

**PIJS MEETING HELD ON 20 MAY 2004 AT THE PROTEA HOTEL
INCHANGA**

PRESENT

CS Ngcobo	Chief Magistrate Pietermaritzburg
D Ntshangase	Regional Court President
E Sibeko	Chief Prosecutor Durban
F Engelbrecht	Department Correctional Services
Adv G Williams	DDPP Durban
J Botma	Court Manager Magistrate Pietermaritzburg
P van Rooyen	Acting Registrar Magistrate Durban
R Laue	Senior Magistrate Durban
S Batohi	Director of Public Prosecutions
T Mthethwa	Legal Aid Durban
JW Booysen	SAPS
BA Mbili	Natal Law Society
M Odayan	IJS Support Consultant
B Davis	Dept of Transport
Adv Gey van Pittius	DDPP Durban
WJD Pieterse	Asst Court Manager Durban
C Martin	Natal Law Society
G Caine	IPT
S Phillip	IPT

Ms S Batohi opened the meeting and said that a High Court Judge was not available to Chair and Mr Ntshangase agreed to chair the meeting.

1. OPENING REMARKS AND WELCOME

Mr Ntshangase expressed his gratitude to all stakeholders for their commitment to attendance.

2. APOLOGIES

Judge Shabalala
Miss Zwane
Ms Sejosengwe
Mr Mabaso
Asst Commissioner Browne
Comm B Ntanjana
ED Mzolo

3. ACCEPTING OF MINUTES OF PREVIOUS MEETING

Mr Laue pointed out an error on Page 4, the second last paragraph, should read: "Pre-Trial Court procedures should be done outside the court". Other than that the minutes were accepted as a true reflection of the previous meeting

4. **ACCEPTING OF AGENDA**

The Agenda was accepted by all present.

5. **MATTERS ARISING FROM PREVIOUS MINUTES**

COURT ORDERLIES

Will appointment of two Court Orderlies per court be implemented outside of Durban Cluster? There has been a commitment to provide two Court Orderlies per court at Durban Magistrate's Court; what is the position outside of Durban Court? The safety of the staff is at stake. The expressed desire for the provision of better security at courts has been ongoing. The recent killing of a Court Orderly in court has led to dissatisfaction amongst Court Orderlies and a breakdown in court activities. Over the past week the commander of the grill at Durban Magistrate's Court received a directive from the SAPS for the assignment of two Court Orderlies per court. The question of "should this not be rolled out Provincially?" was raised.

Even though members of the SAPS are fully committed to this forum, it was pointed out that the request placed on the table required research to ensure that resources are available when decisions are made, and that the matter stands over to the next meeting.

Director Browne was requested to look into this matter.

It was placed on record that, whenever members attend the PIJS Meetings on behalf of other stakeholders, they should be fully briefed in order that decisions can be made at the PIJS.

Regular attendance by the High Court is essential if the PIJS is to have esteem and respect.

PRE-TRIAL CONFERENCES

The document "Pre-Trial Conference in the Lower Courts", that was circulated previously, is regarded as an extremely good document by the Prosecutors, save for minor amendments i.e. the Presiding Officer should complete the document and not the Prosecutor. For, in terms of practice, the concern was raised that it is impossible for a Presiding Officer to hand the document to the court.

It was intended that, as far as possible, the initiative should come from the litigants, but the bench should complete the document. Over time it should become a questionnaire for the Bench and done under directive of the Court. It is important at this stage to defer to the view of the Prosecuting Authority and to amend the document as suggested. What

remains is for the legal fraternity to look at the document and to come up with proposals.

It was suggested that the defence give input to Mr Laue within a week or two. The reason why the defence had not yet been approached was because the domestic response, i.e. from the Bench and the Prosecutors, had to be obtained prior to approaching the legal fraternity.

Mr Martin suggested that the document be handed to Mr van de Merwe as soon as possible to be discussed at the Law Society.

Mr Laue proposed a small committee be established to look into the matter rather than wait for the next meeting. A response is to be given by the Law Society by 25 June 2004, directed to the Chief Magistrate Durban, for attention Mr Laue.

All representatives at this forum should take note that, if the Law Society is also in favour of this document, it will be implemented on ground level. Ms Batohi will take responsibility for the document and will be empowered to handle the issues immediately and not have to wait for this forum to take action.

CASE FLOW MANAGEMENT

There is a serious problem with the implementation of Case Flow Management in the outlying areas, where Magistrates did not buy into Case Flow Management. A circular is to be sent out to the effect that this decision has been made.

Mr Ngcobo requested the forum not to generalise, but identify the problem cases.

Mr Laue said the success of Case Flow Management depends on the willingness of everybody to participate. The Bench should look into the reason for not implementing Case Flow Management. The Case Flow Management Document must not be prescriptive but act as assistance in implementing Case Flow Management. The document will not be forced upon anyone, but the judiciary will be urged to buy in to it.

Awareness on the part of SAPS is important, in order that they understand the concept of Case Flow Management.

REPORT BY ADVOCATE GARY WILLIAMS

A meeting was held on 01 April 2004. Judge Jappie was not available to attend the meeting. Advocate Williams mentioned that he would like a Judge at the meeting for the sake of continuity.

High Court Criminal Sessions:

He further reported that there are presently 3 High Court Criminal Sessions and because of these short sessions Judges often cannot finalise matters, resulting in part-heard matters. Cases are also often crowded out.

It was suggested that the JP should be approached to amend the High Court Criminal Sessions as follows:

1st Session-	February:	4 weeks
	March:	4 Weeks
	April:	2 Weeks
	Total:	10 Weeks

2nd Session:	May:	4 Weeks
	June:	4 Weeks
	August:	4 Weeks
	Total:	12 Weeks

3rd Session:	September:	4 Weeks
	October:	2 Weeks
	November:	4 Weeks
	December:	2 Weeks
	Total:	12 Weeks

Case Flow Management Document

Laue document:

Every single accused for session will appear on the first day of the session and pre-trial conferences are then to be heard between legal aid and state counsel.

Engelbrecht document:

Legislation will have to be in place before it can be implemented.

Congestion will result as only a few legal aid attorneys and interpreters are available. There are too many cases in session to make pre-trials workable.

It was agreed that this matter needs further discussion.

A request was received from the Registrar's Office to increase the number of interpreters. Legal Aid will provide more staff to circuit courts.

Correctional Services will have to understand that these new procedures will impact on the first day of sessions.

The idea is for the procedure on the first day of the session to structure the rest of the session.

The long postponement of matters in the Lower Courts before a court date is obtained in the High Court was discussed at length. The Court rolls at the High Court are fully booked to December 2004. Matters cannot be withdrawn whilst a court date in the High Court is awaited. The information of the congested courts should be shared with the Prosecutors in the Lower Courts, so that Prosecutors can explain to courts when they are addressed on these lengthy remand periods.

How can these processes be reviewed in the light of both cycle time and Case Flow Management? The Judicial Officer is the party that authorises the postponement of matters, thus the information re congested court rolls should also to be made available to the Judiciary.

It was further suggested that matters should be adjourned for a year, if need be, to prevent congestion with matters remanded over and over again.

Once a matter is sent to the High Court, for the Director of Public Prosecutions decision, the matter is to be adjourned for 4 months. If indictment is received within the 4 months, the accused can be requisitioned.

Mr Sibeko remarked that the ball should be given back to the Justice Portfolio Committee, as it is not acceptable to remand a matter for 12 months where accused is in custody. The Department should be geared up to guard against long incarcerations of accused by empowering the Director of Public Prosecutions to give court dates more speedily.

It was further explained that it is normally not the decision on indictment that takes time, but the full court rolls.

If a matter is destined for the High Court, the Prosecutor has to inform the High Court within 3 days. Within 8 days the High Court informs the Prosecutor and requires dockets within 3 months. The starting point of expediting matters is for the Magistrate to enquire if the Prosecutor has informed the High Court of the matter. After 10 days the Magistrate can enquire if the High Court has reported back. After 3 months

Magistrates can enquire if the docket has been forwarded to the High Court.

The Director of Public Prosecutions is often not aware of potential High Court cases pending at the Lower Courts. In order for High Court to ensure that the docket is forwarded timeously to the High Court, it is proposed that a directive be issued in this regard, and that similar processes are followed in Regional Court matters to enable Magistrates to fast track matters.

It was further suggested that a copy of the notification be attached to the charge sheet. Advocate Batohi will forward a notice to be disseminated to all Magistrates.

6. REPORT BY MR B DAVIS

6.1 ROADSIDE COURT

Easter Holidays:

The Department of Transport was pleased with the fact that the Commission supports Roadside Courts, but a procedure for payment is needed from National Office. Magistrates are to submit their claims for remuneration to their respective offices. A consolidated claim should then be sent to the Department of Transport, where after the Department of Justice is then reimbursed.

Regional Courts have been abolished. A Senior Court Manager has been appointed and will take office on 01 June 2004. The Senior Court Manager will be delegated to consolidate all of these issues.

A total number of 4 Roadside Courts were operational during the Easter Holidays at Camperdown, Umdloti, Park Rynie and Bergville. A total of 403 cases were registered of which 99% were finalised. Matters that required legal representation were further remanded. Pinetown Court came in as a standby Court.

The Easter Roadside Courts were a huge success. The Department of Transport was pleased with the support that they received from Magistrates and Prosecutors. A letter was sent out by the Head of Office indicating the proposed expansion of the office, but proclamations etc have to be put in place first. They are still awaiting feedback from Justice.

Area of concern:

A Magistrate from Lion's River acted at one of the Roadside Courts which may have been outside of his jurisdiction, thus his matters may be refuted. This Magistrate had not been paid as his Head of Office did not permit him to go to Bergville.

Roadside Courts have impacted on drivers' behaviour on routes where they were functioning, i.e. from Ladysmith to Durban there were only two fatalities reported. People are conditioned to the fact that Roadside Courts were in place.

Certain issues around Roadside Courts are still to be fine-tuned, i.e. a person required to spend a weekend in jail for speeding may lead to constitutional issues.

6.2 FINES SET BY COURT

Fines set by courts in the various Provinces are to be uniform. There is a discrepancy in fines set by courts in various provinces. However, Admissions of Guilt for RTO in the various provinces are uniform.

It was pointed out that in the imposing of a sentence there may be other considerations at stake.

7. REPORT BY DSV NTSANGASE

The project concerning the CCTV link with Durban Correctional Centre was handed to Ms Sejosengwe. She had to obtain buy in from all role players. There was a demonstration attended by Mr Jiyane. He was satisfied. A room would be available for consultation between private practitioners and accused. This would assist in that all Correctional Clients will no longer have to be transported to court. The safety of many people, including members of the SAPS would be enhanced and late arrival of Correctional Clients at Court would be curtailed. Mr Ntshangase requested buy in from the PIJS. The Prosecution is in support as are all other stakeholders. Mr Ntshangase will forward a letter to Ms Sejosengwe to report on the response of the meeting. Being a Pilot Project it can be stopped or adapted if it is going astray.

The question was raised as to where the legal representative will be if the CCTV link is in use: at court or at the Correctional Centre? It was pointed out that it depends on the legal representation. If he or she prefers to be at court, they may do so, or if accused prefers representation with them, so be it.

The question was then posed as to where the interpreter will be? It was explained that the interpreter will be in normal court.

It was then asked how long the pilot scheme will run for? Mr Ntshangase replied that it will run as long as it takes to test and determine the success of the CCTV link. If it succeeds, it will become a permanent system. A timeframe may need to be set, but this is not advisable.

It was further explained that the CCTV link is a Justice initiative.

The Defence would have the most reservation and are implored to test the system, as it will have a positive impact on various issues. If problems occur, the defence can make valuable inputs into the reviewing or adapting of the process.

It is mentioned that the CCTV video link had been tested in the USA.

8. REPORT BY ADVOCATE G WILLIAMS

This item has already been dealt with under "Matters Arising from Previous Minutes" in paragraph 5.

9. GENERAL

9.1 APPOINTMENT OF SENIOR COURT MANAGER: HIGH COURT PIETERMARITZBURG

Mr J J M Manual has been appointed at the High Court Pietermaritzburg and he will also form a part of this forum.

9.2 LOSS OF DOCKETS AT COURT

There are serious problems within SAPS as dockets are reported to be stolen and sometimes sold. Members of SAPS are said to be in cahoots with criminals. Presently dockets are also disappearing from Prosecutors' offices. Prosecutors are implored to take proper control of dockets in their possession, for it was reported that dockets are often found in courts after the adjournments of the court. The National Prosecuting Authority manual states that if a docket is lost and the matter is reported to SAPS, a docket is to be opened for the loss of that docket, for Prosecutors do also have criminal tendencies. The standpoint of the National Prosecuting Authority is to charge people. Dockets are now scanned into the system by the CPS process so that, if dockets go missing, they will still be available on the system.

A project is being piloted at Durban relating to the securing of dockets as far as Prosecutors are concerned. Prosecutors are constantly sensitised to this effect and these matters are to be reported to the Director of Public Prosecutions office.

9.3 IMPLEMENTATION OF CASE FLOW MANAGEMENT OUTSIDE OF DURBAN

Even though a decision was taken and the Case Flow Management document was circulated to all offices, there is no leadership in the driving of Case Flow Management outside of Durban.

- Ø In Durban and Pietermaritzburg Magistrate's Courts Case Flow Management meetings are held but at the outlying offices, no meetings have been called
- Ø At Umlazi Magistrate's Court a meeting was called, but the Prosecutors were not included.
- Ø At Pinetown and Verulam Magistrate's Courts no meetings have been called.
- Ø At Chatsworth Magistrate's Court, Durban intervened and called a meeting.

The National Prosecuting Authority has gone further and Case Flow Management has become a strategic objective.

The Chief Prosecutors are not averse to take leadership of Case Flow Management in KwaZulu-Natal.

In the outlying areas serious problems are experienced with the implementation of Case Flow Management, especially by members of the Judiciary.

There could be an incorrect perception that Case Flow Management needs to be perfected before it is rolled out. Teething problems still occur in Durban that have not been resolved. Outlying areas have to be attended to.

The PIJS forum has decided that Case Flow Management will be implemented in all courts.

In Pietermaritzburg Magistrate's Court, Magistrates have been sensitised to implement Case Flow Management. The Area Cluster Heads were also informed in meetings and other Heads of Offices within the Cluster have been advised to implement Case Flow Management.

Ladysmith Magistrate's Court has been labelled the "best small court" in South Africa.

Pietermaritzburg Magistrate's Court is experiencing problems as they do not have computers to assist with Case Flow Management.

The Prosecutors requested a workshop to assist them drive Case Flow Management.

Criticism of the Durban Cluster is valid, but it cannot be quickly fixed. The PIJS forum took note of the concerns.

9.4 DEDICATED LEGAL AID COURTS

As from 01 June 2004 dedicated Legal Aid Courts will start in W, X, Y and Z Regional Courts at Magistrate's Court Durban. 20 – 80% of Regional Court matters are Legal Aid Matters. The project will be rolled out to the District Courts at the Durban Magistrate's Court.

This should impact positively on Case Flow Management.

9.5 TARGETING PROSECUTORS

There is a need for liaison between SAPS and the Prosecution regarding priority crimes, e.g. drugs and housebreaking. The housebreaking project has been highly successful and because housebreaking is a quality of life crime, this has had huge impact. Also, housebreakers are often the link in a series of other crimes and so the successful arrest and prosecution of housebreakers has a larger impact.

The National Prosecuting Authority will be involved in joint initiatives with the SAPS in order to ensure impact and this is part of a drive to deal more effectively with crime.

Mr Ntshangase promises full co-operation from Magistracy. All role players should join hands and move forward together.

9.6 IJS STRUCTURE

This item will be held over for the next meeting, as it is a lengthy discussion. Ms Odayan would like to talk on how BAC could assist in the standardising of methods. The PIJS Forum plays a critical role to ensure that matters that are started are followed through.

9.7 OVERCROWDING OF PRISONS

There is a crisis at prisons because of overcrowding and the use of drugs. SAPS have to look at the possibility of arresting the Drug Lords.

Members of the SAPS are doing a good job in arresting perpetrators. However, a system of first investigating and then arresting would help improve the Court Rolls. In some instances it may be necessary to arrest in the very early stages of the investigation. This may be necessary, but National Prosecuting Authority has a method of not enrolling matters where there is no case.

The Defence can assist in the Plea Bargaining system by identifying people that want to plea bargain. This initiative must come from the defence.

It is possible to have a Prosecutor at the SAPS station that can close dockets where there is no case. At Chatsworth Magistrate's Court Prosecutors go to SAPS stations on Sundays to screen dockets and at other courts, Prosecutors go to court at 07:00 in the morning to screen cases.

Suspects may be incarcerated on Friday and kept in custody until Monday, where there is no case.

Matters with bail of less than R 1 000 or R 1 050. Section 63A is now in place to deal with these matters.

DCS has circulated a list of matters with bail under R 1 000.00. In some serious matters bail had been set too low, and stakeholders are sensitive as to who are released.

9.8 AWAITING TRIAL

Female Correctional Clients are bringing their babies to court. Judges will not tolerate this as they disturb courts. Judges cannot concentrate on court proceedings and it does not look good to see these small children in court.

It is the policy of DCS that a mother must take her child to court. There is a crèche at prison, but it only takes babies over 18 months.

It is the last meeting that Mr F Engelbrecht of DCS will attend, as he has been transferred. Mr Ntshangase thanked him for his co-operation and presence.

The next meeting will be held on 30 July 2004 at 09:00.

MR DSV NTSHANGASE
CHAIRPERSON

MS P A VAN ROOYEN
SECRETARY