

**P.I.J.F MEETING HELD ON 26 JANUARY 2007 AT THE HILTON HOTEL AT
09:00**

1. WELCOME

Judge Jappie welcomes all.

Mr Mabaso introduces Mr Cele, the new Regional Court President and a committed and experienced Judicial Officer, to the meeting. Mr Cele, previously a Regional Court Magistrate and Acting Judge, was appointed as Regional Court President, KZN, during December 2006.

Ms van Rooyen introduces Dr Shanta Singh and Dr Nirmala Gopal, lecturers at Howard College, the Law Faculty at the University of KwaZulu Natal. Both ladies are interested in Case Flow Management and intend to include the Case Flow management processes in the curriculum of the undergraduates, with a possibility of a movement in this direction at Universities nationally.

2. APOLOGIES

Dr Akoojee	Department of Health
Mr Byroo	Department of Social Health
Mr K Glen	BAC
Tanuja Munnoo	South African Human Rights Commission KZN
Iole Matthews	IPT

3. CONFIRMATION OF PREVIOUS MINUTES

A number of amendments are requested to the previous minutes:

- Ø Page 1 – Adv. Batohi did tender apologies.
- Ø All references to Mr Ross, should be references to Mr Ross Stuart.

- Ø Page 2, Paragraph 5.1 "Mr Ngcobo suggests that Prosecutors **are** appointed..." should read: " Mr Ngcobo suggests that Prosecutors **be** appointed..."
- Ø Page 2, Paragraph 5.1 reads: "A further 2 Prosecutors are leaving at the end of October 2006." Should read: "A further 2 Prosecutors are **said to be** leaving at the end of October 2006."
- Ø Page 3, Paragraph 5.1 reads: "Guilty pleas **in** drunken driving matters". Should read: "Guilty pleas **for** drunken driving matters."
- Ø Page 3, Paragraph 5.1 reads: "Mr **Andre**", should read "**Mr Britz**"
- Ø Page 6 Paragraph 8 reads:" The pilot has already been implemented at Magistrate Pietermaritzburg". Should read:"The pilot has **not** been implemented at Magistrate Pietermaritzburg." NICRO programs will continue to assist the Alternative Sentencing Program.
- Ø Page 7 Paragraph 6.1.1 reads: The **Committee** met. Should read: The **Judicial CFM Monitoring Committee** met
- Ø Page 8 Paragraph 6.1.2 reads: "Mr Ngcobo indicates that originally Court 8 was dedicated" should read: "Mr Ngcobo indicates that originally **Regional** Court 8 was dedicated
- Ø Page 12 Paragraph 6.3 reads: "There is a lack of Administration support and the posts are to be advertised". Should read "There is a lack of Administration support and **42** posts are to be advertised."

Save for the afore-mentioned amendments, the minutes are accepted as a true reflection of the proceedings at the previous meeting.

MATTERS ARISING

Development Committee:

Adv Batohi raises a concern around Mr Jiyane's proposal that the Development Committee should exclude the Judiciary. The Development Committee would

feed to the National Development Committee. Adv Batohi is also concerned about all the committees at our Provincial level that may be duplicating functions. Ms van Rooyen reminds the meeting that it was suggested that the PIJF committee should deal with strategic issues and the sub-committees with production issues.

Mr Sibeko mentions that Mr Jiyane proposed that a Development Committee was to be established. This meeting had to meet and discuss the issue, but no formal decision was ever taken.

Mr Ngcobo indicates that Mr Jiyane spoke of Development Committee that was to be established, tasked to prepare progress reports on CFM.

Judge Jappie indicates that the Development Committee's functions were not clearly specified. He refers to the Judicial CFM Monitoring Committee and indicates that this Committee was supposed to collect statistics in order to assist this meeting.

Mrs van Rooyen explains that the Regional Office was supposed to provide a secretariat to the Judicial CFM Monitoring Committee, but as a result of insufficient resources, they could not fulfill their undertaking. Mrs van Rooyen and Mrs Nortje of the Durban Magistrates Court assisted with the duties of the secretariat, but it was extremely difficult to obtain the Provincial statistics at their level and statistics were simply not coming forward.

Mr Sansom mentions that he had met with the prison personnel to promote CFM issues, but this initiative also died down.

Judge Jappie acknowledges the need for logistical assistance for the Judicial CFM Monitoring Committee and the difficulties experienced in getting statistics. These tools were important for the Judicial CFM Monitoring Committee to

operate successfully. Mr Sansom and Mrs van Rooyen are to meet with Regional Office and address the issue.

Page 6 – Item 9: PIJF Sub-Committees:

Adv Batohi agrees that the PIJF Sub-Committees are doing a lot of work and should report to the PIJF Forum at every meeting.

Mr Mabaso will meet with Mr Laue and compile a minute to Ms Shabalala, to address all problems.

Adv Batohi mentions that the PIJF Sub-Committees established were:

- a. Child Justice
- b. CFM
- c. Restorative Justice
- d. Awaiting trial

The original minutes and reports from the PIJF Sub-Committees should be circulated to all PIJF members to prepare for discussions at the next PIJF meeting.

The fact that Regional Office is not attending the PIJF meetings is serious.

Late arrival: Ms Shabalala.

Judge Jappie updates Ms Shabalala on the discussion on the Judicial CFM Monitoring Committee re the statistics and secretariat.

Ms Shabalala explains that it has been a struggle to secure posts at the Regional Office. Candice Lupke was identified as the secretariat. She was there after appointed at National Office. Regional Office has since been unable to secure a person with suitable skills to act as secretariat. She spoke to Mr Hartzler to

advertise the post internally so that an experienced person can be recruited. The person dealing with the statistics at present does not have the necessary skills.

The minute addressed to Ms Shabalala that Mr Mabaso was tasked to do will no longer be necessary.

Adv Batohi indicates that the operating system at the Regional Office to support CFM will have to be substantial to take care of all the various needs of CFM in the Province.

Page 8-Section 75 of the CPA - matters to be heard in the appropriate forum:

Adv Batohi explains that the matter was escalated to the highest level.

Page 4 – Item 13.4 and page 5 Item 3– Payment of Psychiatrists:

Ms Shabalala explains that psychiatrists demanded a higher tariff paid. Some progress has been made towards authorizing payment of a tariff of R750 per hour to observe a patient, or R5000 per day to attend a court hearing.

Psychiatrists have to be paid immediately (S&T and salary). When a request is received from a Prosecutor for payment to a Psychiatrist, Regional Office has to act immediately to request for authorization from the Department of Health. Ms Shabalala requested for a budget to be allocated to Regional Office, instead of claiming from the Department of Health. This request is still in the balance.

Ms Shabalala explains that Court Manager should draft letters and fax requisitions to the regional Office. This should not a function of Prosecutors. An Excon meeting is to be held with Area Court Managers shortly and processes will be explained.

The number of beds available to patients remains a problem.

Page 8 Determination of Admission of guilt fines for traffic offences:

Judge Jappie explains that the Judicial Officers are not opposed to amount of fines, but the fact that these are easily affordable by the rich, but not by the poor, and so the poor will come to court.

Mr Mabaso explains that in Durban Cluster A he has sent out requests for inputs to the Fines Classification Lists for suggestions by the NPA Traffic Department.

Judge Jappie mentions that the penalty on exceeding the speed limits appears to be out of balance.

Mr Sibeko also wanted to raise the "One size fits all" - perceptions in NPA Traffic fines and sentences. He understands that the Traffic Department budgets on fines as a source of revenue, but this means Prosecutors are placed in a difficult position. Court rolls are becoming clogged as many offenders would rather appear in court to seek lenience. It was emphasized that the visibility of Traffic Police Officers on roads is what is important and not so much the fines imposed.

Judge Jappie indicates that he understands the concerns both of Prosecutors as well as Traffic and NPA. We will have to find a way of addressing the concerns.

Mr Schnell points out that estreated bail and fines for failing to appear in court are paid to central Revenue, not to Traffic Departments. The current Admissions of Guilt lists have been circulated to all Magistrates in the Province for updating and amendments to the CPA.

Admissions of Guilt on written notices have increased, but the sentencing threshold of District Courts has not increased. This may result in the approval of traffic fines in excess of thresholds allowed. It is suggested that the review is postponed and that current lists to remain in use for 2007. Adv Batohi mentions that exorbitant fines have been imposed over the last 2 months. She suggests

that we revert to the old fines and that we do not process the exorbitant fines. Judge Jappie indicates that we cannot stop law. Mr Schnell points out that the perception exists that the Traffic Department sets fines; however, it is not within the discretion of the Traffic Department. They are bound by the Admission of guilt fines approved by the Chief Magistrate.

A major concern is that the extent of drunken driving contraventions in the Province continues to climb.

Judge Jappie mentions that previously periodical imprisonment was imposed for drunken driving offenders. Perpetrators ought to be locked up!

Mr Schnell raises a concern in that few drivers' licenses are endorsed / suspended / cancelled. This option should be looked at more widely. The vehicle population has increased phenomenally. We do not have a resolution for the problem. Therefore it is beneficial to the Justice System if perpetrators have to come to court in view of high fines and suitable sentences can be imposed.

Adv Batohi indicates that they view the issue from a different perspective. Prosecutors see that justice is done and that punishment should suit crime and seek to address behaviour. Traffic fines cannot be seen in a different light and are to be dealt with in the same manner as other offences. One cannot increase fines astronomically to address behaviour. A lesser fine is imposed for drunken driving than for speeding, i. e. drunken driving fines average R8 000 suspended – [Judge Jappie interjects: R6 000 to R12 000 generally ½ suspended], whereas fines for speeding can amount to R20 000.

Adv Batohi stresses that speeding fines can not be seen in isolation. Do we impose higher fines or more visible policing? On 22 December 2006 she drove from Pietermaritzburg to Durban and observed no low enforcement vehicles on the road.

The holistic view speaks of the negative impact on the court system as unequal justice will apply: those perpetrators that can pay or do not have time to go to court will pay their fines, whereas those perpetrators that cannot afford the high fines, will be forced to go to court and seek leniency.

At present warrants of arrest for 2002 and prior are cancelled, as the system cannot deal with the volume of unexecuted warrants of arrest. The excessively high fines will have a devastating effect on the numbers of warrants of arrest. There is in general no objection for the Admission of Guilt fines to be revised / increased, but rather that the increase in the amounts of Admissions of Guilt need not be so high.

Judge Jappie mentions that Deferred Fines are clogging the Clerk of Court's work. He suggests that a meeting be held with the Department of Transport / City Metro Law to find ways to deal effectively with the problems on the road. Judges suggested that drunken driving offenders are to go to gaol, or be given periodical imprisonment/ suspended sentences on condition that they attend classes. Judicial Officers are to be more innovative in sentencing. The imposition of high fines is not the answer.

Ms Dugmore mentions that the statistics kept by NICRO from January 2006 to December 2006 revealed that the drunken driving graph is escalating. For the period 1 January to 19 January 2007, 40 matters were dealt with, double the number in December 2006. NICRO Pietermaritzburg is inundated with drunken driving numbers. They planned to suggest for the region a minimum number of hours community service, coupled with group programs. She attended 2 group sessions and found the attendance to be positive. Not only is the court experience most traumatic, the arresting procedures are adding to the trauma as it is a leveling experience. All members of society are treated equally and have to talk about their experiences at the sessions i. e.: "pull over; arrest; detention in

holding cells; formally charged; diversion". She firmly believes that these procedures will bring about a behaviour change. She also believes that they will see a 100% success rate assessing responses of offenders. It is of the utmost importance for the offenders that have attended the innovative programs to give feedback at the next meeting of offenders.

Adv Batohi points out the importance to track and see if a person re offends. If charges are withdrawn, fingerprints are destroyed. No system is as yet in place to kept statistics to look at follow ups.

Mr Schnell indicated that they are willing to meet with respective Cluster Heads and produce statistical info, as differentiation of specific offences may be required. Mr Middleton indicates that they will gladly meet to discuss the problem areas. More effective traffic policing on roads would call for more traffic officers and they are short of resources.

Mr Cele points out that no solution will be found today. The house need to under take to let the meeting take place.

Judge Jappie enquires about the delays regarding DNA tests.

Commissioner Brown indicates that the forensic laboratory in Silverton has moved to the Arcadia Hospital which has been refitted. 800 DNA samples can be analyzed per week as they have fully automatic equipment. They undertook to produce the results within 10 days, should a prosecutor send a request for an urgent report together with the sample particulars and the date of trial, If it is not an urgent case, it may take longer.

Judge Jappie enquires if people are properly trained to collect samples.

Commissioner Brown responds that local fingerprint officers are well trained to collect samples. The problem is that contracted doctors need to be properly trained. Hospitals are properly equipped, but when policemen make use of contracted doctors to collect samples, they do not have proper equipment.

The backlog does not include all DNA samples. The DNA results requested by Public Prosecutors are regarded as backlog. Those reports not requested are not regarded as backlog.

Page 5 Item 5.6: Floor space Chatsworth court:

Ms Shabalala informs the meeting that they have procured a mobile court [park home].

Page 11 Item 6.2 – delays regarding blood alcohol reports:

The Department of Health is not present – stand over.

Page 12 Item 6.4 CFM issues:

Mr Sansom reports as follows:

- § Additional courts are required to work down backlogs
- § Communication is a problem at operational level.
- § This year will see changes in reporting back to the PIJF Committee
- § The NPA has a program in place and has published a document to train all Prosecutors country wide.

Mr Mabaso interjects that he has traveled countrywide. The argument against the Travers Case is still not sorted out and the NPA can still choose the court for cases to go to.

Adv Batohi explains that the focus of the NPA and their vision is to finalize cases and prepare cases properly for trial, they will rather place only 2 cases on the roll and prepare properly for trial. Templates are affixed to the face of the docket

indicating what each witness will say. The aim is to stimulate the Prosecutor's address so that prosecutor will be forced to be prepared.

Ms Shabalala refers to the appointment of court clerks to take over the administrative functions performed by the court orderlies and interpreters. A team has been established led by Durban Court, Mr Laue, to develop job descriptions for court clerks in line with prescripts: Oath, etc.

Com Brown raises a concern on diverted cases where in terms of the CPA fingerprints cannot be kept. Amendment to the Act has been requested to keep fingerprints of diverted cases on record. A minute was sent to all DPP's in this regard and they responded positively. The minute together with the responses were forwarded to the Minister to draw up a policy document [letter dated 11/1/07].

Mr Sansom is requested to develop a program for SAPS based on the presentation of by Ms Melis, which she did on behalf of Mr Sansom at the previous meeting.

5. NEW MATTERS:

5.1 AG'S FOR TRAFFIC FINES

Dealt with.

5.2 APPOINTMENT OF COURT CLERKS:

Ms Shabalala mentions that she was pressured to appoint stenographers – previous Regional Court Stenographers. There were no Stenographers utilized in the District Courts. National Office contracted a recruitment agency to recruit and train Court Clerks on the new court recording system. It was acknowledged that the Court Clerks were contracted from outside the department with little or no experience and assigned

responsibilities of case flow functions and administrative support duties in court. A learning program is being developed in order to train them in performing their functions. Mr Laue's team will work on this.

Ms van Rooyen points out that the functions of the court clerks in the Civil- and Family Courts will have to be developed. The new digital court recording machines may pose problems that we will need to look into as a matter of urgency. We will have to appoint and train to checking officers to ensure that all recordings are properly burnt to the CD's.

Ms Shabalala echo's the concerns and agrees that they were very real problems that need to be looked at. Saving information is crucial and she will request for checking officers to look at proper saving of recordings.

Ms van Rooyen refers to the E-Scheduler and raises a concern that data captured will need to be checked, to ensure that statistics captured are correct.

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Ms Shabalala agrees to the importance thereof.

5.3 DETENTION OF UNCONVICTED YOUNG PEOPLE/ DETENTION OF CHILDREN

Ms Shabalala points out that on request of the Child Justice Forum a nag was identified at Westville Prison that will notify the committee of children detained for lengthy periods of time. It was reported previously that 6 children at prison were awaiting transfer to a Reform School. The Court Nag and the committee are active in obtaining stats.

Adv Batohi indicates that a National project was in place to co-ordinate on National level children in custody facing serious crimes. Social Welfare did

an encouraging presentation on reform schools the previous year in Port Elizabeth. Plans were in place to provide for more reform school facilities.

Ms Shabalala has the plan on the proposed reform schools. The School of Industries at Newcastle is to provide for reform school facilities, also a rehabilitation center, etc. They were planning to finalized the scheme towards the end of March 2007

5.4 PEACE ORDERS

Mr Mabaso mentions that the Magistrates at Durban Court complain that members of SAPS refer peace order complaints to them over weekends.

Judge Jappie enquires as to a mechanism in place for peace orders and domestic violence matters when accused are arrested and request for bail has to be considered. Can Magistrates or Prosecutors be called over weekends at Durban / Chatsworth / Pinetown Courts?

Mr Sibeko explains that Senior Public Prosecutors and Prosecutors are on standby for bail applications. There is usually no need to call Magistrates as generally cases can be given police bail.

Judge Jape suggests that a roster should be given to the Registrar at the High Courts. Mr Cele suggests that Domestic Violence should be included.

Judge Jape refers to a decision in Free State that it is a constitutional right of an accused person to pay bail immediately, should he qualify. Section 56 was changed to exclude outside of court hours bail applications.

5.5 SEARCH WARRANTS

Section 20, 21 and 25 of the CPA are discussed.

It is suggested that the prescribed form to authorize a Search Warrant is to be revised, renamed to J51 and disseminate to SAPS for future attachment to all applications in respect of Section 20 and 21 Search Warrants.

Another form is to be devised for section 25 Search Warrants.

5.6 GENERAL

5.6.1 SECTION 57 CPA

Mr Ngcobo refers to cases destined for the regional court that are kept in the District Court's Canalization Court. Some of these matters remain as long as 2 years in the District Court before they are trial ready, adding to District Court statistics and clogging the District Court rolls.

Mr Ngcobo discussed the issue with Mr Cele. It was suggested that Senior Prosecutors will sift through the Regional Court destined cases as these Prosecutors are experienced. Mr Cele requested Adv Batohi's assistance in this matter.

It appears that in some instances District Court cases are transferred to Regional Courts when they are not trial ready. Should Regional Court Prosecutors at Pietermaritburg read the dockets, proper instruction will be given to Investigating Officers and matters will be trial ready when transferred to the Regional Court. Thus suitably experienced Prosecutors will direct investigations and speed up processes.

Mr Sibeko points out that as far as the NPA is concerned both District Court and Regional Court are courts of first instance. Prosecutors enroll cases under the guidance of the Director of Public Prosecutions. Regional

Court Magistrates are highly paid and cannot do remands. Durban Court 10 is the Regional Reception Court, staffed with Regional Court Prosecutors. The District and Regional Court Reception Courts are to be done away with.

Mr Cele suggests that the problem should be discussed in house and a report back given to the PIJF.

Adv Batohi states that Mr Ngcobo's concern is well raised. She will look into the problem. She would prefer prosecutors to take matters from the outset since if a Prosecutor knows that he/ she will not prosecute a case, it may lead to laxity, as opposed to court prosecutors who, knowing that they will take matters to trial, may be more inclined to actively drive investigations.

Judge Jappie acknowledges that it is a valid complaint. Regional Court matters do clog District Court rolls.

5.6.2 RESTRUCTURING WITHIN SAPS

Commissioner Brown informs the meeting that SAPS is in the process of restructuring.

- § Area North Director Ngcobo will be a Director of a Station;
- § Area South Director Delpont will be the detective branch commander Durban Central;
- § The Area Commissioner will be re deployed to a major station.
- § Problems experienced with members of SAPS, report to station commander. If no response, escalate complaint to Commissioner Brown.
- § Support services in each cluster to look after the logistics.

§ Serious and Violent Crimes Unit no longer in existence. Matters dealt with by organized crime. Officers previously attached to this unit were sent to station level to uplift performance.

5.6.3 CASE FLOW MANAGEMENT PROGRESS REPORT: DURBAN DISTRICT COURTS

Mrs van Rooyen reports that CFM is progressing well in the Durban District Courts. 60% of all matters have been on the roll for less than a month, and only 5% of all matters are on the rolls for 6 months or longer.

5.6.4 FESTIVE COURTS DURBAN MAGISTRATE'S COURT ONLY

Adv Batohi informs the meeting that an idea came up on 19 December 2006 to have Holiday Courts over the Festive Season. Within 24 hours the key role players [except for SAPS] were called in for an urgent meeting and a decision was made to hold the Festive Season courts over the 4 day Christmas and New Year weekends [23, 24, 26, 30 and 31 December 2006]. Logistical items, i. e. overtime etc. were discussed. One of the aims was to assist SAPS who could not do law enforcement if cells were clogged.

The successes which were achieved are an example of what can be achieved if role players work together closely.

Statistics were collated and will be presented to the team involved. Successes and problems were noted, i.e. dockets had to be literally fetched from Durban Central Police Station.

Early indications were that SAPS was not as busy as expected. The reasons thereof have not been clearly defined: whether it could be attributed to a lack of enforcements, or better behaved public.

Adv Batohi extended thanks to all that contributed to CFM progressing in KZN and all parties taking hands to move forward in a united chain.

Ms Chiliza from IPT requests for all documents for circulation to be presented 7 days before next meeting to IPT.

The next meeting will be on 4 April 2007. Venue to be disclosed

**JUDGE JAPPIE
CHAIRPERSON**

**P A VAN ROOYEN
SECRETARY**