

**MINUTES OF THE PIJF MEETING HELD ON 7 OCTOBER 2005
AT 09:00 AT THE HILTON HOTEL**

1. ATTENDANCE:

As per annexure attached.

In Judge Jappie's absence, Mr Mabaso is appointed as chairperson.

The following new comers are introduced:

S Akoojee – Department of Health; Advocate Ramouthar – DDPP Durban; R Byroo – Social Welfare; B Mbili – KZN Law Society Pietermaritzburg; ED Tillett – Community Safety and Liaison

2. APOLOGIES

Advocate Batohi

Commissioner Ntanjana

Commissioner Brown

Ms Kemp

Mr Mncwabe

Mr Lakhi

Ms Sejonsengwe

3. ACCEPTING MINUTES OF PREVIOUS MEETING

Advocate Ramouthar spelled incorrectly

Page 3 – paragraph 3 and 7 need to be corrected as follows:

“Valley View provides for 60 boys only”

“Part of Ocean View place of safety, in the Wentworth area, need to be converted.”

Except for the afore mentioned amendments, the Minutes are accepted as a true reflection of the proceedings at the previous meeting.

4. ACCEPTING OF AGENDA

The Agenda is accepted by all present.

5. MATTERS ARISING FROM PREVIOUS MINUTES

MEETING DATED 10.06.2005

6. SHORTAGE OF REGIONAL COURT MAGISTRATES

Mr Mabaso is part of the Magistrates Commission dealing with creation of new posts. The Minister, after consulting with the Magistrates Commission, approved additional posts in the country. The recommended number of posts was reduced.

CASE CYCLE TIMES

To deal with at a later stage during the meeting.

13.4 COMPENSATION IN RAPE CASES

Advocate Blumrick received a list of complainants that may receive restitution 2 days ago. She did not have time to work on it as yet, in order to establish who can receive restitution. Dockets need to be drawn to consult with complainants.

The matter is to stand over to the next meeting.

MEETING DATED 25.02.2005

12.1 J165 BENCH WARRANTS

Mrs van Rooyen articulates that the matter regarding the non-return for cancellation of Bench Warrants was taken up with the Durban SAPS Court Manager Capt Nair. He had discussions with role players and 21 000 Bench Warrants are now on their way back to Durban Court for cancellation.

MEETING DATED 3 DECEMBER 2004

8. HIGH COURT SUB-COMMITTEE

The report is to follow later.

MEETING DATED 30 JULY 2004

5.8.1 OVERCROWDING OF PRISONS

To be discussed at a later stage.

5.8.2 ISSUED IN RESPECT OF JUVENILES

To be discussed at a later stage.

5.8.3 STATISTICS FIRST APPEARANCES: JUVENILES

The statistics are with Mrs van Rooyen, to collate at a later stage.

5.8.4 COMBINING OF FORUMS OVERLAP

Mr Byroo will look at issues that other forums are dealing with and report back on how they can be combined.

5.8.5 AGE ASSESSMENT BY THE DISTRICT SURGEON

The Probation Officer can assist court with the following:

- § Check if Birth certificates are available.
- § Check if Juvenile had been arrested before and seen by a Probation Officer.
- § Check if Juvenile had been in programmes before

The Probation Officer can also make recommendations to prisons for age assessments.

Dr Akoojee explains that District surgeons were abolished during 2005. The Departments of Correctional Services and Social Welfare are responsible to provide medical services. The Department of Justice and SAPS play no role in these functions. Forensic Medical Services works closely with SAPS at the expense of the Department of Health.

District surgeons used to render primary health care. KZN is divided into 11 districts under the leadership of Managers, who handle claims and appointments. They have moved to a system of Service Providers on BAS. It is an Administrative process to identify doctors and specialists to provide services: Doctors and Dentists have to be registered on the database with a theme of services that can be rendered. A letter of appointment is issued to the District Surgeons. Doctors' particulars are to be registered so that electronic payments can be effected. Claims are processed by the Budget Section. A sum of money is budgeted for state patients held at the Midlands complex. The balance of services is not funded by the Department of Justice. With the change over in 2002, District Surgeons enquired as to who would fund court appearances. The Department of Health then undertook that they would compensate. Problems are still experienced.

Witness Fees

Mr Manuel explains that, if you are in service of another Government Department, your own Department must pay for your expenses.

The Department of Health did not have a service contract with the District Surgeons. Mr Manuel will check with Mr Langenhoven and issue a new circular.

Advocate Blumrick refers to Minimum Sentencing matters where accused as well as victims have to be examined on a daily basis. The doctor that performs the examinations has to appear in court. If the doctor that is used is a private practitioner, he may not have time to come to court. At present the prescripts state that court is supposed to pay the doctors. The Department is often late in paying doctors, causing the system not too flow well.

Ms Ramouthar explains that Dr Ruben, used to handle age assessment matters at high and lower court level had retired.

Dr Akoojee replies that it is not easy to get people willing to do radiology and dental assessments. She will request for process to be put in place to assist with this issue. Practitioners often feel that they are not trained to do age assessments.

Mrs Ramouthar requests specific feedback at the next meeting.

Mr van Pittius requests that the gap left by Dr Ruben be filled.

Advocate Blumrick emphasizes that these problems are experienced daily at every court.

What do we do to buy services of practitioners? Mr Manuel explains that a fee for expert witnesses is prescribed. If the practitioner claims more, the Court Manager has to submit the claim for approval (DG Pretoria). Prior approval can be obtained. Prescripts are at present been looked at.

Mr Sibeko arrives.

Advocate Blumrick explains that R 400.00 paid to doctors is too little to cover all their expenses incurred, i.e. traveling, loss of practice hours and patients. The loss of income makes them reluctant to attend court.

Mr Manuel explains that a departmental committee sits annually to review tariffs. We need to submit a document to the Departmental Committee and suggest a possible amount as the minimum tariff. Ms Akoojee can possibly assist, as they have these statistics readily available.

Mr Mabaso asks how these negotiations will be started off. Mr Manuel suggests that we establish a sub committee and report back at the next meeting.

The Sub-Committee is to comprise of the following members:

Mr Manuel

Dr Akoojee

Ms Blumrick

5.8.6 TRANSPORT OF PRISONERS

Mrs van Rooyen suggests that we close the issue. According to SAPS it is much more effective to transport the prisoners in canters, opposed to the big truck. The daily report from the grille reflects that the prisoners are arriving timeously at court.

Mr Ngcobo agrees that we should now close the issue.

Mr Sibeko still has a problem with some prisoners coming late and request for the issue to remain on the Action List.

Discussions were held with Director Nthehe and the Durban Magistrate's Court Grille and it was reported in both instances that no prisoners are coming late.

Mr Sibeko stresses that they want zero tolerance. The matter should be monitored. Zero tolerance includes that children are not to be transported with adult prisoners

Mrs van Rooyen is to give feedback at the next meeting.

5.8.7 SECTION 63A

Mrs van Rooyen explains that DCS has experienced problems with their IT programme and they have not generated any Section 63A applications for the past two months.

5.8.8 SECTION 62F

Mrs van Rooyen states that there has been no Section 62F applications received ever at the Durban Magistrate's Court. Mr Sibeko is of the opinion that the mind set of the Judiciary needs to be changed so that they will not read into these processes as an interfere with Judicial discretion. The Judiciary is to be converted. If postponements and remands are done properly, there will be no need for Section 62F applications. Prosecutors are abusing the 7 days remands to verify address. Magistrates do not question remands and merely allow them.

Mr Ngcobo mentions that he attended an international workshop in Pretoria that looked at the Overcrowding of prisons worldwide. It may be an option to make more use of traditional courts, opposed to the normal court system. The traditional courts are more widely used in Botswana. Traditional Courts can deal with petty cases. This matters needs to be addressed in Parliament and legislation put in place to minimize traffic to courts.

Mr Mabaso points out that accused have a right to legal aid – injustice may take place in traditional courts and these problems will have to be ironed out.

Mr Mbili mentions that Prisons should step out on rehabilitation programmes. In other countries some prisoners need to be kept in closed prison, but those that have proved that they are rehabilitated, can be sent to "open" farm prisons, where they can be trained in skills. This may be a way of dealing with overcrowding of prisons.

Mr Sibeko suggests that statistics needed to be forwarded to IPT so that a strategy can be formulated. Then we can decide on which sub-committee to deal with this issue. Mrs van Rooyen is to forward statistics to IPT.

10.3 IMPLEMENTATION OF CASE FLOW MANAGEMENT: INSUFFICIENT COURTS AND STAFF SHORTAGES

Mrs van Rooyen mentions that the compliments of support staff at offices need to be looked into. Over the last 10 years statistics of first appearances at Durban Magistrates Court almost doubled, but the allocated court establishment has not been updated. The same problem prevails at other courts as well. Volunteers are used in an attempt to stay abreast of the influx of work.

Mr Ngcobo agrees that there has been an increase of matters. Magistrates and courts are also short.

Mr Sansom indicates that the courts throughout KZN will have to be interrogated. This will come out in the report on statistics compiled by Mr Sansom as he progresses in the reproduction and analyzing thereof. Mr Mabaso agrees and indicates the need for a national workshop to be held to look into this issue.

Mr Manuel requests for the statistics. He mentions that there are 300 vacancies in KZN that need to be filled. 50 million rand has been made available by state expenditure for the creating of posts.

Mr Manuel had requested for a report of posts required across the board. These posts are being filled in drips and drabs. He had issued a circular to court managers indicating that by the end of November 2005 all vacancies had to be filled. Then incapacity of courts will be addressed.

Mr Boardman and Mr Ntshangase join the meeting.

Mr Boardman had just completed the first 11 Video Remand cases. All went off very well and this will now be an ongoing process. Mr Boardman discusses the Video Remand process comprehensively.

Mr Ntshangase agreed that the Video Remand went very well and commends the Magistrates in the professional manner in which they had conducted the Video Remand matters.

The ISDN lines were not up yet, but no private conversations were required between prisoners and their legal representatives. Telkom will provide these lines with priority.

Mr Boardman mentions that bail receipts are still not finding their way to the charge sheets timeously.

A mixed group of challenges were handled this morning, i.e. bail applications, etc. Bail was set in one of the matters. Where bail was opposed, matters were set for formal bail applications.

Mr Sibeko enquires as to the amendments to the CPA and if the ISDN line can be bugged.

Mr Boardman explains that the final draft of legislation is in process, but it has been suggested that we should wait for the 6-month pilot to run, as the outcome of the pilot will assist in the drafting of the final legislation.

Mr Boardman explains that Magistrates confirm at appearances that accused have no objection to appear on Video Remand.

Mr Ntshangase articulates that the chance of appeals being lodged against Video Remand proceedings are slim, as first appearances are done in person, only subsequent appearances by Video Remand, thus we conform with the Act in this regard.

Mr Boardman is thanked for the Video Remand process, which is now underway, together with all the other role players.

6. DISTRIBUTION OF CASE FLOW MANAGEMENT GUIDELINES TO JUSTICE AND OTHER DEPARTMENTS.

Mr Sansom does his presentation.

The Case Flow Management booklet has been published and 7 000 copies printed at the beginning of September 2005. The Case Flow Management booklet was then launched on 06 September 2005 in Pretoria. One third of the booklets have already been issued to offices. The remaining portion has been packaged and is ready to be delivered. They are at present negotiating with a sponsor to deliver the booklets to offices. The quotes received amounts to R30 000– R40 000. Provincially deliveries have been done to all offices, except for the offices in Zululand.

Mr Manuel makes quick enquiries and reports that National Office indicated that R30 000 is not a too large amount.

In the Trevors case a Regional Court Magistrate from Pretoria took the National Prosecuting Authority on. Prosecutors would not give him new matters as they complained that his court was too slow. The Judgment in this matter supports Case Flow Management. The Judge said that a Magistrate's independence is entrenched in the Constitution that it is his responsibility to schedule and distribute cases. A Magistrates workshop was held in Pretoria during October 2005. Times are going to change with the roll out of the Case Flow Management booklet. National Prosecuting Authority had authority over courts by default. Magistrates will now have more responsibility and accountability as far as court rolls are concerned. Monitoring is extremely important and without proper monitoring Case Flow Management will fall apart.

The PIJF Statistics task team use National Prosecuting Authority statistics by mutual consent of the sub committee. National Prosecuting Authority statistics are accurate and readily available. The statistics are collated at National level and provincially extracted. It is however time consuming to extract, and IPT was approached to assist. The strengths and weaknesses of the various offices are clearly visible in the statistics and graphics. The statistics will also screen occupancy and indicate where more courts and capacity is required. The focus is to move from court hours and problems around prisoners coming to court to additional court rooms required. The consistent finalization of cases should be the focus point.

No additional or Saturday courts are held at present, as we ran out of funding.

IPT will generate the statistics, where after a small task team will analyze the statistics and present problem areas to the PIJF for intervention. This is accepted uniformly.

Page 49 of the Case Flow Management document suggests that a court and Case Flow Management review is done weekly. These reviews are to be completed and forwarded to Mrs van Rooyen, to bring a report to the PIJF quarterly.

A regular Case Flow Management meeting is required at every office to check if all pillars/role players are rolling or if problems are experienced. Mr Sansom suggests that these meetings take place weekly.

A question is raised if children's court statistics are available from the NPA statistics. Mr Sansom explains that the mandate was to analyze comprehensively all statistics. Mr Sibeko states that statistics are readily available. The presence of the Department of Welfare at the Case Flow Management meetings is urgently sought.

7. LAUNCH OF CASE FLOW MANAGEMENT GUIDELINES

The launch of the Case Flow Management Guidelines was on 06 September 2005. It is clear that there is a lot of support for the document. The document is available on website www.justiceforum.co.za on the site is also an opportunity for comments.

8. REPORT BACK FROM CASE FLOW MONITORING TASK TEAM

Already dealt with under item 6.

9. PRESENTATION BY DEPARTMENT OF SOCIAL WELFARE RE: PROBATION SERVICES

Mr Byroo made the PIJF aware of the programmes of the Probation Services.

A presentation was done, focusing on:

- Legislation supporting the programmes
- Duties of Probation Officers
- Functions of Assisting Probation Officers
- RAR Centers (Reception assessment and referral centers)
- Assessments
- Assessment and referral process
- Home based supervision
- Pre-sentence Investigation process
- Format for pre-sentence report
- Facilities accommodating Child Awaiting Trial, and other facets.

The following are places of safety:

Excelsior	74 boys	(Pinetown)
Valley View	60 boys	(Sydenham)
Pata	35 boys	(Pietermaritzburg)
Ocean View	15 girls	(Bluff)
Greenfields	10 girls	(Pietermaritzburg)
Ngwelezane	15 [boys and girls]	(Empangeni)

A unit is presently renovated at the school of industries at Ladysmith to accommodate 300 juveniles

Future planning – awaiting trial facilities:	Durban	300
	Ladysmith	90
	Empangeni	90
	Pietermaritzburg	120

They had approached Province for funds, and are looking at all facilities to be outsourced.

The Juvenile awaiting trial population has reduced from \pm 600 to \pm 200. A problem is that SAPS do not collect awaiting trial children at facilities for court appearances.

Advocate Blumrick points out that the capacity at Social Welfare will in all probability play a role in the performance of the Department.

Mr Sibeko refers to page 35 of Case Flow Management document – probation officer should be part of Case Flow Management forum at all levels. He emphasizes that invitations should be extended to them for attendance at the Case Flow Management meetings.

Mr Sibeko also refers to the PIJF Juvenile Sub Committee and suggests that statistics concerning juveniles should be channeled through that committee to the PIJF, analyzing problem areas.

1. Mr Mqadi agrees that the presence of his Department is a necessity at Case Flow Management forums, throughout KZN.
2. Statistics with regard to juvenile Criminal matters are collated, but no statistics with regard to Children's Court enquiries and backlogs, yet Children's Court matters take a lot of their time.
3. Adequate infrastructure is required to assist the Social Services, i.e. diversions will address the workload of the Probation Officers. They attempt to provide RAR centers at courts. At Margate the SAPS station could not provide space to them.

Mr Mabaso requests for the presentation by Mr Byroo in hard copy format, to be disseminated to all offices. Ms Matthews will make that available.

10. COMMUNITY PROSECUTION PROJECT

Ms Ndaba states that the backlog has reached crisis dimensions. We have challenges in children's court matters, i.e. ± 18 476 Foster care cases that require finalization. A huge number of communities are affected by poverty: 53.5 % people in KZN, hence their children are in need of care. There is a link between foster care and poverty.

Ms Ndaba does a presentation and focuses on the following issues:

- Who would be classed as a child in need of care?
- Purpose of foster care and kinship care
- Factors leading to backlog in foster care services
- Recommendations

She enquires if the Department of Justice could not look at appointing dedicated children's court commissioners to deal with children's court matters.

Some of the backlog figures are as follows:

Hlanganani	829
Lower Umfolozi	602
Ladysmith	1135
Ntuzuma	651
Umbumbulu	561
Stanger	1887

Advocate Blumrick relates to the constitution that specifies that all matters concerning children should be at children's best interest.

In matters concerning sexual abuse within the family, the child from time to time discloses information. The risk is that due to incapacity the child may not be receiving adequate attention.

Mr Mabaso requests Dr Mqadi to address these problems to the two Cluster Heads.

Dr Mqadi indicates that a huge problem is the lack of dedicated Child Court Commissioners at many courts, coupled with incapacity. He expresses his gratitude to Magistrates Escourt and Pietermaritzburg who have gone out of their way to work down backlogs.

The statistics represents cases known to the Department. It is a reality that many cases are out there, not part of the statistics of backlog of the Department.

The need for the Departments of Justice, Social Welfare and Home Affairs to sit together and strategize the mechanisms to deal with problem areas is expressed.

Many cases are withdrawn due to lack of evidence. This has a direct link to incapacity problems. Organizations such as Child Line are disillusioned with the Government and do not get support from Social Welfare in the Province. They have the helpline, but require assistance in terms of capacity.

Dr Mqadi reports that the Director of Child Line visited Parliament with problems experienced. The Port folio committee of Parliament decided that the Departments of Social Welfare, Justice and SAPS, need a joint strategy for child abuse to deal with cases as per agreement. What is role of Justice, i.e. to adjudicate; Social Welfare's role is counseling and care. Strategy as a family is required to deal with issues.

We need to procure funds from outside. There is a general reluctance to look at NGO's, even though we do not have capacity. We need more lateral mindset to bring NGO's into the fold to assist. There are ±1400 NGO's including Child Line.

A model of Child Line is being accepted to roll out Nationally.

Mr Sibeko emphasizes that a workshop on Children's court issues is very necessary and Dr Mqadi should liaise with Mr Mabaso in this regard.

Advocate Batohi requests for a date to meet on the Community Prosecution Project. The date of 15 November 2005 is requested and the meeting will be held at 09:00.

Mr Manuel requests that Home Affairs be invited.

Mr Ntshangase indicates that all role players must be present, especially those that did the presentations. In particular, the Department of Social Welfare.

11. REPORT ON VIDEO REMANDS

Already dealt with under 10.3.

12. SERVICE OF PEACE ORDERS BY SAPS

Stand over to next meeting.

13. GENERAL

13.1 OBSERVATION FOR JUVENILE ACCUSED

Advocate Blumrick mentions that:

- We need facilities where juvenile as per section 77 and 78 of the CPA can be observed. Some of them are dangerous young murderers, etc
- We need another observation unit at the Correctional Centre.
- The new Mental Act is in operation. Director of Prosecutions no longer deal with mental patients. Magistrates do not sign orders. Patients are directed to hospitals.
- Patients are sent for observation and declared State Patients. The new Act does not allow for the name of the institution on the J505. Current Act Legislation requires the High Court/ Clerk of court, to fax the J505 to the Detention Center for detention, pending designation of the Detention Center by the National Department of Health, within 14 days from transfer to the hospital designated. SAPS are distraught; Correctional Services do not know what to do with mentally ill patients. Some people are kept in cells for 30 – 60 days. Do we as *curator ad litem* go to the High Court requesting a mandate to remove the patients?
- Observation of patients: In terms of Section 77 – 79 of the CPA – it is a serious offence not to have a panel of 3. Fort Napier does not know who to call to observe the patient. In some cases the panel of 3 are not used and matters need to be referred back, impacting amongst others on the budget.

13.2 JUVENILES DECLARED STATE PATIENTS – FACILITIES ARE LACKING

Stand over to next meeting.

13.3 AGE ASSESSMENT OF JUVENILE ACCUSED AND WITNESSES

Stand over to next meeting.

13.4 MENTAL HEALTH CARE ACT

Stand over to next meeting.

13.5 EFFECT OF CASE FLOW MANAGEMNET AT DURBAN MAGISTRATES COURT

Stand over to next meeting.

14. CLOSURE

The sponsorship making these venues available is thanked.

The date for the next meeting is 15 November 2005.

T C MABASO
CHAIRPERSON

P VAN ROOYEN
SECRETARY

Matters arising from the meeting dated 7 October 2005			
Item no	Topic	Discussion	Responsibility
10	Community prosecution project	Ms Ndaba enquires if the department of justice could not look at appointing dedicated children's court commissioners to deal with children's court matters. Mr Mabaso requests Dr Mqadi to address these problems to the two cluster heads.	Dr Mqadi
		Mr Sibeko emphasizes that a workshop on children's court issues is very necessary and Dr Mqadi should liaise with Mr Mabaso in this regard.	Dr Mqadi
12	Service of peace orders by SAPS	Stand over to next meeting	Ms Blumrick
13.2	Juveniles declared state patients – facilities are lacking	Stand over to next meeting	Ms Blumrick
13.3	Age assessment of juvenile accused and witnesses	It is not easy to get people willing to do radiology and dental assessments. We need to request for process to be put in place to assist with this issue. We need to submit a document to the departmental committee and suggest a possible amount as the minimum tariff of payment to district surgeons. Ms Akoojee can possibly assist, as they have these statistics readily available. A sub committee is to be established to report back at the next meeting.	Mr Akoojee
13.4	Mental health care act	Stand over to next meeting	Ms Blumrick
13.5	Effect of case flow management at Durban magistrates court	Stand over to next meeting	Ms van Rooyen