

CHAPTER 4

JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The judicial authority in South Africa is vested in the courts. The courts are independent, impartial and subject only to the constitution and the law, which they must apply impartially without fear, favour or prejudice.³⁶ The administration of justice is a function of the national government which must ensure a uniform system of justice granting equal protection to all.

The Department of Justice and Constitutional Development is responsible for the administration of the courts. The department performs this function in conjunction with the country's judges, magistrates and the National Prosecuting Authority (NPA).³⁷ It is the responsibility of the department to ensure that the court system receives adequate resources to enable it to work fairly and efficiently.³⁸

The NPA is responsible for instituting criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.³⁹ The NPA aims to provide a prosecution service which is prompt, vigorous and fearless, and in the public interest, where all are treated with humanity and sensitivity.⁴⁰

What was promised?

The aim of the Department of Justice and Constitutional Development is to give effect to the constitutionally mandated requirement that South Africans have a fair, equitable and accessible system of justice. According to parliament's 2001 and 2002 budget votes—which includes state expenditure on the NPA—the department's key objectives are to:⁴¹

- maintain, improve and streamline a system of courts in which legal proceedings are processed efficiently and effectively;
- investigate certain crimes and prosecute all offenders;

- research, draft and promote legislation;
- ensure fair and equitable justice for all; and
- develop and maintain a justice system which contributes to improving the safety and security of people by creating a deterrent and building respect for the law.

The ‘administration of courts programme’ provides the core function of the department: the establishment and operation of courts in the exercise of justice. The programme’s key output in relation to criminal courts is the “adjudication of persons in accessible courts where processes are speedy and fair”.⁴² For 2001/02 the department developed the following service delivery indicators for the programme:

- number of cases finalised;
- size of the case backlog;
- average length of trials;
- number of court hours worked;
- customer satisfaction surveys;
- number of cases; and
- duration of cases.

The NPA—a key component of the department in respect of criminal courts—set itself outputs and service delivery indicators for the 2002/03 budget year as outlined in Table 4:⁴³

Available resources

For the 2002/03 budget year the Department of Justice and Constitutional Development was allocated R4.3 billion. Of this 33% was allocated to the administration of courts programme. Some 22% or R942 million was allocated to the NPA (up from 11% or R415 million in the 2001/02 budget year). The remainder was allocated to auxiliary and associated services (29%), administration (8%), and state legal services (5%).⁴⁴

Table 4: NPA outputs and indicators, 2002/03		
Sub-programme	Outputs	Output measure/ indicator
Public Prosecutions	<ul style="list-style-type: none"> • Effective and efficient prosecutions. 	<ul style="list-style-type: none"> • Reduction in case backlog/outstanding court rolls. • Customer satisfaction. • Conviction rate. • Reduction in number of decision dockets. • Reduction in court disposal time.
Witness Protection Programme	<ul style="list-style-type: none"> • Confident and safe witnesses appearing in court. 	<ul style="list-style-type: none"> • No. of incidents threatening witness safety.
Special Operations	<ul style="list-style-type: none"> • Investigation, prosecution and disruption of organised crime. 	<ul style="list-style-type: none"> • No. of completed asset forfeiture cases. • No. of forfeitures initiated. • Value of assets seized and forfeited. • DSO conviction rate. • Financial crime cases finalised.

Source: National Treasury, 2002

The budget allocation to the department grew by 26% between the 2000/01 and 2001/02 budget years, and by 17% between 2001/02 and 2002/03. The NPA's budget grew by 19% and 31% over the respective same two periods, largely owing to the growth of one of the NPA's subcomponents, the Directorate of Special Operations (the Scorpions) which was established in 1999.

Personnel related expenditure decreased from 55% of the department's 2000/01 budget, to 50% of both the 2001/02 and 2002/03 budgets. This was achieved by not filling numerous positions that had become vacant through natural attrition. The decline in personnel related expenditure was matched by increased spending on capital, reflecting the department's emphasis on upgrading and extending its physical and information technology infrastructure.⁴⁵

During the 2002/03 financial year the department budgeted to employ 15,446 people (exactly the same as in 2001/02), of which some 2,500 were prosecutors, just fewer than 1,700 magistrates and about 360 permanent and acting judges.⁴⁶

Workload

Between 2000 and 2001 the number of new cases referred to court increased by a substantial 26%.⁴⁷ Between 2001 and 2002 the number of new cases increased by a massive 47%. The 2000/01 increase was the likely result of the police's National Crime Combating Strategy (NCCS), also known as Operation Crackdown (see chapter three). The Operation is a high density, zero tolerance type police and army operations taking place in high crime areas since April 2000. Some 462,000 arrests were made during first 12 months of the three year operation.⁴⁸

According to the NPA, 756,801 new criminal cases entered the magistrates' or lower court system during 2001.⁴⁹ During 2002 the number of new cases rose to 1.1 million.⁵⁰ No figures are given for the high courts, but less than 5% of all criminal cases end up there.⁵¹

Of the new cases for 2001, 55,178 (or 7%) went to the regional courts where most serious crimes are tried, and 701,623 (93%) went to the district courts where less serious offences are prosecuted. The ratio of new cases going to the regional and district courts during 2002 was the same as in 2001.

Actual performance

Cases withdrawn

During 2001, 423,890 cases were withdrawn by the prosecution service.⁵⁴ Of the withdrawn cases, 92% were withdrawn at district court level, and 8% at regional court level. During 2002, slightly fewer cases were withdrawn (420,124): 94% at district and 6% at regional court level.

The steady increase in the number of cases withdrawn by the prosecution service was halted during 2002 (Figure 12). The marked increase in the number of withdrawn cases during 2000 and 2001 was partly the result of an initiative started in mid-2000 by the NPA, to encourage prosecutors to withdraw

District, regional and high courts

Over 95% of all criminal trials take place in the magistrates' courts (also known as the lower courts). There are two types of magistrate's courts: regional courts and district courts.

Only the most serious crimes such as brutal murders, particularly violent rapes, robbery with aggravating circumstances where someone is seriously injured or killed, and fraud involving large amounts of money are usually prosecuted in the high court by state advocates.

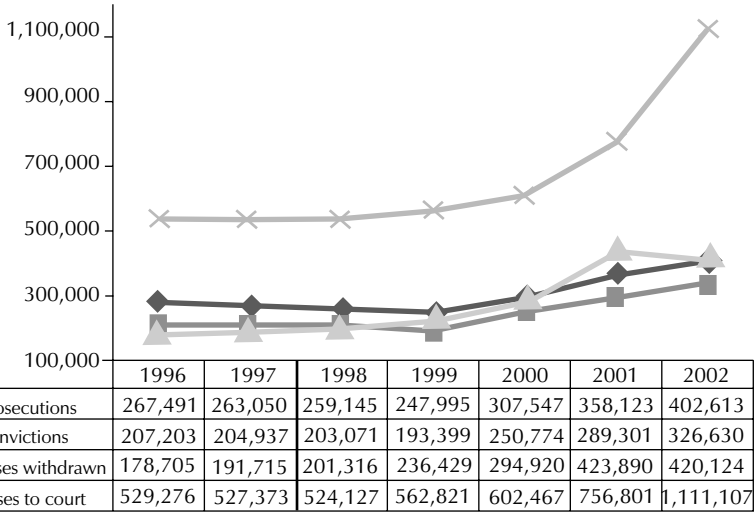
The vast majority of murders, rapes and robberies, and crimes such as attempted murder, child abuse, kidnapping, sexual offences, house-breaking where the intention is not only to trespass, fraud and theft where the loss exceeds R40,000, and car theft are prosecuted in the regional court.⁵² Unless legislation provides otherwise, regional courts have the jurisdiction to impose a maximum period of imprisonment of 15 years (and a fine of up to R300,000).

More minor offences such as assault, most forms of theft and fraud, malicious injury to property, most drug related offences, drunk driving offences, and other driving related offences are prosecuted in the district court. Unless legislation provides otherwise, district courts have the jurisdiction to impose a maximum period of imprisonment of three years (and a fine of R60,000).⁵³

cases which were flawed in some way and were not ready to proceed to a successful prosecution.⁵⁵

In 2001, 358,123 cases were finalised with a verdict: 81% resulted in a conviction and 19% in an acquittal or not guilty finding. Of the cases finalised with a verdict about nine-tenths (88%) were finalised in the district courts and 12% in the regional courts. The conviction rate was higher in the district courts (83%), compared to the regional courts (66%).⁵⁶ During 2002, 402,613 cases were finalised with a verdict—an increase of 12% compared to 2001. The conviction rate in 2002 did not differ significantly from that in 2001.

Thus, of all the cases dealt with by the prosecution service during 2001, just over half (54%) were withdrawn. A further 37% resulted in a conviction and 9% in an

Figure 12: Cases processed by the prosecution service, 1996-2002

Sources: SAPS CIAC, NPA Court Management Unit

acquittal. In 2002 the proportions were as follows: 51% withdrawn; 40% convicted; and 9% acquitted.⁵⁷ It is encouraging that the proportion of withdrawn cases decreased during 2002. However, with every second case that is referred to court being withdrawn, it would appear that police resources are being wasted in the investigation of cases which do not make it to the trial stage of proceedings.

Prosecutions and convictions

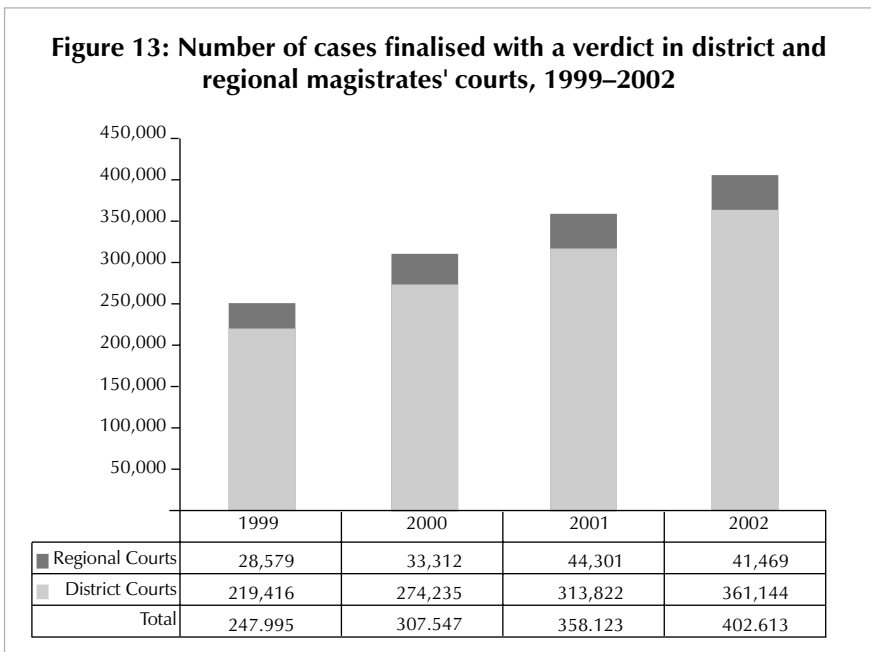
The high number of case withdrawals during 2001 limited the impact Operation Crackdown had on prosecutions and convictions. While the number of cases referred to court increased by 30% during 2001, over the same period the number of case withdrawals increased by 44%. The number of prosecutions and convictions increased by, respectively, only 16% and 15% in 2001. During 2002 the performance of the prosecution service improved, however. Comparing 2002 with 2001, the number of cases referred to court increased by 5%, withdrawals decreased by 1%, while the number of prosecutions and convictions increased by, respectively, 12% and 13%.

The number of prosecutions increased by 16% between 2000 and 2001, and 12% between 2001 and 2002. Between 2001 and 2002, the number of regional court prosecutions decreased by 6%, while the number of district court prosecutions increased by 15% (Figure 13).

Outstanding cases

Compared to 2000, the number of outstanding cases decreased by 1% during 2001—a significant achievement given that the number of new cases referred to court increased by 26% over the same period. This decline in outstanding cases was achieved by a 20% reduction in outstanding regional court cases. (Outstanding district court cases actually increased by 6%). However, compared to 2001, the number of outstanding cases at the end of 2002 increased by 10% (but the number of new cases rose by 46% in that year).

At the end of 2001, 181,638 lower court cases were outstanding or had not been finalised. This represents the backlog of cases the courts had to contend



Source: NPA Court Management Unit

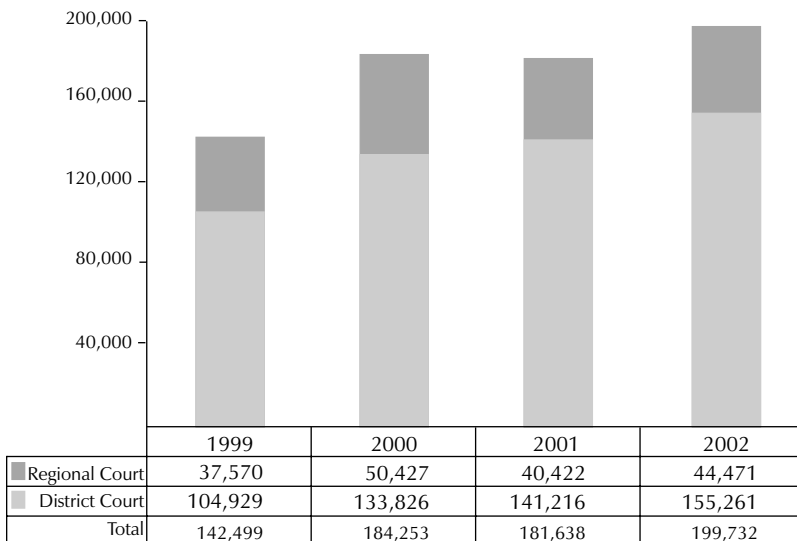
with at the beginning of 2002. At the end of 2002, 199,732 lower court cases were outstanding or had not been finalised (Figure 14). The increase in the backlog of outstanding cases is worrying as the backlog is high, given that the number of outstanding cases at the end of 2002 was equal to almost half of all cases prosecuted during that year.

In October 2000 the National Director of Public Prosecutions, Bulelani Ngcuka, pointed out that the 180,000 criminal cases outstanding in the country's courts at the time, would take prosecutors two years to deal with, excluding any new cases.⁵⁸

Productivity of courts

The productivity of the average magistrates' court declined during the period under review. During 2002, the average district court secured 273 convictions;

Figure 14: Number of lower court cases outstanding at the end of year, 1999–2002



Source: NPA Court Management Unit

the average regional court 64 convictions. Given that district courts mainly deal with minor offences, 273 convictions per average court per year—or a conviction about every working day—is low. While some regional court trials can take a long time to finalise, an average of one conviction per court every fourth working day is low.

During 2002 the average district court sat for four hours and ten minutes, and the average regional court for four hours (excluding periodical courts). Compared to 2001, the average district court figures improved by 16 minutes and the regional courts' by five minutes.⁵⁹

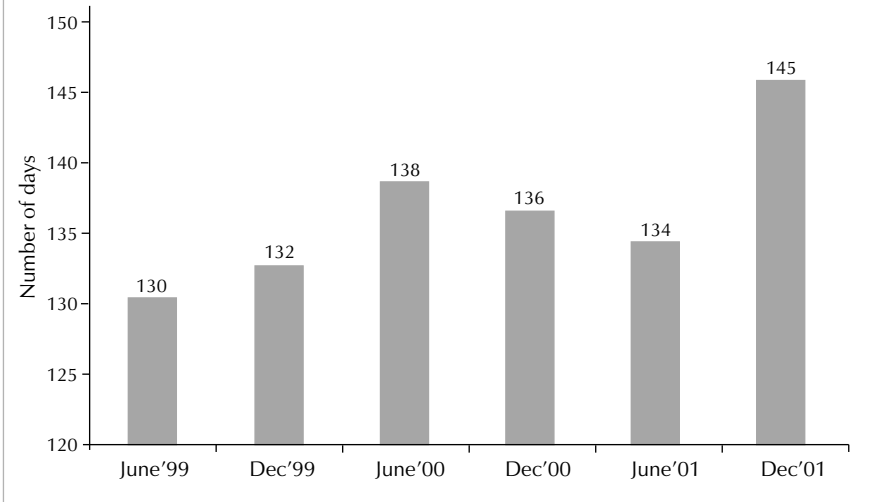
Some accused are incarcerated while they await the outcome of their trial. This is because the courts refuse to grant them bail, or because bail is set at an amount which is unaffordable to the accused. There are a number of factors which determine the length of time an accused spends in prison awaiting the finalisation of his trial. The speed with which the police finalise the investigation, the length of the trial, and the number of postponements the accused requests during the trial are all factors which lengthen the awaiting trial period of an accused, and over which the prosecution has little or no control. However, in many cases there are delays in the finalisation of trials because the courts' rolls are badly managed or the courts do not operate effectively.

The detention cycle time, or the average length of time unsentenced prisoners remain incarcerated until the finalisation of their trials, increased during the period under review from 136 custody days in December 2000 to 145 custody days in December 2001 (Figure 15). By September 2002 the national detention cycle time had decreased slightly to 143 custody days—an average of slightly less than five months.

This means that, on average, in September 2002, accused persons were imprisoned for almost five months awaiting the finalisation of their trial. Such delays in the processing of cases involving awaiting trial prisoners place a considerable financial burden on the state. In 2002, one prisoner cost the state some R95 a day. Multiplied over an average of 143 custody days, this adds up to almost R13,600 per average unsentenced prisoner.

The average detention cycle time varies significantly between the provinces. Provinces with above average detention cycle times in September 2002 were: Limpopo (218 days), Gauteng (152 days), Western Cape (151 days) and KwaZulu-Natal (139 days). The Northern Cape had the lowest detention cycle time of 99 days.

Figure 15: Average number of days unsentenced prisoners incarcerated, 1999–2002



Source: Department of Correctional Services

Asset forfeiture

During 2001, the NPA's Asset Forfeiture Unit seized assets in 86 cases to the value of R154 million (achieving a 89% success rate), and proceeded to the forfeiture stage of the process in 47 cases involving R68 million. The Unit also finalised 17 cases involving R4 million. The Unit deposited R580,000 into the Criminal Assets Recovery Account from where monies are ploughed back into the criminal justice system.⁶⁰ Between 1999 (when the Unit was established) to the end of 2002, the Unit had paid R100 million to crime victims and R16 million into the Criminal Assets Recovery Account.

Directorate of Special Operations (Scorpions)

According to the National Director of Public Prosecutions, conviction rates achieved by the Directorate of Special Operations (DSO) "exceeded 90%".⁶¹ No details were, however, given on how the conviction rate was calculated, or the period over which the conviction rate was calculated. According to the

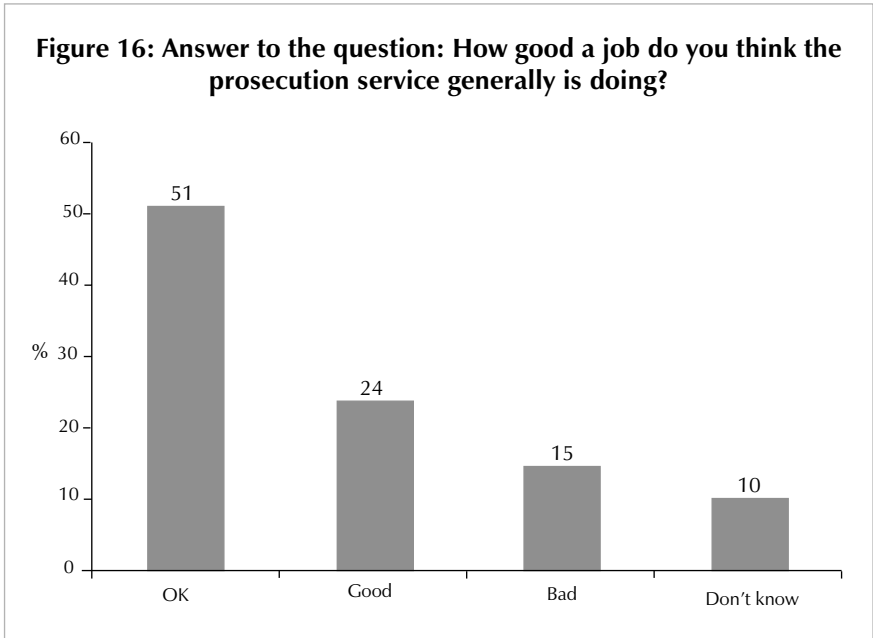
national treasury, the DSO finalised 210 prosecutions over the 18 months to September 2002 with a 93% conviction rate.⁶²

Witness protection

In February 2002, the NPA’s Witness Protection Programme had 248 witnesses in the programme, plus 231 family members of witnesses, giving a total of 479 persons under protection.⁶³ No witnesses in the protection programme were assassinated during the period under review.⁶⁴

Customer satisfaction

In late 2001, the Institute for Security Studies (ISS) conducted an opinion survey to evaluate the services provided by the NPA. The survey covered the general public, as well as crime victims and state witnesses who interacted with prosecutors in 18 magistrates’ courts throughout the country.



Source: ISS survey, 2001

The survey found that court users—people who have interacted with the prosecution service as state witnesses or crime victims—are more positive about the work of the NPA compared to people who have not. Of the 1,800 court users surveyed, 87% said that the prosecutor they had dealt with was willing to help them, and 86% stated that the prosecutor understood their concerns. Of the approximately 3,800 members of the general public surveyed, only 15% thought that the prosecution service generally is doing a bad job (Figure 16).

According to the survey, court users were most likely to be dissatisfied with the service provided by prosecutors because of frequent postponements, numerous delays in the court process, and a lack of information provided by prosecutors.

Issues to watch

- *Reducing case backlogs and case cycle time.* Expanding Integrated Justice System Court Centres to more courts, appointing more court managers and lower court prosecutors (as is planned) should contribute to a reduction in the case backlog and the speedier finalisation of cases.
- *More specialist sexual offences courts.* The NPA's Sexual Offences and Community Affairs (SOCA) Unit intends establishing a further ten specialist sexual offences courts during 2003.⁶⁵
- *Specialist maintenance prosecutors and investigators.* The SOCA Unit intends appointing 70 maintenance and ten senior maintenance prosecutors throughout the country during 2003. The department has made the appointment of maintenance investigators a "top priority".⁶⁶
- *Enactment of Child Justice Bill and diversion.* The Child Justice Bill is due for enactment during 2003. In terms of the Bill, children accused of less serious offences will be afforded the opportunity to be held accountable outside of the criminal justice system through a variety of diversionary options.
- *Boosting asset forfeiture.* During 2003/04 the Asset Forfeiture Unit intends completing 75 asset recovery cases, and achieving a 85% conviction rate in the cases it takes to trial.⁶⁷
- *Phasing in hub courts.* During 2002/03 the justice department's business unit: court services, intends replacing the department's regional offices

with hub courts to provide decentralised court support services for more localised court clusters.⁶⁸

- *Legal aid.* The Legal Aid Board provides legal aid to the indigent, and legal representation to those entitled to it in terms of the constitution. These services are primarily made available by attorneys and candidate attorneys employed by the Board at its Justice Centres. At the time of writing, 30 Justice Centres had been established, and a further 30 were planned by the end of 2004.⁶⁹

Summary

One of the key promises both the justice department and the NPA made at the beginning of 2001, was to contribute towards a more efficient and effective criminal justice system. Progress was made in this direction as the number of finalised cases, and thereby, the number of prosecutions and convictions, increased in 2001 and 2002.

The prosecution service's performance during 2001 was blemished by the high number of case withdrawals. This situation improved during 2002, however. Compared to 2001, the number of cases referred to court increased by 5% during 2002, withdrawals decreased by 1%, while the number of prosecutions and convictions increased by around 12%. Also encouraging is the fact that the average lower court sat for longer periods during 2002 than in 2001. This is an indication that the courts appear to be better managed and are operating with fewer interruptions than in the past.

This good news needs to be treated cautiously, however. At the end of 2002 there was a backlog of almost 200,000 cases in the system—an increase of 10% compared to 2001. Such a high backlog of cases has a negative impact on the average case cycle time which, in turn, undermines the prosecutions' chances of obtaining convictions and infringes the rights of accused who are incarcerated awaiting trial.

Part of the problem is that the productivity of the average magistrates' court declined during the period under review. During 2002 the average district court secured a conviction every second working day only, while the average regional court required almost a week per conviction.

While some performance indicators are disappointing, on the whole many indicators are showing signs of improvement—albeit not as fast as was expected. Both departments are committed to improving their performance, and have identified key focus areas requiring attention. This is a fundamental improvement considering where the criminal justice system was a short eight years ago. In 1994, court related statistics were not even collected by these two organisations. The NPA did not exist, civil asset forfeiture was an unknown concept in South African law, and customer satisfaction surveys were an outlandish notion for state institutions.