



**REPORT ON INSPECTIONS OF COURTS:
DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

EASTERN CAPE PROVINCE

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FOREWORD

During 2010, the Public Service Commission (PSC) conducted inspections in the Department of Police focusing on detective services. One of the key findings of the inspections was the delay in the finalization of cases in the courts which led to a backlog¹. Given the crucial role played by the courts in effecting justice, the Public Service Commission (PSC) decided in 2011 to conduct service delivery inspections of the courts in the Department of Justice and Constitutional Development (DoJ&CD). The purpose of these inspections was to determine the reasons for the backlog of cases at the courts, especially those cases that require detective service. Furthermore, the inspections sought to assess the adherence of the courts to the service delivery principles of *Batho Pele* as a key strategy for the transformation of the Public Service delivery.

In South Africa, the courts are central to the delivery of justice, since the judicial authority lies within the court system. In this regard, the DoJ&CD is mandated amongst others, to ensure that the courts system is administered efficiently and effectively to facilitate the resolution of cases. Furthermore, the DoJ&CD is responsible for ensuring that justice is realised by providing an appropriate environment in terms of the establishment of courts and the operations thereof to deliver a fair, equitable and accessible system of justice for all. The delivery of justice is performed with multiple stakeholders, amongst others, the Judiciary and the National Prosecuting Authority (NPA).

The inspections of the courts, led by a Public Service Commissioner found that the perennial human and infrastructural constraints facing the courts have contributed to the backlog of cases, while poor adherence to the *Batho Pele* requirements impacts negatively to the effective functioning of the courts.

It gives me pleasure to present the report on inspections of the Regional courts conducted in the Eastern Cape Province. The PSC is of the view that the findings and the recommendations contained in this report will help the Department and its stakeholders in improving service delivery at the courts.

MR B MTHEMBU

CHAIRPERSON: PUBLIC SERVICE COMMISSION

¹The Republic of South Africa. Public Service Commission. Report on Inspections of Detective in the Department of Police (Unpublished). 2010/11.

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LIST OF ACRONYMS

AO	Accounting Officer
CCTV	Closed Circuit Television
CFM	Case Flow Management
DoJ&CD	Department of Justice and Constitutional Development
EA	Executive Authority
NPA	National Prosecution Authority
OPSC	Office of the Public Service Commission
PSC	Public Service Commission
RCPF	Regional Court President Forum
SAPS	South African Police Services

1. INTRODUCTION AND BACKGROUND

Improving service delivery for the citizens of South Africa remains a key priority for the government. To this end, the government has outlined twelve outcomes in order to fulfil its mandate of delivering services to all. Therefore, various government departments are required to put systems and processes in place to ensure that these outcomes are achieved. However, the activities and achievements directed at attaining such outcomes need to be assessed on a regular basis. In this regard, the Public Service Commission (PSC) has put in place a range of monitoring mechanisms that can be used to establish the progress that is being made in improving service delivery in the Public Service. One such mechanism involves the inspections of service delivery sites. Through inspections, the PSC observes, collect information and obliges officials of Departments to account for the state of affairs at the service delivery sites under their jurisdiction. Subsequently, the PSC advises on the necessary steps to be taken to improve service delivery.

In conducting inspections, the PSC is mandated by section 9 of the Public Service Commission Act (1997) which provides that *“the Commission may inspect departments and other organizational components in the Public Service, and has access to such official documents or may obtain such information from Heads of those departments or organizational components or from other officers in the service of those departments or organizational components as may be necessary for the performance of the functions of the Commission under the Constitution or the Public Service Act²”*.

In line with the above-mentioned mandate, the PSC developed a Protocol on Inspections³. The purpose of the Protocol on Inspections is to assist the PSC to conduct inspections in a meaningful and objective manner, which is important for both the integrity of the inspection process and the quality of the reports that are subsequently generated.

Guided by the Protocol, the PSC has since 2006/2007 been conducting inspections of service delivery sites in various departments and the following departments were inspected:

- National Department of Home Affairs and Labour, Housing (Gauteng) and Social Development (Free State) in 2006/2007.
- Departments of Education in eight provinces and National Head Office in 2007/2008.
- South African Police Service in 2008/2009.

²Republic of South Africa.Public Service Commission.Public Service Act. 1997.

³Republic of South Africa.Public Service Commission.Protocol on Announced and Unannounced Inspections.2007.

- Departments of Health in all provinces in 2009/2010.
- National Department of Police in 2010/2011.

The PSC's 2010/2011 financial year inspections conducted in the Department of Police focused on detective services. One of the key findings of the inspections was the delay in the finalization of cases in court which led to a backlog⁴. In order to consolidate its findings in this area, the PSC decided in 2011/2012 financial year to conduct inspections in the Department of Justice and Constitutional Development (DoJ&CD). The purpose of these inspections was to determine the reasons for the backlog of cases at the courts, especially those cases that require detective services and to assess the adherence of the courts to the service delivery principles of *Batho Pele* as a key strategy for the transformation of Public Service delivery.

2. THE AIM AND OBJECTIVES OF THE INSPECTIONS

The broad aim of the inspections is to assess the quality of services rendered to the public, the state of the facilities and the conditions at the service site. It is also the objective of inspections to determine if government departments are achieving the required service standard, intended to meet the needs of the people of South Africa. The following table shows the broad objectives of inspections as provided by the PSC Protocol on Inspections as well as specific objectives of these particular inspections in the Department of Justice and Constitutional Development.

Table 1: Objectives of inspections

Broad objectives of inspections as provided for in the Protocol on inspections	The specific objectives of these inspections
a) To determine the service delivery challenges facing the Departments. b) To report serious concerns about the quality of service delivery and compliance with <i>Batho Pele</i> requirements. c) To afford the PSC an opportunity to observe the extent to which services are rendered to citizens. d) To engender a sense of urgency and seriousness among officials regarding service delivery. e) To introduce objective mechanisms of	a) To determine the reasons for the backlog of cases at the courts, especially those cases that require detective services. b) To determine whether the courts comply with the implementation of the <i>Batho Pele</i> principles. c) To gather first-hand information regarding the state of service delivery and the functioning of the courts as service delivery sites of the DoJ&CD.

⁴Republic of South Africa. Public Service Commission. Consolidated Report on Inspections of detective Services: Department of Police. 2010.

identifying both weaknesses and strengths in improving service delivery.	
f) To carry out investigations of serious failures as pointed out by inspections.	
g) To improve service user care relations in order to improve a user-oriented Public Service.	

3. SCOPE AND METHODOLOGY

3.1 SCOPE

The inspections sought to determine the reasons for the backlog of cases at the courts, especially those cases that require detective services and to assess the adherence of the courts to the service delivery principles of *Batho Pele* as a key strategy for the transformation of the Public Service delivery. The inspections were conducted at the Zwelitsha and Mthatha Magistrate Court centres on 14 and 16 September 2011 respectively. On enquiry, it was established that these two Magistrate courts also host the regional court and/ or backlog courts within their centres. For the purpose of this report, the inspection sites will be referred to as Zwelitsha and Mthatha Regional Courts. **Table 2** below shows the list of the inspection sites (courts) visited, names of officials that met with the inspection team and their respective institutions as well as the dates on which inspections were conducted.

Table 2: Inspection sites

Inspection sites	Names of Officials	Date
Zwelitsha Regional Court	<ul style="list-style-type: none"> • Thobeka Ndzube - Court Manager • Mncedisi Mbete - Office Manager • Zukile Mjane - Principal Court Interpreter 	14 September 2011
Mthatha Regional Court	<ul style="list-style-type: none"> • Ms Conjwa - Regional Magistrate • Ms Mfobo N.M - Regional Magistrate • Ms Pretorius J - Senior Public Prosecutor • Mr Busakwe JS - Senior Public Prosecutor • Mr Swepu SE - Acting Court Manager • Mr Ntiyane TWN - Supervisor: Vote Accounts • Mr Mdudu ET - Supervisor: Regional Criminal • Mr Mnyapa V - Supervisor: Languages. • Mr Mdoda - Supervisor: Regional Divorce 	16 September 2011

3.2 METHODOLOGY

To initiate the inspection process, letters were sent to the Executive Authority (EA) and the Accounting Officer (AO) of the DoJ&CD informing them about the PSC's intention to conduct inspections in the courts. Furthermore, letters were also sent to other stakeholders such as the National Prosecuting Authority (NPA) and the Magistrates Commission. This was to ensure that their views on the matter of backlog of cases at the courts were obtained during the inspection process.

The PSC conducted both announced and unannounced inspections. The announced inspections focused on the backlog of cases at the courts, whilst the unannounced inspections focused on the compliance of the courts with the *Batho Pele* principles. In the case of **announced** inspections, preliminary discussions were held with officials of the DoJ&CD to obtain their inputs on the PSC's data collection tool and also seek their assistance with the logistics of the inspections, especially the coordination of the stakeholders. Furthermore, this was to ensure that all the required information would be made available at the time of the inspections.

Unannounced inspections were conducted after the announced inspections. Unannounced inspections provide the most representative picture of the daily operations and practices of a service delivery site. The inspection team comprised the PSC Commissioner and the OPSC officials. The Commissioner played a leading role in the inspections process. PSC-designed data collection tools were used to guide and to gather information during the inspections.

4. KEY FINDINGS

The key findings of the inspections are presented below. The findings of the announced inspections are presented first followed by the findings of the unannounced inspections.

4.1 ANNOUNCED INSPECTIONS

The Department of Justice and Constitutional Development (DoJ&CD) aims to uphold the Constitution and the rule of law and render accessible, fair, speedy and cost effective administration of justice in the interest of a safer and more secure South Africa. On a daily basis, courts at various levels perform their functions, thus providing fair public hearings through independent and impartial tribunals/forums. However, the delay in the finalisation of cases (which leads to a backlog) compromises the efficiency of the courts in the delivery of services. The following findings highlight the case load at the regional courts, reasons

contributing to the backlog of cases, and the Criminal Justice System interventions on dealing with backlog cases.

4.1.1 *Status of Backlog of Cases at the Regional Courts*

The inspection team established that both the Zwelitsha and Mthatha Regional Courts were experiencing a backlog of cases since 2008. The team further found that, statistically, these Courts had a case load of approximately 850 and 2773, respectively. The inspection team also established that given the huge case load experienced by these regional courts, cases were not finalised on time, thus resulting in the backlog of cases.

4.1.2 *Reasons Contributing to the Backlog of Cases*

It was found that there were various challenges that contributed to the backlog of cases at the Regional Courts. Below are some of the challenges that contributed immensely to the case backlog.

4.1.2.1 *Poor Access to Court Services*

The jurisdiction of the two Regional Courts is a challenge due to the geographical spread and the workload brought about by such an arrangement. For example, Mthatha Regional Court services 17 Magisterial areas which fall under it, namely, Mthatha, Port St Johns, Libode, Elliotdale, Bityi, Kwaaiman, Coffee Bay, Ngcobob, Elliot, Qumbu, Mqanduli, Ngqeleni, Tsolo, Cala, Ugie, Barkley East and Maclear. On the other hand, the Zwelitsha Regional Court services 8 Magisterial areas under it, namely, Zwelitsha, Whittlesea, Peddie, Middledrift, Alice, Seymour, Keiskamahoe and King Williams Town. Most of the areas serviced by the two courts are rural and the distances that the accused as well as the witnesses have to travel and the costs associated with such traveling, are unaffordable for most witnesses. Consequently, this has led to the unwillingness of victims/witnesses to further partake in the court proceedings because of the mentioned challenges. Cases are often postponed due to the failure of witnesses to appear before the court. As a result, such cases eventually fall within the backlog.

4.1.2.2 *Postponements of Cases by Private Attorneys*

It was further established that the absence of private attorneys on the date of the hearing derailed the finalisation of cases. As such, cases cannot be processed without the accused's legal representative. This was further exacerbated by the continuous changing of attorneys

by the accused, which disrupts progress as the new attorneys would require time to familiarise themselves with the cases. As a result of the above challenges, new dates were set for the court hearing. The other challenge found to be causing delays in finalising cases at court was attributed to the allegedly unnecessary requests by private attorneys for postponements which was viewed as a ploy for commercial gain. In addressing this challenge, the inspection team established that the Mthatha Regional Court has held enquiries with the affected private institutions/ law firms and holding them accountable and committed to the court proceedings.

4.1.2.3 Human Resource Constraints

The inspection team found that the insufficiency of human resources was a general challenge that applied to all court stakeholders such as prosecutors, language interpreters, magistrates and Legal Aid practitioners, and therefore was not specific to a particular field. Due to the insufficiency of human resources to handle cases on a daily basis, the cases were postponed. For instance, cases that require legal aid representatives cannot be proceeded with in the absence of a Legal Aid practitioner. Equally, cases involving foreign nationals who require to use of their native language during court proceedings cannot be proceeded with in the absence of a suitable language interpreter.

In addition to insufficient human resources, the courts did not have sufficient working tools such as computers for staff members like prosecutors and magistrates. At the time of the inspections prosecutors and magistrates were found to be sharing resources which implied that such resources could not be used simultaneously by all staff as required. The perennial lack of dedicated resources experienced by the courts has been a key contributor to the backlog situation.

4.1.2.4 Insufficient Infrastructural Resources

The inspection team also learnt that one other factor that contributes to the backlog of cases was the shortage of court rooms at the court centres. In the absence of an available court room, the court hearing cannot take place and cases at hand are then postponed. Furthermore, shortage of office accommodation for the court officials was a concern. For instance, the inspection team observed that prosecutors were sharing small offices designed for one occupant. Such a situation compromises confidentiality of case documents and does not afford them space and confidentiality to discuss cases with witnesses. Shared court rooms between the District and Regional Courts contributed to the accumulation of backlogs

as the affected magisterial districts falling under these two Courts have to use these shared court rooms for about 3 quarters of the time at the disadvantage of the regional courts.

Furthermore, the old design of the court room structures does not provide for designated areas for the accused during court proceedings. As a result, the suspects (sometimes in violent cases) easily mingle with the prosecutors, magistrates and the witnesses, which is not only intimidating to the witness, but also poses a security threat. The inspection team was further informed that the Mthatha Magistrate Court experienced several incidents of escape. The CCTV cameras were also found to be inadequate in both Regional Court Rooms and this also impacted negatively on service delivery.

The inspection team also found that there was poor ventilation in certain Mthatha court rooms as air conditioners were not provided. A lot of noise was also experienced every time toilet facilities were used thus disturbing the court proceedings. Unavailability of facilities for people with disabilities impacted negatively on the optimal use of the facility by those with disabilities. As a result, the structures of the court rooms were found to be disability unfriendly as this group of persons had to be assisted around the building to gain access. An example given was that of a Regional Magistrate at Zwelitsha who was required to leave his/her workstation and meet the person at a convenient place instead of his/her work station due to poor access to the facility for the disabled.

4.1.2.5 Poor Municipal Services

The inspection team found that poor and unreliable municipal services were affecting the court proceedings. It was established that electricity and water cuts occurred more frequently at the courts, mostly in an abrupt manner and without notice, which have a negative impact on the functioning of the courts. For instance, some of the equipment used at courts such as recording machines function on electricity. Therefore, in the absence thereof, the recording of court proceedings was difficult. As a result of the interruptions of municipal services, cases were not presided over and were therefore postponed adding to the backlog.

4.1.3 The Criminal Justice System Backlog Interventions

The inspection team found that the working relations with all the stakeholders at both courts were good, professional and manageable. This was attributed to the Case Flow Management (CFM) meetings that regularly sit to discuss all matters aimed at facilitating quick resolution of cases. However, certain challenges were identified and these ranged from the poor investigation capacity of the SAPS members which sometimes impacted

negatively on the relationship. It is critical that proper investigation is conducted and sufficient evidence is made available on the day of the hearing for a case to be successfully presided over. Poor investigation of cases often leads to postponements as further evidence has to be sought. Another challenge was the constant change of Branch Commanders in Mthatha area which disrupts the flow of (CFM) meeting resolutions and commitments. The unavailability of SAPS members at court to give evidence when cases have already been put on roll was also one of the identified disturbing challenges. Continuous engagement in the Case Flow Management and interaction with the stakeholders in the Justice Cluster/ Forum was viewed as a good practice which should be encouraged.

4.1.4 *Reasons for Striking Cases Off the Roll*

The inspection team established that cases are sometimes struck off the roll. In this regard, it was reported that few cases of this nature exist in these two regional courts. These were cases resulting from any of the following:

- Insufficient evidence at court.
- Witnesses/ dockets not at court on the day for various reasons.
- Cases pending investigation/ delays in finalizing investigations.
- Issued warrants of arrest, but not executed by the SAPS.

4.2 UNANNOUNCED INSPECTIONS

Unannounced inspections were conducted at the Zwelitsha and Mthatha Regional Courts. The main aim of the unannounced inspections was to determine compliance levels of the service delivery sites with the implementation of the *Batho Pele* framework. The inspections were guided by the PSC-developed checklist which contained issues relating to the *Batho Pele* principles such as observing facilities, access to information, observing staff and general observations.

4.2.1 *Observing Facilities*

According to the *Batho Pele* principle of Access, citizens should have equal access to the services to which they are entitled to. One measure of ensuring access is to adapt and improve the physical conditions of service delivery sites for easier accessibility. During the visits to the sites, the inspection team observed that outside signage at both sites visited was acceptable. Besides the fact that the structure of the two buildings was old and inherited

from the then Ciskei and Transkei Administrations, their general conditions were still of acceptable standard. However, both structures did not have adequate ramps to enable people with disabilities to access the buildings. Business hours as well as services rendered were not reflected on the walls or at strategic points of the courts. Parking facility was also in dire shortage especially at the Mthatha Magistrate Offices. Staff members and the public park in the streets which is an unsafe practice as the properties of the officials are left exposed to vandalism.

4.2.2 *Observing Access to Information*

The *Batho Pele* principle of Information requires that information should be readily available to customers to empower them and address their needs. During the inspections, it was found that at both Magistrate Offices there were staff members at the reception areas, who directed visitors on arrival to appropriate service points and assisted clients as and when necessary. No service charters were displayed in these institutions. There were no complaints registers or suggestion boxes to enable the general public to complain or comment about the services they receive. The complaint procedures were also not displayed. As a result, members of the public would not know what to do should they wish to lodge complaints against the officials.

4.2.3 *Observing Staff*

Wearing of name badges fosters the spirit of transparency, openness, accountability and accessibility. The inspection team noted that not all staff members wore name tags. However, all staff members of the two courts appeared friendly, professional and knowledgeable about their work.

4.2.4 *General Observations*

General observations made by the inspection team were that at both Mthatha and Zwelitsha Magistrate Offices, there was a need to ensure that improvements are made to the buildings in order to conform to the Batho Pele requirements. This would allow free movement of members of the public when accessing services. Ramps and lifts are a necessity. Constant water and electricity disruptions by the local municipality with no back up facilities were found to be a challenge.

5. RECOMMENDATIONS

5.1 ANNOUNCED INSPECTIONS

It is recommended that:

- **Post Structure:** The DoJ&CD should develop a distinct organogram or post structure for the courts in general to enable clear staffing arrangements and allocation of related resources, including budget, by April 2012.
- **Office Space:** The DoJ&CD should urgently address the lack of office space and structural defects at both Regional Courts. Provision of separate court buildings for Regional Courts with installation of adequate security measures should be given consideration given the seriousness of cases handled at these courts. In this regard, a plan of action should be put in place by April 2012.
- **Equipment:** The DoJ&CD should provide more computers, printers, photocopiers, CCTV cameras and related equipment at both courts to enable efficiency in dealing with court matters. In this regard, a plan of action should be put in place by April 2012.
- **Municipal Services:** The Regional Courts should, as a matter of agency liaison with the relevant municipalities regarding the abrupt disruption of services which affects the functioning of the courts. Furthermore, consideration should be given to providing backup services.

5.2 UNANNOUNCED INSPECTIONS

It is recommended that:

- **Ramps:** Ramps should be erected to enable service users on wheelchairs to easily access and use the facilities of the courts. In this regard, a plan of action should be put in place by April 2012.
- **Service charters:** Service charters indicating court services and standards should be displayed to improve access and measuring of quality of services by the customers, and these should, as far as possible, be provided in languages predominantly spoken in the areas serviced by the courts concerned. In this regard, a plan of action should be put in place by April 2012.
- **Complaint/suggestion boxes:** Clear complaints and suggestion boxes should be provided and placed where the public could easily access and be encouraged to utilize them. In this regard, a plan of action should be put in place by April 2012.

- **Name tags:** Wearing of name badges should be a norm for all front and back office staff serving the public and should therefore be enforced immediately at both courts visited.

6. CONCLUSION

The inspections have become one of the PSC's methodologies of reinforcing accountability across the Public Service because they are a fact finding exercise meant to observe and obtain first-hand information on service delivery. The above findings reflect the discussions between the inspection team and the DoJ&CD and the NPA as well as the RCPF. In general, the findings show that the perennial human and infrastructural constraints facing the courts have contributed to the backlog of cases, while poor adherence to the *Batho Pele* requirements impacts negatively to the effective functioning of the courts.

7. ACKNOWLEDGEMENTS

The PSC would like to thank the DoJ&CD, NPA and the RCPF for agreeing to meet with the inspection team and for sharing invaluable information. Furthermore, the PSC would like to thank all officials that met with the inspection team for the warm welcome and cooperation during the inspections.