

**JUSTICE AND CORRECTIONAL  
SERVICES**

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South African law is a combination of different legal systems, with its origin in Europe and in Great Britain. As with any other country, the common law has been augmented by statutory law and many of the cases before the court are now concerned with their interpretation and application.

Because of the unique heritage of South African law, and the constitutional imperative to have regard to comparative law, foreign law is frequently consulted, not as binding but as persuasive authority. Judicial decisions are themselves a source of law. The decisions of the Court are binding on all lower courts.

### **Department of Justice and Constitutional Development**

The Department of Justice and Constitutional Development's mandate, derived from the Constitution, is twofold. On the one hand, it seeks to provide a framework for the effective and efficient administration of justice. On the other, it seeks to promote constitutional development through the development and implementation of legislation and programmes that seek to advance and sustain constitutionalism and the rule of law.

At the same time, the department also seeks to provide an enabling environment for the judiciary and constitutional institutions to exercise their constitutional powers and functions freely and independently.

### **The courts**

Judicial authority is vested in the courts, which are independent and subject only to the Constitution of South Africa, 1996 and the law. No person or organ of state may interfere with the functioning of the courts

### **Constitutional Court**

The Constitutional Court in Johannesburg is the highest court in all constitutional matters. It is situated on Constitution Hill in a building specially designed to reflect the values of the new constitutional democracy. The Constitutional Court 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.

In September 2011, Justice Mogoeng Mogoeng was appointed Chief Justice.

### **Supreme Court of Appeal (SCA)**

The SCA, situated in Bloemfontein in the Free State, is the highest court in respect of all matters other than constitutional ones. It consists of the President and Deputy President of the 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.

In 2011/12, 119 criminal appeals were enrolled and 83 were finalised; 222 new petitions were enrolled and 189 finalised. During this time, 601 civil appeals were enrolled, and 259 were finalised, 412 new petitions were enrolled and 427 finalised.

### **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

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certain specified cases.

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

During 2011/12, 68 211 new matters were enrolled and 40 242 matters finalised. The regional courts managed to finalise 7% more matters compared to the previous year. This includes old and new matters.

#### **Magistrates' courts**

The Minister of Justice and Constitutional Development may divide the country into magisterial districts and create regional divisions consisting of districts. The country is divided into 384 magisterial districts (18 sub-districts), 384 main magistrates' offices (18 detached courts), 90 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 May 2012, 24 of the 90 branch courts were identified for rehabilitation into full-service courts by 2014. Of these 24

branch courts, 15 were converted into full-service courts in August 2009 and a further four were converted during 2011.

### **Small claims courts**

A commissioner in the Small Claims Court hears cases involving civil claims not exceeding R12 000. By April 2013, there were small claims courts in 248 magisterial districts.

### **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, such as 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).

### **Pilot sites for family courts**

A family court structure and extended family advocate services are priority areas for the department. The department is developing a policy to prioritise family-law services, which include domestic violence, maintenance, divorce and children's court matters, in all courts.

### **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

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repealed Black Administration Act (BAA), 1927. The BAA, 1927 was repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005.

### **Role players**

#### **Legal Aid South Africa**

Legal Aid South Africa provides legal aid or makes legal aid available to indigent persons within the budget allocated to it by the State. Its full-time legal staff is stationed at 64 justice centres, 13 high courts and 64 satellite offices countrywide.

#### **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.


By February 2013, the capacity of the SIU had increased from 70 staff members to more than 600.

Between 2009 and the end of 2012, the President signed 34 proclamations directing the SIU to investigate allegations of corruption, fraud or maladministration in various government departments and state entities. Criminal investigations had been initiated against 203 accused people in 67 priority cases under investigation by the end of September 2012, with pre-trial proceedings initiated against 191 persons.

Some 66 persons under investigation were alleged to have received R5 million or more through corruption, and orders for the freezing of assets had been obtained against 46 people.

#### **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). In 2011/12, courts finalised 216 cybercrime cases, with a conviction rate of 87,5%. During 2012, the Anti-Corruption Task Team finalised 175 cases with



charges of corruption involving 182 justice, crime prevention and security officials. In December 2012, Nomgcobo Jiba was appointed as acting National Director of Public Prosecutions (DPP).

### **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 unit convicted 150 officials for corruption in 2011/12, a conviction rate of 73%. Assets worth R533,4 million were seized in 2011/12, bringing the total of seized assets over the past 13 years to R5 billion. About R150 million recovered by the unit were allocated from the Criminal Assets Recovery Account to the Anti-Corruption Task Team to intensify its investigative capacity.

### **Sexual Offences and Community Affairs (Soca) Unit**

Soca acts against the victimisation of vulnerable groups, mainly women and children. 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 way.

The Thuthuzela Project is supported by the roll-out of victim support rooms (VSRs) in an effort to show empathy to victims of violent crime, especially in cases of sexual offences, child abuse and domestic violence.

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By July 2012, there were 52 operational TCCs in the country. In March 2013, Soca, in partnership with various state departments and the United States Agency for International Development, launched the Increasing Services for Survivors of Sexual Assault Programme (ISSSAP). The aim of ISSSAP is to enhance the role of the TCCs.

By April 2012, there were 803 police stations with VSRs nationwide.

#### **National register for sex offenders**

The number of registered names of sex offenders on the National Register for Sex Offenders (NRSO) increased from 978 in 2010/11 to 2 340 during 2011/12, indicating an increase in the registration of offenders. During 2011/12, the Registrar received 39 684 purified names of historical convictions from the South African Police Service (SAPS).

#### **Maintenance**

The main objective of the Maintenance Act, 1998 is to facilitate the securing of maintenance moneys from parents and/or other persons able to maintain maintenance beneficiaries, mainly children, who have a right to maintenance.

#### **Priority Crimes Litigation Unit (PCLU)**

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.

#### **National Prosecutions Service (NPS)**

A significant majority of the NPA's prosecutors are housed in the NPS, the organisation's biggest unit. The National Prosecutions Service is headed by the Deputy DPPs. They head the respective regional jurisdictions, which are attached to the high courts of the country.

All the public prosecutors and state advocates manning the district, regional and high courts report to the DPPs in their respective areas of jurisdiction.



## Specialised Commercial Crime Unit

The unit was established in 1999 as a pilot project to combat the deteriorating situation pertaining to commercial crime. The unit aims to reduce commercial crime by the effective investigation and prosecution of complex commercial crime.

The unit's mandate is to effectively prosecute complex commercial crime cases emanating from the commercial branches of the SAPS. The client base of the unit comprises a broad spectrum of complainants in commercial cases, ranging from private individuals and corporate bodies to state departments.

## Public Protector

The Public Protector investigates complaints from the public or on own initiative 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:

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- 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 was dissolved in March 2002 by way of proclamation in the Government Gazette. The TRC made recommendations to government regarding reparations to victims and measures to prevent the future violation of human rights and abuses experienced during the apartheid years. Four categories of recommendations were approved by government in June 2003 for implementation, namely:

- final reparations: the provision of a once-off individual grant of R30 000 to individual TRC-identified victims
- symbols and monuments: academic and formal records of history, cultural and art forms, as well as erecting symbols and monuments to exalt the freedom struggle, including new geographic and place names
- medical benefits and other forms of social assistance: education assistance, provision of housing and other forms of social assistance to address the needs of TRC-identified victims
- community rehabilitation: rehabilitating whole communities that were subject to intense acts of violence and destruction, and which are still in distress.

On 27 April 2013 – Freedom Day – the Protection from Harassment Act come into effect. It is seen as a testimony of the progress made in safeguarding the rights of all South Africans. The new law makes it possible for people who believe they are being stalked, harassed via SMS, fax, telegrams and emails to approach the courts for relief. Those hiding behind anonymity to send offensive SMSs will be able to be traced because the Act compels service providers to give the addresses and ID numbers of offenders when asked to do so by courts. Interim protection orders come into effect immediately.

The TRC identified 21 769 people as victims of human-rights violations. Of the 875 outstanding beneficiaries at the end of April 2011, 435 living beneficiaries or their rightful next-of-kin in the case of deceased beneficiaries were paid by May 2012. Some 219 payments were made to living beneficiaries and 216 were made to the rightful next-of-kin of deceased beneficiaries.

This contributed to about 16 837 beneficiaries being traced and an amount of R541 million being cumulatively paid from the President's Fund. This means that 440 of the 16 837 beneficiaries who applied and were approved for reparation remain to be paid.

## Correctional services

The Department of Correctional Services strives 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 people subject to community corrections.

The department is further committed to contribute to reduce re-offending through offender management and rehabilitation intervention as well as to add to social re-integration of offenders through management of non-custodial sentences and parole.

The Remission of Sentence granted by the President was undertaken over a 10-week period from 30 April 2012 until 6 July 2012. During the 10-week period, 19 695 offenders were released from correctional centres.

For 2011/12, the inmate population was on average 158 790.

## Development and care of offenders

The Department succeeded in keeping the level of overcrowding within the target of 36% for 2011/12 (34,87%). The eight-pronged strategy that is used to down-manage overcrowding is proving to be effective, while there is a need to make greater impact on the level of overcrowding.

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The Department of Correctional Services announced that from April 2013, it would be compulsory for every inmate to complete Adult Basic Education and Training level 1 to 4. This forms part of the department's view that key to rehabilitation is empowering offenders with skills to function effectively in society upon their release, and to ensure that they are actively involved in productive activity while they serve their sentences.

During the past six years, Correctional Centre Schools have been achieving an above 90% average matric pass rate. By April 2012, 991 offenders were studying towards post-matric or higher education and training qualifications, 4 042 towards further education and training college programmes and 3 853 towards skills development programmes (including basic business skills training and entrepreneurship).

The Draft Protocol on Interstate Transfers of Inmates has been widely consulted in the Justice, Crime Prevention and Security Cluster and submitted to the Department of International Relations and Cooperation. While the inter-state transfer approach is driven by the department's approach to rehabilitation and the inability of effective reintegration of foreign nationals into their home countries, such inter-state transfers will also have a positive impact on levels of overcrowding.

The 2012 achievement with regard to the number of offenders with correctional sentence plans is 93,9% against the set target of 70%. Participation in Correctional Programmes was recorded at 239%.

Some 65% of eligible offenders had access to adult education, eight, instead of the target of six schools have been registered as full time schools and this will allow more offenders to participate in formal education programmes. The targets for offenders participating in Further Education and Training college programmes and participation in agricultural programmes were also exceeded.

The department has identified three facilities to be converted and/or upgraded to special facilities for female offenders at Pretoria, Emthonjeni and East London.