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The record thus far: The 'Specialised' Commercial Crime Courts

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1 Introduction

At the time of writing, in 2025, there are 22 Specialised Commercial Crime Courts (SCCCs) in 16 locations in all the Divisions across South Africa.¹ The SCCCs are intended to be the primary courts in which serious commercial crime is processed.² As such, they are the primary courts in which corruption, money laundering and other serious economic offences are addressed. This policy brief considers their public record since establishment in 1999, as well as the reasons for the observed trends, and recommends some solutions.

This publication, based on publicly available summary data, precedes a comprehensive review of the operation of Commercial Crime Courts and the prosecution of commercial crime, currently being carried out by the Judges Matter Project of the Democratic Governance and Rights Unit (DGRU) at the University of Cape Town, with technical assistance from the Dullah Omar Institute.

2 Jurisdiction

The SCCCs are not like other specialised courts in that they do not have a ring-fenced jurisdictional mandate arising from specific legislation, such as is the case with the Land Court³ and Labour Courts.⁴ It is largely a matter of choice, whether a commercial crime case is set down in the District Court, an SCCC, an ordinary Regional Court, or in the High Court; this choice is up to the prosecutor in the relevant case. The SCCCs are regional courts and have the same jurisdiction as any regional court; regional courts may hear any offence except treason.⁵

2.1 Sentencing jurisdiction

The ostensible jurisdiction in respect of the sentence which can be imposed on conviction of an accused in a regional court, is 15 years' imprisonment.⁶ Although a District Court may only sentence an imprisonment term of up to three years⁷, a case heard in the District Court, may, on conviction, be referred to the Regional Court for sentencing, if a sentence of more than 3 years' imprisonment is sought.⁸

¹ Eastern Cape: East London, Mthatha, Port Elizabeth; Free State: Bloemfontein; Gauteng: Johannesburg, Palm Ridge, Pretoria, Pretoria North; KwaZulu-Natal: Durban, Pietermaritzburg; Limpopo: Giyane, Polokwane; Central Mpumalanga: Mbombela; Northern Cape: Kimberley; North West: Mmabatho; Western Cape: Cape Town at Bellville. Sourced from the website of the Department of Justice and Constitutional Development www.dojcd.gov.za.

² There also exists a Special Tax Unit / Component STU or STC of the NPA, separate from the SCCU, whose matters are also frequently heard in the SCCCs.

³ Labour Relations Act 1995.

⁴ Restitution of Land Rights Act 1994.

⁵ Section 89(1)(2) Magistrates' Courts Act 32 of 1944.

⁶ Section 92(1)(a) Magistrates' Courts Act 32 of 1944.

⁷ Section 92(1)(a) Magistrates' Courts Act 32 of 1944.

⁸ Section 116, Criminal Procedure Act 51 of 1997.

2.2 Minimum sentencing jurisdiction

In respect of matters falling under the minimum sentencing legislation, the regional courts' sentencing jurisdiction includes the sentences mandated for those crimes, which may exceed 15 years.⁹ For example, for a first conviction for commercial crimes falling under part II of Schedule 2 (such as fraud involving more than R500 000) the legislation mandates a 15-year sentence, which a regional court may impose under its usual jurisdiction. However, for a second or third offence, 20 and 25 years respectively is mandated.¹⁰ A regional court may impose this sentence under its minimum sentence jurisdiction. Any court imposing a lesser sentence than this, must be satisfied that "substantial and compelling" circumstances exist justifying a lesser sentence, and must record these circumstances when imposing sentence.¹¹ The legislation further provides that a regional court may not impose more than 5 years imprisonment over and above the mandated "minimum".¹² Accordingly, an SCCC may impose up to 25 years' imprisonment for a second offence and 30 years' imprisonment for third offence falling under the minimum sentencing legislation.

3 Rationale

The SCCCs were intended to reap the presumed benefits of specialisation, by bringing in prosecutors with the correct skills early on in the investigation to better prepare a case, and to utilise magistrates who were more familiar with commercial crime, which is often qualitatively different from violent crime. This would enable the effective and efficient finalisation of matters, it was theorised. However, despite early promise, the gains of specialisation do not seem to have materialised as may have been hoped, as the public record shows.

4 History

4.1 Early years 1999 – 2001

The SCCCs were first established in 1999. A paper published in 2002 written at the time reported that there were initially two (2) such courts which heard cases investigated by the then "Commercial Branch" of the Detective Service of the South African Police Service (SAPS), and prosecuted by the Specialised Commercial Crime unit (SCCU) of the National Prosecuting Authority (NPA), with 20 prosecutors

⁹ Section 51(1) of the Criminal Law Amendment Act 105 of 1997.

¹⁰ Section 51(2)(a) read with Schedule 2 of the Criminal Law Amendment Act 105 of 1997. The relevant offences in part II of Schedule 2 are: "Any offence relating to exchange control, extortion, fraud, forgery, uttering, theft or any offence in Part 1 to 4 or Section 17, 20 or 21 (insofar as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt activities Act, 2004—(a) (b) (c) involving amounts of more than R500 000,00; involving amounts of more than R100 000,00, if it is proved that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or if it is proved that the offence was committed by any law enforcement officer— (i) (ii) involving amounts of more than R10 000,00; or as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy".

¹¹ Section 51(3) Criminal Law Amendment Act 105 of 1997.

¹² Section 51(2) Criminal Law Amendment Act 105 of 1997.

allocated to the SCCUs.¹³ In 1999, the SAPS recorded 66 773 reported cases across the country of “fraud, forgeries, malappropriations, embezzlements, etc.”. These reported crimes, according to SAPS data obtained at the time, ultimately resulted in 4715 convictions in all the courts of the country, with 1233 “not guilty” verdicts and 1119 “otherwise settled in court” while 5826 were withdrawn.¹⁴ This implies a conviction throughput from reported crime of around 7 percent, with a verdict conviction rate of 79 percent. It is unclear what “otherwise settled in court” meant at the time. However, the totals suggested the courts finalised (including withdrawals) 13 837 matters in 2000.

What is intriguing is that the number of guilty verdicts and finalisation obtained in 1999 and 2000 in all courts including the new SCCCs, was in fact fewer than those obtained in 1997 and 1998, without SCCCs (see Table 1). Furthermore, the number of guilty verdicts expressed as a percentage of cases referred to court, dropped from 41 percent to 38 percent, comparing 1997 and 1998 with 1999 and 2000. This suggests that the establishment of the SCCCs was even at the outset associated with a reduction in finalisations in court. This was an early warning that the SCCCs may not be the panacea for commercial crime that they were intended to be.

Table 1: All fraud, forgeries, malappropriations, embezzlements, etc (SAPS) (1997-2000)

	Cases reported	Cases referred to court	Cases withdrawn	Cases untraced	Cases unfounded	Cases guilty	Cases not Guilty	Cases withdrawn in court	Cases settled otherwise in court
1997	63632	13465	17257	28061	4430	5590	990	4894	1185
1998	62086	12779	15409	26454	4861	5289	1052	4740	852
1999	66773	13007	14631	27538	4729	4715	1233	5059	1 119
2000	67076	12657	15703	32045	4410	5107	1251	5826	1653

It was recorded that two magistrates in the SCCCs, one having started only in July, handed down judgement in 171 (completed) cases, with 150 (88 percent) resulting in a conviction; this suggests a rate of 100 convictions per SCCC per year, if one magistrate is counted as half a year; although a range of offences could be heard in the SCCCs, in practice there tended to be primarily fraud and theft cases “too serious to be heard in the District Court but not serious enough to be heard in the High Courts.”¹⁵ Thus although in the early years the productivity of the courts seemed high, it is likely the offences concerned were primarily fraud offences involving relatively low amounts of money; imprisonment was seldom

¹³ Altbeker, A. ‘A model for justice delivery? The Specialised Commercial Crime Court’ SA Crime Quarterly No 2 November 2002 available at <https://journals.co.za/doi/pdf/10.10520/EJC47588> accessed 15 September 2025.

¹⁴ Spreadsheet obtained from the CIMC of the SAPS in 2000.

¹⁵ Altbeker, A. ‘A model for justice delivery? The Specialised Commercial Crime Court’ SA Crime Quarterly No 2 November 2002 available at <https://journals.co.za/doi/pdf/10.10520/EJC47588> accessed 15 September 2025, p33.

imposed as a sentence, suggesting that the offences may not have fallen under minimum sentencing legislation, which in turn suggested the amounts involved w may have been less than R500 000.

4.2 Scorpions era 2001 – 2008

During this era, the more complex cases intended to be prosecuted in the SCCCs, were to be both investigated and prosecuted by the Directorate of Special Operations (DSO or Scorpions) of the NPA, until the DSO was disbanded in January 2009. By 2004/5, there were four (4) SCCCs in Pretoria, Johannesburg, Durban and Port Elizabeth. By 2005/6, the SCCU of the NPA said it “finalised” 2271 cases in these SCCC, and achieved convictions in 857 cases.¹⁶ In other words, around one third of cases was finalised by way of conviction and sentence, or more than 200 convictions in each SCCC. This was achieved with average court hours in the SCCCs of 4 hours 53 minutes per day, and a caseload of 63 cases per prosecutor.¹⁷ Half of cases in the SCCCs were on the roll for fewer than 6 months.¹⁸ This suggests a doubling of the early productivity of the SCCCs, and suggests an era where performance of the SCCCs was relatively good.

4.3 State Capture era 2009 – 2018

The state capture era can broadly be defined as the decade between 2009 and 2018, during the national Presidency of President Jacob Zuma. After the disbandment of the DSO in, serious commercial crime investigations were carried out by the Directorate for Priority Crime Investigation (DPCI or Hawks), and the prosecutions predominantly by the SCCUs of the NPA. The 2014/2015 Annual Report of the NPA, which covered the period when Mxolisi Nxasana was NDPP, just prior to his removal as NDPP by then President Zuma¹⁹ records as follows:

“A target was set to convict at least 20 people of corruption where the amount benefitted is more than R5 million by 31 March 2015. The NPA exceeded the target in obtaining convictions of 23 accused. The NPA participates in the Anti-Corruption Task Team (ACTT) which was set up to focus on this target... The SCCU achieved 1 069 convictions against a target of 988.”²⁰

The SCCCs in Cape Town and Bloemfontein were formally established in 2007, bringing the total to six courts. Thus the 1069 convictions referred to by Nxasana, if all heard in SCCCs, thus represent 178 convictions per court, the beginnings of a decline from the more than 200 achieved by the SCCU in the Scorpions era, albeit that some more serious matters were on the roll. The NPA Annual Report goes on to note as follows:

“In some of the SCCU regions that have only one dedicated court, limited availability on the court roll contributes to lengthier remands. In the short-term, the SCCU will attempt to alleviate

¹⁶ NPA Annual Report 2005/6.

¹⁷ NPA Annual Report 2005/6.

¹⁸ NPA Annual Report 2005/6.

¹⁹ After a protracted enquiry into his fitness to hold office, Nxasana agreed to step down from his position as NDPP on 31 May 2015, effective from 1 June 2015. His signature in the NPA Annual Report is dated 29 May 2015.

²⁰ NPA Annual Report 2014/2015, p71.

the problem by prosecuting cases in the high court. The SCCU aims to influence the process of establishing more dedicated commercial crime courts.”²¹

This is an early warning of one of the key problems of the SCCC specialisation model – with a single magistrate, properly running a continuous roll (in which a matter in which trial has begun, is heard daily until completion) contemporaneously with managing cases at the pre-trial stage, becomes near impossible to do efficiently. Thus, it seems likely that not all SCCU matters were heard in the SCCC in 2014/15. By 2018/19, the NPA Annual Report records 10 SCCC courts in 6 locations.²² The SCCU reported 760 convictions, of which 16 related to corruption of R5 million or more.²³ This averages out to 76 convictions per court per year, if they were all heard in the SCCC, reflecting a further decline in the apparent productivity of the SCCC.

4.4 Current era 2020 -

A project by the Judges Matter Project of the Democratic Governance and Rights Unit (DGRU) is currently collecting detailed data from all the SCCC directly from the relevant records, and has also obtained access to the Integrated Case Management System for cross-referencing. This will answer many questions around the current trends of the SCCC and the prosecution of commercial crime in general. However, data already published in Annual Reports suggests, on the face of it, that the situation has worsened further.

This public data shows that by 2023/24, the number of reports to SAPS of “commercial crime” exceeded 128 000.²⁴ Unfortunately, at the same time, by 2023/24, the SCCUs of the NPA, who mainly bring cases to the SCCC, recorded in the NPA Annual Report only 333 convictions in all 22 SCCC for 2023/24, or an average of only 15 convictions per magistrate/courtroom.²⁵ This is a 5 times lower rate than was present in 1999-2001, and a 13 times lower productivity than in 2005/6, when the DSO was in operation. The number also represents a halving in total number from the 760 convictions recorded as recently as 2018/19, by the NPA for the SCCUs. However, the SAPS made 15 009 commercial crime (fraud) arrests in 2023/24, suggesting the major drop-off in throughput is on the investigation side.²⁶ It is noteworthy that the approximately 15 000 arrests is very similar to the approximately 13 000 referrals to court per year in the 1997-2000 period.

Looking at data from the DPCI, reveals that the total number processed by the SCCU of the NPA, is far fewer than the number of convictions recorded by the DPCI. This suggests that as was the case in the Scorpions era, not all commercial crime cases investigated by the DPC, are processed via the SCCU and thus the SCCC. The small number making it to first appearance, compared to cases received by the DPCI, suggests the quality and quantity of investigation by the DPCI may be a limiting factor.

²¹ NPA Annual Report 2014/2015, p72.

²² NPA Annual Report 2018/2019, p69

²³ NPA Annual Report 2018/19, p69

²⁴ SAPS Crime Statistics 2023/24.

²⁵ NPA Annual Report 2023/2024.

²⁶ SAPS Annual Report 2023/24 p129

Table 2: Complex Commercial Crime (SAPS-DPCI) vs SCCU convictions (NPA)

	Cases received by DPCI	DPCI cases 1st Appearance	DPCI convictions (cases)	SCCU convictions
2018/19	3793	1053	1031	760
2022/23	2313	707	1098	364
2023/24	1854	546	417	298

In addition, there is a sharp drop-off in values associated with convictions, compared to values in cases received, as well as compared to cases in which there has been an arrest or first appearance. (see table 3).

Table 3: Values in serious commercial crime cases (Rand billions) (DPCI)

Serious Commercial Crime (DPCI)	Cases received (billions)	Arrests & first appearances (billions)	Convictions (billions)
2018/2019	R39	R6.40	R1.10
2022/2023	R88	R3.40	R0.34
2023/2024	R59	R75	R0.74

Furthermore, it remains the case that fraud and theft appear to be the primary charges heard in the SCCCs,²⁷ despite the plethora of offences created by the legislature, particularly those designed to control the expenditure of government finances, such as the Public Finance Management Act 1999 (PFMA) and Local Government: Municipal Finance Management Act 56 of 2003 (MFMA), organised crime (Prevention of Organised Crime Act 121 of 1998 (POCA), and corruption (Prevention and Combatting of Corrupt Activities Act of 2004 (PRECCA)) (See Table 4).

Table 4: Complex Commercial Crime 2023/24 (DPCI) ²⁸

Charge	Cases received	Cases to court	Cases convicted
Fraud	1219	298	280
Theft	68	25	30
Tax Act	244	109	30
Counterfeit Goods Act	29	26	26
Customs Act	23	25	18
Other serious commercial crimes	73	6	15
National Credit Act	22	14	7
Electronic Communication	2	0	3
PRECCA	46	7	3
POCA s2 (racketeering)	1	1	2

²⁷ Preliminary data collected by the Democratic Governance and Rights Unit, UCT, from 5 courts.

²⁸ SAPS Annual Report 2023/24 p

Counterfeit Currency	1	1	1
FAIS	7	1	1
POCA s6 (proceeds)	0	0	1

In other words, despite the more than ten-fold increase in the number of courts and the number of prosecutors, the total number of convictions obtained per court per year, is only double the number obtained when there were only 2 magistrates and 20 prosecutors. The seeming general reduction in productivity of the SCCCs and other courts, is closely linked to the reduction in court hours, which has been evident in all courts: whereas 4.5 hours was the target two decades ago, many regional criminal courts are now sitting for below 3 hours per sitting day, with the average at 2h54 minutes, as reported in 2022/23, an improvement from 2h41 minutes in 2021/2.²⁹ Preliminary DOJCD data for 024/25, shows a slight improvement to 3h07. Furthermore, many courts, including the specialised courts, do not sit for every available day in a month; the average days sat by a “main” regional court (i.e. excluding periodical courts) was 12.8 days in a month, in 2018/2019.³⁰ (This may be because of the need of sitting magistrates to attend to periodical courts. Periodical Regional Courts sat on average for 5.7 days a month).³¹ Unsurprisingly, the low court hours and low court days have been accompanied by an explosion in the number of postponements before a case is removed from the roll (by whatever means). The NPA is reportedly now routinely monitoring matters with 80 or more postponements, in all regional courts, including SCCC.

5 Conclusions

Too few matters are finalised by way of trial, each year in the SCCCs. The reasons are discussed below.

5.1 Reliance on the Hawks for investigation

One of the major problems is the reliance on the Hawks as the primary investigative agency through which matters must reach the SCCCs. Their wide mandate and lack of ring-fenced focus on commercial crime and corruption means referrals to court are few and often inadequate. Combined with the NPA’s aversion to the risk of acquittals, this results in lack of enrolment and/ or too many withdrawals. This may in future be somewhat ameliorated by the better capacitation of the IDAC of the NPA and the processing of cases through it, which until recently had only 35 personnel and also largely relied on the Hawks. However, the mandate of the IDAC is ambiguous and it is not clear the extent to which they may legally investigate crimes not arising from the Commissions of Inquiry referred to in the legislation.

²⁹ Judiciary Annual Report 2022/23, pp42-43.

³⁰ Internal NPA data, 2019.

³¹ making the total average 18.5 days, or 222 of the 251 working days in the year. This suggests that magistrates’ leave may affect the sitting of the courts, and the system of acting magistrates is not working to make up the necessary days.

5.2 Targeting of “conviction rates”

From the earliest days, there has been a tendency of the NPA to focus on conviction rates (convictions expressed as a percentage of verdicts). The focus on success in court, rather than volume of success in court, has exerted downward pressure over time on the number of all conviction types (except sexual offences, which generally has lower success rates). Conviction rates of well over 90 percent mean that cases with an 80 percent chance of conviction are not being prosecuted. In 1999, such cases would have been prosecuted, as the conviction rate was 79 percent. A throughput of 7 percent, as was prevalent in 1999, if applied today, would see close to 9000 convictions in this category of crime. Yet preliminary data sees only around 1400 fraud convictions and 336 corruption convictions per year, suggesting a much lower throughput than in 1999.³²

5.3 Undiagnosed collapse in productivity of SCCUs

While in 2018/19, each SCCU prosecutor achieved 6 convictions per year, this has collapsed to an estimated 1.5 per prosecutor in 2023/24. There seems to be no appreciation of this and no guidance from within the NPA to correct this. While the lockdown years of 2020-2021, during which many courts were closed for some of the time, may have created a backlog, it is now 3 years later and that should have cleared. Almost every NPA Annual Report explains reductions in number of convictions by the SCCU by the claim that they are now concentrating on “more serious matters”. However more serious matters should not mean the abandonment of effective and efficient finalisation. The “more serious matters” are also simply not evident in the data, neither in the charges convicted nor the associated amounts.

6 Finalisation delays

6.1 Premature enrolment

Matters are frequently enrolled via grandstanding arrests, before the matter is ready for prosecution. Multiple postponements for further investigation are evident in the data, which should not be the case if a matter is ready for enrolment. This leads to long case-cycle times and takes up space on the court roll.

6.2 Lack of incentives for efficient finalisation

There is no incentive for efficient finalisation of cases. Prosecutors and magistrates are paid the same no matter how many matters are finalised, while defence attorneys are paid per hour, thus incentivising delay. Postponements often means finishing early in court for the day, particularly if the day was allocated to the matter.

³² Preliminary data from ICSM.

6.3 Multiple accused

Serious cases tend to involve multiple accused, which tend to multiply the possible sources of delay. Better data on this is likely to emerge from the DGRU project.

6.4 Lack of guidance on plea and sentence agreements

Guilty pleas, and plea and sentence agreements, are by far the most efficient way of resolving matters appropriately. Yet there is little guidance and encouragement of these for prosecutors, in either policy or directives. This has been discussed in more detail in another paper by this author.

6.5 Lack of real specialisation

It is no longer obvious that the investigators, prosecutors and magistrates are particularly specialised in the matters which they hear. This undermines the presumed advantages of specialisation while at the same time creating an effective bottleneck through these entities for such matters.

6.6 Lack of integration of investigation and prosecution

While previously there was close integration of investigation and prosecution, this no longer appears to be the case.

6.7 Lack of a properly functioning continuous roll

A continuous roll should apply once trial has commenced, in terms of the relevant directives.³³ This is difficult to do when there is a single magistrate allocated, and despite a clear directive that a continuous roll should apply, appears to be very seldom done, leading to delay even after trial has commenced.

6.8 Single court issues

With the exception of Gauteng, the number of courts in each Division typically amounts to only one or two courts. A matter emanating in Richards Bay, will require the accused and their representatives to travel to Durban for each appearance, for example. Similarly, one in George, will require travel to Bellville. This is extremely onerous and defeats the object of the expansion in access to courts.

7 Solutions

7.1 Promote commercial crime prosecutions in all courts

It is quite clear that there is limited capacity of the SCCCs – and also countrywide. Data suggests that in 17 months, there were only 1428 fraud charge convictions in the entire country and only 366 corruption

³³ Criminal Court Practice Directives for the Regional Courts in South Africa (2023) 7th Revision, paragraph 4.3.2. .

charge convictions.³⁴ In the face of an epidemic of fraud and corruption, this is simply insufficient. Given that long custodial sentences are seldom sought, there is a need to promote the efficient prosecution of these crimes in the District Courts as well as ordinary regional courts. SCCCs and the SCCU cannot be a bottleneck for the prosecution of this crime category, and skills and capacity need to be nurtured.

7.2 Increase guidance to all prosecutors on commercial crime

Furthermore, in order to promote such prosecutions, the following may be needed:

- The development of pro-forma charge sheets for offences in terms of PRECCA and POCA (the fraud pro-forma is well-established)
- The development of clear guidelines on plea and sentence agreements for fraud and corruption, with clear linking to potential section 204 (in terms of which indemnity may be obtained in return for giving honest evidence against others)³⁵
- A directive to seek sentence in terms of s276(1)(h) of the Criminal Procedure Act – which permits conversion to parole after one sixth is served, rather than wholly suspended sentences, for less serious offences.

7.3 Optimisation of existing SCCU and SCCC

It seems clear that the single magistrate system does not lead to an optimum situation in terms of current practice. Innovative approaches may need to be piloted, which may include:

- Running of two separate court sessions per day per court, with mornings for trial continuation on a continuous roll, and afternoons for bail, postponements, interlocutory applications and guilty pleas. This order of business is proposed to ensure witnesses time is not wasted, to allow fresh minds for trial, and to avoid incentivising the postponement of matters in trial (which may more likely happen if set for the afternoons). Since on average approximately 10 actual court hours is needed to finalise a matter by way of trial, this equates to 5 morning court sessions. This suggests each SCCC could finalise 40-50 matters going to trial per year, and a further number via guilty plea or plea and sentence agreement.
- Incentivising the effective and efficient conclusion of matters. Ways to do this should be brainstormed together with the various role-players involved, to ensure buy-in.
- Identify excellence among prosecutors in the District Courts who achieve good results in the prosecution of commercial crime via frequent interrogation of the data, and ensure they are tracked for promotion to the SCCU.

³⁴ Preliminary data in ICMS closed charges data, January 2024 to May 2025.

³⁵ See section 204 Criminal Procedure Act 51 of 1977.