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ANALYSIS OF THE ANNUAL REPORT OF THE PUBLIC PROTECTOR: 2006/2007

1. INTRODUCTION

The Office of the Public Protector (OPP) was established to ensure government's accountability and to provide remedies for maladministration and abuse of authority. In order to do this, the Public Protector is empowered to investigate, report on, and suggest remedial action for a wide range of wrongdoings in the public administration.

This paper analyses the OPP's Annual Report for 2006/2007. Amongst others, the document seeks to provide an overview of the OPP's:

- Institutional framework.
- Strategic priorities for 2006/2007.
- Selected achievements and challenges for 2006/2007.
- Programme performance.
- Cases handled.
- Human resources.
- Financial information and the report of the Auditor-General.
- Recap of some recommendations of *ad hoc* Committee on Chapter 9 and Associated Related Institutions.

2. INSTITUTIONAL FRAMEWORK: CONSTITUTIONAL AND LEGISLATIVE MANDATE

Section 112 of the interim Constitution created an independent and impartial Public Protector, while section 181 of the Constitution of 1996 provides for the Office's continued existence in the form of a state institution to strengthen constitutional democracy. The Constitution of 1996 establishes an independent and impartial Public Protector for the Republic to investigate any conduct in state affairs, or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on the alleged or suspected conduct, and to propose appropriate remedial action.

Section 6(4) of the Public Protector Act of 1994, as amended, provides the Public Protector with additional powers to investigate, whether on own initiative or on complaint. The Public Protector Act of 1994, as amended, also gives the Public Protector special powers to assist him or her when he or she conducts an investigation. Therefore, the Public Protector may direct any person to appear before him or her to give evidence or produce a document in his or her possession or under his or her control. The Public Protector may also request the assistance of any person at any level of government or anyone, who performs a public function, to assist him or her in performing his or her duties with regard to a special investigation.



The Constitution also provides that the Public Protector must be accessible to all persons and communities, and that the Public Protector ensures transparency and openness, especially in reporting, unless exceptional circumstances as determined by national legislation require otherwise.

The Executive Members Ethics Act, 1998, enables the Public Protector to investigate any complaint received from the President, a Member of Parliament or Premier or Member of a provincial legislature of an alleged breach of the code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and Members of provincial Executive Councils.

Other legislation that provides the Public Protector with additional mandates are:

- The Promotion of Access to Information Act, 2000.
- The Protected Disclosures Act, 2000.
- The Housing Consumer Measures Protection Act, 1998.

3. STRATEGIC PRIORITIES

The OPP identified the following as being its strategic goals from 1 April 2006 to 31 March 2009.

- Efficient and effective communications.
- Corporate support services.
- Communications, including the OPP's Outreach programme.
- Knowledge management and information technology.

4. OVERVIEW OF SERVICE DELIVERY FOR 2006/2007

Key achievements/successes for 2006/07 include:

- The recruitment and appointment of managers to key positions, including the CEO. (Note. The OPP had been without a CEO for two years when the present CEO was appointed on 1 April 2007).
- The Outreach programme, which aims include increased accessibility and public awareness, conducted 73 clinics (this is, however, down from the 78 clinics conducted in 2005/06) and held 167 information sessions.
- The OPP went through a rigorous 'landscaping survey' conducted by the European Union (EU) through the Civil Society Advocacy Programme (CSAP). The study resulted in a number of valuable recommendations, which the OPP is implementing with the European Union's financial assistance.

Questions

- The Accounting Officer states that the OPP has made significant progress in reaching the poorest of the poor through outreach programmes. How does the OPP measure its success in this regard? Similarly, does the OPP have any means to evaluate its success in terms of promoting increased awareness of the OPP's work other than the number of information



sessions held? How does the OPP establish how effectively it has increased public awareness of the OPP and its work?

- Could the Public Protector provide a copy of the EU's landscaping report, as well as a précis of the recommendations it is in the process of implementing. What is the progress in this regard?
- In his foreword, dated August 2007, the Public Protector states that the turnaround time has dropped from 2 to 1 years. Could the PP clarify whether this statement is applicable to the 2006/07 year?

5. KEY CHALLENGES

A key challenge identified in the Annual Report for 2006/07 has been difficulties in filling critical posts, which has impacted negatively on performance. These critical vacancies included the position of Chief Executive Officer, Chief Financial Officer; the Senior Manager: Information Technology; the Senior Manager: Human Resources; the Senior Manager: Provincial Co-ordination; the Senior Manager: Communications and the Senior Manager: Administration. While most of the posts were filled, the vacancies nevertheless impacted on the OPP's ability to achieve its strategic objectives for 2006/07. This is particularly evident in the performance of Programme 4: Knowledge Management and Communications and Information Technology.

Other key challenges for 2006/07 included:

- As a result of problems with ICT, the OPP lacked an electronic system to manage its cases. This has meant that statistics are compiled manually, which not only makes the collation of statistics time consuming but makes tracking of cases difficult.
- The public dispute between the Public Protector and the Deputy Public Protector.
- Collaboration with the other Chapter 9 institutions.
- Making the OPP more accessible, especially in remote areas.
- Increasing public awareness of the OPP's work.

6. RECAP OF SOME KEY CONCERNS RAISED BY THE *AD HOC* COMMITTEE ON THE REVIEW OF CHAPTER 9 AND ASSOCIATED INSTITUTIONS (2007)

The *ad hoc* Committee identified a number of areas of concern and made the following recommendations:

- The need to increase public awareness of the Office's activities. Note that the *ad hoc* Committee had Operational Problems in the Office of the Public Protector (2006 and 2007) found that the OPP needed an effective communication strategy to allow it to keep the public adequately informed of its work and progress.



- The Public Protector should participate in the proposed formal collaborative structure to be formed between the Chapter 9 and associated institutions to foster greater public awareness of these institutions and their work.
- Also, there should be a formal agreement with relevant institutions to prevent any possibility of duplication or overlap of function. This is particularly necessary where there is referral of cases or complaints to another body. Specifically, the *ad hoc* Committee recommended that the Public Protector formalises its relationship with the Auditor General, the Commission on Gender Equality and the Human Rights Commission and establishes mechanisms to track and monitor referred matters.
- A staff retention strategy should address staff turnover, particularly at a senior level.

7. PROGRAMME PERFORMANCE

(Note: only those targets that have not been met, partially met or where targets have been exceeded are mentioned)

The OPP has 4 programmes, namely Investigations and Reporting; Communication Services; Corporate Support Services; and Knowledge Management and Information Technology.

7.1. Programme 1: Investigations and Reporting

Investigations and Reporting Strategic Objectives	Target 2006/07 (as per the Strategic Plan for 2006/07 – 2008/09)	Actual Performance (as per the Annual Report 2006/07)
Identify and conduct systemic investigations	5 systemic investigations	Conducted 8 systemic investigations Exceeded target
Conduct own-initiative investigations	5 own initiative investigations	Conducted 22 own-initiative investigations. Exceeded target
Develop investigative techniques, processes and training	Process manual completed 100%	A draft process manual been drafted. Task team appointed to review manual in line with international best practice. CSAP to assist with appointment of service provider to refine manual. Process deferred to 2007/08. Not Achieved
Reduce turnaround time to 2 years for all cases	60% compliance	95% of cases finalised in 2006/07 met the 2-year target Exceeded Target
Monitor and report on remedial action recommended to state organs	50% of recommendations made implemented by organs of state	80% of all cases where recommendations were made received positive feedback on implementation. There were 2 cases where the OPP is following up on recommendations made. Exceeded Target



Improve on Think-Tank committee procedures and processes	60% Documented Think Tank operational process manual completed	Drafted and circulated for input/comment by Managers. Achieved
	100% participation of Think Tank committee members	Not reported on
	40 % Think Tank reports submitted	Not reported on
To improve on strategic performance reporting	Quarterly performance meeting and reporting	Achieved
	Annual strategy meeting and reporting	Not reported on
	Annual reporting to Parliament	Not reported on but achieved
Improve the effective and efficient co-ordination of provincial offices	Appointment of Executive Manager: Provincial Investigations	Achieved
	60% Provincial process manual completed	Provincial co-ordination process manual drafted Achieved

Key achievements for 2006/07 include:

- In 2006/07, a total of 8 systemic and 22 own initiative investigations were conducted, of which 9 were finalised.
- 95% of cases were finalised in the targeted turnaround time of 2 years.
- Appointment of the Executive Manager: Provincial Investigations.

Questions

- The OPP conducted 22 own initiative investigations. However, the number of backlog cases for this category of investigation has grown steadily over the years? Why is this so? Could the OPP provide comprehensive statistics in this regard?
- The impact of the OPP's investigations is measured in terms of following up on the successful implementation of suggested remedial action. What systems are in place to track the implementation of the PP's recommendations? What are the challenges in this regard?
- What steps have been taken to inform government departments of the PP's roles and functions and to form co-operative relationships with departments?



- What happens in the situation where a government department fails/refuses to co-operate with an investigation?
- What has been the outcome of the 2 cases where the OPP was still following up on recommendations made?

7.2. Programme 2: Communication Services

7.2.1. Outreach Services

Outreach Services Strategic Objectives	Target 2006/07 (as per the Strategic Plan for 2006/07 – 2008/09)	Actual Performance (as per the Annual Report 2006/07)
Increased accessibility	2 Additional regional offices established	Areas where offices will be opened identified and opening deferred to 2007/08. Not Achieved
Enhanced collaboration with stakeholders	Chapter 9 collaboration plan	Collaboration plan not achieved but areas of collaboration identified. There is collaboration through joint implementation of CSAP Not Achieved

Key successes for 2006/2007 included:

- The OPP conducted 73 clinics, which garnered 1852 complaints.
- The OPP exceeded its target with regard to increased public awareness: 167 information sessions were conducted. The target was 5 information sessions per province.

Questions

- Has the OPP opened the 2 regional offices in 2007/08 as planned? If so, where were these offices opened? Why the need for these 2 regional offices?
- Are the OPP's offices in the provinces adequately resourced?
- What precisely is their relationship with Head Office (communications, lines or reporting, accountability, etc)?
- What is the current situation with regard to ensuring greater and more structured collaboration with Chapter 9 and Associated Institutions?
- What is the OPP's outreach strategy?



- To what extent has the OPP set in place an effective media strategy when communicating with the media – not only to counter negative responses to controversial findings but also to publicise the more routine work that it does?

7.2.2. Communications and Marketing

Communications and Marketing Strategic Objectives	Target 2006/07 (as per the Strategic Plan for 2006/07 – 2008/09)	Actual Performance (as per the Annual Report 2006/07)
Internal communication strategy developed	100% of communication strategy developed	Periodic communication made to staff via email and internal communication Achieved in part
Enhanced image of OPP	100% branding strategy developed	OPP corporate branding manual drafted and being discussed Achieved in part
Staff trained on protocol	40% staff trained	Appropriate staff trained in protocol The AR states that the target was achieved but insufficient evidence provided.

Questions

- On the issue of collaboration and duplication of function - Chapter 9 and associated institutions have distinct mandates. However, as it is important to use available resources as advantageously as possible, a strong argument exists in favour of greater and more structured collaboration. Not only can this assist in facilitating a seamless approach to complaints handling, it creates the potential for joint public awareness campaigns, human rights advocacy and training campaigns, etc. In this light, what is the state of play with regard to the EU funded initiative to promote greater cooperation and collaboration between the OPP, the Human Rights Commission and the Commission for Gender Equality.
- Has the OPP entered into memoranda of understanding with any institutions other than the Public Service Commission?
- How many cases have been referred to other institutions? If so, can the Commission provide details (the number of cases, to which Commission and the outcome)?