

Court and other legal structures

Constitutional Court

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

The Department of Justice and Constitutional Development aims to promote better case-flow management at the CC. Targets set include increasing the number of cases finalised by 5%, and increasing the number of court hours worked per day.

Supreme Court of Appeal

The Supreme Court of Appeal, situated in Bloemfontein, is the highest court in respect of all other matters. It is composed of the President and Deputy President of the Supreme Court of Appeal and a number of judges of appeal determined by an Act of Parliament. The Supreme Court of Appeal has jurisdiction to hear and determine an appeal against any decision of a High Court.

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

High Courts

In terms of Item 16(6)(a) of Schedule 6 to the Constitution, 'all courts, their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalized with a view to establishing a judicial system suited to the requirements of the Constitution'.

The Minister of Justice and Constitutional Development must, after consultation with the Judicial Service Commission (JSC), manage this process.

When the post-apartheid Government came to office in May 1994, there were only one black male judge and two white female judges. By July 2003, out of 214 judges of the Superior Courts, there were 128 white males (60%), 14 white females, 42 indigenous African males, eight indigenous African females, eight coloured males, one coloured female, 11 Asian males and two Asian females. Some 60% of the Superior Court judges are post-apartheid appointments.

This result has been achieved through the application of a rigorous appointment procedure conducted by and under the auspices of the Judicial Service Commission.

Presently there are 10 court divisions: Cape of Good Hope (with its seat in Cape Town); Eastern Cape (Grahamstown); Northern Cape (Kimberley); Orange Free State (Bloemfontein); Natal (Pietermaritzburg); Transvaal (Pretoria); Transkei (Umtata); Ciskei (Bisho); Venda (Sibasa), and Bophuthatswana (Mmabatho).

Each of these divisions, with the exception of Venda, is composed of a Judge President and, if the President so determines, one or more Deputy Judges President, and as many judges as the President may determine from time to time.

There are also three local divisions: the Witwatersrand Local Division (Johannesburg), Durban and Coast Local Division (Durban), and South-Eastern Cape Division (Port Elizabeth). These courts are presided over by judges in the provincial courts concerned. A provincial or local division has jurisdiction in its own area over all persons residing or being in that area. These divisions hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or impose a penalty. Except where minimum or maximum sentences are prescribed by law, their penal jurisdiction is unlimited and includes life imprisonment in certain specified cases.

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

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

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

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

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

Circuit local divisions

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

Regional Courts

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

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

Magistrate's Courts

Magisterial districts have been grouped into 13 clusters headed by chief magistrates. This system has streamlined, simplified and provided uniform court-management systems applicable throughout South Africa, in terms of judicial provincial boundaries. It facilitated the separation of functions pertaining to the judiciary, prosecution and administration; enhanced and developed the skills and training of judicial officers; optimised the use of the limited available resources in an equitable manner; and addressed the imbalances in the former homeland regions. The Department now communicates through cluster heads.

In terms of the Magistrates Act, 1993 (Act 90 of 1993), all magistrates in South Africa fall outside the ambit of the Public Service. The aim is to strengthen the independence of the judiciary.

Although the Regional Courts have a higher penal jurisdiction than Magistrate's Courts (District Courts), an accused person cannot appeal to the Regional Court against the decision of a District Court, only to the High Court. By March 2003, there were 370 magistrate's offices, 51 detached offices, 107 branch courts and 234 periodical courts in South Africa, with 1 772 magistrates.

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

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

Civil jurisdiction

Except when otherwise provided by law, the area of civil jurisdiction of a Magistrate's Court is the district, sub district or area for which the Court has been established. South African law as applied in the Western Cape is in force on Prince Edward and Marion Islands, which, for the purpose of the administration of justice, are deemed to be part of the Cape Town magisterial district.

On 1 May 1995, the civil jurisdictional limits of Magistrate's Courts were increased for both liquid and illiquid claims, from R50 000 and R20 000 respectively, to R100 000. In addition to the considerable increase, the previous distinction between jurisdictional limits with regard to the different causes of action was abolished.

Unless all the parties in a case consent to higher jurisdiction, the jurisdiction of a Magistrate's Court is limited to cases in which the claim value does not exceed R100 000 where the action arises out of a liquid document or credit agreement, or R50 000 in all other cases.

Small Claims Court

Cases involving civil claims not exceeding R3 000 are heard by a commissioner in the Small Claims Court. Thirty-five such Courts have been created since 1994, with a focus on rural and previously disadvantaged areas. By July 2003, there were 142 courts countrywide, of which 25 were designated to rural areas.

The commissioner is usually a practicing advocate or attorney, a legal academic or other competent person, who offers his or her services free of charge. Neither the plaintiff nor the defendant may be represented or assisted by counsel at the hearing. The commissioner's decision is final and there is no appeal to a higher court.

Other civil courts

An authorised African headman or his deputy may hear and determine civil claims arising from indigenous law and custom, brought before him by an African against another African within his area of jurisdiction. Courts constituted in this way are commonly known as Chief's Courts. Litigants have the right to choose whether to institute an action in the Chief's Court or in a Magistrate's Court.

Proceedings in a Chief's Court are informal. An appeal against a judgment of a Chief's Court is heard in a Magistrate's Court.

Criminal jurisdiction

Apart from specific provisions of the Magistrate's Courts Act, 1944 (Act 32 of 1944), or any

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

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

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

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

Prosecutions are usually summarily disposed of in Magistrate's Courts, and judgment and sentence passed. The following sentences may, where provided for by law, be passed upon a convicted person:

- imprisonment
- periodical imprisonment
- declaration as a habitual criminal (Regional Court and High Court)
- committal to an institution established by law
- a fine with or without imprisonment as alternative, correctional supervision or a suspended sentence
- declaration as a dangerous criminal (Regional Court and High Court)
- a warning or caution
- discharge.

The sentencing of 'petty' offenders to do community service as a condition of suspension, correctional supervision or postponement in appropriate circumstances has become part of an alternative sentence to imprisonment.

Where a court convicts a person of any offence other than one for which any law prescribes a minimum punishment, the court may, at its discretion, postpone the passing of sentence for a period not exceeding five years and release the person convicted on one or more conditions, or pass sentence but suspend it on certain conditions.

If the conditions of suspension or postponement are not fulfilled, the offender may be arrested and made to serve the sentence. This is done provided that the court may grant an order further suspending the operation of the sentence if the offender proves that circumstances beyond his or her control or any other good and sufficient reason prevented him or her from complying with the conditions of suspension.

Other criminal courts

In terms of statutory law, jurisdiction may be conferred upon a chief or headman or his deputy to punish an African person who has committed an offence under common law or indigenous law and custom, with the exception of certain serious offences specified in the relevant legislation. The procedure at such trials is in accordance with indigenous law and custom. The jurisdiction conferred upon a chief and a magistrate does not affect the jurisdiction of other courts competent to try criminal cases.

Legal practitioners

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

Advocates are organised into Bar associations or societies, one each at the seat of the various divisions of the High Court. The General Council of the Bar of South Africa is the coordinating body of the various Bar associations. There is a law society for attorneys in each of the provinces. A practicing attorney is *ipso jure* a member of at least one of these societies, which seek to promote the interests of the profession.

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

societies.

In terms of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), advocates can appear in any court, while attorneys may be heard in all of the country's lower courts and can also acquire the right of appearance in the Superior Courts. An attorney who wishes to represent his or her client in the High Court is required to apply to the registrar of a provincial division of the High Court. Such an attorney may also appear in the CC. All attorneys who hold an LLB or equivalent degree, or who have at least three years' experience, may acquire the right of audience in the High Court.

The Attorneys Amendment Act, 1993 (Act 115 of 1993), provides for alternative routes for admission as an attorney. One of these routes is that a person who intends to be admitted as an attorney and who has satisfied certain degree requirements prescribed in the Act is exempted from service under articles or clerkship. However, such a person must satisfy the society concerned that he or she has at least five years' appropriate legal experience.

State law advisors give legal advice to Ministers, government departments and provincial administrations, as well as to a number of statutory bodies. In addition, they draft Bills and assist the Minister concerned with the passage of Bills through Parliament. They also assist in criminal and constitutional matters.

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

The State Attorney derives his or her power from the State Attorney Act, 1957 (Act 56 of 1957), and protects the interests of the State in the most cost-effective manner possible. He or she does this by acting on behalf of the State in legal matters covering a wide spectrum of the law.

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

Masters of the High Court

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

The key statutory functions of the Masters are the following:

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

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

Master's Business Unit

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

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

Rules Board for Courts of Law

The Rules Board is a statutory body, empowered to make or amend rules for the High Courts,

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

Justice College

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

Office of the Family Advocate

The Office of the Family Advocate functions in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987). The Family Advocate, assisted by family counsellors, reports to the court and makes recommendations which will serve the best interest of children in cases where there is litigation relating to children in divorce actions or applications for the variation of existing divorce orders.

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

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

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

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

Legal aid

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

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

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

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

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

In civil matters, legal applicants are obliged to qualify in terms of a means test. In criminal matters, the means test is used as a point of departure, but the final test is whether or not the accused is able to afford the cost of his/her own legal representation.

Criminal matters handled by the Legal Aid Board include all matters in which substantial injustice would result if legal representation were not provided at State expense. Subject to the ability of the accused to provide his/her legal representation, all matters in the High Court, all matters in the Regional Courts, many matters in the District and Magistrate's Courts, and less serious matters where the accused, if convicted, would be unlikely to be sentenced to more than three years' imprisonment, are excluded from the scheme.

Minor civil claims, the institution of claims sounding in money (for which contingency-fee arrangements are legal) and civil claims, which do not have reasonable prospect of success,

are also excluded from the civil legal-aid scheme.

The Board used to provide legal aid and representation mostly by instructing legal practitioners in private practice. This has proved to be unsustainably expensive and subject to abuse. The Legal Aid Board is moving towards a scheme in which salaried legal practitioners employed by the Board provide most legal aid and representation. By the end of 2004, the Board plans to have a national network of 60 Justice Centres throughout South Africa. By the end of April 2003, 44 Justice Centres had been established.

Legal aid may also be provided through co-operation agreements with NGOs and universities, which provide legal services. Cooperation agreements are an important part of the Legal Aid Board's Access to Justice Strategy. The Board is committed to rendering quality legal services and is consequently eager to participate in the further development of the justice system through continued co-operation with its partners. It assists approximately 250 000 applicants a year.

Office of the Public Protector

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

The Public Protector enjoys wide discretion regarding the manner in which any dispute is resolved and methods may include mediation, conciliation and negotiation as well as formal methods of investigation, such as the issuing of subpoenas, taking evidence under oath, and cross-examination. The Public Protector may, after the issue of a warrant by a magistrate or judge, enter any building or premises to investigate a complaint, and may seize anything on those premises which in his or her opinion has a bearing on the investigation.

The Public Protector can make recommendations to the public body involved, and may refer any indications of a criminal offence to the relevant authority responsible for prosecutions.

The Public Protector is prohibited from inquiring into the decisions of a court of law. No person or institution may hinder the Public Protector in the execution of his or her duties.

Any person may submit complaints to the Public Protector. Except in special circumstances, the Public Protector will not investigate a complaint unless it is reported within two years of the occurrence of the incident or matter concerned. Reports on the findings in any investigation are made public, unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential.

The Public Protector submits annual reports to Parliament on its activities and functions. If necessary, reports on the findings of certain investigations are also submitted to Parliament. The Office of the Public Protector has provincial offices in all provinces, except Gauteng, where the national Office fulfils that function. In 2002/03, the Office received 15 680 new cases and 13 108 cases were carried forward from 2001/02. Of these, 21 707 cases were finalised in 2002/03.

Magistrate's Commission

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

The Commission also attends to grievances, complaints and misconduct investigations against magistrates. It advises the Minister on matters such as the appointment of magistrates, promotions, salaries and legislation. The Commission has established committees to deal with appointments and promotions; misconduct, disciplinary inquiries and incapacity; grievances; salary and service conditions; and the training of magistrates.

South African Law Reform Commission

It is generally accepted that legal systems and rules should be revised and reformed on a continuous basis. Law reform is necessary to ensure that the principles underlying the legal system are just and in line with governing social views and values.

With a view to extending the basis for consultation and involving interested parties and the

community at an earlier stage in the process of law reform, shorter documents – which precede the publication of discussion papers – are compiled for general information and comment. The object is to stimulate and activate debate in respect of relevant matters, and to give direction to the reform, which is to follow. The Commission's line of thinking is also evident from the community-orientated nature of the investigations included in its programmes.

Judicial Service Commission

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

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

The JSC was established in terms of Section 178 of the Constitution to perform this function and also advises government on any matters relating to the judiciary or the administration of justice.

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

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

The Commission has determined criteria and guidelines for the making of appointments, which have been made public. The interviews are conducted as public hearings and may be attended by anyone who wishes to do so. Following the interviews, the JSC deliberates and makes its decisions in private. Its recommendations are communicated to the President, who then makes the appointments.

In terms of Section 177 of the Constitution, a judge may be removed from office only if the

JSC finds that the judge suffers from an incapacity, is grossly incompetent, or is guilty of gross misconduct.

The Commission considered it desirable that a formal system for the handling of complaints against judges be established by legislation. After discussions with the judiciary, draft legislation dealing with aspects such as control over discipline, leave, salaries and a complaints mechanism regarding the lower judiciary in order to strengthen the independence of the judiciary, is being prepared.

South African Human Rights Commission (SAHRC)

The Constitution makes provision for a Human Rights Commission consisting of a chairperson and 10 members. The appointment of commissioners is regulated by the Constitution.

The SAHRC, launched on 21 March 1996, comprises a Commission and a Secretariat. The aim of the Commission is to promote a culture and respect for human rights, to promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights in South Africa.

The SAHRC has the power to:

- investigate and report on the observance of human rights
- take steps to secure appropriate redress where human rights have been violated
- carry out research and educate.

The Commission has established standing committees that advise and assist the Commission in its work. The committees are:

- International Standards
- NGO and Community-based Organisation Liaison
- Disability
- Children
- Government and Parliamentary Liaison.

The Secretariat implements the policy of the Commission and ensures the promotion and

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

Strategic objectives

To effectively execute the constitutional mandate and give effect to its mission statement, the strategic objectives of the SAHRC are to:

- raise awareness on human rights and the role of the Commission, and to provide an internal and external communication service
- contribute to the development of a sustainable culture of human rights and democracy through training and by translating human-rights standards into tangible and deliverable education and training outcomes
- investigate individual and systemic complaints of human-rights violations and provide redress
- provide a research and documentation facility designed to advance human rights, especially social and economic rights
- establish the Commission as a resource and focal point for human rights in South Africa in collaboration with other institutions on the continent.

Within the parameters of its business plan, the Commission has focused on:

- socio-economic rights
- equality, with specific focus on child rights, HIV/AIDS, disability, racism, older persons, and health
- the administration of justice.

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

NACHRET was established in April 2000. The Centre provides a platform for debate on human rights issues aimed at enhancing an understanding of these issues and practices.

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

Commission on Gender Equality (CGE)

Chapter 9 of the Constitution provides for the establishment of, among others, the CGE.

Section 187 of the Constitution specifically grants the CGE powers to promote respect for gender equality, and promote the protection, development and attainment of gender equality. The composition, functions and objectives of the CGE are outlined in the CGE Act, 1996 (Act 39 of 1996).

The CGE comprises 11 commissioners, one chairperson and 37 members of the Secretariat who fall within four departments and are based in six provinces. The other three provinces are serviced from the Johannesburg office. The CGE is responsible for:

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

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

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

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

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

Some of the activities that were performed include:

- conducting research on:
 - women and access to social security
 - women and access to economic opportunities

- monitoring the implementation of the Employment Equity Act, 1998 (Act 55 of 1998)
- Unemployment Insurance Fund maternity benefits
- implementation of the Maintenance Act, 1998 and addressing systemic problems
- Spatial Development Initiatives.

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

The CGE supports strategic interventions in litigation, with the aim of encouraging law reform. The CGE also monitors most Bills that are introduced in Parliament to ensure that gender sensitivity is considered and that the rights of women are integrated.

Truth and Reconciliation Commission (TRC)

The TRC's date of dissolution was determined as 31 March 2002 by way of proclamation in the *Government Gazette*. The dissolution was ordered by the President in terms of Section 43(3)(b) of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995).

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

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

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

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

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

International affairs

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

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

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

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

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

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

- interaction with foreign states outside the SADC region
- negotiation of extradition and mutual legal-assistance agreements with other countries
- preparation of Cabinet and Parliament documentation for ratification of human rights treaties, including report-writing.

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

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

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

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

- Zambia (Extradition and MLAT)
- Argentina (Extradition)
- Hungary (Extradition)
- Namibia (Extradition and MLAT)
- Hong Kong (Extradition and MLAT)
- Brazil (MLAT).

South Africa has MLATs with the following countries:

- Canada (ratified on 3 April 2001, entered into force on 5 May 2001)
- USA (ratified on 9 November 2000, entered into force on 25 June 2001)
- Lesotho (ratified on 7 November 2001)

- Egypt (ratified on 11 November 2002)
- Algeria (ratified on 11 November 2002)
- Nigeria (ratified on 11 November 2002)
- France (ratified on 11 November 2002).

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

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

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

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

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

Human-rights issues

Southern African Development Community

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

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

African Union

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

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

Commonwealth

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

United Nations

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

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

National Action Plan (NAP)

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

Hague Conference

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

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

International Criminal Court (ICC)

A South African delegation comprising the Departments of Justice and Constitutional Development and of Foreign Affairs attended the UN Preparatory Commission Sessions during April and June/July 2002, which saw the finalisation of the outstanding instruments of the ICC, in particular the Fifth Year Budget of the ICC, and the procedure for the nomination and election of judges, prosecutors and deputy prosecutors. On 11 March 2003, the Minister of Justice and Constitutional Development and his delegation attended the inauguration ceremony of the Court in The Hague, Netherlands.

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

This Act provides for a framework to:

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

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