

Administration of Justice

Input for the SA Yearbook 2003/2004

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The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), is the supreme law of the country and binds all legislative, executive and judicial organs of the State at all levels of government.

In terms of Section 165 of the Constitution, the judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law.

No person or organ of State may interfere with the functioning of the courts, and an order or decision of a court binds all organs of State and persons to whom it applies.

The Department of Justice and Constitutional Development is responsible for the administration of the courts and constitutional development. It is the mission of the Department to uphold and protect the Constitution and the rule of the law. The Department is accountable to the public and the State in rendering accessible, fair, speedy and cost-effective administration of justice in the interest of a safer and more secure South Africa. The Department aims to achieve this by promoting constitutional democracy, providing appropriate legal services and the sound management of courts, and alternative dispute-resolution mechanisms.

It performs these functions in conjunction with judges, magistrates, the National Director of Public Prosecutions (NDPP) and the Directors of Public Prosecutions (DPPs), who are independent. The Department's responsibilities include the provision of adequate resources for the proper and efficient functioning of the criminal and civil justice systems. It provides legislation and administrative support for the establishment of institutions required by the Constitution.

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Transformation of the justice system

One of the biggest challenges facing government was, and still is, the successful transformation of the justice system.

Restructuring of the Department

The Department of Justice and Constitutional Development is undergoing a restructuring process. The Department's goals are to:

- Improve service delivery to internal and external clients to enhance client satisfaction.
- Ensure that business is conducted efficiently and in a cost-effective manner, with the primary focus on courts and other services rendered to the State and the public. This includes improving productivity in the courts and making justice more accessible and affordable.

For the purpose of restructuring, the following core business units have been identified under the leadership of the Minister of Justice and Constitutional Development, Dr Penuell Maduna:

- Court Services
- Masters' Offices
- Legal Services
- Legislative and Constitutional Development.

Various other units have been identified in support of these business units, namely:

- The Office of the Chief Financial Officer
- Human Resource Development
- Information and Systems Management, which includes information technology services
- Public Education and Communication.

National Prosecuting Authority of South Africa (NPA)

The NPA structure includes the National Prosecuting Services (NPS), the Directorate: Special Operations (DSO), the Witness-Protection Programme, the Asset Forfeiture Unit (AFU) and specialised units such as the Sexual Offences and Community Affairs Unit and the Specialised Commercial Crime Unit. In terms of the NPA Amendment Act, 2000 (Act 61 of

2000), the DSO is a distinct and autonomous agency.

The NPA has made steady progress in achieving its priorities. Generally, productivity in courts is increasing, but this has to be viewed in the light of substantial increases in the number of new cases. Between January 2002 and December 2002, the lower courts finalised a total of 833 594 cases, of which 421 213 were withdrawn. Outstanding cases on the lower courts' rolls decreased from 195 638 in January 2002 to 180 953 by the end of December 2002. Over the same period the conviction rate was 81%. The High Courts finalised 1 684 cases between January 2002 and the end of September 2002. Of these, 288 were rape cases referred by the lower courts, for which the High Court must give at least the minimum sentence; with 1 130 receiving a verdict of guilty (81%). There was an outstanding roll of 1 048 cases and 1 827 new cases were registered.

Office of the National Director of Public Prosecution

The Office of the NDPP is the head office of the NPA. The prosecuting authority vests in the NDPP. This authority can be and has been delegated to other members of the NPA. They have 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
- Discontinue criminal proceedings.

Directorate: Special Operations

The DSO pursues its objectives, and complies with its legislative mandate through the application of numerous legislative tools. In addition to the NPA Act, 1998, other statutes include the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), International Cooperation in Criminal Matters Amendment Act, 1996 (Act 75 of 1996), and the Extradition Amendment Act, 1996 (Act 77 of 1996).

The DSO is committed to the investigation of matters that are national in scope, and concentrates on those crimes that threaten national security and economic stability. The more complex and protracted the investigations and higher up the criminal target, the more appropriate the matter would be for DSO selection. In many instances, these high impact

investigations fall outside the scope and capacity of the South African Police Service (SAPS).

The following three delineated areas fall within this strategic focus: organised corruption, transnational organised crime, and serious and complex financial crime. The DSO has specifically initiated investigations in respect of transnational drug syndicates, such as West African and Chinese drug syndicates with strong international links.

It has developed operational liaison with international law enforcement agencies such as the United States (US) Federal Bureau of Investigation and Drug Enforcement Administration, United Kingdom's (UK) Scotland Yard, and UK Customs and Excise, which allows for international collaboration.

In the area of serious and complex financial crime, DSO investigations are evidence of its intention to penetrate crime markets that have in recent years been out of the reach of traditional law enforcement. The DSO has initiated investigations into organised public office corruption. It has developed an ambitious, though realistic strategy, based on a customised model of successful overseas anti-corruption programmes.

By September 2002, the DSO had finalized 210 prosecutions over a period of 18 months. Eighty-five of these were finalised in the last seven months with a 93% conviction rate. In those seven months, an additional 43 major case investigations were initiated, bringing the total number of projects on its books to 500, one-third of which had already appeared before the courts.

The Department of Justice and Constitutional Development raised more than R700 000 for civil organisations fighting women and child abuse through the National Signature Pledge held during the *16 Days of Activism for No Violence Against Women and Children Campaign* in 2002.

Over 580 000 people, including President Thabo Mbeki and several sporting and international personalities, supported the Campaign.

The money was disbursed to the different nongovernmental organisations by the Foundation for Human Rights. The Campaign was repeated in 2003.

Asset Forfeiture Unit

In terms of Chapters 5 and 6 of the Prevention of Organised Crime Act, 1998, the AFU can seize and forfeit property that is the proceeds of crime, or property that has been used to commit a crime.

The AFU has two major strategic objectives, namely to:

- develop the law by taking test cases to court and creating the legal precedents necessary to allow for the effective use of the law
- build capacity to ensure that asset forfeiture is used as widely as possible to make a real impact in the fight against crime.

The use of asset forfeiture to fight crime has been one of government's important innovations. By June 2003, the AFU had initiated over 300 cases and frozen nearly R500 million worth of criminal assets. There was more than R25 million in the Criminal Assets Recovery Account, which will be used to fight crime.

Special Investigating Unit

A special investigation and tribunals unit was appointed in March 1997 to probe corruption and maladministration in government.

Sexual Offences and Community Affairs Unit

This Unit focuses on violent and indecent offences committed against women and children, as well as on family violence, child support and child justice. It ensures that these cases are prioritised, monitors the quality of delivery, and ensures that victims and witnesses receive decent treatment in courts. The Unit also seeks to improve the investigation and prosecution of rape cases. To this end, four multidisciplinary rape care centres, known as the Thuthuzela Care Centres, have been established. The Centres comprise police investigators, medical personnel, social workers, prosecutors and community volunteers who assist in addressing the underreporting of rape cases.

These teams have also contributed to speeding up and humanising rape investigations,

developing accurate data-collection tools, and building better co-operation and communication between victims and the justice system.

In June 2002, the Unit began training prosecutors in the handling of domestic violence. It also recruited and trained maintenance prosecutors. In addition, prosecutors countrywide have been trained to deal with child-justice matters. Since the inception of child-justice committees co-ordinated by prosecutors, some 9 990 offenders have been diverted from the criminal justice system (CJS).

Sexual offences

By July 2003, 40 Sexual Offences Courts had been established countrywide. The fight against sexual offences is a national priority. The Department of Justice and Constitutional Development is busy with a programme of providing facilities at courts where child witnesses, especially in child abuse cases, can testify in a friendly and secure environment without the risk of being intimidated.

New child-witness rooms are furnished with one-way glass partitions adjacent to the courtrooms. Where it is impossible to provide such rooms in existing buildings, other rooms away from the courts are utilised by providing a closed-circuit television link. Significant progress has been made in this regard. Some 35 rooms have been provided with one-way glass partitioning, while 178 closed-circuit television systems have been installed.

Twenty of the Sexual Offences Courts are blueprint-compliant while a further 20 Regional Courts are dedicated to hearing mainly sexual offences cases. The Department of Justice and Constitutional Development, the NPA, the Department of Social Development and the SAPS have established a close working relationship and have developed a national strategy for the accelerated rollout of Sexual Offences Courts.

The Office of the NDPP and the Department of Justice and Constitutional Development have identified several additional areas for the creation of these Courts. Similar court structures have been included as a standard requirement for all future building projects.

National Prosecuting Services

The mission of the NPS is to raise the levels of productivity in the NPA and make it efficient

and credible. The unit has to ensure proper planning of court rolls, prioritisation, proper preparation and arrangement for all cases to be heard, and the avoidance of unreasonable delays. Between 2000 and 2002, District Court rolls decreased to 127 per court, and to 106 in Regional Courts. In addition, there has been a dramatic increase in cases finalised with a verdict of guilty.

The conviction rate in District Courts is over 80%, and in Regional Courts approximately 70%. By mid-2003, integrated justice system (IJS) Court Centres had been established at 39 lower courts throughout the country. The IJS Project has resulted in improved case preparation and reduced case-cycle times. Court statistics show that the average cycle time of cases has declined from 110 to 74 days. The Court Management Information System (MIS) reports aspects such as the number of cases finalised per courtroom and per judicial officer, cases withdrawn as a proportion of cases disposed of, and the number of new cases per courtroom and per judicial officer. Encouraged by the initial results, the Department decided to extend the Southern Gauteng Pilot Project to the rest of the courts in Gauteng and all the courts that have IJS Court Centres.

Specialised Commercial Crime Unit

The Pretoria-based Specialised Commercial Crime Unit was established in 1999 to bring specialisation to the investigation, prosecution and adjudication of commercial crimes. Three new courts and offices were established in the Johannesburg and Pretoria central business districts for specialized commercial crime cases.

The Johannesburg and Pretoria Courts will eventually be followed by similar courts in Durban and Cape Town. Before the establishment of the Specialised Commercial Crime Courts, only 6% of all perpetrators prosecuted were convicted, compared with the 23% conviction rate at the Pretoria Court.

The Specialised Commercial Crimes Unit had a conviction rate of more than 95% in 2002.

Witness-Protection Programme

The Office for Witness Protection falls under the auspices of the NPA. The Office is responsible for the protection of witnesses in terms of the Witness Protection Act, 1998 (Act 112 of 1998), and its regulations.

It also makes provision for placing a person related to the witness under protection at the request of the witness, prospective witness or a person who has given evidence or is required to give evidence in criminal proceedings or before a commission of inquiry.

The 2003/04 budget for witness protection amounted to R36 524 million. The Programme does not offer incentives to witnesses of serious crimes such as those offered by the SAPS. Instead, the Programme offers sustenance in the form of a food allowance, replacement of salary if employment has been lost, free accommodation including all municipal services, a clothing allowance, transport, a housing allowance for school-going children, medical expenses, etc.

At the end of March 2003, there were 326 potential testifying witnesses admitted to the Programme. The total number of people in the Programme is 704, including family members. The average gross monthly expenditure stands at R1 775 million.

Between January and March 2003, the following was realised through the involvement of the Witness-Protection Programme: some 87 cases were finalised, 114 witnesses testified, the number of accused persons stood at 183, while 141 convictions took place, 42 persons were acquitted, and the combined jail terms amounted to 2 626 years and 72 life sentences.

Community Courts

In May 1999, South Africa's first Community Court, aimed at alleviating the burden placed on the justice system by petty crimes and social disputes, was launched at the Kyalami Metro Council in Gauteng. The pilot project is guided by members of the SAPS, the Department of Justice and Constitutional Development, and non-governmental organizations (NGOs). It promotes community participation in justice administration and policing.

The South African Law Reform Commission (SALRC) is finalising a report on Community Courts. During 2002/03, the Department delivered new Community Courts at an unprecedented rate. Some R211 138 million was spent on establishing new courts at Botshabelo, Queenstown, Kroonstad, Khutsong, Khayelitsha, Blue Downs, Patensie and Middledrift. Ongoing extensions at various other Courts ensured that the capital budget was

put to the best possible use.

Courts for Income Tax Offenders

In October 1999, the South African Revenue Service (SARS) opened a criminal courtroom at the Johannesburg Magistrate's Office dedicated to the prosecution of tax offenders. The Court deals only with cases concerning failure to submit tax returns or to provide information requested by SARS officials. It does not deal with bigger cases such as tax fraud.

Another SARS court is operating twice a week at the Magistrate's Office in Roodepoort. Discussions to decentralise and expand such a Court to the bigger centres in the country have taken place between SARS and the Department.

In terms of Section 22(8) of the NPA Act, 1998, the NDPP may authorise any competent person to conduct prosecutions in respect of statutory offences. Representatives from the NPA and SARS are engaged in discussions to appoint suitable officials to deal exclusively with the prosecution of income-tax offenders.

Family Court Pilot Projects

A specialised Family Court structure and extended Family Advocate services are priority areas for the Department. The Family Court Blueprint was developed by the Family Court Task Team in 2002 to support the existing five pilot projects in becoming fully fledged successful Family Courts, and thereafter the rolling out of Family Courts to other magisterial districts. The establishment of Family Courts in South Africa is motivated by three broad aims, namely to:

- give wide and specialised protection and help to the family as the fundamental unit in society
- bring about access to justice for all in family disputes
- improve the quality and effectiveness of service delivery to citizens who have family law disputes.

The Family Court Blueprint recommended that 17 interim projects be established to strengthen the existing pilot projects. The Department is implementing these recommendations as part of the restructuring of the Courts.

Municipal Courts

Municipal Courts are being set up in the larger centres of South Africa in conjunction with municipalities. They are Magistrate's Courts but deal only with traffic offences and contraventions of municipal by-laws.

They are set up in a partnership agreement in that administrative and infrastructural support is supplied by the municipality, while magistrates are provided by the Department. Pretoria, Johannesburg, Port Elizabeth and Nelspruit either have Municipal Courts already or are in the process of setting up these Courts. These Courts assist in addressing the backlogs and severe workloads of the other lower courts.

Equality Courts

The role of Equality Courts, which are to be rolled out countrywide, is to enforce the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000).

The Act outlaws unfair discrimination and allows for the creation of Equality Courts within the Magistrate's and High Courts, each to be presided over by an equality court officer. The Act further authorises the Minister of Justice and Constitutional Development to appoint an Equality Review Committee to monitor the implementation of the Act's provisions. By June 2003, 62 Equality Courts were in operation.

State Legal Services

State Legal Services provides government with legal services and facilitates constitutional amendments through three sub-programmes.

- Legal Services to the State provides for the work of the State Attorney and State law advisors. The former acts as attorney, notary and conveyancer for government. State law advisors provide legal opinions, scrutinize and amend international agreements and draft legislation and attend relevant Parliamentary Portfolio Committees as legal advisors for all national departments.
- The Legislative and Constitutional Development Unit is responsible for promoting, maintaining and developing the Constitution and its values by researching, developing and promoting appropriate legislation. It includes the research activities of the SALRC, which

involve extensive reviews of wide areas of law and legal practice. The Unit established a section for statutory-law revision in 2002, which researches and develops legislation, researches possible future legislation, and develops reports for the Minister on a range of issues.

- The Master of the High Court is responsible for the administration of deceased and insolvent estates, companies and close corporations in liquidation, trusts and the Guardians Fund, as well as the property of minors, persons under curatorship and absent persons.

Human rights

Human rights, in terms of Chapter Two of the Constitution, bind all legislative and executive bodies of State at all levels of government. 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:

- freedom from discrimination
- a right to life.

Crime prevention

The Department of Justice and Constitutional Development is one of the four core departments in the Criminal Justice Cluster that has been tasked with the implementation of the National Crime Prevention Strategy (NCPS). This is government's official strategy to combat, control and prevent crime. The main responsibilities of the Department in the implementation of the NCPS are:

- promoting legislation to create an effective CJS
- creating an effective prosecution system
- creating an effective court system for the adjudication of cases
- co-ordinating and integrating departmental activities of all role-players involved in crime prevention.

Integrated Justice System

The IJS Board was established in 1997 to integrate the activities of departments in the Justice

Cluster in a co-ordinated manner. The underlying principle in establishing this System is the re-engineering of business processes through the necessary technology to ensure effective interaction and transition between the respective departmental responsibilities.

Six major developments are being undertaken, namely the:

- Development of a framework detailing the business processes that will be reengineered in an integrated manner. By July 2003, the project was nearing completion, the results of which are going to be used to finalise the design of the initial build of the integrated business process, for subsequent release and implementation.
- Establishment of the necessary infrastructure to enable the IJS. Each department has been tasked with the responsibility of ensuring that the required infrastructure is put in place for the deployment of the IJS elements.
- Establishment of the Virtual Private Network. This task has been assigned to the State Information Technology Agency.
- Identification System that has been procured. The project consists of an Automated Fingerprint Information System (AFIS), the National Photographic Identification System (NPIS), and a database of all DNA samples. By July 2003, these systems were largely complete. However, they still have to be placed within the IJS framework to facilitate the management of the person through the justice process, which not only includes the offender, but also the victim and witnesses.
- Development of the necessary business intelligence capacity within the Justice Cluster, which was expected to move into a new phase during 2003/04.
- Integrated Case-Flow Management System, which includes Case, the Person (offender, victim and witness) and the Exhibit business processes. These processes are seen to be the primary business capabilities which are to be supported by the main functionalities of work flow, document management, scheduling and event notification.

Improved governance was one of the most significant achievements during 2002/03 as well as the following:

- Framework development – by July 2003, the project was almost concluded.
- Business enablement – a core strategy has been developed and demonstrated.
- Reference-data management – initial requirements have been delivered.

- Business intelligence – two business areas were ready for implementation by July 2003.
- Identification service – the NPIS enhancement is nearing completion. Since its implementation in September 2002, AFIS has reduced the backlog in fingerprint searches from 84 891 to 32 169.
- Inmate tracking (offender/persons management).
- Improved database capacities.
- The Court Process Project (CPP) – a functional baseline has been established for court processes across departments.
- The CPP roll-out to 13 police stations in the Durban Magistrate's Court area is showing good progress.

The CPP provides for the automation of civil and criminal case-management systems. The objective is to implement it in all 450 Magistrate's Courts countrywide, together with the associated Community Safety Centres, prisons and social development institutions. In relation to the Department, the 2003/04 priorities of the IJS – focusing on promoting service-delivery excellence in the CJS – are to increase the efficiency of the courts, especially the handling of sexual-assault crimes.

The Department is recruiting court managers to take over the administrative function of magistrates following the decision to separate administrative and judicial functions. Courts are working longer hours, and between 1999 and 2001 there was a 49% increase in the number of daily court sittings. As a result, the number of cases finalised in courts has increased since 2001. To deal with case backlogs, 3 027 Saturday and additional court days were introduced.

Between January 2002 and March 2003, these courts finalised 27 570 cases. More courts are being encouraged to sit over weekends to reduce unacceptable case backlogs. There has been a positive reversal in the ratio between sentenced and other prisoners, owing to the overall improvement in court efficiency. During 2002, 18 new permanent judges were appointed and further appointments are being processed. An amount of R20 million was set aside to increase the number of magistrates and prosecutors to cope with escalating court rolls. For 2003/04, an amount of R229 million was allocated for capital works and R35 million

for the upgrading of existing infrastructure. Construction of new court buildings is under way in Tembisa, Benoni, Boksburg, Scottburgh, Atteridgeville, Randburg, Pretoria North, Atamelang, Sasolburg and Sebokeng.

e-Justice

The e-Justice Programme was developed to transform the Department into an equal role-player in the IJS. The Programme is a multi-year development that consists of four components. These are the:

- Digital Nervous System (DNS) Project, which entails rapid infrastructure deployment throughout all the Department's offices. The Project was scheduled for completion by December 2002, but the baseline deadline could not be met and has been extended to 2004.
- Financial Administration System, which consists of four projects involving the automation of the Guardian's Fund, bail, maintenance, and the State Attorney's trust accounts. The development phases of the projects have been completed and rollout was due to start in 2003.
- MIS, which is designed to provide essential information necessary to manage the Department. The MIS has been incorporated into and will now be a subproject of the DNS.

Legislation

In terms of the Constitution, legislative authority is vested in Parliament, which consists of the National Assembly and the National Council of Provinces (NCOP). South African legislation is constantly revised to meet changing circumstances in a dynamic and developing society. This is done on the advice of the legal sections of various government departments and the SALRC, after consultation with all interest groups.

Since April 1994, the Department has promoted more than 100 Bills. The Department's legislative programme was dominated by three main themes, namely, legislation to give effect to the spirit of the new constitutional dispensation, legislation to address the crime problem prevailing in South Africa, and legal reform.

The Department of Justice and Constitutional Development's Maintenance Outreach

Programme was launched by the Deputy Minister of Justice, Ms Cheryl Gillwald, in Cape Town in March 2003.

The Outreach Programme is aimed at educating people about their rights and responsibilities with regard to maintenance and child support, appointing maintenance investigators to improve the payment of maintenance and progress in the modernisation of systems for the collection and distribution of maintenance.

The most important pieces of legislation promoted in recent years include the following: Implementation of the Maintenance Act, 1998 (Act 99 of 1998), and the Domestic Violence Act, 1998 (Act 116 of 1998) The Department implemented the Maintenance Act, 1998 and the Domestic Violence Act, 1998 in November 1999 to make a difference to the lives of vulnerable women and children. The Department has also started appointing contract maintenance investigators in 55 of the Maintenance Courts.

Promotion of Access to Information Act, 2000 (Act 2 of 2000)

The Open Democracy Bill was introduced to Parliament in August 1998. Amendments were made and Parliament finally approved the Promotion of Access to Information Bill, 2000 in January 2000. The Promotion of Access to Information Act, 2000 grants the right of access to information referred to in Section 32 of the Constitution.

The Act generally promotes transparency, accountability and effective governance of all public and private bodies. The Act, with the exception of a few sections, came into force on 9 March 2001.

The Promotion of Access to Information Amendment Act, 2002 (Act 54 of 2002), was published in the *Government Gazette* in January 2003. The aims of the Amendment Act are to amend the definition of 'court' in the principal Act and to provide for the training of presiding officers in Magistrate's Courts. The Department has approached the Minister to designate all Magistrate's Courts as Access of Information Courts.

Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)

The Act is aimed at the provision of lawful, reasonable and procedurally fair administrative

action as contemplated in Section 33 of the Constitution.

The Act, with the exception of Sections 4 and 10, came into force on 30 November 2000. The Promotion of Administrative Justice Amendment Act, 2002 (Act 53 of 2002), was published in the *Government Gazette* in February 2003. The aims of the Amendment Act are to amend the definition of 'court' in the principal Act and to provide for the training of presiding officers in the Magistrate's Courts for purposes of the Act.

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

The objectives of the Act include the prevention and prohibition of unfair discrimination, redress for discrimination, the promotion of equality and progressive eradication of discrimination. The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002 (Act 52 of 2002), was published in the *Government Gazette* in January 2003. The objectives of the Amendment Act are to further provide for the training and designation of presiding officers of Equality Courts for purposes of the Act, to provide for the designation of Magistrate's Courts as Equality Courts, to further regulate the training of clerks for Equality Courts and to provide for related matters.

The Department is in the process of approaching the Minister to designate Magistrate's Courts as Equality Courts.

Child Justice Bill

Article 40(3) of the Convention on the Rights of the Child requires State parties 'to promote the establishment of laws, procedural authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law'. The Government, having ratified the Convention on the Rights of the Child in 1995, recognised that the situation regarding such children in South Africa was unsatisfactory, and decided to bring about change.

A Juvenile Justice Project Committee, appointed by the SALRC, drafted a comprehensive Bill. The proposed legislation will create a new system for dealing with children accused of crimes that will:

- set a minimum age of criminal capacity

- ensure individual assessment of each child
- establish procedures to divert as many children as possible away from courts and institutions
- set up new Child Justice Courts with trained personnel
- provide a creative range of sentencing options
- develop a system of review and monitoring for the system.

The Bill encourages the release of children into the care of their parents and entrenches the constitutional injunction that prison should be considered as the last resort. The Child Justice Bill was presented to the Portfolio Committee on Justice and Constitutional Development on 20 February 2003. Public hearings were held and several submissions were received.

Amendments to the Bill were made on the request of the Portfolio Committee. Although substantial redrafting of certain sections has been requested, the main policy direction of the Child Justice Bill remains intact. It was expected that the Bill would be passed before the end of 2003.

Constitution of the Republic of South Africa Amendment Act, 2001 (Act 34 of 2001)

This Amendment Act amends the Constitution of the Republic of South Africa, 1996 so as to change the title of the President of the Constitutional Court (CC) to that of Chief Justice; provide for the Offices of the Deputy Chief Justice, President of the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal; and provide for the extension of the term of office of a Chief Justice. The Amendment Act also makes provision for municipal borrowing powers, and to enable a municipal council to bind itself and a future council in the exercise of its legislative and executive authority to secure loans or investments for the municipality concerned.

Criminal Procedure Second Amendment Act, 2001 (Act 62 of 2001)

The Act emanates from a report of the SALRC (as part of its investigation into the simplification of the criminal justice process) and aims to amend the Criminal Procedure Act, 1977 (Act 51 of 1977), to allow a prosecutor and an accused person to enter into a plea and sentence agreement.

Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act 70 of 2002)

This Act aims, among other things, to regulate the interception of certain communications, the monitoring of certain signals and radio frequency spectrums, and the provision of certain communications-related information. The Act also regulates the making of applications for, and the issuing of, directions authorising the interception of communications and the provision of communications related information under certain circumstances.

It further provides for the execution of directions and entry warrants by law-enforcement officers and the assistance to be given by postal service-providers, telecommunications service-providers and decryption key holders in the execution of such directions and entry warrants.

Constitution of the Republic of South Africa Second Amendment Act, 2003 (Act 3 of 2003)

The objectives of the Amendment Act include amending the Constitution so as to simplify the process of review by the NCOP where national executive interventions have taken place in provincial affairs, and simplifying the process of review by the NCOP where provincial executive interventions have taken place in local affairs. The Act also changed the name of the Northern Province to Limpopo.

The Republic of South Africa Third Amendment Bill, 2003

The Bill amends the Constitution of the Republic of South Africa, 1996 in two respects:

- provision is made for a single High Court of South Africa, consisting of the divisions, with the areas of jurisdiction, as determined by an Act of Parliament
- provision is made for the appointment of a second Deputy President of the Supreme Court of Appeal.

The amendments contained in the Bill are required in order to constitutionally sanction certain corresponding provisions of the Superior Courts Bill, 2003. The Superior Courts Bill will largely be giving effect to item 16(6) of Schedule 6 to the Constitution, in terms of which all courts must be rationalised with the view to establishing a judicial system suited to the requirements of the Constitution. This Bill aims to rationalise and consolidate the laws

pertaining to the CC, the Supreme Court of Appeal and the High Courts, referred to collectively as the Superior Courts. It will also merge the Labour Court and the Labour Appeal Court with the proposed High Court of South Africa and the Supreme Court of Appeal, respectively.

Compulsory HIV-Testing of Alleged Sexual Offenders Bill, 2003

The purpose of the Bill is to provide a speedy and uncomplicated mechanism whereby the victim of a sexual offence can apply to have the alleged offender tested for HIV and have the test results disclosed to the victim.

The Bill emanates from the SALRC's fourth interim report on *Aspects of the Law Relating to AIDS*. In its report, the Law Commission noted the vulnerability of women and children being infected with HIV as a result of rape and other sexual offences.

In accordance with the Bill, the HIV-testing of the alleged offender should take place within a specific period after the alleged sexual offence was committed. The victim, or any interested person on behalf of the victim, may apply to a magistrate for an order that the alleged offender be tested for HIV.

The application may also be made as soon as possible after a charge has been laid, and may be made before or after an arrest.

Criminal Procedure Amendment Bill, 2003

The purpose of the Bill is to further regulate appeals against decisions of lower courts in criminal cases. The Bill provides that any person convicted of any offence in a lower court who wishes to appeal against the conviction, sentence or order, must apply to the relevant lower court for leave to appeal against any conviction, sentence or order. The Bill further provides for a petition procedure to the High Court having jurisdiction, in the case where an application for leave to appeal has been refused.

Public Protector Amendment Bill, 2003

The main purpose of the Bill is to further regulate the appointment of the Deputy Public Protector. The Public Protector Act, 1994 (Act 23 of 1994), provides for the appointment of

Deputy Public Protectors by the Cabinet member responsible for the administration of justice.

There have been arguments that this erodes the independence of that office, as such a person (Deputy Public Protector) may eventually assume the duties of the Public Protector. The amendments to the Bill propose that only one Deputy Public Protector be appointed, and that he or she, as is the case with the Public Protector, be appointed by the President with the involvement of Parliament. Amendments that regulate the remuneration and other terms and conditions of employment, vacancies in office, and removal from office of the Deputy Public Protector, are also included in the Bill.

Sexual Offences Bill

The Bill emanates from an investigation by the SALRC. The aim of the Bill is to address mounting public concern about the high levels of rape and other sexual offences in South Africa.

According to statistics released by the Crime Information Analysis Centre of the SAPS, 52 425 rape cases were reported between April 2003 and March 2003.

The Bill proposes that all types of sexual penetration should be considered unlawful when they occur under coercive circumstances, including the application of force, threats and the abuse of power.

The Criminal Law (Sexual Offences) Amendment Bill, which seeks to improve the approach to dealing with sexual offences, was adopted for submission to Parliament in July 2003.