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### JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE 31 January 2006 MINISTER & DEPUTY MINISTER BRIEFING ON DEPARTMENT'S 2006 PRIORITIES

**Chairperson:** Ms F Chohan-Kota (ANC)

**Document handed out**  
[Briefing by Minister of Justice on 2006 Priorities](#)

#### SUMMARY

The Minister outlined the Department's efforts to ensure its three strategic goals of access to justice for all, enhancing the Department's organisational efficiency and the transformation of justice, state and security were given effect to in 2006. The Minister highlighted a few pieces of legislation that were promoted and implemented during 2005 as well as the draft legislation the Department would like to table in 2006. The briefing added clarity on the Department's ongoing projects that would be focused on in 2006, such as the modernisation of the courts, the transformation of the judiciary and Justice College and the status of the Guardian's Fund, the Department's efforts to modernise the courts and its efforts to transform the judiciary and the Justice College.

The Committee sought clarity on the functions and operations of the local assessor committees, whether Legal Aid resources could be expended to include civil litigation, the full extent of the theft from the Guardian's Fund, the Department's efforts to expedite the applications for amnesty pardons, the transformation and curriculum of the Justice College, who exactly the National Prosecuting Authority's accounting officer was, the Department's efforts to improve the gender breakdown of the judiciary and whether the decentralisation of the high court could add greater impetus to the Department's objective of ensuring access to justice for all.

The Deputy Minister firmly rejected the Democratic Alliance's criticism that the Department had failed to properly consult the judiciary on the Superior Courts Bill and the draft Constitution Fourteenth Amendment Bill. The Deputy Minister explained in detail the history of the legislation, which had begun in 1998, and he contended that the consultation process was both lengthy and adequate. The Democratic Alliance acknowledged this but maintained that the latest drafts of the legislation included provisions that were not reflected in earlier drafts.

#### Introduction by Chairperson

The Chair welcomed the Minister of Justice and Constitutional Development, Ms B Mabandla, the Deputy Minister, Adv J de Lange, the Director-General, Adv M Simelane and the other departmental officials present. She explained that the briefing would kick off the Committee's budget hearings process, which would run its course over the next two weeks.

#### Briefing by Minister of Justice and Constitutional Development

The Minister thanked the Committee for the invitation to brief it on the department's priorities and restructuring process. Her department enjoyed excellent interaction with the Committee over the past year, and she believed the two would continue to work closely together. The briefing outlined the Department's efforts to ensure its three strategic goals of access to justice for all, enhancing the Department's organisational efficiency and the transformation of justice, state and security. The Minister highlighted a few pieces of legislation that were promoted and implemented during 2005, she outlined the list of draft legislation the Department would like to table in 2006, the Department's

resource allocation for 2006, the status of the Guardian's Fund, the Department's efforts to modernise the courts and its efforts to transform the judiciary and the Justice College.

The Minister concluded her briefing by expressing her congratulations at the appointment of Judge President Ngoepe to the African Court of Human Rights, the appointment of Judge Moloto to the International Criminal Court and the appointment of Judge Nkabinde to the Constitutional Court.

The Chair echoed the Committee's own pride in those appointments. She stated that the Committee congratulate them personally when it met with the judiciary..

### **Discussion**

The Chair noted that the Committee had not yet had sight of the separate financial statements on monies held in trust, and requested the Department to provide copies to Members.

Mr B Magwanishe (ANC) asked when the Legal Practitioners Bill would be finalised.

The Minister replied that the Legal practitioners Bill would be brought before Parliament in second half of 2006.

Mr Magwanishe asked how exactly the local assessor committees would work, especially with regard to that committee's relationship with community organisations and its composition.

The Deputy Minister responded that the assessors legislation was of the bills the Department was struggling to implement, even though it was passed in 1998. The problem lay with the finances needed for the implementation as well as the fact that resistance was received from some of members of the judiciary and the magistracy regarding the presence of assessors. A further problem was that the communities themselves were unsure as to whether assessor committees were desirable or not. He stated that the Department was thus uncertain as to how those committees would work in practice, because it was unable to fully implement the Bill. He added that the Bill was really designed for a stable democracy with stable communities, and it was very difficult for communities that had inner conflict to try to create committees that were tasked with appointing assessors who truly commanded the respect of the entire community.

Imam G Solomon (ANC) stated that the Magistrates Court Amendment Bill was an important piece of legislation, but contended that its operation could also result in a number of civil cases. He stated that he understood that the majority of Legal Aid resources were allocated to criminal matters and not civil cases. He asked whether a balance could be struck between the criminal and civil cases.

The Deputy Minister replied that the policy of government was to fund its legal obligations, which involved two constitutional obligations: criminal matters and litigation involving children. He stated that as more funds became available to the Department it would look towards expanding those obligations to include civil matters, but at the moment the Department was struggling to meet these two core obligations and did not currently have the capacity or the necessary funds to expand those obligations. The Department had learnt from the Canadian legal system that it was a struggle to expand the state's obligations into civil cases.

Adv C Johnson (ANC) stated that the Committee was aware of the fact that the Department had engaged in a thorough consultation process on both the Superior Courts Bill and the Constitution Fourteenth Amendment Bill yet, despite that, the Department was being accused of not consulting properly. She requested the Views of Department on the consultation process it conducted, and whether the Department was of the view that the process was adequate.

Ms S Camerer (DA) stated that there had been an outcry from the judiciary and the legal profession in general about the Constitution Fourteenth Amendment Bill. She asked the Minister to explain the extent to which she still had an "open mind" on the Bills, and whether she was prepared to effect minor amendments to the Bill to accommodate the concerns of the judiciary and the legal profession generally.

The Minister responded by expressing her difficulty in receiving such a question from a Member who

has been a Member of the Committee for such a long period of time. She informed Ms Camerer that she did what was unprecedented by taking the issues back to Cabinet for discussion, when it was before Parliament at that stage. She thus failed to understand Ms Camerer's assertion that she was not "open-minded" about the legislation. She stated that Ms Camerer was aware that the Bills had been before Parliament for a very long time, and that both Ministers Omar and Maduna dealt with the Bills. The Bills were currently before Parliament, where they belonged. She thus failed to understand Ms Camerer's question.

She stated that the Bills cannot be delayed any longer because, as she had indicated, they had been on the cards for a very long time. She informed the judges that any submissions they needed to make must be made now in Parliament. She believed she would have acted irresponsibly had she delayed the Bills any longer.

With regard to the complaints mechanism, the Minister stated that she was currently engaged in discussion with the judges and meetings had taken place. There were however many untruths and exaggerations surrounding these matters. The fact of the matter was that people were still able to make submissions to Parliament. She assured the Committee that she would be bringing the complaints mechanism before Parliament in first half of 2006.

The Deputy Minister stated that he was glad the matter of the Chairperson's press statement on the matter was brought up because he was "absolutely flabbergasted" at the media reports. He stated that he was and had always been completely in favour of an exchange of ideas and the voicing of concerns, but he detested the "intellectual dishonesty" with which that was being done. Members of Parliament who have been around for a long time, like Ms Camerer, knew very well that the late Minister Omar said that one of the first issues he would be addressing as Minister was the rationalisation of the courts, because the transitional provisions in the 1993 Constitution stipulated that government must rationalise the court structure. Minister Omar then appointed a Commission in 1995 to look into the matter, which took two years to consult all relevant and interest parties and to draft the report. A policy statement was given by Minister Omar in August 1998, which dealt with the education of judges, the complaints mechanism etc. Government then had a colloquium in Pretoria and Minister Omar drafted a Bill which came before this Committee in 1999. The Committee then had public hearings on the Bill and all the issues that were currently being raised by the judiciary were discussed fully.

The Committee then referred the Bill back to Minister Omar, and indicated the problematic areas in the legislation. Minister Maduna then took office and he decided to begin the process from scratch. A second colloquium was held on the same issues and another report was produced. A committee was appointed under the then Chief Justice Chaskalson, which drafted the Bill and was eventually presented to Parliament and this Committee. This Committee then had public hearings on that Bill, during which the very same issues were raised again. At the beginning of 2004 the Committee then discussed the resultant draft Bill prepared by Mr Johan de Lange, Legal Drafter from the Department, and the Committee instructed Mr de Lange to redraft certain aspects of the Bill which the Deputy Minister, as Chairperson of the Committee at that time, would oversee. The Bill was then referred back to the department.

Mr de Lange continued that when the current Minister had taken office, she had acquainted herself with the Bill and a draft Bill was released. There had been an outcry from about August 2004 when the Bill was ready. Minister Mabandla then consulted again and a third colloquium was held in April 2005 where the same issues were discussed again. He stated that the Minister had thus consulted from April 2005 till the end of the year and then indicated the amendments she would propose, and then referred the Bill to Parliament. The matter went through Cabinet and the Bill was then advertised for public comment.

Issues were then raised in the media that the Department "was trying to rush the Bill through". The Deputy Minister indicated that he failed to understand the rationale behind that allegation because the Department had no power to process a Bill, as that was the sole domain of the legislature. Section 74 of the Constitution stipulated unambiguously that Department must only submit all the submissions it received on the Bill to Parliament for Parliament itself to process. This had been the legislative practice for the last twelve years. He stated that these media reports were not written by the journalists who sat

in Parliament everyday, because they knew the Parliamentary and legislative process and would never write such exaggerations.

Ms Camerer agreed with the Deputy Minister that it had been a lengthy process, but maintained that the latest form of the Constitution Fourteenth Amendment Bill contained provisions that were not reflected in its predecessors. She stated that they were in fact additions that were inserted between the April 2004 elections and April 2005, which caused a great amount of fuss and concern. Secondly, a number of additions were effected to the Superior Courts Bill, which not reflected in the initial draft.

Mr J Sibanyone (ANC) noted that other accusations were raised by the judiciary that the Constitution Fourteenth Amendment Bill was gazetted during the December break, when most of them were on vacation. He requested the Department to comment.

The Deputy Minister replied that during the last months of 2003 and the beginning of 2004 some issues were raised by the judiciary such as judicial administrative functions, which the judiciary raised before the Committee's public hearings. One judge argued in favour of the United States system, in which the Chief Justice him- or herself ran the judiciary and not the Department. The Committee engaged him on it, and at that time the DA in fact rejected the notion of the United States system. There was in fact disagreement between the judges themselves on the matter, and the then Chief Justice Chaskalson said the current system should be retained. It was precisely because the Constitution was silent on the appointment of a Judge President and Deputy Judge President that the Committee proposed solutions way back in 2003 and 2004. At that stage the DA did not raise a single objection to any of the issues, yet it was now "opportunistically jumping on the bandwagon". He disapproved of the manner in which the DA was going about the matter.

Mr Magwanishe sought an indication of the progress made by the Khampepe Commission.

Ms Camerer noted that the Minister had approved the relocation of the Scorpions from the Department and into the South African Police Service (SAPS). She asked the Minister to indicate the extent to which she still had an open mind on the matter and whether, in anticipation of the finding of the Khampepe Commission, she would retain them within her department.

The Minister replied to the two questions by proposing that the final report of the Khampepe Commission be waited on. The President established that commission and it would soon be presenting its report to the President, who would in turn communicate it.

Ms Camerer noted the Minister's statement that she planned to improve access to the Guardians Fund. She asked whether that was merely a euphemism for restocking the fund, as it had been reported that R70 million had been stolen from the fund. She asked the Minister to indicate the full extent of the funds stolen.

The Minister responded that Ms Camerer had misheard her. She stated that the Fund consisted of a total of R3 billion, that there had been an increase in the number of claimants over the past year and that funds were now beginning to be paid to those claimants. Regular payments from the fund have doubled in the past financial year, with a total of 592 000 claims received in 2005.

The Deputy Minister added that the Department did report three cases in which funds were stolen. The Minister appointed a commission of inquiry to look into the liquidation industry and, more broadly, in the Masters Office. One of the terms of reference was to call on all people who appeared before the commission to bring forward evidence on any incidences of corruption. Unfortunately, the final report indicated that hardly anyone came forward with such evidence, despite the Department of Trade and Industry's efforts to assist them in drafting statements etc. Those that came forward were referred immediately to the police. He requested any other matters of corruption in Masters Office to be brought to the Department's attention, as the failure of evidence was transforming the allegations into an urban myth.

The Chair stated that that was one of the aspects the Committee would focus on, and the modernisation of the Masters Office would go a long way to address the problem. A further question was whether the funds were in fact stolen or whether there was simply no proper accounting

processes in place in the Masters Office.

The Minister responded that one of the Department's objectives was the modernisation of the Masters Office. South Africa currently had a total of 563 courts, yet only 221 were currently connected to a central system. Over the next six months the remaining 342 courts would be connected, and the Minister requested the Committee to hold her to this promise, even though it was an ambitious undertaking. It was critical to complete the process and the department did have the funds for it.

The Chair agreed.

Mr J Van Der Merwe (IFP) expressed his extreme disappointment that literally hundreds of applications submitted to President for pardons were referred to Department and had been stagnating for more than two years. This was not mentioned in the Minister's briefing at all. Many people were currently in jail when they did not deserve to be, and he pleaded with the Department to clarify the matter.

The Minister replied that Mr Van Der Merwe was referring to the ordinary pardons, and informed him that the Department was currently working on guidelines for those whose amnesty application had either been rejected or had not been considered. The President was directing the process. The guidelines will be tabled before Cabinet in 2006. It was a delicate issue but would be brought before Parliament in 2006.

Mr Van Der Merwe stated that that was not to his satisfaction, and pleaded with the Department to be more pro-active and to investigate the applications and decide whether or not reprieves should be granted.

The Minister answered in the negative and stated that the President himself would decide, and his decision would then be discussed in Parliament. Government acknowledged the urgency of the matter and it would be brought before Parliament in 2006.

The Chair informed Mr Van Der Merwe that the Committee did discuss the matter with the National Prosecuting Authority (NPA) at a meeting which he did not attend. She stated that she would be happy to discuss it with Mr Van Der Merwe after the meeting.

Secondly, the Chair stated that she was concerned with the transformation of the judiciary. She was inundated with people who had been fingered as being racists but who were never afforded an opportunity to defend themselves, which was wrong in principle. The matter would be raised again when the Committee met with the Chief Justice. Such allegations cannot be allowed to fester.

The Minister replied that she purposefully stepped aside during those matters because she believed the judges themselves were best placed to address the issues as they were directly involved. She had received reports which indicated that they have held dialogues, which have been beneficial in discussing the matter. She was not sure what the result would be but a report would be made available soon. The Minister believed that that was the proper route to follow.

The Chair stated that there was a "hue and cry" that the Department was somehow manipulating judicial training. The Committee's concern was that there was no written plan for the alternative to the Department's proposal. She stated that the Committee had this discussion on judicial training last year with the outgoing Chief Justice. As a principle judicial training had been at the cornerstone of transformation of the judiciary because, as she understood it, it was not merely a question of relocation of staff, but was in fact a change in mindset. It was something that needed to be very critically infused into the judiciary if there was any hope to transform it. She stated that she failed to see the problem with the Department's proposal that a completely independent body be placed in complete control of the curriculum, which the judiciary would be in complete control of would also and provide its training. The Department would then only provide the resources needed, nothing else.

The Minister responded that she believed in the doctrine of the separation of powers, and thus the independence of judiciary was vital. It was therefore important that the transformation of the judiciary was lead first by the judiciary itself, and it was therefore important to have progressive leadership

within judiciary. She believed that that was in fact the case, and assured the Committee that fuller plans will be provided in time. The judiciary would establish a task group on judicial training. The Department could not however wait for the judiciary's plans to unfold because government was under pressure to improve inefficiencies within the legal service providers in the Department. Hence she instructed the Director-General to task one of the Deputy Director-Generals to head the training of the judiciary, which was included in the Department's budget under its human resource development component. The chief litigation officer post was created because the Department wanted to streamline the structure.

The Justice College as it currently stood would be phased out, but the areas of development and capacity would be fully increased. The Department's plans would in time be presented to Parliament, and the Department was consulting with experts in the area to ensure a good college.

Ms Camerer stated that judges had recently received salary increases, but judges who were currently on pension have not received the increase they thought they would receive.

The Deputy Minister replied that the Department had changed the dispensation for judges on pension because it stemmed from a very old legal regime. Ms Camerer was referring to those judges who went on pension before the 1989 legislation came into force, and some of their widows were currently living in serious abject poverty. He stated that the laws have since been changed to give them substantially more money than they would have received. Any future pension packages would fall under the new Act and not the 1989 legislation. He assured the Committee that all the monies would be provided for.

Mr M Malahlela (ANC) asked whether the large Medium Term Expenditure Framework (MTEF) allocations mentioned in the briefing were granted by National Treasury specifically to enable the Department to properly discharge the tasks it must carry out in 2006, or whether the allocations were something completely separate and unrelated..

The Minister responded that the Department had costed its strategic plans and stated that by the end of 2009 the Department should be able to cost the provision of justice properly. There has been great improvement in the department's work, and it was working very closely with task teams in the National Treasury and the Department of Public Service and Administration. To constantly improve its personnel quota and budget management. A large portion of the Department's budget was allocated to the courts, and a portion was allocated to the restructuring of the Masters Office.

Imam Solomon congratulated the Department on receiving an unqualified audit from the Office of the Auditor-General. He noted that the Auditor-General's Report raised concern with the NPA, especially the uncertainty with regard to its accounting officer.

The Minister replied that the Director-General of the Department was in fact the accounting officer, but in the past the Director-General of the Department delegated some functions to the NPA which was how the CEO post was created. There were structural problems which would come out clearly during the review of the NPA structure.

The Deputy Minister added that one additional confusing factor was that the Scorpions' enabling legislation stipulated that the CEO was in fact the accounting officer. This created difficulties in practice because the Department had political oversight over the Scorpions, but it did not have powers of oversight over their budget.

A task team was established and headed by the Department's CFO, and it considered some of the issues relating to the non-existence of an asset register for the NPA. The Department was working very closely with NPA to tidy up its asset management system and to establish very good and efficient working relationships.

Mr L Joubert (DA) stated that one of the Department's strategic goals was ensuring access to justice for all. This was a laudable objective, but the locations of the new provincial courts appeared to hinder that objective because they required people must travel vast distances to reach the nearest high court. He asked whether the Department considered a system of decentralised high courts, as was done with the divorce courts, so as to introduce a roving court system..

The Deputy Minister responded decentralised courts was an important issue, but it would not be achieved by doing away with the high courts. At moment the Department was trying to locate them closer together, to ensure clearer access to the province as a whole. Strategies were also being devised to decentralise the activities of the Supreme Court of Appeal (SCA) by introducing circuit courts. A circuit procedure for high courts was also being explored, which could be expanded upon in time to come. The Department's most urgent priority was to create access to courts in the Mpumalanga and Northern Provinces especially, and informed the Committee that members of those provinces were ecstatic because for the first time their province would have high courts.

Mr Joubert noted that he was aware of the Constitution Twelfth Amendment Bill and the Constitution Fourteenth Amendment Bill, but was not aware of a Constitution Thirteenth Amendment Bill.

The Deputy Minister replied that there was in fact a Constitution Thirteenth Amendment Bill. It dealt with a very technical amendment to a change of name, and fell under the Department of Defence. It also dealt with a very technical amendment raised by the National Treasury. The Bill was still being processed, and the hope was that it would be presented to Parliament quite soon.

Mr Magwanishe sought clarity on the Department's efforts to employ persons with disability in the judiciary, as much effort had been committed to fast-track their recruitment.

The Deputy Minister admitted that the recruitment had not been as expedient as originally hoped, as there were only two judges that he knew of. Mr V Gore (ID) posed this question to the Minister in the House, and the Department was addressing the matter.

Mr Magwanishe stated that he was aware that the Department was part of the fact-finding mission to assist the people of the Republic of the Comores, and asked whether the Department in fact provided any assistance to them.

The Minister replied that in time the Department would place before Parliament its international and regional programmes as part of government's Justice and Crime Prevention and Security (JCPS) Cluster. Assistance to the Commonwealth would be provided via the JCPS broadly, and would include the provision of training in legal drafting and legal services etc. to southern countries. This was another compelling reason for the implementation of the new justice college.

Adv Johnson stated that the latest statistics indicated that only 23 out of the current total of 204 judges were in fact female, and asked the Department to indicate the steps it was taking to improve the gender breakdown of the judiciary..

The Chair noted that the latest statistics in the Department's yearbook indicated that in 1994 out of the total of 196 judges in South Africa, a total of 162 were white males, there were 2 white females and 3 black males, and no black female judges. In 2003 there were 61 black male judges, 12 black females, 13 white females and 128 white male judges. In 1994 the judiciary consisted of less than 2% black judges, the judiciary was 34% black by June 2004. Of the 53 new judges appointed since 1994 a total of 89% were black, while the magistracy was nearly 50% black and 30% female. She stated that the figures for the magistracy were thus improving.

The Minister replied that the Department was committed to increasing the number of black appointments.

### **Concluding remarks**

The Chair thanked the Minister, the Deputy Minister and the delegation from the Department for their input, and looked forward to similarly constructive interaction in future.

The meeting was adjourned.

therefore should not  
be regarded as a complete and correct record of the proceedings in the committee.  
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