

POCKET GUIDE TO SOUTH AFRICA



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JUSTICE AND CORRECTIONAL SERVICES

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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.

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 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.

The regional courts by virtue of the Jurisdiction of Regional Courts Amendment Act, 2008, adjudicate civil disputes. The Minister of Justice and Constitutional Development, with effect from August 2010, established a court for each regional division for the purposes of adjudicating civil disputes. In addition, the Minister appointed within each regional division the places (64 in total) of holding court for adjudicating civil disputes. The divorce courts were subsumed under the regional-court divisions. The divorce court rules made under Section 10(4) of the Administration Amendment Act, 1929 were repealed from 15 October 2010. The regional courts therefore started adjudicating divorce matters from 15 October 2010. This has addressed 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.

The country is divided into 384 magisterial districts (18 subdistricts), 384 main magistrates' offices (18 detached

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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.

Small claims courts

A commissioner in the Small Claims Court hears cases involving civil claims not exceeding R12 000.

By March 2012, there were 240 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.

In 2010, the Department of Justice and Constitutional Development appointed 229 commissions and 217 advisory boards to assist small claims courts.

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).

Courts for income-tax offenders

In October 1999, the South African Revenue Service (Sars) opened a criminal courtroom at the Johannesburg Magistrate's Office dedicated to the prosecution of tax offenders. The court

deals only with cases concerning failure to submit tax returns or 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.

The BAA, 1927 was repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005.

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 like 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 Two of the SIU and Special Tribunals Act, 1996.

By December 2011, the SIU had almost 1 000 individual investigations underway. Of these, nearly 600 were related to procurement, while 360 conflicts of interest on contracts valued at R3,5 billion were also under investigation.

National Prosecuting Authority (NPA)

The NPA structure includes the National Prosecution 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.

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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.

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 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.

By December 2011, there were 27 fully operational TCCs in the country.

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. In 2011, the department increased the number of VSRs from 806 to 900 across the country. These rooms are used for interviews, taking statements and other consultations.

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.

National Prosecution 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.

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The transformation of the judiciary remains one of government's key priorities. Through the efforts of the Judicial Service Commission, by mid-2011, of the 226 permanent judges, 40,3% (91) were white, 40,7% (92) were African, 9,3% (21) were coloured and 9,7% (22) were Indian. Overall, 26,3% were female.



Significant strides have been made in respect of the magistracy. Through the efforts of the Magistrates' Commission, during the same period, of the 1 694 magistrates, 42,8% were white, 40,8% African, 7,6% coloured and 8,8% Indian. Overall, 37,6% were female.

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:

- 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 human-rights violations. Of these, 16 837 applied for reparations.

By June 2011, 15 962 beneficiaries had been paid once-off grants of R30 000 as final reparation. These payments 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 2011, there were 162 162 inmates in 241 correctional service centres throughout the country. Of these, 158 400 were male and 3 762 were female.

There are two private prisons in South Africa. Of the 241 correctional centres, eight are for women, 13 are for the youth, 129 are for men and 91 are mixed (women and men). The average cost of incarceration per offender per day was estimated at R123,37.

Care and development of inmates

The department continues to improve the healthcare of inmates. The implementation of the occupation specific

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dispensation for nurses will 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 HIV-positive offenders, bringing the total number of such facilities across the country to 21.

In partnership with the Department of Basic Education, the department has 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 trains them as ECD practitioners. The ECD qualification empowers 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 involves illiterate offenders. Volunteers from the community are recruited and trained as literacy facilitators.

Eleven computer-based training centres for offenders were established. Computer-based training forms an integral part of the subject Life Orientation within the National Curriculum Statement for grades 10 to 12 as well as the National Curriculum Vocation. The department completed and implemented a national project to align presentation of the curricula with national requirements.

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.

Inmates per crime category as on the last day of 2011/12

| Total | | | |
|----------------|---------------|----------------|----------------|
| Crime Category | Unsentenced | Sentenced | Total |
| Economical | 15 414 | 25 373 | 40 787 |
| Aggressive | 23 182 | 61 097 | 84 279 |
| Sexual | 6 927 | 18 033 | 24 960 |
| Narcotics | 1 707 | 2 717 | 4 424 |
| Other | 2 465 | 5 247 | 7 712 |
| Total | 49 695 | 112 467 | 162 162 |

Source: www.dcs.gov.za/WebStatistics/totcrime.aspx

INKUNDLA YOMGAOOSISEKO
INKANTOLO YOMTHETHOSISEKELO
KHOTO YA VUMBIWA
INKANTOLO YEMTSETFOSISEKELO
KGOROTSEHEKO YA MOLAOTHEO
INKHOTO YOMTHETHOSISEKELO
CONSTITUTIONAL COURT
LEKGOTLA LA DINYWE LA MOLAOTHEO
KHOTHE YA NDAYOTWEWA
KONSTITUSIONELE HOF
KGOITLAMO YA MOLAOTHEO

