



Justice and Correctional Services

The responsibilities of the Department of Justice and Constitutional Development (DoJ&CD) are closely linked to those of the Department of Correctional Services (DCS). Both include ensuring a just, peaceful and safe society and both are involved in South Africa's criminal justice and court system.

South African law is a combination of different legal systems, with its origin in Europe and in Great Britain. As with any other country, the common law has been augmented by statutory law and many of the cases before the court are now concerned with their interpretation and application.

Department of Justice and Constitutional Development

The DoJ&CD is responsible for ensuring an accessible justice system that promotes and protects social justice, fundamental human rights and freedoms, thus providing a transparent, responsive and accountable justice for all.

In particular, the department leads government programmes to afford all citizens equal benefit and protection of the law and the realisation of the Bill of Rights. The department also exercises executive oversight in the provision of public defence for citizens from disadvantaged backgrounds.

Transforming the judiciary

By 2013, 61% of judges (generic) were black compared to only one black in 1994. Similar progress has been made in addressing race and gender imbalances in the magistracy. Of the 1 661 magistrates, 974 are black and 687 are white, 647 are women and 1 014 are men.

There are still challenges regarding the appointment of female judges. Out of 239 judges only 76 are women. Out of 311 judges appointed since 1994, 113 are white males compared to 76 female judges. Of the 5 708 enrolled advocates only 1 841 are women, while there are 7 477 female attorneys from a total number of 21 463.

The department has increased the allocation of briefs to legal practitioners from previously disadvantaged individuals to 70% in 2013.

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.

President Jacob Zuma, in terms of section 174(4) of the Constitution of the Republic of South Africa of 1996, appointed Adv Mbuyiseli Russel Madlanga SC as a Judge of the Constitutional Court with effect from 1 August 2013.

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

By June 2013, there were 277 small claims courts. The number of commissioners who preside over small claims courts has almost doubled in the past four years, from 811 in 2009 to 1 546 in 2013 – comprising 1 314 men and 232 women.

Equality courts

Any person who has been unfairly discriminated against in terms of section 9 of the Constitution may approach the Equality Court. In 2013, 619 matters were enrolled before equality courts. Most of the complaints dealt with include hate speech, unfair discrimination and harassment. The department is preparing legislation that will criminalise hate speech.

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

Sexual offences courts had been reintroduced by the end of the 2013/14 financial year, and up to 57 sexual offences courts would be operational countrywide within the next three years.

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.

Maintenance

From the 369 maintenance courts nationwide, the department registers about 200 000 new maintenance complaints a year. To reduce the maintenance queues at courts, the department installed technology to process payments through electronic financial transfers to replace the card-based manual system. The courts are also increasingly making orders for payments to be deposited directly into the accounts of beneficiaries.

Through the Guardian's Fund, the department contributes substantially to poverty alleviation. In 2013, the department made 37 000 payments totalling R1,006 billion to Guardian's Fund beneficiaries.

Domestic violence

The rigorous steps that the justice, crime prevention and security cluster is taking to root out gender-based violence is the adoption of 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. The department has, after engaging with regional court presidents, identified 57 regional courts across the country for use as dedicated sexual offences courts.

Human trafficking

In July 2013, President Zuma assented to the Prevention and Combating of Trafficking in Persons Act of 2013. It will see a maximum penalty of R100 million or life imprisonment or both in the case of a conviction. The new legislation gives effect to South Africa's international obligations in terms of a United Nations Protocol.

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 2013, Legal Aid SA provided assistance in 736 679 matters.

The staff comprises a representative team of 183 at national office and 2 395 staff based at 128 justice centres nationally comprising 64 main and 64 satellite offices.

Special Investigating Unit (SIU)

The SIU, the Anti-Corruption Task Team, the Asset Forfeiture Unit (AFU) and the Hawks have made notable progress in the quest to combat corruption in the public sector.

The SIU works closely with the National Prosecuting Authority (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.

By February 2013, the capacity of the SIU had increased from 70 staff members to more than 600. The SIU had 25 active proclamations by May 2013.

Investigations in relation to seven proclamations were finalised in 2013, 15 were finalised in 2014 and 10 are expected to be finalised in 2015. These include the investigation of 481 incidents of serious corruption recorded in 2013 and more than 758 persons who were under criminal, financial and/or forensic investigation in 2013.

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 was created in 1999 in terms of the Prevention of Organised Crime Act of 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 completed 302 forfeiture cases in 2013, with a value of R118,4 million. The success rate of the AFU in this period was 94,1% (289 cases). In addition, 276 new freezing orders to the value of R518 million were 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 (Soca) 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.

In March 2013, Soca, in partnership with various state departments and United States Agency for International Development, launched the Increasing Services for Survivors of Sexual Assault Programme to enhance the role of the TCCs.

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. By October 2013,

there were 176 FCS units, with a workforce of 2 238 members. To give further impetus to the investigation of crimes of this nature, 72 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. By 2012/13, the third Public Protector, was investigating 33 533 complaints per year, assisted by 160 staff members based at a national office and 238 at nine provincial and satellite offices throughout the country.

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.

Truth and Reconciliation Commission Unit (TRC)

The TRC was dissolved in March 2002 by way of proclamation in the *Government Gazette*. The TRC made recommendations to government regarding reparations to victims of human rights and abuses experienced during the apartheid years. Government approved four categories of recommendations in June 2003 for implementation, namely:

- final reparations
- TRC-identified victims
- symbols and monuments
- medical benefits and other forms of social assistance
- community rehabilitation.

By May 2013, 16 721 beneficiaries had been paid reparations.

Correctional services

To promote good governance, ethical administration and effective human resource management, the DCS declared 2013 as "The Year of the Correctional Official."

This department has been in existence for 102 years. DCS marks the end of a life of crime, and the beginning of restoration. The department must deliver justice for victims and ensure that offenders make restitution both to society for their crimes, and leave correctional centres with better skills and prospects. The field of corrections is gaining prominence. On 16 May 2013, 45 students from the University of Zululand, graduated with a Bachelor of Arts in Correctional Studies.

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.

Development and care of offenders

The *White Paper on Corrections in South Africa* represents the final fundamental break with a past archaic penal system,

and ushers in a start to the second decade of freedom where prisons become correctional centres of rehabilitation and offenders are given new hope and encouragement to adopt a lifestyle that will result in a second chance towards becoming the ideal South African citizen.

The Second Chance Act of 2011 repudiates the notion that recidivism reduction is best achieved through deterrent threats alone, and calls for the delivery of services to former prisoners not in a minimal or grudging way but in a systematic, progressive fashion. It is a re-entry movement that could be classified as therapeutic jurisprudence, restorative justice and to some extent victims' rights. The Act provides programmes and services that will aid rehabilitation efforts and encourage positive participation in society upon release.

It eliminates 'invisible punishment' by excluding access to public benefits such as social grants, general assistance, housing and jobs.

The Act counters the effects of policies, which have made it difficult for ex-offenders to re-enter the normative non-criminal community and could explain why there are so many recidivists.

