

# SHADOW LEGACY REPORT

2004–2009



## The Parliamentary Portfolio Committee on Justice and Constitutional Development



OPEN SOCIETY FOUNDATION FOR SOUTH AFRICA

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## Abbreviations and acronyms

<b>ATDs</b>	Awaiting Trial Detainees
<b>Board</b>	South African Board for Sheriffs
<b>CGE</b>	Commission for Gender Equality
<b>CJS</b>	Criminal Justice System
<b>Committee</b>	Portfolio Committee on Justice and Constitutional Development from 2004 to 2009 (also referred to as ‘the previous Committee’)
<b>Council</b>	Council for Debt Collectors
<b>Department</b>	Department of Justice and Constitutional Development
<b>Equality Act</b>	Promotion of Equality and Prevention of Unfair Discrimination Act
<b>Fourth Parliament</b>	Parliament from 2009 to 2014
<b>ICT</b>	Information and Communication Technology
<b>LAB</b>	Legal Aid Board
<b>LASA</b>	Legal Aid South Africa
<b>NPA</b>	National Prosecuting Authority
<b>New Committee</b>	Portfolio Committee on Justice and Constitutional Development from 2009 to 2014
<b>OPP</b>	Office of the Public Protector
<b>OSD</b>	Occupation Specific Dispensation
<b>PMG</b>	Parliamentary Monitoring Group
<b>SAHRC</b>	South African Human Rights Commission
<b>SALRC</b>	South African Law Reform Commission
<b>SAPS</b>	South African Police Service
<b>SCOPA</b>	Standing Committee on Public Accounts
<b>SONA</b>	State of the Nation Address
<b>Third Parliament</b>	Parliament from 2004 to 2009
<b>TRC</b>	Truth and Reconciliation Commission
<b>Victims Charter</b>	Service Charter for Victims of Crime in South Africa

## 1 The role and mandate of Portfolio Committees

Both houses of South Africa's Parliament, the National Assembly and the National Council of Provinces, do much of their work through committees made up of members from all parties. The committee system enables work to be done efficiently, allows greater time for debate, increases participation of Members of Parliament and provides a forum for direct presentation of public views.

The role and mandate of Portfolio Committees are to:

- Facilitate public participation.
- Promote cooperative government.
- Exercise oversight on the Executive, state departments and bodies they are responsible for, and on international relations.
- Pass legislation.

## 2 The aim of this report

This report briefly highlights issues discussed in 303 meetings by the Portfolio Committee on Justice and Constitutional Development (the Committee) during the Third Parliament (from 2004 to 2009). These issues can be tracked from the Committee's Five Year Legacy Report and Five Year Review, prepared by Parliamentary staff and tabled in July 2009.

This report includes recommendations the Committee made for follow-through by its successor, the Fourth Parliament's Portfolio Committee on Justice and Constitutional Development (the new Committee from 2009 to 2014). Sometimes we will refer to the Committee as 'the previous Committee' to distinguish it from the new Committee.

This shadow legacy report is an independent report on the work of this Committee. The issues and concerns highlighted in this report were extracted from extensive research into the full reports of Committee meetings prepared by the Parliamentary Monitoring Group (PMG),<sup>1</sup> and reports of the Committee from 2004 to 2009.<sup>2</sup>

This report gratefully acknowledges the assistance of the PMG, including full access to its resources, during the research and preparation of this report. The Parliamentary Committee staff and Members of Parliament also provided answers to queries.

**Note:**

- This report aims to reflect action taken by the previous Committee and to highlight relevant outstanding or ongoing issues for action by the new Committee.
- The recommendations at the end of each item in this report are recommendations from the previous Committee.

## 3 Justice and Constitutional Development priorities

The State of the Nation Address (SONA)<sup>3</sup> sets out government priorities each year. For the justice sector, the focus was on:

- Finding efficient solutions to the problems of crime across society.
- Addressing the root causes of crime, together with communities affected.
- Improving the courts through transformation of people and systems.
- Setting up specialist courts.
- Addressing the position of victims of crime.

The Service Charter for Victims of Crime in South Africa (Victims Charter) was approved in 2007 as an initiative of the Department of Justice and Constitutional Development (the Department). The Charter sets a minimum level of standards for assisting victims, and should be implemented across the entire justice sector.

The Criminal Justice System (CJS) Review is the crucial overall policy framework. The current CJS is fragmented, resulting in poor service delivery to victims of crime and offenders, delays and little public confidence. The Cabinet proposed a complete review of the CJS in 2003/04 and approved a 7-point plan for the CJS Review in November 2007. This aims to achieve better service delivery and systems through coordinating management structures and setting up integrated databases across the CJS.

The Joint Committees' report of February 2009<sup>4</sup> on the public hearings on the CJS Review called for:

- The Department to attend to issues around bail applications, the performance of the courts and trials, and administrative delays and postponements.
- Faster implementation and key proposals to be brought before the parliamentary committees in the Justice, Crime Prevention and Security Cluster as soon as possible, with the public also being given the opportunity to comment.

The Department of Justice is part of the Justice, Crime Prevention and Security Cluster, yet also collaborates with departments from other clusters, for example, on legislation around sexual offences and children. The new Child Justice Act adopts a restorative justice approach and depends on cooperation through intersectoral committees.

#### Recommendations to the new Committee:

- Continue to be guided by sector priorities.
- Ensure it receives reports on the participation of the Department in all forums.
- Participate regularly in the CJS Review process.

## 4 Mandate: Portfolio Committee on Justice and Constitutional Development

In line with its oversight mandate, the Committee took briefings from and monitored the work of the Department, the National Prosecuting Authority (NPA), the Legal Aid Board (LAB), the South African Human Rights Commission (SAHRC), the Commission for Gender Equality (CGE), the Office of the Public Protector (OPP), the Council for Debt Collectors (the Council), and the South African Board for Sheriffs (the Board). We cover relevant areas of concern for the new Committee in parts 5 to 12 below.

The Committee did not take briefings from the South African Law Reform Commission (SALRC), although it did ask for input from researchers. The Committee questioned how the SALRC prioritised issues and noted long delays in reforming some statutes.

The Committee commented that shortage of time and lack of funding hindered oversight and study tours. It undertook a joint oversight visit to Pollsmoor Correctional Service Centre,<sup>5</sup> and visited One Stop Child Justice Centres.

The Committee held joint hearings with the Portfolio and Select Committees on Provincial and Local Government, and Safety and Security, and the Joint Monitoring Committees. The Committee held public hearings on a number of bills. Civil society inputs were also invited, significantly on the Child Justice Bill (now the Child Justice Act).

The Committee considered and recommended ratifying a number of treaties.<sup>6</sup> It also made appointments to the Chapter 9 institutions, reviewed the salaries of judicial officers, and considered the removal of magistrates and the impeachment of judges.

#### Recommendations to the new Committee:

- Adopt the previous Committee's approach of involving civil society to help produce broadly acceptable and workable legislation.
- Attend to any necessary appointments for Chapter 9 institutions.
- Consider and make decisions on implementing recommendations on Chapter 9 institutions, including their future functions and placement.
- Continue to table full reports wherever possible.
- Consider breaking into smaller sub-committees to tackle its heavy workload.
- Request a report from the SALRC on the current status of its projects.

## 5 Concerns: Court issues

Although the running of the courts falls under the Court Services Programme of the Department, the National Prosecuting Authority (NPA) also contributes to the functioning of the criminal courts. Improvement of the court system as a whole forms part of the CJS Review and was also included as a SONA priority for 2005, 2007 and 2009. The Committee raised concerns at Department or NPA briefings – in this report we include both of these under the broad heading of court issues.

## 5.1 Establishment, infrastructure and resources

### *Physical infrastructure*

The Department raised budget concerns to cover needs such as building, refurbishment, identifying court sites, security arrangements and the security of records. The 2009 target was to replace 42 branch courts with full courts and to build 11 new courts by 2011/2012. The Committee asked if these would be enough, questioned the timeframes and recommended accelerating the programme. It also expressed concern that not all courts were yet disabled-friendly.

#### Recommendations to the new Committee:

- Monitor the building and redesignation of courts, including costs and progress.
- Assess if new courts are increasing access to justice and relieving backlogs.

### *Resources allocated to courts*

In June 2004, the Chief Justice and Chief Magistrate identified lack of resources at all levels as a major challenge, coupled with some wasteful use of existing resources. There were substantial improvements to technology in the courts between 2006 and 2009, including digital recording, better security, Information and Communication Technology (ICT) training for court staff and provision of computers. ICT was identified as a spending priority for the 2009/10 financial year.

#### Recommendations to the new Committee:

- Monitor the testing and rollout of new ICT systems and training of staff.
- Assess if spending on increased resources has improved court functioning.

### *Setting up and support of specialist courts*

Creating specialist courts was meant to assist in effective and speedy resolution of cases, using specialist staff and ensuring appropriate services to the public.

#### *Equality courts*

The Equality Courts were established under the Promotion of Equality and Prevention of Unfair Discrimination Act (the Equality Act) No 4 of 2000. There has been significant lack of public awareness and underusage of these courts. In 2007, the Committee, in its report on the Equality Review discussions,<sup>7</sup> asked the Department to report on its publicity campaign for the Equality Act. The SAHRC noted from 2007 onwards that a massive campaign would be needed, but that it did not have resources to promote use of the courts.

#### *Sexual Offences Courts and Thuthuzela Centres*

The Sexual Offences Courts offer specialist court services and aim to reduce the secondary trauma to victims of sexual crimes, while Thuthuzela Care Centres aim to provide a centralised range of testing, counselling and medical facilities to victims. Already in 2004, the Sexual Offences Courts showed substantially better conviction rates than the regional courts, and this trend continued. The Committee suggested that the NPA should concentrate its training in this area. The budget for specialised courts decreased in 2008. The aim was to deliver 7 more Thuthuzela Care Centres by March 2009 and 47 in total over the next 3 years.

#### *Maintenance courts and maintenance matters*

Difficulties faced by the public in obtaining maintenance orders and lack of proper enforcement when they were granted, were highlighted in 2004/05. Operation Isodlo was launched to improve the system. The numbers and location of the maintenance courts, as well as their staffing, will affect their impact.

#### Recommendations to the new Committee:

- Receive and monitor proposals for mainstreaming specialist courts.
- Examine if specialist courts are more effective than regular courts, and what can be done to improve their budgets and efficiency.

- Request reports from the Department on what it is doing to promote the Equality Courts and on their functioning.
- Monitor if maintenance courts are operating efficiently, if there are enough of them, and whether legislative changes are needed.

## 5.2 The courts in action

### *Management of case flows and case backlogs in the courts*

The management of case flows in the courts is linked to the improvement of the whole justice system, and was named as a SONA priority from 2005 to 2007 and 2009. Although the Department had planned to pilot court management models from 2004, this was delayed by restructuring. The Re Aga Boswa court management model was then introduced to address court backlogs and was meant to run until 2009.

In 2005, case backlogs numbered 30,000 cases, while fewer current-year cases were also being finalised. Poor court discipline, short court hours and lack of funding were named as contributory factors.

Concerns raised by the Committee included:

- Questioning why Saturday courts had been disbanded, and being told by the Department that these had caused administrative problems.
- During 2007, questioning insufficient allocations to case backlogs, and noting the shortage of magistrates and prosecutors – the Committee was concerned that 68% of cases were being removed from the court roll because they were not properly handled from the start.
- By May 2008, noting a further decline in court performance, with backlogs and outstanding cases being particularly serious at the regional courts.

In 2009, the Department allocated R200 million for reducing the backlog of criminal cases.

### **Recommendations to the new Committee:**

- Ensure the Department reports on budget allocations to reduce backlogs, how and when it will take action, and how the outcomes will be measured.
- Receive updated Departmental reports on progress in finalising current-year cases, and the numbers of backlog and current cases being finalised each year.
- Consider and address the reasons for backlogs as part of the CJS Review.

### *Working relationships*

The Chief Justice and Chief Magistrate advised the Committee that there were poor working relationships between court staff, judicial officers and the Department. These were largely due to a lack of resources in courts, and poor linkage between judicial officers and the Department on budgetary allocations. Although the Department attempted to address communication issues, many problems continued.

### **Recommendations to the new Committee:**

- Receive regular inputs from judicial officers and staff associations or unions on the functioning of the courts and working relationships in the CJS.
- Request Departmental proposals on short-term solutions to communication difficulties and strained working relationships, and address these as part of the CJS Review.

## 6 Concerns: Human resources

The Committee found that the Department and the NPA head offices, as well as many of their divisions, faced human resource challenges consistently between 2004 and 2009. The Committee repeatedly questioned what was being done to address these.

### 6.1 General planning, management and control

#### *Vacancies and staff retention*

The Department and the NPA raised human resource capacity issues as a challenge. Vacancy rates for each year were given to the Committee and were also included in annual reports.

In 2006/07, the Department's vacancy rates were at 23%, with staff turnover at 61%. In response, the Committee:

- Expressed concern over continued delays in making staff appointments and the Department's failure to detail its human resources plans.
- Questioned the use of consultants and contract staff appointed from private legal practices to assist the Department, particularly on constitutional issues.

The Department's strategic plan for 2009 stated that it would aim to reduce its reliance on private legal services to 30% by 2010/11.

The NPA also had high vacancy rates from 2006 to 2008. In 2006/07 the Auditor-General reported that the vacancy rate had impacted severely on the NPA's operations, and this was also stressed by the Committee. The NPA's 2009 strategic plan says human resources processes, systems and plans will be developed to address the shortages.

The Department and the NPA listed low salaries, long hours, poor working conditions and poaching of staff by other departments and the private sector as reasons for the crisis. The Committee felt that both had done too little strategic planning, and requested details on levels and positions of vacancies, and whether filling vacancies led to improvements.

#### **Recommendation to the new Committee:**

- Call for reports on all initiatives aimed at improving human resource challenges.

#### *Occupation Specific Dispensation*

Public Service Coordinating Bargain Council Resolution 1 of 2007 was passed to develop and implement Occupation Specific Dispensation (OSD) to reduce losses in the public sector by giving proper remuneration and career pathing opportunities. Implementing OSD involved restructuring salary levels and conditions, as well as aligning salary levels for similarly-qualified individuals across different structures.

#### **Recommendation to the new Committee:**

- Receive updated reports on what the Department and the NPA were doing to address vacancy rates and retention, and OSD, and whether these initiatives were improving the situation.

#### *Poor management policies and procedures for existing staff*

The Committee commented several times that many Departmental and NPA human resource problems were caused by poor policies, weak management and lack of consistent enforcement. Up to 2009, there was increasing emphasis on staff needing to enter into and be rated on performance agreements. The SONA of 2008 directed all senior managers to sign key performance agreements.

The NPA audit report for 2005/06 mentioned lack of financial management and incorrect procedures. The 2006/07 and 2007/08 audit reports showed many more instances of lack of supervision and management, unacceptable performance, insufficient policies and an ineffectual risk management system. The Committee believed that these were partly responsible for the decline in finalising cases.

The Auditor-General also commented that reasons for the Department's consistently qualified audit reports included both the poor financial systems that it had set up, and not ensuring that policies and procedures were followed up by financial staff.

**Recommendation to the new Committee:**

- Monitor and stress that management policies and financial procedures should be clearly and effectively conveyed to all staff by the Department and the NPA.

**Disciplinary issues**

The Department's audit report for 2005/06 listed disciplinary irregularities that the Standing Committee on Public Accounts (SCOPA) asked the Department to correct. These problems continued in the 2006/07 report, and there were about 100 fraud and theft cases in 2008. The Department said many disciplinary issues arose through poor financial management at court level, and should be addressed by introducing improved systems and eliminating cash from the process.

The NPA also experienced fraud and theft, as well as failure to attend work and finalise cases, and lost files. Low morale was causing leaks of information from within its units. The Committee suggested that this was linked to the low salaries paid to staff, together with corruption and not respecting disciplinary standards.

The Committee raised these issues concerning both the Department and the NPA:

- The length of time taken to finalise investigations while staff members charged were suspended on full pay.
- The need to pursue claims to ensure that staff found guilty repay salaries paid to them during suspension.

**Recommendation to the new Committee:**

- Follow up on the previous Committee's concerns about amounts paid to suspended employees who were later dismissed.

**Staff training**

The Committee stressed that training is vital at every stage of the justice process to sensitise all administrative and professional staff, including judicial officers, on issues such as discrimination, disability and gender. This would contribute to the broader transformation agenda and keep people informed of new legislative requirements, such as training staff on the principles of restorative justice under the Child Justice Act.

In 2007, the Committee recommended ongoing training for Departmental and NPA staff, community development workers and parliamentary constituency office staff on:

- The Equality Act.
- The Criminal Law (Sexual Offences and related matters) Act.
- The Child Justice Act.
- The 3 Constitution Amendment Acts of 2009.<sup>8</sup>

**Recommendation to the new Committee:**

- Be briefed on ongoing training from the Department and Justice College.

## 6.2 Different staff categories

**Judicial officers and transformation of the judiciary**

The Department advised the Committee that a bill was being prepared to regulate the appointment of magistrates and bring the Magistrate's Commission more in line with the Judicial Service Commission. In June 2006, the Committee recommended to the Magistrate's Commission how to approach this task. During public hearings on the Jurisdiction of Regional Courts Amendment Bill, the shortage of magistrates was highlighted as a recurring problem.

Transformation of the judiciary, a SONA priority for 2004, and 2007 to 2009, includes ensuring that there is a better demographic, gender and disability representation in the judiciary, and that judicial officers have been properly sensitised:

- In May 2007, the Chief Justice and Committee agreed that transformation was too slow.
- The Committee suggested that the Department give briefs to young black advocates to develop expertise and build a network to advise the Department.
- The Joint Committee's report of February 2009<sup>9</sup> recommended that the Ministry consult judges and other relevant stakeholders before finalising its policy framework on the transformation of the judiciary.

**Recommendations to the new Committee:**

- Ensure the appointment of sufficient numbers of well-trained magistrates.
- Assess improved conditions of service for magistrates.

***Prosecutors***

The SONA of 2009 outlined the need to address the position of prosecutors. In 2005, the Minister acknowledged that the numbers of prosecutors leaving the courts directly affected the efficiency of the courts. The NPA presented its Strategy 2020<sup>10</sup> to address the prosecutors' 24% vacancy rate with extra resources and more efficient delivery, signing of performance agreements by staff and quarterly assessments.

In 2006, the Committee noted low morale amongst prosecutors and said the salaries of magistrates and prosecutors must be brought in line with each other, and improved over the next 3 years. The NPA had not finalised salary upgrade salaries by 2007. Although higher allocations were made, they were still not enough to reach the target of having 2 prosecutors in each court.

Another problem was the shortage of office accommodation for prosecutors at courts, resulting in lack of privacy and access to proper resources. The Committee suggested accommodating prosecutors in other buildings, but the NPA was reluctant to do this because of the security risk of moving dockets from one building to another.

The Committee and the Portfolio Committee on Police highlighted different performance targets – SAPS targets were based on arrests, while NPA targets were based on successful prosecutions.

**Recommendations to the new Committee:**

- Assess improved conditions of service for prosecutors.
- Address different performance targets for prosecutors.

***Interpreters***

The Chief Justice noted that one of the problems hindering access to justice was the fact that interpreters were not available at all courts. The 2009 budget of the Department mentioned promoting multilingualism in the courts as a spending priority.

**Recommendations to the new Committee:**

- Call for improved training for all court officers, including language training for interpreters.
- Question allocations for ensuring that interpreters are available in all courts.

## 7 Concerns: Department of Justice and Constitutional Development

### 7.1 Administration issues

#### *Budgets, strategic plans, annual report and audit matters*

When considering budgets and strategic plans, the Committee stressed allocating sufficient resources for implementing legislation passed, for example, paying service providers in the diversion and restorative justice processes. The Committee noted that Strategic Plans should address the need to improve the functioning of the courts, and that spending should be focused on addressing backlogs and appointing staff to increase efficiency internally and at the courts.

The Department admitted that it did not always have enough capacity to spend the allocated budget and needed better management.<sup>11</sup> The Committee asked that the Department's targets should be tighter and show clearly defined, measurable targets and deadlines. The 2009 spending priorities were presented to the new Committee.<sup>12</sup>

When considering annual reports, the Committee assessed the amount and quality of the spending, aligning expenditure to the Strategic Plans and budget, any problems identified by the Auditor-General, and performance issues.<sup>13</sup> The Committee queried:

- If the Department was doing enough to address human resource difficulties.
- Examples of when performance information, Strategic Plan aims and Annual Reports did not link with each other.

The Department received an unqualified audit in 2004/05, but problems with third party funds and the Guardian's Fund led to a disclaimer in the 2005/06 year and qualified reports since then. The audit reports highlighted poor financial management, under-spending and high vacancy rates.

From 2008, the Committee called for quarterly reports setting out what was being done on management of third party funds, asset management, progress on matters identified by the Auditor-General, the Justice Deposit Account System (JDAS), internal controls aimed at addressing fraud, and the Guardian's Fund. The 2007/08 and 2008/09 audit reports were also not presented to the previous Committee.

#### **Recommendations to the new Committee:**

- Assess if problems identified from 2004 to 2009 are still ongoing and hear from the Department how it will address them.
- Monitor the submission of quarterly Departmental reports and specify what these should include.

#### *Management of tenders*

In May 2008, the Committee discussed the controversy around the awarding of a tender by the Department to the Cyberia Group. The Committee asked that the internal audit committee identify any systemic problems and describe how these would be addressed.

#### **Recommendation to the new Committee:**

- Assess the Department's report on the Cyberia Group tender.

#### *Management of monies held in trust*

The Department's 2005/06 Audit Report focused on difficulties in administering proper systems for monies in trust, including money in the Guardian's Fund and money paid into court. The Department suggested that administration of maintenance should be taken over by the Department of Social Development, while SCOPA asked the Committee to consider the Department's policy, and monitor the implementation of the Third Party Funds Audit Action Plan and Asset Audit Action Plan.

In May 2008, the Committee questioned again whether the Department should be taking responsibility for third party funds or should rather be focusing on core functions. The Minister replied that the new Justice Deposit Account System, together with training of officials, had improved the Department's ability to process maintenance payments.

**Recommendations to the new Committee:**

- Check on the Department's handling of all third party funds.
- Receive a Departmental briefing on whether fraud prevention measures, proper systems and effective monitoring are now in place.

**7.2 Mandate and management of specific priorities***The Department's constitutional development mandate*

In 2008, the Committee commented that not enough was said in the Department's presentations and Annual Reports about its constitutional development mandate, and that this must be addressed in all future reporting.

**Recommendations to the new Committee:**

- Receive a briefing on Departmental initiatives on constitutional development.
- Assess if the constitutional development mandate is being adequately addressed.
- Debate relevant issues with the new Joint Committee on Constitutional Development.

*Implementing the Service Charter for Victims of Crime*

In 2004, the Committee questioned why the Department was taking so long to formulate the Victims Charter. The Charter was finally launched in November 2007.

**Concerns of the Committee included:**

- Victims of rape not receiving proper attention, while some reported rape judgments reinforced negative gender stereotyping of women.
- Questioning what training had been given to improve the ability of court staff to deliver better services to victims.
- The Department still needing to develop policy on recognising the needs of lesbian, bisexual, gay and transgender victims.
- Raising the possibility of introducing an inquisitorial system to deal with sexual offences cases and crimes against children.

In discussion with the Ministry, it was agreed that more work must be done to curb secondary victimisation of female complainants in sexual offences cases, and that judicial training was needed to address patriarchal mindsets.<sup>14</sup>

**Recommendations to the new Committee:**

- Ensure that sufficient budgets are allocated for proper treatment of victims.
- Monitor the implementation of the Victims Charter by the Department.
- Receive a report on developing policy on meeting the needs of lesbian, bisexual, gay and transgender victims.
- Assess policies aimed at curbing secondary victimisation, especially in sexual offences cases, in cluster meetings and during the CJS Review.

*Implementing Truth and Reconciliation Commission recommendations*

The SONA of 2006 and 2008 prioritised implementing the Truth and Reconciliation Commission's (TRC) recommendations. In 2006, the Department noted that its new TRC unit would implement recommendations in a coordinated manner, while the 2007/08 Annual Report said that government departments had been asked to submit policies for reparation programmes for TRC victims to enable the Department to draft the necessary regulations. This was also mentioned as a strategic objective for 2009 to 2012.

**Recommendation to the new Committee:**

- Check that TRC reparation programme regulations are drafted and implemented.

### 7.3 Departmental branches

#### *The Office of the Family Advocate*

The Office of the Family Advocate did not give separate reports to the Committee, who identified a need to examine the structure and resourcing of the Family Advocate.<sup>15</sup> In 2008, a subcommittee met with the civil society group, Fathers 4 Justice, and noted that there was a need to change the maternal bias in family law cases. The Committee proposed that custody and access cases should be dealt with on an individual basis and in a non-adversarial atmosphere, while reforms in family law should be linked to other pending reforms, for example, around maintenance.<sup>16</sup>

#### Recommendations to the new Committee:

- Monitor the structure and resourcing of the Office of the Family Advocate.
- Ensure the CJS Review covers the more general concerns raised in the sub-Committee's report.
- Consider legislative reforms in family law and maintenance.

#### *The Office of the Master of the High Court*

The Department's 2004/05 Annual Report said that problems arising from manual systems and backlogs in the Office of the Master could take up to 5 years to address. The Auditor-General issued a disclaimer report on the Guardian's Fund in 2005/06, noting that there were insufficient internal controls and lack of proper systems. In 2007, the Committee requested the Master to address issues around staff retention, computerisation, visibility and access. The Master's office in Johannesburg was identified as particularly problematic. A new Chief Master has since been appointed.

#### Recommendation to the new Committee:

- Monitor if there have been improvements in the performance of the Master's offices.

#### *The Chief Litigation Office*

In a report in February 2009,<sup>17</sup> the Committee noted challenges around the poor image and weak relations between stakeholders and the Chief Litigation Office. The Chief Litigation Office aimed to strengthen capacity, including developing a skills plan, taking on interns, participating in a State Litigation Management Forum, and developing a litigation blueprint and risk analysis. There were also plans to extend the services of the State Law Advisors to municipalities.

#### Recommendations to the new Committee:

- Monitor if the Chief Litigation Office's initiatives are implemented and address the problems identified.
- As part of the CJS Review, assess whether State Law Advisors are able to assist municipalities.

#### *Justice College*

The Justice College trains magistrates, prosecutors, interpreters and registrars, and also focuses on new legislation such as the Child Justice Act, the Sexual Offences Act and the Criminal Procedure (Minimum Sentencing) Amendment Act. The Committee queried vacancies that existed in 2007 and the relevance of training. The SAHRC suggested that not enough was being done to improve awareness of the Equality Courts.

#### Recommendations to the new Committee:

- Monitor the mandate and functioning of the Justice College.
- Receive a briefing from the Justice College on training plans to address new legislation and improve awareness of the Equality Courts.

8  
Concerns:  
National  
Prosecuting  
Authority

The National Prosecuting Authority (NPA) is an independent body under Section 179 of the Constitution.

*NPA budgets, strategic plans, annual report and audit concerns*

In 2004, the NPA suggested to the Committee that the Public Finance Management Act should be amended to allow the NPA to be listed as a constitutional institution, since part of its budget (non-personnel issues) fell under the Director-General of the Department. This does not appear to have been addressed.

The NPA told the Committee that its budget was insufficient to adequately address its human resources shortages, as it lacked the funding to appoint the required numbers of prosecutors (for example, 500 extra prosecutors in 2006). The Committee said that the NPA should be formulating plans to ensure that courts had longer hours, to address backlogs and to reduce the high numbers of cases withdrawn.

The NPA's 2005/06 Annual Report, although not qualified, pointed to the high vacancy rate, delays in re-prioritisation, lack of compliance with donor agreements, and not following correct procedures. The next two audit reports were qualified, relating to wasteful expenditure and lack of financial management. In addition, the Criminal Asset Recovery Account lacked systems or processes to track orders and cases, maintain and safeguard assets, and enforce accountability of curators and account for cash.

Recommendations to the new Committee:

- Follow up on the suggested amendment to the Public Finance Management Act.
- Monitor whether the problems raised in previous audits have been resolved.
- Check that sufficient allocations are being made to addressing vacancies and that they are actually being filled.
- Monitor whether remaining suggestions made by the previous Committee are being implemented.

*Structure and functioning of the NPA's business units*

The NPA operated with several units between 2004 and 2008, namely National Prosecution Service, Asset Forfeiture Unit, Sexual Offences and Community Affairs Unit, Specialised Commercial Crime Unit, Witness Protection Unit and the Priority Crimes Litigation Unit. These all reported separately to the Committee, together with the Directorate of Special Operations (DSO/Scorpions) until its disbanding under the National Prosecuting Authority Amendment Act of 2008.

Most of the Committee's questions to these units related to their specific functions and no continuing concerns were highlighted, except problems relating to vacancies:

- The Special Investigating Unit had grown to over 600 members by 2008 and attributed its successes and high conviction rates to close working with other law enforcement agencies.
- The Asset Forfeiture Unit had also grown, although it would need a substantially increased budget in order to reach its full potential.
- The Witness Protection Unit reported that none of the witnesses being protected were harmed while under the Unit's care, although some decided to leave the programme.
- The Sexual Offences and Community Affairs Unit, Specialised Commercial Crime Unit and the Priority Crimes Litigation Unit also presented detailed statistics and plans.

Recommendations to the new Committee:

- Continue to receive separate reports from each unit.
- Ensure that lessons learned from the successes of or difficulties encountered by the units are considered during the CJS Review.
- Monitor the takeover of budgets from the NPA to the SAPS, and the takeover of staff in joint meetings with the Portfolio Committee on Police.

## 9 Concerns: Legal Aid South Africa

Previously known as the Legal Aid Board (LAB), Legal Aid South Africa (LASA) is a public body under the Public Finance Management Act.

### *Access to services, civil work and land restitution matters*

#### *General availability of services*

The Committee noted that, although the LAB had made consistent attempts to reach all the population, there was still a need to improve its presence in areas such as the Northern Cape and rural provinces, using the offices of traditional leaders. The Committee also suggested that the LAB should market itself more strongly as a training ground for candidate attorneys in all areas.

#### *Civil work*

In 2004, the LAB noted that justice centres had been opened across the country, and that it aimed to increase its focus on civil cases. The previous Committee noted:

- While legislation mandated the LAB to offer legal aid for certain cases, there was not always funding to implement this.
- A concern that the LAB had not met its primary mandate to provide legal representation to all accused who could not pay for private legal representation in criminal cases.
- Its view that, except for specific categories affecting children, the LAB should play a limited role in providing legal representation in civil cases.

#### *Land Restitution cases*

Land restitution matters are handled by the Ministry of Rural Development and Land Reform. The LAB reported in 2008 that illegal eviction cases had been put out to tender and would in future be handled by a private firm of attorneys, and not by the LAB. The LAB expressed some concerns over the sustainability of this system.

#### **Recommendations to the new Committee:**

- Monitor LASA activities every year instead of receiving reports every 2 years.
- Consider in principle whether the LASA should be offering services in more civil cases and the need to create more specific policies on this.
- Monitor the setting up of additional LASA offices.
- Assess the placement, structure and functioning of legal aid as part of the CJS Review.

### *The Legal Aid Act and Legal Aid Guide*

The Committee noted that amendments to the Legal Aid Act were needed to correct references to the 1996 Constitution and incorporate changes since 1994, and urged the Minister to ensure that these were introduced within the first 2 years of the new Parliament.

The Committee recommended that:

- The Legal Aid Guide be brought to Parliament every 2 years, instead of annually, for ratification.
- New legislation extend the current role of the Portfolio Committee, as the current wording permitted the Portfolio Committee only to accept or reject the Guide, but not to suggest amendments.<sup>18</sup>

#### **Recommendations to the new Committee:**

- Receive proposed amendments to the Legal Aid Guide every 2 years.
- Monitor the introduction of new legislation in line with the previous Committee's suggestions.

### *Miscellaneous LASA issues*

In 2007, the Committee suggested that databases tracking children in conflict with the law should be integrated with LASA databases. It also proposed that representatives from the LASA should be included in future oversight visits to correctional centres to highlight difficulties with access to awaiting trial detainees. The Committee noted that the new Committee should receive reports from the LASA Integrity Management Unit.

**Recommendations to the new Committee:**

- Be further briefed on implementing the recommendation on databases tracking children in conflict.
- Check on including LASA officials in oversight visits to correctional centres.
- Receive reports from the LASA Integrity Management Unit.

## 10 Concerns: Chapter 9 institutions

The Committee received reports from 3 bodies created under Chapter 9 of the Constitution – the South African Human Rights Commission (SAHRC), the Commission for Gender Equality (CGE) and the Office of the Public Protector (OPP).

**10.1 Common concerns**

In October 2004, the Committee called for consecutive briefings from the SAHRC, the CGE and the OPP on their 2003/04 Annual Reports and 2004/05 Strategic Plans. The Committee asked them to ensure that all future Annual Reports indicate if aims set out in Strategic Plans had been met, to achieve more systematic accounting, and to include in Strategic Plans measurable objectives, projected budgets, timeframes, and to explain the division of work between commissioners and administrative staff.

Between 2004 and 2009, the Committee identified concerns common to all 3 bodies:

- There was not enough interaction with the Committee, as most meetings were limited to a 3-hour session once a year.
- Each body should notify the Committee of any problems at an early stage before approaching National Treasury or other departments.
- Regular submission of reports throughout the year would give the Committee greater insight.
- There was lack of formal or systematic interaction between the 3 bodies.
- There was no legislative uniformity to set salaries and conditions of service for the heads of the bodies, and a lack of consultation with them on increases.

All 3 bodies were reviewed by the ad hoc Committee on the Review of Chapter 9 and Associated Institutions (the ad hoc Committee), whose Review Report set out a number of recommendations.<sup>19</sup> A unit in the Speaker's office is to be established to coordinate interactions with the 3 bodies in future.

**Recommendations to the new Committee:**

- Consider whether the common concerns identified by the previous Committee were dealt with by the ad hoc Committee.
- Continue to receive reports from all 3 bodies.
- Examine the ad hoc Committee's recommendations in detail.
- Consider the need for legislative amendments to implement its decisions on the Chapter 9 institutions.
- Interact further with National Treasury on budgets for the 3 bodies.

**10.2 South African Human Rights Commission**

The SAHRC reported to the Committee each year to present its budgets, Strategic Plans and Annual Report. All its audit reports from 2004 to 2009 were unqualified.

The Committee raised these concerns with the SAHRC:

- Asking how the SAHRC would quantify and add quality to its work.
- Not always receiving SAHRC's reports.
- Because of reports on continued non-compliance by various bodies with the Promotion of Access to Information Act, No 2 of 2000,<sup>20</sup> asking SAHRC to propose amendments for more effective implementing of the Act.
- Since the SAHRC had met its targets in 2008, it should raise its targets.
- The SAHRC should pursue socio-economic rights more vigorously, do research on the impact of crime on society, and attend to vulnerable older age groups.
- Wanting to engage with the SAHRC's new Information Commissioner on vacancies and meeting equity targets.

These were the responses of the SAHRC:

- Many workshops had been given, but the SAHRC was not clear if these had managed to entrench a culture of human rights.
- The SAHRC reported that it struggled to get reports from people and institutions. In 2007, the SAHRC asked if the Committee could take up non-responses of certain departments with relevant Ministers, while waiting for amendments to be made to the SAHRC Act to strengthen its requests for information.
- The SAHRC tried to enforce socio-economic rights through appeals and persuasion. Its budgetary constraints prevented the SAHRC from investigating more cases and taking them to litigation.
- The SAHRC stressed to the Committee that the SAHRC Act was never brought in line with the 1996 Constitution.

#### Recommendations to the new Committee:

- Receive the SAHRC's 2007/08 and 2008/09 Annual Reports.
- Track all the concerns raised by the previous Committee and the SAHRC.
- Link the debates around the mandate, functioning and funding of the SAHRC to considering the ad hoc Committee's recommendations and the CJS Review.
- Call for detailed SAHRC proposals for amendments to the SAHRC Act and the Promotion of Access to Information Act.
- Oversee the amendment of legislation where necessary.

### 10.3 Commission for Gender Equality

The Commission for Gender Equality (CGE) presented its Strategic Plans and Annual Reports to the Committee each year.

The Committee felt that there was not always alignment of CGE plans and goals, with the CGE seeming to start new programmes and then abandon them later. The CGE pointed to inadequate budgets, budgetary allocations that failed to take account of annual salary increments, and lack of staff as problems. The Committee commented that increases in the budget would have to be linked to better performance, and asked for further analysis on staff placement.

The Committee also queried the effectiveness of the CGE's programmes and requested specific research on their impact. It wanted indicators of success and reports on CGE findings on client satisfaction. The Committee noted that CGE audit reports were qualified each year, but did not have time to address financial issues in detail.

Other Committee concerns about the functioning of the CGE were:

- The CGE should be doing far more to promote the Equality Courts, and reaching out to more remote areas to facilitate education and monitoring.
- The CGE should become more involved in training SAPS officials on implementing the Domestic Violence Act, particularly the violation of protection orders.
- The CGE should fully report and take action on backlogs in handling complaints.
- The CGE should do international work, including making inputs on relevant issues in other African countries.
- The CGE should place greater emphasis on the boy child.
- There were some uncertainties in the wording of the CGE Act around appointing Commissioners.

#### Recommendations to the new Committee:

- Receive the CGE's 2007/08 and 2008/09 Annual Reports.
- Assess whether the CGE is doing enough to address all the issues identified by the previous Committee.
- Consider whether CGE should also be addressing other issues.
- Debate the mandate, functioning and funding of the CGE linked to the ad hoc Committee's recommendations and the CJS Review.
- Reconsider the CGE appointment process and the need to appoint new commissioners.
- Consider the fact that the CGE now also reports to the Committee on Women, Children and People with Disabilities.

#### 10.4 Office of the Public Protector

The Office of the Public Protector (OPP) briefed the Committee each year on its budget, Strategic Plans and Annual Report.

The Committee repeatedly asked the OPP to submit business plans, and to link goals and business plans so that it could assess whether the OPP's goals were met. The OPP budget was projected to decrease in the financial years ending 2008 and 2009, and this could lead to a decrease in investigations.

The OPP's annual reports indicated backlogs in 2004, but the OPP had launched a case management system to help remedy this. The Committee also questioned the rollover of funds, the competency levels of the staff, and the functioning of the OPP's special investigation unit.

Other concerns of the Committee were:

- In 2006, asking for the introduction of a customer satisfaction barometer, with findings reported to the Committee. These requests were repeated in 2007 after incomplete manual statistics were submitted.
- The OPP should do more to increase public awareness, evaluate outreach, and improve its communication and media strategy.
- The OPP should build a better relationship with Parliament and the Executive, and participate in more formal collaborative structures.

Recommendations to the new Committee:

- Receive the OPP's 2007/08 and 2008/09 Annual Reports.
- Be briefed by the OPP on updated technical planning information.
- Call for a report from the outgoing Public Protector on the impact of the OPP on the value of its service and on the functioning of government.
- Follow up its suggestion that traditional leaders' offices should be used instead of mobile officers for promotion of OPP work in rural areas.
- Receive further reports from the OPP on its strategies and activities, including communication.
- Link debates around the mandate, functioning and funding of the OPP with considering the ad hoc Committee's recommendations and the CJS Review.

## 11 Concerns: Council for Debt Collectors

The Council for Debt Collectors (the Council) is a statutory body under the Debt Collectors Act, but is not funded by government. In 2007, the National Treasury rejected the Council's request that it become funded to increase its activities.

Under the Debt Collectors Act 114 of 1998, the Council must report to Parliament on the register of approved debt collectors, any amendments to the Code of Conduct for debt collectors, and its management of public funds. The Minister is responsible for appointing members of the Council and making regulations.

No major concerns arose from oversight on this Council. The Committee, in its report on the Judicial Matters Amendment Bill 2005,<sup>21</sup> asked the Department to consider whether all debt collectors, including attorneys who collect debts, should fall under a single law. The Department does not appear to have reported back on this.

Recommendations to the new Committee:

- Receive updated reports from the Council.
- Call for a report from the Department on the proposed amendment of the legislation.

## 12 Concerns: South African Board for Sheriffs

Swiss funding was given during 2000 to implement an action plan to transform the sheriff's profession. The Committee asked for audit reports of the South African Board for Sheriffs (the Board). In 2005, the Minister advised the Committee that projects would be created to develop competition, ensure fairness in the profession and transparency in appointment.<sup>22</sup>

In May 2007, the Committee recommended introducing a uniform introductory course, and this was later introduced and run through the Sector Education and Training Authority. In March 2009, the Committee asked the Department to provide a written report on regulations for the Board.

### Recommendations to the new Committee:

- Request the Department to provide the report on Board regulations.
- Monitor the Board's activities and the impact of its services in the sector as part of the CJS Review.

## 13 Legislation and recommendations

In 2004, the Committee noted that proper costing and implementation must be considered when parliamentary committees pass legislation. This was later confirmed in the Report of the Independent Panel Assessment of Parliament.<sup>23</sup>

The previous Committee attended to a substantial amount of legislation from 2004 to 2009, passing 24 Bills and carrying out preliminary investigations on a further 2 bills that were reintroduced in the new Parliament.

### Recommendation to the new Committee on language:

The new Committee should follow through on the previous Committee's recommendation that, from 2008 onwards, legislation should be translated into at least 3 languages.

### Recommendations to the new Committee to follow up on legislative issues:

- **General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Act, No 55 of 2008** – within the first 2 years of its term, Parliament should consider reviewing the electoral system.<sup>24</sup>
- **Criminal Law (Sexual Offences and Related Matters) Amendment Act, No 32 of 2007** – the Minister must adopt and table the National Policy Framework for the Management of Sexual Offences in Parliament, and the new Committee must monitor implementing the Sexual Offenders Register. The Department was asked to research the disclosure of HIV status after Cabinet reservations on criminalising non-disclosure. The Department was also asked to investigate and report back how other jurisdictions dealt with the age of consent.<sup>25</sup>
- **Judicial Matters Amendment Act, No 66 of 2008** – the Department must report back to the new Committee on concealment of birth issues within 12 months. The Department should implement recommendations on informing accused of implications of admission of guilt fines (Sections 55–57A of Criminal Procedure Act). The right to succession in same-sex unions should be covered in new legislation on domestic partnerships drafted by the Department of Home Affairs.<sup>26</sup>
- **Revised Draft Rules of Procedure for Judicial Review of Administrative Action under Section 7(3) of the Promotion of Administration of Justice Act, No 3 of 2000** – the Minister should report back to Parliament within 24 months of approving the Rules. The new Committee should hold public hearings on access to justice in civil cases.<sup>27</sup>

- ***National Prosecuting Authority Amendment Act, No 56 of 2008*** – the Department was asked to investigate whether there was any need for the proclamation by the President of 2 Investigating Directorates, and to report back to the new Committee within 6 months of Parliament's current term.<sup>28</sup>
- ***Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, No 56 of 2008*** – the new Committee should receive a report from the Minister on implementation within 2 years.<sup>29</sup>
- ***South African Judicial Education Institute Act 14 of 2008*** – the previous Committee called for an implementation plan to highlight social context and gender issues, and detail plans for the setting up of the Institute. Annual Reports must be presented to the new Committee.
- ***Jurisdiction of Regional Courts Amendment Act, No 31 of 2008*** – the new Committee should actively monitor and receive 6-monthly reports linked to an implementation plan, including a report on the state of courts in Cape Town. New rules must be made within 6 months and submitted to Parliament.<sup>30</sup>
- ***Amendment of the Rules of Court, and the Amendment of the Rules regulating the conduct of the proceedings of the Provincial and Local Divisions of the High Court of South Africa*** – the previous Committee said the Rules Board must reach agreement on issues before submitting the Rules to the Minister, and the Committee must be given the opportunity to comment on them in advance.<sup>31</sup>
- ***Draft Rules of Procedure for Applications to Court under the Promotion of Access to Information Act 2 of 2000*** – the Committee must be allowed to comment on the Rules in advance, and the Rules Board must report back in the first 6 months of the new Parliament on 4 submissions sent to it by the previous Committee.<sup>32</sup>
- ***Child Justice Act, No 75 of 2008*** – this became fully operational on 1 April 2010, as summarised in the previous Committee's Report.<sup>33</sup> Under the new Act:
  - In 5 years, the Minister must review the minimum age of criminal capacity.
  - The Restorative Justice National Policy Framework and regulations must be submitted to the new Committee.
  - The new Committee should monitor the capacity of service providers and challenges around reform schools.
  - The Department and the SALRC were asked to consider an amendment to Section 154(3) of the Criminal Procedure Act.
- ***Criminal Procedure Amendment Act, No 65 of 2008*** – the previous Committee asked the new Committee to discuss issues raised in the Committee Report.<sup>34</sup>

#### Recommendations to the new Committee on legislation still to be considered:

- ***The Traditional Courts Bill [B15-2008]*** was tabled in 2008, but lapsed. It was revived in July 2009. When approved and in force, the Committee will need to ensure that the remaining sections of the Black Administration Act are repealed.
- ***Criminal Law (Forensic Procedures) Amendment Bill [B2-2009]*** – this was considered by an ad hoc Committee, and there may be a need for the new Committee to engage in joint hearings, particularly on constitutional concerns.<sup>35</sup>
- ***Constitution 17th Amendment Bill [B8-2009]***, introduced in the new Parliament.
- ***Draft Protection of Personal Information Bill [B9-2009]***, introduced in the new Parliament.
- ***The Prevention and Combating of Trafficking in Persons Bill*** has been tabled as a draft, and may require joint meetings.

### Recommendations from the previous Committee on issues needing new or amending legislation:

- *Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000* – the SAHRC noted the need for regulations to make this Act effective.
- *Deleting criminal records* – the previous Committee asked the Minister to research and consult on systems for keeping criminal records, and report back to the new Committee within 24 months, with a view to further legislation.<sup>36</sup>
- *Adult prostitution* – the SALRC was asked, when researching adult prostitution, to consider offences around soliciting of a child under 16, a child aged between 16 and 19, and the current offences under the Criminal Procedure Act.<sup>37</sup>
- *Possible amendments to the Domestic Violence guidelines and the Domestic Violence Act* – the Portfolio Committee on Women, Youth, Children and Persons with Disabilities called for submissions at a public hearing in October 2009.
- *The Legal Profession Bill* – still pending since 2004 budget debates.
- *Mediation in family law* – awaiting SALRC discussion paper on new legislation.
- *The Prohibition of Hate Speech Bill*, to meet South Africa's duty as a party to the UN Convention Against All Forms of Racial Discrimination.
- The Department was asked to advise the new Committee if it was ready to present legislation to protect homes from attachment for debt.

## 14

### General recommendations

#### Recommendations from the previous Committee for follow-up by the new Committee:

- Government should introduce a policy limiting the amounts that may be spent by government departments on litigation.<sup>38</sup>
- When negotiating any future treaties for extradition, South Africa must ensure that the person extradited would not face a death penalty in the requesting state.
- When government negotiated on extradition or mutual legal assistance, it should also include legal cooperation on other issues, such as insolvency.
- The National Assembly should adopt an urgent plan to ensure all departments met South Africa's duties to comply with international law on human rights.<sup>39</sup>
- There is a need for broader cooperation of government and Parliament with non-governmental organisations, for example, during the CJS Review.
- The speed of bills being processed should be monitored and improved.

## Endnotes

- <sup>1</sup> <http://www.pmg.org.za/minutes>
- <sup>2</sup> <http://www.pmg.org.za/minutes>
- <sup>3</sup> <http://www.info.gov.za/speeches/son/index.html>
- <sup>4</sup> <http://www.pmg.org.za/docs/2009/comreports/090302pcjusticereport5.htm>
- <sup>5</sup> <http://www.pmg.org.za/docs/2007/comreports/071130pcjusticereport3.htm>
- <sup>6</sup> These were: The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (subject to reservations being expressed on some Articles and interpretive declarations on others – see report of 27 October 2004), the Treaty for Mutual Legal Assistance (extradition) with the Argentine Republic (see report of 7 August 2007) and the RSA/India Treaty on Extradition, and on Mutual Legal Assistance in Criminal Matters (see report of 4 September 2008)
- <sup>7</sup> Committee Report available from <http://www.pmg.org.za/docs/2007/comreports/070412pcjustice.htm>
- <sup>8</sup> Constitution Fifteenth Amendment Act (9 January 2009); Constitution Fourteenth Amendment Act (9 January 2009) and Constitution Sixteenth Amendment Act (26 March 2009)
- <sup>9</sup> <http://www.pmg.org.za/docs/2009/comreports/090302pcjusticereport5.htm>
- <sup>10</sup> Committee meeting report of 2 May 2005
- <sup>11</sup> Committee meeting report of 27 February 2006
- <sup>12</sup> <http://www.pmg.org.za/docs/2009/comreports/090623pcjusticereport.htm>
- <sup>13</sup> The plans and reports can be sourced from [http://www.doj.gov.za/reports/report\\_list.html](http://www.doj.gov.za/reports/report_list.html)
- <sup>14</sup> Committee meeting report of 7 August 2006
- <sup>15</sup> Committee meeting report of 22 March 2006
- <sup>16</sup> See Committee Report <http://www.pmg.org.za/docs/2009/comreports/090302pcjusticereport2.htm>
- <sup>17</sup> <http://www.pmg.org.za/docs/2009/comreports/090302pcjusticereport3.htm>
- <sup>18</sup> <http://www.pmg.org.za/docs/2007/comreports/070412pcjustice.htm><http://www.pmg.org.za/docs/2008/comreports/081022pcjusticereport.htm>
- <sup>19</sup> See note 1
- <sup>20</sup> The new Committee was informed that by July 2009, around 300 bodies had still failed to comply
- <sup>21</sup> <http://www.pmg.org.za/docs/2005/comreports/050413pcjusticereport.htm>
- <sup>22</sup> Committee meeting report of 10 March 2005
- <sup>23</sup> Parliament of the Republic of South Africa. 2007. Report of the Independent Panel of Assessment of Parliament
- <sup>24</sup> <http://www.pmg.org.za/docs/2008/comreports/080813pcjusticereport.htm> (second part of report)
- <sup>25</sup> <http://www.pmg.org.za/docs/2007/comreports/071130pcjusticereport2.htm>
- <sup>26</sup> <http://www.pmg.org.za/docs/2008/comreports/081021pcjusticereport2.htm>
- <sup>27</sup> <http://www.pmg.org.za/files/docs/090217report.doc>
- <sup>28</sup> <http://www.pmg.org.za/docs/2008/comreports/081020pcjusticereport.htm>
- <sup>29</sup> <http://www.pmg.org.za/docs/2008/comreports/081022pcjusticereport2.htm>
- <sup>30</sup> <http://www.pmg.org.za/docs/2008/comreports/080516pcjusticereport.htm>
- <sup>31</sup> <http://www.pmg.org.za/docs/2008/comreports/081119pcjusticereport5.htm>
- <sup>32</sup> <http://www.pmg.org.za/docs/2008/comreports/081119pcjusticereport.htm>.
- <sup>33</sup> <http://www.pmg.org.za/docs/2008/comreports/080624pcjusticereport.htm>
- <sup>34</sup> <http://www.pmg.org.za/docs/2008/comreports/081021pcjusticereport.htm>
- <sup>35</sup> <http://www.pmg.org.za/docs/2009/comreports/090323pcjusticereport.htm>
- <sup>36</sup> <http://www.pmg.org.za/docs/2008/comreports/081021pcjusticereport.htm>
- <sup>37</sup> See note 34
- <sup>38</sup> Committee meeting report of 16 March 2005 and Committee Report at <http://www.pmg.org.za/docs/2009/comreports/090302pcjusticereport3.htm>
- <sup>39</sup> <http://www.pmg.org.za/files/docs/080625annualreport.pdf>

This shadow legacy report is an independent reflection on the work of the Parliamentary Portfolio Committee on Justice and Constitutional Development during the Third Parliament (2004–2009). The report highlights some of the key issues discussed and recommendations made by the Committee for follow-through by its successors in the Fourth Parliament.

The views expressed in this document are the result of extensive analysis of the minutes of Committee meetings prepared by the Parliamentary Monitoring Group (PMG), and the reports of the Committee for the period under discussion.



OPEN SOCIETY FOUNDATION FOR SOUTH AFRICA

## Mission

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The Open Society Foundation for South Africa (OSF-SA) is committed to promoting the values, institutions and practices of an open, non-racial, non-sexist, democratic society. It will work for a vigorous and autonomous civil society in which the rule of law and divergent opinions are respected.