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JUSTICE PORTFOLIO COMMITTEE 16 January 2006 SUPERIOR COURTS BILL: BRIEFING

Chairperson: Ms F Chohan-Kota (ANC)

Documents handed out:

[Superior Courts Bill \[B52-2003\]](#) as of 19 October 2005

[Draft Constitution Fourteenth Amendment Bill, 2005](#) as of 18 December 2005

SUMMARY

The Department of Justice briefed the Committee on latest version of the Superior Courts Bill (19 October 2005) that arose from recent debate and meetings with relevant interest groups including the judiciary. The proposed integrated court system was outlined and the structure of superior courts explained. Detail was provided on the administration of judicial functions of all courts. The Bill made a clear distinction between judicial and administrative functions. No powers had been removed from the Chief Justice. The Judicial Services Commission would continue to play a role in the appointment process of judges. Labor courts would be integrated into the mainstream court system and removed from the specialised divisions. Court managers would be appointed to oversee administrative and logistical arrangements within the courts.

Members asked numerous questions including the role of Parliament in determining the budget of courts, the role of the Judicial Services Commission in the appointment of judges, the distinction between administrative and judicial functions, whether judges would receive salary adjustments, why labor courts would no longer be regarded as specialised courts, the role of trade unions within High Courts and whether a constitutional amendment was necessary to create court managers.

The Chairperson emphasised that no attempt had been made to stifle comment and public input by publishing the 14 Constitution Amendment Draft Bill during the Christmas recess. Submissions could still be made during the Committee's deliberation process. She believed that no substantial objections were anticipated from the judiciary as the Bill drew a clear distinction between judicial and administrative functions. The executive would play no role in judicial functions. The Bill contained norms and standards for the exercise of judicial functions

MINUTES

The Chairperson welcomed the Director General for the Department of Justice. She stated that the Committee programme for the first term would be finalised in due course with particular attention being paid to budget hearings. Political party training would occur next week so there would be no meetings that week. The Sexual Offences Bill was priority as well. The Superior Courts Bill before the Committee was a redraft containing significant substantive changes that necessitated close scrutiny by Members. The Committee would be briefed the following day on the National Prosecuting Authority policy amendments with regard to procession of criminal matters arising from conflicts of the past. The Committee would meet with relevant statutory bodies for budget hearings before Parliament rose on the 17 February for constituency work due to local government elections. The Draft Constitutional 14th Amendment Bill had been gazetted in December 2005 and would have to be referred to when contemplating the Superior Courts Bill.

Ms S Camerer (DA) sought to establish from the Department why the 14th Amendment Bill had been

tabled in December during the holiday period. She asked why not even the Chief Justice had not been informed of the request for comments. Members should be provided an opportunity to interact on this matter with the Director-General and clear up certain contentious issues.

The Chairperson responded that views from the public and other interested parties would be taken into consideration during the legislative process in Parliament. Adequate opportunities had been provided to debate the content of the Superior Courts Bill. The Bill had been before the committee for three years. Interest groups could still submit comments and opinions to the Committee during the deliberation process. The Director-General wanted to set the record straight on certain key points with representatives of the media during the press conference after this meeting. Written submissions had been received throughout the legislative process. The Superior Courts Bill could not be passed by the Committee before the 14th Amendment Bill had been tabled. Prior to tabling the constitutional amendment, the Department had to engage in a process of consultation for 30 days as prescribed by the Constitution and this process had occurred in December.

Ms Camerer asked whether the Director-General would brief Members during the present meeting.

The Chairperson replied that the Director-General was present to hold a press conference and not to brief the Committee.

Ms Camerer referred to the large number of written submissions that had been received.

The Chairperson added that the briefing to Members would emphasise the new aspects of the Bill. Inputs from members of the judiciary would still be allowed during the deliberation part of the process.

Briefing on Bill

Mr J De Lange (Department Legal Director) provided a briefing on the Superior Courts Bill and read through the Bill. Recent meetings with legal representatives had resulted in various proposed amendments to the legislation. The main thrust of the two Bills was that one single High Court would be created containing special and general divisions. The Labour Court and Labour Appeal Court would be abolished. The Constitutional Court would remain as the apex court of South Africa. The Supreme Court of Appeal would acquire a second deputy-president. The Chief Justice would act as the leader of the judiciary. The Minister would have authority over court administration and court budgets.

The Chairperson stated that the overall intention of the proposed legislation was to provide a more accessible, cost-effective and efficient judicial system. The Bill would promote the transformation of the judiciary.

Preamble / Chapter 1: Introductory provisions

Mr De Lange read through the Preamble and Index.

Ms Camerer noted that the Preamble made no mention of the role of Parliament in determining the budget of courts. She felt that this anomaly should be corrected.

The Chairperson asserted that the Minister and Department were responsible to Parliament for expenditure incurred within the judicial system.

Ms Camerer retorted that the final responsibility for passing a budget rested with Parliament.

The Chairperson concurred and suggested that necessary changes to the wording be facilitated to dispel any ambiguity. More discussion on the matter would occur during the deliberation process.

Chapter Two: Structure of Superior Courts

Mr De Lange continued with the briefing on this chapter which dealt with the structure of superior courts.

The Chairperson asked whether any additions to the legislation had resulted in the removal of powers from certain role-players.

Mr De Lange replied that no powers had been removed from the Chief Justice as no separate piece of legislation existed that accorded specific powers to the Chief Justice.

The Chairperson responded that the lack of specific powers for the Chief Justice appeared to be the overriding problem that had to be rectified. More powers should be assigned to the Chief Justice.

Mr De Lange stated that a more extensive concern for removal of powers lay with the judiciary and the lower courts. A current argument was that the status of the Supreme Court of Appeal was being adversely affected by legislative amendments.

The Chairperson declared that the existence of two apex courts of equal status could impact negatively on efficacy and cost-effectiveness. However, no evidence existed at this juncture to support the claims of removal of powers.

Ms Camerer sought clarity on the role of the Judicial Services Commission (JSC) and the responsibility for the appointment of leadership positions within the courts. She asked whether the JSC would no longer play a role in the appointment procedure.

Mr De Lange replied that Section 174 of the Constitution confirmed the role of the JSC in the appointment process. The role of the JSC was also entrenched within the 14th Amendment Bill.

Ms Camerer responded that the Superior Courts Bill did not mention the JSC in the appointment process and asked why this was the case.

The Chairperson replied that the Bill sought to confirm the composition of the JSC as opposed to the process of appointment.

Chapter Three: Administration of judicial functions of all courts, including governance issues and administration of administrative functions of courts, including finances of all courts

The location of High Courts and the role of special divisions were explained.

The Chairperson sought clarity on the process of appeals and the role of the Supreme Court of Appeals.

Mr De Lange replied that certain provisions would be removed to end the practice of full bench appeals. The Supreme Court of Appeal would handle all appeals.

The Chairperson stated that High Court judges could now act in the capacity of judges of the Supreme Court of Appeal.

Mr De Lange declared that the Department had foreseen initial problems of implementation with regard to the amendments to the appeal process. A decentralised Supreme Court of Appeal system was optimal to promote access.

The Chairperson added that the rollout of the new system had to be conducted in an effective manner.

Ms Camerer stated that the role of the JSC in terms of the appointment of Judge Presidents appeared to be removed by the proposed legislation.

Mr De Lange replied that the individuals concerned had already been appointed judges by the JSC. The proposed legislation would advocate consultation with the Chief Justice to appoint Judge Presidents. The JSC would continue to play a role in appointing judges. The JSC would compile a list of suitable candidates for consideration for leadership positions. The provisions of Chapter Three were applicable to all courts including special and general divisions. Clause 11 was of particular importance in this regard and contained additions from recent meetings of role-players.

Mr Magwanishe (ANC) stated that issues of accessibility and efficacy of courts should fall under

administrative duties rather than as part of a judicial function.

Ms Camerer noted that the Bill avoided referring to leadership positions within courts in terms of a management responsibility. Presidents of courts had to be regarded as managers.

The Chairperson stated that the Bill sought to impose a clear distinction between judicial authority and administrative authority.

Mr De Lange continued with Chapter Three dealing with the office of the Chief Justice and access to courts. Clause 14 had been particularly contentious and stipulated regulations governing the functioning of courts including periods of recess. Vacation leave for judges would remain at four weeks per annum.

The Chairperson asked whether the concept of vacation leave existed within the judiciary. A distinction had to be drawn between vacation and recess. Preparation work should be undertaken by judges during a recess period. Recess should not be regarded as a vacation. The powers and responsibilities of the Chief Justice as head of the judiciary had to be clearly stipulated within the legislation.

Mr De Lange indicated that judges of specialised courts would be regarded as ordinary judges of the High Court. The Land Claims Court would continue to exist in the interim.

Mr Magwanishe asked whether the salaries of the Chief Justice and the President of the Supreme Court of Appeal would experience salary adjustments.

The Chairperson noted that the management burden of judges and judge presidents would be increased by the proposed legislation.

Mr M Mahlawe (ANC) asked why the labor courts would no longer be included within the realm of special courts.

Mr De Lange responded that the new Bill drew a distinction between labor courts and specialised courts such as the Electoral Court which operated on an ad hoc basis. The labor courts had a higher workload than other specialised courts. Labor courts would be integrated into the mainstream court system to promote access and synthesise the overall court system. The specialised nature of the labor courts would be retained through the continued existence of a specific list of labor judges thereby maintaining the required level of expertise. A primary intention of the legislation was to decentralise labor adjudication. He outlined the role of the executive in maintaining the administrative functions of the courts.

Mr L Joubert (IFP) noted that a third of the training budget would be allocated to women and asked why an increase was advisable given the small number of female judges.

Mr De Lange responded that the budget allocation was in line with existing quota targets.

Mr J Sibanyoni (ANC) asked whether the incorporation of the labor courts into the High Courts would adversely impact on the ability of the poor to access due process. He inquired whether trade unions would still play a role in High Court cases.

Mr De Lange declared that the purpose of the legislation was to improve access to the High Court system.

Ms Camerer referred to the long overdue decision to create court managers and asked whether a constitutional amendment was necessary to facilitate this positive development. The presence of a court manager could generate tensions with judges in terms of overall authority. She asked whether the amendment would have an impact on existing relations of authority.

The Chairperson asserted that the presence of court managers would have no negative connotations for the authority of judges. Managers would be appointed by the Minister who would have to account for expenditure. Personal differences did arise between court managers and judges on a periodic

basis that regulation could not address.

Mr De Lange noted that court managers had already been appointed and the necessary budget had been arranged to accommodate the logistical adjustments. Court managers could fulfil other administrative duties such as the registrar if the workload allowed this.

The Chairperson reiterated that no attempt had been made to stifle comment and public input by publishing the Bill during the Christmas recess. Judges could still make inputs during the Committee's deliberation process. No substantial objections were anticipated from the judiciary. The Bill drew a clear distinction between judicial and administrative functions. The executive would play no role in judicial functions. The Bill contained norms and standards for the exercise of judicial functions.

The meeting was adjourned.

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