BRIEFING TO PORTFOLIO COMMITTEE ON POLICE LEGAL EXPENDITURE

18 NOVEMBER 2015

THE GENERATIONAL DYNAMIC

- Legal expenses arise from legal matters the majority of which flow from civil litigation and motions. The SAPS expenditure on legal costs includes:

- The legal costs paid to the Department of Justice and Constitutional Development by SAPS on a monthly basis relating to:
  - **Legal services rendered on behalf of SAPS and involves:**
    - Civil claims against and by SAPS/ motion applications
    - Criminal cases where members of SAPS are represented by the State Attorney
    - Labour law matters
    - Commissions of Enquiry
    - Legal fees paid to counsel and correspondents appointed by the state attorney

  - Legal costs due to litigants who obtained court orders against SAPS or legal costs due relating to settlements of claims for compensation

CIVIL CLAIMS, LITIGATION AND COSTS

- The majority of legal costs are linked to civil litigation. Legal costs increase as and when civil litigation figures rise due to escalating civil claims. For instance, in the past three (3) financial years registered civil claims, and compensation payments have shown a progressive rise that is also visible in the dynamic of rising legal costs.

	2012/13		2013/14		2014/15	
REGISTERED CLAIMS	10,777 **(+2,1%)**	R6,9 billion	#10, 434 **(-3,2%)**	R5,9 billion	12,670 **(+21,4%)**	R9,5 billion
***ACTUAL NUMBER AND COMPENSATION PAYMENTS**	3,773 **(+55,7%)**	R 209,9 million	5,056 **(+41, 2%)**	R 296,5 million	5,317 **(+2,02%)**	R 302,5 million
LEGAL COSTS	R 165,6 million **(+19,4%)**		R 291,3 million **(+75,9%)**		R 340,2 million **(+16,78%)**	

 # The reduction in claims in 2013/2014 is as a result of postal strike during the last two quarters of the said financial year resulting in letters of demand received and registered during 2014/2015
*** Payments for compensation claims paid irrespective when the claims occurred or registered**

PAYMENT METHODS NATIONALLY				
FINANCIAL YEAR		SETTLEMENTS	COURT JUDGMENTS	**TOTAL**
2012/2013	NUMBER OF PAYMENTS	1,144	**2,629 (69.7%)**	**3,773**
	AMOUNT PAID	R42,371,816.87	R167,554,221.9	**R 209,926,038.80**
2013/2014	NUMBER OF PAYMENTS	1,193	**3,863 (76,4%)**	**5,056**
	AMOUNT PAID	R 59,203,664.22	R 237,296,699.7	**R 296,500,363.96**
2014/2015	NUMBER OF PAYMENTS	1,658	**3659 (68.8%)**	**5,317**
	AMOUNT PAID	R 66,739,264.30	R 235,819,635.9	**R 302,558,900.20**

NOTE: The majority of payments are for court judgments with the result that costs increase accordingly. There are no frivolous settlements as each matter is considered on its own merits

CHALLENGES AND SOLUTIONS

- **Absence of cost visibility**
  - A breakdown of legal costs paid for various categories is not possible as yet
  - Task Team appointed to ensure cost visibility per civil claim / motion application and different categories of legal costs involved
  - All invoices received from the Departments of Justice and Constitutional Development for a refund of legal costs paid by State Attorneys` on behalf of SAPS will eventually be certified by legal officials who instructed the State Attorney to perform legal work on behalf of SAPS
  - The main aim of the said project is to ensure cost visibility as and when a case is still in progress to monitor legal costs involved.
  - It will also assist with monitoring the ratio of legal costs versus possible capital paid as compensation.
  - The POLFIN system has already been enhanced to ensure cost visibility and a pilot project has been implemented prior rolling out of the project to all the provinces.
  - The intention behind this is to eventually be able to monitor costs of each matter as it progresses so as to make rational decisions on the desirability of continued litigation and cost effectiveness

CHALLENGES AND SOLUTIONS

- **Increasing use of correspondents and Counsel**
  - Inputs have been provided to the Department of Justice and Constitutional Development on the transformation of State Legal Services. The aim is attainment of quality and cost effective litigation. This is to be achieved through, amongst other things, proper capacitation of the office of the State Attorney
- **Regulatory framework (Act 40 of 2002 and Court Rules)**
  - The regulatory frame work allows cost escalation in an unintended fashion as lawyers choose to initiate legal proceedings at the principal place of business (Pretoria) rather than where the cause of action arose.
  - Proposal submitted to the Department of Justice and Constitutional Development to amend the establishment of jurisdiction with regard to service on the defendant's principal place of business
  - Institution of legal proceedings against certain Organs of State, Act 40 of 2002
- **Protracted processes (Court and administrative)**
  - Implementation of Court annexed mediation (to reduce summonses and minimize the burden of cases on Court rolls). Implementation date to be announced by Department of Justice and Constitutional Development before end of 2015
  - Shortened procedures (Settlement of uncontested, trivial matters without intervention of the State Attorney)
  - Revised delegation of powers to expedite decision making
  - Implement performance ratings relating to investigation of civil claims to expedite decisions whether claims are defendable or not
  - Bi-monthly engagement between SAPS and the Department of Justice and Constitutional Development on quality management of litigation and to reduce legal costs

CHALLENGES AND SOLUTIONS

- **Rising claims for unlawful arrests (B-crimes, collusion, opportunistic litigation, arrest as a performance target)**
  - Submission of monthly civil claims/ litigation report to monitor and address trends
  - Consequential management with respect to lack of implementation
  - Project to finalize prevention strategy and establishment of ownership and accountability
  - Implementation of communication strategy to create awareness amongst members and officials about conduct that leads to unnecessary claims
  - Distribution of informative material in support of communication strategy
  - Pending investigation about allegations of collusion and touting (Between members and private firm of attorneys)
  - Defence of opportunistic litigation
  - The use of the arrest tool as a performance measure. Amendment of performance assessment tools
  - Extraordinary operational initiatives to combat crime and unrest related incidents may attract frivolous civil claims against the SAPS
  - Legal advice prior to operations

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YEARS OF POLICING IN A DEMOCRACY

Thank you