TWENTY YEAR REVIEW

SOUTH AFRICA

1994 - 2014

BACKGROUND PAPER:

JUDICIARY

Contact details:
Chantelle Van Der Byl
Tel: (012) 312 0102
Email: Chantelle@presidency-dpme.gov.za

Disclaimer

The background papers are written by officials in the Presidency and other government departments using inputs from literature reviews, commissioned research, government reviews and reports and roundtable discussions with a range of stakeholders. The views reflected in the background papers do not represent those of the Presidency, but rather reflect authors' views on sector developments.

Contents

Acronyms and Abbreviations

CGE	Commission on Gender Equality
CJS	Criminal Justice System
DOJ&CD	Department of Justice and Constitutional Development
EFT	Electronic funds transfer
JCPS	Justice, Crime Prevention and Security Cluster
IJS	Integrated Justice System
JSC	Judicial Service Commission
MTEF	Medium-term Expenditure Framework
NDPP	National Directorate of Public Prosecutions
NPA	National Prosecution Authority
OCJ	Office of the Chief Justice
SAHRC	South African Human Rights Commission
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
SAJEI	South African Judicial Education Institute
SAPS	South African Police Service
TRC	Truth and Reconciliation Commission

Executive Summary

Introduction

Before 1994, the apartheid regime, under the guise of parliamentary supremacy, used the law in such a manner that it was experienced by the people as a legal instrument to impose racial oppression and systematic discrimination. In addition, from an operational point of view and as a result of the homelands or self-governing areas that were established prior to 1994, there were 11 different departments of justice, leading to uneven justice offerings and a disparate delivery of services, depending on race, gender and geographic location. Furthermore, the judiciary was fragmented and untransformed, consisting mainly of white men. It was especially in the magistrates' courts that the systematic aspects of racial oppression, such as pass laws, segregation laws and detentions without trial, were implemented on a daily basis. In summation, it can be said that prior to 1994, the justice system as a whole was not seen to be accessible by most South Africans and was not considered to be legitimate.

This review examines the role of the judicial system in advancing access to justice over the past 20 years, and covers the broader role played by the various role-players of the justice system, such as the courts, the judiciary, the prosecuting authority, the Department of Justice and Constitutional Development, (DOJ&CD), the Justice, Crime Prevention and Security (JCPS) Cluster and other social partners, who have all made and continue to make an immense contribution to the justice system broadly to improve access to justice and the quality of the lives of the people of South Africa.

The journey since 1994

Since 1994, government embarked on the mammoth task of establishing a new democratic constitutional dispensation. In this regard, the task of improving access to justice for all has been a critical priority, with the main objectives being to bring the justice structures and systems in line with the Constitution, to establish trust in and respect for the law and the justice institutions, and to restore legitimacy in the eyes of the people. In addition, and as part of the JCPS Cluster, the judicial system was strengthened to assist government to ensure a stable constitutional democratic society, in which all communities are able to live in peace, safety and security.

The main achievements made since 1994

Institutions, personnel distribution and outcomes

The first work to be done after 1994 was to restore the rule of law in South Africa by putting the legislation required to create the mechanisms laid down by the Constitution in place. This included establishing new institutions to support constitutional democracy and the transformation of how the administration of justice functioned, so as to restore respect for the law and the justice system.

This led to the establishment of a large number of new legislative measures. Of the 1 294 acts passed by Parliament since 1994, 148 are attributed to the justice sector. These acts focus on the following main pillars of the justice system: building and strengthening the state institutions that support our constitutional democracy, transforming the judiciary and the justice sector broadly, fighting crime and corruption, and broadening access to justice. The outcome and impact of this work is that the Constitution is now the supreme law of the land, recognising the equality of all. The Constitution furthermore entrenches the right of access to justice, which includes the right of access to courts enshrined in section 34.

Constitutional democracy is further strengthened through the establishment of the Public Protector, the South African Human Rights Commission (SAHRC) and the Commission on Gender Equality (CGE). Of critical importance was the establishment of the Truth and Reconciliation Commission (TRC), which aimed to create a historic bridge between the past of a deeply divided society and a future founded on the recognition of human rights, access to justice, democracy and peaceful co-existence for all South Africans.

The Constitutional Court was established as the highest court and an independent guardian of the Constitution to ensure its legitimacy, interpret and enforce its provisions and guarantee legally protected fundamental human rights to everyone in South Africa.

The judiciary has been recognised as a branch of the state equal in status to the legislature and the executive in an effort to ensure separation of powers, as well as having a system of checks and balances in place. In giving effect to the foregoing principle, the following measures have been implemented:

- Magistrates were delinked from the DOJ&CD to become public office-bearers instead of civil servants. There are ongoing programmes to integrate them fully into the judiciary in order to establish a unified judiciary. The appointment processes of judges were changed through the establishment of a Judicial Service Commission (JSC), leading to greater transparency. An independent remuneration commission was also instituted to ensure independent recommendations regarding conditions of service for judges and magistrates.

- Transformation in terms of race and gender has also been a priority. Progress has been made with regard to representivity and institutional reform. This has, to some extent, changed the experience of citizens when interacting with the justice system, as the courts are more representative of the demographics of the country and their proceedings are conducted in languages spoken by the people. The South African Judicial Education Institute, which is assigned the responsibility for the training of aspirant and serving judicial officers, is now fully functional.

- Importantly, the Superior Courts Act that came into operation in 2013 has established a legislative framework for the creation of the Office of the Chief Justice, thereby entrusting the responsibility of judicial administration (in contrast to court administration) to the Office of the Chief Justice. The act also rationalises the superior courts, thereby redressing the apartheid-drawn demarcations that dislocated and marginalised poor and rural communities from enjoying equal access to justice.

The DOJ&CD also embarked on a process of the complete transformation and restructuring of the legal and justice system and institutions. Various bodies that had been in existence were reconstituted to ensure that they function across the country and that they are transformed in line with the Constitution. These included the Rules Board for Courts of Law, the Magistrates' Commission, the Judicial Service Commission, the Board for Sheriffs, the Legal Aid Board and the South African Law Reform Commission. A court manager system was introduced countrywide from 2004 to ensure that the judiciary focuses on the adjudication function, while the administrative functions are performed by the court managers. In addition, large-scale changes were effected to the administrative support functions underpinning court operations, including fundamental changes on how to be responsive to the needs of the public through the introduction of the Batho Pele principles, service delivery charters and victim empowerment programmes. The rationalisation of the department also entailed new demands in the field of training. Human resource development was consequently dealt with as a critical component of strategic planning, including the implementation of a policy on employment equity and representivity, and skills development.

A single National Prosecuting Authority (NPA) in the Republic, responsible for the institution of criminal proceedings on behalf of the state, was established in 1998, and is an important role-player in the integrated justice system. Court performance has been improving over the past five years with the assistance of the NPA.

A large-scale review of the South African criminal justice system (CJS) was initiated in 2007 in order to render it more efficient and effective. Critical interventions in the CJS "front end" led to more resourcing/capacity-building to deal with crime scene investigation, forensic analyses, fingerprinting and investigations, prosecutions, adjudication and legal aid, resulting in substantial improvements to achieve speedier and more effective service delivery.

To improve court performance, various interventions have been implemented. Case flow management has been placed under the responsibility of the judiciary, and the Office of the Chief Justice (OCJ) has initiated a process for setting uniform standards and norms for the judiciary, as well as aligned performance measurement. Cross-departmental backlog interventions were instituted and the regional and district

backlog courts have removed 87 607 cases from the court rolls from 1 November 2006 until the end of May 2013.

After 1994, the JCPS Cluster developed various business plans to improve court and case management systems. The most comprehensive initiative in this regard was the Integrated Justice System (IJS) project, which entails nothing less than the re-engineering of business processes throughout the criminal justice process: from arrest to prosecution, imprisonment, parole and rehabilitation. In this regard, government has invested heavily in terms of people skills, training, system development and implementation. Much has been achieved in this regard, but full integration is still work in progress and may take several more years to complete.

The department has embarked on a civil justice system review to improve the civil justice system. A particular success story is the progress that has been made in improving access to civil justice through the small claims courts.

Has justice become more or less inclusive?
In the last two decades, various initiatives have led to the transformation of the justice system to expand access to justice to the 90 percent of the population that had previously been excluded. Focus areas were to ensure that poor people and rural communities have greater access to justice. This enormous task has yielded many promising results, although there is yet some way to go.

- A key institutional change made post-1994 was that the homeland courts were incorporated into the legal system and customary law was acknowledged in the Constitution. Through the Justice Laws Rationalisation Act of 1996, it was ensured that the same laws are applicable and in place across the whole country. This act provided for the rationalisation and unification of over 180 laws in operation and, in particular, for the extension of the operation of these laws to the former states and territories that now formed part of the national territory of the Republic of South Africa, substituting them for more or less equivalent laws applied in those areas, and the repeal of such other last-mentioned laws.

- Access to justice was further improved through more courts that have been established, particularly in previously disadvantaged communities. Since 1994, 43 new courts were built and a further 24 branch courts were revamped and elevated into proper full-service courts, thus bringing full court services to especially rural and previously disadvantaged areas. Nine justice regional offices – each with its own regional head – were instituted with effect from 1997. This has led to easier access and speedier responses to provincial and local justice-related issues.

- Various specialised and dedicated court forums have also been created to attend to priority areas such as constitutional matters, labour matters, land claim matters, competition matters, election matters, tax matters, small claims, equality and sexual offences.

Has access to justice increased for vulnerable communities?
In this regard, it is notable that the various initiatives embarked on since 1994 have led to vulnerable groups, especially women and children, having greater access to justice. The increase in the number of courts in rural areas has also contributed to rural communities having greater access to justice.

- Key legislation in advancing institutional reforms pertaining to vulnerable groups include the Promotion of Equality and Unfair Discrimination Act and the Promotion of Administrative Justice Act. There are 382 equality courts, one at every high court and the rest at designated magistrates' courts throughout all nine provinces. The aim is to eventually have equality court services available at all courts and to ensure that these courts are readily accessible. These courts deal with cases of unfair discrimination, hate speech or harassment, and were created by the Promotion of Equality and Prevention of Unfair Discrimination Act. While it is a formal court, proceedings are inquisitorial with a more relaxed application of rules and procedures.

- The Children's Act deals with issues affecting children who are in need of care and protection, and makes decisions about children who are abandoned, neglected or abused. There is a children's court in every magistrates' court. The Child Justice Act of 2008 came into effect in April 2010 and creates a justice system for children aged 11 to 18 who are in conflict with the law. The significance of the Child Justice Act lies in the fact that courts ensure that the constitutional rights of children are protected in all their interactions with the criminal justice system, and that diversion and rehabilitative measures are taken wherever appropriate.

- Improving the maintenance system has been one of the key successes recorded. Accessing maintenance is a lot more efficient, as evidenced by a new decentralised electronic funds transfer payment system that has been put in place, and maintenance beneficiaries now receive their monthly payments within 24 to 48 hours, compared to the 10 calendar days that it used to take. Other efforts include mainstreaming processes, clamping down on defaulters and the appointment of maintenance investigators to ensure compliance with maintenance orders.

- Sexual offences courts are being rolled out across South Africa and will assist in improving convictions for such crimes, as well as empowering victims. Dealing

with sexual offences matters through dedicated court support services (increasing the appointment of intermediaries, providing audiovisual equipment and training, etc.) has been strengthened.

- Domestic violence measures have been put in place across different sectors, but this remains a focus area for improvement.

- Civil jurisdiction has been extended to the regional courts with effect from 2010, thereby increasing access to justice in matters that were ordinarily dealt with by the high court, including divorces.

- In early 2009, the DOJ&CD launched a pilot of indigenous languages courts. Apart from enhancing access to justice by facilitating proceedings in the language of the community, it has also reduced the dependence on interpreters and the possibility of human error in their translations.

- The lay assessor system was introduced to improve access to justice by increasing public participation in the adjudication process.

- Although some inroads have been made in improving access to justice for people with disabilities through the construction of ramps at courts, producing brochures and documents in Braille, and working with civil society organisations to increase the number of sign language interpreters, much more still needs to be done in this regard.

- Examples of cross-departmental JCPS Cluster measures include the implementation of the Restorative Justice National Policy Framework and the development of an interventionist strategy to address gender and sexual orientation-based violence against lesbian, gay, bisexual, transsexual and intersex persons. The Restorative Justice Policy Framework aims at involving parties in a dispute and others affected by the harm (i.e. victims, offenders, families concerned and community members) to collectively identify harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to prevent the recurrence of the incident and promoting reconciliation.

What progress has been made regarding legal representation for indigent people?
In South Africa, the normal difficulties of accessing justice are exacerbated by gross inequalities, the high cost of legal services and the remoteness of the law from people's lives. Legal Aid South Africa, established by the Legal Aid Act of 1969, is the statutory body established for the purpose of providing legal aid services to the poor and indigent in both criminal and civil matters. In its first 20 years, demand for its services escalated prodigiously and, by the early 1990s, the cost of providing

these services far outstripped the organisation's annual allocation from government. In the 1990s, it moved to using salaried legal practitioners employed by either Legal Aid South Africa or one of its cooperation partners. It currently provides services through its 64 justice centres, 64 satellite offices and 13 high court units, established throughout the country. These centres provide general legal advice through their professional and paralegal staff and, in 2010, the establishment of a toll-free Legal Aid Advice Line greatly increased access to general advice services.

Overcoming challenges

The past five years have been spent consolidating legislation and other measures aimed at the deepening democracy, enhancing access to justice, transforming the administration of justice – including the judiciary and the courts – improving court performance, strengthening coordination through the cluster system and the outcomes-based approach of government to deal with priorities, and strengthening the rule of law. It is crucial that this work continues and that more attention is paid to the costing of the prolific legislation programme and to implementation issues.

Notwithstanding the tremendous progress that has been made since 1994, challenges remain towards further transformation of the judicial system, improving access to justice for all and achieving the goals of the National Development Plan for 2030. This is because the reality is that South African society is still characterised by poverty and illiteracy, and is bound by the differences of culture and language, and many persons are either unaware of or poorly informed about their legal rights and what they should do to enforce them, while access to professional advice and assistance is still difficult for financial or geographic reasons.

The redemarcation of judicial boundaries and alignment with municipal boundaries is far advanced, but has yet to be concluded as it has substantive resource implications and requires widespread consultation.

Specific legislation that requires finalisation includes the following:

- The Legal Practice Bill, which is before Parliament, seeks to transform the profession.
- Now that the Superior Court Act is in place, the next step will be to rationalise the lower courts' legislation in a similar manner.
- The reform of State Legal Services is continuing and it is envisaged that a Bill that will amend the State Attorney Act of 1957 will be introduced soon. This Bill seeks to establish a dispensation of Solicitor-General, who will represent the state in civil litigation and who will lead transformation in the way the state deals with its legal services.

- The finalisation of the Traditional Courts Bill will not only repeal the remnants of the Black Administration Act of 1927, but will also bring the quasi-judicial functions of traditional leaders in conformity with our Constitution.

Concluding remarks

Our country's transition from a bleak past to a bright future espoused by South Africa's democratic constitution has been phenomenal. Our constitutional and legislative transformation over the past 20 years is the bedrock from which has sprout the programmes that promise a South Africa different and qualitatively better than the one we inherited from the apartheid regime. It is important to remember that as South Africa's constitutional democracy has evolved, so the landscape has changed, and the understanding of the most important obstacles to access to justice has shifted. As considerable strides have been taken to enhance access to justice, new problems have emerged that tend to cloud the progress that has been made. Also, the country's justice systems have had to channel capacity from resources that effectively catered to 10 percent of the population, to the entire population. There are more courts in townships and rural areas today than there were in 1994, and several specialised courts have been established to deal with priority areas such as violence against women and children. Those who staff the justice system are starting to be more representative of the population.

However, there is still a long way to go. Transformation of the judiciary, in terms of gender, remains particularly slow. Issues of cost and a lack of knowledge of their rights by members of the public also present barriers to the fulfilment of the constitutional guarantee of access to justice. Backlogs and lack of capacity in the courts present a serious challenge to the fulfilment of access to justice, particularly the attendant impact on pre-trial detention in criminal cases.

Review

1. Introduction and background

This review provides a brief summary of the progress made with regard to access to justice over the past 20 years. It is important to consider the pre-1994 judicial system and system regarding access to justice as a precursor to the analysis of the progress made in this regard over the past 20 years. It can be acknowledged that, prior to 1994, the justice system as a whole was not accessible to most South Africans and was not considered legitimate. It can, however, also be noted with pride that immense strides have been made over the past two decades to turn the situation around and lay the building blocks for a strong democracy and to deal with challenges as they arise.

Furthermore, this review examines the role of the judicial system, in particular, in advancing access to justice over the past 20 years, and covers the broader role played by the various role-players of the justice system, such as the courts, the judiciary, the prosecuting authority, the Department of Justice and Constitutional Development (DOJ&CD), the Justice, Crime Prevention and Security (JCPS) Cluster and other social partners, who have all made and continue to make an immense contribution in the justice system broadly to improve access to justice and the quality of the lives of the people of South Africa.

Various areas of the administration of justice have been identified as key thematic focus areas for the review. In this regard, the review focuses on the following elements, in particular:

- How has access to justice progressed over the past 20 years? Where and how have the developments taken place: the institutions, the personnel distribution and the outcomes?
- Has justice become more or less inclusive: do poor people have greater access to justice? What about rural communities?
- Has access to justice increased for vulnerable communities? Do women have greater access to justice? Do children, rural communities, people with disabilities and other vulnerable groups have greater access to justice? How has this happened and where are the improvement areas?
- Legal representation for indigent people: how far have we progressed and how can this system be improved?
- Human rights and constitutional democracy
- The cluster and the outcome-based approaches

2. The journey since 1994

2.1 The pre-Constitutional dispensation era (pre-1994)

The late Chief Justice DP Mahomed[1] summed up the previous era as follows:

> *For decades, South African history has been dominated by a deep conflict between a minority which reserved for itself all control over the political instruments of the state and a majority who sought to resist that domination. Fundamental human rights became a major casualty of this conflict ... the legitimacy of the law itself was deeply wounded as the country haemorrhaged in the face of this tragic conflict.*

Challenges in relation to the situation before 1994 comprised the following, among others, in relation to the administration of justice:

- Three hundred and fifty years of colonialism and the apartheid system dominated the South African legal system, which reflected the values and rules of these systems. As a result, a distinction could be drawn between pre-1994 South African common law and traditional African law, which was supposed to represent the customary law of the indigenous people. Colonial and apartheid rule not only marginalised indigenous or customary law, but, in the process of interpretation, legislation was given a slant that facilitated colonial and apartheid rule. In this regard, the role of traditional leaders and traditional courts was marginalised.

- Before 1994, the previous regime operated under the guise of a system of parliamentary supremacy. In this regard, the law was experienced by the people as a legal instrument to impose racial segregation and systematic discrimination.

- Before 1994 there were, as a result of the imposition of various so-called homelands and self-governing states, 11 different departments of justice, police and other departments – a situation that impacted negatively on the administration of justice and justice for all in view of the fact that there were uneven justice offerings and a disparate delivery of services, depending on one's race, gender and where one was located geographically.

- There was poor access to justice, especially to the disenfranchised and the indigent.

[1] Judgment, The Azanian Peoples Organisation, Ms NM Biko, Mr CH Mxenge and Mr C Ribeiro v the President of the Republic of South Africa, the Government of the Republic of South Africa, the Minister of Justice, the Minister of Safety and Security and the Chairperson of the Commission in the Constitutional Court, Case No 17/96.

- There was a fragmented and untransformed judiciary, consisting mainly of white men. Judges were appointed by the State President in Cabinet, strictly from the ranks of the most senior advocates. The appointment process was characterised by a lack of openness and transparency.
- Magistrates were public servants and not considered independent judicial officers. They, too, were almost exclusively white males.

- The majority of South Africans that come into contact with the legal system have always done so through the magistrates' courts and it is here that more than 95 percent of civil and criminal cases are dealt with. It was in the magistrates' courts that the systematic aspects of racial oppression, such as pass laws, segregation laws and detentions without trial, were implemented on a daily basis.

- It can be viewed that prior to 1994, the justice system as a whole was not seen to be accessible by most South Africans and therefore not considered legitimate.

2.2 Progress over the past 20 years

2.2.1 10-year review findings and challenges

Government's 10-year review of the democratic dispensation (The Presidency, 2003), revealed the following findings:

- The policy framework and priorities remain valid.
- Significant progress has been made in national security, the rule of law and transforming institutions that were the frontline defence of apartheid.
- There was slow transformation of the criminal justice system.
- The social transition and new forms of organised crime reduced gains in crime prevention and combating crime.

The 10-year review (The Presidency, 2003) also revealed the following challenges:

- Strengthening all structures and building an efficient, integrated criminal justice system, addressing human resource development matters across the JCPS Cluster, including the judiciary
- Reducing case backlogs, establishing an effective offender rehabilitation programme
- More involvement of citizens and strengthened social fabric as essentials for significant crime reduction
- Accelerated social programmes that help prevent crime from taking place
- Improved visible policing and social partnerships, particularly in dealing with priority crimes

2.2.2 15-year review findings and challenges

Government's 15-year review of the democratic dispensation (The Presidency, 2008), revealed the following findings:

- The JCPS Cluster policies and priorities remain valid and are having some impact.
- While the cluster's responses to challenges identified after the first 10 years were in the right direction, problems, including those of integrated implementation, were more deep-seated than actually appreciated.
- Implementation was uneven and some critical goals were not achieved. Police, courts and prisons are grappling with their loads and need not only more resources, but optimal use of those resources.
- At a more detailed level, the persistence of court backlogs (despite fewer cases coming to court), growing undercapacity of prisons and the lagging of crime reduction figures that are behind target (for example, 7 to 10 percent reduction of serious crimes per year) are symptoms of systemic problems.
- Lack of the required capacity and issues of orientation of the judicial system hinder access to justice.
- These findings are consistent with what emerged from the reflection on the criminal justice system by the two-year joint initiative of the Presidential Big Business Working Group.
- At the end of 2007, Cabinet approved a Seven-point Plan based on the review. Implementation of the plan began in mid-2008. The objective is a truly integrated, modernised, properly resourced and well-managed criminal justice system. Key elements include a new coordinating and management structure for the criminal justice system, an overhaul of criminal court processes, strengthening the components of the system (from investigation through trial to incarceration), modernising technical systems, integrating information and boosting civil society participation.
- Crime is impacting on other areas of social endeavour. The high profile of violent crime affects public morale and fosters a climate of fear and vigilantism, weakening the rule of law and stressing the social fabric. The economy is affected, whether at the level of attracting investment or, as a recent study for The Presidency has shown, at the level of small and micro-enterprises.

The 15-year review (The Presidency, 2008) also revealed the following challenges:

- Pre-eminent challenges are violent and organised crime, more effective operation of each component and truly integrated strategising and implementation across components. While the departments of the criminal justice system were the first to form themselves into a cluster, in practice the components are at best loosely coordinated.
- Some critical policy vacuums, for example with regard to migration policy, undermine the effectiveness of coordinating structures.
- The mobilisation of communities to participate in fighting crime remains a valid premise of government's approach. Although there are several examples of

strong cooperation, overall, the level of citizen involvement in ensuring safety and security falls short of what is needed to succeed.

- At the same time, the legitimacy and credibility of some institutions of the criminal justice system are being tested by trends in public discourse and by action taken against senior officials.
- The worrying increase in violence in pursuit of socio-economic objectives in the past two years or so, the kind of lawlessness seen in the violent action against people from other countries and South Africans in early 2008 and dynamics in the party-political arena have all played a role in undermining the legitimacy of state institutions.

2.3 Progress regarding institutions, personnel distribution and outcomes

In line with government's policy directions and strategies, since 1994, the DOJ&CD has been progressively spearheading the transformation of the justice system and, in doing so, has put in place the foundation and pillars to build and sustain the new democratic dispensation. This was done on behalf of all the people of South Africa, not only because it was necessary to bring the justice system in line with the Constitution, but also to restore its legitimacy in the eyes of the people and to establish trust in, and respect for the law and its institutions. The vision has been to meet the challenge of assisting government in the creation of a stable constitutional democratic society, in which all communities are able to live in peace, safety and security.

To achieve this, government has been working full steam towards establishing, through a democratic process of transformation and rationalisation, a single, legitimate and accountable administration of justice that is just, transparent, accessible and representative of the whole South African community, and towards helping restore the rule of law so as to address violence and serious crime, create and establish accountability for human conduct and behaviour, and ensure that a new culture based on respect for human rights is promoted.

The lack of access to justice for the people, especially poor people, was one of the major challenges that were inherited in 1994. Improving access to justice for all has therefore been a main goal of government since 1994 and is aimed at addressing the historical, social and legal injustices of the apartheid era, which had previously entrenched racism, tribalism and sexism.

Most of the legislation that had to be put in place immediately after 1994 was required to create the mechanisms laid down by the Constitution, and was essential to establish the new constitutional democracy. Of the 1 294 acts passed by Parliament since 1994, 148 are attributed to the justice sector. These acts focus mainly on the following pillars of the justice system:

- Building and strengthening state institutions that support the constitutional democracy.
- Transforming the judiciary and the justice sector broadly.
- Fighting crime and corruption.
- Broadening/widening access to justice.

The first step to a system of constitutional democracy was the adoption of the Constitution of the Republic of South Africa, 1996 (the Constitution), which was certified by the Constitutional Court in December 1996 to be compliant with the 34 constitutional principles contained in the Interim Constitution of 1993. The Constitution, in contrast to the pre-1994 parliamentary sovereignty, became the supreme law of the land, recognising the equality of all and including justiciable socio-economic rights. It also underpinned the normative framework, which emphasised its underlying values of freedom, equality and human dignity.

The appointment processes of judges were changed through the establishment of the Judicial Service Commission (JSC), which introduced greater transparency into the processes.

Magistrates were delinked from the DOJ&CD and became public office-bearers instead of civil servants.

An independent remuneration commission was instituted to ensure independent recommendations regarding conditions of service for judges and magistrates.

2.3.1 Constitutional amendments

In 2001, the administration of the Constitution was assigned to the Minister of Justice and Constitutional Development. Since that time, the DOJ&CD has been responsible for the amendment of the Constitution and has promoted 11 constitutional amendment acts. Fifty-four percent of the bills that were promoted after 1994 contributed to transformation and gave effect, in one way or another, to the new constitutional dispensation. During this transition spanning over 19 years, Parliament has enacted 1 294 laws (acts of Parliament), while the magnitude of policies adopted and implemented by the Executive is beyond imagination. These laws and policies have been translated into strategies, programmes and plans that give effect to the transformative goals embodied in our Constitution. It is through these programmes of government that today millions of our people are able to enjoy the rights in the Bill of Rights, including the right to equal protection and benefit of the law, housing, basic education, healthcare, water and social security.

The legislative changes that have been effected include the amendment of the Constitution, inter alia, to change the title of the President of the Constitutional Court to that of Chief Justice, to provide for the offices of Deputy Chief Justice, President of

the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal, to enable a member of a municipal council to become a member of another party while retaining membership of that council, to regulate the allocation of delegates to the National Council of Provinces, to redetermine the geographical areas of some of the nine provinces of the Republic of South Africa, to abolish floor-crossing and regulated matters relating to the funding of political parties, and to confer, on the Chief Justice, the authority to lead and guide the performance of judicial functions by all judicial officers. The Constitution now enjoins the Chief Justice to develop standards for the performance of all judicial functions. These standards, which will be made public, will address challenges caused by long postponements and delayed judgments that clog court rolls.

In addition to the legislative changes referred to above, bills that recognise that the Republic inherited a fragmented court structure and infrastructure in 1994 – which were largely derived from the colonial history and were subsequently further structured to serve the segregation objectives of the apartheid dispensation – were introduced in Parliament in 2011 and passed in 2013. They represent a particular milestone and are the culmination of years of deliberations and negotiations. The enactment of these bills into law will contribute enormously to the transformation of the judiciary and the judicial system, as envisaged by the Constitution. With the implementation of these amendments, the judiciary will have the necessary armoury to drive case flow management.

2.3.2 The Truth and Reconciliation Commission

The establishment of the Truth and Reconciliation Commission (TRC) was necessary to determine the truth in relation to past events, as well as the motives for and circumstances in which gross violations of human rights occurred. In pursuance of this, in 1995, government, through the DOJ&CD, promoted the Promotion of National Unity and Reconciliation Act (1995), which formed the statutory basis for the establishment, appointment of and work performed by the TRC.

The TRC addressed one of the most significant challenges that confronted the new government: to create a historic bridge between the past of a deeply divided society and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans.

Finding and paying out reparations was challenging. The total number of beneficiaries who have already been paid reparations is 16 721. The number of outstanding beneficiaries still to receive payment is 111 as at end March 2013.

2.3.3 The establishment of institutions that strengthen constitutional democracy

The establishment of the Constitutional Court has led to several important judgments regarding aspects such as the unconstitutionality of the death penalty, corporal

punishment and the imprisonment of debtors. From 2009 to April 2013, the Constitutional Court delivered 126 judgments. Since 1994, the Constitutional Court has declared only 17 provisions of different acts of Parliament unconstitutional. This translates to less than 1.6 percent of all legislation passed by this government since 1994.

The impact of the superior and high courts has been felt by the man on the street through judgments impacting on their lives. The Supreme Court of Appeal has delivered 901 appeals, while the Labour Court has delivered 906 judgments, which guaranteed fair labour practices across the labour spectrum. The Land Claims Court has delivered 107 judgments to give effect to land restitution and land tenure.

Over and above the role of the superior courts, the establishment of the institution of the Public Protector has created an institution tasked with investigating conduct in the public administration that is improper or results in any impropriety or prejudice. Similarly, the South African Human Rights Commission (SAHRC) is tasked with promoting respect for, and the protection, development and attainment of human rights. The Commission on Gender Equality (CGE) is tasked with promoting the protection, development and attainment of gender equality.

2.3.4 The judiciary

The transformation of the judiciary has received considerable attention during the 20-year period under review. Challenges towards a unified, independent judiciary included budgetary constraints and differences in how the high courts and lower courts operate, governance issues, as well as the lack of a legal framework. These required protracted consultation, research and the development of a legislative framework, starting at the highest court levels.

Government embarked on a process of transforming the judiciary in 1994 through the enactment of the Judicial Service Commission Act (1994). The establishment of the JSC gave rise to a dramatic shift in the appointments to the benches of our superior courts in terms of race and gender.

In 1995 and 1996, two important pieces of legislation were enacted to address the position relating to magistrates. All magistrates, including those of the former homeland states (Transkei, Bophuthatswana, Venda and Ciskei) (the TBVC states) were brought under the jurisdiction of the Magistrates Act. This act regulates the functions of the Magistrates' Commission, as well as the appointment and remuneration of magistrates. In 1996, provision was made for the restructuring of the Magistrates' Commission to make it more representative of the South African population.

The introduction of the Family Court concept and dealing with divorces at regional court level signalled the end of the divorce courts that were created in the late 1920s,

which were segregated along racial lines. This improved access to justice through civil jurisdiction, including the hearing of divorces by regional courts rather than the high courts. Implementation has been a challenge in view of the requirements of rule changes and resource constraints.

The transformation of the judiciary was also given impetus by the enactment of three pieces of legislation that aimed to regulate matters relating to the remuneration, training and misconduct of judicial officers. The South African Judicial Education Institute Act of 2008 established the South African Judicial Education Institute (SAJEI) to provide for the education and training of judicial officers in a quest to enhance service delivery and the rapid transformation of the judiciary. The Judicial Service Commission Amendment Act created a Judicial Conduct Committee to deal with complaints about judges. The Amendment Act also established Judicial Conduct Tribunals to inquire into and report on allegations of incapacity, gross incompetence or gross misconduct against judges.

Magistrates were delinked from the public service, and there are ongoing programmes to integrate them fully into a single judiciary, while the lower court magistrates were clustered into 13 judicial administrative regions to help deal with lower court judicial management aspects.

2.3.5 Rationalisation of the administration of justice

As part of Justice Vision 2000, driven by the first Minister of Justice after the birth of the new democracy in 1994, the system of justice was rationalised from 11 apartheid-based administrations of justice into one single united system of justice that applied across the whole country and a single justice department and centralised governance.

The adoption of the Interim Constitution and later the new Constitution played a major role in the laws that have been adopted during the period under review. Specific legislation that was promoted in this regard include the Justice Laws Rationalisation Act of 1996, which provided for the rationalisation and unification of over 180 laws in operation and, in particular, for the extension of the operation of these laws to the former states and territories now forming part of the national territory of the Republic of South Africa, and the Legal Aid Amendment Act of 1996, which made provision for the restructuring of the Legal Aid Board and ensured that the Act also applied to the former TBVC states and self-governing territories. A new bill to align the 1969 act with the Constitution was developed in 2013. The Sheriffs Amendment Act of 1998 sought to repeal the legislation of the former TBVC states as far as these functionaries are concerned. The enactment of the Abolition of Restrictions on the Jurisdiction of Courts Act of 1996 gave effect to the Interim Constitution, which provided that every person has the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum.

The redemarcation of judicial boundaries and alignment with municipal boundaries is yet to be concluded, as it has substantive resource implications and requires widespread consultation. Regional offices, each with its own regional head, were instituted with effect from 1997. They have control over decentralised functions relating to the administration of justice in each province, while still being accountable to the national department and accounting officer. The impact was closer proximity to the people, leading to easier access and speedier responses to provincial and local issues.

A court manager system was first piloted and then introduced countrywide from 2004 to ensure that the judiciary could focus on the adjudication processes while the administrative processes were performed by the court managers. All non-judicial administrative functions that had traditionally been exercised by the chief and senior magistrates have now been reallocated to court managers. This was done generally to strengthen the separation of powers and enhance judicial independence. It has led to local access by the public to management and improved control and supervision over court-based administrative staff. The court manager system has been firmly entrenched now, but resource constraints remain a challenge.

2.3.6 Access to justice through more courts

More courts have been established, particularly in previously disadvantaged communities. Specialised courts have also been created to attend to priority areas such as small claims, equality and sexual offences. Forty-three new courts have been built since 1994. Besides these courts, a further 24 branch courts have been revamped and elevated into proper full-service courts. There are also six new courts planned for construction in the next three-year Medium-term Expenditure Framework (MTEF) cycle. The impact has been an improvement in access to justice. Steps to improve the effectiveness of the courts included specialised courts, such as the Constitutional Court, the Labour Court, the Labour Appeal Court, the Competition Court, the Election Court, the Land Claims Court and the tax courts.

2.3.7 Transformation of existing bodies

Government also embarked on a process of complete the transformation and restructuring of the legal and justice system, and related institutions. Various bodies that were already in existence were reconstituted to ensure they function across the country and are transformed in line with the Constitution. They have since improved the functioning of the areas they cover and have promoted large-scale transformation. These are the Rules Board for Courts of Law, the Magistrates' Commission, the Board for Sheriffs, Legal Aid South Africa and the South African Law Reform Commission.

The JSC was established in terms of the Constitution and its function is to select fit and proper persons for appointment as judges and to investigate complaints about

judicial officers. It also advises government on any matters relating to the judiciary or to the administration of justice. Its creation has also contributed to transformation and ensured compliance with the aims of representivity, thereby contributing to a shift in appointments to the bench in terms of race and gender.

2.3.8 The National Prosecuting Authority

Section 179 of the Constitution required the establishment of a single prosecuting authority in the Republic of South Africa, which is to be structured in terms of an act of Parliament. In this regard, the National Prosecuting Authority (NPA) Act of 1998 was enacted to make provision for the appointment of a National Director of Public Prosecutions and Directors of Public Prosecutions, together with their conditions of employment and those of public prosecutors. This has led to a single prosecuting authority in South Africa, responsible for the institution of criminal proceedings on behalf of the state.

2.3.9 Other areas of transformation aimed at the improved efficiency of the criminal justice system and access to justice

Criminal justice system review

A primary responsibility of the justice system to improve the finalisation of criminal cases and reduce case backlogs is to facilitate integrated court services, including courts, staffing and support services in order to provide fast and effective justice to all, as justice delayed is justice denied. This is a joint responsibility for the various JCPS Cluster departments. Magistrates' courts form an important part of the judicial system, as this is where ordinary people come into contact with the justice system on a daily basis.

In 2007, government approved the implementation of a Seven-point Plan. To give effect to the vision of a transformed criminal justice system, an intensive review of all component parts of the criminal justice system was undertaken. This review covered the functioning of all parts of the criminal justice system within departments and across departmental boundaries. The review has ensured major organisational reprioritisation, restructuring and the redeployment or appointment of large numbers of staff in the criminal justice system, especially in the South African Police Service (SAPS).

Critical interventions in the criminal justice system "front end" include more resourcing or capacity to deal with crime scene investigation, forensic analyses, fingerprinting and investigation, prosecutions, the judiciary and legal aid. These resulted in substantial improvements in speedier and more effective service delivery. The SAPS's forensic laboratories have shown a turnaround, but health laboratories still experience challenges in that there are serious backlogs in the analysis of blood (for drunk driving) and toxicology (for inquests). Resourcing and assistance in this area is thus a priority. The Department of Correctional Services has embarked on a

realignment of its structure, functions and appropriate staffing levels for delivery on remand detention, corrections incarceration and social reintegration.

Various protocols to improve coordination among departments in the criminal justice system value chain have been developed and implemented. This includes work relating to increasing the number of cases finalised, and reducing the overcrowding of correctional facilities, especially regarding remand detainees.

Various interventions have been implemented, including case flow management, which has now been placed under the responsibility of the judiciary. The Office of the Chief Justice (OCJ) has embraced case flow management and initiated a process to set uniform standards and norms for the judiciary, as well as aligned performance measurement.

To assist with capacity in the lower courts, certain backlog interventions have been instituted. The number of outstanding cases, in general, on the court rolls at all the various court levels became a cause for great concern in 2006, as it was impacting negatively on service delivery and consequently trust in the criminal justice system.

The JCPS Cluster departments embraced the Integrated Justice System (IJS) Programme and the re-engineering of business processes throughout the criminal justice process, i.e. from arrest to prosecution, imprisonment, parole and rehabilitation. It was aimed at developing an integrated management system for the entire criminal justice system, thus increasing the probability of successful investigation, prosecution and punishment for priority crimes to reduce the time period that elapsed between the reporting of a crime and sentencing. It links all processes from departments involved in the justice system. The IJS Programme was established as a vehicle to electronically enable and integrate the end-to-end criminal justice processes and related interdepartmental information exchanges and to assist in improving the efficiency of the criminal justice system.

Civil justice review

Significant progress is being made to improve the civil justice system. As part of the Civil Justice Reform Programme, court-connected Mediation Rules have been published for public comment. These rules introduce into the legal system a dispensation through which disputes can be resolved by mediation within the precinct of the courts. Mediation has proven to be a successful form of dispute resolution in many jurisdictions. The rules will also make it possible to resolve many of the civil claims brought against government. Early resolution of these disputes to avoid costly litigation will save government and other litigants millions of rands.

The DOJ&CD envisages increasing the civil jurisdiction of magistrates' courts and regional courts beyond their current thresholds of R100 000 and R300 000

respectively, thus making it cheaper and faster to obtain legal recourse in comparison with the high courts.

Another success story is the progress that has been made in improving access to justice through the small claims courts. The aim is to establish at least one small claims court in every magisterial district. Good progress has been made with the 277 small claims courts that have already been established. The impact has been improved access to justice, in that people can use the lower courts instead of the more expensive higher courts. Training interventions are being conducted throughout the country. This has not only led to better quality judgments, but also more practitioners being willing to be appointed. There are currently 1 561 commissioners (1 328 male and 233 female) and 1 115 advisory board members (782 male and 333 female). Commissioners and advisory board members are appointed on a daily basis. The main challenge in establishing new small claims courts is getting practitioners who are willing to assist as commissioners. The Small Claims Courts Act and the processes in the small claims courts are to be reviewed to take cognisance of the prescripts of the Constitution and any other legal framework that has an effect on small claims.

Table 1: Small claims courts by the end of June 2013

Province	Magisterial districts	Number of small claims courts	Additional places of sitting	Inactive small claims courts	Small claims courts required
Eastern Cape	79	47	9	2	32
Free State	56	37	5	6	19
Gauteng	31	28	6		3
KwaZulu-Natal	53	37	10	1	17*
Limpopo	36	31	9		5
Mpumalanga	33	32	7	1	1
Northern Cape	32	19	14	1	13
North West	29	20	4	1	9
Western Cape	44	26	6	1	18
Total	**393**	**277**	**70**	**13**	**117***

** Magisterial districts without small claims courts*

Training and skills development

The Justice College trains in excess of 5 000 employees per annum. Although initially presenting mostly criminal training, specifically for magistrates and prosecutors, the Justice College's training menu now comprises civil training, criminal court training, family law training, legislative drafting training, court interpreter training, masters' training and prosecutorial training, as well as training on quasi-legal and quasi-judicial matters. The training is focused on areas such as the Promotion of Administrative Justice Act (PAJA), the Promotion of Access to Information Act (PAIA), the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), legislative drafting and the Sheriffs' Introductory Course.

To assist with the education of the judiciary, SAJEI was established through legislation. It is currently dealing with the training of both magistrates and judges.

2.3.10 Representivity

Prior to 1994, it was policy to appoint judges from silks (Senior Counsel). This explains the reason why the bench remained predominately white and male. The country still has appalling statistics regarding silks. Of the 473 silks, 402 are white (382 white males and 20 white females), while 78 are black (namely 69 black males and nine black females). Only 58 of the 311 judges appointed since 1994 have been drawn from the ranks of Senior Counsel. If the emphasis was on Senior Counsel, the country would still be lagging far behind. The requirement of “fit and proper person” in our Constitution has opened opportunities to previously disadvantaged people to pursue a career on the bench. The result of these policy changes is that representivity and substantial institutional reform have been advanced. It is to be noted that, to date, 61 percent of the 239 judges are black, compared to only one in 1994. Similar progress has been made in addressing race and gender imbalances in the magistracy. Of the 1 661 magistrates, 974 are black and 687 are white, while 647 are female and 1 014 are male.

The country still faces challenges regarding the appointment of female judges. Out of 239 judges, only 76 are female. Of a total of 311 judges appointed since 1994, 113 are white males. This shows that white males outnumber females in the appointment stakes. Drastic steps are needed to replenish and nourish the pool from which female judges can be appointed. Of the 5 708 enrolled advocates, only 1 841 are female, while there are 7 477 female attorneys out of a total of 21 463.

2.4 Has justice become more or less inclusive?

The lack of access to justice for the people, especially poor people, is one of the major challenges that were inherited in 1994. Access to justice is a fundamental right that unlocks access to all the other rights enshrined in the Constitution. This right has the power to transform our society into a just and equitable one, redressing the injustices of the past. Especially in a fledgling democracy like South Africa’s, access to justice, along with a strong rule of law and trust in the judiciary, is crucial to the development of the country and to the provision of socio-economic rights for the indigent.

Access to justice for all is the main goal of the DOJ&CD and is aimed at addressing the social and legal injustices of the apartheid era, which entrenched racism, tribalism and sexism. Taking direction from the Constitution (Republic of South Africa, 1996), access to justice can be understood to include collective rights to equality (section 9), just administrative action (section 33), access to the courts (section 34), arrested, detained and accused persons (section 35), and other matters concerning the administration of justice (section 180). The constitutional guarantee is

supported and defined in legislation and policy such as the Promotion of Administrative Justice Act of 2000 and the Batho Pele principles.

Access to justice is traditionally understood in terms of legal rights, processes and procedures, often shadowing the socio-economic element, particularly that of poverty. The link between justice and poverty is the inevitable impact on poor and marginalised communities, the majority of whom are women, deprived of choices, opportunities and access to basic resources. Access to justice can, in the first instance, be effectively achieved only if a prospective litigant is able to approach a court of law free of barriers or obstacles, such as unjustifiable expiry periods in respect of certain civil claims or ouster clauses that effectively remove the jurisdiction of the court. In other words, all prospective litigants must have an unfettered right to bring a case before a court. However, access to justice is more than this. A prospective litigant must have knowledge of the applicable law, must be able to identify that he or she may be able to obtain a remedy from a court of law, must have some knowledge about what to do in order to achieve access and must have the necessary skills to institute (or defend) the case and present it to a court. An ordinary person who is not a lawyer, even a well-educated person, does not possess the necessary skills to represent him or her in the sense outlined above. It is therefore clear that legal representation makes up an integral part of access to justice.

2.4.1 Achievements

The following achievements have been recorded:

- As part of the Access to Justice Programme, there continue to be commitments of substantial amounts of the budget towards building additional courts and service delivery points for the Office of the Master of the High Court to ensure that rural and remote communities are reached. The country continues to build court buildings, in ever-increasing numbers, where there had not been facilities before. These courts are more accessible to users, including people with disabilities.

- In view of the need to improve and refurbish court buildings, especially in the previously neglected areas of our country, on 28 May 2013, the Minister of Justice and Constitutional Development officially opened the Ntuzuma Magistrate's Court, which is the 43rd new court to be built since 1994.

- In addition to the 43 new courts, the DOJ&CD has revamped and equipped a further 24 branch courts and elevated these courts into proper full-service courts. The remaining 65 branch courts and 230 periodical courts have been lined up for rehabilitation, consistent with the National Development Plan. There are also six new courts planned for construction in the next three-year MTEF cycle. The new and upgraded facilities will lead to increased productivity, will boost staff morale

and will contribute to job creation, so effecting the economic empowerment of surrounding communities.

- The Constitution placed an obligation on the DOJ&CD to ensure that courts are accessible to every person or community, both physically and culturally. This has received and continues to receive focused attention, within budgetary constraints.

- The DOJ&CD has implemented a Lay Assessor Project to bring the justice system closer to the community. This assists in improving confidence in, and understanding of the justice systems for all communities.

- The DOJ&CD not only committed itself to the constitutional objective relating to access to legal representation, but has commenced with the implementation of measures to extend legal assistance to indigent persons, both in civil and criminal cases. The department's initiatives in this regard include strategic interventions to broaden the legal profession and access to the services of that profession for persons and communities from all cultural groups and economic backgrounds.

- To further the administration of justice in southern Africa, initiatives have been implemented to procure uniformity in the entire subregion, leading, inter alia, to mutual legal assistance treaties, the promotion of uniform enforcement of maintenance orders and measures to facilitate closer cooperation regarding the combating of crime, drug trafficking and corruption.

- The civil jurisdiction of magistrates' courts was increased to R100 000 with effect from 1 May 1995 and the jurisdiction of the small claims courts was increased to R3 000 with effect from 1 October 1995, leading to a larger portion of civil litigants now being able to utilise less expensive procedures. Small claims courts have been established across the country in 277 magisterial districts (with 117 still to be established); the current jurisdiction is R12 000 for small civil matters.

- The civil justice system review has been initiated and regional court jurisdiction was legislated and implemented.

- Alternative dispute resolution forums, such as mediation, traditional courts and community courts (which facilitate access to justice, bearing in mind the diversity of issues, cultures and constitutional parameters) have been investigated by the South African Law Reform Commission.

- Court-annexed mediation is currently receiving attention.
- Research and policy development is ongoing and will lead to legislative reforms on the community courts and traditional courts.

- The department's access to justice initiative incorporates a community outreach programme and a commitment to the simplification of language used in statutes and the administration of justice, and ensuring that, as far as possible, communication is done in the language understood by all users of the justice system, regardless of culture or any other qualifications.

- An Indigenous Language Project was piloted within the context of the policy on the language of record.

2.5 Has access to justice increased for vulnerable communities?

2.5.1 The promotion of legislation to transform areas of the law of relevance to women and children

The impact of legislation that has been promoted to transform areas of the law that affect women and children has, in general, been to improve access to justice and to empower vulnerable groups.

The following progress is mentioned in this regard:

- An entirely new Maintenance Act, 1998, was approved by Parliament at the end of 1998. This act repealed the Maintenance Act of 1963. Intended to bring about a number of improvements to the maintenance system and its users, the act heralded the start of a reform process as far as maintenance is concerned. It brought about many changes to the existing law, among others, by providing for the appointment of maintenance investigators to assist maintenance officers in carrying out their tasks more effectively. The act also introduced a core set of principles relating to the duty of parents to support their children, and allows the Minister of Justice and Constitutional Development to make regulations prescribing guidelines for or factors to be taken into account by a maintenance court when making a maintenance order.

  The act further introduced a civil enforcement mechanism in respect of maintenance orders for the first time, in terms of which a maintenance order is regarded as a final order and can be executed as such without requiring the person in whose favour the order was made to initiate further court proceedings. From the 369 maintenance courts nationwide, the DOJ&CD registers about 200 000 new maintenance complaints per annum. To reduce the maintenance queues at courts, technology has been installed to process payments through electronic funds transfer (EFT) 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.
- Similarly, through the Guardian's Fund, the DOJ&CD contributes substantially to poverty alleviation. In 2012/13, the department made 37 000 payments, totalling R1.006 billion to Guardian's Fund beneficiaries. In November 2010, the

department introduced an electronic payment system, reaching 92.88 percent of beneficiaries, reducing the turnaround time of payments and thereby limiting cheque payments with the associated risk of the money not ultimately reaching its beneficiaries.

- The main object of the Recognition of Customary Marriages Act, 1998, is to extend full recognition to marriages entered into in accordance with customary law or traditional rites. It improves the position of women and children within these marriages by introducing measures that bring customary law in line with the Constitution. It lays the foundation for a uniform code of marriage law that will be applicable to all South Africans. The principles laid down in the act – consent and minimum age for spouses, community of property and judicial regulation of divorce in a system of family courts – are intended to provide a uniform national framework receptive to all marriages.

- Legislation was initiated in order to institute a new juvenile justice system, which came into operation in 2008. The Child Justice Act, 2008, represents another milestone in recognising the particular vulnerability of children who come into conflict with the law. The act establishes a criminal justice system for children in accordance with the values underpinning the Constitution and the international obligations of the Republic of South Africa. The act, among others, provides for the holding of preliminary inquiries and for incorporating, as a central feature, the possibility of diverting matters away from the formal criminal justice system in appropriate circumstances. The act also makes provision for child justice courts to adjudicate all trials of children whose matters are not diverted, and entrenches the notion of restorative justice in the criminal justice system in respect of children who are in conflict with the law.

  A Diversion Accreditation Framework in support of the Child Justice Act has been finalised and implemented. Other legislative documents to support the Child Justice Act of 2008 have also been finalised and implemented. These include the Regulations, National Directives by the National Directorate of Public Prosecutions (NDPP) and National Instructions by the SAPS on how to deal with children in conflict with the law. The JCPS Cluster has been promoting integrated and holistic approaches to deal with these types of matters, and the integrated establishment of one-stop child justice centres, as envisaged in section 89 of the Child Justice Act, is a case in point. Research has indicated that such an integrated approach addresses the needs of children not only from a criminal justice perspective, but also from a social perspective. The one-stop child justice centres established at Mangaung in the Free State and Nerina in the Eastern Cape have proven to be internationally leading examples of these centres. These models have been lauded as shining examples of the way in which children in conflict with the law can have access to the necessary services in terms of the

arrest and charge phase, the assessment phase, the prosecutorial and judicial phase, the diversion phase and the trial phase of the criminal justice process.

It is against this background that the JCPS Cluster, via the MTSF, recommended that one-stop child justice centres be established throughout the country. This is currently underway. In this regard, guidelines for the establishment of one-stop child justice centres have been developed. This includes the development of standard business documents and procedures, with costing, site identification and the submission of data. To satisfy the requirements of the current MTSF, four sites had been identified and costed to date. The cost of the proposed refurbishments at these sites needs to be examined, as the extent of these costs may well prove that it is not viable to establish these centres.

- The position of persons who, as a result of their particular vulnerability, are more likely to become victims of crime has also been addressed through legislative measures. One such measure was the Domestic Violence Act, 1998, which recognises that domestic violence is a serious social evil and an obstacle to achieving gender equality. The act offers protection to any victim of any form of abuse, and not only physical abuse, who is in a domestic relationship with an abuser. Another was the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, which aims to comprehensively and extensively review and amend all aspects of the laws and the implementation of the laws relating to sexual offences, and to deal with all legal aspects of or relating to sexual offences in a single statute. The particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse was recognised through the inclusion of comprehensive provisions in the act dealing with the creation of certain new, expanded and amended sexual offences. The impact of the Sexual Offence Register and the Child Protection Register, a result of these acts, as well as considering a possible merger of the two registers, is receiving attention. Dealing with sexual offence matters through dedicated court support services (increasing the appointment of intermediaries, providing audiovisual equipment and training, etc.) is being strengthened.

2.5.2 Addressing vulnerable groups and victim empowerment

Addressing vulnerable groups and victim empowerment has been a high priority focus area for the JCPS Cluster. The following can be noted in this regard:

- The Restorative Justice National Policy Framework (including forming linkages with traditional justice) has been implemented.

- An interventionist strategy has been developed to address gender and sexual orientation-based violence against lesbian, gay, bisexual, transsexual and intersex persons.

- The *White Paper on Awaiting Trial Detainees*, which focuses on remand detention and the rehabilitation of offenders, was approved by Cabinet. This was followed by the approval of the Correctional Matters Amendment Act to provide a new medical parole policy, strengthen the general policy on parole and correctional supervision, and provide for a legislative basis for the management of remand detention. Long-outstanding matters involving remand detainees are being prioritised by the JCPS Cluster.

2.6 The legal profession

A number of acts were also passed that have a bearing on the legal profession in the process of transformation. These legislative changes formed part of the continuing initiatives to ensure that the legal profession is opened up and transformed to make access to justice a reality. Examples are the Admission of Advocates Amendment Act, the Admission of Legal Practitioners Amendment Act (which abolished Latin, English and Afrikaans as statutory language requirements for admission to the legal profession, thereby ensuring adherence to the language provisions in the Constitution, which encourage the use of all official languages), the Right of Appearance in Courts Act (which enabled attorneys to appear in the high courts), the Contingency Fees Act (which allows attorneys to conclude contingency fee agreements with clients in terms of which the client will only pay legal costs if he or she wins the case in question) and the Reinstatement of Enrolment of Certain Deceased Legal Practitioners Act (whereby certain deceased legal practitioners were reinstated on the respective rolls). The latter act was enacted as a measure to honour the memory of those deceased legal practitioners who contributed to the fight against apartheid, or who assisted persons who were so opposed, and who had been struck off the roll of attorneys or advocates on account of such opposition or assistance.

Yet another milestone was reached in 2012 with the introduction of the Legal Practice Bill in Parliament. The bill aims to transform and restructure the legal profession by, among other things, providing for the establishment, powers and functions of a single South African Legal Practice Council and regional councils to regulate the affairs of legal practitioners. The bill further aims to regulate the admission, enrolment and registration of legal practitioners, and to regulate the professional conduct of legal practitioners to ensure their accountability.

Challenges being addressed include the following:

- Law societies that are still fragmented
- Slow progress regarding the finalisation of the Legal Practice Bill
- The current LLB degree, which is presenting challenges in practice and is currently being revisited in conjunction with the organised legal profession

2.6.1 Progress with the legal profession

In South Africa, the normal difficulties of accessing justice are exacerbated by gross inequalities, the high cost of legal services and the remoteness of the law from people's lives. Such socio-economic adversity dictates the need for a comprehensive system of legal assistance for poor people, to allow their issues to be adequately articulated and to promote parity in the legal process.

Legal Aid South Africa, established by the Legal Aid Act of 1969, is the statutory body established for the purpose of providing legal aid services to the poor and indigent in both criminal and civil matters. In its first 20 years, demand for its services escalated prodigiously and, by the early 1990s, the cost of providing these services far outstripped the organisation's annual allocation from government.

In the 1990s, it moved to using salaried legal practitioners employed by either Legal Aid South Africa or one of its cooperation partners. It currently provides services through its 64 justice centres, 64 satellite offices and 13 high court units, established throughout the country. These centres provide general legal advice through their professional and paralegal staff and, in 2010, the establishment of a toll-free Legal Aid Advice Line greatly increased access to general advice services. Justice centres deliver 87 percent of legal services, while Judicare and cooperation partners deliver 11 percent and 2 percent respectively. Legal Aid South Africa represents clients in 80 to 90 percent of the matters in the high courts and about 70 percent of matters on the trial roll in the lower courts.

2.7 Human rights and constitutional democracy

A new portfolio was added to the Department and Ministry of Justice, namely Constitutional Development. The department therefore has mandates relating to both justice and constitutional development. This branch in the department has promoted the following, among others:

- The implementation of human rights legislation and policies on behalf of government.

- The DOJ&CD plays an important role in ensuring that legislation relating to human rights and administrative justice is implemented by putting together action plans and policies of government. Two policies are under development and are going through consultation with relevant stakeholders. These are the Policy Framework to Combat Hate Crimes, Hate Speech and Unfair Discrimination, and the National Action Plan for Strengthening National Cohesion by Eliminating All Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerances (Article 4 of the Convention on Elimination of all forms of Racial Discrimination – Outcome of Durban Declaration and Programme of Action at the World Conference Against Racism, 2001). This is based on prohibited grounds contained in section 9 of the Constitution.

In addition, the DOJ&CD plays a key role in assisting government to comply with the Promotion of Administrative Justice Act, and in this regard, coordinates the Interdepartmental Working Group to implement the act. A number of pilot projects are ongoing and will guide further implementation of the act.

The Constitution makes it possible for the high courts to declare acts of Parliament or provisions thereof unconstitutional, but such declarations of invalidity must be referred to the Constitutional Court for confirmation. A number of judgments of the Constitutional Court have had a bearing on legislation that is administered by the DOJ&CD. These judgments have given rise to amending legislation to ensure that legislation is in line with the judgments in question. The following legislation has been enacted in this regard:

- The Abolition of Corporal Punishment Act, 1997, which gave effect to the Constitutional Court's judgment that corporal punishment as a sentence option is in conflict with the Constitution by repealing or amending all statutory provisions in terms of which corporal punishment could be imposed by the courts.

- In the case of *S v Ntuli,* the Constitutional Court decided that all appeals from the lower courts should be subject to an application for leave to appeal to the trial court, failing which a petition can be addressed to the appeal court, namely, the high court having jurisdiction. The Criminal Procedure Amendment Act, 1997, was promoted to remove the requirement that judges' certificates should be issued by judges in chambers in respect of appeals from lower courts by appellants who are in prison.

- The Criminal Law Amendment Act, 1997, which gave effect to the decision of the Constitutional Court in respect of the death penalty by providing for the setting aside of pending death sentences and introducing a procedure for the substitution of such sentences with lawful punishments.

- The Administration of Estates Amendment Act, 2002, which addressed the concerns raised by the Constitutional Court in the case of *Moseneke v the Master*, in terms of which certain discriminatory provisions of the Black Administration Act of 1927 and certain regulations made thereunder, dealing with the administration of deceased estates of black persons, were declared to be inconsistent with the Constitution.
- In the case of *S v Steyn,* the Constitutional Court declared the procedure dealing with appeals in criminal cases from the lower to the superior courts to be unconstitutional. The Criminal Procedure Amendment Act, 2003, introduced leave to appeal and petition procedures in respect of decisions of lower courts. The amendment act also provided that certain appeals against decisions by the

lower courts and the high courts relating to children may be noted without having to apply for leave to appeal.

- The Constitutional Court, in *Nyathi v MEC for Department of Health, Gauteng and Another*, declared section 3 of the State Liability Act of 1957, which deals with the satisfaction of judgments against the state, to be inconsistent with the Constitution. The State Liability Amendment Act, 2011, therefore amended the State Liability Act of 1957, so as to regulate the manner in which a final court order sounding in money against the state must be satisfied.

- The Criminal Procedure Amendment Act, 2012, amended section 49 of the Criminal Procedure Act of 1977, so as to substitute and align the provisions relating to the use of force in effecting the arrest of a suspect with the judgment of the Constitutional Court in the case of *Ex parte: The Minister of Safety and Security and Others: In re the State v Walters and Another* 2002(2) SACR 105 (CC).

3. Overcoming challenges

The past five years have been spent on consolidating legislation and other measures aimed at the deepening democracy, enhancing access to justice, transforming the administration of justice, including the judiciary and the courts, improving court performance, strengthening coordination through the cluster system and the outcomes-based approach of government to deal with priorities, and strengthening the rule of law.

It is crucial that this work continues and that more attention be paid to the costing of the prolific legislation programme and to implementation issues.

Substantial work is still required to instil and maintain public confidence in the administration of justice and to dispel the notion that the courts have not been effective in the fight against crime, particularly serious crime and crimes against women and children. However, problems still exist. For example, bail remains a matter of serious concern and adequate sentencing policies need to be devised. These and other measures to ensure that the DOJCD plays a meaningful role in the fight against crime will receive further attention in the coming years.

Specific legislation that requires finalisation includes the following:

- The transformation of the legal profession is an important focus area. The Legal Practice Bill, which is before Parliament, seeks to change the systemic make-up of the profession. It establishes democratically elected governance structures that will regulate the admission and conduct of legal practitioners, among others. The

bill also sets out a framework for the complete overhaul of the admission requirements and vocational training that have become barriers to access to the profession for previously disadvantaged individuals. The enrolment of women into the profession is also receiving special attention.

- Now that the Superior Court Act is in place, the next step will be to rationalise the lower courts' legislation in a similar manner.

- The Reform of the State Legal Services is continuing. It is envisaged that a bill to amend and reform the State Attorney Act of 1957 will be introduced soon. This bill seeks to establish a dispensation of Solicitor-General who will represent the state in civil litigation. The allocation of legal work and briefs to previously disadvantaged individuals is continuing and targets have been set to benefit more women, and thereby enhance their opportunity to nurture their legal skills, which is indispensable for appointment to the bench.

- The finalisation of the Traditional Courts Bill will not only repeal the remnants of the Black Administration Act of 1927, but will also bring the quasi-judicial functions of traditional leaders in conformity with the Constitution. In the absence of a regulatory framework, it becomes difficult for traditional leaders to be held accountable for the exercise of their quasi-judicial functions, which relate to dispute resolution.

4. Conclusion

The country's transition from a bleak past to a bright future, espoused by the democratic Constitution, has been phenomenal. Much has been accomplished, including the following:

- The constitutional and legislative transformation over the past 20 years is the bedrock from which has sprout the programmes that promise a South Africa different and qualitatively better than the one that was inherited from the apartheid regime. Through this period, titanic strides have been taken in promoting and advancing democracy and the rule of law at home, in the region and on the continent.

- It is important to remember that, as South Africa's constitutional democracy has evolved, so the landscape has changed, and the understanding of the most important obstacles to access to justice has shifted. As considerable strides have been made to enhance access to justice, new problems have emerged that tend to cloud the progress that has been made. The justice systems have also had to channel capacity from resources that effectively catered to 10 percent of the population to the entire population.

- There are more courts in townships and rural areas today than there were in 1994, and several specialised courts have been established to deal with priority areas, such as violence against women and children.

- Those who staff the justice system are starting to be more representative of the country's population. The considerable demands and challenges during the past few years, however, required many sacrifices from an often understaffed complement that has remained loyal and has continued to deliver a professional and dedicated service to the people of South Africa under very trying circumstances.

The DOJ&CD, in addition to the Constitution, administers in excess of 160 statutes which regulate very diverse areas of the law. There is, however, still much to be done to ensure that all legislation, in so far as it relates to the administration of justice, reflects the goals and spirit of the Constitution. The information provided in this review bears witness to the fact that the department has, since 1994, played a major role in paving the way for a new society and a revised and transformed administration of justice in its many facets.

Since 27 April 1994, the department's legislative programme has been dominated by three main themes: transformation, crime and legal reform. Many of the Bills passed also have a direct or indirect bearing on access to justice, as well as the promotion and protection of the rights of vulnerable groups, particularly women and children. The department has, over the past 20 years, promoted more than 143 bills. Forty-eight of these statutes are entirely new statutes, giving an indication of the growth in our law since 1994, mainly to give effect to the new constitutional dispensation.

On the other hand, there is still a long way to go:

- The transformation of the judiciary in terms of gender remains particularly slow.

- Issues of cost and a lack of knowledge present barriers to the fulfilment of the constitutional guarantee of access to justice.

- Backlogs and a lack of capacity in the courts present a serious challenge to the fulfilment of access to justice: particularly the attendant impact on pre-trial detention in criminal cases.

Justice is a very serious issue that requires serious consideration by all stakeholders. To this end, it is clear that government and the DOJ&CD are committed to continually endeavour to meet the obligations of the Constitution and, in particular, improve access to justice and the promotion of true justice for all. At the

heart of this lies improved service delivery and improved partnerships with other state departments, civil society and organisations in civil society, and business.

References

Afrobarometer Survey in South Africa. (2008). "Afrobarometer Summary of Results, Round 4", available at: http://www.afrobarometer.org/index.php?option=com_docman&task=cat_view&gid=180&Itemid=31 (accessed May 2013).

Bam, F. (2011). "Specialised Courts: The Equality Court, the Labour Court, the Land Claims Courts and the Sexual Offences Court". Compilation for the Access to Justice Conference. 8-10 July 2011, Johannesburg. Available: http://www.justice.gov.za/access-to-justice-conference-2011/20110709_ajc_bam-speech.pdf. (accessed May 2013).

Barbier, A. (2013). "Zuma passes Constitution Seventeenth Amendment Bill into law". SABC. 8 February. Available: http://www.sabc.co.za/news/a/87a8a9004e7b518cb672beb7074a8d3f/Zuma-passes-Constitution-Seventeenth-Amendment-Bill-into-law-20130208 (accessed May 2013).

Claassens, A. (2012). "The Traditional Courts Bill is a legal travesty". Mail & Guardian Online. 28 September. Available: http://mg.co.za/article/2012-09-28-00-the-traditional-courts-bill-is-a-legal-travesty (accessed May 2013).

Constitutional Court. (2013). "Landmark Cases". Available: http://www.constitutionalcourt.org.za/site/thecourt/history.htm#cases (accessed May 2013).

Constitutional Court. (2013). "Office of the Chief Justice: JSC advertisement". Available: http://www.constitutionalcourt.org.za/site/Admin/judicial.htm (accessed May 2013).

Constitutional Court. (2013). History of the Court. Available: http://www.constitutionalcourt.org.za/site/thecourt/history.htm. (accessed May 2013).

De Lange, JH. (2004). "Address at the official launch of the Western Cape Community Courts", Gugulethu by the Deputy Minister for Justice and Constitutional Development Adv JH de Lange, MP. Cape Town, 07 December 2004. Available: http://www.justice.gov.za/m_speeches/sp2004/2004%2012%2007_dmin_wccc.htm (accessed May 2013).

De Waal, J., Currie, I. & Erasmus, G. (2001). "The Bill of Rights Handbook". Juta Legal and Academic Publishers 4th edition.

Department of Justice and Constitutional Development. (1997). "Justice Vision 2000". Available: http://www.justice.gov.za/policy/policy_list.html (accessed May 2013).

Department of Justice and Constitutional Development. (2005). "Re Aga Boswa". Available: http://www.justice.gov.za/brochure/2005%20Re%20Aga%20Boswa.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2009). "Launch of Indigenous Language Court in the Western Cape". Available: http://www.justice.gov.za/reportfiles/other/20090302_Report%20on%20Launch%20of%20Indigenous%20Court%20in%20Western%20Cape.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2009). "Zwelitsha's Indigenous Court to reduce backlogs". Available: http://www.justice.gov.za/events/2009events/20090227_zwelitsha.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2010). "Annual Report 2009/10". Available: http://www.justice.gov.za/reportfiles/anr200910/anr2009-2010_part2.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2010). Justice on the Ball. Justice Today, Issue 2. Available: http://www.justice.gov.za/newsletter/JT/JT_2010_Issue2.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2011). "Access to Justice Conference". Available: http://www.justice.gov.za/access-to-justice-conference-2011/index.html (accessed May 2013).

Department of Justice and Constitutional Development. (2011). "Access to Justice Conference: Draft Resolutions". Available: http://www.justice.gov.za/access-to-justice-conference-2011/20110710_ajc_%20draft-resolutions.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2011). Parliamentary Question: DoJ: Court Backlocks. 17 March. Available: http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=14215:parliamentary-question-doj-court-backlocks&catid=86:parliamentary-questions&Itemid=187 (accessed May 2013).

Department of Justice and Constitutional Development. (2012). "Annual Performance Plan 2012/13". Available: http://www.justice.gov.za/MTSF/dojcd-app-2012-13.pdf. (accessed May 2013).

Department of Justice and Constitutional Development. (2012). "Discussion Document on the Transformation of the Judicial System and the Role of the Judiciary in the Developmental South African State". Available: http://www.info.gov.za/view/DownloadFileAction?id=161854 (accessed May 2013).

Department of Justice and Constitutional Development. (2012). "Lower Courts List". Available: http://www.justice.gov.za/contact/lowercourts-sheet.pdf (accessed May 2013).

Department of Justice and Constitutional Development. (2012). "Lower Courts List"

Department of Justice and Constitutional Development. (2012). Discussion Document, p.23.

Department of Justice and Constitutional Development. (2013). "Customer Service Charter for Court Users". Available: http://www.justice.gov.za/policy/misc/courtusers.htm#6 (accessed May 2013).

Department of Justice and Constitutional Development. (2013). "Equality Courts". Available: http://www.justice.gov.za/EQCact/eqc_briefingdoc.html (accessed May 2013).

Department of Justice and Constitutional Development. (2013). "Judicial Service Commission Reports". Available: http://www.justice.gov.za/reportfiles/report_list.html (accessed May 2013).

Department of Justice and Constitutional Development. (2013). "Justice College". Available: http://www.justice.gov.za/juscol/about.htm (accessed May 2013).

Department of Justice and Constitutional Development. (2013). "National Guidelines for Prosecutors in Sexual Offence Cases". Available: http://www.justice.gov.za/policy/guide_sexoff/sex-guide04.html (accessed May 2013).

Department of Justice and Constitutional Development. (2013). "The Final Verdict". Available: http://www.justice.gov.za/video-fv.html (accessed May 2013).

Department of Justice and Constitutional Development. (2013). FAQ on the Children's Act. Available: http://www.justice.gov.za/vg/children/children-chp04.html (accessed May 2013).

Department of Justice and Constitutional Development. (2013). The Courts in South Africa. Available: http://www.justice.gov.za/about/sa-courts.html (accessed May 2013).

Department of Justice and Constitutional Development. 2012. Annual Report 2011/12. Available: http://www.justice.gov.za/reportfiles/report_list.html. p17.

Dereymaeker. (2011). "Hate speech in post-apartheid South Africa", p.71-72

Du Preez v Minister of Justice and Constitutional Development and Others. (2006). (5) SA 592 (E).

Dugard, J & Tissington, K. (2009). "Why Cape Legal Twist Looks Like a Demolition of Justice for the Poor". Business Day. 2 July. Available: http://www.bdlive.co.za/articles/2009/07/02/why-cape-legal-twist-looks-like-a-demolition-of-justice-for-poor (accessed May 2013).

Dugard, J. (2006). "Court of First Instance?: Towards a Pro-Poor Jurisdiction for the South African Constitutional Court". South African Journal on Human Rights vol. 22(2) pp. 261-282.

Dugard, J. (2007). "Judging the Judges: Towards an appropriate role for the judiciary in South Africa's transformation". Leiden Journal of International Law vol. 20(4) pp. 237-253. p.972.

Dugmore, M. L. & Redpath, J. (2006). "A study of Municipal Courts in South Africa: A Research for the City of Cape Town". Institute for Security Studies.

Dyzenhaus, D. (1998). "Judging the Judges, Judging Ourselves: Truth, Reconciliation and the Apartheid Legal Order". Hart Publishing.

Hawker, D. (2013). "Women ignored in Concourt appointments". The Sunday Independent. 27 January.

Hoffman and Madeleine de Swardt (2011). "No justice in Bench selection system". Cape Times, 21 April 2011, page 11.

Hoffman, P. (2011). "Judiciary. Business Day, 22 August". Available: http://www.bdlive.co.za/articles/2011/08/22/paul-hoffman-judiciary (accessed May 2013).

In terms of the Jurisdiction of Regional Courts Amendment Act 31 of 2008, implemented in August 2010. See also South African Government Information. 2013. Pilot sites for family courts. Available: http://www.info.gov.za/aboutgovt/justice/courts.htm#familycourt. (accessed May 2013).

Institute for Security Studies. (2012). "The Bigger Picture: What the National Victims of Crime Survey findings tell us about victims of crime". Conference on International & National Perspectives on Crime and Criminal Justice. Pretoria, 3 February. Available: www.issafrica.org/crimehub (accessed May 2013).

Karth, V. (2007). "Transforming the South African Magistracy – how far have we come?" Available: http://analysis.quanta.org.za/wp-content/uploads/2007/07/2007-final-thesis.doc p.75. (accessed May 2013).

Kharsany, Z. (2008). "R1.5bn to Keep suspects behind bars". Mail & Guardian. 17 July. Available: http://www.mg.co.za/printformat/single/2008-07-17-r15bn-to-keep-suspects-behind-bars (accessed May 2013).

Kriegler, J in President of the Republic of South Africa and Another v Hugo 1997 (4) SA 1

Legal Aid Board. (2013). Available: http://legalaid.onsite.hosting.co.za/services/c_magistrate.php. (accessed May 2013).

Legal Aid South Africa. (2013). "Country Report" presented at ILAG Conference, Netherlands. June 2013. Available: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/South_Africa_National_Report.pdf (accessed May 2013).

Legal Aid South Africa. Available: http://www.legal-aid.co.za/?p=16 (accessed May 2013).

Moult, K. (2000). “The Court Doors May Be Open, But What Lies Behind Those Doors?: An Observation of the Workings of the Wynberg Sexual Offences Court”. Honours Thesis. University of Cape Town.

Nel, A. (2012). Media Statement on “Access to Justice for Persons With Disabilities by Deputy Minister of Justice and Constitutional Development Mr. Andries Nel. Mpumalanga”, 4 December 2012. Available: http://www.justice.gov.za/m_statements/2012/20121204_dm-pwd.html (accessed May 2013).

Ngxuza and Others v Secretary, Department of Welfare, Eastern Cape Provincial Government 2000 (12) BCLR 1322 (E). No. 33216 of 2010.

Oxtoby & Dereymaeker. (2011). “Governance of the Judiciary”.
Oxtoby, C. & Dereymaeker, G. (2011). “South Africa: Governance of the Judiciary”. African Peer Review Mechanism Report.

Paralegal Advice. (2013). “Lay assessors”. Available: http://www.paralegaladvice.org.za/docs/chap05/02.html (accessed May 2013).

Pillay, V. (2011). “Zuma’s worst decision?”. Mail & Guardian Online. 17 August. Available: http://mg.co.za/article/2011-08-17-zumas-worst-decision (accessed May 2013).

Rabkin, F. (2011). “Controversy as JSC again snubs top lawyer for post on Cape bench”. Business Day. 18 April. Available: http://www.businessday.co.za/articles/Content.aspx?id=140544 (accessed May 2013).

Rabkin, F. (2010). “JSC’s snub to ‘combative’ Gauntlett shocks lawyers”. Business Day. 16 April. Available at: http://www.bdlive.co.za/articles/2010/04/16/jsc-s-snub-to-combative-gauntlett-shocks-lawyers (accessed May 2013).

Rabkin, F. (2010). “Workload in Gauteng Courts up 400%”. Business Day. 20 April. Available: http://www.bdlive.co.za/articles/2010/04/20/workload-in-gauteng-high-courts-up-400 (accessed May 2013).

Rabkin, F. (2011). “Chaskalson unfazed by Zuma warning”. Business Day. 11 July. Available: http://www.businessday.co.za/articles/Content.aspx?id=148028 (accessed May 2013).

Rabkin, F. (2011). “Dark horse not always in step with peers”. Business Day. 17 August. Available: http://www.bdlive.co.za/articles/2011/08/17/dark-horse-not-always-in-step-with-peers (accessed May 2013).

Rabkin, F. (2011). “Prosecutor Bemoans Closure of Sexual Offences Courts”. Business Day. 11 July. Available: http://www.businessday.co.za/Articles/Content.aspx?id=148026 (accessed May 2013).

Rabkin, F. (2011). “Top court 'not ready to be apex court' of SA”. Business Day. 11 October. Available: http://www.bdlive.co.za/articles/2011/10/11/top-court-not-ready-to-be-apex-court-of-sa;jsessionid=C9AFF771A8D6E8C6E903D518F86C0F6E.present2.bdfm. (accessed May 2013).

Rabkin, F. (2013). “Gauntlett once again passed over for judicial appointment”. Business Day. 22 February. Available: http://www.bdlive.co.za/national/law/2013/02/22/gauntlett-once-again-passed-over-for-judicial-appointment (accessed May 2013).

Raphaely, C. (2013). “Oscar Pistorius case highlights plight of South Africa's disabled prisoners”. The Guardian. 22 February. Available:

http://www.guardian.co.uk/world/2013/feb/22/paraplegic-remand-south-africa (accessed May 2013).

Rickard, C. & Gosling, M. Row (2011). “Over choice of judges”. Cape Times, 20 April 2011, pp. 1, 3.

Rule of Law in Armed Conflicts Project, Geneva Academy. Available: http://www.geneva-academy.ch/RULAC/international_treaties.php?id_state=2 (accessed May 2013).

SA Government Communications (2012). “Regulations Regarding Non-Judicial Member of Tribunals”. Government gazette. 35802. 18 October

SA Government Information. (2013). “Pilot sites for family courts”, supra footnote 49.

Serjeant at the Bar. (2010). “JSC choices leave a lot to be explained”. Mail & Guardian Online. 15 November. Available at: http://mg.co.za/article/2010-11-15-jsc-choices-leave-a-lot-to-be-explained (accessed May 2013).

Singh v Minister of Justice and Constitutional Development and Others (57331/2011) [2013] ZAEQC 1 (23 January 2013).

South African Government Information. (2013). “Audio-Visual Remand System”. Available:

South African Government Information. (2013). “Case-Reduction Backlog Project”. Available: www.info.gov.za/aboutgovt/justice/system.htm#eft (accessed May 2013).

South African Government Information. (2013). “Community Courts”. Available: http://www.info.gov.za/aboutgovt/justice/courts.htm#communicours (accessed May 2013).

South African Government Information. (2013). “Electronic Funds Transfer”. Available: http://www.info.gov.za/aboutgovt/justice/system.htm#eft (accessed May 2013).

South African Government Information. (2013). Available: http://www.info.gov.za/documents/constitution/ (accessed May 2013).

South African News Agency. (2011). “Zuma nominates Mogoeng as new Chief Justice”. Available: http://www.sanews.gov.za/south-africa/zuma-nominates-mogoeng-new-chief-justice (accessed May 2013).

Stanton, S., Lochrenberg, M. & Mukasa, V. (1997). “Improved Justice for Survivors of Sexual Violence? Adult Survivors’ Experiences of the Wynberg Sexual Offences Court and Associated Services”. Research and Advocacy Project by Rape Crisis Cape Town, African Gender Institute: University of Cape Town.

The Justice Forum. (2013). “Court & Case Flow Management South Africa: Guidelines”. Available: http://www.justiceforum.co.za/CCFMSA-Guidelines.asp (accessed May 2013).

The Justice Forum. (2013). “Practical Guide: Court and Case Flow Management”. Available: http://www.justiceforum.co.za/practical_guide.pdf (accessed May 2013).

UNICEF. (2013). “List of Thuthuzela Care Centres”. Available: http://www.unicef.org/southafrica/protection_5080.html (accessed May 2013).

Waterhouse, S. (2008). “The Impact of Changing Criminal Justice Reponses to Child Victims of Sexual Abuse: Good Intentions, Questionable Outcomes”. The Criminal Justice Initiative of Open Society Foundation for South Africa. Available: http://osf.org.za/wp/wp-content/uploads/2012/09/CJI_Occasional_Paper_41.pdf. (accessed May 2013).

Wesson, M. & du Plessis, M. (2008). “The Transformation of the Judiciary”. Fifteen Year Policy Review, South African Presidency.

Working Group on Arbitrary Detention. (2005) p. 19 paras 65 – 67; available at: http://daccessddsny.un.org/doc/UNDOC/GEN/G05/168/98/PDF/G0516898.pdf?OpenElement (accessed May 2013).