**NATIONAL ASSEMBLY**

**FOR WRITTEN REPLY**

**QUESTION 1960**

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**(INTERNAL QUESTION PAPER 19 OF 2021)**

**Ms N N Chirwa (EFF) to ask the Minister of Justice and Correctional Services:**

(a)(i) What is the current backlog in maintenance court cases yet to be resolved by his department and (ii) how far back do they date and (b) how does his department intend on resolving the crisis of backlogs with regard to maintenance court cases?

**NW2192E**

**REPLY:**

1. Prior to responding to the abovementioned question by Ms N.N. Chirwa, it is important to provide the definition of Backlog maintenance court cases in the Department of Justice and Constitutional Development.
2. Backlog maintenance court cases means all maintenance cases finalized after 90 days from the date of proper service of process. This definition was developed due to the fact that the Department is alive to the provisions of Section 6 of the Children’s Act 2005, which provides that all matters affecting children must be finalized speedily and any forms of delays must be avoided.
3. Given the provisions of Section 6 of the Children’s Act 2005, and with the view to finalize all maintenance cases speedily, the Department firstly developed a key performance indicator: Percentage of maintenance cases finalized within 90 days from the date of proper service of process. With this, the Department planned to finalize maintenance cases within 90 days from the date that the Respondent/ Defaulter was served with the Directive/ Subpoena informing him or her of the maintenance claim and further calling upon him/ her to make good the maintenance claim and also provided that the Maintenance Application complied with the requirements of a complete maintenance application such as that the application has clearly outlined the details of the Defaulter / Respondent, proof of birth of the child and identity documents of the Applicant. Thus any application which does not have the required and necessary information will not be processed as it will negatively affect the investigation process.
4. Whilst the Department had developed the said Key Performance Indicator, the Department experienced severe capacity constraints and as such resolved to introduce the implementation of the said Key Performance Indicators in identified maintenance courts also referred to as Maintenance Pilot Sites. To date, there are 241 Maintenance Courts which are implementing the said Key Performance Indicator. It is envisaged that the number of the Maintenance Pilot Sites would be increased as and when the Maintenance Courts are capacitated accordingly.
5. With the view to also track the maintenance backlog cases, the Department also developed the Key Performance Indicator: Percentage of Maintenance Backlog cases finalized. The said Key Performance Indicator has been introduced in the Branch Operational Plan of Court Service and this assist the Department to track backlog cases and prioritize them accordingly.
6. To date there are 2905 backlog cases (that is cases which were received in the 241 Maintenance Pilot Sites and which could not be finalized within 90 days from the date of proper service of process).
7. The above backlog cases were received between the periods 2008 to 2021. The reasons for the cases not being finalized within 90 days from the date of proper service of process were also analyzed and it was found that they could not be finalized due to the whereabouts of the Respondents/ Defaulters being unknown and as such they could not be served with the Subpoenas / Directives. It should further be noted that due to the nature of the maintenance processes, the non-service of the subpoenas and directive on the Defaulter means that the maintenance case will not be hearing ripe and as such cannot be finalized. Furthermore, the backlog was also occasioned by postponements as a result of incomplete investigation of the cases. Since the introduction of the Maintenance Defaulters Track and Trace System the courts have also experienced delays in obtaining information from the Information Storing Institutions such as Banks and CIPC.
8. The Department plans to deal with the backlog cases by training the Maintenance Officers and Maintenance Investigators on the utilization of civil remedies, forensic investigation and child forcedness. This will ensure that maintenance cases are prioritized.
9. The Department will also train the Maintenance Officers on the utilization of the Interim Maintenance Orders option pending the finalization of investigations.
10. The Department also plans to strengthen the Maintenance Defaulters Track and Trace System.
11. The Department will also fill some of the vacant Maintenance Officers’ vacant position progressively.