



OFFICIAL GUIDE TO SOUTH AFRICA 2019/20

**JUSTICE AND  
CORRECTIONAL SERVICES**

## Department of Justice and Constitutional Development (DoJ&CD)

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 of magistrate's courts, and the appointment of magistrates and other judicial officers;
- appointment of judges and other judicial officers, their conditions of service, discipline and training;
- establishment and functioning of the National Prosecuting Authority (NPA);
- conducting of criminal proceedings;
- the prosecution of organised crime and corruption, and the forfeiture of assets obtained through illicit means;
- provision of witness protection to vulnerable and intimidated witnesses and their related persons in judicial proceedings;
- establishment and functioning of bodies responsible for legal aid, law reform and rule making;
- appointment of masters of the high courts;
- management of third-party funds;
- administration of the Guardian's Fund and deceased and insolvent estates;
- regulation and provision of legal advisory services to government departments;
- management of state litigation;
- promotion, protection and enforcement of human rights; and
- protection of vulnerable groups; and the provision of support to Chapter 9 institutions.

Chapter 12 of the National Development Plan sets out a vision for building and maintaining safe communities in South Africa through, among other things, strengthening the criminal justice system. This vision is expressed in terms of Priority 5 (social cohesion and safe communities) of government's 2019-2024 Medium Term Strategic Framework.

The work of the DoJ&CD is directly aligned with this priority in that a well-functioning criminal justice system provides relief to victims of crime, protects vulnerable groups and swiftly acts against perpetrators of corrupt activities. To this end, over the medium term the department will focus on: implementing the integrated criminal justice strategy, eradicating gender-based violence and femicide (GBVF), and strengthening the state's capability to combat corruption.

### Implementing the integrated criminal justice strategy

The most effective deterrent to criminal activity is an efficient and effective criminal justice system. The Integrated Criminal Justice Strategy aims to improve the efficiency of the criminal justice system through aligning the business processes of various stakeholders in the criminal justice system, improving and strengthening the capabilities of the criminal justice system, and coordinating integrated interventions across the criminal justice value chain. The department leads the implementation of the strategy in the justice, crime prevention and security cluster.

## **Eradicating GBVF**

A common criticism levelled against the State is its ineffectiveness to respond to the crisis of rape, domestic violence, femicide, child homicide and related forms of GBV. In response, government has developed the National Strategic Plan (NSP) on GBVF, which requires large-scale changes in the criminal justice system. In March 2020, Cabinet approved the NSP on GBVF, which is based on the following six pillars:

- Accountability, Leadership and Coordination;
- Prevention and Restoration of Social Fabric;
- Protection, Safety and Justice;
- Response, Care, Support and Healing;
- Economic Empowerment; and
- Research and Information systems.

To ensure a seamless transformation process, training in producing rapid results will also be undertaken at all levels of management.

In contributing to building a victim-centric criminal justice system, the NPA will increase the number of Thuthuzela care centres from 55 in 2019/20 to 60 in 2022/23.

## **Strengthening the State's capability to combat corruption**

In responding to the urgent need to combat corruption in South Africa, the NPA has been allocated additional funding. The funds will be used to increase capacity in all business units; rejuvenate the aspirant prosecutor training programme; and operationalise an investigative directorate to deal with serious, high-profile or complex corruption, and any other cases referred to it by the national director of public prosecutions in accordance with the NPA Act of 1998.

The NPA was expected to increase the number of specialised commercial crime courts. The Special Investigating Unit was also to appoint forensic investigators and operationalise the Special Tribunal, which has a statutory mandate to recover public funds syphoned from the fiscus through corruption, fraud and illicit money flows.

## **Office of the Chief Justice (OCJ) and Judicial Administration**

The Office of the Chief Justice and Judicial Administration derives its mandate of providing effective administrative and technical support to the Chief Justice as the head of the Judiciary and the Constitutional Court from Section 165(6) of the Constitution of the Republic of South Africa of 1996, read together with the Superior Courts Act of 2013.

The mandate has the following supplementary functions: provide and coordinate legal and administrative support to the Chief Justice; provide communication and relationship management services; provide intergovernmental and internal coordination services; develop administration policies for courts; support the development of judicial policy, norms and standards; support the judicial function of the Constitutional Court; and support the Judicial Service Commission and South African Judicial Education Institute in the execution of their mandates.

## **The courts**

### **Constitutional Court**

The Constitutional Court as the highest court in the land and its decisions cannot be changed by any other court.

The Constitutional Court, based at Constitution Hill in Johannesburg, is presided over by 11 judges who stand guard over the Constitution and protect everyone's human rights. When a person, an organisation or a company is not satisfied with any decision of the High Court on any matter; they can approach the Constitutional Court for a review of that decision. Normal appeal matters are however dealt with at the Supreme Court of Appeal (SCA).

## Supreme Court of Appeal

The SCA, situated in Bloemfontein in the Free State, has Jurisdiction to hear and determine an appeal any decision of a High Court. Except for the Constitutional Court, no other court can change a decision of the SCA. Only the SCA can change one of its own decisions. The SCA consists of a President, Deputy President and 23 permanently appointed judges.

## High courts

The High Court handles any case which exceeds the jurisdiction of the Magistrates' Court or when a person or organisation goes to the court to change a decision of a Magistrates' Court, which means appealing a case. Cases of the High Court are listened to by one Judge, meaning a person with many years of practical experience.

However, if it is a case on appeal, then at least two Judges must hear the case. Sometimes if the case is about a very serious crime then a Judge and two experienced people in law who are usually advocates or Magistrates who have retired, will listen to the case.

The two people are called assessors. The assessors usually help the Judge to make a decision. The High Court divisions have "jurisdiction" – the right to hear a case – over defined provincial areas in which they are situated, and the decisions of the High Court are binding on Magistrates' courts within their areas of jurisdiction.

They usually only hear civil matters involving more than R100 000, and serious criminal cases. They also hear any appeals or reviews from lower courts (Magistrates' courts) which fall in their geographical jurisdiction. The High Court usually hears any matter involving a person's status such as adoption and insolvency.

There are 14 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 Tlohohe; the Northern Cape High Court, Kimberley; the North West High Court, Mafikeng; and the Western Cape High Court in Cape Town and Mpumalanga High Court in Mbombela.

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.

## Magistrates' courts

Magistrates' courts are the lower courts which deal with less serious criminal and civil cases. They are divided into Regional courts and District courts. In Criminal courts, the State prosecutes people for breaking the law. Criminal courts can be divided into two groups: Regional Magistrates' Courts and Ordinary Magistrates' Courts (also called District Courts). Currently, Regional Magistrates' Courts only deal with criminal cases whereas the District Magistrates' Courts deal with criminal and civil cases.

The Magistrate makes the decisions in a Magistrates' Court; sometimes with the support of lay assessors. Magistrates' Courts can be divided into either criminal courts or civil courts. The Regional Magistrates' Courts deal with more serious cases than the ordinary Magistrates' Courts such as murder, rape, armed robbery and serious assault.

In terms of the Criminal Law (Sentencing) Amendment Act of 2007, a Regional Magistrates' Court can sentence a person who has been found guilty of offences that include murder or rape to imprisonment for life. The court can also sentence people who have been found guilty of certain offences such as armed robbery or stealing a motor vehicle to prison for a period up to 20 years. A Regional Magistrates' Court can impose a maximum fine of R300 000.

Regional courts now have civil jurisdiction to the extent that divorce matters can now be heard there. District courts try the less serious cases. They cannot try cases of murder, treason, rape, terrorism, or sabotage. They can sentence a person to a maximum of three years in prison or a maximum fine of R100 000. Ordinary Magistrates' Courts can hear civil cases when the claims are for less than R100 000. They cannot deal with certain matters such as divorces, arguments about a person's will and matters where it is asked if a person is mentally sane or not.

## 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.

## 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 well-being 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 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 (DCS)

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; and
- 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;

The Standerton and Estcourt Correctional Centres were officially opened in April and May 2019 respectively. The Tzaneen Correctional Centre was opened in November 2020.

## 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 Criminal Procedure Act (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.