped to the leg of the offender.

Once the bracelet is fitted, and activated, it cannot be removed without breaking the transmitter, strap or connecting clips. The device keeps Correctional Services officials aware of offenders' movements 24 hours a day, and triggers an alarm at a control room once an offender enters a restricted zone.

By monitoring offenders in this way the department wants to protect victims of domestic violence. Such victims can be given a receiver that alerts them when the perpetrator comes within a certain distance of them.

### Automated Fingerprint and Identity System (Afis)

The department initiated the roll-out of Afis in correctional centres around the country. The department's Automated Personal Identity System, which was developed through the Inmate Tracking Project, was implemented at 32 correctional centres and 99 community corrections offices.

This interfaces with the Department of Home Affairs' database to verify the identity of offenders.

### Operational structure of correctional facilities

#### Inmates statistics

The *White Paper on Remand Detention* was signed into policy in March 2014.

In 2014, there was a prison population of more than 150 000, which included pre-trial detainees and remand prisoners.

Pre-trial detainees and remand prisoners made up 26,9% of the inmates. Female inmates were 2,5% of the total prison population, juveniles 0,2%, foreign prisoners 6,3%. There are 242 correctional centres in the country.

### Parole boards

The interim case management committee structures were established in all centres in accordance with Section 42 of the Correctional Services Act of 1998.

The parole system is based on international best practices.

It allows for independent decision-making by correctional supervision and parole boards and it allows for the participation of victims as well as other role players such as representatives from the SAPS and DoJ&CD.

### Review of the CJS

The three main streams of core business of the department are vested in the budget programmes:

- remand detention
- incarceration and corrections
- social reintegration.

### Remand detention

The White Paper on Remand Detention, in conjunction with the Correctional Matters Amendment Act of 2011, seeks to improve the management of remand detainees in DCS facilities. The constitutional right of 'innocent until proven guilty' underpins the White Paper.

Remand Detention Facilities must, therefore, allow for the minimal limitation of an individual's rights, while ensuring secure, and safe, custody.

The White Paper is also a response to the challenges posed by a dramatic increase in remand detainees over the past years. The White Paper recognises the challenges associated with persons in remand detention, although they have not been found guilty of any crime.

The DCS established a Remand Detention Branch, which became operational in April 2012. Together with the Criminal Justice Review Committee, DCS has embarked on a process of tracking those remand detainees who have been detained the longest in correctional facilities. The process assisted in determining the factors, which delay the finalisation of such cases, to ensure that these issues are addressed accordingly.

### Social reintegration

The community forms an integral part of the rehabilitation of offenders on parole to reintegrate them as law-abiding citizens. Parole is used internationally to place offenders under supervision within the community.

The parole policy provides for credible members of communities to chair the Correctional Supervision and Parole Boards which have been allocated decision-making authority.

The department wants to return rehabilitated offenders to society as healthy, and responsible, community members.

Parolees who obtained skills in correctional centres, are being provided with work tools, and start-up kits, to start their own businesses.

These include welding machines, sewing machines, car-wash machines and vacuum cleaners to create entrepreneurs and employment for parolees.

Through the Working on Fire project, female parolees are being trained and graduate to structural fire fighting. The training is not only confined to fire fighting, but includes administration and carpentry.

The department has also engaged the National House of Traditional Leaders in the rehabilitation, and reintegration, of offenders. This project is aimed at going back to the basics of rehabilitation and reintegration.

Other initiatives include parolees employed by the City of Johannesburg in the Gateway Project, the Clean Sweep Jo'burg Project, painting the Glenanda Clinic as well as a garden project at Helen Joseph Hospital, which supplies the hospital with fresh vegetables. Similar projects are being undertaken in other provinces.