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DEPARTMENT OF
CORRECTIONAL SERVICES



DCS interaction with Portfolio Committee on Outstanding Matters and the Annual Report

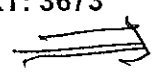
13 & 14 October 2010

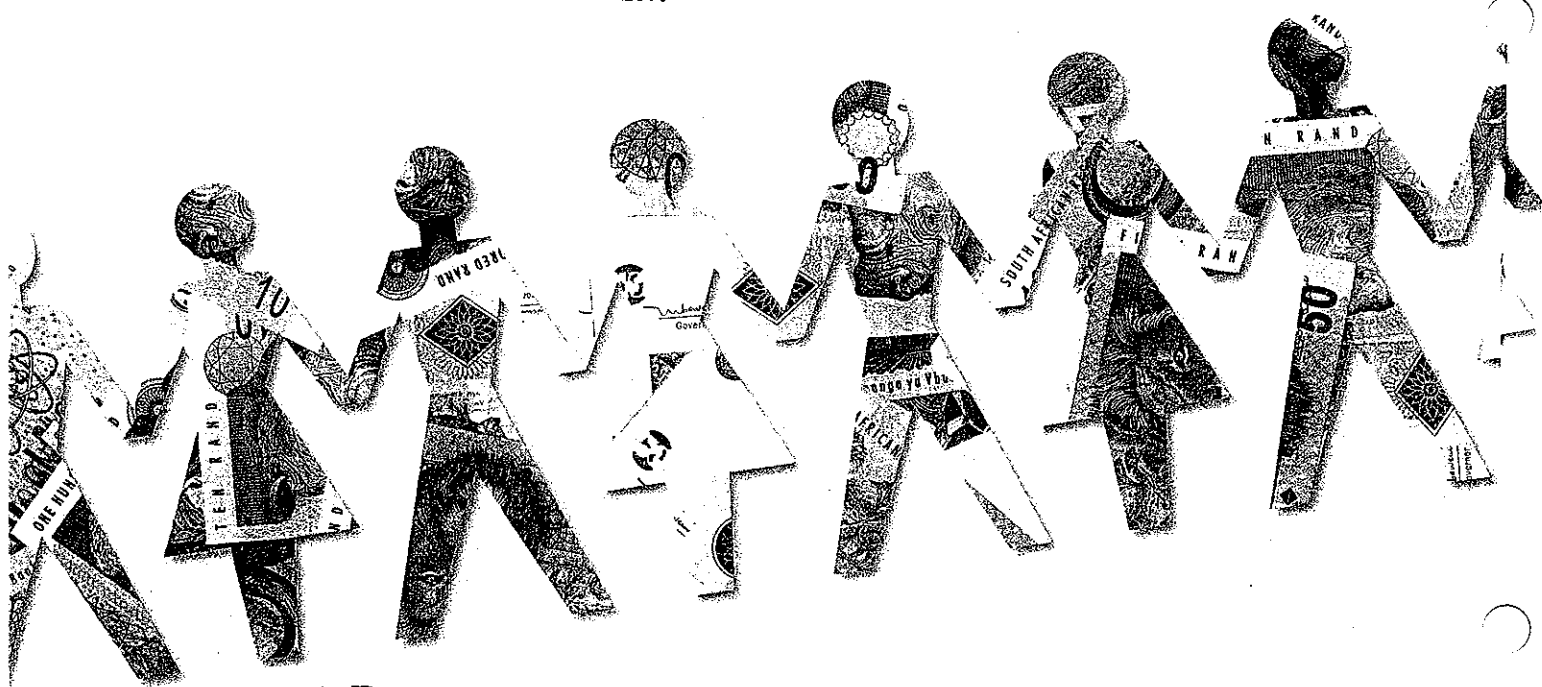
*Task assigned to
Committee Secretary Received.*

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CINDY BALIE
PC on Correctional Services
COMMITTEE SECRETARY
EXT: 3673



correctional services
Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA





1. Data pertaining to liabilities, including details of claims

This exposition covers the following:

The age of the claims;

- The nature of the claim;
- The Status whether the claim are pending, finalized, abandoned before summons were issued or whether they are not taken further after issuing summons;
- Prescription of the said claim will be addressed; and
- Other relevant comment.

The sub judice rule

- Seeing that some of the claims are pending before courts of law, the names of the parties will be withheld. However, as soon as they are finalized whether in favor of the Department or against it, the names may be revealed.
- No comment will be made on the merits of a claim since court decisions are pending.
- As far as it is reasonably possible, particulars of the claim will be furnished subject to observing the sub judice rule.

Definition of terms

- The "age" of a claim refers to the date on which it was registered, with the Department of Correctional Services. In this context, the following financial years are covered:
 - 2004/2005, financial year. In this financial year, the natures of claims were not clearly defined. For example, "damages" were reported on without indicating the root cause of the alleged damages. Some of them will prescribe or has prescribed if summons were not issued to interrupt prescription.
 - 2005/2006 financial year. This is the period when the nature of claims was starting to be defined.
 - 2006/2007 financial year. A clear definition of the nature of claims was made.
 - 2007/2008 financial year. The age and nature of claims were clearly defined.
 - 2008/2009 financial year.
 - 2009/2010 financial years

Claims for damages (R15,144 million)

- Before 31/03/2005, claims for damages were not clearly defined. For example damages arising from infection with TB or any other disease. The nature of claim was not clearly defined except using legal terminology.
- After 31/03/2006 claims were clearly defined in terms of root causes thereof.
- A distinction must be drawn between a case where a letter of demand was submitted and

where summons were served. It is also important to indicate whether a claim is vigorously pursued or not.

- As at 31/03/2005, the claims for damages were R11,950 million. All the claims for damages were included without making a difference about causes thereof.
- The claims for damages incurred during the 2005/2006 financial year amounted to R703,063 million rand.
- The claims for damages for 2006/2007 financial year amounted to R531, 375 million.
- As from 2008/2009 financial year, claims for damages were classified in terms of the root cause thereof. For example, the following categories were indicated in the DCS financial statements: assaults, injury during incarceration, pain and suffering, damages caused by unlawful detention, accidents, malicious damage to property defamation, fraudulent petrol transactions, breach of contractual obligations, disputes about service rendered, death in detention, rape, payment of levy, damage to property and outstanding debt and /or account. The total damages during this period are R978, 625.18 million.
- All the claims for damages which were not pursued by means of summons will be written off at the end of the 2010/2011 financial year. Moreover some of the claims have already prescribed and this will be confirmed at the end of the current financial year.
- The status of most of the claims for damages is pending and are not vigorously pursued by the plaintiffs.
- All the claims that have prescribed will be written off at the end of the 2010/2011 financial year.

Claims for Damages due to alleged infection with HIV related virus (R3, 455 million)

- These claims were reported during the 2009/2010 financial year.
- In the Western Cape Region, there was one reported case of rape by inmate on an inmate.
- Three reported cases of rape/sodomy were reported at the Free State & Northern Cape Region.
- The status of all these cases is pending because only letters of demand were issued and they were not followed by summons.
- If no summonses are issued by end of current financial year, these cases will be written off.

Claims for Defamation (R1, 795 million)

- Inmates were allegedly assaulted by members of the DCS and in the process they were allegedly called names. Those statements were the basis of the alleged defamation claim.
- During the 2004/2005 financial year; 6 alleged cases of defamation were registered. Seeing that they were not pursued, they have now prescribed in terms of law and will be written off at the end of the financial year.
- During the 2009/2010 financial year four cases of alleged defamation were registered and their status is that they are pending
- All the claims that are not pursued will be written off at the end of the 2010/2011 financial year.

Alleged bodily injury/or alleged assault by inmates (R986, 598 million)

- One inmate submitted a claim for R900 million. He issued summons and did not brief an attorney to handle his case. Unless he takes his case further, his claims will fall away when the DCS forces him to proceed or abandon claim.
- The remaining R86 million claims are based on letters of demand by an attorney acting on behalf of inmates from St. Albans in the Eastern Cape Region. Most of these claims are from a 2005/2006 incidence which was not pursued.
- If no summonses are issued, the claims will prescribed and will be written off at the end of the current financial year.

Unlawful detentions (R176, 235 million)

- Eight cases of alleged unlawful detentions were not followed in the 2004/2005 financial year.
- Seven cases of alleged unlawful detentions were registered in the 2005/2006 financial year.
- Twenty one cases of unlawful detentions were registered in the 2006/2007 financial year.
- In 2008/2009 financial year, an inmate claimed R49 million for alleged unlawful detention. The case is pending.

Compensation (R25, 107)

- During the 2005/2006 financial year, eight cases were registered in which the employees claimed compensation.
- Only letters of demand were issued which were not followed by summons.
- Unless the complainants pursue their claims, they will soon prescribe.

Death of inmate in detention (R14, 130)

- Death of an inmate may be a natural process which does not create an obligation for the state.
- Whoever alleges untoward conduct on the part of the State must prove it.
- The cases are pending and may prescribe soon.

Claim of legal costs (R40, 130)

The claim for R40 mill legal costs for the 2004/2005 financial year has prescribed. No claim may be entertained at this stage.

Unlawful Detention (R14, 130)

- A claim for R10 000,00 was reduced by the court to R2 million and the Department of Justice and Constitution Development paid R1 million rand plus interest and the DCS paid R1 million rand plus interests.
- The other cases are pending

Unlawful Deduction of Salary (R10 000)

- The DCS disputes the claim.
- The matter is pending.

Unpaid Rental (R1, 328)

- The Gauteng Regional Office is facing a claim for unpaid rental for R475 000 claim the 2007/2008 financial year.
- The NUPRO company is claiming R850 000 as unpaid rental from the Gauteng Regional Office.

Breach of Contract (R3, 048 million)

- The claim for breach of contract is disputed by the DCS and will prescribe soon since no summonses were issued.
- The Status of the claims is pending.

Alleged Rape

- Inmates sodomised other inmates and this constitutes rape.
- The matter is pending until the court hands down a ruling.

Pain and Suffering

- The claim for pain and suffering go hand in hand with the alleged assaults.
- The status is pending.

Damage to Property

- In the Gauteng Region, Telkom lines were damaged and the amount claimed was R11 000,00. In addition, a claim for R300 00.00 was submitted. In KZN Region a claim for R60 000.00 was registered; in the Free State and Northern Cape Region a claim for R71,000.00 was registered; in the Western Cape Region two claims for R1 900 million, and R 900 000 were registered.
- All these claims were submitted in the 2008/2009 and 2009/2010 financial years.
- The status of the claim is pending

Motor Vehicle Accidents

- All claims relating to motor vehicle accident for the 2004/2005 financial year were included under "damages". They will all be written off since they have prescribed. The position is the same for the 2005/2006, 2007/2008 financial year.
- In the 2008/2009 financial year claims relating to motor accidents were registered.
 - Western Cape Region = 26 claims
 - Gauteng Region = 9 claims
 - LMN Region = 3 claims
 - Eastern Cape Region = 5 claims
 - Free State and Northern Cape = 10 claims
 - KZN Region = no claim
- During the 2009/2010 (up to 30/06/2010) the following claims have been registered
 - Gauteng Region = 4 claims
 - Free State and Northern Cape Region = 9 claims
 - KZN Region = 3 claims
 - LMN Region = 9 claims
 - Western Cape Region = 6 claims

Other Claims

- Payment of salary = R36, 884.00
 - Death on duty = R1, 000,000.00
 - Damage to cables = R11, 368.57
 - Improper searching = R 5,500,000.00
 - Payment for hotel accommodation = R 22,701.00
 - Loss of property = R1, 875.00
 - Acting allowance = R 112, 118.25
 - Contracting disease/ TB = R70, 000,000.00
 - Medical treatment = R500, 000.00
 - Disciplinary Action = R100, 000.00
 - Funeral costs = R15, 000.00
 - Relocation cost = R5, 000.00
 - Transfer = R2, 020,680.00
- TOTAL = R79,326, 627.42**

Conclusion

All the claims which are older than 36 months and where no summonses were served will be written off at the end of the 2010/2011 financial year. The reason for this is that once a claim has prescribed, it cannot be pursued further. Where summons were issued and served, the prescription period is interrupted and cannot run. For that reason, those claims will remain active until DCS forces the Plaintiffs to set the matter down or abandon them. This process requires services of counsel.

All claims where only letters of demands were served on the DCS, must be pursued within 36 months or they will prescribe. They will remain on DCS record until they prescribe. There are various periods of prescription.

The DCS receives all letters of demand and records the quantum of those claims. That does not mean that the DCS admits allegations made therein. Where there is valid defence, the claims are defended vigorously. However where the DCS has no valid defence, a settlement amount on the merits is negotiated with prior approval of the delegated authority.

The so-called contingency claims are indicators of the total amount that the DCS may be exposed to and may have to pay in the unlikely event that they are proven in a court of law. So far, the DCS has successfully defended most of those cases that ended in court. Very low quantum is agreed upon.

The above exposition is based on the information currently available. Further evidence /information may be discovered during the exchange of information between those who are lodging claims against the DCS during the pleading stage.

The Directorate: Legal Services will have the necessary capacity, once all the 7 X vacant MR6 (DD posts) posts are filled. The process has started.

Nature of claims and closing balances as at 31 March 2010	(R'000)
Claims for damages	15,144
Claims for damages, due to alleged infection with HIV related virus	3,455
Claims for defamation	1,795
Alleged bodily injury and/or alleged assault by inmates	986,598
Unlawful detention of inmates / offenders	176,235
Compensation	25,107
Death of inmates in detention	14,130
Claim for legal costs	40,004
Unlawful deduction of salary / arrears salary due to reinstatement after dismissal	10
Unpaid rental	1,326
Breach of contract	3,048
Alleged rape: offender on member	4,089
Pain and suffering	10,937
Damages to property: physical destruction of property	2,494
Motor vehicle accidents	3,852
Other claims not included above	95,091
Total	1,383 315

Royal Sechaba's Matter

This is a motion application lodged by the Applicant to seek a court order in the following terms:

- To dispose off the application on an urgent basis;
- To review and set aside the award of the tender number HR14/2008 to Bosasa Operations (Proprietary) Limited ("The Third Respondent");
- To review and set aside the decision of the First and/or Second Respondent to disqualify the Applicant from the bid process following their failure to submit a bank guarantee with their bid documents; and
- To direct the First and Second Respondents to re-adjudicate the Applicant added two grounds on the relief sought :
 - That the First Respondent reconstitute the Tender Evaluation Committee on grounds set out in the application;
 - That the reconstituted Tender Evaluation Committee be directed to re-adjudicate the tender by following all the transparent and lawful tender processes

Defence by First and Second Respondents

- The First and Second Respondents originally entered appearance to defend the original motion application;
- Following advice from eminent practicing senior advocates, the notice to defend was withdrawn. The advice was not based on information obtain through a consultation process with DCS officials who took part in the tender evaluation process;
- In January 2009, Senior Management of the DCS took a decision to defend the entire motion and a letter was sent to the office of the State Attorney under the signature of the former Acting National Commissioner;
- The two senior counsel became unavailable to act on behalf of the First and Second Respondents and an email was sent to the office of the State Attorney in this regard. Under the circumstances, the First and Second Respondents requested the State Attorney to brief a new legal team to handle the matter. A new legal team was briefed and they are currently handling the

matter. Their seniority is equivalent to the team that was withdrawn.

- A comprehensive Answering Affidavit by the First and Second Respondents have been served and filed at the North Gauteng High Court.
- The Decision to defend was based on deliberations at a meeting of Senior Management of the DCS.
- The decision of the High Court will be announced early in 2011. The hearing of the matter is scheduled for 7 and 8 February 2011.

*Damages: psychological damages suffered by an individual: 2,494

Nature of Claim	LMN	EC	GP	KZN	WC	FS/NC	Total
Motor Vehicle Accidents	75 000	51 876	100 000	4 978	0	0	231 852
Assaults	0	245 000	850 000	0	0	0	1 095 000
Damage to Property	0	0	8 225	60 491	0	0	68 716
Pain and Suffering	100 000	0	0	0	0	0	100 000
Unlawful conduct (HR related)	0	2 000 000	0	0	0	0	2 000 000
Unlawful detention (Inmates)	700 000	60 000	12 000 000	1 000 000	4 981 900	0	18 741 900
Total	875 000	2 356 876	12 958 225	1 000 000	4 981 000	0	22 237 470

2. Contracts and spending on contracts

Outstanding invoices from the Department of Public Works

Item	Month	Date received	Date of payment	Amount R'000
Leases	April to September 2010	22 July 2010	29 July 2010	32,868
Municipal Services	May 2010	08 August 2010	13 August 2010	33,970
	June 2010	18 August 2010	24 August 2010	41,398
Capital Projects	April 2010	25 May 2010	02 July 2010	25,529 (amount claimed 30,086)
	May 2010	22 June 2010	26 July 2010	46,955 (amount claimed 50,305)
	June 2010	14 July 2010	01 September 2010	45,829
Arrear payments	March 2010 April - May 2010		01 September 2010	6,306 7,907

Phezulu Ownership:

Shareholders are as follows:

Ms. G T Josephs	67% shares
Ms. S M Rodenburg	13% shares
Penta Projects (Pty) Ltd	20% shares
Ms. G T Josephs	10% shares (in Penta Projects)
Ms. S M Rodenburg	90% shares (in Penta Projects)

Churches	Eastern Cape	GP	KZN	LMN	FS/NC	Western Cape	Total
Afrikaans Baptist Church	1	65	0	0	0	0	66
Greek Orthodox Church	0	0	0	0	0	1	1
Salvation Army	2	0	2	0	0	0	4
Hindu Faith	0	1	4	0	0	0	5
Islamic Faith (MUSLIM)	7	9	20	18	10	21	85
Jehovah's Witness	3	6	12	10	10	14	55
Jewish Orthodox Faith	0	0	0	0	0	1	1

10. Appointment of Correctional Supervision and Parole Boards

Region	Status
EC	Shortlisting done. Approved shortlisting memorandum couriered back to Region: 23/09/2010
FS/NC	Shortlisting completed. Approved shortlisting memorandum couriered back to Region: 23/09/2010
Gauteng	Shortlisting completed. Approved shortlisting memorandum back to Region: 23/09/2010
KZN	Shortlisting done. Approved shortlisting memorandum couriered back to Region: 23/09/2010
LMN	Approval for shortlisting panel back to Region: 23/09/2010
WC	Interviews completed. Appointment memos submitted to CDC Corporate Services on 20/9/2010. Office of Commissioner 23/09/2010

11. Sexual harrasment: Rustenburg

The Department wishes to emphasize that information about employees who have been the subject of disciplinary measures are to be treated with the necessary confidentiality. Against this background the following information is availed.

The Rustenburg Head of Correctional Centre was confronted with allegations of sexual harassment. He pleaded guilty on charges framed against him and the Chairperson imposed one of the possible alternative sanctions to dismissal namely, demotion. The date of the outcome of the disciplinary hearing was 31 August 2010. He was subsequently demoted from a Deputy-Director on the former salary level 11 to the commencing salary scale for an Assistant-Director on the former salary level 9.

He filed an application to appeal on 31 August 2010. In terms of the DCS Disciplinary Procedure an employee may appeal the conviction and sanction by filing an intention to that effect within five (5) days from the date of the outcome of the disciplinary hearing.

Although the Department is not at liberty to provide verbatim minutes of a disciplinary hearing to employees who wish to appeal, the Management of Rustenburg in this case provided the employee with minutes to enable him to formulate his grounds of appeal in clear terms.

The appeal documents are currently being processed and should be availed to the delegated authority during the course of October 2010. In this particular case the delegation to decide about the appeal is vested in the applicable Deputy Regional Commissioner (DRC). In terms of procedure the delegated authority must consider the appeal and come to a decision within 30 days from receipt of the appeal application.

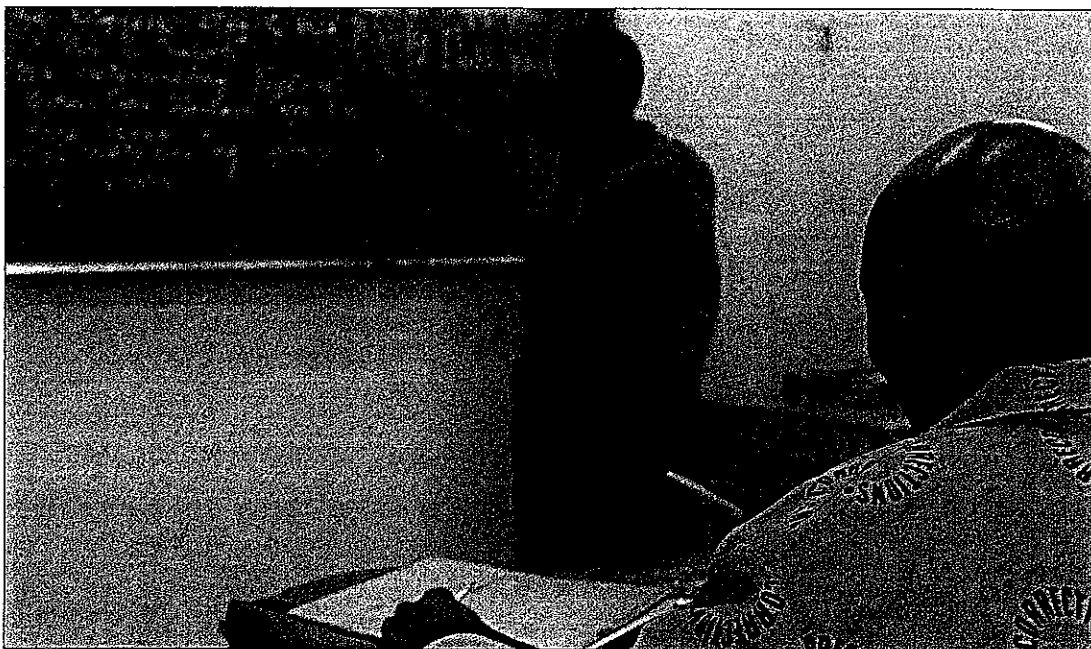
In the interim, whilst awaiting the outcome of the appeal, the acting Area Commissioner of Rustenburg has transferred him temporarily to a vacant post in the office of the Area Commissioner Rustenburg. Although an application for an appeal in the DCS or Public Service has the effect of a stay of execution, he was temporarily moved given the sensitivity and emotions attached to the incident.

It is unfortunate that he is residing on the premises of the Rustenburg Correctional Institution where some of the complainants also reside. The Department cannot evict him from the state accommodation, especially in view of the fact that the appeal has not been finalized.

The outcome of the appeal cannot be pre-empted at this stage. After the outcome of the appeal and depending on the outcome, further decisions might have to be taken.

The possible permanent transfer of a transgressor does not constitute a sanction option in any disciplinary procedure available in the DCS or the public service. The possible transfer of an employee can only be considered after the fact weighing the interest of the Department and employee(s) affected. Furthermore, it speaks for itself that the rule of natural justice must be applied before a decision can be taken.

12. OSD for educators



After the signing of the ELRC agreement 01 of 2008 in April 200, it was agreed that the department should request the agreement to be extended to DCS Educators since in terms of the ELRC it they were not included in the scope. In 2008 the Department (DCS) approached the Department of Public Service and Administration (DPSA); National Treasury and the Department of Education (DoE) to extend the ELRC agreement 01 of 2008 to Correctional Services Educators.

Responses from National Treasury and the Department of Education were received which were not in support of the request. The Department sought the intervention of the Minister of Correctional Services.

