

## **Budget Vote 21: Department of Justice and Constitutional Development by comrade MRM Mothapo 9 May 2018**

### National Prosecuting Authority

Between 1926 and 1992, according to former Chief Justice Ismail Mahomed, South Africa's attorneys general were not truly independent because they operated under the "control and direction" of the Minister of Justice. The clause empowering the Minister to control attorneys general was repealed on December 31 1992.

The reconstituted post-1994 Prosecuting Authority allowed the Minister to exercise "final responsibility" over the National Director, but the Constitution and the NPA Act have built-in mechanisms to ensure that "final responsibility" does not mean control.

The National Prosecuting Authority (NPA) is critical in the proper functioning of South Africa's criminal justice system and upholding of the rule of law. For it to play this critical role it must be independent from any external influence and manipulation and carry out its functions without fear, favour and prejudice.

Even before 1955, African National Congress envisioned an equal society where all would be equal before the law. Equality before the law is an ideal which is contained in the Freedom Charter. The Congress declared that: No one shall be imprisoned, deported or restricted without a fair trial; No one shall be condemned by the order of any Government official; and the courts shall be representative of all the people.

Having prepared to govern, in 1993, the ANC adopted a new approach to security. The ANC declared that the security institutions shall respect human rights, non-racialism and democracy, and act in a non-discriminatory manner towards the citizenry; and that they shall be politically non-partisan. In the 1994 election manifesto, the ANC declared that detention without trial will be done away with and that the system of justice will be made more accessible, cheap and fair to everyone.

Section 179 (2) of the Constitution empowers the NPA to institute criminal proceedings on behalf of the State, and to carry out the necessary functions incidental thereto. In terms of section 20(1) of the NPA Act, the power vests in the prosecuting authority, to:

institute and conduct criminal proceedings on behalf of the State  
carry out any necessary functions incidental to instituting and conducting such criminal proceedings  
discontinue criminal proceedings

The mission of the NPA is to provide justice to the victims of crime by prosecuting without fear, favour or prejudice, and by working with our partners and the public to solve and prevent crime.

Understanding the importance of this institution and the challenges it has been seized with over the years, President Ramaphosa, in his maiden State of Nation Address said: "We will urgently attend to the leadership issues at the NPA to ensure that this critical institution is stabilised and able to perform its mandate unhindered."

### Corruption

In the 2014 Election manifesto, the ANC promised that inter alia:

Further measures will be developed to identify and prosecute corrupt actions by public servants and others.

Step up the fight against crime to further improve the criminal justice system, the capacity of the police, prosecutors, legal aid and courts will be improved.

In the ANC NEC January 8 Statement , the President said "Anti-corruption efforts within the state must be more effectively coordinated and all forms of corruption must be exposed and prosecuted in both the private and public sectors." And in his State of Nation Address, the President said "Corruption and fraud in the private sector must be fought with the same purpose and intensity."

It is encouraging to note that the NPA has performed in combatting corruption. We note the number of persons convicted of corruption or offences related to corruption and the 230 government officials convicted for corruption or related offences. We note the 90% conviction rate in organised crime. In the same breath, we encourage the NPA not to relax its efforts when it comes to private sector corruption. Corruption unduly enriches a few, undermines good governance and the rule of law, and ultimately impedes service delivery.

As at 31 December 2017, the NPA maintained good conviction rates in all court platforms, recording 87% in the High Courts, 74% in Regional Courts and 88% in District Courts.

Notwithstanding the financial constraints, we are however concerned about the suspension of the Aspirant Prosecutor Training Programme as it has a huge impact on the sustainability of the NPA prosecutorial services. It is reported that an estimated 444 NPA officials have applied for 297 aspirant magistrate posts advertised on 16 March 2018. This will have an impact on the staff complement and inevitably the staff morale.

According to the Poverty Trends in South Africa report published by Statistics South Africa in August 2017, there was a decline in poverty level from 66.6% to 53.2% between 2006 and 2011. The poverty levels however rose from 53.2% reported in 2011 to 55.5% in 2015. If poverty continues to rise, it will cause an increase in social ills such as crime for survival and might put pressure on the over-stretched capacity at court level . And inevitably, this will have a direct bearing on overcrowding in correctional centres.

#### Sexual Offences and Gender-Based Violence

Gender-based violence and violence against other vulnerable groups such as children, the elderly, people with disabilities and members of the LGBTIQI community is a scourge that needs to be eradicated. On average, every eight hours, a woman dies at the hands of an intimate partner in South Africa . In the past year, we have witnessed increases in femicides and overall violence against women and children. Lately, this violence has taken more barbaric acts of burning victims and even cannibalism in the Eastern Cape and KwaZuluNatal. We, as the ANC view this in a very serious light .

The National Development Plan Outcome 3 envisions a country where: All people in South Africa are and feel safe. In 2030, people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the street and children play safely outside. If we are to realise this NDP goal, the NPA and entire JCPS cluster should continue working hard.

We have 55 Thuthuzela Care Centres which provide medical and psychological services to victims of sexual violence in one location whilst statements are taken and evidence is gathered for the criminal case. These care centres are a best practice model and a pride of our country and should be extended to all victims of gender-based violence.

We welcome the Department's efforts in the achievements for securing 70% conviction rate in sexual offences and 75% conviction rate in murder prosecutions. We are encouraged by the amount of 29 800 person who were assisted in the Thuthuzela Care centres and the achievement of 70%

conviction rate in TCC reported cases. This shows that indeed the ANC-led government places the victim at the centre of the criminal justice system in order to effectively combat the gruesome acts of violence that plague our society today.

We welcome the conviction and sentencing of the KwaBhaca rapist who raped two teenage girls school who were boarders - known as Amagxamesi. The court convicted and sentenced the rapist to two life terms for two counts of rape and an additional fifteen years for another count of rape, five years for each of two counts of kidnapping and three years for two counts of housebreaking with intent to commit a crime. We welcome the conviction and sentencing of Karabo Mokoena's murderer, Sandile Manstoe.

#### Special Investigating Unit

Although the SIU does not have the power to arrest or prosecute offenders for criminal conduct, it will report matters to the attention of the Directorate for Priority Crime Investigation (DPCI; the Hawks), the South African Police Service (SAPS), as well as the National Prosecuting Authority (NPA). The SIU also works closely with the Asset Forfeiture Unit (AFU) in the NPA, where its powers are more appropriate or effective in recovering the proceeds of crime.

The revised budget allocation for 2017/18 was R579.6 million (R346.1 million from the baseline grant and R233.4 million from revenue). In the 2018 Budget the Unit receives an allocation of R624.9 million (consisting of baseline grant from government of R357.21 million and a projected R267.8 million from revenue).<sup>17</sup> Of this 68 per cent (R459 million) is allocated to compensation of employees.

We will continue to support the efforts of the NPA and SIU. We envision a South Africa where all people feel safe and are equal before the law.

The ANC supports the vote.

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#### **Budget Vote 21: Department of Justice and Constitutional Development by Gijimani Skosana (ANC) MP in the National Assembly, 09 May 2018**

"Office of the Public Protector and South African Human Rights Commission" Office of the Public Protector and South African Human Rights Commission.

"Liberation in our country requires the destruction of the apartheid system in its entirety: its ideological roots, its institutional branches, its violent seeds and its bitter fruits of oppression, racism and exploitation. Liberation must therefore entail the transfer of power to the people of South Africa so that we can collectively determine and shape the society we desire, create the institutions and structures required and decide by whom and how they will be operated".

-Oliver Reginald Tambo

Human rights has been an important subject to the African National Congress (ANC) since its formation. The ANC proposed for the adoption of a Bill of Rights from as early as 1924, again in 1944 and again in 1955 in the Freedom Charter. The ANC's mission has always been for an open, democratic, transparent and accountable government.

The thinking of the ANC regarding the establishment of the Office of the Public Protector was accountability, transparency and openness. Past experience, through the apartheid regime, exposed the dangers of a government that was neither transparent nor accountable. The ANC, through the establishment of these two institutions supporting democracy, was a way of transferring power to the

people.

One of the main objectives of the African National Congress policy, as per the 1992 Ready to Govern Document, was: To overcome the legacy of inequality and injustice created by colonialism and apartheid, in a swift, progressive and principled way.

It is in this document that it was said that South Africa had never had a good government. The apartheid government's objectives were to divide, harass and humiliate the majority of South Africans, while securing privilege and relatively high standards of service for the minority. The ANC sought a constitution would guarantee a high quality of government service for all. The public service would be based on representivity, competency, impartiality and accountability. The ANC envisaged public service that would serve the public as a whole.

Isthwalandwe, Former President Mandela in the ANC's Ready to Govern , said that the ANC proposes that a full-time independent office of the Ombud should be created, with wide powers to investigate complaints against members of the public service and other holders of public office and to investigate allegations of corruption, abuse of their powers, rudeness and maladministration. The Ombud shall have power to provide adequate remedies. He shall be appointed by and answerable to parliament.

In 1993, the ANC had proposed, in a document titled, Building a United Nation: ANC Policy Proposals for the Final Constitution, that, "The Constitution shall as far as possible empower the poor and the vulnerable to enforce their rights and shall inter alia create a Human Rights Commission and a Public Protector to perform this function."

The Constitutional Principle XXIX of the Interim Constitution provided for the independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service."

Human rights, accountability, transparency, openness and accountability were some of the issues within the thinking of the ANC. The ANC wanted to transform government, making it a government of the people which is accountable to its people.

In its 1994 election manifesto, the ANC affirmed its position of striving for an open society that encourages vigorous debate. It affirmed that people must be free to express their views without fear, including criticising the government of the day. This is something which did not exist in the apartheid regime.

In the manifesto, ANC promised South Africa a new style of government .

It committed itself to creating a Government administration that would serve the people and that it would be answerable to them. The ANC undertook to encourage private citizens to use the independent Public Protector to investigate corruption, dishonesty or violation of rules of conduct on the part of government officials, and that those found guilty would be dealt with.

In the First Certification judgment , the court held:

The independence and impartiality of the Public Protector will be vital to ensuring effective, accountable and responsible government. After amendments to the initial provision, Constitutional Principle XXIX (29) was certified by the Constitutional Court in the Final Certification.

At the African Regional Workshop of the International Ombudsman Institution, Mandela said:

People must be encouraged to speak out against maladministration with the surety that their complaints will be taken seriously and in confidence. Every citizen needs to be familiar with their obligations and duties. They must be able to claim the right to be treated justly, promptly and courteously, and to claim their due under the law. Only then will we be able to ensure that government is dedicated to public service and a culture of efficiency and transparency .

The Office of the Public Protector was established by means of the provisions of the interim Constitution of 1993 and confirmed as an institution that strengthens constitutional democracy by the final Constitution, 1996. The Office of the Public Protector came into being on 1 October 1995.

For the ANC; the Public Protector's Office is not only a critical instrument for good governance but also holds centrality in the transformation of the public service by, among other means, rooting out the arrogance, secrecy and corruption so rampant during the apartheid years .

"Persistent contravention of human rights is a recipe for violent conflict and war. The people can clearly not tolerate the arrogance of the oppressors indefinitely. Already the people have decided to stand up and fight for their rights, arms in hand.

Our fight is for justice. We cannot cease until we have won, as we will in time. And in achieving human rights for all men in southern Africa we will be making our contribution to the fight for human rights and freedom the world over. "

-Isithwalandwe OR Tambo

The establishment of institutions such as the Office of the Public Protector and SAHRC are effective and accessible means of enforcing Human Rights. They are institutions of change; giving power to the people. They are a result of the commitments of the ANC.

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## **Budget Vote 21 Department of Justice and Constitutional Development comrade MSA Maila 9 May 2018**

### Introduction

Throughout its existence, the African National Congress has always championed for human rights and human dignity. In 1911, the founding father of the ANC, Pixley ka Isaka Seme called on Africans to forget the differences of the past and unite together in one national organisation. He said: "We are one people. These divisions, these jealousies, are the cause of all our woes today." In 1912, the ANC declared its aim to bring all Africans together as one people to defend their rights and freedoms.

Human Rights have defined the struggle for freedom and justice as led by the African National Congress. The ANC`s Bill of Rights of 1923, the Africans` Claims of 1943 and the Freedom Charter of 1955 laid the foundation for our democratic Constitution and the Bill of Rights.

In 1986, the ANC adopted its Constitutional Guidelines which declared that all organs of government, including justice, security and armed forces shall be representative of the people as a whole, democratic in their structure and function according to the principles of a new constitutional framework.

In his inaugural speech , Isithwalandwe President Nelson Mandela said: Let there be justice for all. Let there be peace for all. Let there be work, bread, water and salt for all. Let each know that for each the body, the mind and the soul have been freed to fulfill themselves.

Understanding full well the injustices of what was called the "justice system" of the past, the ANC committed itself to making justice accessible to all. There can be no justice when the justice system can be accessed only by the elite. When the poor cannot seek relief or protection or enforce their rights in courts or other tribunals because of the exorbitant legal fees. There can be no justice when courts are only in urban areas and not in rural areas. There can be no justice when court proceedings are conducted in a language foreign to the litigants, without interpretation services. There can be no justice when the criteria for access to justice is wealth and privilege. The ANC continues to ensure that justice is indeed accessible to all.

## Access to Justice

The concept of access to justice has evolved over the years from a narrow definition that refers to access to legal services and other state services (access to the courts or tribunals that adjudicate or mediate) to a broader one that includes social justice, economic justice and environmental justice . Justice is not the exclusive preserve of the courts. The Constitution is designed to achieve justice in the broader sense including social justice and various functionaries including government, independent institutions, the private sector and indeed civil society take on a special responsibility for the achievement of justice and thus access to justice is much more than simply access to courts . The concept of access to justice denotes the situation where state legal systems are organised ensure that every person is able to invoke the legal processes for legal redress irrespective of social or economic capacity" and "that every person should receive a just and fair treatment within the legal system".

The ANC was serious when it said: If a person is unable to pay for legal representation, and the interests of justice so require, the State shall provide or pay for a competent defence. On access to legal services, we are proud of the work of Legal Aid South Africa (LASA). LASA has delivered on its constitutional and legislative mandate by increasing access to justice by providing legal assistance and advice and delivering programmes within the budget. LASA has evolved into a high performing organisation, which has delivered more than 90% of its Business Plan annually and has received consecutive unqualified audits annually. During the 2013-2014 financial year the organisation provided legal services in just over 440 000 new legal matters and 330 000 general advice consultations, successfully delivering on its mandate of ensuring access to justice for the poor and vulnerable . In 2016-17, legal advice and assistance provided in 767,656 matters .

LASA receives an allocation of R1.82 billion for the 2018/19 financial year, a decrease from R1.92 billion in 2017/18. The number of funded posts as at 31 March 2018 stands at 2 752. Because of limited financial resources Legal Aid SA advises that no further positions will be added to the staff establishment over the MTEF period. This is budget cut is concerning to the ANC as it will severely affect the roll out of legal aid to the indigent. We are concerned about LASA`s ability to deliver on its mandate without a full staff complement. According to LASA`s accounting authority, Judge President Mlambo, if the 5% budget cut is reversed, Legal Aid will be able to function properly.

Improving access to justice and accelerating the transformation of the judicial system remains a key priority for the ANC. The ANC conference reaffirmed the imperative to continue enhancing efficiency and effectiveness of the legal services across all levels of government. The ANC 54th national conference resolved that the Department of Justice should bring free legal aid services closer to the communities. As the caring organisation we are, we continue to advocate that access justice must be increased in rural areas. Conference also resolved that the court working hours should be extended including the possibility of using weekends in order to address the high case backlogs. This is in keeping with the spirit of enhanced and efficient access to justice.

## Achievements

Among the many successes of the ANC-led government, the roll out of sexual offences courts is one of them. An additional 14 sexual offences courts are planned to be designated in the 2018/19 financial year. The ANC is committed to combating sexual and gender-based violence. These courts are built in such a way that children and victims get the necessary care, respect and support at the court. Thuthuzela Care Centres were established to make it easier for victims to lay a charge by opening a case.

The Mpumalanga High court will be completed during the course of the financial year at an estimated cost of R1.2 billion. To operationalise the court, R41.8 million was reprioritised within the vote over the MTEF period through the reduction of funded magistrates' positions to fund prosecutorial capacity and legal defenders. This will result in the realisation of the MTSF milestone of having a Division of the high court in every province.

Justice delayed is justice denied. The realisation of specialised courts ensures the speedy justice.

The roll out of maintenance courts, and particularly the enactment of the Maintenance Amendment Act 2015 shows the ANC's commitment to the enhancement of the maintenance system and ensuring that the most vulnerable in society, which are women and children, are provided for by those who have an obligation to maintain them remains a priority of the Department. Small Claims Courts provide inexpensive and speedy justice offer a quicker and easier way of resolving disputes that involve amounts limited to R15 000.

Equality Courts have been set up to provide assistance those who believe that they have suffered unfair discrimination, hate speech or harassment. These courts make sure that it is easy for someone with such a case to bring their case to the court and that the issue is finalised quickly.

There are three Community Courts that have been established in the Western Cape namely: Mitchell's Plain Cape Town and Fezeka (Gugulethu). The court practices a restorative justice approach and many diversion and alternative sentencing options are available. Restorative justice, which is rooted in ubuntu, is something which the ANC has consistently championed for. Community courts should be equipped to deal with children as they are often traumatised by the formal court system. We encourage the enactment of legislation regulating Community Courts.

## Recommendations

The ANC encourages the speedy finalisation of the Regulation of Paralegals legislation which will give statutory recognition to paralegals in community advice centres and will thus further enhance access to justice. We encourage the optimal use of paralegals.

Language is an impediment to access to justice. The ANC holds the view that the use of indigenous languages in courts must be used. It cannot be that we have a situation where all the parties in court proceedings speak and understand a particular African language but the proceedings are conducted in a foreign language. We further encourage the compulsory teaching of African indigenous languages as part of the LLB curriculum. Before 1994 no one would get a law degree without passing English, Afrikaans and Latin even if they were going to work or practise in the Bantustans. Today we have eleven official languages but there is no requirement that all law graduates should pass at least one of the indigenous languages before they could receive their law degree.

## Conclusion

We have provided legal aid services. We have built courts in townships and rural areas. We have made great effort in transforming the judiciary and jurisprudence of the country. We take pride in the efforts we have made in ensuring access to justice. The poorest of the poor have access to the justice system. That is something that was unheard of. We will not relax our efforts in ensuring that there is even greater access. With the ANC, justice is not just done but it is also seen to be done.

The African National Congress supports the budget vote.