



Pocket Guide to South Africa 2008/09

JUSTICE AND CORRECTIONAL SERVICES

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.



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 11 Constitutional Court judges.

Supreme Court of Appeal (SCA)

The SCA 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 SCA are binding on all courts of a lower order.

It consists of the President and Deputy President of the SCA 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 judges of the provincial courts concerned preside over.

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 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, the penal jurisdiction of these courts 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

By mid-2008, there were 1 830 magistrates in the country (including regional court magistrates). A magistrate's court has jurisdiction over all offences, except treason, murder and rape.

By mid-2008, there were 366 magisterial districts and main magistrates' offices, 80 branch courts and 246 periodical courts in South Africa.

Small claims courts

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

By June 2008, there were 168 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.

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 2007/08, 219 magisterial courts had been designated as equality courts and the remaining 152 magisterial districts were expected to be designated in 2008/09. 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.

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. By mid-2008, four had been formally launched and were 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.

In 2008, the Legal Services Charter, which could become a milestone in legal-sector transformation, was completed.

Full participation of the legal profession is a reflection of the commitment of the legal sector towards establishing a transformed justice system.





The Department of Justice and Constitutional Development introduced an internship programme to give graduates opportunities to acquire the required skills in law.



In 2008/09, the department put aside R15 million to sustain the programme. In 2007, more than 130 legal graduates were placed in the various areas of the legal profession as part of the National Youth Service Programme. In 2008, at least 80 were placed with university law clinics, while another 45 were placed with the Offices of the State Attorney countrywide.

Chiefs' 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.

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).



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By mid-2008, of the 199 judges, 48,23% (96) were white, 35,68% (71) were African, 7,54% (15) were coloured and 8,55% (17) were Indian.



Overall, 18,59% were female and 81,42% male. In terms of the lower-court judiciary, of the 1 830 magistrates, 47% were white, 38% African, 7% coloured and 8% Indian. Overall, 31% were female and 69% male.

The transformation of the judiciary is closely linked with the transformation of the legal profession and of legal scholarship. The Department of Justice and Constitutional Development has worked in partnership with law schools in transforming the curriculum of the basic law degree to bring it in line with modern best practices.

Asset Forfeiture Unit (AFU)

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.

According to the Department of Justice and Constitutional Development's *2007/08 Annual Report*, the AFU had finalised 1 100 cases to the value of R663 million.

Sexual Offences and Community Affairs Unit

Since its establishment in October 1999, the Soca Unit has aimed to:

- reduce victimisation of women and children by enhancing capacity to prosecute sexual offences and domestic-violence cases
- reduce secondary victimisation of complainants and raise public awareness of the scourge of sexual offences and domestic violence
- ensure proper management of young offenders.

Supporting activities operated by Soca include its multidisciplinary Thuthuzela Care Centres (TCCs), recognised by the United



Nations General Assembly as a “world best-practice model” in the field of gender-violence management and response.

TCCs are one-stop facilities that have been introduced as a critical part of South Africa’s Anti-Rape Strategy, aiming to reduce secondary trauma for victims, improve conviction rates and reduce the cycle time for finalising cases.

TCCs are in operation in communities where the incidence of rape is particularly high.

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 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.

The investigation and prosecution process of the SCCU is driven through a combined prosecutor and investigator approach conducive to the methodical planning of the outcome and speedy finalisation of cases registered.

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 co-ordinate 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.

Correctional services

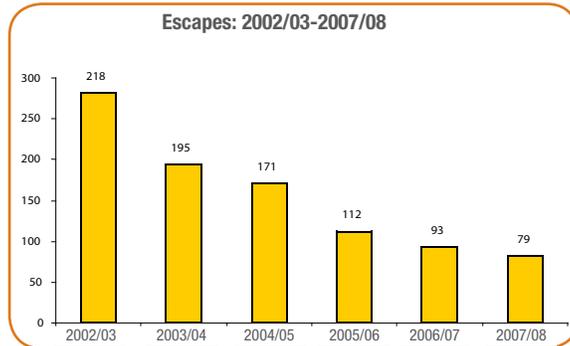
The Department of Correctional Services aims to provide adequate correctional-centre accommodation that complies with accepted standards. By March 2008, 165 840 offenders were housed in 239 facilities countrywide, including:

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

Two correctional centres were closed for renovations.

There are two private prisons in South Africa.

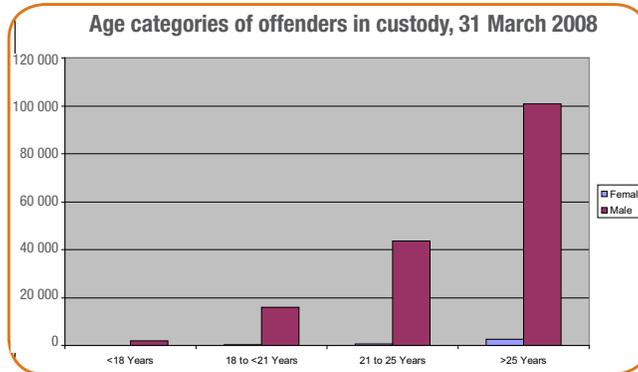
In centres where male, female and juvenile offenders are accommodated, female and juvenile offenders are housed in separate designated sections.



Overcrowding in correctional centres

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 the number of children awaiting trial.





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.

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

