

**Directives issued in terms of section 105A(11) of the
*Criminal Procedure Act, 1977 (Act No. 51 of 1977)***

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SECTION 105A PLEA AND SENTENCE AGREEMENTS

I, MENZI SIMELANE, National Director of Public Prosecutions, hereby in terms of Section 104A(11) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), withdraw all directives previously issued in terms of said section and issue the following directives to be observed in the application of the said section.

1. The following directives are issued pursuant to section 105A(11) of the *Criminal Procedure Act, 1977 (Act No. 51 of 1977)*. These directives, and any amendment or withdrawal thereof, are required to be submitted to Parliament, before they take effect¹.
2. The procedure enacted in section 105A of the *Criminal Procedure Act, 1977* does not supplant the standard procedure for pleas of guilty in terms of section 112 of the Act. The established practice of accepting pleas of guilty on the basis of *bona fide* consensus reached, remains applicable. Section 105A of the Act is a complementary disposal mechanism.
3. Section 105A of the Act is to be utilized for those matters of some substance, the disposal of which will actually serve the purpose of decongesting or reducing the court rolls without sacrificing the demands of justice and/or the public interest.
4. Negotiating a plea and sentence agreement is not meant to bargain away a sentence of imprisonment for a non-custodial sentence. Where justice and/or public interest require(s) a custodial sentence, this must be adhered to.
5. The established principle, in terms of which a prosecutor has discretion to decide whether or not to consider accepting a plea of guilty on the main charge, alternative charge or competent charge, still applies.
6. Any prosecutor not authorised in terms of section 105A(1)(a) of the Act, and who is requested by the legal representative of an accused person to consider a plea and sentence agreement, must refer the request to a relevant authorised prosecutor.
7. In instances where the National Director or a DPP has authorised/instructed that the accused person be prosecuted, section 105A of the Act is not to be applied without specific authorisation from the National Director or the relevant DPP.
8. Negotiations are not to be finalized unless the accused person's record of previous convictions ("SAP 69") has been obtained.
9. In a case involving multiple accused persons, the desirability of entering into an agreement with one (or some) but not all of them, is to be carefully considered.
10. Where the Investigating Officer is not available for consultation, his/her relevant superior must be consulted.

¹ These directives were tabled in Parliament on 22 October 2010.

11. In the case of a minor or mentally handicapped complainant or victim, his/her representative should also be consulted.
12. In a homicide matter, the relatives of the victim or interested parties should be consulted.
13. Only a DPP or Deputy Director may authorise a plea and sentence agreement where there is deviation from any prescribed minimum sentence.
14. In respect of offences where a court has the power or duty to make a specific order or to conduct a specific enquiry, the agreement should indicate that the accused person has been made aware of this and that the agreement cannot bind the presiding officer not to exercise his/her discretion or perform his/her duty according to the relevant law.
15. Where criminal conduct gives rise to damage and/or loss of property (including money) to the complainant, the prosecutor should advise the complainant that the compensation can be ordered in terms of either section 300 (with civil law enforcement) or section 297(1)(a)(i) or section 297(1)(b) of the Act. An agreement shall not provide for an award for compensation unless requested by the complainant, which request is to be reduced to writing.
16. In cases where asset forfeiture is involved, the authorised prosecutor should consult with the relevant representative of the AFU before any plea and sentence agreement is accepted and concluded.
17. Authorised prosecutors must strictly comply with all instructions and circulars issued by the National Director concerning documentation, record-keeping and statistics.