



CRIMINAL COURT PRACTICE DIRECTIVES

FOR

THE REGIONAL COURTS

IN SOUTH AFRICA

2023

7th Revision

PREAMBLE

Whereas the Chief Justice has issued Norms and Standards for the performance of judicial functions in terms of section 8(3) read with 8(5) of the Superior Courts Act, 10 of 2013;

And whereas the objectives of the Norms and Standards as well as these Criminal Court Practice Directives are to

- ensure that sexual offences cases receive priority,
- improve uniformity,
- promote best practices,
- improve the efficiency and effectiveness of the court and case flow management and
- eliminate unnecessary and/or unreasonable delays in court proceedings,

Now, therefore, we as the Regional Court Presidents of the nine Regional Divisions, do hereby issue these Criminal Court Practice Directives to all Judicial Officers presiding in the Regional Courts in the Republic of South Africa with effect from 1 May 2023.

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1. COURT SESSIONS AND SITTINGS

1.1 Official Court sitting times are from 09h00 -11h00; 11h15- 13h00; 13h45 – 16h00. The Court may sit before and after the specified times and even outside these times including breaks.

1.1.1 All judicial officers should strictly comply with set court times, save where, for good reason, this cannot be done. See also Regulation 35 of SORMA and Paragraph 5.2.1(i v) of the Norms and Standards requires trial courts to strive for a minimum of 4.5 hours sitting per day.

1.1.2 Court sittings must be adjusted in accordance with the load-shedding schedule to minimize the loss of court hours, including through rescheduling tea and lunch breaks to be taken during load shedding.

1.2 Sittings of less than 3.5 hours on any one day **must be reported immediately in writing on the day of occurrence** by each and every affected Regional Magistrate to the Office of the Regional Court President with detailed reasons.

1.3 Every Regional Magistrate must maintain a diary of his/her court rolls, including circuit court, with such entries as case number, name, number of and status of accused person/s, charges, number of witnesses, prosecutor, attorney/s, intermediary and special language interpreters, estimated time of hearing, in person, Sexual offences systems (SOS) or remote virtual link, whether preferential/part-heard, child/vulnerable/special needs witnesses.

1.4 All Regional Magistrates must keep and maintain a monthly schedule of all circuit court sittings, approved by the Regional Court President (RCP) prior to the sittings.

1.4.1 The schedule must be made available to all relevant stakeholders upon approval by the RCP.

1.4.2 Any amendment to the schedule must be approved in advance by the RCP.

2. CASE ALLOCATIONS AND APPLICATIONS

2.1 For judicial case management and to improve efficiency, every Regional Magistrate must start his/her court no later than 09h00.

2.1.1 The Regional Magistrate must enquire as to the status of each case on the court roll including the planning regarding attending to each case and give necessary directions, which enquiry must be recorded electronically/digitally in respect of each case.

- 2.1.2 The Regional Magistrate must ascertain which witnesses are in person at court, who will be using the SOS and which witnesses will testify through remote virtual links in respect of each case. The Regional Magistrate must confirm with the prosecution and defence which witnesses will not be used or accommodated on such particular day.
- 2.1.3 It is expected of the Court to call such witnesses not later than 11h00 before court, explain circumstances relating to their cases and the court excuses on record those witnesses who will not be accommodated on that particular day and advise them on when they will be next required to attend in person or virtually, if they will be so required to attend. This must also be noted on the appearance sheet for the day.
- 2.1.4 Should the court not be able to proceed at 09h00, the reason must be recorded electronically/digitally under the first case on the roll and in writing in the Court Record Book.
- 2.1.5 Case blockages in each specific case must be recorded electronically/digitally and in writing on the Charge Sheet (J15) of that case as well as the Court Record Book where applicable.
- 2.1.6 Case Flow Management blockages (general as well as specific to each case) must also be captured daily on the Judicial Statistics Tool under 'Court and Case Flow Management Blockages'.
- 2.2 When the court adjourns, all must be informed of the reason for the adjournment as well as when the court will resume again and this must be recorded in the Court Record Book. The Regional Magistrate must resume with the court sitting at the scheduled or agreed time without having to be called.
- 2.3 All role players are expected to be in court no later than 09h00 and any other time as ordered by court or per court scheduled times. All court officials must remain in attendance until excused by the Court. Any failure to comply must be recorded in the Court Record Book and the Charge Sheet where applicable and reported to the relevant authorities, and in the case of legal practitioners, to the Legal Practice Council.
- 2.4 Actual court sitting times (commencement, resumption and adjournment times) must be accurately recorded in the Court Book (J546).
- 2.5 A court must always be available on all court days and throughout the court day as scheduled. Where this is not possible the Regional Court President must be notified immediately. Any non-availability of the presiding officer or delay of the court sitting must be timeously communicated to all concerned parties and disclosed to all stakeholders by appropriate notices affixed to the court room door.

- 2.6 Each Regional Magistrate must hold weekly planning and preparation Judicial Case Management meetings in respect of their own court/s, with the relevant court staff including the NPA and the legal practitioners involved, for the purpose of –
- 2.6.1 Monitoring of priority cases;
 - 2.6.2 Identifying trial ready priority cases, including backlog cases for that week;
 - 2.6.3 Confirmation of trial-readiness of these cases for that week;
 - 2.6.4 Confirmation of availability of court officials and personnel, including interpreters, assessors and intermediaries; and
 - 2.6.5 Confirmation of the availability of functional court equipment including alternative recording devices, security and court room.
- 2.7 These regular weekly planning and preparation Judicial Case Management meetings must be convened outside of official court sitting times with the relevant stakeholders by the Regional Magistrate and can be held inside the court room or in chambers.

3. CASE ALLOCATIONS AND APPEARANCES

- 3.1 The Regional Court President or his/her delegate will be responsible for the transparent, fair and equitable allocation of cases in the Regional Division. Where applicable, a list of the cases allocated to each court must be emailed to all other Regional Magistrates at that centre/area of allocation and the Regional Court President.
- 3.1.1 Gender-based violence cases, including sexual offences cases, must receive priority in allocation.
- 3.2 In compliance with paragraph 5.2.4 (iv) and (v) of the published Norms and Standards each Regional Magistrate must take control of the management of cases at the earliest possible opportunity and take active and primary responsibility to ensure that all enrolled cases are concluded without unnecessary delay, including but not limited to:
- 3.2.1 The rights of the accused and other relevant information must be explained to the accused by every Regional Magistrate at every first appearance in his/her court.
 - 3.2.2 Every Regional Magistrate must ensure that the necessary explanations and assistance is accorded to the Accused for the exercise of their rights, as well as confirmation on record that it is understood. Such rights include, but are not limited to, legal representation, language (as provided in s 35(k) of the Constitution), bail, further particulars (including docket information), assessors (s 93 *ter* MCA), competent verdicts, minimum sentences, etc.

- 3.3 Regional Magistrates must at all times ensure that all court officials (which include attorneys, advocates, prosecutors, language practitioners, intermediaries, court clerks, registrars, assistant registrars, etc.) are duly qualified to appear and act before them. Court officials are expected to supply proof of the appointment, oath of office, instructing brief etc.

4. JUDICIAL CASE MANAGEMENT: PRE-TRIAL HEARING AND CERTIFICATION OF CASES AS TRIAL READY

In compliance with paragraph 5.2.4 of the Norms and Standards dealing with Judicial Case Flow Management, no matter may be enrolled for trial unless certified trial ready by a court. [Find attached as Annexure A the pre-trial and trial readiness certification template to be used for this purpose.]

- 4.1 Prior to certifying the case as trial ready a court must have conducted a pre-trial hearing.
- 4.2 At the pre-trial hearing the issues enumerated below, but not limited thereto, are to be considered and addressed, where relevant:
- 4.2.1 Whether the prosecution is ready to proceed to trial?
 - 4.2.2 Whether the accused/defence is ready to proceed to trial?
 - 4.2.3 Whether the accused person is legally represented and in the case of a private practitioner, whether the legal representative has sufficient funds or acceptable financial arrangements for the duration of the trial.
 - 4.2.4 Whether the legal representative has received copies of the final charge sheet, further particulars (if any), a copy of the docket/statements and all evidentiary material intended to be used by the prosecution at the trial.
 - 4.2.5 Whether the prosecution has consulted with all relevant witnesses and that there is no outstanding investigation or evidence.
 - 4.2.6 Whether the legal representative has consulted with accused person.
 - 4.2.7 Where multiple accused have the same legal representative, whether there is a possibility of any conflict of interest.
 - 4.2.8 The intended plea by the accused person.
 - 4.2.9 Whether the parties had exhausted all possibilities to make representations to the prosecution.
 - 4.2.10 Whether consideration has been given to a guilty plea or a plea and sentence agreement.

- 4.2.11 Whether any admissions by the defence or prosecution will be made to avoid the unnecessary calling of witnesses.
- 4.2.12 Whether the Prosecution has delivered any s212B and/or 213 notices and whether the Defence has responded to such notices.
- 4.2.13 Whether minimum sentences or competent verdicts (if applicable) were explained to the accused.
- 4.2.14 Whether there is any evidence of a technical nature. This may include, for example, admissions or confessions, pointing out by the accused person, forensic evidence, expert testimony or statements in terms of section 212 of the Criminal Procedure Act, 51 of 1977 (CPA) or other documentary evidence.
- 4.2.15 Whether the admissibility of any written statements or pointing out made by the accused, forensic evidence or s 212 statements will be placed in issue.
- 4.2.16 The number of Accused and the number of legal representatives.
- 4.2.17 The number of witness the prosecution and defence (if necessary) intend to call.
- 4.2.18 Whether there are any child witnesses or witnesses with special needs.
- 4.2.19 Whether there are any technical requirements for the trial, such as the –
- 4.2.19.1 Use of an intermediary by any witness (see s 170A (1) categories),
 - 4.2.19.2 Audio visual equipment,
 - 4.2.19.3 Remote audio-visual testimony etc. and
 - 4.2.19.4 Whether the necessary arrangements have been made.
- 4.2.20 Whether an appropriate language intermediary is necessary and whether arrangements have been made.
- 4.2.21 Whether any foreign language interpreters or other specific interpreters are necessary for any of the Accused or for any of the witnesses and whether any arrangements have been made.
- 4.2.22 The court must conduct an inquiry to determine the language an accused understands (as provided in section 35(k) of the Constitution read with section 6(2) of the Magistrates Court Act, 1944 (Act 32 of 1944)) and not simply enquire about the mother tongue or preferred language of the Accused. Such enquiry must be electronically/digitally recorded and the finding must be recorded in writing.
- 4.2.23 Whether there are any other outstanding issues that must be dealt with, what these are and how and when it will be dealt with.
- 4.3 The estimated duration of the trial and proposed trial dates
- 4.3.1 When setting the matter down for trial, the Regional Magistrate **must determine the number of days and time that will be required for the matter to be finalised** with reference to the information obtained in 4.2 above.
 - 4.3.2 Every attempt should be made to allocate a continuous roll during which the matter could be tried to completion.

4.3.3 Where the matter cannot be placed on a continuous roll, the matter should be staggered over a number of days sufficient to cover the determined trial days (e.g. if the matter requires five trial days, and successive days are not possible, it should be placed staggered by being placed for two or three days in week 1, two or three days in week 2 or another day or two in week 3, to ensure that evidence will be finalised still within that month).

4.3.3.1 Where one case is placed over a period of consecutive days' trial-ready 'back-up' cases (including civil) should still be placed in the event that the main trial cannot proceed.

4.3.4 Special attention must be given to ensure that the case is placed down in such a way that the testimony of child witnesses and witnesses with special needs can be dealt with as early as possible on that court day it is placed for the testimony of such witnesses and that it is placed such that it can be rolled to the next day for continuation should it not be finalised in one day.

4.3.5 Care must be taken not to place the case for the evidence of children and students on dates they are required to write school or university exams.

4.3.6 A Regional Magistrate / Acting Regional Magistrate adjudicating matters other than his /her own should not schedule any dates without consultation and coordination with the resident Regional Magistrate.

4.3.6.1 Under no circumstances should part-heard cases of different presiding officers be placed on the same day in the same court room.

4.3.6.2 On dates any other presiding officer has cases scheduled in the resident Regional Magistrate court room, that resident Regional Magistrate/Acting Regional Magistrate must arrange after consultation with the RCP for a court roll elsewhere for that day/s (including civil court rolls elsewhere in the division or virtually).

4.3.6.3 Any Regional Magistrate/Acting Regional Magistrate that needs to travel to another court to preside over a case/s in another court, must confirm at least a day prior to traveling as to whether the case/s will be able to proceed. If for any reason the case/s will not be proceeding alternative arrangements must be considered which may include virtual postponement or by another Judicial officer to avoid unnecessary travels. This should be communicated to the RCP.

- 4.3.7 Cases must be placed such that the case will be finalised within 6 months from the date of plea and the case be finalised within 9 months from the first appearance in the Regional Court as provided for in the Norms and Standards as far as possible.
- 4.3.8 In courts presided over by Acting Regional Magistrates cases must be scheduled for finalisation within a 3-month period from the date of plea.
- 4.3.9 Acting Regional Magistrates must schedule the cases such that they can be finalised within the period of the current contract.
- 4.3.10 Where any part-heard case cannot be finalised within the contract period the date of its finalisation should be done after consultation with the Regional Court President. Such finalisation date should be registered in the relevant court's diary as well as in the register kept in the RCP's office.
- 4.4 The case enrolment period and estimated duration should be revisited as the circumstances of the case require or unfold and enrolment should cover the additional determined days/dates.
- 4.5 Where any of the issues above have not been answered satisfactorily the judicial officer may remand the case to a later date for a further pre-trial hearing, and may give specific directions to parties.
- 4.6 Remands should be for the shortest possible periods in order to get cases to be certified trial ready within 3 months after first appearance in Regional Court as provided in the Norms and Standards.
- 4.7 Any *in limine* or preliminary issues, including legal representation, should be resolved before the matter is set down for trial. This may include referral for observation in terms of section 77 or 78 of the Criminal Procedure Act, 51 of 1977.
- 4.8 The prosecution and defence must as soon as possible determine whether the witnesses required for the trial are available (state witnesses' / defence witnesses), and whether they will be testifying in person, using SOS, remote virtual link or whether their testimony will be through affidavits either in terms of s 212, 212A, 212B or s213 of the CPA.
- 4.9 Where a matter has been set down for trial and an issue arises which may prevent the trial proceeding, this should be brought to the attention of the presiding officer and other parties as soon as possible.

- 4.10 No postponements should be granted unless it is necessary and in the interest of justice. All postponements should be granted for the shortest possible time and the proceedings must be fully recorded electronically/digitally and the reasons for such postponement be adequately recorded on the J15 court record.
- 4.11 Every Regional Magistrate must ensure that a sufficient number of cases be scheduled and placed on the roll to facilitate finalisation of cases and to ensure optimal utilisation of court time, inclusive of part-heard matters where evidence is still to be presented, and / or judgments and sentences to be delivered.
- 4.12 Court should always ensure that a case that is a 'back-up' on its first date of trial is postponed as a preferential case on the next trial date.
- 4.13 Children and vulnerable witnesses with special needs should generally not be scheduled as back-up witnesses. Rolls involving child witnesses and vulnerable witnesses with special needs should be arranged in such a manner that would enable the rolling over of that case to the next day to facilitate finalization of the testimony of such child or vulnerable witness with special needs.
- 4.14 Cases involving children in conflict with the law must be prioritized when placed for trial and Regional Magistrates must ensure that they comply with the time periods and limits for postponements and finalization of these cases as prescribed by the Child Justice Act.
- 4.15 Cases where accused are remand detainees for 12 months or longer must be prioritized when placed for trial.
- 4.16 Gender-based violence cases, including sexual offences cases are all regarded as high priority cases but cases with child witnesses or witnesses with special needs must not be put on the roll with other high priority/preferential matters on the days scheduled for the testimony of children or witnesses with special needs.

5. COURT AND TRIAL MANAGEMENT

- 5.1 Gender-based violence cases, including sexual offences cases must receive priority on the date of trial and care should be taken that such cases are not crowded out.

- 5.2. Cases involving child witnesses must be dealt with first. Where it is not possible to finalise the evidence of a child or rape victim on the same day, the case must be rolled over to the following day as far as possible. If not, it must be postponed to the earliest possible date for further hearing.
- 5.3 Partly- heard cases must be prioritized in order to ensure the expeditious finalization of cases (see 4.3.6 – 4.3.10 above regarding scheduling).
- 5.4 The Regional Magistrates are encouraged to explain to all affected persons the reasons why their cases cannot be dealt with on a scheduled date and how the matter will be dealt with further, which must be recorded electronically/digitally and in writing on the J15 charge sheet.
- 5.5 Generally, cases should not be postponed merely because of the absence of a particular witness, where other witnesses are available to testify (consider section 342A CPA for an inquiry into unreasonable delay). Where witnesses are present at court their evidence should, as a rule, be finalised.
- 5.6 Requests for postponements should only be made in court and recorded electronically/digitally and prosecutors are not to excuse legal practitioners or witnesses until the postponement has been granted by court or unless the practitioner or witness has been earlier excused by the court.
- 5.7 In terms paragraph 5.2.5(ii)(b) of the Norms and Standards, accused should plead within three months after first appearance in the Regional Court and the matter must be finalised within six months after plea. (see in regards to acting Regional Magistrate 4.3.8 -4.3.10).
- 5.8 Regional Magistrates must report monthly to the Regional Court President on all part heard cases that had not been finalised within 6 months from the date of plea. Acting Regional Magistrates must report monthly to RCP on all the part-heard cases that had not been finalised within 3 months from the date of plea. The report must include an action plan as how the matters will be fast tracked.
- 5.9 Regional Magistrates / Acting Regional Magistrates must provide a monthly report including an action plan to the Regional Court President of all cases in respect of awaiting

trial detainees for more than 24 months since first appearance in Regional court setting out the reasons why each case was not finalised.

- 5.10 Regional Magistrates should not have more than 15 part heard cases at any given time and 5 part heard cases in respect of acting Regional Magistrates. A Regional Magistrate (or acting Regional Magistrate) with 15 (or 5 as the case may be) or more part heard cases should not start any new cases without a written approval from the Regional Court President. Such a Regional Magistrate (or Acting Regional Magistrate) should equally only postpone a trial-ready case after consultation with the Regional Court President.
- 5.11 Regional Magistrates (or Acting Regional Magistrates) who have more than 15 (or 5 as the case may be) part heard cases must submit a monthly report with reasons together with an action plan on how they are going to reduce their part heard cases and report monthly on progress.
- 5.12 Where a party unreasonably delays a matter, or fails to comply with a provision of the directives, the court must, in appropriate circumstances, hold an enquiry and may make an order in terms of Section 342A of the Criminal Procedure Act, or refer the matter to an appropriate body.
- 5.13 The Norms and Standards in paragraph 5.2.6 state that judgments should be handed down in three months after the last date of hearing, however, Regional Magistrates/Acting Regional Magistrates must submit a report with reasons why a judgment cannot be delivered within 30 days after the last date of hearing to the Regional Court President.
- 5.14 The reasons why a judgment cannot be delivered within 30 days after the last date of hearing must be electronically/digitally recorded and recorded in writing on the charge sheet, including the reasons why a representative for such party cannot be arranged to appear for purposes of the delivery of the judgment within the 30-day period.

6. COURT ROLL PLANNING FOR LEAVE AND ATTENDANCE OF TRAINING/ MEETINGS AND OTHER OFFICIAL ABSENCES

- 6.1 Annual leave schedules for planned leave must be submitted no later than the 28th February of each year to the office of the Regional Court President. No court roll should be placed for planned leave period unless authorised by the Regional Court President.
- 6.1.1 District Magistrates acting in the regional court must submit planned leave

schedules for any period that traverses into the contract period at the start of the contract to the office of the Regional Court President.

- 6.2 Regional Magistrates must be mindful of the leave they are supposed to take during the 3 year leave cycle and must plan their leave accordingly to avoid possible forfeiture of their leave days.
 - 6.2.1 Regional Magistrates are encouraged to consider taking annual leave during the period 16 December to 10 January
- 6.3 Requests for urgent and unplanned leaves should be made through an Email/ WhatsApp/ SMS as soon as the need for such arises, in the case of WhatsApp or SMS it should be confirmed by way of an Email. Thereafter Itirele must be completed.
- 6.4 No attendance of training, meetings and other related absences will be approved by the Regional Court President if there are cases scheduled for that court during that period, unless suitable alternative arrangements have been made timeously for all cases on the roll.
- 6.5 All applications for absence due to leave, training or other absences must be accompanied by a declaration regarding the status of the court roll during that period. If there are any cases scheduled during that period, the declaration must include alternative arrangements that have been made for such cases.
- 6.6 All the arrangements above apply to all Acting Regional Magistrates as well.

7. GENERAL

- 7.1 All proceedings including postponements must be electronically/digitally recorded.
- 7.2 Upon the direction of the Regional Court President, a Regional Magistrate/ Acting Regional Magistrates must submit any information and any assessment material including statistics, roll collapse reports, other reports, etc. required by the Regional Court President to assess the functioning and efficiency of the court (see paragraph 6(ii) of the Norms and Standards).
- 7.3 All itineraries and where applicable MC9 trip authority for official travel, must be submitted timeously to the Regional Court President for prior approval.

- 7.3.1 Trip authorities should be submitted no later than 26th of the preceding month.
- 7.3.2 Trip authorities for January must be submitted no later than the 10th of December of the preceding year.
- 7.3.3 Unnecessary travels should be avoided even in relation to pre-approved trips.
- 7.4 All communications with the presiding Regional Magistrate must be in open court and electronically/digitally recorded, including communications with legal practitioners and prosecutors.
- 7.5 Failure to comply with these directives may amount to misconduct and may be reported to the Magistrates Commission for appropriate action.

8. COMMENCEMENT

These amended Practice Directives will take effect on 1 May 2023 as per resolution of the Regional Court President's Forum on 19 April 2023 and may be amended from time to time as may be necessary: Provided that they shall not be construed as taking away the right of individual Regional Court Presidents to make specific directions which may be necessitated by the special circumstances in a particular court or Division.

