



# Justice and Correctional Services



The responsibilities of both the Department of Justice and Constitutional Development's (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's constitutional mandate provides a framework for the effective and efficient administration of justice and to promote constitutional development through the development and implementation of legislation and programmes to advance and sustain constitutionalism and the rule of law.

At the same time, the department also provides an enabling environment for the judiciary and constitutional institutions to exercise their constitutional powers and functions freely and independently. The department's functions include, among other things, the:

- establishment and functioning of the Superior Courts, 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 strategic goals of the department relate to ensuring safer communities, fighting corruption and enhancing accountability for all people in South Africa to feel and be safe.

The department facilitates the effective and efficient resolution of disputes by providing accessible, efficient and quality administrative support, thereby improving the finalisation rates of cases; helping to clear the backlogs of criminal, civil and family matters by the courts and justice service points; providing access to quality guardian and probate services for citizens.

## 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. The outstanding 65 branch courts and 230 periodical courts have been lined-up for rehabilitation consistent with the National Development Plan.

### Small claims courts

The Small Claims Court allows you to institute minor civil claims not exceeding R15 000 in a speedy, affordable and simple manner without using an attorney.

### Equality courts

Any person who has been unfairly discriminated against in terms of section 9 of the Constitution may approach the Equality Court. Most of the complaints dealt with include hate speech, unfair discrimination and harassment.

### 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. By March 2016, the DoJCD had upgraded 46 regional courts into sexual offences courtrooms.

## **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.

## **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**

To curb gender-based violence, 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 DoJCD 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 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. In the first three quarters of 2015/16, Legal Aid SA took on 315 138 new criminal matters, 228 905 new civil matters and assisted 11 781 children through its justice centres and 64 satellite offices.

### **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. During 2015/16, the NPA achieved an 82% conviction rate in trio crimes, 88% in organised crime and 94% in complex commercial crimes.

### **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. In 2015/16 financial year 163 government officials were convicted of corruption-related offences. The AFU obtained 483 forfeiture orders to the value of R372 million. Recoveries totalling R356.9 million were also obtained.

### **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**

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 gender-based violence 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.

### **The family violence, child protection and sexual offences units (FCS)**

The FCS units have been reintroduced in all 176 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 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.

## 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.

There are 52 Correctional Supervision and Parole Boards countrywide. These 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.