



# 2016/17 SOUTH AFRICA YEARBOOK

## JUSTICE AND CORRECTIONAL SERVICES

The National Development Plan (NDP) highlights the need for government to ensure that all people in South Africa are and feel safe. The NDP also emphasises that public confidence in the criminal justice system (CJS) is the most effective deterrent to criminality.

The Department of Justice and Constitutional Development (DoJ&CD) works closely with the Department of Correctional Services (DCS).

Until 1990, the two departments functioned as one entity. In late 1990, government announced that it planned to introduce extensive reforms in the prison system.

The Prison Service was separated from the Department of Justice and renamed as the DCS. This triggered important changes to prison legislation.

An important milestone in this period was the introduction of the concept of dealing with certain categories of offenders within the community rather than inside prison – a system known as non-custodial “correctional supervision”. This was introduced as a more cost-effective way of dealing with offenders and a response to overcrowding, as well as dealing with prisoners in a way more suited to the country’s prioritisation of human rights.

In 2014, the two departments were merged to become the Department of Justice and Correctional services on a ministerial level, yet still functioning as separate departments in practice as well as when reporting in official capacity and in legislative terms.

### Department of Justice and Constitutional Development

In line with the NDP, government’s Medium Term Strategic Framework 2014 – 2019 places the onus on the DoJ&CD to implement practical, short and medium-term measures to address backlogs in court cases and improve the all-round performance of the courts over the medium term.

The department’s spending over the medium term will thus be focused on improving physical access to courts, including the rationalisation of magisterial districts and the alignment of the jurisdiction of magistrates’ courts, and on improving services in courts.

The department also supports the NDP’s vision of building a capable state, and to this end it will be re-engineering state legal services.

The DoJ&CD’s plays a major and direct role in implementing the “safety for all” mandate of the NDP, which deals with the following, among other things:

- building safer communities
- promoting accountability and fighting corruption
- focusing on social protection matters
- focusing on transforming society and uniting the country.

Also included in the scope of the responsibilities of the DoJ&CD is the Seven-Point Plan of the criminal justice review, which involves making substantial changes to court processes in criminal and civil matters through short and medium term proposals.

The department has put targets in place to address areas that would improve court processes, including improving the usage



of audiovisual remand systems, implementing improved court record systems, and decreasing the rate of court postponements due to administrative staff issues.

As one of the deliverables of the Seven-Point Plan, an integrated and seamless national criminal justice information system containing all relevant performance information is under development.

The system improvements that need to be put in place for the department to fully align with the CJS requirements are included in this plan.

In line with Chapter 13 and Chapter 14 of the NDP, the department has also included targets that cover departmental interventions regarding human capital development and targets to mitigate fraud and corruption, which include fraud and corruption awareness sessions and finalising the process of reviewing the Protected Disclosures Act, 2000 (Act 26 of 2000).

The DoJ&CD has further included the implementation of the Strategic Framework on Socio-Economic Justice for all programmes.

This initiative seeks to support the delivery of socio-economic rights, which are integral to the recommendations of the NDP tackling poverty, inequality and unemployment.

The department will also continue with the implementation of the Truth and Reconciliation Commission (TRC) recommendations and legislation on human rights.

### Legislation and policies

The following instruments of legislation are relevant to the successful functioning of the DoJ&CD:

- 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 (JSC) 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 (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 NPA Act, 1998 (Act 32 of 1998), the Criminal Procedure Act (CPA), 1977 (Act 51 of 1977), the Prevention of Organised Crime Act (POCA), 1998 (Act 121 of 1998), the Special Investigating Unit 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 Court and the administration of the Guardian's Fund 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 the 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 Special Investigating Unit (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 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, 2013 (Act 10 of 2013), which repeals the Supreme Court Act of 1959.
- The Legal Practice Act, 2014 (Act 28 of 2014) establishes a new regulatory framework for the profession, enhances opportunities to enhance access to services of attorneys and advocates, and creates mechanisms to address the spiralling cost of litigation.

### New Bills in Parliament

- The Traditional Courts Bill, which aims to affirm the values of customary law and customs in the resolution of disputes, based on restorative justice and reconciliation and to align them with the Constitution.
- The Prevention and Combating of Hate Crimes and Hate Speech, which aims to create the offences of hate crimes and hate speech, and seeks to put in place measures to prevent and combat these offences.
- The Cybercrimes and Cyber Security Bill, which is intended to criminalise cyber-facilitated offences.

### Upcoming Bills for tabling in Parliament during the 2017/18 financial year

- The Lower Courts Bill, which aims to further regulate the structure and functioning of the lower courts and will replace the Magistrates' Court Act of 1944 and the Magistrates' Act of 1993.
- Magistrates' Remuneration and Conditions of Employment Bill, which aims to regulate the appointment, remuneration and conditions of service of judicial officers in the lower courts.
- The International Arbitration Bill, which aims to introduce a legislative framework that can be used by business to resolve their international commercial disputes and in terms of which parties can obtain arbitral awards that are legally enforceable. It is envisaged that the Bill will contribute to increased economic growth and investment as well as to build a positive image of South Africa in the rest of the world.
- The Protected Disclosures Amendment Bill, which is intended to provide greater protection to persons who report improprieties or irregularities in the workplace.

### 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

The administration of justice is labour-intensive, and compensation of employees remains the main cost driver in the department's budget, with expenditure expected to increase from R9,4 billion in 2015/16 to R11,1 billion in 2018/19.

The number of posts is expected to be 27 374 at most in 2018/19. The DoJ&CD received increases in compensation of employees of R208 million in 2016/17, R543 million in 2017/18 and R669 million in 2018/19 towards the costs of the 2015 public sector wage agreement.

However, Cabinet approved budget reductions in compensation of employees of R429 million in 2017/18 and R671 million in 2018/19 as part of its decision to lower the national aggregate expenditure ceiling.

After consultation with the Department of Public Service and Administration and National Treasury, the department will develop and implement a plan to manage its personnel expenditure within its reduced personnel budget.

The number of personnel in the organisation was expected to increase from 2 663 in 2015/16 to 2 717 in 2018/19. As a result, expenditure on compensation of employees is expected to increase at an average annual rate of 5%, from R1,3 billion in 2015/16 to R1,5 billion in 2018/19.

The legal aid services and special projects programmes will continue to be the largest drivers of spending over the medium term, accounting for an estimated 82,1% of the approved budget of R5,2 billion over the period.

The onus is on the DoJ&CD to implement practical, short and medium-term measures to address the all-round performance of courts and improve the investigation and prosecution of criminal cases. The department's spending over the medium term will thus be focused on increasing access to courts and expediting justice. The department will also focus on deepening individuals' constitutional right to privacy by establishing the Information Regulator.

## Role players

### Legal Aid SA (LASA)

LASA is mandated to ensure access to justice and the realisation of the people's rights to have legal representation as envisaged in the Constitution.

To this end, LASA has identified the following priority groups: children's matters; detained persons, including sentenced prisoners; accused persons who wish to appeal or review a court's decision in a higher court; women, particularly in divorce, maintenance and domestic violence cases; and the landless, especially in eviction cases.

LASA has expanded its national delivery footprint to 64 justice centres, 64 satellite offices, 13 high court units and 13 civil units.

By July 2016, LASA had handled 388 692 new criminal legal matters and 52 364 new civil legal matters.

It also finalised 432 210 legal matters during this period. LASA remains committed to assisting children. At 17 701 new matters for the year, the institution assisted 7,4% more children than the previous year.

Its Impact Litigation Unit took on 13 new civil matters and two criminal matters and finalised 14 matters. LASA was successful in 93% of the finalised matters.

The organisation plans to increase the number of civil matters finalised from 53 622 in 2015/16 to 54 431 in 2018/19, and the number of legal matters finalised a year from 446 853 in 2015/16 to 453 590 in 2018/19. To achieve these targets, 54 additional legal aid practitioners will be appointed.

More than 320 000 new matters were taken by LASA by the end of 2016. Legal advice services were rendered to over 230 000 people through the call centre. It expanded its national delivery footprint to 64 justice centres, 64 satellite offices, 13 high court units and 13 civil units.

In May 2016, LASA was named a 2016 Public Sector Leading Performer by Top Performing Companies. The organisation was also accredited as a Top Employer in South Africa in 2016, an endorsement LASA has received for seven consecutive years.

On June 2016, it was awarded first place in the Innocentrix 2016 SA Innovation League Awards. The organisation was commended for its innovative business practices and recognised as a leader in contributing towards national prosperity and creating a better future for South Africa.

### Special Investigating Unit

The SIU is a public entity with powers of both investigation and litigation. Following the issuing of a presidential proclamation by the President, the SIU has powers to subpoena, search, seize and interrogate witnesses under oath.

The SIU was created in terms of the Special Investigating Unit and Special Tribunals 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 Special Investigating Unit and Special Tribunals 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
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- 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.

Where criminal conduct is uncovered, it will bring the matter to the attention of its partners, the Hawks, an independent directorate in the South African Police Service (SAPS), as well as the NPA. It works closely with these institutions to ensure that there is an effective investigation and prosecution.

The SIU also works closely with the AFU in the NPA, where its powers are more appropriate or effective in recovering the proceeds of crime.

Between 2010 and 2016, 69 SIU proclamations were signed, with 10 proclamations signed in 2016/17 alone, to investigate a number of allegations of corruption.

In 2016/17, President Jacob Zuma approved eight proclamations and the SIU submitted five reports on completed investigations to the President.

By February 2017, the actual value of the money and/or assets that had been recovered for the State and/or relevant third parties by the SIU was R22,5 million. Since 2011/12, the total value of money recovered for the State adds up to R279,5 million.

### South African Law Reform Commission

The SALRC is a statutory body established in terms of the SALRC Act 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.

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 investigates matters appearing on a programme approved by the Minister of Justice and Constitutional Development. Reports and other documents published by the commission are made available on the SALRC website for general information.

Recent SALRC programmes included:

- statutory law revision: legislation administered by the Department of Police



- statutory law revision: legislation administered by the Department of Trade and Industry
- statutory law revision: legislation administered by the Department of Social Development
- statutory law revision: legislation administered by the Department of Public Service and Administration
- statutory law revision in respect of legislation administered by the Department of Water and Sanitation
- statutory law revision: legislation administered by the Department of Arts and Culture
- reviewing the Witchcraft Suppression Act, 1957 (Act 3 of 1957)
- revised discussion paper on the practice of ukuthwala
- statutory law revision: legislation administered by the Department of Environmental Affairs.

### National Prosecuting Authority of South Africa

The NPA was established in 1998 and comprises the National Director, deputy national directors of public prosecutions, special directors and 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.

The deputy national directors of public prosecutions are responsible for the following divisions:

- National Prosecutions Service (NPS)
- AFU
- Legal Affairs
- Administration and Office for Witness Protection (OWP).

Special directors of public prosecution head the following specialised units:

- Sexual Offences and Community Affairs Unit (SOCA)
- Specialised Commercial Crime Unit (SCCU)
- Priority Crimes Litigation Unit (PCLU).

### National Prosecuting Service

The NPS is a division of the NPA managing the performance of directors of public prosecutions 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

Under the auspices of the NPA, the OWP provides specialised services to all law enforcement agencies in South Africa, the NPA and any judicial proceedings. The OWP provides the following:

- 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 of 1998.

### Asset Forfeiture Unit

The AFU was established in May 1999 as a division of the NPA to focus on the implementation of Chapter 5 and Chapter 6 of the POCA 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, in particular 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 SAPS, and the South African Revenue Service (SARS)
- build the AFU into a professional and representative organisation.

By the end of March 2017, the AFU had recovered R685 million in respect of corruption cases involving R5 million or more.

### Specialised Commercial Crime Unit

A division of the NPA, 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, falling under the NPA, 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 TRC processes.

### Sexual Offences and Community Affairs Unit

SOCA is a division of the NPA that 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 sexual assault is rife. These one-stop facilities are aimed at reducing secondary victimisation, improving conviction rates and reducing the cycle time for the finalisation of rape cases. In 2016, the conviction rate of sexual offences reported at TCCs was 71%.

By June 2017, there were 55 TCCs across South Africa.

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

The FCS employs a network of highly skilled forensic social workers to assist with assessment of abused children and the compilation of court reports and provision of expert testimony in court. By April 2016, there were 176 FCS units nationwide.

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.

More than 6 000 members within the FCS units nationally have been trained by the SAPS on various aspects of dealing with sexual offences.

The FCS units were able to secure 541 life sentences in 2016/17, a significant improvement on the 167 life sentences in 2010/11.

The SAPS currently has 1 045 designated victim-friendly rooms at police stations and police contact points all over the country. Victim-friendly rooms are an extension of the community service centres.

The value of a victim-friendly room is that it assists in preserving the dignity of victims by making space available where a statement can be taken in privacy, in accordance with the SAPS's mandate.

At those police stations that are not yet equipped with these facilities, a room is made available for victims to be interviewed in private.

Provision has also been made to create special sexual offences courts or establish facilities for the sensitive and safe treatment of victims of sexual offences.

### 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**

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 the accepted, mainstream South African culture. However, most South Africans have gained awareness of their rights concerning language, religion and culture, 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.

In terms of transformation, the sheriff's profession is gradually

becoming more representative. As of February 2017, there were 268 practising sheriffs, of which 189 were male and 79 were female; with the overall percentage of black sheriffs totalling 62%.

**South African Human Rights Commission**

As the independent national human rights institution, the SAHRC was created to support constitutional 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 United Nations (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 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, effectiveness, accessibility and dignity 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, as well as 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 both 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 provide 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.

According to Law Society of South Africa, in 2016 some 6 088 of the 24 330 attorneys in the country were black men and 3 604 were black women.

In 2016/17, the DoJ&CD paid about R781 million to counsel, 79% of whom were historically disadvantaged individuals and 26% female.

### 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.

In response to the constitutional requirement that everyone has the right to access to a court, the DoJ&CD will continue providing court infrastructure and improving access to courts.

Access to justice will also be enhanced over the medium term by the employment of additional prosecutors. Some 150 aspirant prosecutors, 39 regional court prosecutors and 19 senior public prosecutors will be appointed between 2016/17 and 2018/19.

The greater prosecuting capacity is expected to increase the number of criminal cases finalised, including those finalised through alternative dispute resolution mechanisms, by almost 13 000 over the medium term.

The organisation planned to increase the number of civil matters finalised from 53 622 in 2015/16 to 54 431 in 2018/19, and the number of legal matters finalised per year from 446 853 in 2015/16 to 453 590 in 2018/19.

According to Statistics South Africa's Victims of Crime Survey 2014/15, 54,4% were satisfied with how the courts were performing.

In 2015/16, conviction rates in all courts improved in comparison to the previous year.

The high courts achieved an 89,9% conviction rate against the target of 87%, the regional courts achieved a 77,7% conviction rate against the target of 74%, and the district court achieved a 94,3% against a target of 88.

### 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. 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.

Justice Mandisa Maya was appointed as President of the Supreme Court of Appeal in May 2017. She is the first woman to hold this position.

### 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.

The Department of Justice and Constitutional Development (DoJ&CD) has rolled out the Court Recording Technology (CRT) to allow for easy and reliable retrieval of court recordings.

The CRT will enhance the management and administration of courts. By the end of the 2016/17, the DoJ&CD had rolled out the CRT to the majority of courts in the country.

The department has also invested R14,7 million for the installation of the Audio-Visual Remand system to facilitate the postponement of criminal cases via a high quality audiovisual link between a correctional centre and a court.

The DoJ&CD's legislative mandate provides for a high court in every province. The Mpumalanga High Court was completed in 2016/17, bringing the total of high courts in the country to 14:

- the Eastern Cape has four high courts 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 Polokwane
- the Northern Cape High Court in Kimberley
- the North West High Court in Mafikeng
- the Western Cape High Court in Cape Town.

As at 31 December 2016, the NPA had maintained a conviction rate of 91% in the high courts.

### Specialist high courts

The following specialist high courts exercise national jurisdiction:

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

### Lower courts

Regional courts, magistrates' courts and periodical courts are all lower courts. There are 714 lower courts in South Africa.

### Circuit local divisions (periodical courts)

These itinerant courts, each presided over by a judge of the provincial division, periodically conduct hearings at remote areas outside the seat of the high court designated by the judge president of the provincial division concerned. This is with a view to 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. There are more than 1 886 courtrooms dealing with district and regional court cases across the country.

The regional courts adjudicate civil disputes by virtue of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008).

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 in 15 October 2010. Subsequently, regional courts started adjudicating divorce matters. 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 need to appoint and brief counsel, thus reducing the cost of litigation and increasing access to justice.

As at 31 December 2016, the NPA maintained a conviction rates of 80% in regional courts.

### 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.

This is with a view to widening access to justice, as more people will be able to access the magistrates' 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.

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.

There are 763 magistrates' courts countrywide. The magistrates' courts prioritised for completion over the medium term are: Mamelodi, Port Shepstone, Plettenberg Bay, Dimbaza, Booysens, Richards Bay and Bityi. This is at a total projected cost of R1,4 billion over the Medium Term Expenditure Framework 2015 – 2018 (MTEF).

Building more courts will be supplemented by rationalising magisterial districts and aligning the jurisdiction of magistrates' courts with municipal boundaries to ensure that all people can access justice equitably wherever they live.

By April 2017, about 48 senior magistrates had been appointed in various courts across the country.

The appointment of the new candidates, who assumed their new roles in May 2017, was in line with government's commitment to transform the judiciary. Of the 48 appointed candidates, 47 were black and 23 were women.

As at 31 March 2017, out of the total of 1 576 active magistrates, 644 were women.



### 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 May 2017, there were 405 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 citizens 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 DoJ&CD'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, (Act 66 of 1995), which deals with matters such as unfair labour practices. For example, dismissing an employee without giving notice.

Labour courts can order an employer, 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 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.

**Traditional courts**

There are traditional courts in traditional community areas in rural villages. These courts were formerly known as chief’s courts.

These courts have jurisdiction to hear certain matters at the level of magistrates’ courts. They are designed to deal with customary issues in terms of customary law.

An authorised headman or his deputy may decide cases using indigenous law and custom (for example, disputes over ownership of cattle or lobolo), brought before him by parties within his area of jurisdiction.

A person with a claim has the right to choose whether to bring it to a traditional court or in a magistrate’s court. Any person who is not satisfied with the decision in a traditional court can take their matter to the ordinary courts.

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).

The Traditional Courts Bill, which was submitted to Parliament in 2016/17, aims to affirm the values of customary law and customs in the resolution of disputes, based on restorative justice and reconciliation and to align them with the Constitution.

**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: Hatfield, Hillbrow and Protea (Lenasia) in Gauteng; Mthatha in the Eastern Cape; Thohoyandou in Limpopo; Kimberley in the Northern Cape; Durban (Point) and KwaMashu in KwaZulu-Natal, Bloemfontein and Phuthaditjhaba in the Free State; and Fezeka (Gugulethu), Mitchells Plain and Cape Town in the Western Cape.

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**

Sexual offences courts were reintroduced by the DoJ&CD in August 2013 to provide specialised support services to victims of sexual offences, decrease turnaround times for finalisation

of sexual offences cases and improve conviction rates in these cases.

In 2016/17, 11 regional courts were upgraded to sexual offences courts, bringing the total to 59 nationwide.

These courts are specially designed for the delicate handling of sexual offences through the use of technology, intermediaries and an appropriate court environment for dealing with sexual offences.

Government had deployed 161 intermediaries spread over all dedicated sexual offences courts and also installed 324 closed circuit TV systems, 49 one-way mirrors and established 222 child testifying rooms.

The courts have been labelled as responsive and effective, as they reduce secondary victimisation, improve the skills of court personnel, speed up the finalisation of cases and contribute to their efficient prosecution and adjudication.

The number of court rooms adapted in line with the model is projected to increase with eight (in addition to the existing 47) in 2016/17 and with 15 in 2019/20.

The rebirth of specialised courts has contributed to the increase of the conviction rate in sexual offences.

By March 2016, the conviction rate in sexual offences had increased slightly from the previous year, from 69% to 70%, with 7 098 sexual offences crime verdict cases with 4 978.

A multidisciplinary approach followed by newly established provincial structures with stakeholders from the DoJ&CD, LASA, the SAPS, the Department of Health and the NPA seems to have contributed to the improvements in handling sexual offences cases.

In June 2017, the High Court in Johannesburg lifted a 20-year “expiry date” on prosecuting sexual offences, declaring it unconstitutional.

In 2016/17, there were 18 magisterial districts providing victim support services in terms of the victims charter. The department aims to increase this number to 36 in 2019/20.

**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.

Maintenance monies are now being deposited directly into the bank accounts of beneficiaries. During the 2016/17 financial year, R1,6 billion was paid to 183 000 maintenance beneficiaries through the EFT system.

Equally, the introduction of the Paperless Estates Administration System in the Master’s Office has enhanced the efficacy in the management of deceased estates.

The system was rolled out to 15 Masters’ offices countrywide and about 206 service points. This has resulted in improved accountability and faster turnaround times.

The department has introduced a new system called MojaPay, which has ensured that 80% of payments are made within four working days as opposed to the previous manual system that could take up to a month.

**National Register for Sexual Offenders (NRSO)**

The department has developed the 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 people with a mental disability.

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.

Information on whether a person is on the list is available on request, along with the relevant motivation, before any confirmation or information is released.

By November 2016, the figure of sex offenders in the NRSO stood at 22 879.

**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.

The Maintenance Amendment Act, 2015 (Act 9 of 2015) further ensures that maintenance systems are effective, putting the following measures in place, among others:

- A beneficiary will be able to claim maintenance where they work and not only where they live. This will make it easier for beneficiaries to go to the maintenance court during working hours.
- If the person from whom maintenance is sought cannot be located, despite all reasonable efforts, the court can grant an order directing electronic communication service providers to provide the court with contact information.
- Maintenance courts must complete their enquiries as speedily as possible. The views of the person who is obliged to pay maintenance must be sought.
- If a person has defaulted on paying maintenance, their personal details will be submitted to all credit bureaus. This will prevent maintenance defaulters from continuing to receive credit while owing maintenance. They will effectively be blacklisted.

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.

The Guardian’s Fund is a fund created to hold and administer funds which are paid to the Master of the High Court on behalf of various persons known or unknown, for example, minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a usufructuary, fiduciary or fideicommissary nature.

Each Master of the High Court has its own Guardian’s Fund. Through the Guardian’s Fund, the department contributes substantially to poverty alleviation.

Over the medium term, the DoJ&CD aims to ensure an enhanced and integrated family law service by:

- increasing the percentage of maintenance matters finalised within 90 days from the date of proper services of process from 50% in 2016/17 to 60% 2019/20
- increasing the percentage of family advocate reports filed within six months from the date of opening matters, from 50% in 2016/17 to 60% in 2019/20.

**Domestic violence**

The rigorous steps the Justice, Crime Prevention and Security (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 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.

The Prevention and Combating of Trafficking in Persons Act, 2013 (Act 7 of 2013) 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. The Act 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 UN Protocol.

South Africa fully recognises the existence of human trafficking and smuggling activities. These crimes are mostly perpetuated by transnational syndicates, hence the calls from many states for regional and international cooperation as well as the introduction of aligned legislation and immigration procedures.

To address those challenges, UN member states require fair, responsible, ethical and efficient CJSs and crime-prevention strategies that contribute to sustainable economic and social development. It also imposes a responsibility on states to work together.

These scourges have also had a negative impact on the people of South Africa, and government therefore fully supports the UN’s promotion of the objectives relating to the continued and focused national and international prevention and combating of these crimes.

In South Africa, migration and human trafficking remain to be the result of a complex set of interrelated push-and-pull factors. On the “push” side factors such as poverty, a lack of opportunities, dislocations from family and community, gender, racial and ethnic inequalities and the break-up of families are all relevant. The “pull” factors include the promise of a better life, consumer aspirations and lack of information on the risks involved, established patterns of migration, porous borders and fewer constraints on travel.

As a result of these factors, South Africa has become a source, transit and destination country for trafficked and smuggled men, women and children. South African girls are trafficked or smuggled for the purposes of commercial sexual exploitation and domestic servitude, while boys are trafficked or smuggled for use in street vending, food service and agriculture.

The Prevention and Combating of Trafficking in Persons Act of 2013 deals comprehensively with human trafficking in all its various forms and in particular provides for the protection of and assistance to victims of trafficking.

Persons engaged with trafficking will be liable on conviction to a severe fine or imprisonment, including imprisonment for life or such imprisonment without the option of a fine or both.

Other existing laws being used to prosecute traffickers include the Children’s Act of 2005, which provides for the criminalisation of the trafficking of children, while the Criminal Law Sexual Offences and Related Matters Amendment Act, 2007 (Act 32 of 2007), contains provisions that criminalise trafficking in persons for sexual purposes.

South Africa has also been successful in using the racketeering offences in the POCA of 1998 to deal with criminal organisations involved in trafficking.

Under the common law, depending on the circumstances of each case, persons suspected of trafficking could be charged with kidnapping, common assault, assault with intent to do grievous bodily harm, extortion, attempted murder and murder.

Those involved in acts of trafficking in persons may be prosecuted using other acts that include the Immigration Act, 2002 (Act 13 of 2002), the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), the Intimidation Act, 1982 (Act 72 of 1982), the Domestic Violence Act of 1998, and the Films and Publications Act, 1996 (Act 65 of 1996).

## Transforming the judiciary

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

As at March 2017, there were 244 judges in active service in South Africa, of which 87 were women. Regarding racial demographics, there were 39 black judges, 11 coloured judges, 11 Indian judges and 25 white judges.

The limited number of women who advance to the bench has been attributed to the low number of female legal practitioners in comparison to their male counterparts.

At the end of April 2016, of the 2 826 members registered as practising advocates on the roll of the General Council of the Bar, only 742 were women.

## 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 trusts', tutors' and curators' administration of the Guardian's Fund (minors and people with mental disabilities).

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.



During the 2016/17 financial year, the Master's Services issued 140 331 appointments in deceased estates, of which 135 242 were dealt with within the 15-day time frame set.

## Office of the Family Advocate

The role of the Family Advocate is to promote and protect the best interests of 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; 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 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 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.

Embracing information and communication technology (ICT) has allowed the DoJ&CD to extend its reach on modern-day platforms that are more accessible to children, thereby increasing access and engagement with potentially vulnerable or threatened children who would otherwise not have access to the department and, therefore, support and assistance.

The department has developed a child-friendly Frequently Asked Questions 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 by both 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 subbranch 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 ICT tools and systems
  - 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 further development of the ICMS Masters System aims to create 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.

The DoJ&CD's aim over the medium term is to increase the percentage of new deceased estates registered on the paperless estate administration system from 95% in 2016/17 to 100% in 2019/20.

### 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 as well as international bodies and 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 African Union.

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 handling 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.

### Office of the Chief Justice (OCJ)

The mandate of the OCJ is to render support to the chief justice as the head of the judiciary, as provided for in the Constitution, read together with the Superior Courts Act of 2013.

The OCJ is also required to:

- provide and coordinate legal and administrative support to the Chief Justice
- provide communication and relationship management services, and intergovernmental and internal coordination

In April 2017, the Department of Justice and Constitutional Development opened the Skukuza Regional Court. This means that South Africa's largest game reserve, the Skukuza National Park, now houses a court that will combat rhino poaching.

This is one of the measures being taken in terms of the Integrated Strategic Management approach to combat rhino poaching.

The regional court in Skukuza will help to expedite the case turnaround times for rhino poaching and related cases.

Rhino-poaching has been declared a National Priority Crime, and government continues to work as a team in the implementation of the Integrated Strategic Management of Rhinoceros.

- develop courts administration policies
- support the development of judicial policy, norms and standards
- support the judicial function of the Constitutional Court
- support the JSC and SAJEI in the execution of their mandates.

In the first five months of 2016/17, 50% of the cases at the Constitutional Court and 53% of the cases at the Supreme Court of Appeal were finalised, each against annual targets of 80%.

Performance on the finalisation of criminal cases with verdicts in the high courts was below the annual target of 64%, mainly because some of the more complex cases took longer than anticipated to be finalised.

Some 66% of the civil cases enrolled in the first five months of 2016/17 were finalised, against the annual target of 54%. This was as result of enhanced practice directions as issued by the judges president and the deputy judges president.

Regarding the performance of specialised courts, 73% of cases in the Land Claims Court and 52% of cases in the Labour Court were finalised against the annual target of 54%. The overachievement related to land claims was due to enhanced case-flow management practices, while the underachievement on the labour court side was due to the more complex and drawn-out nature of the cases.

Regarding the number of criminal cases on the backlog roll in the high courts, there were 155 cases on the backlog roll against an annual target of 156 cases. The overachievement on this target was a result of ringfenced backlog cases that were prioritised for finalisation.

### Legislation and policies

The OCJ derives its mandate from several pieces of legislation which include the following:

- The Public Service Act of 1994, which provides for the organisation and administration of the Public Service.
- The Public Finance Management Act of 1999, which regulates financial management in the national government.
- The Superior Courts Act of 2013, which empowers the Chief Justice to exercise responsibility over the establishment and monitoring of norms and standards for the exercise of judicial functions for all courts. The Minister of Justice and Correctional Services has, in terms of this Act, delegated certain powers and functions to the Secretary-General (SG) of the OCJ for the purposes of providing administrative support functions to the Chief Justice and the Judiciary. This Act also

regulates the allocation of financial resources of the OCJ and designates the SG as the Accounting Officer.

- The Judges' Remuneration and Conditions of Employment Act of 2001, which deals with the remuneration and conditions of employment of judges.
- The JSC Act of 1994, which deals with the appointment of judges and support to the JSC.
- The SAJEI Act of 2008, which provides for further training of judicial officers.
- The Public Service Act of 1994: In March 2015, the Minister of Public Service and Administration, in terms of this Act, determined the functions relating to the administration of the Superior Courts transferred from the DOJ&CD to the OCJ.

### Budget and funding

In 2016/17, the OCJ's allocated budget amounted to R1,785 billion. Of this amount, R920,057 million was allocated to judges' remuneration and benefits. This means that the OCJ had an operating budget of R864,99 million.

Over the medium term, the OCJ will focus on improving the efficiency and effectiveness of the court system, specifically through implementing and monitoring judicial norms and standards and facilitating the appointment and training of judicial officers.

This focus supports the NDP's vision to strengthen judicial governance and the rule of law by accelerating reforms towards judiciary-led, independent court administration and by dramatically scaling up judicial training.

During 2016/17, the department had 2 645 posts (including 243 judicial officers), which were all funded and filled. Judicial officers included justices for the peace, magistrates and judges.

Over the medium term, the department will fund the operationalisation of the Superior Courts Act of 2013, including creating capacity in judge president offices to coordinate judicial functions and ensure that judicial norms and standards are implemented, monitored and reported on.

The department will receive increased funding of R34,5 million in 2017/18 and R36,3 million in 2018/19 in the Judicial Support and Court Administration programme for this work.

Excluding direct charges, the bulk of the department's spending is in this programme, accounting for R2,3 billion or 38,3% of the total departmental budget of R5,9 billion over the medium term.

Because the work in this programme is labour-intensive, most of the spending is on compensation of employees and related goods and services items.

The number of personnel in the programme was expected to increase from 1 709 in 2016/17 to 1 793 in 2018/19, resulting in average annual growth of 12,3% in expenditure on compensation of employees over the period.

This increased capacity would enable the department to increase the percentage of cases finalised with a verdict from 64% in 2016/17 to 70% in 2018/19, while reducing the number of cases on the backlog roll for more than 12 months from 156 in 2016/17 to 56 in 2018/19.



The department supports the JSC to recommend candidates for judicial officers by providing the commission with secretariat and administrative support services.

All appointments of judicial officers are public and therefore 100% transparent, to enhance public trust in the judiciary. Over the medium term, R82,3 million is budgeted for the work of the commission under the JSC subprogramme in the Judicial Support and Court Administration programme.

Judicial officers receive continuous training from the SAJEI. Some 225 judicial education courses are to be provided over the medium term, including on new legislation on domestic violence, maintenance, and immigration.

For facilitating the appointment and training of judicial officers, the department will receive increases of R17,2 million in 2017/18 and R17,9 million in 2018/19 in the Judicial Education and Research programme. The programme's budget was expected to increase from R37,8 million in 2016/17 to R60,1 million in 2018/19.

The bulk of the spending is in the SAJEI subprogramme, which accounts for 83,9% of the programme's budget over the medium term.

## Department of Correctional Services

The mandate of the DCS is derived from the Correctional Services Act, 1998 (Act 111 of 1998), as amended; the CPA of 1977; the 2005 *White Paper on Corrections*; and the 2014 *White Paper on Remand Detention Management in South Africa*.

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 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
  - offenders are reintegrated into the community as law-abiding citizens.

## Legislation and policies

In addition to its legislative mandate, the DCS 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
- right to humane treatment and to communicate with and be visited by family and next of kin.

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 persons on warning in lieu of bail or order the amendment of the bail conditions imposed by that court on the accused person.

Section 63A also forms the basis of a protocol between JCPS cluster departments to encourage the use of this provision to assist accused persons 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 person 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 of 2007 (borrowed from the United States) 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.

The Criminal Matters Amendment Act, 2015 (Act 18 of 2015) amends the CPA of 1977. The amendments provide for changes to the law pertaining to infrastructure-related offences by making stricter provisions for the granting of bail, the sentencing of offenders and creating a new offence to criminalise damage to, tampering with or destruction of essential infrastructure that may interfere with the provision of basic services to the public.

The Act also aims to create a new offence relating to the essential infrastructure as well as amend the POCA of 1998.

## Budget

The DCS was allocated R21,577 billion in 2016/17. Allocations for rehabilitation and social reintegration increased by 26,6% and 18%, respectively, over the MTEF.

Over the medium term, the budget allocation for rehabilitation will increase from R1,217 billion in 2016/17 to R1,541 billion in 2018/19. Social reintegration will increase from R807 million to R954 million over the same period.

In line with the DCS's commitment towards improving correctional intervention programmes, the department reprioritised the budget for the compensation of employees of the incarceration programme to allocate R193,4 million in 2016/17, R206,6 million in 2017/18 and R220,6 million in 2018/19 to capacitate the case management committees.

Activities such as managing security operations for sentenced offenders and remand detainees, profiling inmates and compiling needs-based correctional sentence plans, as well as inmate administration, such as admissions and releases, are funded in the incarceration programme.

The programme comprises the bulk of the department's spending at R43,8 billion over the medium term. These funds also support the department's work to reduce the number of inmates who escape and the number injured in assaults, and other safety and security activities.

As this work is labour-intensive, most of the spending is on compensation of employees, which accounts for an estimated 70,2% of the programme's budget over the medium term.

The programme had 28 223 funded posts in 2016/17. However, this number is expected to decrease to 27 293 in 2019/20, through the gradual termination of contracts and natural attrition, as the department adjusts its personnel establishment to accommodate the Cabinet-approved budget reductions to spending on compensation of employees.

## Role players

### 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 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
- 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 cases such as the above-mentioned, recommendations are submitted to the courts that in turn will make decision in respect of conditional placement.

There are 53 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 by virtue of occupation, standing or cultural reverence. 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.

The views of victims of crime are important. As a result, the numbers of victims participating in parole considerations increased eightfold over the past six years, from 253 to 2 279.

As part of its mandate, the DCS aims to improve the effectiveness of the parole system by increasing the percentage of offender profiles submitted by case management committees that have been considered by correctional supervision and parole boards from a projected 89% in 2016/17 to 93% in 2019/20.

In 2016/17, the correctional supervision and parole boards considered 41 000 submissions and approved placement on parole or release of 23 000 offenders. It also referred 1 800 offenders back for further intervention and restorative justice programmes.

In addition, to facilitate the possibility of successful parole, over the medium term the DCS aims to improve the effectiveness of the parole system by:

- increasing the number of persons placed under the electronic monitoring system, from 870 in 2015/16 to 1 000 in 2018/19
- increasing the percentage of parolees and probationers without violations, from 95% in 2016/17 to 97% in 2019/20.

## Programmes and projects

### The Gallows Memorial

The Gallows Memorialisation Project at the Kgoši Mampuru II Prison (formerly 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

The DCS's annual Operation Vala (meaning "close") security campaign results in numerous unauthorised items being confiscated from offenders, as part of search operations to counter offenders' smuggling contraband at the country's 243 correctional facilities.

Contraband items can include dagga, television sets, music systems, kettles, cellphones, sharp objects, electrical extensions, cigarettes and alcohol.

In the 2016/17 financial year, Operation Vala started on 12 December 2016 and ended on 6 January 2017. Inmates usually attempt to escape during the December/January holiday period.

During Operation Vala, special emphasis is placed on security measures in correctional centres. This means increased visibility and involvement of managers at all levels in the operational activities. Focus areas include tightening security measures, increased supervision of officials as well as decreasing idleness amongst inmates.

### 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, where possible.

### 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.

Rehabilitation activities in correctional centres include correctional programmes, skills development programmes, as well as psychological, social work and spiritual care services.

The department plans to increase the proportion of sentenced offenders assigned to correctional programmes from 72% in 2016/17 to 80% in 2018/19, and maintain the percentage of offenders participating in skills development programmes at 80% over the medium term.

This will be achieved through improving the marketing of programmes, and appointing external service providers to provide more training opportunities for offenders.

The DCS aims to enhance the social functioning and reintegration of offenders into communities by increasing the percentage of offenders (inmates, probationers and parolees) who are involved in social work services from 49,4% in 2015/16 to 52% in 2019/20.

### 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.

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.

The DCS has entered into contractual agreements with eight halfway house agencies in different regions to address challenges of offender social reintegration. The department aims to facilitate the social acceptance and effective reintegration of offenders into society by increasing the number of parolees/probationers reintegrated through halfway house partnerships from 111 in 2015/16 to 200 in 2018/19.

### 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.

Over the medium term, the DCS aims to facilitate the social acceptance and effective reintegration of offenders into society by VOD. This will be done, among other things, by:

- increasing the number of victims/offended persons who participate in restorative justice processes from 6 491 in 2015/16 to 7 560 in 2019/20
- increasing the number of inmates/parolees and probationers who participate in restorative justice processes from 3 630 in 2015/16 to 7 560 in 2019/20.



### Educational programmes

Correctional Services has placed education and training at the centre of its rehabilitation, aimed at eliminating illiteracy, underqualifications and the absence of critical technical skills and competencies required for employment or self-employment.

The education intervention programmes were strengthened by the introduction of a compulsory education policy in 2012, targeting youth up to the age of 25. The DCS introduced a compulsory education policy to push offenders to join education programmes.

One of the challenges identified included the fact that 35 000 offenders did not even have a Grade 9 qualification, while over 5 000 were completely illiterate – unable to read, write or count.

Four DCS Further Education and Training (FET) schools achieved a 100% matric pass rate in the 2016 academic year, which saw the department, yet again, surpassing the 70% pass threshold, achieving a 72,1% pass rate. The 2016 academic year also registered an increase in the number of offenders sitting for the final examination, where 11 DCS FET schools enrolled 140 inmates. This was an increase from the previous academic year, which had nine DCS FET schools accommodating 111 offenders.

This 72,1% pass rate comprised of 40 bachelor degree passes, 50 diploma passes and nine certificate passes. The 2016 academic year also registered an increase of 36 distinctions, up from 30 in 2015.

The DCS aims to enhance the level of literacy, education and skills competency among offenders by:

- increasing the number of learners completing adult education and training programmes from 10 437 in 2015/16 to 11 741 in 2019/20
- increasing the number of learners completing further education and training mainstream programmes from an estimated 603 in 2016/17 to 802 in 2019/20
- increasing the number of offenders participating in skills development programmes from an estimated 8 306 in 2016/17 to 11 054 in 2019/20.

### 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.

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.

### Electronic monitoring systems

The Electronic Monitoring System (EMS), which was launched in July 2014, has enabled the DCS to effectively track an offender or a person awaiting trial on a 24-7-365 basis.

By April 2016, 870 offenders had been placed under the EMS to enhance tracking. In addition, body-scanning equipment

had been installed at Kgoši Mampuru II Prison, Johannesburg, Pollsmoor, St. Albans, Durban Westville, Groenpunt and Barberton correctional facilities.

Cellphone detection systems were rolled out in new-generation correctional facilities including Tswelopele (Kimberley) and Brandvlei (Western Cape).

Other installations targeted the Johannesburg Management Area and Kgoši Mampuru II Management Area in Gauteng, Pollsmoor and Goodwood in Western Cape as well as Durban-Westville and Umzinto in KwaZulu-Natal. The long-term aim is to install cellphone detection in all correctional facilities.

### 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

By March 2016, the DCS had a total inmate population of 161 984, with approved bed space of 119 134. Out of 71 inmates who escaped, the department managed to rearrest 57 escapees.

The Back-2-Basics security campaign was relaunched in 2015 to re-establish all the basic security principles in the department. There are 243 correctional centres in the country.

#### Incarceration of inmates

The DCS aims to enhance safety and security in correctional centres and remand detention facilities by:

- managing escapes to remain below 0,035% between 2017/18 and 2019/20
- reducing the percentage of inmates injured as a result of reported assaults from 5,4% in 2015/16 to 4,7% in 2019/20
- reducing the percentage of unnatural deaths from 0,038% in 2015/16 to 0,032% in 2019/20.

As part of its mandate, the department aims to provide facilities that will contribute to humane incarceration by:

- ensuring that overcrowding remains below 41% between 2017/18 and 2019/20
- upgrading facilities and constructing new facilities that will create 1 543 bed spaces between 2017/18 and 2019/20.

#### 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 Management in South Africa of 2014* is relevant to the mandate on remand

detention and is consistent with the Correctional Matters Amendment Act of 2011 and other relevant national and international legislation and protocols.

The DCS has commenced with the operationalisation of the White Paper through the development of the overarching departmental policy and procedure manuals.

As part of efforts to operationalise the White Paper, the DCS piloted a risk classification for remand detentions during 2014/15, and subsequently implemented the Continuous Risk Assessment (CRA) during 2015/16.

The CRA was successfully rolled out to 22 remand facilities within all six DCS regions across South Africa.

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 DCS established a Remand Detention Branch, which became operational in April 2012. Together with the Criminal Justice Review Committee, the department 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 that delay the finalisation of such cases to ensure that they are addressed accordingly.

#### Health services

To uphold the basic human rights of inmates, the DCS aims to maintain the health and personal wellbeing of inmates by:

- increasing the percentage of inmates on antiretroviral therapy from 98,1% in 2015/16 to 99% in 2019/20
- increasing the tuberculosis (new pulmonary) cure rate from 83,4% in 2015/16 to 89% in 2019/20
- increasing the percentage of inmates who are involved in psychological services from an estimated 16% in 2016/17 to 19% in 2019/20
- increasing the percentage of inmates who benefit from spiritual services from an estimated 57% in 2016/17 to 62% in 2019/20.

Over the medium term, the DCS aims to improve nutritional services to inmates by maintaining the provision of therapeutic diets at 15% of the total inmate population between 2017/18 and 2019/20.

The DCS has pharmacies in various provinces including the Eastern Cape, Free State, Northern Cape, Gauteng, Western Cape, KwaZulu-Natal, Limpopo, Mpumalanga and North West.