



Justice and correctional services

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

The courts

Constitutional Court

This is the highest court in all constitutional matters and deals only with constitutional issues. The court's work includes deciding whether Acts of Parliament and the conduct of the President and executive are consistent with the Constitution, including the Bill of Rights.

The court's decisions are binding on all persons including organs of state, and on all other courts. It consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine Constitutional Court judges.

Supreme Court of Appeal

The Supreme Court of Appeal is the highest court in respect of all other matters. The court has jurisdiction to hear and determine an appeal against any decision of a high court. Decisions of the Supreme Court of Appeal are binding on all courts of a lower order.

It consists of the President and Deputy President of the Supreme Court of Appeal and a number of judges of appeal determined by an Act of Parliament.

High courts

There are 10 court divisions and three local divisions which are presided over by judges of the provincial courts concerned.

A provincial or local division has jurisdiction in its own area over all persons in that area. These divisions hear matters that are of such

Fact:

The Department of Justice and Constitutional Development's budget allocation for 2006/07 was R7,3 billion, of which R1,5 billion was for the National Prosecuting Authority, R2,4 billion for the court services programme and R986 million for chapter nine institutions. Chapter nine institutions are established by the Constitution and have as their general mandate the strengthening of constitutional democracy in South Africa.

a serious nature that the lower courts would not be competent to make an appropriate judgment or impose a penalty. Except where minimum or maximum sentences are prescribed by law, their penal jurisdiction is unlimited and includes life imprisonment.

The Land Claims Court and the Labour Court have the same status as the High Court. In the case of labour disputes, appeals are made to the Labour Appeal Court.

Regional courts

Regional courts established in each regional division have jurisdiction over all offences, except treason. Unlike the High Court, the penal jurisdiction of the regional courts is limited.

Magistrates' courts

Magisterial districts are grouped into 13 clusters. By March 2005, there were 366 magistrates' offices, 50 detached offices, 103 branch courts and 227 periodical courts in South Africa, with 11 767 magistrates.

A magistrate's court has jurisdiction over all offences except treason, murder and rape.

Small claims courts

A commissioner in the Small Claims Court hears cases involving civil claims not exceeding R7 000. Thirteen new small claims courts, seven of which are in rural areas and townships, were opened in 2004.

By June 2006, there were 154 such courts throughout 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.

There is a national programme that aims to strengthen and roll out small claims courts to rural and peri-urban areas by pursuing the strategic objectives of:

- providing access for all, especially the poor and the vulnerable
- establishing systems and rules of court that are accessible and easy to understand
- providing trained administrative support staff
- attracting and retaining commissioners.

Sexual offences courts

These specialised courts allow sexual offences cases to be handled with sensitivity to avoid secondary victimisation of traumatised victims.

Equality courts

By the end of 2005/06, 260 designated equality courts were expected to be functioning and dealing with matters of discrimination. Section 16(1)(a) of the Promotion of Equality and Prevention of Discrimination Act, 2000 provides that every high court is an equality court for its area of jurisdiction. Infrastructure is provided for this purpose as new courts are set up. Over 1 290 magistrates and 300 clerks of court have been trained in equality matters.

Fact:

The Thuthuzela care centres are 24-hour, one-stop service centres where victims have access to all services including police, counselling, doctors, court preparation and prosecutors. The main objectives of these centres are to eliminate secondary victimisation, reduce case cycle time and increase convictions.

Community courts

Modelled on the Hatfield Community Court in Pretoria, community courts focus on the appropriate handling of lower-court cases from the area, specifically offences such as handbag and cellphone theft, offences relating to drug and alcohol abuse, municipal by-law offences and petty offences.

By September 2005, there were 13 community courts, of which four were operational. The total number of cases finalised was 9 685, with a 96% conviction rate.

Specialised commercial crimes courts

In 2005/06, 935 commercial-crime trials were finalised with a conviction rate of 94,22% and with some courts averaging over six hours a day.

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.

By September 2006, the National Prosecuting Authority had attained its target of finalising 5% more cases in a financial year. The number of cases that were diverted from the criminal justice system more than doubled in 2005/06 from an average of 1 208 cases diverted a month in 2004 to an average of 2 800 a month in 2005.

Implementing the diversion programme helped 89 425 children avoid the punitive justice system between 1999 and 2006.

The lower courts attained an 85% conviction rate in 2005/06 and case-cycle times rose from 17% to 19% of cases older than the target set by the Department of Justice and Constitutional Development.

Municipal courts

Municipal courts are being set up in the larger centres of South Africa in conjunction with municipalities. They deal only with traffic offences and contraventions of municipal by-laws.

Chief's courts

An authorised African headman or his deputy may hear and determine civil claims arising from indigenous law and custom, brought before him by an African against another African within his area of jurisdiction.

Litigants have the right to choose whether to institute an action in a chief's court or in a magistrate's court. Proceedings in a chief's court are informal. An appeal against a judgment of a chief's court is heard in a magistrate's court.

National Prosecuting Authority (NPA)

The NPA structure includes the National Prosecuting Services, the Directorate: Special Operations (DSO), the Witness-Protection Programme, the Asset Forfeiture Unit (AFU) and units such as the Sexual Offences and Community Affairs Unit, the Specialised Commercial Crime Unit and the Priority Crimes Litigation Unit.

By 2005, 54 sexual offences courts, with an average conviction rate of 62%, had been established. Many of those cases dealt with protecting the rights of children. Of the 54 courts, 26 were blue-print compliant and infrastructure is to be provided to make the remainder compliant. Permanent positions will be created with the Magistrates' Commission to capacitate sexual offences courts.

By May 2006, more than 50 000 victims had been prepared for court by 66 court preparation officials employed by the National Prosecuting Authority.

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 has been used to commit a crime.

The AFU has two major strategic objectives, namely to:

- develop the law by taking test cases to court and creating the legal precedents necessary to allow for the effective use of the law
- build capacity to ensure that asset forfeiture is used as widely as possible to make a real impact in the fight against crime.

The use of asset forfeiture to fight crime has been one of government's most important innovations. Between 2000 and 2006, more than R1 billion in proceeds from crime was frozen and nearly R100 million paid into the Criminal Assets Recovery Account.

Special Investigating Unit (SIU)

The SIU works closely with government departments to deal with fraud, corruption and serious maladministration in state institutions. It was established in terms of the Special Investigating Units and Special Tribunals Act, 1996 and investigates cases referred to it by the President. It is the only institution that can conduct forensic investigations and consequently institute civil litigation to recover state assets or public money.

By July 2006, the SIU's investigation into irregular social-grant payments in the Department of Social Development, at the request of the Minister of Social Development, Dr Zola Skweyiya, and paid for by that department, had removed some R1,5 billion in irregular grants from the system.

The joint efforts of the Department of Social Development and the SIU resulted in 110 000 grants being cancelled, saving taxpayers over R400 million a year.

The next phase of the investigation would focus on private individuals receiving social grants fraudulently.

The corruption probe at the Department of Correctional Services' facilities led to a saving of R3,4 billion for the medical aid scheme at the department, and to 90 officials being criminally prosecuted and charged internally.

Sexual Offences and Community Affairs Unit

Various concrete steps have been taken to give effect to the national crackdown on sexual offences:

- Multidisciplinary rape-care centres, known as the Thuthuzela care centres, have been established. Here rape investigations are accelerated and 'humanised'.
- New child-witness rooms have one-way glass partitions enabling child witnesses to testify in a friendly and secure environment without the risk of being intimidated.

Integrated justice system

This system aims to use technology to improve the co-ordination of the activities of departments in government's Justice, Crime Prevention and Security Cluster.

In 2006, work on the Legal Services Charter continued. The charter seeks to address:

- access to justice by poor and uneducated communities
- quality and affordable delivery of legal services to citizens
- accessibility of legal services to communities
- entry requirements to the legal profession
- equal opportunities of legal services among legal practitioners
- access to legal work, including state and parastatal contracts by black practitioners
- the role of the legal profession in promoting equality in the judiciary
- transformation of governance structures of the legal profession
- a unified regulatory framework for the legal profession
- empowerment of historically disadvantaged black legal practitioners
- skills development, employment equity, ownership and management within the legal profession.

The system will entail, among other things:

- a virtual private network
- an automated fingerprint identification system and DNA database
- an integrated case-flow management system, including case, person (offender, victim and witness) and exhibits
- better tracking of people, including inmates.

Access to justice

The department continues to prioritise access to justice for vulnerable groups, including:

- implementing relevant legislation and enabling policy, for example, the Sexual Offences Bill that Cabinet approved in 2006
- ensuring assistance from prosecutors and public defenders for child maintenance
- enforcing the right of children to receive support from earning parents
- prioritising child justice and all cases involving children, especially those in prison awaiting trial.

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 is involved and statutory councils.

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, introduced in December 2004, 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.

By September 2006, some elements of the charter were in place, including:

- toll-free lines installed in all provinces
- training of victim-assistance staff who will assume duty at service-delivery points by 2007/08
- a set of complaint mechanisms.

Correctional services

The Department of Correctional Services strives to provide adequate correctional centre accommodation that complies with accepted standards. By March 2006, offenders were housed in 237 correctional centres countrywide, including:

The Department of Correctional Services is rolling out a biometric security system and state-of-the-art fencing with closed-circuit television that both use the same control centre. By August 2006, the biometric security system had been launched in 62 of the targeted 66 correctional services sites. The system includes a biometric fingerprinting system that will manage inmate visitations.

- eight correctional centres for female offenders only
- 13 youth correctional facilities
- 129 correctional centres for male offenders only
- 87 correctional centres for both male and female offenders.

Three correctional centres were closed down for renovations.

In centres where male, female and juvenile offenders are accommodated, female and juvenile offenders are housed in separate designated sections.

Overcrowding in prisons

By 31 December 2005, South Africa's correctional centres collectively housed 160 213 inmates, while accommodation was available for only 114 354. This means that general overcrowding was in the region of 137,64%. Of the total population, 113 820 inmates were unsentenced.

The average cost of incarceration was estimated at R123,37 a day.

To alleviate overcrowding, unsentenced juveniles have been transferred to places of secure care, some sentences have been converted to correctional supervision, and facilities have been renovated or upgraded.

National and provincial action plans to fast-track all children awaiting trial from prisons and police cells, since October 2004, have led to a reduction in children awaiting trial. The number of children awaiting trial declined by 65% between December 2004 (over 1 700) and December 2005 (1 277).

Sentence length breakdown as at 31 March 2006

Sentence length	Number
< 6 months	5 088
>6 – 12 months	4 188
>12 – 24 months	3 815
2 – 3 years	10 423
3 – 5 years	10 642
5 – 7 years	8 831
7 – 10 years	18 060
10 – 15 years	23 901
15 – 20 years	11 287
>20 years	9 537
Life	6 803
Death	13
Other sentenced (Psychopath, corrective training, prevention of crime, habitual criminal, other mental instability, corporal punishment, security offender, reformatory, day parole, ordered by court as dangerous, period, fine)	1 232
Total sentenced	113 820

Source: Department of Correctional Services

No prisoners may be released before they have served at least half their sentence. The Criminal Law Amendment Act, 1997 provides for much harsher sentences for serious crimes. These changes are expected to place an even greater burden on prisons.

Since 2003, the offender population started stabilising and began to decline significantly in 2005, after exponential growth between 1995 and 2003 at a rate of about 10 000 offenders per year.

Statistics indicate that in 1995, there were 110 000 offenders, and in 2003, the number increased to 187 000. It dropped in 2005 to 156 000.

Bed space was increased by 697 in 2005 which had a limited albeit welcome impact on overcrowding, which stands at 137% nationally.

Awaiting-trial detainees decreased from 52 313 in January 2005 to about 46 327 in December 2005.

Fact:

In 2006/07, Samuel Beckett's play *Waiting for Godot* was staged at Pollsmoor by a cast drawn from inmates as part of the Arts in Prison Project run by the Department of Correctional Services in collaboration with the Department of Arts and Culture.

An independent judicial inspectorate regularly visits all prisons to report on conditions and prisoners' treatment.

The building of four new-generation prisons in Kimberley, Klerksdorp, Leeukop and Nigel is expected to be completed in 2008/09 and provide an additional 12 000 offender places. Similar facilities are expected to be built in East London, Allandale, KwaZulu-Natal and Limpopo. All eight prisons will have 3 000 beds each. Over the next three years, accommodation capacity in correctional services will be increased by 12 000 beds.

Inmates per security category as at 31 March 2006

Sentence categories	Women	Men	Total
Maximum security	261	37 341	37 602
Medium security	1 412	57 947	59 359
Minimum security	20	1 251	1 271
Total	1 693	96 539	98 232

Source: Department of Correctional Services