

THE CRIMINAL JUSTICE SYSTEM AND YOU

*A GUIDE TO THE SOUTH AFRICAN
CRIMINAL JUSTICE SYSTEM FOR
REFUGEES AND MIGRANTS*



A PUBLICATION PRODUCED BY



Independent Projects Trust

"Closing the gap between policy and practice"

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ABOUT IPT

Founded in 1990, IPT is a non governmental organisation whose mission is to close the gap between policy and practice in the South African Public Service.

For the past four years IPT has been funded by The Atlantic Philanthropies to improve the level of service to refugees and migrants. During this time our experience has made us aware of the confusion, and often fear, experienced by refugees when they interact with the South African system and this is never more pronounced than when they interact with the Criminal Justice System. Penalties can be harsh, language is often confusing and the process often baffles South African nationals.

There is also the perception that foreign nationals are not treated fairly once in the Criminal Justice System, this despite the fact that the South African Constitution guarantees everyone in South Africa the same Constitutional rights.

It is IPT's hope that by preparing and circulating this guide we will help to assist refugees who find themselves interacting with the Criminal Justice System to understand the process of a case better, keep their own accurate records of the people they interact with and, with this increased knowledge, we trust that individuals will have the confidence to interact with the system more effectively should they find themselves in conflict with the law, or as a witness or complainant in a case.

We have tried to make the guide simple and so have not included many of the fine technical points of law along the way, for the purpose of the guide is to assist people to know what's going on, which reference numbers are key to keep in their own records, and how important it is to retain the name of the Investigating Officer, the Prosecutor, the confusing Case and CAS numbers and other vital information.

All references to the male gender hereafter include the female gender as well and are only used for convenience purposes!

We hope this guide serves the purpose and would be grateful for feedback to glendac@iafrica.com. We will use feedback to guide us as we revise the guide.

GLOSSARY OF TERMS

Accused

The person / s charged with the crime

Advocate

An attorney specializing on court litigation

Appeal

To request that a superior court review the decision in a case

Attorney

A qualified attorney who will handle legal issues, including those in court, on behalf of any person

Bail

A sum of money deposited to secure an accused person's release from custody in order to guarantee that the person appears at court at a later date

Bar Council

The governing body of advocates

Complainant

The person who lodges the complaint with the police

Court Roll

The order of cases for court for a specific day

Docket

A file containing all the evidence of a criminal case compiled by the police

Judiciary

The country's body of judges and magistrates

Litigate

To be actively involved in a court case representing one of the parties

Oath

A legally binding promise to tell the truth

Statement

An account of the facts relating to the crime

Subpoena

A written legal document calling a witness to attend court

Summons

Is a specific demand for an accused person to appear at court on a specific day at a stated time

Trial

The process of hearing evidence and legal argument in a court case

Verdict

The finding of a court at the end of the trial

Victim

The person who has been hurt or affected by the crime or the person who has suffered loss

Warrant of Arrest

Written authorization for the arrest of a person

Witness

The person who saw the crime or a criminal act being committed or who can provide other evidence to prove the crime

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Crime is a constant and increasing blot on the landscape of the relatively new South African democracy. It affects all sectors of society and does not discriminate on grounds of race, gender, religion, political affiliation or economic status. Anyone who lives in South Africa has a fairly reasonable chance of having to interact, at some time, with the Criminal Justice System, either as a victim or witness, or maybe even as an accused person.

South Africa has a relatively well developed and modern criminal justice system which draws its roots from a blend of Roman Dutch and English law and has, over the years, drawn and borrowed from a variety of respected international legal systems. The Constitution (Act No 108 of 1996), the foundation upon which our criminal justice system rests, was designed to provide a system of human rights either not previously available to all citizens or not entrenched in law.

It sets the core values upon which the system is based and guides our courts in interpreting and implementing laws. The Constitution has been criticised for being unfairly biased and protecting the offender at the cost of the victim. Whilst accused persons certainly do enjoy specific rights, the Constitution seeks to protect all persons within the Republic. An integral part of the Constitution is the Bill of Rights which seeks to protect the individual against the abuse of power held by the State.

Key Protections include :

• ***Freedom and Security of the Person (Section 12)***

This includes the Right not to be detained without trial and not to be punished in a cruel or degrading way

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- ***Privacy (Section 14)***

This includes the Right not to have your person or home searched, your property seized and your communications intercepted

- ***Access to Information (Section 32)***

Persons have the Right to access information held by the State

- ***Arrested, Detained and Accused Persons (Section 35)***

There are a number of rights dealing with the various stages of the Criminal Justice System. Without listing all of them, they include the right to remain silent; have legal representation; to communicate with your spouse, partner or doctor etc; to a public trial; to a speedy trial; and to present and challenge evidence

- ***Enforcement of Rights (Section 38)***

This includes the right to approach the Court for relief when a right is being infringed

It is important to note that every right listed can be limited. If a law allows the police or courts to do something seemingly in conflict with a right then they will normally be entitled to so act. For instance, despite the right not to have your home searched and possessions seized, the police are fully entitled to do so in accordance with Sections 20 – 26 of the Criminal Procedure Act. In the same way, while citizens can enforce their right to access to information, persons will not be entitled to sensitive and secret State information. So a balance always has to be struck between combating crime and protecting a person's individual rights.

The Criminal Procedure Act (No 51 of 1977), mentioned above, also plays an important role in criminal trials as it guides and determines every process in it. Aspects of this will be referred to later in this guide.

*You can find out more
about the Criminal
Procedure Act at
www.justice.gov.za*

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Besides the various rights enjoyed by people who interact with the system, people are also entitled to proper service. Government departments ascribe to a principle called 'Batho Pele' which, loosely translated, means 'People First', and is a code of conduct which requires public officials to provide a service which is efficient, timeous and user friendly.

Unfortunately many government offices are plagued by poor service delivery and no attention is paid to the Batho Pele principle.

In addition, the Public Protector has a role as a last resort should your complaint not be addressed at any other level.

The Eight Principles of Batho Pele are explained at www.etu.org.za/toolbox/docs/govern/bathopele.html

Information about how to complain to the Public Protector can be found at www.pprotect.org/lodge_complaint/process_overview.asp

THE SOUTH AFRICAN COURTS

South African criminal courts operate on an adversarial system which means that there will always be two opposing parties litigating, with the magistrate or judge sitting as neutral arbitrator or umpire. The District and Regional courts are presided over by Magistrates and the High Courts by Judges. District and Regional Courts are where most cases are heard, so we have begun with these lower courts.

District Courts

District Courts are the lowest courts and hear less serious cases, for example drug cases, theft, drunken driving and/or assault. These courts may impose a maximum sentence of 3 years imprisonment or R 60 000 fine per count (unless a specific law says otherwise). They can also only hear cases within the local magistrates' jurisdiction, usually within the geographical boundaries of the local city or town.

Regional Courts

These courts hear more serious cases such as Rape, Robbery, Housebreaking, Kidnapping and Corruption. These courts may impose a maximum sentence of up to 15 years imprisonment or R300 000 fine per count. Their geographic jurisdiction is usually limited to the province in which they are situated and / or in which the crime was committed.

The High Courts

The High Courts hear only very serious cases such as pre-meditated murder, serial crimes, serious commercial crimes and politically motivated serious crime. They have no limits regarding sentence and can hear a case from anywhere in South Africa but for practical purposes tend to only hear those within their provincial jurisdiction.

JUSTICE SYSTEM ROLE PLAYERS

Whilst a number of people and organisations fulfil functions in the criminal justice system, the major role players are the Judiciary, the National Prosecuting Authority, the South African Police Force and the various Legal Representatives.

1) Judiciary

The Judiciary refers to judges and magistrates who are the independent and neutral parties who preside over criminal and civil trials. They have no prior knowledge of the facts or evidence of the cases and have no allegiance to the State or any other body. The general public have no direct access to the judge or magistrate in respect of a criminal case.

2) National Prosecuting Authority (NPA)

The Constitution and the NPA Act provide the prosecuting authority with the power to institute criminal proceedings on behalf of the State and to perform the necessary tasks in support of this function. This includes supporting the investigation of a case, or discontinuing criminal proceedings where necessary. Unlike many other countries in which there is an obligation to prosecute once a case has been made, in South Africa the NPA has the discretionary power to decide whether to prosecute or not.

The NPA falls under the Department of Justice but also has its own independence. It is headed by the National Director of Public Prosecutions and each province has its own Director of Public Prosecutions who is responsible for the management of prosecutions in their own particular province. Most local offices will have a Senior Public Prosecutor or a Control Prosecutor in charge of that office. The prosecutor is the attorney for the State and represents the victim or claimant in criminal cases.

3) South African Police Force

Whilst there are a number of law enforcement agencies, it is the SAPF (until recently referred to as the South African Police Service) that is largely responsible for the prevention, detection and investigation of crime. They have a number of different units but the public will generally encounter either the uniform branch or the detective branch. Uniform members are in attendance at police stations, they do patrols and have crime prevention duties as well as police station duties. The detectives investigate crimes once they have been reported and gather evidence for prosecution purposes. The SAPF has recently re-introduced a military style rank structure. Each police station is headed by a Station Commissioner whilst the detectives have a Branch Commander as their supervisor.

4) Legal Representatives

Legal Representatives are comprised of advocates and attorneys. Advocates are specialist attorneys who litigate in the High Court and are briefed by attorneys where the case is more difficult or serious. They are bound by their professional rules and are accountable to their local Bar Council. Advocates can appear in any court, while attorneys may be heard in all of the country's lower courts and can also acquire the right of appearance in the superior courts.

Attorneys are the legal representatives who appear on behalf of accused persons. They are bound by the rules of their profession and are accountable to their local Law Society. Attorneys often specialise in different fields of law and, like other professions, will have different fee structures. The cost of engaging an attorney's services should be investigated carefully before making any commitment to retaining their services.

In criminal cases where the accused cannot afford private representation this can be provided by Legal Aid South Africa, a State agency which provides free legal services to those that

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cannot afford attorneys. There are, however, certain criteria in determining who qualifies for their free service. Every court should have a legal aid office where enquiries can be made and their website is (www.legal-aid.co.za)

Other role players encountered in Court will be the Clerk of Court who is responsible for the administrative side of running the court, the Interpreter who provides translation services to those who do not speak either English or Afrikaans as their mother tongue and the Court Orderly who is a police officer assigned to keep good order and security in the courtroom.

THE CRIMINAL JUSTICE PROCESS

The criminal justice process begins when a crime is committed and is either discovered by the police, or a charge is laid by a complainant.

Becoming the victim of a crime can be a very traumatic experience. Having to then deal with the system can also be a troublesome and frustrating task and having some knowledge of what to expect we hope will greatly alleviate additional trauma. With this in mind we will deal with it under three headings, The Complainant, The Witness and The Accused

THE COMPLAINANT

Laying the Charge

The first thing a victim of crime (called a complainant by the legal system) needs to do if a crime has been committed against them is to contact the police. This can be done in one of two ways, either by the complainant going to the police station or meeting the police at the scene of crime. An example of the police attending would be when there has been a burglary (housebreaking), a car accident or an incident of violence and the police have been called to the scene either by the complainant or some other party.

If the complainant is injured, not sober or in a state of shock (or all of these!) then the complainant's condition should be attended to before any legal steps (as detailed below) will be undertaken. While a crime can be reported at any police station, it is advisable to go to the station in the area where the crime was committed, as that station that will be tasked to investigate the case.

The first step that is taken in opening any case is for a statement to be taken by the police. This statement is a very important part of the process as it may influence the process later on. The complainant should not make any statement unless he/she is fit

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and ready to do so. This is especially so for the situations described in the above paragraph. If the complainant has gone to the police station to open a case they should make sure they are well prepared by having all possible documents or evidence relevant to the crime available.

It would be advisable at this point for the complainant to obtain a file, or large envelope, and keep all documents relating to the complaint in one place, and in date order.

Once at the police station, the statement will probably be taken by a police officer who will ask the complainant to relate his story, or version of events, to him. The complainant should keep a record of the name of the police officer who takes the initial statement. The complainant is entitled to the services of an interpreter if he is not fully comfortable in English and the police should source not only local language interpreters but also foreign languages if needed.

It is important to give all details relevant to what happened to the police officer, and to listen carefully to questions being asked by the officer. Once the officer has finished writing the statement, he will administer an oath to the complainant confirming that the truth has been told and accurately recorded. After that the complainant will be asked to sign the statement. It is most important for the complainant to read the statement carefully or have it read (and translated) back so that he fully understands and accepts what has been written down before signing the document. If something is not correct it should be rectified before signing. The complainant will be held to this statement and it will be the basis of possible future court proceedings. It is for these reasons that great care should be taken in the process of statement taking. The complainant is entitled to have his statement taken by his own legal representative or even private investigator beforehand but this will involve personal cost to the complainant.

The Investigation

From this point onwards the situation is handled by the South African Police Force, who will open a docket. The docket is basically a file in which all the evidence gathered, including the complainant's statement. This file is prepared for onward submission to the prosecutor. This docket will be assigned to a specific Investigating Officer (I/O) from the detective branch and will be allocated a specific reference number called a CAS number. This is not to be confused with a case number which is allocated by the court when the case is enrolled there.

It is important for the complainant to carefully retain this CAS number in his own file and it is usually sent to the complainant's cellphone by sms. It is vitally important to keep this number as it is this number which the police will use to track and trace the docket on its journey through the system. It will also be important to keep the Investigating Officer's (I/O) name and contact number as well as this will be the complainant's contact person until the case gets to court.

The I/O's function from here is to collect the necessary and available evidence for the prosecutor. The I/O may ask the complainant's assistance here for names of other witnesses, whereabouts of evidence and again the complainant should keep a record of all information supplied in their own file.

Prosecuting The Case

The prosecutor becomes involved in a case when presented with a crime docket by the SAPF. By this time the police should have investigated the crime sufficiently to link a suspect to the offence. Once the suspect has been arrested and is in custody, the SAPF has a legal obligation to take the accused to a court within 48 hours of the arrest.

The accused will often be released on bail and be told to appear in court on a certain day and at a certain time.

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The complainant is usually not involved or consulted in this process at all. However whatever the result, it should be communicated to the complainant by the I/O and this is another good reason to keep in regular contact with the I/O.

The prosecutor is a public official and so the complainant should have access to him. The complainant has a right to information and reasons for decisions made regarding the case and may approach the prosecutor for such information. If the complainant does not know which prosecutor is dealing with his case then he should approach the Control Prosecutor or Senior Public Prosecutor for assistance. In seeking such assistance, as much information as possible relating to the case should be provided to the prosecutor, especially the CAS number and name of I/O.

The complainant should by now have a record of all this information and should keep it in a safe place.

Refer to the end of the Guide for a Checklist.

If the prosecutor is satisfied that there is sufficient evidence to prosecute then the case is put down for trial and a court date is scheduled on the court roll.

THE WITNESS

This section deals with witnesses who may have some evidence to provide. Bear in mind that the complainant may also be a witness.

If you are called as a witness the first thing that will happen is that you will receive a subpoena which will give you the date and time of the trial and the whereabouts of the trial. Should a witness have any problems with attendance or any queries about the trial he should contact the prosecutor named on the subpoena.

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Witnesses are entitled to be compensated for any travelling costs incurred beyond a certain distance from the court.

On the trial date the witness should approach the prosecutor of the case by no later than 08h30 that morning. Court is supposed to start at 09h00 and the prosecutor may need some time to discuss the case with his witnesses. Before the trial starts the witness will be entitled to consult with the prosecutor about the evidence and to read his police statement to refresh his memory. Once the trial starts the witness will not be able to discuss the case with the prosecutor so all queries regarding the case and the trial should be dealt with at this consultation and before the trial.

During the trial the witness will be called into court to testify and this may happen over several different trial dates. If the witness does not fully understand the language of the court he will be entitled to the services of an interpreter. Foreign interpreters will have to be arranged beforehand as they will not be readily available on every day at court. The witness should listen carefully to all questions asked of him in court and answer all to the best of his ability. He should at all times try to remain calm and respectful. A magistrate is addressed as 'Your Worship' and a judge as 'My Lord/Lady'. But 'Sir' or 'Madam' is quite acceptable if these terms cannot be remembered.

The witness will also be cross examined by the defence counsel and, because our system is adversarial, it can be expected that there will be an effort to test the testimony of the witness under cross examination. Once the witness has finished testifying he will be excused and may leave the court. However if he wishes to hear the rest of the trial he may do so from the public gallery. Once all the evidence has been heard and the evidence is completed the magistrate or judge will make a finding as to whether the accused is guilty or not of the charges laid against him by the prosecutor. If the accused is found guilty then the court will pass sentence on him.

THE ACCUSED

If you are the accused in a criminal case, you must remember that the South African system presumes every accused person innocent until proven guilty. It is this core value that underpins our South African Justice system. It is for this reason that our Constitution seeks to protect those who find themselves on the wrong side of the law and to protect them against any abuse of power vested in those agencies that seek to uphold the law.

However that certainly does not mean that guilty persons should walk free or that there should be a soft approach when a crime has been committed. A balance between the rights of society to punish those who transgress the law, and the rights of those who are deemed to have broken society's laws, has to be maintained. An accused person will either be brought before a criminal court after being arrested by the police or by being issued with a summons to appear by the Clerk of Court. A summons is an official document containing information about the time, date and venue where the accused must appear as well as the charge and police CAS reference. A summons must be personally delivered to the physical address of the accused and someone will be required to sign for it. Failure to comply with a duly served summons will result in a warrant of arrest being issued by the court and the accused may then be brought before court in custody.

However if an accused person is in custody he may only be detained for a maximum of 48 hours before being brought before a court. If a weekend or public holiday falls in that period then he must appear on the court day immediately following. Once the accused appears before court the magistrate will explain his Constitutional Rights which, at that point, will include his right to have a legal representative as well as his right to apply for bail.

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As far as legal representation goes the accused may choose his own attorney or, if his income is below a certain bracket, he may qualify for Legal Aid and the State will provide him with an attorney. He may also decline to have any legal representative and speak for himself. Whilst the magistrate or judge will assist him in all the legal proceedings if he has no attorney, it is risky to have no legal representative and is not advised.

Although the prosecutor is an adversary or opponent to the accused, the accused nevertheless also enjoys access to him in the sense that he would be entitled to ask for copies of the evidence in order to discuss the case and he can also make representations. An example of this would be where the prosecution and defence team engage in a pre-trial conference where issues of the trial are discussed.

In exercising his Constitutional rights the accused is entitled to know what evidence the prosecution will be presenting against him in the trial. This is usually done by the prosecution handing him copies of the statements in the police docket. He is also entitled to a copy of the charge sheet so that he knows what charges he is facing.

The accused must carefully consider whether to plead "guilty" or "not guilty". Pleading guilty brings with it its own benefits in that the court will probably pass a more lenient sentence if genuine remorse is shown. It will also cut down the delay in finalising the case, thus saving the accused both time and money. The accused is also entitled to plea bargain with the prosecution and this brings more benefit to the accused as he will be able to negotiate with the prosecutor and will have a clearer picture of the outcome.

However the accused is entitled to dispute any, or all, of the charges the prosecution levy against him. There are a number of rights that protect his interests during the trial, including his right to remain silent, to present and challenge evidence and to a

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public trial. If the accused informs the court that he intends to plead “not guilty” the matter will then be set down for trial where both parties will be afforded the opportunity to present evidence in their case. The complexity of the case and the backlog in that particular court will determine the remand date for that trial. The length of delay can be anywhere from one to 15 months (or more) depending on various factors.

It should be noted that foreigners are entitled to the same minimum legal rights as other detained persons (including arrested persons) as guaranteed by Section 35 of the Constitution.

The NPA has a target of six months for the finalisation of a case in the district court and nine months for a case in the regional court. However many cases take much longer than the target times and cases can be postponed for a number of reasons but ultimately a date will have to be set for trial. The accused may also elect to plead guilty and the case is often then disposed of without any involvement or consultation with the complainant (unless he is present on his own accord or has been requested to be at court)

Some of the factors which contribute to delays in the trial process include incomplete and outstanding investigations; dockets being unavailable; unavailability of forensic laboratory and pathology reports; unavailability of legal aid (for an accused who cannot afford a attorney); Interpreters not being available and witnesses, complainants and even the accused not being present. In the case of the accused this may be because they absconded when on bail or because they arrived late from Detention Facilities.

If the accused is pleading not guilty and a trial date is set then all witnesses to the offence (including the complainant) will be issued with a subpoena to attend by the court. This subpoena is usually delivered by the I/O who will require the witness to sign for it.

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It is important to note that this subpoena is a legally binding document and there are serious consequences for not complying with it. It also contains important information about the case including the date and venue of trial, the name of the accused, the name of the prosecutor and CAS number. The complainant should include these details in their file. The interests of the victim play an important role in the court and the court may well ask the victim to assist with extra evidence in order to increase the sentence. A victim who has suffered economic loss from the crime in question may also be ordered compensation as part of the evidence.

If the victim is dissatisfied with the outcome of the case he should discuss this with the prosecutor concerned. Sometimes the public do not understand legal issues and verdicts can be misunderstood. The prosecutor should explain these issues and advise on the prospects of appeal.

Another means of dealing with the case is by Alternate Dispute Resolution (ADR). This basically involves the accused and complainant deciding on a mutually acceptable outcome facilitated by a neutral party (usually the Prosecutor). The ADR process is usually reserved for less serious cases such as assault, malicious damage to property, negligent driving and less serious theft cases, although it has also been used for more serious cases.

The victim is not obliged to participate in the ADR process and can insist on the matter being dealt with by the Court. However the main advantage of the victim's participation is that the case will be resolved quickly and the complainant will have a "say" (or more impact) in the outcome. Typical methods of resolving such cases can be a formal apology, compensation or community service. This is a more formal process, does not involve court and is usually done in private in the prosecutor's office. If there is no mutual agreement then the case will go to trial in the ordinary way.

BAIL

Bail is a very misunderstood concept. Bail does not mean the person has been let off; also it is not a sentence but rather a method of ensuring that person's attendance at Court.

If an accused has been arrested for a crime he may be released on warning by the police before appearing in court but this is only possible for certain less serious offences. If this does not happen, bail proceedings take place at a hearing to

decide whether or not bail is to be granted and to determine the conditions of bail. There are other categories of offence where the police can ask a prosecutor to consider bail after official court hours, and an accused person who has been arrested should ask the police to assist him with these queries.

The mere fact that the accused is charged with a serious offence is not a reason in itself to refuse bail. In most offences, the prosecution will have to show to the court that there are valid grounds for the court to deny bail. These may include that the accused is a flight risk, will interfere with witnesses or destroy evidence or will become a danger to the public if released. Just like every application in Court the prosecution and the accused are entitled to present evidence, challenge evidence and argue for the granting, or refusal, of bail. In some categories of more serious offences, the law has placed an onus on the accused, making it more difficult to obtain bail. A person who is given bail is not "let off" as they will still be expected to appear before the

Bail is a legal mechanism used in order that accused person can be released from detention prior to his case being concluded, so long as certain conditions are met. These conditions are meant to ensure that the accused returns to court and does not run away. It usually involves paying a certain Rand amount as security, as well as the requirement to report to the police on regular basis or the surrender of travel documents like a passport.

court on the date set for trial.

Bail applications are given priority by the Courts as they are of an urgent nature for the liberty of the accused will be at stake. If bail is refused, the accused will remain in custody until the completion of the case. If bail is granted then the accused will have to pay the stipulated bail money over to the Clerk of Court before he can be released. This money is held as security until the completion of the case when it is refunded to the accused. However if the accused fails to adhere to the conditions of bail then a warrant may be issued for his arrest, the bail cancelled and his bail money forfeited to the State and he will be held in detention until the end of the case.

TRIAL AND SENTENCING

The trial will begin by the prosecutor reading out the charges to the accused who will be required to plead to them. The accused is entitled at this stage to tell the court what the basis of his defence will be. After that the prosecution will present its case by calling its witnesses. Every witness called by the prosecutor is entitled to be cross-examined by the accused or his legal representative. Once the prosecutor has closed his case the accused can decide to give evidence himself, call witnesses in his defence or remain silent. Any witness called by the defence is also open to be cross-examined by the prosecutor. Once the defence has closed its case, then both the prosecutor and defence are entitled to present argument as to why the accused should, or shouldn't, be convicted.

The Court (magistrate or judge) will then pass judgement, summarising and analysing the evidence and then finding the accused guilty or not guilty. If the accused has been found guilty then the court must consider an appropriate sentence. Again both parties are entitled to present argument or evidence in mitigation and / or aggravation of sentence. The court generally has a very broad discretion in what sentences to pass and can take into account a number of factors. Sentences can include imprisonment, a fine, a suspended sentence, correctional supervision, community service or a combination of sentences. If the accused is aware that a fine may be imposed, he would be advised to bring money to court because if the fine is not paid, then the accused will have to go to prison. However he will have his bail money refunded to him at this stage which can also be utilised to pay a fine or part of it.

As discussed previously the ADR process is another method the accused can engage in to finalise the case. For the accused to qualify for the ADR process he will have to take responsibility for his actions, in other words he will have to acknowledge his guilt. The benefit is the chance to participate in the outcome and most importantly, the charges will be withdrawn once the ADR process is finalised and so the accused will not get a criminal record.

A magistrate cannot sentence a foreign national to deportation as punishment for a criminal offence committed in South Africa as this is not a prescribed sentence in a Criminal Court and this aspect is in the domain of Home Affairs.

Deportation is a separate process and only if the crime implicates National Security or public order may it then impact on status. In such a case only the Minister may order the removal of a refugee from the Republic (section 28 of Refugees Act) It is important to remember that if a person breaks the law they will be charged criminally in the same way as a South African national, regardless of refugee or asylum status.

CHILDREN IN THE SYSTEM

The law regards any person under the age of 18 years as a child. South African law is very sensitive to youths and the criminal justice system in particular seeks to protect their interests. In fact an entire Act (the Child Justice Act) has been passed specifically with this in mind.

Firstly, as offenders, children receive extra and different protection from adult offenders. Their trials are held privately out of the public eye and the child is entitled to the assistance of their parent or guardian. Keeping a child in custody or sentencing one to imprisonment should be used only as a last resort. At the time of arrest the police have 48 hours to contact a probation officer who must conduct an assessment. Children who are kept in custody have to appear in a Child Justice Court with this assessment within the same 48 hours.

A child witness or complainant should be treated with sensitivity and intermediaries may be used when the child witness has to give evidence. The child witness may also testify without being in the presence of the accused. Cases in which children are involved are also generally given preference over other cases.

Where a child is arrested and then found to be in need of care the provisions of the Children's Act apply to both children from South Africa and foreign children, whether they have documents or not. So foreign children enjoy the same protection as offered to South African children.

*More information on both
the Child Justice Act and the
Children's Act can be found at
www.doj.gov.za*

APPEALS

One of the hallmarks of our judicial system is its process of appeal. Decisions in lower courts are not cast in stone and dissatisfied parties may take the matter on appeal. In essence this means that a higher court is asked to assess and check the correctness of the lower court's decision.

This is available to all accused persons who may be dissatisfied with either their verdict, or their sentence, or both. However before an appeal is instituted the accused (or his legal representative) must show to the appeal court that there are valid grounds that an appeal court may consider in granting the appeal. This is called Leave to Appeal. Since these grounds would involve some legal aspects it would be advisable for a legal representative to pursue this course of action, as the appeal hearing may only be heard some time in the future, the accused is entitled to re-apply for bail pending his appeal hearing.

The other party to criminal trials is the State and they have a right to appeal decisions that they are not satisfied with. The complainant though does not have any direct right to appeal as only the prosecutor representing the State may take this decision. As mentioned above, the complainant should rather seek a consultation with the prosecutor so that this issue can be discussed and the prosecutor can explain what grounds may exist (or not) and the likelihood of success. The criteria for the State to appeal are much stricter than that for accused persons and State appeals are not as common.

CONCLUSION

The South African Government recognises that large numbers of the population are indigent and do not have access to money for legal purposes. They have thus made great strides in trying to ensure proper access to the criminal justice system for all citizens. Despite this access, interacting with the system still remains a daunting task.

All the same it is possible to do so in a more effective manner if one has some idea of how the system works, who are the roleplayers and what can be expected from them. Having a legal representative is undoubtedly an advantage, but is not absolutely necessary for a successful intervention.

What has been provided in this guide serves only as a basic summary and could never cover the entire justice system which has many facets and sectors too great to include in this short work. Even the topics included here are of a general nature and there is obviously much more detail to each one. The law is a massive field and volumes on each topic fill most law libraries.

The criminal justice system is an essential service available to all people within the Republic. The public can rightfully expect and demand proper service from a system designed to ensure "Justice for All". Far too many people accept poor service as they know no different. Ignorance too breeds unrealistic expectations, so having some insight and a level headed approach will go a long way to reducing the frustrations of interacting with this system.

CHECK LIST FOR YOUR FILE

| DETAIL | INFORMATION |
|---|--------------------|
| Date of Incident | |
| The Police Station at which it was reported | |
| The date and time of the report | |
| The name of the Police Officer who took the statement | |
| The CAS number | |
| The name of the I/O and his contact number | |
| The case number | |
| The name of the prosecutor involved | |
| The court dates | |
| The names and contact numbers of witnesses | |

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Crime is a constant and increasing blot on the landscape of the relatively new South African democracy. It affects all sectors of society and does not discriminate on grounds of race, gender, religion, political affiliation or economic status. Anyone who lives in South Africa has a fairly reasonable chance of having to interact, at some time, with the Criminal Justice System, either as a victim or witness, or maybe even as an accused person and we hope this guide will assist those who use it.



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