



# Department 2006/7 Annual Report: briefing

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Justice and Constitutional Development

24 October 2007

## Meeting Summary

*A summary of this committee meeting is not yet available.*

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## Meeting report

### **JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE**

**24 October 2007**

### **DEPARTMENT 2006/7 ANNUAL REPORT: BRIEFING**

**Chairperson:** Mr Y Carrim (ANC)

## **Documents handed out**

President's Fund Annual Report 2006/2007

Annual Report 2006/2007 briefing to Parliamentary Portfolio Committee

Annual Report of Department of Justice and Constitutional Development 2006/2007 Research Unit By C Silkstone  
Maintenance cases

## **Audio recording of meeting**

## **SUMMARY**

In his presentation on the Annual Report, the Director-General outlined the achievements and challenges faced in operations such as its mobile courts programme, strengthening of court security and cash in transit functions, its programmes aimed at improving access to justice, communication of the Department's operations and programmes with media and the public at large, the electronic systems aimed at improving efficiency and the transformation of the judiciary by appointing female judges and increasing the jurisdiction of courts. The presentation also outlined the Department's performance per programme.

During the discussion Members sought clarity on measures to improve co-ordination and co-operation between the Department, the South African Police Service and the Department of Correctional Services, and to clarify the different mandates of each. The reduction of the heavy case load was a persistent problem, and would involve a collective effort from stakeholders, especially those departments. The large underspending on goods and services was a cause for concern as it was greater than that recognized as permissible. The Chair was of the view that quarterly reports provided by the Department would allow the Committee to better discharge its oversight mandate. The DA and ACDP felt that large little progress had been made over the last year, especially the monies held in trust, but conceded that there were also improved areas.

## **MINUTES**

### **Introductory remarks by Chairperson**

The Chair welcomed Mr Adv M Simelane, Director General: Department of Justice and Constitutional Development,

and invited him to present his Department's annual report. It would in future be supplemented by quarterly reports devoted to certain sections of the Department's functioning, so that incremental advances could be more easily. That would allow the Committee to better monitor whether the Department was achieving its goals.

The Chair also welcomed Mr Sean Tait of the Open Society Foundation (OSF), which had undertaken to monitor the Department's budgets on two to three year cycles. As such the OSF would be playing a complementary role to the Committee in the oversight of the Department.

### **Department Annual report briefing**

The DG then began his presentation and stated that the work of the Department was still saddled by the burden of being a service delivery point, at the Magistrates' Courts offices, for other departments which did not have offices at such "coal face" points. This was a legacy of the previous dispensation. The Department's Budget was R7 billion and the larger portion thereof was devoted to ongoing repair and maintenance of Magistrates' Court Offices, on an ongoing cycle. There was never a sufficiency of funds, there was a vast backlog and the Department's approach was to attend to the most needy first. However, the actual court work/case load was growing. That was a complicating factor as such courts required additional attention and expenditure. Building maintenance and erection was the primary responsibility of the Department of Public Works, and thus liaising with that department was both required and necessary, and required. The Department did not have, nor was it able to, exercise control over that Department.

### **Mobile courts**

He drew the attention of the Committee to the Mobile Courts, and their number. Formerly there had been magistrate court districts, branch court districts and periodical court areas. Usually, the administrative support services rendered at periodical courts were out of either a Correctional Service or South African Police Service (SAPS) offices, with a Presiding Judicial Officer sitting wherever there was an appropriate venue. This had led to confusion in the mind of the public, in certain areas, about the roles played by the Departments of Justice, Correctional Services and SAPS. In the view of the layman the Department was not independent and impartial but subject to the Department of Correctional services or SAPS. In short this was offensive and the impression among the public was one of suspicion. The principle was for the Department to step away from such other departments and this was done by the purchase of suitable movable courts and their utilization where there had formerly been periodical courts.

### **Court security**

Court security was another concern and this was being attended to incrementally as the budget allows. The ultimate objective was to have Close Circuit Television Cameras (CCTV) installed in every courtroom which would save costs as the provision of security personnel in each courtroom was expensive.

At this point the Chair and the DG very informal ideas on court security.

The DG continued by that that it was intended in the meantime to have burglar bars and steel doors installed wherever appropriate as security features, and in due course scanning machines at every point of entry to a court.

### **Cash in Transit.**

The DG explained that this was a problem because the courts were full of cash and it should not be the responsibility of the Department to safeguard it. Traffic fines were paid, in cash, bail was tendered, in cash, maintenance was paid, in cash; fines were paid, in cash and so every afternoon this cash needed to be collected and banked. In the mornings cash was delivered to courts for change payments and the cycle was reversed. The Department intended to reduce this by banking electronically. With such huge amounts of cash at courts there were temptations for robberies at the courts or on the routes to and from the courts, as well as the temptation for court officials to defraud the Department.

### **Access to Justice**

Attention to continuing awareness programs of access to justice had been conducted, especially with regard to the Equality Courts and a Victims Charter. Despite such awareness campaigns little use was made of the Equality Courts. The public, the judiciary and the officials needed to become more aware of the existence of these courts and use them. Additionally although there was a Victims Charter, more needed to be implemented in this regard. Operation Isando had been conducted to make those affected aware of the provisions for child maintenance services, and payments. However, in this regard the courts were really middlemen or intermediaries between aggrieved parties, and acted as stakeholders receiving money and paying out to its destination and reporting defaulters of payments. Thus far 13 000 beneficiaries have been persuaded to open bank accounts into which the payments can be made electronically without the courts playing a role. It was admitted that this was a problem and a challenge and was work in progress.

### ***Communication***

The media highlighted problems, often to the disadvantage of the Department, without understanding or being prepared to understand the full circumstances surrounding an issue. In fact a newspaper of the previous day had carried banner headlines about missing files in the High Court in Johannesburg, which required significant unnecessary attention to rectify. When press statements were issued the newspapers hid them in the inside pages, leaving the damage already done.

### ***Efficiency***

The Department had a legacy of having been the general dogs body for every government department of and historically there was no system of reporting. The systems that were in place were manual and difficult to reconcile easily and quickly. To counter this the E scheduler system was introduced, a scanning programme and the video postponement of cases. Initially this had been introduced in Durban, and certain other identified courts, where it was running well. However, legislation was required to have the introductions recognized formally by the judiciary who were bound by precedent which did not recognize such advances. In addition, there was the introduction of digitally recording systems, and the phasing out of tapes. The digital systems ran from the inception of the working day to the end. The quality of reproduction was better than the tape system. R29 million had been spent on this system and it was being improved by voice recognition so that it would not be necessary to transcribe but would be available on a CD and incorporated with CCTV. This would enable a case to be filed electronically. It was intended that the whole justice system follow this system. In 2005 fewer than 30 courts were so fitted out and now almost everyone had it.

The Chair interrupted to recall that only two years ago he had not utilized email and had been in the dark ages and now he had improved his efficiency through email. He felt that what was being described was not modernization but pre modernization and what was being described was very elementary.

The DG conceded that bringing the judiciary onboard was a very big problem. With regard to problems with Internet every call for assistance was logged and it was found that often a computer was not working because it had not been switched on, or there was a problem with the playing of video games which the staff claimed relaxed them during tea or lunch breaks.

The electronic systems were being introduced to estate, deceased and insolvent cases and the Guardians Fund. After the Constitutional Court's *Moseneke* judgment the Masters' Offices were flooded with cases which previously magistrates had handled, and to handle the load temporary assistants had been engaged. There had been no loyalty or dedication from these employees. The Department's budget now allowed for permanent positions.

Previously the stenographers had been part time and not controlled by the Department. Now they were included in the 1017 new employees, were under the Department's control and full time employees. They were also used for other administrative purposes when free from their immediate tasks.

### ***Transformation of the judiciary***

With regard to transformation there were several Bills in the pipeline. One which would make an impact upon the profession and the public increased the jurisdiction of the Regional Courts, family matters, inclusive of divorce, and civil matters. The jurisdiction of the Magistrates' Courts was being raised to R300 000 for civil matters and in the regional Courts R300 000 to R1 million. This was going to be a problem for the bar and impact upon services. It would also make the running of attorney's offices more profitable.

In criminal justice there were bottlenecks. SAPS Officials and State prosecutors were not utilising the Criminal Procedure Act to the fullest extent and were bringing petty shoplifting matters before the courts when such could be handled administratively in terms of the Criminal Procedure Act.

In addition 23 potential female judicial officers had been identified and were undergoing training to transform the judiciary.

The re-alignment of magisterial districts was a major problem as citizens were still unable to access legal services at the closest point to their residence. Chiefly this was a legacy of the old homelands system but in Johannesburg the vast Protea Court was regarded as merely a branch of the Johannesburg Court. This affected its ability to source resources and deliver services.

The Legal Services Charter was expected at the end of November and this would expedite the delivery of services.

### ***Programme performance***

This was outlined in slide 16 of the presentation. The DG admitted that this was not as it should be but still needed to be improved. A total of 66% of the cases did not reach the courts and chiefly this was because the prosecutors had decided that there was insufficient evidence, or the matters needed to be referred back for further investigation. It reflected badly on the Department whereas it was really a weakness or shortcoming in the performance of SAPS and the National Prosecuting Authority (NPA).

The Chair indicated that he felt that such drawbacks could be highlighted and attended to in the intended quarterly reports

Mr S Swart (ACDP) stated that it was incomprehensible that 68% of cases could be removed from the court rolls. This required an analytical breakdown as it was a challenge.

Dr J Delport (DA) said that this recurring issue was the ID dilemma. The investigative arm did not conduct its functions properly or adequately, and the Department received the blame for the deficiencies. The result was that the general public became disillusioned but the real culprit was not identified.

The Chair remarked that the statistics were not helpful

Imam G Solomon (ANC) stated that this was an old problem and required co-operation between the parties. He recalled that there had been a pilot remedial project in Port Elizabeth which had worked well, but then disappeared.

The DG responded that detectives were lowly rated, the idea was to get more 'bobbies on the beat', with the result that detectives were downgraded. Also the public had a role to play in that the public as witnesses did not pitch up for trials. It was contemplated that witnesses would only be required for trial and not postponements and remands, as that would ease the situation.

The Chair brought this to the attention of the DG and requested that discussion on it be revived and possibly expanded. There remained much to be done and the Members must be innovative in their thinking in order to assist.

Mr Swart added that he could not understand the slide on the statistical information about the R17 million, and requested elaboration.

The DG replied that this was the amount which cannot be accounted for. Although it was a large sum, it was a small amount in the overall scale of things. However he was not prepared to countenance the loss of even R500 000, the loss or theft of R1 was R1 too many

#### ***Masters Office***

The DG explained that there had formerly not been one in Mpumalanga, and all its cases were handled from Pretoria. In this regard KwaZulu-Natal was also problematic as there were offices in Pietermaritzburg and Durban which meant that people from Jozini and Pongola had long distances to travel to receive attention.

#### ***Truth and Reconciliation Commission (TRC)***

There were only remnants of the TRC and attempts were still being made to trace recipients and advise them of funerals and the identification of persons after the exhumation and DNA identification thereof.

#### ***Goods and services expenditure***

Although there was a relatively minor underspending, it was large in view of the entire budget.

Ms C Johnson (ANC) pointed out that the underspending was greater than that recognized as permissible.

The DG explained that Slide 33 highlighted the fact that the Department could not hire the necessary staff. Furthermore, if there were no staff it was seen as pointless to purchase equipment which would not be used.

#### ***Monies held in trust***

Trust monies were a work in progress as were the question of March spikes in the capital budget expenditure. Such spikes were often caused by the belated production of invoices and/or delivery by service providers.

#### ***Human resources***

most of the disciplinary actions arose out of the misappropriation of monies. This took the DG onto the issue of financial control. He informed the Committee that that was receiving ongoing attention. Although new controls and systems were installed it was a question of 'teaching old dogs new tricks' and unless the old dogs were motivated this was sometimes a difficult, if not impossible, task.

In short these were the challenges faced by the Department. However, the Department used to employ many different kinds of people and it was difficult to change attitudes. However, with the recruitment of new people attitudes were changing.

The DG felt that the Department should be constantly asking the question "what was its core business" and once the answers were forthcoming, it should concentrate on that. In this regard he observed that private disputes, maintenance and civil litigation were clogging up the Department's resources at no cost, whereas he was of the opinion that a user charge was justified.

The Chair felt that the envisaged quarterly reports would go a long way in assisting in identifying the solution, and would allow the Committee to assist in There should also be no confusion as to the mandate of the Department, and that of the Department of Correctional Services and SAPS.

#### ***Discussion***

The Chair posed the question "what progress has been made by the Department".

Mr Swart said that he felt little progress had been made, although there were improved areas. He agreed that the question posed by the DG needed to be answered, and whether the Department was providing services that might better be provided by the Legal Aid Board.

Dr Delport said that he had been away from this Committee for approximately a year but on his return the same problems as in the past were still being raised. He felt that the organised professions, the Bar and the Law Societies should come before the Committee and make a contribution to the solving of the problems.

Mr J Sibanyoni (ANC) said that the Black Lawyers Association and the National Association of Democratic Lawyers (NADEL) should also be invited to participate.

Mr L Joubert (DA) said that his impression was that the situation was worse than it had been, especially the monies held in trust and the March expenditure spike. He had previously requested the performance contracts of the main managers in the Department but they were still not forthcoming. He requested the DG to expedite their provision.

A Member stated that it was not fair to say that nothing was being done. There were now courts in township areas where there had never been courts before. He was of the opinion that things could be improved even further. With regard to the opening of bank accounts he wished the Committee and the Department to engage with the banking council for bank charges were, in his opinion, too high. He also wanted attention to be devoted to the supply chain management process in the Department, so that it could work properly. The salary for the Head of the Justice College was extraordinarily high, and was in fact higher than the DG's. As far as the professional staff was concerned, he asked why there was only mention of advocates and not attorneys as well. Further, he noted that not all the required officials had divulged their financial interests. Finally, he asked whether risk management official been appointed.

Imam Solomon reiterated the need for greater co-operation between the relevant government departments and stakeholders.

The DG replied to the questions by stating that he had noted the Members comments and issues and added that he thought the great percentage of non finalized cases was attributable to the SAPS and the investigating officers, the prosecutors and the organised profession which often double booked and could not handle the number of cases.

Precisely because of the salary issue prosecutors often sought the greater remuneration offered to the judiciary, and not every lawyer was a good cross examiner or wanted to be a prosecutor. Again he asked what was the Department's core responsibility and felt that this should be identified and concentrated upon. He assured Members that continual efforts were being made at improvement, which was a work in progress.

Attention was being given to asset management but it did require a new approach as it contained new concepts that the Department needed to tackle.

He conceded that the biggest challenge was co ordinating with other role players such as the SAPS. SAPS measured itself by the number of arrests and not successful prosecutions, whereas the State prosecutors measured themselves by the number of convictions and not concluded matters, the judiciary which had totally different benchmark and the organised profession which double booked and thereby was part of the problem. The Legal Aid Board also had a shortage of public defenders and thereby contributed to the Department's bad image.

With regard to filing this had previously been a manual system. The Department retained files for ten years, during which certain aspects of the cases were treated again and again. Paper could not handle the sporadic alterations, and IT might not be able to as well.

As far as the divulging of interests was concerned, the investigation was with the SAPS and the labour relations aspects were that the suspects were suspended pending further developments. More could not be divulged at this stage.

Ms Johnson said that the removal of cases from the court rolls seemed to involve many role players, and thus the fault did not lay with one specific person.. She proposed that a further investigation with SAPS and the NPA would be appropriate.

Mr Swart raised the question as to why more use was not made of Section 63 A of the Criminal Procedure Act. It allowed for the over-riding of a judicial decision regarding bail when the accused could not afford the bail set.

Imam Solomon wanted to know why magistrates were not more considerate of young offenders.

The DG replied that bail amounts of R1 000 had been targeted and, together with the Department of Correctional Services, a considerable reduction in awaiting trial prisoners had been made. The judiciary's point of view was always whether the accused turn up for trial, ignoring the question of the cost of retaining such persons in correctional service facilities pending trial and in this regard 2 800 persons had been released. This was a challenge for the judiciary.

The Chair indicated that this was the type of question which could more favourably be handled in the quarterly reports. He added that the question of court hours was being investigated for in too many cases courts did not sit after lunchtime.

Secondly, he asked how the Committee could facilitate a meeting between the Johannesburg Attorneys Association and the Court Management in Johannesburg. Parliament must be seen to be playing an effective role. That must however be approached carefully so as to not give the impression, real or assumed, that Parliament was merging the separation of powers. This Committee wished merely to facilitate the process, and did not wish to influence the courts in reaching a judgment

With reservations about influencing judgments, Messrs Swart and Delport felt that the organised profession should be invited to appear before the Committee

Mr Sibanyoni congratulated the DG for the work done by the Department in his own constituency.

The Chair added that attention should be given to the Child Care Bill, policy transformation and the Black Administration Act of 1927 or what remained of it. He did not want Parliament to be 'executive driven' or reactive, but instead wanted it to seize the initiative and introduce legislation and effective approaches.

The meeting was adjourned.