

MINUTES OF THE PIJF MEETING HELD ON 15 NOVEMBER 2005 AT KHAYA LEMBALI CONFERENCE
CENTRE, DURBAN AT 09:00

ATTENDANCE REGISTER:

See Attendance Register attached.

1. OPENING REMARKS AND WELCOME

Mr Mabaso welcomes all and mentions that this will probably be the last meeting of the year.

Mr Ntshangase has been appointed as Judge in the High Court with effect from 01 January 2006 and is congratulated by all present.

2. APOLOGIES

Mr E Sibeko
Mr J Manuel
Dr Mqadi
Ms Ramouthar
Mr Mehta
Mr Mbili
Advocate Lakhi
Commissioner Ntanyana
Judge Jappie

Ms Batohi mentions that nobody from Correctional Services is present.

The secretary is to follow this up as their presence is of the utmost importance.

3. ACCEPTING OF MINUTES OF THE PREVIOUS MEETING

PAGE 3: WITNESS FEES

Mr Langenhoven is no longer with the Regional Office.

Mrs van Rooyen is to establish from which official at the KZN Regional Office the required information is to be obtained.

PAGE 9 PRESENTATION BY DEPT OF SOCIAL WELFARE: PROBATION SERVICES

Third bullet – should read “functions of Assistant Probation Officers” unit presently on the process of renovation

The sentence “A unit is presently renovated at the school of Industries at Ladysmith to accommodate 300 juveniles.” should read:

A unit is presently in the process of being renovated at the school of Industries at Newcastle to accommodate 30 juveniles.

The minutes are accepted as a true reflection of the proceedings at the previous meeting, except for the abovementioned amendments.

4. ACCEPTING OF AGENDA

The Agenda is accepted by all present.

5. MATTERS ARISING FROM PREVIOUS MINUTES/ACTION LIST

Matters arising from July 2004 to present, to be included in the Agenda at the next meeting.

MATTERS ARISING FROM THE MEETING DATED 7 OCTOBER 2005

10. COMMUNITY PROSECUTION

Ms Batohi sensitises all present to the initiatives of National Prosecuting Authority to address crime in KZN in a different fashion/new concept. Even though there is a decline in crime statistics, SAPS

look at matters reported versus convictions. Courts are filling prisons, causing overcrowding, but we do not impact on crime levels. There must be something else that we can do to impact on crime and peoples quality of life.

Prosecutors are case processors. SAPS have recognized the need to engage with committee to combat crime – so called community policing. The core function of a Prosecutor is to litigate in Court. But we need to look at problem solving, together with other stakeholders, to deal more actively with crime.

The Community Prosecutors need to be plotted, i.e. Point Community Court. Deal with businesses, schools, etc, NGO, Community, to enhance quality of life. All role players go into the community in defined focused areas to address them on issues like their safety. SAPS and other role players have programmes in place. The National Prosecuting Authority wants to hook up with them and move on beyond; to go to the community that feels that their voices are never heard; to go door to door in defined areas to check what issues are affecting the quality of life, i.e. urinating in public, glue sniffing. Issues are to be tackled, i. e. glue sniffing, by approaching the business that actually sell glue. We need to see as a community how problems can be addressed. If businesses do not want to interact, the NPA will look at manners of dealing with this legally, i.e. if licenses that provide for the selling of glue are up to date.

Tools beyond the Justice System need to be used, i.e. the media etc. Dumps and areas are breeding grounds for crime, i.e. areas that are not well lit.

The National Prosecuting Authority wants to see Judiciary in Community Courts, not sentencing only to fill prisons, but to increase adult diversions in conjunction with NICRO to develop programmes. A one stop Justice Community Centre is visualized where people will not only be sent to prison but to address problems, i.e. prostitutes re-united with families. Magistrates can impose sentences to develop skills of perpetrators so that they can become useful Citizens in society.

Mr Prithipal mentions that at the outset of Community Prosecutions areas of impact were identified, i.e. derelict buildings harbouring criminal elements and attempts were made to address the issue. The NPA linked up with SAPS and other stakeholders, Ethekwini Municipality and the licensing department. In a building a floor was rented to 400 destitute people sleeping on double bunks at R 10 – R 15 per night. The idea is to break the cycle of the prostitutes. Lifeline is interviewing sex workers so that they can benefit from programmes by diversion, training them and developing skills, i.e. bead work, etc.

The NPA has interacted with several business forums representing them. Meetings have been held in which the business community expressed their frustration in the crime in the area, i.e. vagrancy, urinating in public, etc.

The idea is to clean up the Point area.

Ms Batohi suggests that this meeting should take a tour of the Point area. She discusses the hazardous conditions at the Tong Lock building, which she visited recently: dark, gloomy, smelling of facieses.

Prosecutors need to identify such crime holes and together with SAPS and other stakeholders address these problems.

SAPS noticed the change in the National Prosecuting Authority's methods.

Mr Prithipal mentions that they are interacting with all role players to clean up the environment.

Mr Mabaso commends the National Prosecuting Authority on this project, Point Community Court in the inner city, and KwaMashu Community Court in the outer city.

Commissioner Brown enquires how fully the SAPS at Point are involved.

Mr Prithipal explains that the Point Station Commander is fully on board. They interact. Mr Prithipal now attends their daily crime preview meetings. All law enforcing agencies, including the SAPS, are on board. They are also looking at shelters, working closely with SAPS who generates information on crime that needs to be addressed.

Commissioner Brown enquires about the Safer City Concept. Mrs Batohi states that it worries her that it was not working in Durban. Mr Dobson informs the meeting that cameras are now working in Durban. The National Prosecuting Authority needs to get involved to hook up with this venture.

Mr Badal mentions that he heard from Dr Sutcliff that the Municipal Court is again moving and there is a concern for the duplication of rolls. Mr Mabaso is abreast of the movement.

Commissioner Brown states that SAPS and the National Prosecuting Authority cannot alone drive the Safer City issues, but all organizations need to buy in.

Mr Byroo from Social Welfare agrees. They need to budget for their intervention in this venture.

Mrs Batohi expresses her view that the PIJS should in 2006 strategise methods of involvement in all of these issues.

12. SERVICE OF PEACE ORDERS BY SAPS
Stand over.

13.2 JUVENILES DECLARED STATE PATIENTS – FACILITIES ARE LACKING

Ms Blumrick states that they require the Department of Health to intervene where patients have been declared state patients, a serious bottle necking has developed in placing these patients in institutions. There are no proper facilities to house these patients.

Mrs Batohi articulates that this meeting cannot become a talk shop and we need to follow through minutes. We need to make real impact. If no plan is in place for juvenile facilities, we need to log in and make a plan. Ms Blumrick indicates that they looked for a second place at the Department of Correctional Services, but to no avail. They are at present booking beds for June 2006. Magistrates and Judges do not want to permit juveniles to be kept in detention until that time.

Mr Gey van Pittius also states that representative at this meeting should be fully advised to give feedback to this meeting, in order to keep the PIJF alive. This message should be relayed back to the role players.

Ms Matthews suggests that the outstanding issues in previous minutes pertaining to Dr Mqadi's department be compiled and channelled to them for addressing at the next meeting.

13.3 AGE ASSESSMENT OF JUVENILE ACCUSED AND WITNESSES

A series of meetings had taken place with Mr Manuel's office re changes anticipated to the Department of Health as service provider. A process is followed to register all service providers on the system so that whoever needs the information can derive it directly from the database. Training will be provided to court managers. A meeting is to be held on 05 December 2005 to establish lists, tariffs, and complete control systems. On 01 April 2006 the transfer will take place and the Department of Health and Justice will take over the responsibilities.

Mrs Botma indicates that problem issues relating to tariffs have already been discussed.

13.4.1 MENTAL HEALTH CARE ACT

Advocate Blumrick indicates that ordinary patients do not go through criminal courts anymore. The DPP is *curator ad litem*. The new act stipulates that acting Magistrates no longer sign mental health orders. The Registrar has received no applications this year from mental hospitals. Patients may be illegally detained. The act is descriptive on procedures and time frames.

In terms of the Criminal Procedure Act, mentally ill patients were sent for observation and declared state patients. J105's were completed. Now in terms of the new act patients go from Court to detention centres. Within 14 days the Department of Health is to be notified. Mentally ill accused are kept in care without support. Suitable institutions are to be appointed and patients transferred. Some detention centres are furiously complaining that those patients are simply not being transferred timeously. Such patients are inappropriately detained.

The Department of Health will look into this issue.

Mr Batohi indicates that statistics of these patients are to be compiled and forwarded to the Department of Health. The National Prosecuting Authority will take on this responsibility.

Advocate Blumrick will request for the act to be amended so that patients will be transferred awaiting placement in an appropriate institution and not placed in detention centres without medical assistance.

13.4.2 EFFECT OF CASE FLOW MANAGEMENT AT DURBAN MAGISTRATES COURT

Mrs van Rooyen addresses progress in Case Flow Management at Durban Magistrate Court:

- ✓ District Courts matters on the roll for 6 months and longer reduced from 771 in August 2004 to 363 in September 2005. Courts are now starting to focus on matters 5 months and older;
- ✓ District Courts matters on the roll reduced from 3813 in September 2004 [201 per court] to 3277 in September 2005 [164 per court] the Reception Courts hold about 1500 of these matters, thus the trial courts have rolls of less than 100 matters on average.
- ✓ The courts are now sitting longer court hours;
- ✓ Section 57A Admissions of Guilt have increased from 603 during 2003; to 3552 during Jan-Dec 2004; to 3137 January to September 2005.

Mr Sansom indicates that the Case Flow Management document will be delivered this week throughout KZN. He requests for numbers required by SAPS. The document is on the website. Representative quantities will be made available.

Mr Sansom expresses his thanks to Mr Manuel and Mrs Bothma for assisting in obtaining funds from National Office for the distribution of the booklets.

Ms Zulu from Durban Correctional Service and Mrs van Niekerk from Childline arrive late and are introduced.

6. COMMUNITY PROSECUTIONS Dealt with under item 5 [10].

7. FEEDBACK ON MONTHLY STATISTICS

Mr Sansom introduces and explains the schedule of Case Flow Management statistics compiled in respect of KZN. No remarkable approval is visible in the number of matters finalized over the last 3 years. Consistency is noticeable: no remarkable increase or decrease.

The District Courts in KZN are on par with National figure finalized cases and the number of matters on court rolls. The Regional Courts in KZN are on par with the National figure insofar as finalized matters are concerned, but above the National figure on the total matters per court roll. This indicates that we are in urgent need of more Regional Courts.

We need to remove the statistics of Durban Court 10 on the National Prosecuting Authority statistics from the District to the Regional rolls.

Mr van Niekerk from Magistrate Pietermaritzburg expresses his concern on Regional Reception Court cases included in District Court matters.

Mr Ntshangase expresses his opinion that only when a Regional Court matter is trial ready, one will know for sure if it is in fact a Regional Court matter, i.e. Robbery with aggravating circumstances may crystallize in an assault with intent to do grievous bodily harm matter. Mr Ntshangase further informs the meeting that more Regional Court Magistrates are to be appointed and the Regional Courts will increase from 58 to 72 in KZN.

Mr Sansom indicates that the National Prosecuting Authority will put heads together to see how they can assist the Regional Courts in working down the caseload.

Ms Batohi points to the HIV/AIDS crises where victims are dying and accused then escape the justice system, therefore it is important for matters to be dealt with speedily.

Mr Sansom articulates that it is clear from conferences that he had attended that Magistrates and Prosecutors are well geared up for Case Flow Management, as it is a better way of managing Courts.

Mr Sansom points out that the PIJF will have to carefully analyze the needs of the courts with the assistance of the statistics in order to decide which offices will need additional Courts.

Mr van Niekerk sensitizes the meeting to the fact that offices should not be compared, as this may cause unnecessary tension. Statistics are very helpful and can act as pointers for intervention.

Mrs van Niekerk suggests that statistics in respect of diversions are to be kept separately, as it is out of Court work and also loads the Prosecutor.

Ms Batohi articulates that diversions statistics are already kept separately.

Mrs van Niekerk indicates that with the new Child Justice bill the Magistrates will have to decide on diversions and this will load Court time, although the Prosecutors will still do the leg work.

Mrs Batohi articulates that we need to look at what the victims of crime may see as a just outcome. There needs to be guidelines. The victim of crime may then feel that justice had been done and the court rolls will come down. Statistics need to be kept of these alternative ways of prosecuting. We need to move away from mindset that prison sentences are the only outcome.

Mr van Niekerk indicates that the dockets need to be suitably endorsed. Director Brown states that Prosecutors do this.

Ms Batohi mentions that we need a database to track down juveniles on future crimes, where they are simply diverted again. Charge sheets should indicate the reason for withdrawal.

NICRO keeps a database, but young offenders come back with other names. Even if they pick this up, there is no way of proving a second diversion, as offenders decline that they had been included in a previous diversion programme.

Ms Batohi suggests that Commissioner Brown and NICRO representatives should look into this matter. She will assist and they need to lobby with the Law Commissioner. Commissioner Brown will check what National Office has come up with and report back to Mrs Melis. Mrs Blumrick points out that this very same topic has been augmented on before. The CPA will need to be amended so that the fingerprints can be kept on record.

Mrs van Niekerk mentions that adults as well as juveniles offenders may relocate, thus a method needs to be in place nationally.

Mr Mabaso would like to see a comparison on pre constitution and post constitution statistics.

Mr Sansom indicates that pre constitution 80 cases per month were the expected rate. At present there is no expected finalisation figure pinned down.

Mr van Niekerk agrees and points out that they could finalise up to 300 matters in pre constitution times on one day if need be on odd occasions.

Mr Sansom indicates that contract and specialised Courts, i.e. Roadside Courts, Saturday Courts, etc impact positively on outstanding Court rolls and we should now start budgeting for the next financial year, if we wish to go that way.

Commissioner Brown indicates that the NPA statistics on outstanding matters largely differs from the outstanding roll of SAPS.

Commissioner Brown again requests for reasons of withdrawn matters to be clearly indicated, so that he can intervene, i.e. ballistic reports, etc.

Mr Ntshangase indicates that we need to guard against quick withdrawals on request of complainant, as they may be intimidated. If dockets are not at Court on final postponement, accused may even be in custody.

Mr Sansom suggests that dockets clogging the Court rolls are often not properly investigated before sending for first appearance, where accused are often in custody. It is important for Prosecutors to properly read the dockets.

Ms Batohi articulates that withdrawal of matters can be coupled with fraud, i.e. a drug case should never be withdrawn unless the blood analyses are awaited. They have called for dockets of matters withdrawn in the Durban drug Court to investigate the reason for withdrawal.

8. GENERAL

8.1 ROADSIDE COURTS

Mrs Batohi urges the Judiciary to re-consider the Roadside Courts. The Judiciary issued a document declining to be involved in Roadside Courts in future. The Department of Transport and the National Prosecuting Authority found this a very successful manner in dealing with road offenders.

Mr Mabaso explains that they have met and looked into this issue. Two quality control Magistrates looked into the Roadside Court issue as it has deprived the Courts of their dignity to a great extent. It is quick justice and role players may make mistakes. The Judiciary stands for justice.

Mr Ntshangase states that there should be a greater visibility of police on the roads.

The Constitution requires equal treatment, yet Nationally only KZN still had Roadside Courts.

Mr Sansom indicates that KZN is a high profile province during peak times with a high death rate. The death rate had been cut tremendously. In certain areas the Roadside Courts did operate effectively and cautiously in terms of the Constitution. A large proportion of cases were at some Courts remanded to the main Courts. In some instances it was a compassionate manner of dealing with matters speedily, instead of detaining the offender until the first Court date.

Mr Mabaso indicates that the Judicial Independence is affected. Roadside Courts could be labelled as a possible fund raising project.

Mrs Batohi suggests that the way forward may be to address the Magistrates that displayed wrong attitudes. We may need guidelines for members of the Judiciary when presiding in Roadside Courts to combat the vast differences in sentences imposed.

Mr Mabaso quotes that the Criminal Procedure Act is descriptive in that an arrested person must immediately be taken to a SAPS station.

Mr Ntshangase has a serious problem with the decorum of the Court that is seriously harmed by the Roadside Court. Even though this objective is good, it does not justify the means. There is no proper process for Roadside Courts.

Mr Sansom points out that the Park Rynie Roadside Court was properly run and did not embarrass the decorum of the Court. A lot of effort was made and he is of the opinion that proper investigation was not done into the Roadside Courts by the quality assessment team.

Mr Ntshangase points out that the fact that the Magistrates at the Roadside Courts are paid by the Department of Transport is a frightening concept.

Mr Sansom acknowledges that cognisance is taken of all that has been articulated. Prosecutors are volunteering to litigate in Roadside Courts should they be utilised, as they have seen the good that comes from them.

Ms Batohi respects the Judiciary's decision, but would have liked to see a survey on people that have appeared in these Courts, to assist them in assessing if they are providing a service and act as deterrents.

Mr Badal enquires as to the processes with regard to the payment of bail.
Mr van Niekerk indicates that accused can be released on bail immediately.

8.2 REQUEST REVISIT SENTENCES TO REFORM SCHOOLS

Mr Mabaso indicates that it will not be possible for orders to reform schools to be revisited. The matter will have to go on review for the sentence to be altered.

Mrs Kemp indicates that by July 2006 they should have definite suggestions on improvement the lack of reform schools facilities.

Ms Batohi indicates that the National Prosecuting Authority would like to be included in this process.

8.3 WAY FORWARD FOR PIJF

Mrs Batohi proposes that we should in early 2006 investigate into the manner in which the PIJF can achieve more jointly in terms of effective ventures. Even though we discuss the running of the Courts effectively, the other role players need to feel that they are part of the meeting.

Mrs Kemp agrees that they need to discuss the children's issues. The Juvenile Child Justice meeting has been postponed 3 times previously.

Mr Badal suggests that action lists need to be attended to before this meeting takes place and feedback captured. This will save time.

Mrs Batohi proposes that the first meeting next year should be a strategic planning with dedicated sub - committees.

Ms Batohi says farewell to Advocate Gey van Pittius who is leaving and the Regional Court President who has been promoted to a Judge in the High Court. She wishes them all of the best and thanks them for their commitment to this forum.

The next meeting will be held on Monday, 30 January 2006, which will be a strategic planning meeting.

MR T C MABASO
CHAIRPERSON

MRS P VAN ROOYEN
SECRETARY