

1 HOW THE LAW WORKS?

1.1 Who decides whether to bring charges?

In terms of section 20 of the National Prosecuting Authority Act, No 32 of 1998, the power to institute and conduct criminal proceedings on behalf of the State (and to discontinue criminal proceedings) vests in the national prosecuting authority. In practice, decisions in most courts on a day-to-day basis are taken by prosecutors with delegated authority from the National Director. In more important or difficult matters, the decision is taken by the various provincial directors or the investigating directors in consultation with the relevant provincial director and subject to the control and directions of the National Director. In some cases, the National Director himself will be involved in the decision-making process and he may even make the decision himself.

1.2 How do they reach the decision to bring charges?

The decision to bring charges is based on the evidence that has been gathered during the investigation process, either by the police or other investigating agencies, such as the DSO (Scorpions). The principal criterion is whether there is sufficient evidence that a crime has been committed and whether there is a reasonable prospect of a successful prosecution.

1.3 What is Prima Facie evidence?

There is enough evidence that calls for rebuttal from the accused, if not rebutted before the court under oath it becomes conclusive evidence on which the court may convict the accused. Before a case is brought on the basis of such evidence it would be necessary to assess whether the evidence is sufficient grounds for confidence that a conviction is likely.

1.4 Who selects Judges to handle cases and on what basis?

Judges are selected by the Judge President for each division

1.5 Do citizens have the right to show solidarity with someone on trial?

Section 18 of the Constitution guarantees that everyone has the right to freedom of association.

1.6 What recourse do those who are convicted by a court have if they do not agree with the decisions of judges?

If the conviction is of a lower court (Magistrate's court), citizens may approach higher courts for an appeal or review. The decision of a High court may be adjudicated by Supreme Court of Appeal or the Constitutional court, as the court of the last instance.

RIGHTS OF INDIVIDUALS

1.7 Is any person above the law in South Africa?

No-one is above the law in South Africa. The Constitution is the supreme law of the Republic and any law or conduct inconsistent with it is invalid, the obligations imposed by it must be fulfilled.¹ It cannot be said that some persons or organisations are above the law.

1.8 If everyone is innocent until proven guilty, can it be right for anyone to lose their position without having been convicted in a court or even charged?

An employer may dismiss or suspend an employee if it is found that the latter's conduct jeopardises or put into disrepute an employer-employee relationship. It is provided for in the Constitution that the President may appoint the Deputy President and Ministers and may also dismiss them if their conduct is found to be inconsistent with their office.

¹ Section 2 of the Constitution.