



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

**NORTHERN CAPE PROVINCE**

**FEBRUARY 2012**

## 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 backlog<sup>1</sup>. 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 services. 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 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 court 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 wide array of institutional role players involved in the delivery of judicial services create certain systemic challenges which fall outside the scope of authority of any specific organ of state involved in the justice system, but are major contributors to the backlogs currently experienced by the Regional courts. Furthermore, the inspections revealed shortcomings related to the unavailability of indoor signage, service charters and complaint boxes which impacts negatively on service delivery.

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

**MR BMTHEMBU**

**CHAIRPERSON: PUBLIC SERVICE COMMISSION**

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 Report on Inspections of Detective Services in the Department of Police (Unpublished). 2010/11.

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**LIST OF ACRONYMS**

AO	Accounting Officer
CFM	Case Flow Management
DoJ&CD	Department of Justice and Constitutional Development
EA	Executive Authority
FCL	Forensic Chemistry Laboratory
IT	Information Technology
NCP	Northern Cape Province
NGO	Non-Governmental Organizations
NICRO	National Institute for Crime Prevention and Rehabilitation of Offenders
NPA	National Prosecuting Authority
OPSC	Office of the Public Service Commission
PSC	Public Service Commission
RCP	Regional Court President
RCPF	Regional Court President Forum
SAPS	South African Police Service

## 1. INTRODUCTION AND BACKGROUND

Improving service delivery for the citizens of South Africa remains a key priority of 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 have been empowered 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. The Public Service Commission (PSC) in its role as an oversight organ of state has put in place a range of monitoring mechanisms to establish the progress that is being made in improving service delivery in the Public Service. One such mechanism involves the inspection of service delivery sites. Through inspections, the PSC observes, collects information and allow officials of departments to account for the state of affairs at service delivery sites. Subsequently, the PSC advises on the implementation of strategies and 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 Act”*<sup>2</sup>.

In accordance with the above-mentioned mandate, the PSC developed a Protocol on Inspections<sup>3</sup>. The purpose of the said Protocol is to assist and guide 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. The following departments have been inspected:

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

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<sup>2</sup> The Public Service Commission Act, 1997 (Act No 46 of 1997)

<sup>3</sup> Public Service Commission. Protocol for conducting Public Administration Investigations

- 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 backlogs resulting in delayed access to justice. In order to consolidate its findings in this area, the PSC decided to conduct inspections in the Department of Justice and Constitutional Development (DoJ&CD) in the 2011/2012 financial year. The purpose of these inspections was to determine the reasons underlying 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 main objectives of the inspections are to assess the quality of services rendered to the public, the state of the facilities and the conditions at the service delivery sites. It is also the objective of the inspections to determine if government departments are realising the required service standards in meeting the needs of the people of South Africa. The following table reflects the broad objectives of the inspections as provided for in the PSC Protocol on Inspections as well as certain specific objectives inherent and peculiar to the 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	Specific objectives inherent to the inspections in the DoJ&CD
a) To afford the PSC an opportunity to observe the extent to which services are rendered to citizens and to get a sense of what kind of service delivery challenges are faced by departments. b) To engender a sense of urgency and seriousness among officials regarding service delivery. c) To introduce objective mechanisms of identifying both weaknesses and strengths in improving service delivery. d) To report serious concerns about the quality of service delivery and compliance with	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.

<i>Batho Pele</i> requirements.	
e) To carry out investigations on serious failures as pointed out by inspections.	
f) 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 Public Service delivery. The inspections were preceded by meetings with the Regional Head of the DoJ&CD in the Northern Cape Province (NCP), Mr RD Isaacs on 29 August 2011 as well as the Regional Court President (RCP) for the Northern Cape Province (NCP), Mr KM Nqadala on 1 September 2011 for purposes of introducing and clarifying the inspections as well as securing the buy-in of the mentioned role players. The inspections were conducted at the Upington and Kimberley Regional Courts on 22 and 29 September 2011, respectively. **Table 2** below reflects the inspection sites (courts) visited, names and designation of officials that met with the inspection team as well as the dates on which the inspections were conducted.

**Table 2: Inspection sites and meetings with the Criminal Justice System Stakeholders**

Inspection Sites		Date	
Upington Regional Court		22 September 2011	
Kimberly (Galeshewe) Regional Court		29 September 2011	
Meetings with the Criminal Justice System Stakeholders			
Location	Names of Officials	Designation	Date
Desert Palace Casino: Upington	Adv D Plaatjies	Director: Legal Services: DoJ&CD	22 September 2011
	Mrs N Swart	Chief Clerk: DoJ& CD	22 September 2011
	Mr D Theart	Administration Officer: DoJ&CD	22 September 2011
	Ms L Bezuidenhout	Assistant Registrar (Civil): DoJ&CD	22 September 2011
	Mr T Swarts	Chief National Prosecutor Prosecuting Authority	22 September 2011



	Mr J Claasen	Attorney (Circle19) Bekker, Berg and Moré.	22 September 2011
	Lt JH Col van Niekerk	Lieutenant-Colonel SAPS	22 September 2011
	Mr L du Preez	Acting Area Commissioner: Department of Correctional Services	22 September 2011
	Mr M Phakedi	Justice Centre Executive (JCE): Legal Aid	22 September 2011
	Adv M October	District Director: Department of Social Development: NCP	22 September 2011
	Ms J Botes	Social Worker: NICRO	22 September 2011
	Mr S Atlee	Social Auxiliary Worker: NICRO	22 September 2011
National Prosecuting Authority: Director: Public Prosecutions Board Room: Kimberley	Mr RD Isaacs	Regional Head: DoJ&CD	29 September 2011
	Adv D Plaatjies	Director: Legal Services: DoJ&CD	29 September 2011
	Ms L Masote	Personal Assistant: Regional Court President	29 September 2011
	Brig MM Dani	Provincial Head: Detective Services: SAPS	29 September 2011
	Mr CW Louw	Deputy Director: Public Prosecutions: NPA	29 September 2011
	Mr PM Tshweu	Deputy Director: Public Prosecutions: NPA	29 September 2011
	Mr MJ Lamola	Senior Public Prosecutor: NPA	29 September 2011
	Ms S Pillay	Senior Public Prosecutor: NPA	29 September 2011
	Mr MR Ligaraba	Chief Prosecutor: NPA	29 September 2011
	Mr M Ponnye	Regional Court Control Prosecutor: DoJ&CD	29 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 at the courts. Furthermore, letters were also forwarded to other stakeholders such as the National Prosecuting Authority (NPA) and the Magistrates Commission. This was to ensure that their views on the 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. As indicated in paragraph 3.1, in the case of **announced** inspections, preliminary discussions were held with the Regional Head of the DoJ&CD in NCP to obtain his inputs on the PSC's data collection tools as well as to seek his assistance with the logistics of the inspections, especially the buy-in and participation of the identified stakeholders. Furthermore, it was also to ensure that all the required information would be available at the time of the inspections.

The **unannounced** inspections were conducted at the same time as the announced inspections. Such inspections provide the most representative view of the daily operations and practices of a service delivery site. The inspection team comprised of the PSC Commissioner resident in the NCP and an OPSC official. 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 status of backlog cases at the regional courts, reasons contributing to backlog cases and the Criminal Justice System interventions on the matter and stakeholders' views on the backlog matters.

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

The DoJ&CD defines backlog as all the cases longer than six months on the District Court roll, 9 months on the Regional Court Roll and 12 months on the High Court Roll. In this regard, outstanding court rolls/cases refer to the total number of cases being dealt with by a court at any given time and therefore outstanding cases ultimately include all backlog cases.

The inspection team established that the trends in relation to findings on case load at the two Courts were similar. For that reason, this section is limited to the Kimberley (Galeshewe) Regional Court. **Tables 3 and 4** below reflect the case load at the Kimberley Regional Court for 2008, 2009 and 2010 and the conclusion of such cases per annum and percentages.

**Table 3: Case load at the Kimberly Regional Court (Galeshewe)**

Case Load	1 April 2008 to 31 March 2009	1 April 2009 to 31 March 2010	1 April 2010 to 31 March 2011	Average over 3 years
<i>Outstanding court rolls</i>	895	1164	1058	1039
<i>Cases received</i>	769	484	810	688
<i>Subtotal</i>	1664	1648	1868 (46.96)	1727 655 (37.6)
<i>Finalized cases</i>	-500 (30.0%)	-590 (35.8%)	-876 (46.9%)	-655 (37.6%)
<i>Total Outstanding cases</i>	1164	1058	992	1071

**Table 3** above indicates that on average, the Kimberley Regional Court (Galeshewe) had 1039 outstanding court roll cases over the 2008-2010 periods whilst it received, on average, 688 new cases over the same period. Of the average subtotal of 1727 (1039 + 688) cases, it finalized 655 cases per annum thereof. The remainder was 1071 Regional Court cases at the end of the 3-year period. Despite the fact that the Regional Court has managed to finalize more cases each year as shown in **Table 3**, it nevertheless is clear that the outstanding cases have increased from 1039 (2008-2010) to 1071 (31 March 2011). This shows that over the 3-years period this Court has not been able to finalise more cases than those received per annum. It is therefore clear that the continuous and steady rise of Regional Court cases at the Kimberley Regional Court is impacting on the ability of the Court to significantly decrease its outstanding court roll cases over time.

**Table 4** below shows the specific statistics for the backlog cases at the Kimberley Regional Court (Galeshewe) for 2008, 2009, and 2010 reflected as a percentage of the outstanding court rolls.

**Table 4: Backlog cases for the period 2008-2010**

<b>Case load</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Average over 3 years</b>
<i>Outstanding court rolls</i>	895	1164	1058	1039
<i>Backlog cases</i>	328	405	395	376
<i>Backlog cases as a percentage of Outstanding court rolls</i>	36.6%	34.8%	37.3%	36.2%

**Table 4** above shows that the average outstanding court roll cases over the period 2008-2010 of 1039 included, on average, 376 backlog cases, which is 36.2% of the outstanding court roll.

At the time of the inspections, the statistics showed that the backlog of cases as at 31 August 2011 at the Kimberley Regional Court was as follows:

**Table 5: Backlog cases at 31 July 2011**

<b>Courts</b>	<b>Outstanding court rolls</b>	<b>Backlog cases</b>
<i>Kimberley Regional Court (two backlog courts)</i>	835	305 (36.5%)

**Table 5** above shows that during the period May - July 2011, 36.5% or 305 backlog cases (of 835), were included in the outstanding court rolls as backlog cases.

The findings show that the Regional backlog courts at the Kimberley Regional Court (Galeshewe) have had minimum impact on the reduction of backlog cases. If the aim is to eradicate backlog cases, these figures clearly show that this is not being realized, given the fact that the percentage of backlog cases have since 2008 remained almost constant (2008-36.6%; 2009-34.8%; and 2010-37.3%).

The backlog of cases at the Kimberley Regional Court expressed as a percentage of the provincial perspective, is as follows:

**Table 6: Provincial overview of case load**

<b>Case Load</b>	<b>Outstanding Court Rolls</b>	<b>Backlogs</b>	<b>% Backlog cases</b>
<i>Kimberley Regional Court</i>	835	305	36,5%
<i>Provincial overview</i>	1408	426	30.3 %

The average percentage of backlog cases at the Kimberley Regional Court(Galeshewe) of 36.5% is, on average, 6% higher than any other Regional backlog court in the Northern Cape Province (NCP)<sup>4</sup>. This supports the view that there is an increased case load on the Kimberley Regional Court which may be indicative of the eminent constraints to efficiently and effectively deal with outstanding court roll cases.

Emanating from the statistical data and the aforementioned information, it is clear that although the KimberleyRegional Court has successfully finalized and concluded a substantial number of backlog cases over time, it has not been able to eradicate or otherwise substantially reduce the total number of backlog cases. The continuous increase and rise (annually) of the outstanding court roll cases linked to the rate at which such outstanding cases become backlog cases, has basically resulted in the number of backlog cases remaining constant at 36.2% over the period 2008-2010 and even rising to 36.5% in July 2011. Therefore, the rate at which backlog cases are being finalized is more or less equal to the rate at which cases on the outstanding court roll become backlog cases.

#### **4.1.2      *Reasons Contributing to the Backlog of Cases***

The inspection team established that there were various reasons that contributed to the backlog of cases at the Regional Court. The following shows some of the challenges that contribute immensely to the case backlog:

##### **4.1.2.1      Poor Access to Court Services**

The Kimberley Regional Court (Galeshewe) is a branch court within the greater Kimberley magisterial district. Due to accommodation challenges at the Kimberley Magistrate's Court, no Regional backlog courts can be housed at the mentioned Court. The establishment of Regional backlog courts at Galeshewe dealing with cases emanating from the Kimberley Magistrates' Court brings about unique challenges that relate, *inter alia*, to the distances that the accused as well as the witnesses have to travel and the costs associated with such travelling, which is unaffordable for most. Consequently, this has led to the unwillingness of victims/witnesses to further partake in the court proceedings because of the mentioned challenges. These circumstances inevitably result in an increase in the backlog of cases.

##### **4.1.2.2      Human Resource Constraints**

The inspection team established that the Kimberly (Galeshewe) Regional Court experienced

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<sup>4</sup>The Republic of South Africa.Department of Justice and Constitutional Development. Overview of Reduction of Regional and District Court Case Backlogs: Progress as at the end of July 2011. 28 August 2011.

capacity constraints which contributed to the backlog of cases. For instance, the general unavailability of Legal Aid Practitioners is a major factor contributing to the postponement of court cases. In addition, each Legal Aid Practitioner has one day in the office, further impacting on their availability at court. As 96% of all cases at the Kimberley Court require legal aid, issues of the above nature are seriously affecting the finalisation of court cases. Despite an increase of the Legal Aid Attorneys nationally to 2000, the demand for additional professional support staff and practitioners as well as for an increase in the number of courts cannot be met.

The inspection team also learnt that securing the services of Magistrates also poses some unique challenges. For instance, Magistrates at backlog courts are limited to five (5) “part heard” per a three (3) months contract period. This implies that backlog court Magistrates who have postponed five (5) cases to be heard at a date outside of their term of office of three (3) months, cannot adjudicate on any other cases that may require a respite or postponement within his or her current contract period. This in itself merely contributes to further delays as such cases are again postponed to be heard during a Magistrate’s next three (3) months contract term. It was furthermore brought to the attention of the inspection team that the creation and filling of vacant Magistrates’ posts takes extremely long thus hampering the performance of courts.

The inspection team was also informed that the steady increase in crime was placing growing demands on the limited available resources of the DoJ&CD to render judicial services and to provide for such demands. In this regard, the disproportionate increase of especially foreign language residents to the Kimberley Magisterial District carries far reaching implications for the Justice, Crime Prevention and the Security cluster. As far as court proceedings are concerned the utilization of casual interpreters whose services are generally difficult to solicit are playing havoc with budget allocations for this purpose, and severely impacting on court proceedings. Having very few to no replacements available to take their place in the event of their unavailability, the Department is more than often held ransom to either meet their exorbitant demands related to *inter alia* payments (travelling and associated expenses), accommodation, timeframes and special requests, or to forfeit their services. Indications were that there exists an “underground network” manipulating and exploiting the circumstances surrounding their scarce skills. Despite requests to have the matter addressed by the Department by means of the establishment of appropriate measures, policies and resolutions, nothing has been forthcoming.

#### **4.1.2.3 Poor Utilization of Court Hours**

In order to eradicate backlog cases, improved time management is critical in the processing

of backlog cases. According to the Practical Guide on Court and Case Flow Management for South African Lower Courts, it is stated that the prescribed court hours are from 09:00 to 16:00 with relevant adjournments in between. Courts are the domain of the presiding Magistrates who are accountable and responsible for the control of all persons and proceedings therein. Magistrates are therefore, apart from the actual proceedings, responsible for the adherence by all court officials to the prescribed court times, the amount of time spent in court each day, the scheduling of court rolls and the progress and speedy finalization of cases. The inspection team learnt that measures are in place to ensure that court time is optimally utilized and contingency arrangements are made expeditiously by the responsible component to ensure maximum effectiveness of operations. Probing in this regard revealed that backlog courts were being confronted with numerous challenges negatively impacting on the time of courts to actually sit during a day. Crucial to the issue of court time management, is the lack of nationally adopted norms for court sitting times in this regard. The inspection team found that the ultimate goal of backlog courts of dispensing with cases as expeditiously as possible is by no means to be reconciled with the current average court sittings of only 3 hours, 34 minutes per day.

For example, the Regional Court Presidents' Forum (RCPF) on 3 November 2010 adopted a document titled "Criminal Practice Directives for the Regional Courts in South Africa" which stipulates that "Regional Court Presidents find an average court sitting of 4 hours 30 minutes per day in one month acceptable" and that any sitting of less than three hours on any day must immediately be reported to the Regional Court President. In terms of the current performance, it is clear that the desired target still needs to be met.

The inspection team found that the practices resulting in the delay of court proceedings and thus eroding the actual available court time relate to Prosecutors and legal aid representatives consulting on the morning of a trial (instead of the previous day). However, the current practice whereby such meetings only take place between 08:00 to 09:00 on the morning of the hearing, seriously impacts on the overall available court time per day. The situation is further exacerbated by witnesses arriving late at court on the day of the hearing mainly because of the distances to be travelled to the Regional Court. The Case flow management standards specifically provide for witness consultation the day prior to a case being heard. Concomitant circumstances relate to a lack of transport, the unavailability of certain court role-players because of other judicial commitments, and the non-availability of relief personnel to stand in.

In addition, delaying tactics leading to the postponements of hearings are major contributors to the increase of backlog cases throughout Regional Courts in the Province. The citing of a clash of interests and a subsequent request to withdraw from proceedings, leave Magistrates



powerless as they are compelled to accede to such requests. The current judicial system cannot compel the finalisation of a case as all accused are innocent until proven guilty.

#### **4.1.2.4 Lack of Infrastructure**

The inspection team was informed that other factors that contribute to backlogs are the non-availability of sufficient court rooms to be utilized as backlog courts. In addition to these is the lack of necessary equipment used in courts, such as recording machines, which in the absence thereof also contribute to delays in the finalisation of cases. A concern raised by the NPA is the shortage of office accommodation at some courts. It is therefore impossible for Prosecutors to perform their jobs properly and professionally as they sometimes have to consult witnesses in the presence of other people. Other challenges raised were the lack of IT equipment impacting on the ability of the NPA to finalise matters. Overall, the infrastructural shortcomings experienced in this regard impact negatively on the ability of the Department to address the outstanding court rolls.

#### **4.1.2.5 Introduction of the Civil Jurisdiction to the Regional Courts**

In an attempt to transform the civil justice system to *inter alia* provide for expeditious, less cumbersome and more affordable means of resolving civil disputes, Cabinet in May 2010 resolved that civil jurisdiction henceforth be introduced into Regional Courts. This has inevitably brought about additional responsibilities for a number of role-players at Regional Courts. The introduction of specialist civil courts has resulted in expertise being solicited from criminal courts without necessarily replacing, in particular, Magistrates at such courts. The courts from which these role-players are temporarily relinquished are inevitably severely affected with many court hours lost as a result of the ensuing disruptions. The implementation of such specialist courts has therefore not relieved or reduced the outstanding court roll situation at all. Tapping from the existing human resources pool without strengthening the personnel capacity to match the additional responsibilities, merely increases the backlog of cases. Despite an undertaking by the DoJ&CD to incrementally increase Regional Court staffing in line with the available budget, there has been no relief for Magistrates at civil, family (divorce) and high courts because of the increased workload brought about by the introduction of civil jurisdiction into Regional Courts.

#### **4.1.3 Reasons for Cases Struck Off the Roll and Withdrawal Thereof**

The inspection team established that the underlying causes for the striking off cases from court rolls primarily relate to the non-availability of witnesses, unavailability of dockets at court, incomplete investigations, and the refusal of a Magistrate to once again grant a further



postponement of a case. Key to the continuation of any court proceedings is the availability of the witnesses. Issues such as their late or non-arrival at court, unwillingness to give evidence, lack of transport, extreme distances that need to be travelled, intimidation and threats, taking bribes, and deliberately disregarding summonses and subpoenas, all contribute to the postponement of cases with the above-mentioned being some of the major causes of backlogs. With the above-mentioned being some of the major causes for backlogs, Regional Magistrates often feel compelled to strike such cases from the court roll following numerous postponements and no prospects of having the cases heard. Furthermore, the non-availability of witnesses who cannot be traced (living in informal settlements or who have relocated), or are no longer interested in the case, are additional reasons for the non-continuation of cases. It was established that during August 2011, 11 cases were struck off the court rolls at the Kimberley Regional Court (Galeshewe).

In addition, the withdrawal of cases often relate to witnesses who during consultation with Prosecutors would either indicate that the accused was not involved, that they cannot accurately recall what happened or that they made a mistake in their statements. Such cases are normally withdrawn. The inspection team established that during August 2011, 53 cases were withdrawn at the Kimberley Regional Court (Galeshewe). The unavailability of dockets, witnesses not subpoenaed or at court and incomplete investigations also contribute to the withdrawal of cases.

#### **4.1.4      *The Criminal Justice System (CJS) Backlog Intervention***

The inspection team found that a number of interventions have been put in place to eradicate backlogs and ensure effective delivery of justice services. The following outlines the CJS backlog intervention.

##### **4.1.4.1      Case Flow Management**

Key to the successful finalization of court cases is the management of the case flow system by all stakeholders, individually as well as collectively. From a collective perspective, it is the responsibility of the Judiciary to lead the case flow management system in the Northern Cape Province. However, despite the availability of Case Flow Management Guidelines<sup>5</sup> which includes a protocol to ensure proper management of securing court attendance, an effective admission of guilt process, effective plea bargaining, and the effective screening of cases, indications were that case flow management meetings are currently not being held in the Kimberley Regional Court (Galeshewe). Although such meetings do take place at District court level, this essential mechanism to create and establish synergy amongst the numerous

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<sup>5</sup>Republic of South Africa. Practical Guide Court and Case Flow Management for South African Lower Courts.

stakeholders and role players in the rendering of an efficient and effective judicial service to the people of the Province, has not been operative for quite some time.

The institutionalisation of case flow management plans to address the many challenges faced by the backlog Regional Courts will result in a co-ordinated and controlled strategy which will ensure the successful management of backlog court cases with a view to reduce and eventually eradicate all such backlog cases. Monitoring Case Flow Management (CFM) involves Magistrates, Prosecutors and administrative personnel examining and discussing factors affecting court functioning and productivity on a regular basis. It is essential that there is a degree of uniformity and consistency in such practices. Court Managers should likewise ensure that the Case Flow Management protocols are adhered to and that the set standards are complied with and met. Poor court roll planning more than often leads to the mere postponement of cases rather than such cases being heard and finalized.

It was also established that some cases are finalised through diversion processes before enrolment. Diversion relates to a decision to halt the criminal justice process at any point and to replace subsequent standard judicial actions such as an arrest, trial proceedings, conviction, sentencing and institutionalisation with alternative measures, be it a warning, restitution agreement, community service order, or a specific correctional program.

It furthermore emerged that co-ordination challenges among the various role players were giving rise to ineffective case flow management which in turn leads to a lack of timeous case-ready dockets and backlogs. The case flow management process is not addressing systemic problems due to inadequate and fluctuating commitment from role players and it is not driven effectively by Presiding Officers.

Current arrangements to address the challenges being experienced are clearly not bringing about the desired results. Whilst the application of the case flow management guidelines are totally dependent on the buy-in from all stakeholders and therefore reliant on the commitment and dedication of the role players involved, the Provincial Cluster Forum meetings (JCPS meetings – Justice, Correctional Services, Police, Social Development), are not contributing to the resolution of the challenges experienced. Attendees of such meetings are often not mandated and empowered thus frustrating the efficiency of the system as no binding decisions can be taken.

#### **4.1.4.2 Stakeholder Roles and Relationships**

The only manner to efficiently and effectively address the reduction and ultimate eradication of court backlog cases is by finalizing such cases and not by either the postponement or

striking of cases from the court roll. It is for this purpose that only trial ready cases be brought before the Regional Court. In this regard the inspection team found that the relationship between the Prosecutors and Detective Officers are described as good. Interaction and discussions about cases take place regularly with challenges and uncertainties being dealt with in an amicable fashion. The open door approach practiced by the judiciary further enhances sound relationships.

Members of the SAPS are responsible for the compilation of dockets and investigative reports, and are therefore major contributors to effective court and case flow management. Compliance with prosecution directives concerning investigations, the quality assurance of investigations and attendance to issues relating to poor quality dockets, plays a pivotal role in the effective and efficient functioning of courts and Prosecutors. However, the referral of cases back to SAPS is a regular occurrence. Cases referred to the Regional Court have normally been fully investigated. Despite thorough reports, Prosecutors regularly require of investigators to provide feedback on queries and case related issues of uncertainty.

As mentioned afore, as the SAPS is a key role player in this regard, the commitment and dedication of the Investigating Officers to passionately render services of the highest standard to the public at all times, are major factors contributing to the successful finalization of backlog court cases. A high standard of ethical behavior will ultimately address issues such as missing dockets, bribery, thorough and complete investigations to ensure court ready reports, complete records and filing systems as well as matters related to integrity, honesty, respect and fairness. The setting of realistic targets within attainable timeframes linked to supervisory support, assistance and clear guidance, is required at all times. It is furthermore imperative that senior stakeholders within the SAPS are held responsible for delays and take the necessary action to ensure that cases are finalized and court ready within the shortest possible time. Although it is acknowledged that the majority of cases being investigated by the SAPS are subject to an innumerable host of influencing circumstances often beyond the control of Investigating Officers, as the cornerstone of the entire judiciary system, it is non-negotiable that every effort be made to guarantee the successful finalization of court cases at that level. Substandard police investigations in serious cases exacerbate the workload of Prosecutors who continuously have to provide clear and comprehensive directives to SAPS Investigating Officers to ensure trial-ready dockets.

The inspection team was informed that the NPA is responsible for the prosecution of criminal matters within the courts of South Africa. Their aim is therefore to provide a coordinated prosecuting service that ensures that justice is delivered to the victims of crime

through general and specialised prosecutions, to protect certain witnesses and to remove the profit motive from crime.

The NPA has improved the preparation of cases by regularly monitoring court performance. This has resulted in an improved screening process as the protocol is aimed at the purification of dockets leading to fewer cases being placed on court rolls, especially those where there is insufficient *prima facie* evidence. Through communication and engagement with SAPS on cases where there is not enough evidence, such cases are referred back to SAPS for re-investigation.

#### **4.1.5      *Management and Oversight of the Judiciary***

The judicial system, particularly in the Northern Cape Kimberley Magisterial area, is experiencing unique challenges which need to be addressed and resolved very urgently. Although different role players are making efforts to establish a workable system, tension between the Regional Court President and a Kimberley Court Magistrate is not being managed effectively.

In terms of the Magistrates Act, 1993 (Act No. 90 of 1993), a Magistrates Commission has oversight over judicial officers in the lower courts, has to ensure that a code of conduct is adhered to, and has to investigate complaints against Magistrates.

It is unfortunate that the mentioned tension has resulted in a public three (3) year spat conducted in the local newspaper, resulting in news articles on the suspension of the Magistrate in October 2011, a civil suit in January 2012 and public written opinion on 13 January 2012.

The most harmful resulting consequences regarding this situation is the lowered morale of colleagues (as experienced in meetings), the public perceptions around the integrity of the individuals involved, as well as the doubts cast on the integrity of the court system in this area.

Linked to the aforementioned is the issue surrounding the jurisdiction and mandate for the Regional Court President over courts and their personnel. The management of courts are currently allocated to Regional Magistrates. Prosecutors operate and function within the domain of the National Prosecuting Authority (NPA). Court Clerks and other personnel reside under the jurisdiction of the DoJ&CD. However, the Regional Court President is not in charge of any of the aforementioned personnel. His span of control is limited. The management of courts and trials including court availability and sessions, case allocations

(where so delegated) and appearances, communications with the court, case readiness, enrolments and trial set down, and the drawing of criminal cases, is the sole and exclusive responsibility of a Regional Magistrate. These mentioned areas of jurisdiction of Regional Magistrates does not allow for any kind of intrusion or intervention by the Regional Court President.

Further clarification therefore has to be provided regarding the relationship and the accountability (if any) between regional/district Magistrates and the Regional Court President of the same province, as different opinions were expressed in this regard. This matter has in the case of the Northern Cape Province resulted in strained relationships negatively affecting service delivery and the optimal functioning of the Kimberley Regional Court. The inspection team found that in addition to the aforementioned challenges inherent to the current judicial system, the interpersonal relationship problems being experienced is contributing to an environment seriously compromising the efficiency of the Regional Courts.

#### **4.1.6 Stakeholders' Views on the Future of Backlog Courts**

The inspection team found two opposing views on the role, management and future of backlog courts. Some provincial role players hold the view that backlog courts have as far as the current South African judicial system is concerned, become permanent features, and that should they be permanently dissolved or abolished, it would have catastrophic consequences. These roleplayers believe that backlog courts should rather be permanent and increase in number because of the steadily rising number of cases to be adjudicated. Such courts are currently of a temporary nature whilst all the involved role players and staff are contract employees as National Treasury has only provided for interim relief. As need requirements for additional human capacity, funding, courts, the streamlining of the judicial system and improved co-ordination amongst all role players have, however, outgrown the current available resources and management arrangements, the only solution to relieve the mounting pressures and increasing workload, lies in the permanency of backlog courts.

The second viewpoint held is that such courts should be abolished and that the Department should rather invest in permanent capacity to deal with the outstanding court rolls. The establishment of additional Regional Courts on a permanent basis is seen as the only long term solution to successfully address backlog court cases and deal with increased demand on the court system. Case load statistics at the Kimberley Regional Court (Galeshewe) (**Table 4**), reflect that the new cases received in 2008 (769 cases), 2009 (484 cases) and 2010 (810 cases), have during the mentioned years on average (688 cases) exceeded the average number of cases (655) finalised during such years. Therefore, despite the establishment of Regional backlog courts since November 2006, backlog case numbers

have been increasing annually. The Department should therefore optimally utilise its available resources and increase permanent capacity where needed. However, it is in this regard imperative that as far as the prioritisation of the basic services to involved citizens within the criminal justice system is concerned, that all organs of state such as the DoJ&CD, the Judiciary, Legal Aid, SAPS, Correctional Services and Social Development shall interact in a collective effort to synchronise their strategies, goals and objectives to realise such.

## **4.2 UNANNOUNCED INSPECTIONS**

Unannounced inspections were conducted at the Kimberley and Upington Magistrates' Courts. The main aim of the unannounced inspections was to determine the compliance level of the Courts with the service delivery requirements of the *Batho Pele* principles. The inspections were guided by the PSC's developed checklist covering issues that relate to the *Batho Pele* principles such as observing facilities under which services are rendered, observing access to information, observing staff, and talking to citizens.

### **4.2.1 Observing Facilities**

Citizens should have equal access to the services to which they are entitled. One way of ensuring accessibility is to adapt and improve the physical conditions of service delivery sites for easier accessibility. The inspection team observed that only the Upington Regional Court had outside signage, visible from the main road in front of the Court, clearly indicating its name. The reception area was also visibly identified.

At the Kimberley Regional Court, there were no signs indicating parking for visitors nor directions from the parking lot to the reception area. Both Courts have ramps and lifts to facilitate easier access for people with disabilities. The services rendered were displayed at the Kimberley Regional Court. However, business hours, prior requirements for accessing services and the costs of services, were not displayed at any one of the mentioned Courts.

Both Courts were clean and neat whilst the physical condition of the buildings were well maintained, spacious and in a good condition. The reception areas were clean and in the corridors were benches for seating purposes. Furthermore, the Courts were well-enclosed by fences and gates. The sites appeared to have a relatively safe environment reporting minimal criminal activities in and around their premises. The entrances have security gates whilst entry is via security personnel. The inspection team was requested to have the contents of their belongings electronically scanned. All citizens and their possessions are examined by means such as an electronic scanner for the identification and detection of dangerous objects. Toilet facilities were accessible to members of the public. At the Kimberley Court several taps were non-functional whilst the urinals in the men's toilets

were blocked.

#### **4.2.2 Observing Access to Information**

The *Batho Pele* principle of Access to Information requires information to be readily available to customers for their empowerment and to address their needs. During the inspections it was noted that there were front desk personnel assigned to guide and direct clients to the appropriate service points. Service charter/standards were not displayed in the reception areas. The display of service standards provides customers with relevant information about the level of service they can expect and promotes engagement for improved service delivery. However, no such standards or service charters were on display. Clients would request information from the security staff at reception as the information desk was not staffed. It was established that no officials were assigned to the desk on a permanent basis.

The inspection team observed that suggestion/complaint boxes were located at the entrances to the buildings. However, these boxes did not have any writing pads or pens available. Furthermore, no complaints procedures were indicated to guide citizens in this regard. The suggestion box at the Upington Court had notices stuck to it obscuring the indication that indeed it was a suggestion box. Suggestion boxes and complaint registers are important mechanisms in engendering a participatory approach in service delivery and encourage openness and transparency on the part of Courts. This practice is in line with the *Batho Pele* Principle of Consultation.

#### **4.2.3 Observing Staff**

The wearing of name tags or badges fosters a spirit of transparency, openness, accountability and accessibility. The inspection team observed that at the Kimberley Magistrate's Court front-line/reception personnel were wearing their name badges. This affords citizens an opportunity to identify the person who has been responsible for the rendering of a particular service. The wearing of identification badges is important especially when a need arises for citizens to follow up on particular cases. The inspection team also observed that staff members were friendly, demonstrated professionalism and seemed knowledgeable about the work of the Court.

#### **4.2.4 Talking to Citizens**

Citizens as consumers of the services rendered at the Courts are in an excellent position to provide feedback on the state of service delivery. Their views and comments are important in improving service delivery. Both at the Kimberley and Upington Magistrates' Courts, citizens



were generally satisfied with the services they received. They indicated that they were aware of the waiting time and that they have to be patient due to the court procedures and delays. Four (4) to five (5) hours waiting was not out of the ordinary for them. They also indicated that they were treated with dignity and courtesy and that personnel were friendly and knowledgeable. All citizens took between 30 to 60 minutes to travel to the service delivery sites and transport is mostly by taxi. Citizens were not always aware of the complaints handling system and procedures. However, they indicated that they normally complained directly to their own legal representatives who would explain the said procedures.

## **5. RECOMMENDATIONS**

### **5.1 ANNOUNCED INSPECTIONS**

- **Stakeholder Cooperation:** It is acknowledged that the wide array of institutional role players involved in the delivery of judicial services, such as the DoJ&CD, the Judiciary, the NPA, Legal Aid, SAPS, Correctional Services and Social Development, create certain systemic challenges which fall outside the scope of authority of any specific organ of state involved in the justice system. It is therefore imperative that the existing *fora* for the harmonization of intra-governmental relations and the implementation of mutually acceptable policies, practices, directives and resolutions, be fully utilized to ensure the efficient, effective and most economical functioning of the judicial system. Many of the challenges currently experienced can only be addressed through a unified approach involving and requiring the full co-operation of each and every stakeholder.
- **Human Resources:** 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 by April 2012. Such structure should be mutually acceptable to all the institutional role-players involved in the SA judicial system, for the unified and overall strengthening of human resources court capacity to efficiently, effectively and in a co-ordinated fashion address the eradication of court backlog cases. Current capacitation mechanisms have resulted in unevenness and capacity gaps in some parts of the system which need to be addressed.
- **Court hours:** The Judiciary should immediately increase and optimally utilize the amount of time spent in court each day - thus ensuring that the time that courts actually sit per day, is maximized. Crucial to the issue of court time management is the development and implementation of nationally adopted court norms to guide and direct protocols in this regard that will ensure that the proposed court sitting norm of 4 hours, 30 minutes per day, is realized or improved. A plan of action should be put in place by April 2012.



- **Budget:**The Department of Justice and Constitutional Development as a matter of urgency interact with the National Treasury in an attempt to progressively secure additional funding to address the challenges preventing the total eradication of court backlog cases. The interim funding of the backlog courts by National Treasury resulting in *inter alia* the compelled utilization of contract employees to manage such courts, should likewise be addressed. A plan of action should be put in place by April 2012.
- **CaseFlow Management:** Provincial Cluster Forum meetings chaired by the Regional Court President with stakeholder's and role players involved in the delivery of judicial services should, without exception, be held at least once a month. This crucial mechanism for the creation of synergy among the aforementioned role players in the rendering of an efficient and effective judicial service to the people of the Province, is undeniably an indispensable necessity without which the current judicial system cannot function optimally. To ensure maximum output and efficiency such meetings are to be attended by the most senior officials representing each of the mentioned disciplines. Binding decisions are only possible by duly authorized and fully mandated representatives. The official endorsement of the Practice Directives for Regional Courts to address the mentioned issues should be considered by the Department of Justice and Constitutional Development.
- **Interpretation of Directives:**Following certain differences of opinion on the interpretation of directives guiding the management of courts and trials between the Regional Court President in the NCP and a Regional Magistrate at the Kimberley Magistrate's Court, it is imperative that the matter be resolved as a matter of urgency through decisive intervention and conclusion by the Magistrates Commission. The interpretation issue surrounding the jurisdiction and mandate of a Regional Court President over Regional Magistrates and being in charge and having authority over such officials from a supervisory and management control perspective, vis-à-vis the management of courts and trials being the sole and exclusive responsibility of a Regional Magistrate, has resulted in a total communication breakdown. The management of courts and trials does not allow for intrusion or intervention by the Regional Court President. However, certain developments surrounding the interpretation of the aforementioned areas of authority have resulted in strained relationships currently negatively affecting service delivery and the optimal functioning of the Kimberley Magistrate's Court. The Department should with immediate effect decisively intervene in the matter to have the issue addressed as it is contributing to an environment which is seriously compromising the efficacy of the Regional Courts in the Province.

## 5.2 UNANNOUNCED INSPECTIONS

It is recommended that:

- **Requirements prior Accessing Services:** The Courts should be encouraged to display the requirements that clients have to meet prior to accessing its services (e.g. identification documentation, pay slips, permanent residential address, driver's license, doctor's certificates and employer particulars), the business hours and a list of the services available. This will inform citizens about such requirements and will expedite service delivery as citizens would know beforehand what is expected of them.
- **Service Delivery Charters:** There is a need to assist Courts in developing service delivery charters so as to ensure that service users are aware of the kind of services rendered and the standards thereof. Once developed, service delivery charters should be translated into local languages and be displayed where they could be easily noticed by citizens.
- **Complaints Registers or Suggestion Boxes:** Complaints registers or suggestion boxes should be prominently displayed with the necessary stationery available. In addition, a complaints handling process and the procedures to be followed should also be visibly displayed. The management at the Court should ensure that issues raised by service users are addressed and clients informed about the steps taken to address such.
- **Notice Boards:** Secure notice boards should be installed to ensure that scheduled court proceedings/diaries for the day's proceedings remain intact and are not removed by unauthorized individuals.

## 6. CONCLUSION

The inspections have become one of the PSC's methodologies of reinforcing accountability across the Public Service because they constitute 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 it was established that the wide array of institutional role players involved in the delivery of judicial services create certain systemic challenges which fall outside the scope of authority of any specific organ of state involved in the justice system, but are major contributors to the backlogs currently experienced by the Regional courts. Furthermore, the

inspections revealed shortcomings related to the unavailability of indoor signage, service charters and complaint boxes which impacts negatively on service delivery.

## **7. ACKNOWLEDGEMENTS**

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