

# FACTSHEET

## South Africa – Criminal Justice System

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**The aim of this factsheet is to provide an insight into the South African legal system. This factsheet is intended for guidance only, and is not designed to replace advice from a legal expert. If you require any further explanation or clarification, please seek advice from a lawyer or contact Prisoners Abroad.**

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### **1 How long can I be held without charge?**

Following arrest, you should be brought to court within 48 hours. If the period of 48 hours expires after 16:00 on an ordinary court day, or on a weekend or public holiday, this period is extended to 16:00 on the next ordinary court day. At this court appearance you should be charged, informed of the reasons for continued detention, or released.

### **2 How long can I be held on remand?**

It is difficult to give an exact time period within which time a case will come to trial as it will depend on how long it takes to finalise investigations. Any case should, however, be brought to trial and conclude without any unreasonable delay as there is a Constitutional right to a speedy trial. If you feel that a case is being delayed unnecessarily you may object to the Magistrate against further remand.

### **3 What type of legal assistance is available?**

You have the right to see a lawyer from the moment you are arrested. If you cannot afford a lawyer and have been accused in a serious criminal case, you will be entitled to receive a State appointed lawyer free of charge. The Magistrate must inform the accused person of his or her right to legal aid.

#### **4 Will I have an interpreter?**

You do not have the right to have your trial conducted in a language of your choice. However, you do have the right to have proceedings translated for you if you do not understand the language of the court.

#### **5 Can I apply for bail?**

It is possible to apply for bail but interests of justice will prevent bail being granted where, e.g., there is a likelihood that you will attempt to evade trial, interfere with witnesses, commit further crimes or be a danger to others. If you have been arrested on charge of a very serious offence (e.g. murder, rape or armed robbery), you will need to show that exceptional circumstances exist before bail is granted.

#### **6 What is the trial process?**

The trial system is based mainly on the English system, with some important differences. After arraignment, the accused will be asked to plead guilty or not guilty to the charges. Trial is before a magistrate, regional magistrate or judge, with or without assessors. There are no juries. If a plea of not guilty is entered, the trial will proceed. The State will have the opportunity to put their case. The accused may be discharged at the close of the case for the State. If that does not happen, the trial will proceed and the accused will have the opportunity to state his or her defence. The State is required to prove its case beyond reasonable doubt. The court should deliver its verdict as soon as possible.

#### **7 How do I appeal the conviction/sentence?**

There is a Constitutional right to appeal and review. However, leave to appeal is still required. If you wish to appeal the decision of a Magistrate's Court, you must request leave to appeal from that Court within 14 days. If this is not granted, you may apply for leave to appeal directly from the High Court. If you wish to appeal a High Court decision, leave to appeal must be granted either from the High Court or, failing that, directly from the Supreme Court of Appeal.

A higher court can also be used for a Review if you believe proceedings have been unfair or irregular. In certain circumstances, a Review is automatic but in others you must request a Review yourself. You should check how your case will be handled with your legal representative.

#### **8 When will I be eligible for release?**

If you have served more than half your sentence and have a record of good behaviour in prison, you may be released on parole.

## **9 Will I face any financial penalties?**

It is within the sentencing discretion of the court to impose fines - either as an alternative or together with imprisonment. Fines are often imposed for smaller offences.

## **10 Could I apply for clemency or pardon?**

The President retains the right to extend mercy to you, or to grant you a pardon. It is advisable to address a clemency petition to the President for this purpose.

## **11 Is it possible to transfer to a prison in the UK?**

There is no Prisoner Transfer Agreement between South Africa and the UK so it is not possible to transfer to serve your sentence in a UK prison.

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If you spot any errors or inaccuracies in this factsheet please let us know by emailing [info@prisonersabroad.org.uk](mailto:info@prisonersabroad.org.uk). Thank you.

If you require this leaflet in a large print format, please contact us. Our details are below.

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