

**PIJF Meeting Held on 03 December 2004 at
Khaya Lembali at 10:00 am**

PRESENT

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Opening Remarks and Welcome

Judge Jappie welcomed everyone and declared the meeting open.

2

Apologies

Brian Nyar

D Ntshangase

M C Zwane

J J Manuel

E D Mzolo

Mr Eric Mhlongo

LAB

Regional Court President

Court Manager: Durban

Senior Court Manager

Senior Magistrate: Durban

Welfare Department

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Accepting of Minutes of Previous Meeting

The Minutes were accepted by all as a true reflection of the proceedings of the previous meeting.

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Matters Arising from Previous Minutes as per Action List**5.2 Pre-Trial Conferences**

Certain amendments to the Criminal Act were proposed, in order to accommodate the proceedings related to Pre-Trial Conferences.

Judge Jappie articulated that all pillars should be in favour of Pre-Trial Conferences, as it will probably become an integral part of Criminal Law.

5.4 CCTV Linkage

Two workshops were held on 13 October 2004 and 18 November 2004. The most suitable courts and accommodation at the Departments of Justice and Correctional Services were identified and procedures were technically finalised. A meeting had been scheduled for Monday, 6 December 2004, to discuss inputs with regard to the Video Linkage Bill.

Mr Boardman indicated that access of the public to the prison facility posed a problem. Judge Jappie was of the opinion that the access of members of the public to the accommodation identified for the hearing of Video Linkage matters at the prison should not be a necessity. However, Mr Boardman indicated that this is provided for by the bill. The room identified at the Department of Correctional Services is inside of the prison and not in the vicinity of the visitors' area. A document in this regard was distributed and comments thereto were invited, to be channelled via Mrs van Rooyen.

Certain issues and processes still have to be sorted out, such as the procedures relating to the payment of bail in matters where bail had been previously set but not paid at the Correctional Centre. If the amount of bail is then reduced at the Court Video Linkage hearing, relatives may request to pay bail at the court itself. This would necessitate that certain processes be developed in order to release the client at the Correctional Centre when this occurs.

5.5 Dedicated Legal-Aid Courts

Mr Badal advised that a skeleton staff would be available during the holiday period to take care of Legal-Aid services.

Repairs to the Big Truck Used To Transport Correctional Clients to and from the Courts

SAPS reported that the truck had been repaired.

Mr Sibeko reported that the model of the horse and trailer concerned him, as it may be too outdated.

The truck being broken is a permanent issue in the Case Flow Management report issued daily at the Durban Magistrate's Court.

Judge Jappie enquired as to which Department is responsible to budget for the repairs to the truck.

SAPS responded that they indeed are responsible and informed the meeting that the Department will not be able to purchase a new vehicle during the current financial year. Large vehicles will be made available for the transportation of the Correctional Clients.

5.6 Targeted Prosecutions

Judge Jappie congratulated all involved with this project.

Mr Sibeko elaborated that Durban, Chatsworth and Phoenix were largely affected by this issue, because there is only one Drug Court in Durban and the role reached alarming figures of more than 400 matters in November 2004. A second court may have to be established at the Durban Magistrates Court to alleviate this burden.

At Chatsworth, the Metropolitan police need to get more involved. Additional force members are required to deal with issues effectively.

5.8 Overcrowding of Prisons

Mr Zulu indicated that overcrowding was still a problem especially where children are involved. A better interaction is called for between the role players.

Judge Jappie agreed that this was a real problem, as there are no special facilities to take care of children at the Correctional Centres.

Mr Zulu explained that at the Durban Correctional Centre, within the Youth Centre where Correctional Clients between the ages of 18 – 21 are taken care of. There are certain sections made available for the incarceration of children under the age of 18 years.

An order had been made by Social Development for the release of all awaiting trial children by Christmas. Ms Melis and Advocate Batohi would look into the matter regarding facilities being available to provide for all the under 18 offenders. There are insufficient beds available at the places of safety, for these offenders, who are often involved in serious crimes, therefore security is also major issue.

The Justice Bill places an onus on role players that is almost impossible to meet, and these matters need to be addressed with the assistance of the Department of Social Welfare.

Judge Jappie requested the convenor of the meeting to again request an attendance by the Department of Social Welfare.

5.9 Awaiting Trial

The Family Advocate has as yet failed to attend the meetings called for by this forum. It is suggested that they may be of the opinion that their involvement in Criminal Matters is not required.

The Department of Correctional Services urged all Magistrates to apply Sections 63A, 63F, 71 and 72 of the Criminal Procedure act 51 of 1977 in order to assist with the overpopulation of the Correctional Services centres.

6. Community Courts

Mr Mabaso reported that the Point Community Court commenced on 2 December 2004, despite the lack of funds. The Point Community Court did sit over the Christmas period and after hours.

Problems are experienced in the establishment of the Community Court at Ntuzuma, as it falls outside the 7 km radius and thus needs to be claimed. A lack of funds is also an issue that needs to be addressed.

The Legal-Aid Board has made available a member to the Point Community Court.

7. Case Flow Management Workshop: Feedback from Workshop

The workshop was held and the document amended. Mr Mabaso reported that a meeting will be held on 9 December 2004 to finalise the Case Flow Management Workshop. It is envisaged and hoped for that the document will be implemented in early 2005.

10.1 New Strategy for Prosecution: 2004

Criminal Asset Forfeiture: A full bench will be sitting this year to decide on this issue. Judge Jappie explained that it may be envisaged for forfeiture to form part of sentences where applicable.

10.3 Implementation of Case Flow Management

Mr Ngcobo mentioned that Mr Stander had informed him that Newcastle is part of the IJS as implemented by Prosecution. Stats are available at Deon Boardman's office. A bi-monthly meeting is called by Prosecution, to which role players are invited to discuss the implementation of Case Flow Management, but they cannot be descriptive in this regard. Case Flow Management is definitely alive in Newcastle.

Mr Sibeko reported that proper meetings are now called at Newcastle, Empangeni, Port Shepstone and Durban.

A Case Flow Management workshop was called on 15 December 2004 at Ladysmith.

Mr Mabaso exclaimed that Case Flow Management is to be headed by Judiciary. It cannot be left in the hands of others to take the lead in this respect.

There are 2 Regional Courts at Newcastle, of which one is fitted with facilities for intermediaries. There has been tension on the level of certain matters to be set down in this sexual offences court, as Magistrates may feel that they are being prescribed to, if one court is dedicated to deal with sexual offences matters.

Judge Jappie elaborated that matters heard by sexual offence courts are very sensitive and need to be dealt with by people, who have the ability to deal with them. Magistrates and Judges tended to shy away from these matters, but all should get involved.

Most Regional Courts have facilities for intermediaries and many matters are directed to special sexual offences courts, where these courts are available.

It is impossible to bring all sexual offences matters to High Courts and every establishment needs to be empowered to deal with their own matters in this regard.

Meetings have been held with all role players in order to get court systems to flow better, but the Judiciary have not come on board as yet. Matters are adjourned for long periods and the Judiciary need to form part of these meetings.

Mr Mabaso mentioned that Mr Ntshangase had informed him that meetings have been attended and held with other role players. Conversely, there seems to be a problem at Pinetown Court, because the Head of Office was ill. Meetings were held by the Acting Head of Court, however there were no records of previous meetings been held. Mr Mabaso will follow up on this issue. At present Case Flow Management is not in place at Pinetown Court.

Mr Boardman indicated that IJS centres will be re-named to Case Flow Management centres. An assessment was conducted at pilot sites identified during 2002. A final report will be handed in shortly. There is a lack of guidance, but the LCMC now has a manual on guidance. Recommendations by Deon Boardman are also tabled in the document by the LCMC.

6 Finalisation Rates of All Regional Courts

Mr Sibeko indicated that a Case Flow Management meeting was held at the Durban Regional Court. Postponing of cases is predictable; however, the judiciary is accountable for the matters on the role.

The National Prosecuting Authority had requested Prosecutors to do an audit of reasons for all postponements in the Regional Courts, to have been finalised by 4 December 2004. The audit will be taken to Parliament.

Mr Sibeko will present a report at the next PIJF meeting. The finalisation rates at the District and High Court are picking up, but Regional Court still has a problem.

Judge Jappie mentioned that Gert Engelbrecht of the Director of Public Prosecutions Office, Pietermaritzburg, is doing an excellent job of targeting old cases on the roll.

Commissioner Brown reported that only 230 cases had been disposed of during 332 court days, less than 1 case per day. At this rate it will take 7 years to dispose of the backlog. The average Court Hours sat at the Durban Regional Court is only 3.4 hours per day.

Judge Jappie indicated that the workload in the Regional Court has expanded tremendously, because matters that were undecided end up on Regional Court rolls, which is to the advantage of the High Court. This would indicate that matters on the Regional Court roll are still going to expand in future.

Mr Botha commented that many matters on the Regional Court roll should not be there, i.e. Housebreaking and Possession of Firearms matters.

The nature of matters also influence the finalisation rate, an example of this would be child matters, where children get tired and matters have to be adjourned. High court resources need to be looked at, because Constitutional issues have grown, but resources are still the same. The accused is also in a position to tailor defences as matters progress, which further delays matters.

Mrs van Rooyen indicated that court hours are measured by hours sitting in court rooms, but work done in chambers is not measured. Judge Jappie agreed that reviews etc. done in chambers take up many hours, which are unaccounted for.

Prosecutors are also placed under a lot of pressure to start at 09:00 and often have to go to court without proper preparation, which is not good for the functioning of proper justice.

7. Capacity and Infrastructure Required to Implement Legislation

Specific appointments are required to perform duties as required in terms of the new Child Justice Bill.

Tremendous pressure is placed on SAPS to perform their duties effectively.

Judge Jappie indicated that the plight of children has for the first time taken a drastic change and will definitely impact largely on the supplying and distribution of additional resources.

The problem with Child Justice Bill is that it is not realistic about the implications it involves and the lack of resources available to implement the Bill.

8. SAPS Liaison Offices IJS Courts

A list of Court IJS Centres has not been made available as yet. Commissioner Brown articulated that Court Liaison Officers will be provided, and that the Area Commissioner is to be approached for the provision of the necessary personal. A concern was raised about the large number of matters withdrawn. As a remedy to this problem Court Liaison Officers will also ensure that investigation is completed before matters are placed on the roll.

Mr Sibeko mentioned that such a person had been requested since 2002 for Magistrate Court, Durban. A post has been created, and people will be placed to fill the vacancy.

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DNA Tests (Local Lab for Blood Tests)

A building has to be provided, which at present is in the tender process for approval by the relevant parties required. This will not be a short term solution.

13.3

Website

Ms Matthews reported that the website had been created at www.justiceforum.co.za

Stephen Phillip is the webmaster and he will be the recipient of any information that will be placed on the website. All parties are to ensure that their particulars are correct for filing on the website.

New Matters

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IJS Centres

Mr Boardman explained that the statistics discussed at the PIJF meeting only pertain to the District Courts at the 14 IJS Centres in KwaZulu Natal.

Mr Boardman's document as attached was analysed and discussed in detail.

Mr Boardman mentioned that it appears to be more effective to have a larger number of smaller establishments, opposed to large establishments such as Durban Court with its 43 court rooms. This could be attributed to the closer working relationship in smaller establishments, making the IJS more effective.

Judge Jappie added that it is better if a member of SAPS resides within the area of the court, as they are accountable to the public. To have smaller courts built, may not be the answer. One should investigate as to the reasons for quicker case cycle times in smaller courts, opposed to the lengthier processes of those in larger courts.

Mr Boardman's summary also makes provision to indicate best performers in the Province, derived from the exact statistics provided by the programmes in the IJS court centres.

Stanger appears to be experiencing serious problems. The Case Preparation Cycle time is a matter of concern. A Case Flow Management plan needs to be developed for Stanger, because of their particular environmental problems. What are the most influential factors of case preparation in Stanger? This needs to be prioritised and an action plan implemented, in order to reduce the number of postponements or assess the nature of seriousness of the crimes committed.

Judge Jappie enquired if Mr Boardman could indicate what the contributing factors are to the problems experienced at Stanger Court. Mr Boardman responded that he would like to have a workshop at Stanger Court to investigate and analyse the issues and to use his findings as an example.

Mr Sibeko added that it may be useful for Mr Boardman to be invited to the Case Flow Management meeting at Stanger. He will communicate with the SPP of the Stanger area Cluster, and suggested that Mr Mabaso communicate with the Head of Office at Stanger.

Mr Mabaso suggested that a workshop be organised for all the Area Cluster Heads, but Mr Sibeko articulated that it will be more effective to deal with situations particular to a certain environment.

Judge Jappie agreed that Mr Sibeko's proposal is more practical. SAPS and Correctional Services indicated that they would like to be included in such a workshop.

Judge Jappie explained that one should establish the reasonable performance indicators applicable nationally, and not merely accept the National averages as derived from Mr Boardman's document, to be the desired periods/statistics.

Mr Boardman indicated that at Verulam Court the performance appeared to be poor. However, a high percentage of the matters are murder cases waiting for High Court dates.

Adv Blumrick explained that the murder matters from the entire Durban Area is fed to 4-5 High Courts, that need to deal with the influx of this volume of murder matters.

The statistics on page 15 of the IJS Courts' statistics indicated that 62 percent of all matters on the roll at Stanger are handed back for investigation.

Judge Jappie indicated that Child Welfare are experiencing problems that may effect the large number of juvenile matters on the rolls in KwaZulu Natal, as per page 16 of Mr Boardman's document.

Mr Ramolefe indicated that it is highly unlikely for a matter to be trial ready after the first appearance.

The poor quality of charge sheets also contributed to the delays in courts.

Defended cases also take longer to finalise – Mr Boardman responded that 50% of all matters in the District Courts are not defended.

Mr Mthethwa requested for an analysis to be conducted of the Durban Magistrate's Court, in order to compare it with other larger centres, i.e. Johannesburg and Cape Town.

Mr Boardman explained that the IJS system is not run at Durban Court, as the Court Process System [CPS] is being piloted there.

7

Cell Branding

Mr Mthethwa indicated that they have branded a number of SAPS cells by writing the contact details of the LAB in each cell. At some of the SAPS stations they were not allowed to brand the cells, as permission had to be obtained from PWD.

Commissioner Ntanjana indicated that they are concerned that the rights of the accused may not be upheld.

Judge Jappie advised Mr Mthethwa to follow proper channels of communication at SAPS (via the office of the Provincial Commissioner) in order to obtain the necessary permission.

8

High Court Sub-Committee

Adv Batohi commented that she was unaware that the committee has met of late.

Judge Jappie indicated that Case Flow Management at the High Court has come to a standstill. Heads of Court will meet this year.

Adv Engelbrecht will be requested to take over from Adv Williams. The sub-committee should continue to meet in the interim. Judge Jappie will also like to attend these meetings.

9

Problems with Legal-Aid Board

Adv Batohi requested for this matter to stand over, so that she can first discuss the issue with Mr Mthethwa.

10

Awaiting Trial Juveniles

This matter has already been discussed: Problem areas are Places of Safety and the involvement of Social Welfare.

Adv Batohi was concerned about Social Welfare's setting up of another forum, when the PIJF forum was already established. The two forums need to be linked.

Adv Batohi will take up the matter with the MP of Social Welfare and explain issues.

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Ramsgate Court Sessions (Letter from Judge Shabalala)

Judge Theron mentioned his concerns related to Ramsgate court and certain problems that had arose, i.e. problems with members of Language Services having to travel from Pietermaritzburg to Ramsgate and LAB taking instructions at the last minute, and thus the matter could not proceed. Judge Jappie explained that the particular LAB members were not remunerated if they have to consult outside of court hours, therefore they consult at court.

Court Support Services need to look into this matter.

A copy of the letter was forwarded to Mr Manuel and the LAB, but it is s yet unknown if the matters have been addressed.

Mr Mabaso indicated that High Courts run short of interpreters at times and have to draw from the District Courts. This matter needs to be taken up provincially.

Judge Jappie indicated that the issue of interpreters at the High Court has been problematic for a period of time.

Mr Mabaso articulated that the matter concerning the District Courts having to assist the High Courts needs to be addressed.

Mr Naicker indicated that the arrangement prevails due to a shortage of human resources.

Mr Nzama mentioned that at Durban, the High Court now managed and provided for their own human resources.

Adv Batohi requested that Court Support Services address the problem concerning transport of members of Language Services to circuit courts.

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General

Adv Blumrick mentioned that complaints were received regarding SAPS arresting perpetrators in petty matters. She requested that SAPS look into this matter, especially at SAPS Plessislaer.

Mr Mabaso requested Mrs van Rooyen discuss the improvement of matters on the roll for longer than 6 months.

Mrs van Rooyen pointed out that Durban Court is the pilot site for Case Flow Management, in the Criminal Courts in KwaZulu Natal, and that the performance as to the matters on the role for 6 months and longer was very discouraging. For the last ±6 months the Judiciary has taken over the setting of remand dates, and during the last month there has been a noticeable improvement in the stats concerning matters on the roll for 6 months and longer. In certain instances these 6 month matters have improved from 70 matters on the roll to 20, in some of the trial courts.

Mrs van Rooyen is of the opinion that this improvement can be attributed to the fact that the Judiciary can now prioritise and are held accountable for the long outstanding matters on the court rolls. Courts that are experiencing problems due to outstanding analysis reports are D-Court [The Drug Court] and Court 19 [The Drunken Driving Court].

Commissioner Brown responded that the analysis lab in Pretoria will give priority to reports in matters where victims are below the age of 12, even though their workload has largely increased. Drug analysis should not be a problem and the turnaround should not be more than 2 weeks. Matters long outstanding are to be brought to the attention of Commissioner Brown. Long outstanding analysis reports awaited in drunken driving matters are also to be brought to his attention.

Commissioner Brown further mentioned that firearm matters are problematic and only a 7% conviction rate is attained.

In matters of manufactured firearms, proof is required that the firearm was in fact capable of firing.

Adv Blumrick added that the Act is causing a lot of difficulties, to which Judge Jappie agreed.

Adv Batohi added that the applying of Section 57A Admission of Guilt is also negatively affected by the said Firearm Act.

Adv Blumrick was of the opinion that verbal evidence may be required. Justice College has been approached and the matter is still pending to see how it will develop.

Commissioner Brown requested that a Section 212 statement be obtained.

If investigating officers are not attending courts, Commissioner Brown requested that these matters are not to be withdrawn, but a bench warrant be issued.

There is a tendency at the Department of Correctional Services for prisoners to hide if their names are called. Such prisoners are to be removed to smaller prisons where investigating officers will know where they are. If prisoners are not brought to court, matters may be 'struck off the roll', resulting in prisoners being detained illegally.

If Prisoners are in hospital, courts tend not to remand the matter in absence. Magistrates now tend to 'strike' such matters from the roll. Mr Sibeko explained that the 'struck off' roll matters may pertain to matters where a medical certificate is not handed to court in order to request for a remand.

The next meeting will be held on 25 February 2005.

Judge Jappie thanked all for their participation.

Judge Jappie
Chairperson

P Van Rooyen
Secretary