

2023/24

OFFICIAL GUIDE TO  
SOUTH AFRICA



JUSTICE AND  
CONSTITUTIONAL  
DEVELOPMENT

The Department of Justice and Constitutional Development (DoJCD) derives its mandate from the Constitution of the Republic of South Africa of 1996 and a number of acts that assign functions to the department. These include the:

- establishment of Magistrate's courts and the appointment of magistrates and other judicial officers;
- establishment and functioning of the National Prosecuting Authority (NPA);
- conducting of criminal proceedings;
- prosecution of organised crime and corruption;
- 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;
- management of state litigation;
- regulation and provision of legal advisory services to government departments;
- promotion, protection and enforcement of human rights;
- protection of vulnerable groups; and
- provision of support to Chapter 9 institutions.

As part of its overarching goal of ensuring that South Africans feel safe and are able to live without fear, the department invests in initiatives to serve its people as efficiently as possible. Over the medium term, the department will focus on accelerating the implementation of the recommendations of the state capture commission and the Financial Action Task Force, strengthening the response to gender-based violence and femicide, and building capacity in the Office of the Legal Services Ombud and Legal Aid South Africa's land rights management unit.

### **Implementing the recommendations of the state capture commission and Financial Action Task Force (FATF)**

To ensure a systematic and strategic response to the recommendations of the state capture commission, an integrated task force has been established to coordinate investigations, prosecutions and the seizure of assets. The task force is led by the National Prosecuting Authority (NPA) and includes the Directorate for Priority Crime Investigation, the Financial Intelligence Centre and the Special Investigating Unit (SIU).

A detailed action plan has been developed and is being implemented. The NPA's Investigating Directorate has made significant progress in addressing state capture, having declared 99

investigations and enrolled 34 cases (involving 205 accused people), while the Asset Forfeiture Unit (AFU) has secured freezing/preservation orders to the value of R14 billion.

The number of prosecutions of state capture, fraud or corruption and related matters enrolled in the courts was expected to increase. A workstream of law-enforcement agencies has been established, also under the leadership of the NPA, to implement recommendations made by the FATF to remove South Africa from its grey list of countries that are flagged for weaknesses in its framework for combating money laundering and the financing of terrorism.

These include the recording and monitoring of timelines for mutual legal assistance or extradition, the recording of beneficial ownership of trust information, and the establishment and operationalisation of a register to record the number of enquiries to law-enforcement agencies.

### **Strengthening the response to gender-based violence and femicide**

As part of its continuing efforts to afford greater protection to citizens, particularly vulnerable and marginalised groups, the department will continue implementing the recommendations of the presidential summit declaration against gender-based violence and femicide and the national strategic plan on gender-based violence and femicide. It planned to do so by increasing the number of fully operational Thuthuzela care centres from 64 in 2023/24 to 70 in 2026/27.

These centres provide victims of sexual offences with 24-hour access to all relevant services, including police, counselling, doctors, court preparation and prosecutors. Plans were also underway to appoint 15 additional personnel at these centres, including site coordinators, victim assistant officers and state advocates.

### **Building capacity for key legal services**

The mandate of the Office of the Legal Services Ombud includes protecting and promoting the public interest in relation to the rendering of legal services; ensuring the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners; and promoting the independence of, and high standards of integrity in, the legal profession.

### **Office of the Chief Justice (OCJ)**

The OCJ renders support to the Chief Justice as the head of the judiciary, as provided for in Section 165(6) of the Constitution of the Republic of South Africa of 1996, read together with the Superior Courts Act of 2013. The OCJ is also required to:

- provide and coordinate legal and administrative support to the Chief Justice;
- provide communication and relationship management services and intergovernmental and internal coordination;

- develop courts administration policy, norms and standards;
- support the development of judicial policy, norms and standards; support the judicial function of the Constitutional Court; and
- and support the Judicial Service Commission and South African Judicial Education Institute in the execution of their mandates.

Over the next three years, the OCJ planned to focus on improving access to justice and the services of the superior courts, and increasing access to judicial education courses. The work of the Superior Court Services programme is intended to enable access to justice, primarily by ensuring that the judiciary is supported.

To increase efficiencies such as the turnaround time in dealing with cases, the Court Online system is expected to be rolled out in 2023/24 to seven prioritised superior courts in the Eastern Cape, Free State, Mpumalanga, Limpopo, Northern Cape, North West and Western Cape. The plan is to implement the system in all the courts over the medium-term period.

### Office of the State Attorney

The Office of the State Attorney provides legal services to national and provincial departments. State attorneys represent the State in all lawsuits and transactions for and against the State. The functions of the State Attorney include the:

- drafting and managing of contracts on behalf of the State.
- handling of criminal and civil litigation cases instituted against State officials and committed by means of acts or omissions while executing their official duties.
- handing of applications form qualifying personnel for admission as advocates for the High Court.
- handling of applications for admission as practicing attorney
- regulation and overseeing of the conduct of private attorneys operating under the State Attorney Act.

### The courts: Constitutional Court

The Constitutional Court was established in 1996 by the Constitution of the Republic of South Africa of 1996. The court is situated at Constitutional Hill Precinct in Braamfontein, Johannesburg. There are 11 judges of the Constitutional Court, namely a Chief Justice, Deputy Chief Justice and nine judges. A matter must be heard by at least eight judges. The Constitutional Court is the apex court in South Africa. Its decisions cannot be changed by any other court. The court decides constitutional and general matters.

A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution. General matters are heard if the Constitutional Court

grants leave to appeal. A general matter is one that is of general and public importance. The Constitutional Court makes the final decision whether a matter is within its jurisdiction.

Only the Constitutional Court hears:

- disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
- the constitutionality of any parliamentary or provincial Bill;
- the constitutionality of any amendment to the Constitution;
- a matter that Parliament or the President has failed to fulfil a constitutional obligation;
- a matter to certify a provincial constitution in terms of Section 144 of the Constitution.

A matter may be brought directly to the Constitutional Court or appealed directly to the Constitutional Court from any other court. Leave of the Constitutional Court is required to do so.

### Supreme Court of Appeal (SCA)

The SCA, which is based in Bloemfontein in the Free State, was established in 1910 as the Appellate Division. It is designated as the Supreme Court of Appeal by the Constitution. The court consists of a President, a Deputy President and a number of judges of appeal. Ordinarily, proceedings are presided over by three or five judges, depending on the nature of the appeal. An appeal in a criminal or civil matter may be heard before a court consisting of three judges. A court consisting of a larger number of judges hear a matter of importance.

The SCA decides appeals except in labour and competition matters. Appeals to the SCA emanate from the High Court of South Africa or a court of a similar status to the High Court. Except for the Constitutional Court, no other court can change a decision of the SCA. The SCA may change its own decision. The final decision of the SCA is the one supported by most of the judges listening to the case. If a judgement is not agreed to by most of the judges, the matter is adjourned and recommenced afresh before a new court. The President of the SCA determines the constitution of the new court.

### High courts

The High Court of South Africa consists of the following divisions:

- Eastern Cape Division, with its main seat in Makhanda.
- Free State Division, with its main seat in Bloemfontein.
- Gauteng Division, with its main seat in Pretoria.
- KwaZulu-Natal Division, with its main seat in Pietermaritzburg.
- Limpopo Division, with its main seat in Polokwane.
- Mpumalanga Division, with its main seat in Mbombela.
- Northern Cape Division, with its main seat in Kimberley.

- North West Division, with its main seat in Mahikeng.
- Western Cape Division, with its main seat in Cape Town.

Each Division of the High Court consists of a Judge President, one or more Deputy Judges President and judges. The number of judges in each Division are determined in accordance with prescribed criteria and approved by the President. Each Division has an area of jurisdiction which comprises of any part of one or more provinces. Each Division has a main seat and one or more local seats. A local seat has its own (exclusive) area of jurisdiction. Appeals arising from a decision of a single judge or of a Magistrate's Court within the local seat, may, by direction of the Judge President be heard at the main seat of the Division.

The main seat has concurrent (the same) appeal jurisdiction over a local seat. Judges are assigned within the Division by the Judge President. The High Court may sit elsewhere than the main or local seat to hear a matter, as determined by the Judge President after consulting the Minister. The reasons for doing so are expediency or the interests of justice. A civil matter heard by a court of first instance, meaning that the matter is not an appeal matter, is presided over by a single judge.

Any matter may be heard by a court consisting of not more than three judges. A single judge hearing a civil matter may discontinue the hearing and refer it for hearing to the full court of that Division. This is done in consultation with the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge. The law relating to criminal procedure determines the number of judges hearing a criminal case as a court of first instance.

Two judges hear any civil or criminal appeal. If the judges hearing the appeal do not agree, then at any time before a judgment is handed down, a third judge will be added to hear the appeal. The decision of the majority of the judges of a full court of a Division is the decision of the court. Where most of the judges disagree, the hearing is adjourned and commenced from the start (*de novo*) before a court consisting of three other judges.

The High Court decides constitutional matters, with two exceptions. The Constitutional Court may agree to hear the matter directly or an Act of Parliament may assign another court of a status like the High Court to hear the constitutional matter. The High Court decides other matters that have not been assigned to another court by an Act of Parliament.

The jurisdiction of the High Court to hear any matter includes:

- All persons residing or being in the Division;
- All causes arising and all offences triable within its area of jurisdiction;
- All other matters which it may legally recognise;

- Appeals from all Magistrates' courts within the area of the division; and
- Review of the proceedings of Magistrates' courts.

### Circuit courts of the divisions of the High Court

Circuit courts are part of the High Court, and serve far-flung and rural areas. They are established by the Judge President of a Division by way of a notice in the Government Gazette. A Circuit court's jurisdiction applies within the area of the Division. The area of jurisdiction of a Circuit court is the circuit district. Circuit courts adjudicate civil or criminal matters. The boundaries of a circuit district may be altered by notice in the Government Gazette. Circuit courts are held at least twice a year. The court is presided over by a judge of the Division. The judge president of the division determines the times and places for the sittings of the court to hear the matters.

### Tax courts

Tax courts are established by the President of the Republic by proclamation in the Government Gazette. In March 2003 the Tax courts were established for areas. The Special Income Tax courts constituted before 1 April 2003 for the hearing of income tax appeals were abolished. A Tax Court is established for the area of the Division of the High Court.

The Tax Court hears tax appeals and is presided over by a Judge or an Acting Judge of the High Court, who is the President of the Tax Court. The judge is assisted by an accountant and a representative of the commercial community. In appeals relating to the business of mining or the valuation of assets, the representative must be a registered mining engineer or a sworn appraiser. Three judges hear a dispute if a dispute exceeds R50 million; or South African Revenue Service (SARS) and the 'appellant' jointly apply to the Judge President.

The Judge President of the Division of the High Court nominates and seconds a judge or an acting judge of the division to be the President of the Tax Court. A secondment applies for a period or for the hearing of a particular case. The President of the Republic appoints the panel of members of a Tax Court for a term of office of five years. The President may consider reappointing an eligible member for a further period or periods and may terminate the appointment of a member at any time for misconduct, incapacity or incompetence. A member's appointment lapses if the tax court is abolished. A member of the tax court must perform his/her functions independently, impartially and without fear, favour or prejudice. The Commissioner of the SARS appoints the registrar of the Tax Court. The registrar and persons appointed in the office of the registrar are SARS employees.

When the tax court sits to hear an appeal, the proceedings are not public. The president of the tax court may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting. In such a matter, the court considers any

representations made by the 'appellant' and a senior SARS official who appears in support of the assessment or 'decision'. The tax court makes the following orders in appeals:

- Confirms an assessment or decision;
- Orders an assessment or decision to be altered; or
- Refers an assessment back to SARS for further examination and assessment.

In the case of an appeal against an understatement penalty imposed by SARS, the court may reduce, confirm or increase the understatement.

### Appeal against the decision of the tax court

The taxpayer or SARS may appeal against a decision of the tax court. An appeal against a decision of the tax court lies:

- to the full bench of the Provincial Division of the High Court which has jurisdiction in the area in which the tax court sitting is held; or
- (b) to the Supreme Court of Appeal, without an intermediate appeal to the Provincial Division, if:
  - (i) the president of the Tax Court has granted leave under the rules; or
  - (ii) the appeal was heard by the Tax Court.

### Labour Court and Labour Appeal Court

The Labour Court has the same status as a High Court. It adjudicates matters relating to labour disputes between an employer and employee. It is mainly guided by the Labour Relations Act of 1995 which deals with matters such as unfair labour practices. The Labour Appeal Court hears appeals against decisions in the Labour Court and this is the highest court for labour appeals.

### Land Claims Court

The Land Claims Court specialises in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative. These are the Restitution of Land Rights Act, 1994, the Land Reform (Labour Tenants) Act of 1996 and the Extension of Security of Tenure Act of 1997. The Land Claims Court has the same status as the High courts. Any appeal against a decision of the Land Claims Court lies with the Supreme Court of Appeal, and if appropriate, to the Constitutional Court. The Land Claims Court can hold hearings in any part of the country, if it thinks this will make it more accessible and it can conduct its proceedings in an informal way if this is appropriate, although its main office is in Randburg.

### Land Court

The Land Court Act of 2023 was published in Government Gazette 49372, GoN 3744, 27 September 2023, to provide for the establishment of a Land Court and appeals against decisions of the Land Court; to make provision for the administration and judicial functions



of the Land Court; to provide for the jurisdiction of the Land Court and Magistrates' Court for certain land related matters; to provide for mediation procedures; to amend certain laws relating to the adjudication of land matters by other courts; and to provide for matters connected therewith.

### Traditional courts

The Traditional Courts Act of 2022 was published in Government Gazette 49373, GoN 3745, 27 September 2023, to provide a uniform legislative framework for the structure and functioning of Traditional courts, in line with constitutional imperatives and values; and to provide for matters connected therewith.

### Magistrates' courts

The Magistrates' courts are the district courts and the regional courts. The district courts hear limited types of civil cases. They cannot deal with certain matters such as divorce, arguments about a person's will and matters where it is asked if a person is mentally sane or not. The types of civil matters that the magistrates' courts hear are set out in the Magistrates Courts Act (32 of 1944 as amended).

With effect from 27 March 2014, district courts hear matters up to the amount of R200 000. Regional courts hear civil matters above R200 000 up to and including 400 000. The Minister may change these amounts at any time by notice in the *Government Gazette*. Some of the civil matters that the Magistrates courts hear are:

- delivery or transfer of any property, movable or immovable;
- ejectment against the occupier of any premises or land;
- matters arising from a mortgage bond;
- matters arising out of a credit agreement;
- other matters not already set out above, such as claims for damages caused negligently to a vehicle or injuries to a person.

### Divorces

In addition to civil matters, a regional court hears:

- the nullity of a marriage or a civil union;
- divorces and ancillary matters; and
- matters in terms of the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998).

A Regional Court in these matters has the same jurisdiction as a High Court. The Regional Magistrate may be assisted by two assessors to advise on questions of fact.

### Criminal matters in the Magistrates' courts

The State prosecutes people who are charged with breaking the law. The criminal cases are held in the criminal courts. Criminal courts can be divided into two groups:

### Regional courts

A Regional Magistrate makes the decisions in a Regional Court, sometimes with the support of lay assessors. The Regional courts deal with serious cases such as murder, rape, armed robbery and serious assault. These courts do not hear treason cases. The Criminal Law (Sentencing) Amendment Act of 2007 obliges the court to sentence a person to life imprisonment for offences such as murder or rape.

The convicted person must prove “substantial compelling” circumstances for the court to impose a sentence less than life imprisonment. A Regional Court may impose a maximum fine of R600 000 and a maximum sentence of 15 years in common law offences (no statute or act of Parliament determines the sentence for the offence).

A statute may provide for a maximum term of imprisonment more than 15 years for specific offences. An example is the Drugs and Drug Trafficking Act (140 of 1992). The maximum sentence of imprisonment for dealing in drugs is 25 years.

### District courts

The District courts try the less serious cases. They do not hear cases of murder, treason, rape, terrorism or sabotage. The maximum term of imprisonment in common law crimes (crimes that are not specified by a statute/an Act of Parliament) is three years. The maximum fine is R120 000. A statute may provide for a maximum term of imprisonment more than three years for specific offences that are heard in the District Magistrates’ courts.

### Specialised Magistrates courts

There are a number of specialised courts located at the level of the Magistrates’ Courts that deal with certain types of matters. They are the children’s courts, commercial crime courts and SOCs.

### Specialised Commercial Crimes Courts (SCCCs)

The SCCCs operate at the level of the Regional courts. They hear commercial crime and organised commercial crime matters. The first SCCC was established in 2009. They have grown in number over the years and are now found in all nine regional divisions. A Regional Magistrate presides in the SCCC. Commercial and organised commercial crimes are investigated by the commercial branches of the South African Police Service (SAPS). These cases are prosecuted by the Specialised Commercial Crimes Unit of the NPA.

### Small Claims courts

Small Claims courts are established for a magisterial district. The court hears civil matters that arose in the magisterial district in which the Small Claims Court is situated. The maximum amount of a claim is R20 000. Natural persons are allowed to bring claims in the Small Claims

courts whilst businesses, for example companies, close corporations, solely owned businesses and partnerships, are not permitted to do so. Claims may be brought against a business. A claim may not be brought against the State.

There is no Magistrate or Judge in the Small Claims Court. The presiding officer is a Commissioner who is usually a practicing advocate or an attorney. Commissioners are appointed by the Minister of Justice and Correctional Services. The commissioners render their services without any remuneration. Legal representation is not permitted during the proceedings in the court. The proceedings in the court are different from a Magistrates' Court or the High Court. The Commissioner asks each party questions to determine what transpired in the case.

Some types of matters that the Small Claims courts do not hear are divorce, the validity or interpretation of a will, the mental status of a person, defamation, malicious prosecution, wrongful imprisonment and wrongful arrest. You can contact your nearest Small Claims Court through your nearest Magistrate's Court.

### Equality courts

Equality courts have been established to help someone who believes that they have suffered unfair discrimination, hate speech or harassment. The Equality courts were extended to the Magistrates' courts primarily to bring access to justice to the marginalized and vulnerable citizens to assert their rights. Anyone can take a case to the Equality Court, even if you are not directly involved in what happened. This means a complaint to the court can be made against someone or an organisation you believe have failed to respect the rights of another person.

Proceedings in the High courts are costly for most people, however in the Equality courts, legal representation is not a prerequisite and there are no cost incurred when lodging a complaint, thus making it easy to access. In terms of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, the South African Human Rights Commission and Commission on Gender Equality are mandated to assist complainants in taking their matters to the Equality courts.

### Maintenance courts

A Maintenance Court is not a specialised court per se. A very high number of maintenance applications are heard in the maintenance courts. The court is located at each Magistrate's Court. A Maintenance Officer oversees the maintenance matter. The Maintenance Officer assists with application for child maintenance. Maintenance is at the request of the biological or legal guardian of the child. The maintenance sum received by the guardian is for the upkeep of the child. A child's upkeep is not limited to groceries but encompasses all the necessary needs of the child.

A maintenance defendant is legally obliged to maintain a child. Paternity is proved through DNA testing. The amount that is necessary for the maintenance of a child differs from one family to the next in line with their living standards. The amount that the defendant can afford is important. The say so of a defendant and claimant about their income and the needs of a child does not suffice. Each party must provide proof of their earnings and expenses.

Once a matter is in the maintenance court, if the defendant agrees to pay maintenance and both the defendant and the guardian of the child agree on an amount of the maintenance, then the maintenance officer will request the Magistrate to make the offer an order of court. This removes the need for a drawn-out trial and streamlines the court process. If no agreement on the amount is reached or the defendant refuses to make an offer acceptable to the guardian of the child, then the maintenance officer will request the Magistrate to conduct a trial. In such an instance the Magistrate will consider all the financial circumstances and make an order for maintenance.

Legal representation is allowed. The proceedings are recorded but conducted informally due to the nature of maintenance matters. The Magistrate can ask many questions. Maintenance courts aim to ensure that those who have a duty to maintain minors are held accountable. A person may be criminally charged for a deliberate failure to pay maintenance that arose from a court order. The court must first establish that there was a deliberate default.

If, for example, the debtor was not earning an income because he/she was unemployed during a particular time when he/she was liable to pay maintenance, then it cannot be said that the failure to pay was deliberate. If a debtor is found guilty of failure to pay maintenance, the person has a criminal conviction. Apart from a criminal prosecution, the debtor's property may be attached and sold by the Sherriff in civil proceedings. A maintenance debt has the same effect as a civil debt. A maintenance debt is enforceable. A debtor's pension, annuity, gratuity, emoluments or debt owing to the maintenance debtor may also be attached.

### Sexual Offences courts

To combat sexual violence, especially against women and children, the DOJ&CD reintroduced the SOC's in the country with the aim to:

- reduce secondary victimisation often suffered by the victims when they engage with the criminal justice system, particularly the court system;
- reduce the turnaround time in the finalisation of these cases; and
- improve the conviction rate in sexual offence cases.

As of April 2022, 116 Regional courts were upgraded to SOC's. A SOC is defined as a regional court that deals exclusively with cases of sexual offences. A hybrid SOC is defined as a regional court dedicated for the adjudication of sexual offences cases in any specified area.

It is a court that is established to give priority to sexual offences cases, whilst permitted to deal with other cases.

### Children's courts

A Children's Court is a special court which deals with issues affecting children. Every Magistrate's Court in South Africa is a Children's Court. The children's court also takes care of children who need care and protection and makes decisions about children who are abandoned, neglected or abused. Any person/ child may approach the clerk of the children's court when he/she believes that a child may need care and protection. The Children's Court can place a child in safe care or refer the child and/or the parent to services that they may require.

### 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.

### National Register for Sex Offenders

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, creches 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 (NCPR)

The NCPR records vulnerable children, under the age of 18 years, who need care and protection. The register is maintained by a social worker within a local Department of Social Development and designated child protection organisations. Information contained in the NCPR is strictly confidential and can only be shared with those who form part of the child protection team such as a teacher, nurse, care giver, police officer and magistrate. According to Children's Act of 2005, the purpose of the register is to:

- have a record of abuse or deliberate neglect.
- inflicted on specific children.
- have a record of the circumstances surrounding the abuse or deliberate neglect inflicted on the children.
- use the information in the NCPR to protect these children from further abuse or neglect.

- monitor cases and services to such children.
- share information between professionals that are part of the child protection team.
- determine patterns and trends of abuse or deliberate neglect of children.
- use the information in the NCPR for planning and budgetary purposes to prevent the abuse and deliberate neglect of children and protect children on a national, provincial and municipal level.

### 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.

### 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, which works closely with the NPA, provides professional forensic investigating and litigation services to all state institutions at the national, provincial and local levels to combat

maladministration, corruption and fraud; and protects state assets and public funds. 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 purpose of the NPA is provide a coordinated prosecuting service that ensures that justice is delivered to victims of crime through general and specialised prosecutions. It also seeks to remove profit from crime and protect certain witnesses. The NPA structure includes the 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 (PCLU).

### **Office for Witness Protection (OWP)**

The OWP provides for temporary protection, support and related services to vulnerable and intimidated witnesses and related people in judicial proceedings in terms of the Witness Protection Act of 1998.

### **Asset Forfeiture Unit**

The AFU seizes assets acquired from the proceeds of crime or that have been part of an offence through criminal or civil processes. continues to play a critical part in addressing the scourge of corruption. 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 GBVF is the establishment of TCCs. The TCCs are one-stop facilities 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 to show empathy to victims of violent crime, especially in cases of sexual offences, child abuse and domestic violence. The TCC model aims to provide a more effective and victim-centric approach to reporting sexual offences. The fight against violent crime, particularly rape, has recently been undermined by the challenges around the management of forensic DNA due to shortages of essential chemicals required for DNA analysis. It resulted in a national backlog of these cases

being prosecuted in courts. As part of the interventions, the NPA established a partnership with the SAPS Forensic Sciences Laboratory to reduce the backlog in DNA processing.

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

The FCS units operate in all SAPS 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 of the Republic of South Africa of 1996 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.



### Correctional Services

The Department of Correctional Services (DCS) derives its mandate from the Criminal Procedure Act of 1977; the Correctional Services Act of 1998, as amended; the 2005 White Paper on Corrections; and the *2014 White Paper on Remand Detention Management in South Africa*.

This legislation allows the department to contribute to the preservation and promotion of a just, peaceful and safe society by ensuring that the corrections environment is secure, safe and humane, and that offenders are optimally rehabilitated to reduce their likelihood of reoffending.

The department is committed to creating safe, secure and dignified conditions for inmates and department personnel, and ensuring that the public is safe. To this end, the department carries out activities involving security operations, the provision and maintenance of appropriate facilities, remand detention, offender management, the proper administration and profiling of inmates, and the consideration of offenders for release or placement into the system of community corrections.

Over the medium term, the DCS aimed to focus on providing effective rehabilitation for sentenced offenders through rehabilitation programmes and interventions; and building safety by reintegrating offenders into the community as law-abiding citizens.

### Providing effective rehabilitation for sentenced offenders

Over the next three years, the department aimed to ensure that all sentenced offenders are provided with effective rehabilitation programmes to enable their successful reintegration into society once they are released. This will be done by improving their life skills through correctional programmes that target offending behaviour and investing in their personal development by providing literacy, education and skills competency programmes during their incarceration.

### Reintegrating offenders into society

For the successful reintegration of offenders into society, all parole considerations should include victim participation to provide a platform for dialogue between offenders and victims, thereby contributing to healing and restoration. As such, over the medium-term period, the department planned to increase the number of victims participating in dialogues and other restorative justice programmes from 4 700 in 2023/24 to 6 500 in 2026/27.

In its efforts to enable the effective reintegration of offenders into society, the department also provides aftercare support through the facilitation of programmes that seek to help parolees and former offenders to be self-sufficient.

### Other role players

#### 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 regarding those sentenced to life imprisonment. In such cases, recommendations are submitted to the courts that in turn will decide 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.