



OFFICIAL GUIDE TO SOUTH AFRICA 2017/18

Justice and Correctional Service

The responsibilities of both the Department of Justice and Constitutional Development (DoJ&CD) and the Department of Correctional Services (DCS) are to ensure a just, peaceful and safe society.

Department of Justice and Constitutional Development

The DoJ&CD derives its mandate from a number of acts, in addition to the mandate it derives from the Constitution of the Republic of South Africa of 1996. These Acts and the constitutional framework assign functions to the department, such as the:

- establishment and functioning of magistrates' courts and Specialised Courts;
- appointment of judges and other judicial officers, their conditions of service, discipline and training;
- establishment and functioning of the National Prosecuting Authority (NPA), the Special Investigating Unit (SIU) and the Asset Forfeiture Unit (AFU),
- conduct of criminal proceedings, the investigation of organised crime and corruption, and the forfeiture of assets obtained through illicit means;
- establishment and functioning of bodies responsible for legal aid, law reform and rule making;
- appointment of masters of the high courts and the administration of the Guardian's Fund and deceased and insolvent estates; the regulation and provisioning of legal advisory services to government departments; the promotion, protection and enforcement of certain human rights; the protection of vulnerable groups; and support to Chapter 9 institutions.

The National Development Plan (NDP) envisages that by 2030, all South Africans should feel safe at home, at school and at work, and enjoy a community life free of fear. This vision is expressed in terms of Outcome 3 (all people in South Africa are and feel safe) of government's 2014-2019 medium-term strategic framework, with which the work of the DoJ&CD is closely aligned.

Over the medium term, the department intended to focus on strengthening its efforts to transform the justice system by developing and implementing policies that would bring about improved access to justice, improving the efficiency of the criminal justice system through modernising and integrating information systems and related business processes, transforming state legal services to strengthen the capability of the state to manage litigation, and protecting vulnerable groups.

Dealing with fraud and corruption

In order to better coordinate the fight against corruption, the DoJ&CD has collaborated with the SIU; South African Revenue Service; Public Protector (PP); Broad-Based Black Economic Empowerment Commission; Competition Commission and Independent Police Investigative Directorate.

In line with the NDP, the department, through the courts and the NPA, as part of the Justice, Crime Prevention and Security Cluster and the government-wide Anti-Corruption Task Team, put plans together to decisively deal with the scourge of corruption.

In 2017/18, some 213 government officials were convicted for corruption or offences related to corruption against a target of 210, whilst 37 persons were convicted of corruption or offences related to corruption where the amount involved was more than R5 million.

Pretoria Gallows Exhumation Project

The Pretoria Gallows Exhumation Project, which started in 2016, continued into the 2017/18 financial year. Of the remains of 83 people identified for this project, 46 remains have been exhumed, with 32 of these completed in the 2017/18 financial year. The department was

expected to finalise the exhumation project in the 2018/19 financial year.

Office of the Chief Justice (OCJ)

The OCJ was established in August 2010 to:

- ensure that the Chief Justice can properly execute the mandate as both the head of the Constitutional Court and the head of the Judiciary;
- enhance the institutional, administrative and financial independence of the OCJ; and
- improve organisational governance and accountability, and the effective and efficient use of resources.

The courts

Constitutional Court

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

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.

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.

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 courts in Grahamstown, Port Elizabeth, Mthatha and 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 courts in Pietermaritzburg and 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.

The following specialist high courts exercise national jurisdiction:

- The Labour Court and Labour Appeal Court in Braamfontein, Gauteng, which adjudicate over labour disputes and hear labour appeals, respectively.
- The Land Claims Court, in Randburg, Gauteng, which hears matters on the restitution of land rights that people lost after 1913 as a result of racially discriminatory land laws.
- The Competition Appeal Court, situated in Cape Town, which deals with appeals from the Competition Tribunal.
- The Electoral Court, situated in Bloemfontein, which sits mainly during elections to deal with associated disputes.

- The Tax Court, situated in Pretoria, which deals with tax-related matters, including non-compliance with tax obligations.

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.

Magistrates' courts

Magistrates' courts form an important part of the judicial system as it is where ordinary people come into contact with the justice system daily. Besides the 43 new courts, the department has refurbished and equipped a further 24 branch courts and elevated them into proper courts.

Small Claims Courts

Small Claims Courts offer members of the public a quicker and easier way of resolving disputes that involve amounts limited to R15 000 and they can do so without the need for a legal representative.

The department continued to support and strengthen these courts. For the 2017/18 financial year, six new Small Claims Courts were established in Warden, Steynsrus, Petrus Steyn, Memel and Edenville in the Free State and Colenso in KwaZulu-Natal, bringing the total number to 411 Small Claims Courts countrywide by 31 March 2018.

In addition, nine inactive Small Claims Courts were revived between 1 April 2017 and 31 March 2018, and 14 inactive Advisory Boards were revived in the same period. A total of 98 additional commissioners were appointed during 2017/18 to preside in the courts. In addition, 148 new Advisory Board members were appointed to assist with the functioning of the courts.

Equality courts

Equality courts are courts designed to deal with matters covered by the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, also known as the Equality Act. Members of the public bring to the court matters such as unfair discrimination, harassment, hate speech and the publication of information that discriminates unfairly.

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.

Traditional courts

There are traditional courts (formerly chiefs' courts) established at traditional community areas in rural villages.

Sexual offences courts

The courts feature specially trained officials, procedures and equipment to reduce the chance of secondary trauma for victims. .

National Register for Sex Offenders (NRSO)

The NRSO is a record of names of those found guilty of sexual offences against children and

mentally disabled people.

The register gives employers in the public or private sectors such as schools, crèches and hospitals the right to check that the person being hired is fit to work with children or mentally disabled people.

National Child Protection Register

In terms of Section 126 of the Children's Act of 2005, employers offering services which allow for access to children must, before employing a person, establish from the Registrar of the National Child Protection Register whether or not the potential employee's name is on Part B of the National Child Protection Register. If the potential employee's name appears on the register, he or she will not be allowed to work in an environment which allows for access to children, since persons whose names appear on the register have been found unsuitable to work with children by the court.

Maintenance

Maintenance is the obligation to provide another person, for example a minor, with housing, food, clothing, education and medical care, or with the means that are necessary for providing the person with these essentials.

As part of further improving the maintenance system, the Maintenance Amendment Act of 2015 was enacted to ensure that every child receives the appropriate parental care, basic nutrition, shelter, basic healthcare services, education and other related support. The amendment also ensures the blacklisting of defaulters.

Domestic violence

Domestic violence means any physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, trespassing where the parties do not share the same residence or any other controlling or abusive behaviour towards a complainant, where such conduct harms or may cause imminent harm to the safety, health or wellbeing of the complainant.

To curb gender-based violence (GBV), government has adopted a zero-tolerance towards rape, violation of the rights of lesbian, gay, bisexual, trans-gender and intersex people, and other forms of violence towards women and children.

Human trafficking

Human trafficking has become a focus of attention in the country following the introduction of the new visa requirements for children travelling through South Africa's ports of entry. Legislation aimed at preventing trafficking defines trafficking to include the recruitment, transportation, sale or harbour of people by means of force, deceit, the abuse of vulnerability and the abuse of power for exploitation.

Drug abuse

To curb the growing abuse of drugs, the DoJ&CD has amended Schedules 1 and 2 of the Drugs and Drug Trafficking Act of 1992 to make the use and possession of drugs such as *nyaope* (also known as *woonga* or *wunga*) a criminal offence.

The use, possession and sale of dependence-producing drugs is strictly prohibited and punishable in South Africa. If convicted, a fine and/or imprisonment period of up to 15 years can be imposed. Selling or dealing in *nyaope* is punishable with a fine and/or imprisonment for a period of up to 25 years.

Role players

Legal Aid South Africa (Legal Aid SA)

Legal Aid SA provides legal aid or makes legal aid available to indigent persons within the budget allocated to it by the State.

Legal Aid SA has introduced a “Please Call Me” service through which members of the public send a “Please Call Me” text message and a legal advisor returns the call at no cost to the sender. The institution has also established a social media presence on Facebook, Twitter and Instagram.

Special Investigating Unit

The SIU works closely with the NPA to ensure that prosecutions take place as soon as possible. It also works with the AFU in cases where the powers of this unit are more suitable for recovering the proceeds of crime.

National Prosecuting Authority

The NPA structure includes the National Prosecutions Service (NPS), the Witness-Protection Programme, the 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.

Asset Forfeiture Unit

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 family advocate

The role of the Family Advocate is to promote and protect the best interests of the children in civil disputes over parental rights and responsibilities.

Sexual Offences and Community Affairs Unit

The 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 GBV is the establishment of Thuthuzela Care Centres (TCCs).

The improved conviction rate in sexual offences of 72,7% in 2017/18 was an all-time high, reflecting a firm commitment to deliver justice for the most vulnerable members of society – the victims of sexual offences and GBV.

The TCC concept is recognised by the UN 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 that 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.

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

Family violence, child protection and sexual offences units (FCS)

The FCS units operate in all South African Police Service clusters across the country. To give further impetus to the investigation of crimes of this nature, forensic social workers were appointed to assist in cases of child sexual abuse by conducting forensic assessments, compiling court reports and providing expert evidence in court.

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

A significant majority of the NPA's prosecutors are housed in the NPS, the organisation's biggest unit. The NPS is headed by the Deputy Director of Public Prosecutions (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 SCCU'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 PP 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 PP's services are free and available to everyone.

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

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

Department of Correctional Services

The DCS remains committed to placing humane and safe detention and rehabilitation at the centre of service delivery. In doing so, the department strives to promote corrections as a societal responsibility, contributing to enhanced public safety and reducing re-offending.

The DCS has various offender rehabilitation programmes which focus on restorative justice, skilling, training, reading and offender reintegration.

The strategic goals of the department are to ensure that:

- the efficiency of the justice system is improved through the effective management of remand processes
- society is protected through incarcerated offenders being secured and rehabilitated
- society is protected by offenders being reintegrated into the community as law-abiding citizens.

In this way, the department contributes to ensuring that all people in South Africa are and feel safe.

Other roleplayers

Medical Parole Advisory Board

The Correctional Matters Amendment Act of 2011 provides for a new medical parole policy and correctional supervision.

Correctional Supervision and Parole Board

Correctional Supervision and Parole boards are responsible for dealing with parole matters and matters of correctional supervision. The Correctional Supervision and Parole boards have decision-making competency except:

- decisions regarding the granting of parole to people who are declared dangerous criminals in terms of Section 286A of the CPA of 1998.
- the converting of sentences of imprisonment imposed in terms of Section 276 (A) (3) of the CPA of 1998 into correctional supervision
- decisions with regard to those sentenced to life imprisonment.

In such cases, recommendations are submitted to the courts that in turn will make a decision in respect of conditional placement.

Correctional Supervision and Parole Boards are chaired by community members who are regarded as suitable and capable of carrying out the responsibilities.

The DCS provides the members with intensive training in respect of the processes, legislative implications and relative policies.