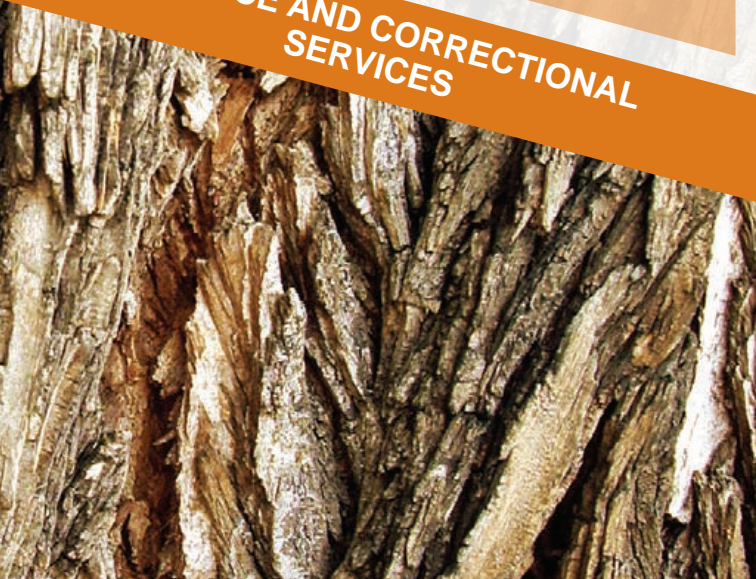




**JUSTICE AND CORRECTIONAL SERVICES**



## Pocket Guide to South Africa 2010/11

### **JUSTICE AND CORRECTIONAL SERVICES**

The Department of Justice and Constitutional Development's mandate is to uphold and protect the Constitution and the rule of law. The department is also responsible for overseeing the administration of justice in the interests of a safer and more secure South Africa.

#### **The courts**

##### **Constitutional Court**

The Constitutional Court, situated in Johannesburg, is the highest court in all constitutional matters. It is the only court that may adjudicate disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state, or that may decide on the constitutionality of any amendment to the Constitution or any parliamentary or provincial Bill.

The Constitutional Court makes the final decision on whether an Act of Parliament, a provincial Act or the conduct of the President is constitutional. It consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine Constitutional Court judges.

Justice Sandile Ngcobo is the Chief Justice of South Africa and Justice Dikgang Moseneke is the Deputy Chief Justice of the Constitutional Court. There are nine Constitutional Court judges, excluding the Deputy Chief Justice and the Chief Justice.

During the 2010 World Cup, there were 56 dedicated court rooms in the nine host cities and 37 district and 19 regional courts.

The following number of court officials served in the dedicated courts:

- 110 magistrates
- 260 prosecutors from the National Prosecuting Authority
- 10 legal aid attorneys from Legal Aid South Africa
- 93 foreign-language interpreters and 110 local-language interpreters
- 1 140 court officials
- 327 court orderlies from the South African Police Service.

Through a legacy project of recruiting volunteers, a pool of about 290 unemployed youth members were trained in the accredited Customer Service Management Course. The Safety and Security Sector Education and Training Authority funded the project with R2,2 million.



## Supreme Court of Appeal (SCA)

The SCA, situated in Bloemfontein in the Free State, is the highest court in respect of all other matters other than constitutional matters. It consists of the president and deputy president of the SCA, and 23 other judges of appeal. The SCA has jurisdiction to hear and determine an appeal against any decision of a high court. Justice Lex Mpati is the president of the SCA.

Decisions of the SCA are binding on all courts of a lower order, and the decisions of high courts are binding on magistrates' courts within the respective areas of jurisdiction of the divisions.

## High courts

A high court has jurisdiction in its own area over all persons residing or present in that area.

These courts hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or to impose a penalty. Except where a minimum or maximum sentence is prescribed by law, their penal jurisdiction is unlimited and includes handing down a sentence of life imprisonment in certain specified cases

There are 13 high courts: the Eastern Cape High Court, Grahamstown; the Eastern Cape High Court, Port Elizabeth; the Eastern Cape High Court, Mthatha; the Eastern Cape High Court, Bhisho; the Free State High Court, Bloemfontein; the North Gauteng High Court, Pretoria; the South Gauteng High Court, Johannesburg; the KwaZulu-Natal High Court, Pietermaritzburg; KwaZulu-Natal High Court, Durban; the Limpopo High Court, Thohoyandou; the Northern Cape High Court, Kimberley; the North West High Court, Mafikeng; and the Western Cape High Court, Cape Town.

## Regional courts

Regional courts are established largely in accordance with provincial boundaries with a regional court division for each province to hear matters within their jurisdiction. There are nine regional court presidents and 351 regional court magistrates.

Regional courts hear most serious matters, including murder and rape but excluding treason. The penal jurisdiction of regional courts was increased and, similarly to the high courts, regional courts may pass life sentences.

## JUSTICE AND CORRECTIONAL SERVICES

The Department of Justice and Constitutional Development wants to promote access to justice through the use of indigenous languages as languages of record in courts. In 2010, the Indigenous Language Pilot Project was implemented at 27 district courts countrywide.

Between the inception of this project in April 2009 and May 2010, a total of 890 cases was heard by these courts in indigenous languages. The lessons learned during the pilot project will inform the policy framework for language use in courts.

The regional courts will, by virtue of the Jurisdiction of Regional Courts Amendment Act, 2008, adjudicate over civil disputes. In 2010, processes were underway to pave the way for the implementation of the Act. Prime among those is the need to build capacity at regional court level to deal with civil and divorce matters. The divorce courts will be absorbed in the regional-court divisions. This will address the jurisdictional challenges in terms of which litigants have to travel to remote courts to get legal redress.

### Magistrates' courts

The Minister of Justice and Constitutional Development may divide the country into magisterial districts and create regional divisions consisting of districts.

By mid-2010, the country was divided into 384 magisterial districts (18 subdistricts), 384 main magistrates' offices (18 detached courts), 79 branch courts and 235 periodical courts. The magisterial districts are still informed by the pre-1994 demarcations of the defunct self-governing states and the Republic of South Africa territory. Processes are underway to align the magisterial districts in accordance with the constitutional dispensation.

By mid-2010, there were 1 914 magistrates in the country, including regional court magistrates. Magisterial districts were grouped into 13 clusters headed by chief magistrates.

This system has streamlined, simplified and provided uniform court-management systems applicable throughout South Africa, in terms of judicial provincial boundaries.

### Small claims courts

A commissioner in the Small Claims Court hears cases involving civil claims not exceeding R7 000.

By May 2010, there were 206 such courts across the country. The commissioner is usually a practising advocate or attorney, a legal academic or another competent person who offers his or her services free of charge. Neither the plaintiff nor the defendant may be represented or assisted by counsel at the hearing. There is no appeal to a higher court.

The department aims to establish an additional 60 new courts by the end of the 2010/11 financial year and a further 60 by the end of the 2011/12 financial year.

### **Equality courts**

Any person who has been unfairly discriminated against in terms of Section Nine of the Constitution may approach the Equality court.

### **Community courts**

Community courts, like the Hatfield Community Court in Pretoria, are normal district magistrates' courts that assist in dealing with matters in partnership with the community and business. These courts focus on restorative justice processes, such as diverting young offenders into suitable programmes.

Thirteen community courts have been established. Four have been formally launched and are fully operational in Hatfield (Pretoria), Fezeka (Gugulethu), Mitchell's Plain and Cape Town. Another nine pilot sites commenced in Durban (Point), KwaMashu, Mthatha, Bloemfontein, Thohoyandou, Kimberley, Phuthaditjaba, Hillbrow and Protea (Lenasia).

### **Court for Income Tax Offenders**

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

### **Traditional courts**

There are traditional courts (formerly chiefs' courts) established at traditional community areas in rural villages. The judicial functions of traditional leaders are regulated in terms of sections 12 and 20 and the Third Schedule of the repealed Black Administration Act (BAA), 1927.

## **JUSTICE AND CORRECTIONAL SERVICES**

The BAA, 1927 was repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005. However, sections 12 and 20 and the schedule were retained through a sunset clause until the enactment of the Traditional Courts Bill, 2008 on 30 December 2010.

### **Special Investigating Unit (SIU)**

The SIU, created in terms of the SIU and Special Tribunals Act, 1996, is an independent statutory body that is directly accountable to Parliament and the President of South Africa. It was established to conduct investigations at the President's request, and to report on the outcomes thereof. The SIU functions in a manner similar to a commission of inquiry, in that the President refers cases to it by way of a proclamation. It may investigate any matter set out in Section 2 of the SIU and Special Tribunals Act, 1996.

### **National Prosecuting Authority (NPA)**

The NPA structure includes the National Prosecutions Service (NPS), the Witness-Protection Programme, the Asset Forfeiture Unit (AFU) and units such as the Sexual Offences and Community Affairs (Soca) Unit, the Specialised Commercial Crime Unit (SCCU) and the Priority Crimes Litigation Unit (PCLU).

### **Asset Forfeiture Unit**

The AFU was created in 1999 in terms of the Prevention of Organised Crime Act, 1998. The AFU can seize and forfeit property that was bought from the proceeds of crime, or property that was used to commit a crime.

The AFU has two major strategic objectives, namely to:

- develop the law by taking test cases to court
- create the legal precedents necessary to allow for the effective use of the law.

In the decade since the AFU's establishment, it obtained 1 679 confiscation or forfeiture orders, totalling R1,136 billion. The AFU has an 85% success rate.

### **Sexual Offences and Community Affairs Unit**

Soca acts against the victimisation of vulnerable groups, mainly women and children. The unit develops strategy and policy, and oversees the management of cases relating

to sexual offences, domestic violence, human trafficking, maintenance offences and children in conflict with the law.

Soca aims to:

- improve the conviction rate in gender-based crimes and crimes against children
- protect vulnerable groups from abuse and violence
- ensure access to maintenance support
- reduce secondary victimisation.

One of the unit's key achievements in ensuring government's commitment to the fight against sexual offences and gender-based violence is the establishment of Thuthuzela care centres (TCCs).

The TCC concept is recognised by the United Nations General Assembly as a "world best-practice model" in the field of gender-violence management and response. The TCCs are one-stop facilities located in public hospitals in communities where the incidence of rape is particularly high.

TCCs aim to provide survivors with a broad range of essential services – from emergency medical-care counselling to court preparation – in a holistic, integrated and victim-friendly manner.

In May 2010, the 21st TCC was launched in Bellville, in the Western Cape. The Department of Justice and Constitutional Development aims to establish 35 centres by 2025.

### **Priority Crimes Litigation Unit**

The PCLU is a specialist unit mandated to tackle cases that threaten national security. The PCLU was created by presidential proclamation and is allocated categories of cases either by the President or by the National Director. The primary function of the PCLU is to manage and direct investigations and prosecutions in respect of the following areas:

- the non-proliferation of weapons of mass destruction (nuclear, chemical and biological)
- the regulation of conventional military arms
- the regulation of mercenary and related activities
- the International Court created by the Statute of Rome
- national and international terrorism
- prosecutions of persons who were refused or failed to apply for amnesty in terms of the Truth and Reconciliation Commission (TRC) processes.

## Pocket Guide to South Africa 2010/11

### **JUSTICE AND CORRECTIONAL SERVICES**

The transformation of the judiciary remains one of government's key priorities. Through the efforts of the Judicial Service Commission, by March 2010, of the 208 permanent judges, 41% (86) were white, 39% (82) were African, 10% (20) were coloured and 10% (20) were Indian. Overall, 25% were female and 75% male.

Significant strides have been made in respect of the magistracy. Through the efforts of the Magistrates Commission, during the same period, of the 1 914 magistrates, 44% were white, 40% African, 7% coloured and 8% Indian. Overall, 36% were female and 64% male.

#### **National Prosecutions Service**

The significant majority of the NPA's prosecutors are housed in the NPS, the organisation's biggest unit. The NPS is headed by a deputy national director who reports to the National Director of Public Prosecutions. A director of public prosecutions heads the organisation in each region, with public prosecutors and state advocates manning the nation's district, regional and high courts.

The NPA is "the people's lawyer", and thus represents and acts on behalf of the people in all criminal trials. The NPA does not seek only to secure convictions but rather to ensure that the interest of justice is served in all cases.

#### **Specialised Commercial Crime Unit**

The SCCU aims to reduce commercial crime by the effective investigation and prosecution of complex commercial crime.

The SCCU's mandate is to accept responsibility for the investigation and prosecution of commercial crime cases emanating from the commercial branches of the South African Police Service in Pretoria and Johannesburg, respectively. The client base of the SCCU comprises a broad spectrum of complainants in commercial cases, ranging from private individuals, and corporate bodies to state departments.

#### **Public Protector**

The Public Protector investigates complaints from the public or on own initiatives against government at any level, its officials, persons performing public functions, corporations or companies where the State and statutory councils are involved. The Public Protector's services are free and available to everyone.



Complainants' names are kept confidential as far as possible. The President appoints the Public Protector on recommendation of the National Assembly and in terms of the Constitution, for a non-renewable period of seven years.

The Public Protector is subject only to the Constitution and the law, and functions independently from government and any political party.

No person or organ of state may interfere with the functioning of the Public Protector.

The Public Protector has the power to report a matter to Parliament, which will debate it and ensure that the Public Protector's recommendations are followed.

## **Victims' Charter**

The Service Charter for Victims of Crime in South Africa and minimum standards for services for victims of crime are important instruments elaborating and consolidating rights and obligations relating to services applicable to victims and survivors of crime in the country.

The charter identifies the following rights of crime victims:

- to be treated with fairness, respect, dignity and privacy
- to offer information
- to receive information
- protection
- assistance
- compensation
- restitution.

## **Truth and Reconciliation Commission Unit**

The TRC Unit was established in September 2005 to audit, monitor and coordinate government's implementation of the TRC recommendations.

The TRC Unit works closely with the President's Fund Office, which is located in the Office of the Chief Financial Officer in the Department of Justice and Constitutional Development. The President's Fund Office has been giving effect to the payment of both urgent interim and final reparations to the 16 837 victims who applied for reparations and were approved by the TRC.

The TRC identified 21 769 people as victims of gross human-rights violations. Of the total identified victims, 16 837

## Pocket Guide to South Africa 2010/11

### JUSTICE AND CORRECTIONAL SERVICES

The Child Justice Act (CJA), 2008 came into effect in April 2010.

The CJA 2008 introduces a Criminal Justice System (CJS) for children under the age of 18 years who are in conflict with the law.

Such children who allegedly commit crimes will be handled in terms of specific procedures. For example, a preliminary inquiry is held prior to the first court appearance and takes place within 48 hours of arrest.

If the child shows remorse, a plan is developed to address the crime in such a way that the child does not fall into a cycle of crime and violence.

The plan could involve a diversion option for an offence committed by the child away from the mainstream CJS. The child may be ordered to attend, among other things, a life-skills, an anger-management or substance-abuse programme as a way of addressing the underlying problem that led the child to commit the crime/s.

With the implementation of the CJA, 2008, the relevant government departments have gone ahead with practical steps to improve the lives of children going through the CJS. The number of children being diverted from the CJS during the past five years has increased every year.

During 2002, an average of 2 269 children were awaiting trial each month in correctional centres. This decreased to an average of 1 192 a month during 2007. In June 2010, only 297 children were awaiting trial in correctional centres.

applied for reparations. By May 2010, 15 956 beneficiaries had been paid the once-off grants of R30 000 as a final reparation.

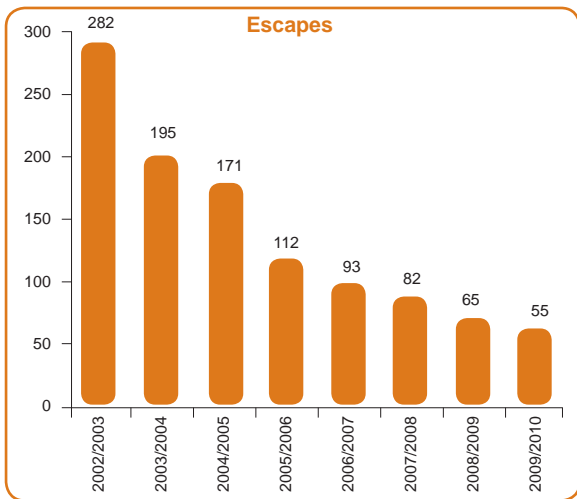
Payments of the once-off reparation amounts are made from the President's Fund, established in terms of Section 42 of the Promotion of National Unity and Reconciliation Act, 1995.

### Correctional services

The Department of Correctional Services aims to contribute to a just, peaceful and safe society, by detaining inmates in safe custody, while maintaining their human dignity, developing their sense of social responsibility and promoting the general development of all inmates and persons subject to community corrections.

In March 2010, there were 164 793 inmates in 239 correctional service centres throughout the country.





Two facilities were closed in mid-2010 for renovations.

There are two private prisons in South Africa. Of the 239 correctional centres, eight are female centres, 13 are for the youth, 130 are male centres and 90 are mixed (female and male).

### Overcrowding in correctional centres

Overcrowding in the department's correctional centres continues to pose a challenge and impacts on how the department functions and on its service delivery. At the close of the 2009/10 financial year, the department's facilities were overcrowded by 39%. The average cost of incarceration per offender per day was estimated at R123,37.

By mid-2010, the actual capacity in correctional facilities stood at 114 822 with 25 000 meant for remand detainees and 89 822 earmarked for sentenced offenders.

The department is working on a strategy to address overcrowding. It partly manages overcrowding through the transfer of offenders between centres and releases resulting from sentence conversions. The construction of new centres

## **JUSTICE AND CORRECTIONAL SERVICES**

should furthermore alleviate the pressure put on facilities and staff.

In March 2010, there were 162 955 sentenced offenders in the department's correctional centres, of whom 159 303 were male and 3 652 were female.

### **Care and development of inmates**

The department continues to improve the healthcare of inmates. The implementation of the occupation-specific dispensation for nurses will also ensure availability of suitably qualified nurses to take care of the health of inmates and assist in the retention strategy in relation to nurses.

Two correctional centres, namely Boksburg and Krugersdorp, were accredited to provide antiretroviral treatment to offenders, bringing the total number of such facilities across the country to 21.

The department has, in partnership with the Department of Basic Education, initiated an Early Childhood Development (ECD) programme for babies and toddlers who are incarcerated with their mothers. The programme recruits unemployed community members and parolees and train them as ECD practitioners. The ECD qualification will empower the beneficiaries with a qualification equivalent to National Qualification Framework levels four and five.

The Pre-Adult Basic Education and Training Programme, also in partnership with the Department of Basic Education, is a mass literacy campaign that also involves illiterate offenders. Volunteers from the community are recruited and trained as literacy facilitators.

### **Fighting corruption**

The department continues to win the war against fraud and corruption:

- the anti-fraud and corruption capacity of the department is rated as the third most efficient of 85 departments audited by the Department of Public Service and Administration
- the measures put in place resulted in an 89% conviction rate during the 2009/10 financial year
- R2,5 million was recovered from some R4,5 million in debt owed by officials who were found guilty of defrauding the department's medical aid scheme.

## JUSTICE AND CORRECTIONAL SERVICES

**Sentenced offender statistics per age group and gender as at 31 March 2010**

