

What South Africans want to see now, are more and faster prosecutions

By **Glynnis Breytenbach MP** - DA Shadow Minister of Justice and Constitutional Development

The Department of Justice and Constitutional Development has submitted an Annual Performance Plan that gives the impression of it being on the very brink of turning the corner, of being on the very brink of improvement, almost as if there really is someone there who is actually in control, actually has a vision of how to turn it around, someone who is actually capable of implementing this.

So, the Annual Performance Plan looks deceptively convincing, and invites a false sense of security. It is cleverly crafted to make us all feel as if everything is going to be OK. It is filled with details of wonderful sounding, 21st Century plans that on paper look as if the only way is up. And we all, myself included, so desperately want this to be true.

But on a closer, more sober, realistic inspection, it becomes clear, painfully so, that it is all words on paper. And worse, it is words on paper that we have heard before. Certainly, it is served up in a different guise, updated for the year 2021. But it really says nothing new. And very little new has happened. There has been little to no progress in the Department, and its performance continues to languish, and in many very important areas, has declined.

The Department has failed to deal with important disciplinary issues that have had a seriously negative impact on its performance and functions for over a year, and these matters are still not near completion. Bearing in mind the negative effect on the ability of the Department to properly perform, this lackadaisical approach is unacceptable.

But, Honourable Members, this speech is rather about suggestions for improving performance in key areas, and specifically in the NPA.

As Adriaan Basson wrote yesterday, the NPA should be an attractive employer for smart lawyers who have no ambition of driving a Ferrari, but it isn't. It used to be, and must be again. The NPA was able to attract outstanding lawyers such as Billy Downer SC, Saaks Maphoma, Lungi Mahlahti, Retha Meintjes SC, Herman Broodryk SC. It has been less successful in keeping them. Head hunting has always been a scourge in the NPA, and is difficult to counter. But there are outstanding lawyers whose passion it is to be the peoples' lawyers, who do not do it for the money, and those must be found and kept. There is a great number of very experienced prosecutors, expert litigators with decades of experience, who are reaching retirement age. This experience must not be lost. If the NPA is to prosper, a way must be found to harness this experience for the good of the prosecuting authority, to mentor young prosecutors, to teach them the practical skills of litigation that cannot be taught in any university.

What South Africans need and want to see now, are more and faster prosecutions. They are tired of waiting and are entitled to start seeing results. There must be tangible consequences for the astonishingly bad behaviour and grand scale larceny we have witnessed over the past decades. Those guilty of State Capture and the massive fraud, theft and money laundering must be charged. Now. Not on each and every possible charge

imaginable, but on two or three solid counts, convicted and taken out of the system. Only when it is clear that the game is not worth the candle will we see change in behaviour.

If the NPA lacks the capacity, and it does, they must find the budget and resources to use private lawyers to prosecute while rebuilding NPA capacity. This is not new, it has been done before, with great success. The litigation capacity of the NPA must be a priority. Young lawyers who want to pursue a career in litigation can find no better learning school. Develop a program where young graduates can join the NPA for a finite period similar to articles of clerkship or pupillage. The time will not be wasted, and many of them may decide to stay. Consult with the Legal Practice Council to employ young lawyers, there are hundreds who are unable to find jobs.

Many practitioners have expressed the desire to assist to get the NPA back on its feet, and would make themselves available to assist with prosecutions for finite periods. These are avenues that must be utilised in order to attend to the massive existing backlog of cases, a backlog that increases annually.

As set out in a study by the Dullah Omar Institute, the Constitution provides that the NDPP sets prosecution policy and directives. The NPA Act says this must be set after concurrence with the Minister. The Prosecution Policy Directives of 1 June 2014, which the NPA treats as confidential, contain a number of provisions that have the effect of discouraging prosecution. This needs to be addressed on an urgent basis, in order to encourage both accountability and transparency in the process.

And in order for the criminal justice process to function optimally, we must, at all costs, continue to fight for, and defend, an independent judiciary. Spurious and unfounded claims against the judiciary must be confronted and dealt with, and those making them must be held to account. It is too easy to cast unjustified aspersions on the judiciary, with no consequences. This cannot be allowed to continue, all it does is undermine the constitutional authority of the judiciary and is ultimately bad for our Constitutional Democracy.

The Democratic Alliance will in the very near future be promoting legislation calling for an amendment to the Constitution, and for the creation a new Chapter Nine institution, in the form of an Integrity Commission. We hope that we will have the support of other parties in this House, and we hope that we can ultimately submit it as a committee bill, in so doing demonstrating that we are all, in this House, regardless of political affiliation, serious about addressing corruption and theft, and that we are serious about holding those responsible to account. We hope that it will ease the massive burden on the NPA, and bring about quicker, more effective prosecutions and convictions of those responsible for grand scale corruption and theft. By so doing, it will set us on the path of ensuring that those who steal from the Fiscus, from the taxpayers and from the poor will end up in prison where they belong, and in a short space of time, have the effect of putting a stop to this endless looting with no consequences, while freeing the NPA to concentrate on its core function of prosecuting crime in general.

If the Department of Justice is indeed going to make an improvement, if the Minister is serious about turning it around, I would encourage him to seek to include all the assistance

he can muster, to harness the goodwill that exists to help the Department to succeed, it is in the interests of all South Africans.