

Justice Today

Official newsletter of the Department of Justice & Constitutional Development

Issue 2 | 2010



**Justice launches Child
Justice Act in Soweto**

**Human
rights
strengthen
Democracy**

**First
Woman
Judge
President**

**Stern
Warning
against
smokers**

**Thuthuzela
turns victims
into survivors**

**Justice
Puzzle
Complete a
crossword
& win**



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Justice on the Ball for 2010

The Department of Justice and Constitutional Development (DoJ&CD) is ready to provide speedy and efficient **Access to Justice for All** during the 2010 FIFA World Cup™ tournament in June and July.

The Integrated Justice System has identified **56 dedicated court rooms** to be used across all nine provinces, **37 of which are in district courts and 19 are in regional courts**. These courts will attend to all 2010 FIFA World Cup™ related cases. These dedicated court rooms are mainly in courts that are in host cities and located closer to the stadiums and ports of entry.

Further to this, a number of **1 140 skilled and well-trained personnel and volunteers** have

been selected to assist at these dedicated court rooms, allowing for speedy assistance with all judicial matters. These committed members will operate interchangeably between day and night courts, operating as follows:

Day Court: 7:45 to 16:30
Night Court: 16:30 to 23:00.

It is important to note that these cases will also be subjected to the normal judicial process and will be dealt with in accordance with the laws of the Republic and the Constitution.

The DOJ&CD is indeed firmly on the ball for the **2010 FIFA World Cup™**.

Dedicated courts for the 2010 World Cup™

Court rooms in provinces	Court rooms in district courts	Court rooms in regional courts
Limpopo x 7 court rooms	Musina x 1 court room Polokwane x 2 court rooms Phalaborwa x 1 court room	Musina x 1 court room Polokwane x 1 court room Phalaborwa x 1 court room
Mpumalanga x 4 court rooms	Nelspruit x 2 court rooms Nsikazi x 1 court room	Nelspruit x 1 court room
Eastern Cape x 6 court rooms	Port Elizabeth x 4 court rooms	Port Elizabeth x 2 court rooms
KwaZulu-Natal x 5 court rooms	Durban x 2 court rooms Verulam x 2 court rooms	Durban x 1 court room
Western Cape x 4 court rooms	Athlone x 1 court rooms Bellville x 1 court room Cape Town x 1 court rooms	Cape Town x 1 court rooms
North West x 4 court rooms	Bafokeng x 1 court room Rustenburg x 1 court room Mogwase x 1 court room	Bafokeng x 1 court room
Free State x 3 court rooms	Bloemfontein x 2 court rooms	Bloemfontein x 1 court room
Northern Cape x 2 court rooms	Kimberley x 1 court room	Kimberley x 1 court room
Gauteng x 21 court rooms	Pretoria x 4 court rooms	Pretoria x 2 court rooms
	Atteridgeville x 2 court rooms	Atteridgeville x 1 court room
	Johannesburg x 2 court rooms	Johannesburg x 2 court rooms
	Kempton Park x 2 court rooms	Kempton Park x 1 court room
	Randburg x 1 court room	Randburg x 1 court room
	Jeppe x 1 court room	0 court room
	Protea x 1 court room	Protea x 1 court room

Classification of a 2010 FIFA World Cup™ case:

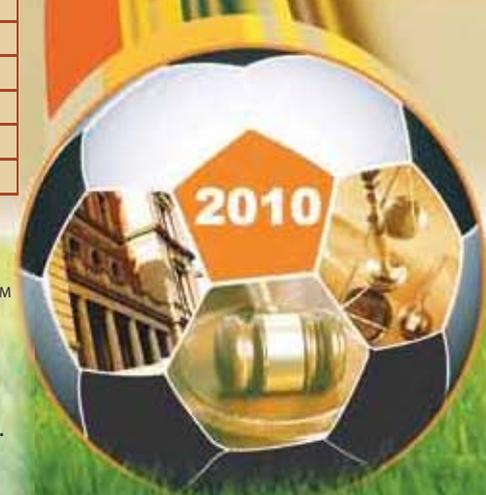
- any offence that is committed by a non-resident supporter of the 2010 FIFA World Cup™
- committed against a non-resident supporter of the 2010 FIFA World Cup™
- to which a non-resident is a witness
- committed at a tourist attraction or any other place in the country and in the opinion of the Senior Public Prosecutor given time, place, nature and/or publicity of the offence.

“Working together we will provide speedy and efficient justice for the 2010 FIFA World Cup™”



the doj & cd

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Justice and Constitutional Development
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Editorial

This edition of Justice Today focuses on the various efforts of the Department of Justice and Constitutional Development (DOJ&CD), which are aimed at promoting and protecting human rights. The department moves from the premise that the realisation of human rights gives meaning to our hard earned democracy. People will not enjoy democracy whilst they cannot exercise their human rights.

This commitment is in line with the Constitution of South Africa which places greater emphasis to the protection of human rights. These human rights are enshrined in the Bill of Rights of the Constitution.

As is customary, South Africa celebrated the Human Rights Day on 21 March 2010. This year's celebration coincided with the 50th anniversary of the Sharpeville and Langa massacre. The celebration was a fitting tribute to the heroes and heroines who were killed while defending our rights to live in a free society.

This momentous event was soon followed by the implementation of the Child Justice Act, which seeks to ensure that children's rights are protected and their matters are dealt with in a rights-based manner. The Act aims to establish a separate criminal justice system for children in conflict with the law.

The department acknowledges that HIV/AIDS is a major challenge in the realisation of human rights. As former President, Nelson Mandela proclaimed, "AIDS is no longer a disease, it is a human rights issue." Government has drafted a comprehensive plan to reduce the level of infections while ensuring that those already infected receive proper medical treatment.

Similarly, the process of land restitution is a major human rights issue. Historically, millions of people in South Africa have been victims of racially dispossessions and forced removals during the apartheid era. In order to give meaning to our democracy, the government has prioritised the implementation of the Restitution of Land Rights Act 22 of 1994 and effective operation of Land Claims Courts.

The department has also moved swiftly to ensure that victims' rights are protected in the criminal justice system, especially victims of sexual offences. Minister Jeff Radebe recently opened yet another Thuthuzela Care Centre. These centres have been introduced as a critical part of the country's anti-rape strategy. Its aim is to reduce secondary victimisation, improve conviction rates and reduce the cycle time for finalisation of rape cases.

Gender equity is one of the major challenges in our country. Hence, in this edition we pay homage to the first woman Judge President who has been appointed at the North West High Court. Her appointment is indicative of government's commitment to transformation in the judiciary.

It is our hope that in your various activities, you will also work to promote and protect human rights. Our collective efforts will ensure that we realise our vision to build a united and democratic South Africa.



Nomusa Mngadi



Deputy Minister Andries Nel and Minister of Justice and Constitutional Development Jeff Radebe during the Child Justice Act Launch.

By Justice Ditshego

The Department of Justice and Constitutional Development launched the Child Justice Act 75 of 2008 on 01 April 2010. The event took place at Walter Sisulu Child Care Centre in Soweto and was attended by the Ministers of Justice and Constitutional Development, Mr Jeff Radebe, Social Development, Mrs Edna Molewa and Women, Children and People with Disabilities, Mrs Noluthando Mayende-Sibiya. As thoroughly summated by the Justice Minister during the event, the Child Justice Act seeks to ensure that “our children’s matters are dealt with in a rights based manner”.

The Child Justice Act provides for the establishment of a separate criminal justice system for children in conflict with the law. This means that children under the age of 18 will not be detained with hardened criminals.

According to the Act, children in conflict with the law must appear before a preliminary inquiry within 48 hours after an arrest has been made. Minister Radebe emphasised the importance of these preliminary enquiries as they ensure that the criminal

justice system complies with the constitutional requirement that the child’s best interests are of paramount importance in all decisions made about the child.

The preliminary inquiry examines the factors that may have led the child to commit a crime and identify ways in which both the child and victim could be assisted. If a child accepts responsibility for the crime committed and asks for help, he/she will not be prosecuted but undergoes a diversion programme.

These diversion programmes include among them a life skills programme, an anger management programme and a substance abuse programme. All diversion programmes are geared towards ensuring effective rehabilitation of the child.

To ascertain that imprisonment is a matter of last resort, as enshrined in the Constitution, the Act provides a wide range of sentencing options – most of which are non-custodial. As Minister Radebe indicated, the Act also promotes the notion of restorative justice. For the very first time in legislation, victims are involved in decisions



Minister of Social Development Edna Molewa and kwaito artist Kabelo Mabalane present gifts to children of Walter Sisulu Child Care Centre.

Government implements Child Justice Act



The Child Justice Act, 2008 (Act No 75 of 2008):-

Provisions of the Act

- Establishes a criminal justice system for children;
- Expands and entrenches the principles of restorative justice in the criminal justice system for children, while ensuring their responsibility and accountability for crimes committed; and
- Places an increased emphasis on the effective rehabilitation and re-integration of children in order to minimize re-offending.

Scope & Applications of the Act

- Children below 10 years at the time of commission of offence – the Act sets out procedures to deal with children who are not criminally liable.
- Children who are 10 years but below 14 years at the time of commission of offence – the Act requires that criminal capacity be proven.
- Children who are 14 years and below the age of 18 years – police officials have to treat the child with due regard to the provision of the Act.

made during the preliminary inquiry and provided space to submit an impact statement which details the nature of damage which was caused by the crime committed.

The Minister also called upon the parents, children, social partners, Provincial and Local governments and Community Based Organisations to take responsibility in the implementation of the Act.

All stakeholders in attendance endorsed the Child Justice Act and committed to fully participate in its implementation. Minister Edna Molewa assured the audience of her department's readiness to work hard to ensure implementation of this key legislation. "We have acted very swiftly in ensuring its implementation with 484 provincial officers to assist in implementing this Act throughout our country," Ms Molewa said. She mentioned that to date there are 33 Residential Care facilities in full operation with 18 new facilities planned for the next year.

In representing vulnerable groups, Minister Nolutando Mayende-Sibiya emphasized the significance of these child care centres. She said that centres like Walter Sisulu are important in achieving the aims of this Child Justice Act. "This will further create safer communities and encourage children to become law abiding citizens of the country," she continued.

Minister Mayende Sibiya concluded, "The step we are taking today will be recorded as a milestone that South Africa reached under the leadership of Minister Jeff Radebe."

The Director-General (DG) for Justice and Constitutional Development, Ms Nonkululeko Msomi, emphasised that there has been a need to develop a legal framework which includes national instructions for police to ensure effective application and implementation of this Act. Ms Msomi said, "This would help in acknowledging the wrongfulness of children's actions. A country that neglects its children has no future lying ahead of them."

Ms Msomi on called the Legal Aid South Africa to ensure that children receive legal representation when they need it. Members of the community were also encour-

aged to support the implementation of the Child Justice Act. Chief Magistrate Desmond Nair reiterated the significance of judges and magistrates in the implementation of the Act. "The buck stops with us to ensure that this legislation is well implemented."

He said to date seventy percent of magistrates have been trained. According to the Chief Magistrate it was important to also have a Child Justice Centre in Gauteng. "I would also like to thank the Minister and Director General for their role in driving the implementation of this legal process," said the Chief Magistrate. Magistrate Nair further called for support from 1400 magistrates and all stakeholders.

Currently, there are two one-stop child justice centres which have been established in Nerina, Port Elizabeth in the Eastern Cape and Mangaung, Bloemfontein in the Free State.

Representing the Non-Governmental Organisations (NGOs), Ms Charmaine Bardenhaurst of the Child Justice Alliance was thankful for the cooperation and partnership between government and the civil society. "I pledge for collaborative support which will ensure that children's rights are taken care of," she said.

South African kwaito artist Kabelo Mabalane, who was the Programme Director for the day, encouraged children to remain hopeful and cited himself as a former drug addict. "You can lose everything but not hope. Calculating from the second of September 2002 until today it is seven years and seven months since I quit drugs. In life we all make mistakes but I like people who take advantage of available support," said Mr Mabalane.

One of the learners Repholositswe Mojakisana stressed the importance of Walter Sisulu Child Care and sees it as a Centre of learning and "a place where we got help."

"Drugs are not good for me and my well-being," he said. He emotively appealed for further help from the audience. Children of Walter Sisulu Child Care Centre performed music and dance for the audience.



Sentencing options

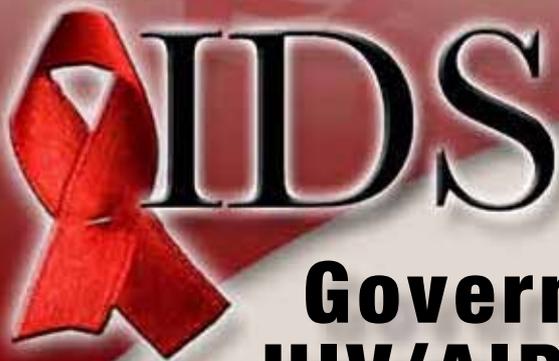
- Community-based options: this involves the sentencing of children to programmes similar to diversion programmes, but as a sentence, which means the children will have a criminal record.
- Restorative Justice Sentences
- Fines or alternative fines which may include symbolic restitution, payment of compensation, An obligation on the child to provide some service or benefit, provided that the child is 15 years or older; or any other option that the court considers fit and proper.
- Sentences involving correctional supervision
- Compulsory attendance to a non-custodial sanctions programme
- Sentences of compulsory residence in child and youth care centre
- Direct imprisonment

Types of offences

- The minor offences includes among others theft of property worth not more than R2500, malicious injury to property that is worth not more than R1500 and common assault where grievous bodily harm has not been inflicted.
- More serious offences would include theft of property worth more than R2500; robbery, other than robbery with aggravating circumstances; assault involving the infliction of grievous bodily harm; public violence; culpable homicide; and arson.
- The most serious offences would include treason, sedition, murder, extortion and kidnapping.



From left: Minister Jeff Radebe, Director for Walter Sisulu Child Centre Sandra Madella, Minister of Social Development Edna Molewa and Deputy Minister Andries Nel



Government Treats HIV/AIDS as a human right issue

By Justice Ditshego

The state has a constitutional responsibility to ensure the realisation of human rights. The Bill of Rights states that no one may be refused emergency medical treatment.

In one of his speeches, the first and former President of a democratic South Africa Dr Nelson Mandela proclaimed that "AIDS is no longer a disease. It is a human rights issue." Section 27 of the Bill of Rights upholds the rights to health care, food, water, and social security.

This section stipulates that everyone has the right to have access to the following:

- Health care services, including reproductive health care;
- Sufficient food and water; and
- Social security, including, appropriate social assistance; if they are unable to support themselves and their dependants,

These rights include access to anti-retroviral drugs as stated by President Jacob Zuma during World Aids Day 2009 address at the Pretoria Showgrounds. President Zuma said that all patients with both TB and HIV will get treatment with anti-retrovirals if their CD4 count is 350 or less. Previously treatment was available when the CD4 count is less than 200. In addition, he indicated that patients will now receive treatment under one care centre.

"This policy change will address early reported deaths arising from undetected TB infection among those who are infected with HIV. We have taken this step, particularly on learning that approximately 1% of our population has TB and that the co-infection between TB and HIV is 73%," he said. He made a promise that "all pregnant HIV positive women with a CD4 count of 350 or with symptoms regardless of CD4 count will have access to treatment.

President Zuma also emphasized that all other pregnant women who do not fall into this category, but who are HIV positive, will be put on treatment at fourteen weeks of pregnancy to protect the baby. In the past, pregnant women only received treatment during the last trimester.

"In order to meet the need for testing and treatment, we will work to ensure that all the health institutions in the country are ready to receive and assist patients and not just a few accredited ARV centres. Any citizen should be

able to move into any health centre and ask for counselling, testing and even treatment if needed," the President said. According to the President, "the implementation of all these announcements is effective from April 2010. Institutions are hard at work to ensure that systems are in place by the 31st of March."

Explaining the meaning of his statement to the audience President Zuma said, "It means that we will be treating significantly larger numbers of HIV positive patients. It also means that people will live longer and more fulfilling lives."

However, he emphasised that it does not mean that "we should be irresponsible in our sexual practices. It does not mean that people do not have to practice safer sex. It does not mean that people should not use condoms consistently and correctly during every sexual encounter."

During his State of the Nation Address President Zuma reiterated government's promise to fight the HIV scourge. He said it is important to confront the fact that life expectancy at birth, has dropped from 60 years in 1994 to just below 50 years today.

"We are therefore making interventions to lower maternal mortality rates, to reduce new HIV infections and to effectively treat HIV and tuberculosis. We will also reduce infant mortality through a massive immunisation programme." He further mentioned that a need to reinstate health programmes in schools without ignoring the implementation of all the undertakings made on World Aids Day relating to new HIV prevention and treatment measures.

The Global Fund report which was presented in Pretoria on 11 March 2010 urges the public to imagine a situation where all HIV positive pregnant mothers in the world give birth to negative children. Malaria has been eliminated as a public health problem within a decade in most countries, and tuberculosis prevalence will be halved internationally by 2015. The report also stipulates that it is possible if current rates of progress by the Global Fund to Fight AIDS, Tuberculosis and Malaria supported programmes and other efforts are maintained and scaled up.

Meanwhile representatives from the business

sector met with Dr Aaron Motsoaledi, the Minister of Health to discuss preparations for the national HIV counselling and testing (HCT) campaign. The focus was to jointly explore how the business community participates in and supports the government-led initiative.

"The South African business sector fully endorses and supports Government's HCT campaign, its targets and the keen focus on HIV prevention," said Brad Mears, the CEO of the SA Business Coalition on HIV/AIDS (SABCOHA), which is the private sector's champion in the national efforts against HIV/AIDS.

SABCOHA representatives outlined the components of the business sector's plan of action:

- Conducting a dedicated Strategic Planning Session for the HCT Campaign on 29 March;
- The Minister of Health and other South African National AIDS Council and Department of Health representatives have been invited to attend and participate.
- Contributing towards the achievement of the testing and treatment targets by mobilising and maximising the use of established workplace wellness facilities equipped to provide HCT;
- Using its structures to showcase leadership and mobilise participation in the national and provincial HCT launch events during and after April;
- Working closely with Government to share experiences; and
- Partnering to extend government's efforts towards the strengthening of the health system into the private sector.

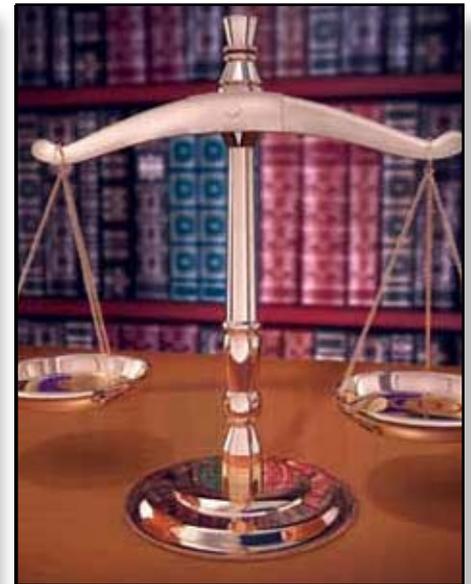
Mears also stressed that SABCOHA and its members will consider how they can assist further with a special focus on the key areas outlined by the Minister.

The following are the key areas as outlined by the Minister:

- Provision of additional quantities of condoms and HIV testing kits;
- Secondment of skilled personnel who can work alongside SANAC and Department of Health teams during this time of intense focus on HIV testing and prevention.

First Woman Judge President

In South Africa



Above: South Africa's first Woman Judge President Mashangu Monica Leeuw

By Lulama Ngoma

The Department of Justice and Constitutional Development's (DOJ&CD) special programme introduced in 2007 to fast track the appointment of women to the Bench has started to bear fruits.

Subsequent to the recommendation of the Judicial Service Commission, the President of South Africa, Honourable Jacob Zuma appointed the first woman Judge President, Justice Mashangu Monica Leeuw. Justice Leeuw's appointment was welcomed by Minister Jeff Radebe who during the delivery of the budget vote in parliament expressed the department's commitment to ensure that she will not be a lone voice among those in leadership for long.

Justice Leeuw of the North West division was described as a dedicated and competent candidate. When she was first appointed in the Bophuthatswana Provincial Division, she was described by Judge Ronald Hendricks as a person who has a personality befitting a judge.

The candidacy of Judge Leeuw as judge president was uncontested, an indication of how the legal fraternity in the North West division respect and hold in high esteem her vast experience in law.

"I definitely will add value to the judiciary by creating more opportunities to women with potential to take positions on the bench, not only in the high court but in other lower courts as well. Women must be empowered by affording them opportunities to act as judges, irrespective of the challenges they may encounter in the process," she said.

Justice Leeuw is aware of the challenges facing the General Council of the Bar as there are still no black women who are senior counsels. She is hoping to tackle these challenges with the help of legal associations she belongs to would receive support from her colleagues in the judiciary and other arms of government, to ensure that women are afforded appropriate recognition in the legal fraternity.

Her determination to make a difference, maintain and fulfil the mandate of the department by bringing access to justice closer to ordinary people is strong. Already she is one of the compilers of a training manual providing training on all laws affecting women and children.

As a judge first, Justice Leeuw dedicates her commitment to uphold the oath of office that she took when she was appointed as a judge of the Bophuthatswana Division those many years ago and in the seat of the highest judge in the North West Division, with the assistance of her col-

leagues.

She has a legal career that started in 1976 after her graduation from the University of the North. Her experience includes work for the Skweyiya Commission, where she served as an investigator and evidence presenter, tasked with the investigation of corruption in the former Bophuthatswana government. Justice Leeuw also acted as a judge at the Labour Court of South Africa and the Labour Appeals Court.

Amid the excitement and accolades showered on her, Justice Leeuw is mindful of the vastness of the task ahead. She was humbled by the confidence shown in her and is aware of the challenges facing the judiciary.

She is however determined to make an impact to improve the lot of other women judges and particularly black women judges, because statistics show slow transformation.

Justice Leeuw sits on an International Association of Women Judges (IAWJ) committee responsible for compiling a (training) manual on the Jurisprudence of Equality Programme (JEP) for the South African chapter of the (IAWJ). The manual is aimed at training or having workshops on all laws affecting women and children. She also serves as a member of the Women Missionary Society of the African Methodist Episcopal (AME) which seeks to uplift the lives of women in the country and abroad.

Through the South African Judicial Education Institute, the DOJ&CD will continue to unearth new talent in order to fast track gender transformation in the judiciary.



Government protects children by fighting cyber crime



By Neliswa Demana

Government has vowed to protect children by fighting cyber crime. Recent reports say that children go missing as a result of being lured by cyberspace criminals posing as friends and this often results in their murder. Cyber crime is expected to rise in South Africa (SA) during the 2010 FIFA World Cup.

Cyber crime means any conduct on the internet or connected with the internet or internet usages which constitute a crime in terms of the South African criminal law. Cyber crime can take a variety of forms. The more common ones are:

- Cyber Stalking occurs when a person harasses or threatens a victim through e-mails or chat rooms. Such behavior is frightening and at times can be very dangerous.
- Cyber Terrorism – is when a person steal data and shuts down computers. For example, a disgruntled employee might commit cyber terrorism by shutting down the entire network of his/her formal employer. Cyber terrorists act to devastate instead of doing it for personal gain.
- Cyber Theft occurs when a person steals financial records, national security files, and other confidential or personal information. Often this information is used for identity fraud. A cyber theft is committed as long as the thief accesses a computer without authority and takes data.

Speaking to the media in Cape Town on 16 March 2010, Minister of the Police, Mr Nathi Mthethwa said “we are increasingly worried about incidents of children being abused, murdered and vow to deal with this negative scourge holistically. As government, we have prioritised crime against women and children and one of the proactive steps we undertook is the re-introduction of the specialised units to focus on crimes against women and children.”

The Minister urged parents to prioritise the safety of their children. “We appeal to parents to actively play a role in their children’s safety [and to] particularly monitor whom they chat and socialise with. As police on the other hand we will have to intensify our efforts in apprehending these cold-blooded criminals,” he said.

A draft cyber crime policy was gazetted on 19 February 2010 inviting public comments and the revised integrated document will be finalised during 2010. Government aims to fight cyber crime by developing an integrated and technology based approach. The Justice Crime Prevention and Security (JCPS) cluster will also have increased capabilities to address the growing phenomenon of this crime.

The policy aims to bridge the technological and legal divide. It ensures that South Africa collaborates with other states to support cyber security initiatives. The policy calls for the development of interventions to ad-

dress cyber crimes through partnerships between government, business and civil society.

It further calls for the creation of a National Cyber Security Advisory Council. This council will advise government on policy, promote coordinated public private partnerships and provide oversight regarding the implementation of national cyber security initiatives. Computer security incident response teams will also be established to identify, analyse, contain and mitigate threats.

The dynamic nature of cyber crime requires continuous development of research, renewed capabilities and necessary skills to mitigate these forms of criminality. The policy aims to achieve this by building capacity to address specific requirements of law enforcement, judiciary, security practitioners and civil society. It will also promote a culture of cyber security through the development of programmes that address the specific needs of business, government and users in general.

Implementation of this policy will ensure that SA has:

- Higher rates of investment;
- A safe and secure cyber space;
- Economic growth;
- Identification and protection of critical information infrastructure (This includes all data systems, data bases, networks that are fundamental to the effective operation of government.) ; and
- A Secure e-commerce environment.

Minister Mthethwa indicated that his Ministry is currently interacting with the United Kingdom’s office in the country to further devise various mechanisms, best practices and information sharing in order to deal with this crime, especially those committed against vulnerable groups. He said there are similar challenges facing the two countries and through information sharing, South Africa will benefit immensely in defeating these crimes.



Government vows to improve the quality of life for all



Deputy President Motlanthe and Minister Radebe engaging the public about Government services available to them.

By Neliswa Demana

Government must strive to improve the quality of life of all South Africans, Deputy President Kgalema Motlanthe said at the Human Rights Day celebrations in Sharpeville on 21 March 2010. The theme for this year's celebration was "Working together we can do more to protect human rights."

"Our Constitution enjoins each and every one of us to strive for the creation of non-racial, non-sexist, open and democratic society based on human dignity, equality and freedom. We must provide shelter, basic amenities, education and security," the Deputy President said.

This year marks the 50th Anniversary of the Sharpeville and Langa massacres. Mr Motlanthe said the 21st of March should remind South Africa (SA) of the history that needs to be told objectively for the benefit of the present and succeeding generations. "The fact is that, a common ownership of our history is the basis of nation-building and must never be undermined by any interest group based on the subjectivity of race, religion, class or ideology," he said.

On 21 March 1960, a large group of protesters set out for the local police station in Sharpeville without their pass books. The protesters were planning to offer themselves up for mass arrest. They convened peacefully at the police station where fewer than 20 police officers were on duty. The military attempted to intimidate them into dispersing by using low-flying jet fighters, but the crowd was unperturbed.

The police, having called in reinforcements, set up armoured vehicles in a line facing the protesters. Subsequently, 69 lives were lost and more than one hundred people got injured. The police claimed that some of the protesters started throwing stones and the inexperienced policemen fired on the crowd spontaneously in retaliation. It is these heroes and heroines that were remembered and celebrated during the event for their courage

which ushered democracy in South Africa. "We duly come back to Sharpeville to pay homage to our heroes and heroines," echoed the Deputy President.

Concluding his address, the Deputy President reaffirmed the government's commitment to uphold the Constitution and the rule of law. "Our democratic government undertakes to never ignore the plight of the poor, those without shelter, those without means to an education and those suffering from abuse and neglect," he said.

Speaking at the same event, Justice and Constitutional Development Minister Jeff Radebe said March 21, 1960 is of paramount significance in the struggle against apartheid and needs to be understood in its historical context. "Sharpeville marked, unquestionably, a turning point in the struggle for freedom and liberation in SA," Minister Radebe said.

The Minister thanked the community of Sharp-



eville for attending the celebration. "I think that today's event illustrates that we can work together as government and the community. We need more of these events as they inspire confidence and make us understand who we are and how we are doing in addressing the challenges that our country is facing," he concluded.

Prior to his address, Minister Radebe received the Torch of Peace from the Minister of Basic Education Angie Motshhekg. The Torch is a symbol of the national campaign to combat violence against women and children. The Minister said the Torch will be utilised for the human rights and other programmes that the department will be having.



LAND RESTITUTION PROMOTES HUMAN RIGHTS

“Government is still on track to implement legislation on land restitution as a remedial step to tackle past injustices which were caused by apartheid system”



The people of South Africa are still waiting for the finalisation of their land claims

By Justice Ditshego

As part of the process of giving meaning to a new South Africa which believes in human rights as enshrined in the 1996 Constitution of this country, government had to engage all land restitution stakeholders in a consultative manner.

In estimation, more than 3.5 million people and their descendants have been victims of racially based dispossessions and forced removals during the years of segregation and apartheid. Urban removals were mostly dealt with in terms of the newly repealed Group Areas Act or the Urban Areas Act.

Rural removals consisted of various categories, such as black spot removals, removal of labour tenants, removals from mission stations, removals for the sake of forestry requirements and internal removals in the scheduled and released areas [later to become the homelands].

Legislation applicable to rural removals included the Black Land Act No. 27 of 1913, the Development Trust and Land Act No. 18 of 1936 and the Prevention of Illegal Squatting Act No. 52 of 1951.

The Constitution, which was adopted on 8 May 1996 and amended on 11 October 1996 owes its supremacy to hopeful citizens of this country and fills existing gaps created by both colonial and apartheid dispensations.

Section 21 of the Bill of Rights grants the right to freedom of movement and residence.

Under this category the following rights are protected:

- Everyone has the right to freedom of movement;
- Everyone has the right to leave the Republic;

- Every citizen has the right to enter, to remain in and to reside anywhere in the Republic;
- Every citizen has the right to a passport.

These rights are inextricably linked to the land reform programme which seeks to redress the imbalances of the past. The land restitution process has been one of the key priorities in a democratic South Africa. For a true realisation of the new dawn for democratic state and an impartial system which represents the needs of all South Africans, it was vital for government to craft new legislation.

This exercise was undertaken as a means to compel an inclusive South Africa which will bring new hope for all racial groups and create one nation which is united in its diversity. The Department of Rural Development and Land Reform (formerly the Department of Land Affairs) has been tasked with this responsibility.

This department is responsible for the facilitation of a new land reformation which purports a process of reconciliation and reconstruction and a development process. To speed-up the redress of the past injustices, the government recruited competent land claims commissioners across South Africa.

However, the land restitution has been characterised by a variety of issues which brought into the picture different mechanisms and strategies. Such strategies include bringing all parties on board as well as an idea of the willing buyer willing seller. The willing buyer willing seller concept as the basis of acquisition of land is however currently being investigated.

Restitution of Land Rights Act 22 of 1994

Sections 121-123 of the Interim Constitution of South Africa served as the source and embodiment of restitution, whereby the legislature was instructed to put in place a law to provide redress for the victims of dispossession. This resulted in the enactment of the Restitution of Land Rights Act 22 of 1994.

The aim of the Restitution of Land Rights Act is to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racial discriminatory laws or practices. This act also established the Commission on Restitution of Land Rights and the Land Claims Court.

The Restitution of Land Rights Act stipulates that a restitution claim will be accepted for investigation if -

- (a) the claimant or an ascendant of the claimant who has died without lodging a claim was dispossessed
 - of a right in land;
 - after 19 June 1913;
 - as a result of past racially discriminatory laws or practices;
- (b) the claimant was not paid just and equitable compensation; and
- (c) the claim was lodged not later than 31 December 1998.

Since its commencement, the Act has been amended extensively. The amendments during 1995 and 1996 were based on the structure, powers and procedures of the Land Claims Court. In 1997 amendments were further promulgated to bring the Act in line with the Constitution of the Republic of South Africa, 1996, and to extend the cut-off date for the lodgement of claims. During 1998 the Act was amended to address the



following:

- Secondment of officers to the Commission;
- To further regulate mediation and negotiation and;
- To grant extension on cases which need money for land development.

The most important amendments up to date were those contained in the Land Restitution and Reform Laws Amendment Act, 1999.

These amendments have resulted in the speeding up of the restitution process by doing away with the need for a claim to be referred to the Court where the interested parties have reached agreement as to how a claim should be finalised.

The Minister of Rural Development and Land Reform was authorised under these circumstances to make an award of a right in land, pay compensation and grant financial aid.

Another important amendment is the insertion of section 42E by the Restitution of Land Rights Amendment Act, 2003 (Act No. 48 of 2003), which confirmed that Minister of Rural Development and Land Reform may expropriate land, a portion of land or a right in land for land reform purposes.

Land Claims Court

The Land Claims Court is established in terms of the objectives of the Restitution of Land Rights Act 22 of 1994. This court

intervenes if after completion of the preceding investigation by the Commission on Restitution of Land Rights, it is evident to all parties involved that it would not be feasible to settle a claim by way of mediation and negotiation.

Constituted in 1996, this court serves as a specialist court with an independent adjudicatory function regarding legal disputes arising from the interpretation or application of the Restitution Act, the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception of matters relating to the definition of "occupier" in section 1(1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997).

The Land Claims Court has the same status as the High Court of South Africa, with exclusive powers to determine a right to restitution in accordance with the Restitution of Land Rights Act 22 of 1994. Land Claims Court is entrusted with powers to determine the following:

- Compensation payable in respect of land owned upon expropriation or acquisition of such land;
- To determine a person entitled for land title;
- Appeals to the Land Claims Court may be lodged with the Supreme Court of Appeal or with the Constitutional Court.

In order to speed up the restitution process the Restitution of Land Rights Act was amended to make provision for a fast track procedure. The amendment entitles

claimants to have direct access to the Land Claims Court to deal with a claim. This introduction of direct access option has brought about an improvement in terms of the rate at which claims are finalised. Scope of the Restitution Programme

The injustices of racial dispossessions occurred on three main levels:

- Land dispossession leading to landlessness;
- Inadequate compensation for the value of the property; and
- Hardship which cannot be measured in financial or material terms.

According to the Restitution of Land Rights Act 22 of 1994 the following people qualify for restitution:

- People who lost a right in land as the result of racially based laws and practices since 1913;
- Direct descendants of people who lost a right in land as the result of racially based laws and practices since 1913; and
- Communities and deceased estates who lost a right in land as the result of racially based laws and practices since 1913.

The Restitution of Land Rights Act 22 of 1994 provided the victims of forced removals in South Africa with the opportunity to lodge restitution claims from 2 December 1994. Initially the cut-off date for lodging of claims was 1 May 1998. By adopting the Land Restitution and Reform Laws Amendment Act, 1997, Parliament later extended this date to 31 December 1998.

Forms of Restitution

According to the overriding principle of fairness and equity, each restitution claim must be treated on its own merits. In the case of a valid restitution claim the claimant has the constitutional right to participate in the formulation of a restitution package specific to that claim.

Restitution can take the following forms:

- restoration of the land from which claimants were dispossessed;
- provision of alternative land;
- payment of compensation;
- alternative relief including a combination of the above-mentioned, sharing of the land, or budgetary assistance such as services and infrastructure development; or
- priority access to state resources with regard to housing and land development programmes.

Under possible circumstances, preference should be given to the restoration of land. Compensation received at the time of removal as well as improvements to the property that had taken place since dispossession should be taken into account when determining redress to the claimant.



More land to be redistributed to its original owners

FIRM WARNING AGAINST PUBLIC SMOKERS



By Neliswa Demana and Justice Ditshego

The Deputy Director-General, Mr Vuso Shabalala, issued a stern warning against departmental officials who insist on smoking in their offices and prohibited areas.

Vuso Shabalala said, in circular 27 Of 2010, that officials smoking in the workplace are transgressing the [departmental] policy. "Non compliance will be dealt with according to the law and followed by charges of misconduct. My duty is to apply restrictive measures to ensure a clean and healthy environment for all of us," he warned.

Managers may grant smokers periodic short breaks to have a smoke, however the work flow must not be interrupted and the breaks must not be long and excessive.

This policy is premised on and seeks to give effect to the Tobacco Products Control Amendment Act No.12 of 1999.

The government of the Republic of South Africa introduced Tobacco Products Act 83 of 1993 in realisation of the danger of public smoking to non-smokers.

The purpose was to realign the health system with the democratic values of the South African Constitution.

This Act prohibits smoking in public places and further regulates the sale and advertising of tobacco products in certain respects. It also prescribes what should be reflected on tobacco packages.

Acknowledging that tobacco usage is extremely injurious to the health of both smokers and non-smokers the act provides for the establishment of restrictive measures. It however does not ban smoking as it is considered a widely practiced habit among adults.

Objectives of Tobacco Products Act 83 of 1993

- To enhance and protect the fundamental rights of citizens;
- To encourage existing smokers to give up smoking;

- To discourage the use, promotion and advertising of tobacco products; and
- To reduce the incidence of tobacco-related illnesses and death

The amendments of this Act came into effect on 21 October 2009. These amendments introduce heavy fines which binds all the people who smoke in a public place. However, smokers are allowed to smoke in designated areas.

Smokers are also prohibited to smoke in the workplace defined in the Act as any indoor, enclosed or partially enclosed area in which employees perform the duties of their employment.

The workplace further includes any corridor, entrance, stairwell, elevator, cafeteria, washroom or other common area frequented by smoking employees during the course and scope of their employment. Exception is granted on all areas that are specifically designated by the employer as a smoking area.

Such area may not exceed 25 percent of the total floor area of the public place and must be separated from the rest of the public place by a solid divider and an entrance door on which the sign "SMOKING AREA" is displayed, written in black letters on a white background.

The sign must be 2cm high and 1,5cm in breadth. Ventilation of such area must be directly exhausted to the outside.

- In addition an employer has an obligation to ensure the following:
- Employees may object to smoking in

- the workplace in contravention of the Act without retaliation of any kind;
- Employees who do not want to be exposed to tobacco smoke in the workplace should not be exposed;
- It is not a condition of employment, expressly or implied, that any employee is required to work in any portion of the workplace where smoking is permitted;
- Employees are not required to sign any indemnity for working in any portion of the workplace where smoking is permitted;
- No person under the age of 18 years is present in any portion of the workplace where smoking is permitted.

NOT ALLOWED

NO SMOKING

Smoking is Hazardous to your Health and the Health of others

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Smoking, including the inhalation of second hand smoke, is a major health hazard. The Department of Justice and Constitutional Development has a Smoking Policy in line with the Tobacco Products Control Act, 12 of 1999 as amended to regulate smoking in its work places and enclosed environments. Smoking within a government building is STRICTLY PROHIBITED. ALL Departmental buildings are declared SMOKE FREE and have designated smoking areas.

RESPONSIBILITY OF:

Department:

- Non smoking employees and public should be protected from tobacco smoke within the buildings occupied by the department;
- Smokers (employees and public) must be provided with designated smoking areas;
- Allow smokers periodic short breaks for smoking;
- Smoking Policy of the department must be enforced;
- All non-smokers must be protected against victimisation, discrimination and harassment from smokers; and
- Smoking in non-designated areas must be reported, investigated and be acted against immediately.

Smokers: (Employees and Public)

- Comply with the departmental Smoking Policy and related legislation;
- Smoke only at designated areas;
- Be considerate to non-smokers;
- Workflow should not be interrupted by smoke breaks; and
- Smokers must refrain from excessive smoking during smoke breaks.

Benefits of quitting smoking:

- Reduce the risk of death by 50%;
- Reduce the risk of smoking related illness such as Lung, Cervical and Throat Cancers including Heart Diseases; and
- Improve lung function, blood circulation, reducing fatigue and illness.

• More disposable income.

Non-Compliance:

- Any employee and/or member of the public who fails to comply with the smoking Tobacco Products Control departmental Smoking Policy shall be prosecuted and is liable to pay a fine as determined by a Court of Law, and violate any stipulation within the departmental Smoking Policy.

Reporting procedure

- The employee may approach their immediate supervisor and/or manager to report infringement for immediate action to be taken against the alleged offender;
- The employee must report the infringement of this policy to a health and safety representative of their section to ensure compliance to this policy;
- The employee, manager/supervisor and/or their health and safety representative must report all infringements of this Risk and Quality Management (SHERQ) at National Office on (012) 315 1606

Anonymous reporting

An employee may wish to make a report anonymously in terms of the Protected Disclosures Act (Act 26 of 2000) in instances where the health or safety of an individual has been, is being or is likely to be endangered.

- The employee may report to Director: Integrity Management at National Office. Tel: (012) 357 6277;
- The employee may also report to any member of senior management, the Director-General, the Chairperson of the Audit Committee, and/or
- The National Anti-Corruption Hotline, 800 701 701.

If you want to stop smoking, you can call the following telephone numbers for help:

Departmental Employee Health & Wellness: Hotline (toll-free) 0800 843 397
 Department of Health (012) 312 01666
 Council Against Smoking (011) 643 2958
 Cancer Association of South Africa (021) 689 5347
 Heart Foundation of South Africa (021) 447 4222

Brought by: Chief Directorate: Risk Management

MORE THUTHUZELA CARE CENTRES TO TURN VICTIMS INTO SURVIVORS



Minister Radebe unveiling the plaque of the centre.



Victim friendly waiting rooms

By Neliswa Demana

The Justice and Constitutional Development Minister Jeff Radebe officially opened the Karl Bremer Thuthuzela Care Centre. The launch was, among others, attended by Justice and Constitutional Development Deputy Minister Andries Nel, the National Director of Public Prosecution Advocate Menzi Simelane, the United States Consul General, Ms A Mayberry and Advocate Thoko Majokweni, who is heading Sexual Offences and Community Affairs from the National Prosecuting Authority.

The Thuthuzela project is led by the National Prosecuting Authority's Sexual Offences and Communities Affairs Unit in partnership with various departments and donors. It was initiated as a response to the urgent need for an integrated strategy for prevention, response and support for rape victims.

The Centres are located in public hospitals closer to community where rape incidences are particularly high. A Thuthuzela Care Centre is a one-stop facility that has been introduced as a critical part of the country's anti-rape strategy. It aims to reduce secondary victimisation, improve conviction rates and reduce the cycle time for finalisation of cases.

The Thuthuzela's integrated approach to rape care is one of respect, comfort, restoring dignity and ensuring justice for children, women and men who are victims of sexual violence. Upon reporting a case, a victim of rape is removed from crowds and intimidating environments, such as a police station, to a more victim-friendly environment before being transported by police or an ambulance to the Thuthuzela Care Centre at the hospital. Enroute, the victim receives comfort and crisis counseling from a trained ambulance volunteer or police officer.

Speaking at the event, Minister Radebe reiterated government's commitment to reduce the level of sexual offences in our society. "The Thuthuzela Care Centres are some of the important measures put by government to protect victims of sexual offences. This centre is therefore a symbol of hope because it has such a significant impact on the lives of the victims and their children," he said. According to the Minister, the spirit of the centres, is one of international collabora-

tion. "It brings together men and women from many different communities and backgrounds to raise awareness on the protection of vulnerable groups. It also acts as an educational tool to encourage reflection and discussion," the Minister explained.

The Minister expressed his confidence in the capacity of the inter-departmental team that assists victims of rape at these centres. The centres are facilitated by a highly skilled inter-departmental management team comprised of the Departments of Justice and Constitutional Development, Health, Education, Treasury, Correctional Services, Police, Social Development and designated civil society organizations.

Various donors have also contributed to making the model child-friendly, through offering technical expertise for the installation and availability of special equipment and furniture. These include two way mirrors, posters CCTV, drawings, and anatomically correct dolls comprising five family members, to help prepare children to appear in court, should that become necessary.

"This Interdepartmental Management Team has made this victim support initiative a success."

"There is no doubt in my mind that there is a very significant level of co-operation between the key criminal justice players. We need to continue this strong interagency co-operation and at the same time encourage greater interaction with the non-criminal justice players," explained Minister Radebe to the 300 delegates who attended. Assuring the public that government was committed in fighting sexual crimes, Minister Radebe said the Criminal Justice System now recognises that whatever the circumstances, whether or not the victim and perpetrator are known to each other, rape is a crime which will be treated with the utmost seriousness.

In conclusion, the Minister said he was pleased with the opening of the centre. "I am even more delighted that there are already 21 centres countrywide to provide the necessary support. It sends a clear message to victims of sexual offences that this government is committed in providing support and will encourage victims to come forward to ask for help," he said.

The Thuthuzela model has already improved the process of reporting and prosecuting rape and other sexual offences, and reducing secondary trauma to survivors as the entire process takes place in a dignified and friendly environment. Over the years it has indeed assisted in turning victims into survivors.

Services offered at the Thuthuzela Care Centers

- Welcome and comfort from a site co-ordinator or nurse.
- An explanation of how the medical examination will be conducted and what clothing might be taken for evidence.
- A consent form to sign that allows the doctor to conduct the medical examination.
- A nurse in the examination room.
- After the medical examination, there are bath or shower facilities for the victims to use.
- An investigation officer will interview the survivor and take his/her statement.
- A social worker or nurse will offer counseling.
- A nurse arranges for follow-up visits, treatment and medication for Sexually Transmitted Infections (STIs), HIV and AIDS.
- A referral letter or appointment will be made for long-term counseling.
- The victim (survivor) is offered transportation home by an ambulance or the investigating officer.
- Arrangements for the survivor to go to a place of safety, if necessary.
- Consultations with a specialist prosecutor before the case go to court.
- Court preparation by a victim assistant officer.
- An explanation of the outcome and update of the trial process by a case manager.



Judiciary Urged To Apply The Law Impartially



Judge Legodi encouraging magistrates to always strive for justice in their work

By Neliswa Demana

Judge Phatudi Legodi urged Regional Court magistrates to apply the law impartially. Speaking at the Regional Court conference for court and case flow coordinators, the judge said, “We ought to apply it [the law] without favour or prejudice. We are judicial servants who undertook to administer justice to all persons alike without fear, favour or prejudice in accordance with the Constitution and the law.”

The three-day conference brought together Regional Court magistrates from the whole country with the intention of developing best practices for their courts, especially with regard to civil court and case flow management. It further aimed to interrogate the integration and coordination of criminal and civil case flow management systems. “Everyone has the right to have any dispute that can be resolved by the application of the law, and be decided in a fair public hearing before a court,” Judge Legodi said.

According to the Judge, accountability is a framework for judicial officers to be part of society. “Section 165 of the Constitution states that we are given powers to deal with judicial matters, but we have to be accountable in dealing with these matters,” Judge Legodi reminded the magistrates. He said judicial officers are not the law but servants who undertook an oath to uphold and protect the Constitution and human rights. “As our courts become more and more accessible, we also ought to be more and more accountable,” he emphasised.

The judgements passed through courts are a way of accounting and communicating to the public, said the Judge. “We run the risk of society losing confidence in the judicial system if we give unreasoned judgements. The quality of our judgements and quick delivery of our judgements is the key in ensuring that more and more people find it convenient to bring their disputes to our courts,” he explained.

Discussing the judicial system, Judge Legodi said efficiency, effectiveness and accessibility of courts give the system credibility. Judicial education, the Judge said, plays an important role in the effectiveness of the system. “Through continuous education you get empowered with knowledge and skills. Judicial education is also a key in fast tracking racial and gender requirements as stipulated in section 174 of the Constitution.”

Court Efficiency Director Dawood Mahomed reiterated the department’s commitment in supporting the implementation of civil jurisdiction



Some of the magistrates who attended the workshop

tion in Regional Courts. “We are here today to discuss issues that will benefit our people. Our role as the department is to support the court and assist the judicial officers to dispense justice as quickly as possible,” he said

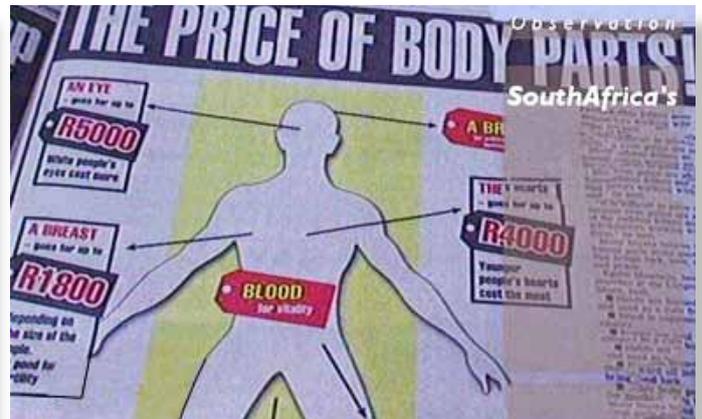
The department, according to Mr Mohamed, is working closely with the judiciary in making sure that the implementation of civil jurisdiction in Regional Courts is effective and efficient. “We have developed case flow management guidelines for the lower courts. The department has provided digital recording and video postponing systems so that our courts function properly. Our courts must be modernised so that justice is fast paced. We are also embarking on a programme that will train the clerks and registrars in our courts,” he explained.

The Public Education and Communication Chief Directorate is working with the Court Efficiency Directorate in marketing civil jurisdiction in Regional Courts. “The people who will be requiring our services should be fully aware of what to expect,” Mr Mohamed said. In conclusion, Mr Mohamed said the department was committed to working with judicial officers. “We are going to continue working together so that we have a strong relationship. This close relationship will close the gap between the judiciary and the department,” he said.



Court Efficiency Director Dawood Mahomed assuring magistrates that the department was committed in supporting their work so that South Africans receive justice.

Muthi Killings Undermine Human Rights



By Neliswa Demana

The right to life is one of the fundamental human rights for all of us, Minister for Women, Children and Persons with Disabilities Noluthando Mayende-Sibiya said at a ritual killing indaba on 22 March 2010 in Pretoria.

“We now have a Constitution which protects human rights for all of us. The right to life is one of the fundamental human rights that we need to protect at all cost. We cannot allow violence and crime to undermine our right to live in a free society and women’s rights to gender equality,” Minister Mayende-Sibiya said.

The Minister reminded the delegates about the shocking incident of the disappearance and gruesome murder of a young girl from Soshanguve (Pretoria), Masego Kgomo.

“One form of violence against women and children that has been reported is that of murder and extraction of body parts to be used for muthi purposes.

This is a difficult crime to address because it is riddled with myths and beliefs. We want to address the root causes of these killings and the factors that encourage such crimes,” she said.

Minister Mayende-Sibiya said that the current legislation, needs to be strengthened or reformed to provide better protection for victims of such crimes. She also called for adequate punishment of perpetrators through the criminal and civil justice system.

“A person who kills and extracts body parts has not only committed murder, but has also violated human

rights. We should have another category of reporting that describes the extra crimes and the motive for such incidents,” the Minister explained.

Mrs Mayende-Sibiya urged the Justice, Crime Prevention and Security (JCPS) cluster to take into consideration the barbaric motives of these crimes and apply appropriate punitive measures. “We need to ensure that the heaviest sentences possible are imposed on people convicted of these crimes,” she said.

The Ministry for Women, Children and Persons with Disability is of the view that those who buy and use the end products of muthi killings should also be prosecuted.

“The Human Tissue Act deals with the handling of human tissues, but we have to find an additional legislative framework that will enable us to deal decisively with those who buy these body parts and imithi derived from them,” she told the delegates.

Minister Mayende-Sibiya reaffirmed government’s commitment in fighting crime. “Contact crimes between people who

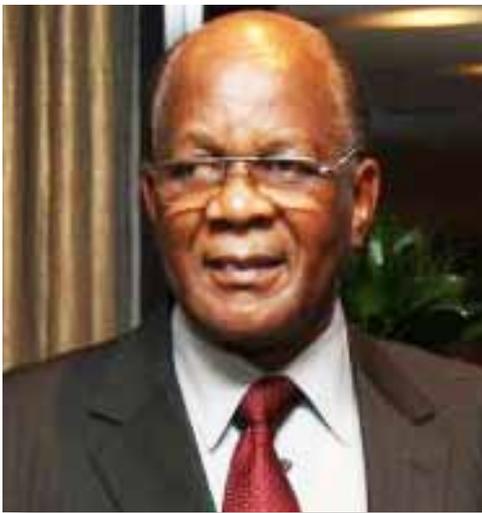
know each

other contribute significantly to our high crime statistics. We have to work with traditional healers to ensure that we do not incite these crimes.

In concluding her remarks, Mrs Mayende-Sibiya emphasised that this government believes in the protection and promotion of African traditional knowledge. Our cultural rights and beliefs as Africans are entrenched in our Constitution and they need to be protected.”



3. Life
Everyone has the right to life.



Judge President

Somyalo a pioneer to the judiciary

By Neliswa Demana

Retiring Eastern Cape (EC) Judge President Cecil Mpho "Doc" Somyalo was honored for his contribution to the country's judiciary. Justice and Constitutional Development Minister Jeff Radebe said "Judge President Somyalo emerged from very humble beginnings to be one of the pioneers of our esteemed judiciary."

The Minister applauded the Judge President's courage and passion in re-organising the judiciary system and ensuring that it is geared towards the dispensation of true justice.

Minister Radebe quoted Somyalo's words when he accepted his appointment as the EC Judge President saying "Rightly or wrongly, the perception among blacks is that justice will not be done to them if whites are on the bench. That is why they would rather go for kangaroo courts, tolerating whatever form of justice they dispense."

Judge President Somyalo was appointed to a vast division which is comprised of the former territories of the defunct Transkei, Ciskei and Republic of South Africa.

He oversaw the rationalisation of the high court division that is comprised of three high courts namely; Mthatha established for Transkei territory, Bhisho High Court for the Ciskei territory and Grahamstown for the Republic of South Africa.

Acknowledging the difficult task Somyalo was faced with, the Minister said "Judge President Somyalo managed the transition and unified the separate three high courts into a single institution that today help foster unity amongst judges who were previously kept apart by the divisive policies that applied at the time."

The Judge President's knowledge and dedication saw him play a profound role in the processes that led to the enactment of the Interim Rationalisation

of the High Courts Act, 2001. The Act aims to make provision for the interim rationalisation of the areas of jurisdiction of the High Courts; and to provide for matters connected therewith.

Judge President Somyalo firmly believed and publicly said the transformation of the judiciary was important because people will not believe that justice will be done for as long as they see their own injustice mirrored in the judiciary.

Applauding the Judge President, Minister Radebe said "Today we celebrate a son of the soil, who proved that to be black is not a natural handicap.

For this reason, Judge President Somyalo became the first attorney amongst both black and white attorneys in South Africa to be appointed a judge."

Radebe said Somyalo lead the EC division with excellence, diligence, humility and helped to unite judges across age,

race and other differences. "That is why those of us serving in the Judicial Service Commission are inspired by his legacy and we cannot afford to ignore society's transformation challenge as we appoint judges. We cannot hide under the excuse that black judges are incapable," the Minister said.

The Minister concluded his address by wishing Somyalo and his wife well into retirement, saying that his legacy will continue to enrich the judiciary and posterity.

"Indeed you have helped lay down the stone, that being our constitution, to where it belongs, right at the corner of our democratic dispensation.

I hope your children and the rest of your family, relatives and friends will cherish the moment to have you around them and share with them your invaluable insight into the various matters of life," Minister Radebe concluded.



Above: Retired Judge President C.M. Somyalo, Mrs Lungi Somyalo and Minister of Justice and Constitutional Development Mr Jeff Radebe



From left: Judge Vuka Tshabalala, Minister of Justice and Constitutional Development Jeff Radebe and Chief Justice Sandile Ngcobo

Judge Vuka Tshabalala bows out with dignity

By Justice Ditshego

Judge Vuka Tshabalala received dignified accolades during his farewell function held in Durban's Hilton Hotel on 17 April 2010. As the former President of the KwaZulu Natal bench and first black advocate in the then province of Natal, Judge Tshabalala was praised by different speakers for his selfless and down to earth character which earned him respect from the entire South African judiciary.

The Programme Director Ms Brigitte Shabalala acknowledged the presence of all dignitaries in attendance and further made a brief profile of all the speakers respectively. After recognising the role played by the church in the liberation of South Africa, Reverend Mgojo opened the function with prayer.

The Minister for Justice and Constitutional Development Mr Jeff Radebe described Judge Tshabalala as a giant of the jurisprudence whose life is worth celebrating. "In celebrating his life we are inspired to emulate this giant of our jurisprudence. Practising law during his days was not easy but he did that magnificently," said the Minister.

Minister Radebe added that this is not just a farewell but a reflection for the followers that if there is a will there is a way. Judge Tshabalala according to the Minister represented the undying spirits as both the first black advocate and first black Judge President for KwaZulu Natal bench.

"When the Tshabalala family moved to Natal in 1938 little did we know that the Transvaal laws will serve as the laws for the day. But Judge Tshabalala decided to grace our profession with his industrious and impeccable mind."

Judge Tshabalala's leadership qualities were credited as the Minister praised him for ensuring that South Africa successfully conducts the general elections and by-elections. "This was during Judge Tshabalala's previous position as the Chairperson of the Independent Electoral Commission (IEC)." In conclusion Minister Radebe extended his appreciation to the former Judge President for his role in promoting the use of indigenous languages in courts and cited The

State v/s Matomela case as an example. Like our icon Madiba, the Minister said, "You have shown us that to retire means to revalue and play a significant role in society.

"Let me reiterate the words which were said during the former Chief Justice Pius Langa's farewell that we will always call on the Judge for assistance while in retirement. Good soldiers do not retire. As a champion for justice you will not decline our request in times of need. Baba Tshabalala, Mshengu, Ayihlale phansi yothe ilanga (You may now sit down and enjoy the sun)" Chief Justice Sandile Ngcobo described Judge Tshabalala's tenure as a remarkable period of service for the people of South Africa and reiterated the need to value the lessons that he so generously tendered.

"As the first black Judge he had to suffer the injustices of our past. As we pay tribute to him, we have to respect those who have worked and remember that he fought for our country. He was denied freedom and justice and in the process he lost his wife," remarked the Chief Justice.

Chief Justice Ngcobo praised Judge Tshabalala for his relentless commitment to the racial transformation of the KwaZulu Natal bench. "As you step down, the racial composition of the KwaZulu Natal bench has changed drastically. When you took office, there were tensions but you left one of the most harmonious benches in the country. We must not undermine your office for imparting relevant information to the media about the courts. This was as a result of your open door policy towards the media." The Chief Justice also noted Judge Tshabalala's perseverance and persistence which made a significant contribution to the judiciary.

"You reminded us that judicial independence does not mean judicial isolation. Judges must not only be independent but be seen as independent and making decisions without favour or prejudice. You are departing our judiciary during a crucial period. The judiciary is facing criticism that often goes beyond fair judgments of the court. All of this is done in the name of democracy," said the Chief Justice.

Without faith in the rule of law said the Chief Justice, citizens will no longer be assured that their rights will be respected and businesses will not be assured that their contracts will be honoured.

"The humanity that you have taught us will undoubtedly help us to resolve judicial tensions in a democratic and constitutional manner. You are where you are today because of the support you received from your family," the Chief Justice concluded.

Responding to all the accolades from the speakers, Judge Vuka Tshabalala admitted that a certain level of symmetry was achieved in the appointment of judges in the province. "When I took over there were 21 judges and now there are 28 judges. It shows us that our work as the judiciary has expanded. I would like to thank all my colleagues for their support and cooperation. I have been fortunate because the Justice Department saw it fit to organise for me the function of this magnitude," said Judge Tshabalala. He also promised to compile all important facts raised during his farewell and write a book. He said "I will sit down and compose all you said about me today and write a book. It is important to document the things I achieved as a human being."

To strengthen family ties, Judge Tshabalala said at the moment he has 10 grand children with whom he will have time to share moments and play with. He stated that judges are called honourable because they are supposed to be upright citizens of the country and deal with issues in an equal manner. "I have put people first in my time as a judge and all judges should be available so that people may realise that they belong to society."

Acting Judge President Justice Msimang made the vote of thanks while Judge Mdondo rendered two musical items in closure. Amongst the dignitaries were also the KwaZulu Natal Premier Dr Zweli Mkhize, the honourable Mayor of Ethekwini Municipality Mr Obed Mlaba, Judges President Bernard Ngoepe and John Hlophe.

**NATIONAL
HUMAN
RIGHTS
DAY**

BILL OF RIGHTS

**21
MARCH**

CELEBRATING 15 YEARS OF FREEDOM AND HUMAN RIGHTS

1. Equality

Everyone is equal before the law and may not be discriminated against.

2. Human dignity

Everyone has basic human dignity which must be respected.

3. Life

Everyone has the right to life.

4. Freedom and security of the person

You may not be physically detained without trial or abused in any way.

5. Slavery, servitude and forced labour

You may never be subjected to slavery or forced labour.

6. Privacy

Your right to privacy includes your body, home and possessions.

7. Freedom of religion, belief and opinion

You have the right to think, believe and worship however you may choose.

8. Freedom of expression

You have the right to express your opinion. No person is allowed to make expression of hatred.

9. Assembly, demonstration, picket and petition

You have the right to peacefully assemble, demonstrate and protest.

10. Freedom of association

You have the right to associate with anyone.

11. Political rights

You may form a political party, run for office and vote for any party in free and fair elections.

12. Citizenship

No citizen may be deprived of citizenship.

13. Freedom of movement and residence

You have the right to enter and leave the republic at will.

14. Freedom of trade, occupation and profession

You have the right to choose any legal trade or occupation freely.

15. Labour relations

Every worker and employer has the right to organise and negotiate to further their aims.

16. Environment

You have the right to live in a protected, healthy environment.

17. Property

No-one may be deprived of property, except in terms of law of general application.

18. Housing

You have the right to access adequate housing.

19. Health care, food, water and social security

You have the right to health care, adequate food and water and social security.

20. Children

Every child has the right to a name, nationality and protection from abuse and exploitation.

21. Education

You have the right to a basic education in the official language of your choice.

22. Language and culture

You have the right to use the language of your choice and practise your own culture in line with the Bill of Rights

23. Cultural, religious and linguistic communities

You have the right to form, join and maintain cultural, linguistic and religious groupings of your own choice.

24. Access to information

You may access any information held by the state for the protection of your rights.

25. Just administrative action

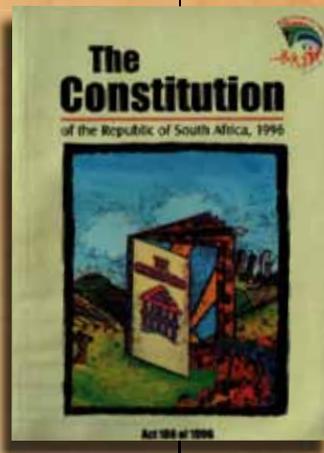
You have the right to administrative action that is lawful, reasonable and fair.

26. Access to courts

You have the right to resolve legal disputes in a court or another impartial tribunal.

27. Arrested, detained and accused persons

When arrested, you have the right to remain silent, to be brought before a court within 48 hours and the right to legal representation.



Note: All these rights can be limited if it is fair to do so. For more information, see Chapter 2 of the new Constitution. This is a simplified version of the Bill of Rights



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



Cross-boarder cooperation for children's safety

By Neliswa Demana

The South African government is working hard to ensure that South African children receive the best education. However, this is not the case in Zimbabwe as children who are living along the border cross into South Africa (SA) to attend school during the day or even to see a doctor. This is a great risk to their personal safety.

In an effort to help these children, officials from 15 countries discussed ways to strengthen cross-border co-operation for the protection of children at risk and to better regulate inter-country adoption in Pretoria on 23 to 25 February 2010.

Speaking at the conference, Chief Family Advocate, Ms Petunia Seabi said the South African government was in talks with Zimbabwean authorities to set up protocols to protect these children. She said neither of the governments would prevent children from accessing services across the border, but would rather try to address the risks the children take while crossing the border unaccompanied.

"The National Programme of Action for children in South Africa deals with all policies and plans to promote and implement the treaties. It also coordinates the efforts of different government departments and Non-Governmental Organisations," she said.

Adv Seabi said an efficient and effective method of cross-frontier child protection will uphold the child's best interest. "A proper method will provide mechanism; enhance collaboration and cooperation between party states in safeguarding the welfare of children. It will also ensure the applicability of the laws of the country of origin in foreign countries," she explained.

Although governments have ratified the African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child, many countries have yet to ratify the Hague Conventions pertaining to children, which

seek to standardise international law in the best interests of the child and provide a comprehensive legal framework for the cross border movement of children between countries.

The four modern Hague Conventions on children include:

- Hague Convention of 1980 on International Child Abduction;
- Hague Convention of 1993 on Inter-country Adoption;
- Hague Convention of 1996 on the Protection of Children; and
- Hague Convention of 2007 on the International Recovery of Child Support.

In affirming South Africa's commitment to the Convention, Ms Seabi said "The Convention is enforceable between SA and 33 countries. The Convention also enables us to have an efficient and effective method of cross-frontier child protection,"

Deputy Secretary-General for the Hague Conference on Private International Law Professor William Duncan said "The African child is the Continent's most precious resource. Many African countries are reforming their national systems of child care and protection. However, because of the increasing movement of families and children across borders, the protection of the child can no longer be secured by national action alone."

The recent movement of large numbers of unaccompanied minors between Zimbabwe, South Africa and other States in the Region, with the prospect of further movements around the 2010 FIFA World Cup, underlined the urgency of the situation.

Prof Duncan said concerted action by two or more states may be needed to protect children, who are the victims of sale, trafficking or abduction, unaccompanied minors who in large numbers are

crossing country borders. "In all these cases inter-State co-operation is needed to track, find, protect and in some cases repatriate vulnerable children," he said.

The seminar, according to Prof Duncan, was an important beginning but will need follow-up at the national and regional levels if the spirit of co-operation demonstrated by the participants is to be translated into permanent and workable structures, through the Hague Conventions and by other means, for inter-State co-operation in child protection.

The Hague Conference on Private International Law is an inter-governmental organisation based in the Netherlands working for the harmonisation of rules of private international law. It currently has 69 Members located on every continent and over 130 States party to one or more Hague Conventions. The Hague Conference seeks to build bridges between various legal systems, while respecting their diversity. In doing so it reinforces the legal security of private persons which is essential in this age of globalisation.

"States will need assistance in developing Central Authorities to support co-operation," Mr Duncan said. South Africa has already established a central authority.

The authority is headed by Ms Seabi. The Central Authority in South Africa applies, on behalf of the applicant, to the Central Authority of the country to which the child has been taken.

The requested Central Authority or their designated representative should on receipt of the application, take immediate steps to:

- Discover the whereabouts of the child;
- Prevent any further harm to the child;
- Attempt to secure the voluntary return of the child, otherwise initiate or facilitate judicial or administrative proceedings in that country with a view to obtain the return of the child to South Africa or the securing of rights of access to the child; and/or
- Provide or facilitate the provision of legal aid and advice.

The Central Authority will assist in tracing a child if a child has been wrongfully removed from South Africa or retained in South Africa. The Family Advocate will study the application and if the application is well founded in terms of legislation, her office will effect proceedings to locate and return the minor child, to the right place



JUSTICE Across the Nation



KZN raises awareness on Sexual Offences Act

By Noma Chiliza

In the last two weeks, the KwaZulu-Natal (KZN) Regional Office embarked upon an awareness campaign around the province to fight against sexual offences. In one of the KZN Regional Office meetings, the Provincial Integrated Justice Forum (PIJF) and the National Prosecuting Authority drew the attention of the members to the rising numbers of sexual offences cases.

According to their statistics, children under 12 are often victims of these offences. In conjunction with other cluster departments, the Justice and Constitutional Development decided to organise awareness campaigns in areas that are most affected to inform the communities of available legislation that could assist in dealing with these offences. Among these, is the Sexual Offences and Related Matters Act which was passed in December 2007 and is being gradually implemented.

The Act criminalises all forms of sexual abuse or exploitation, repeals certain common law sexual offences and replaces them with new offences. It extends statutory sexual offence to cover everyone, irrespective of their gender. It also affords the complainants of sexual offences the maximum and least traumatising protection that the law can provide hence promoting the spirit of Batho Pele in respect of service delivery in the criminal

justice system.

This Act places an obligation on the Department of Justice and Constitutional Development to keep the national register for sex offenders in order to establish a record of persons who are or have been convicted of sexual offences against children and persons who are mentally disabled so as to prohibit such persons from working with or have access to authority or supervision over or care of children or persons who are mentally disabled.

The Act also provides for equality of services, which essentially means that all victims of sexual offences, regardless of where they come from, should be accorded the same services. In KZN, there is at least one court at each seat of the Regional Court that is equipped to hear sexual offences involving child victims or those who are mentally challenged. The court is especially equipped with a CCTV camera that allows the witness to give his/her evidence in a room separate from the offender. The victim will also have the services of an intermediary to assist him/her to give evidence in court.

The districts of the Department of Education welcomed and participated in this awareness campaign. The first sexual offences campaign was held in KwaMashu at Bester

Hall, followed by another at eMlazi Cinema and then Pietermaritzburg at Plessislaer area. Different departments and organisations were part of this campaign and provided learners with different material. The KZN Premier's office was part of these campaigns as well. Learners were given an opportunity to ask questions during these campaigns.

Educators requested that the DOJ&CD assist by also visiting schools to educate learners on these different pieces of legislation. All the schools that attended were given posters on Sexual Offences Act to put up at their schools notice boards and passages.



North West Regional Office Celebrates Human Rights Day

By Isaac Mokaila

In celebrating Human Rights Day, the North West Regional Office and Chapter 9 institutions held a public awareness campaign on the Promotion of Equality and Unfair Discrimination Act at Schweizer- Reneke on 23 March 2010. This campaign was targeting farm workers.

Representing the Regional Head, Ms Raesibe Tladi indicated that equality legislation was brought into operation to ensure that all people are treated equally irrespective of gender and



race. She also educated community members about the process to register a case at the Equality Court. "Last year, there were sporadic incidents of racism reported in the areas of Ventersdorp and Schweizer- Reneke where local white medical practitioners subjected black patients to different kinds of medical treatment and separate consulting rooms as compared to their white counterparts.

Due to the prevalence of inequality practices and incidents resulting in violation of human rights, the department decided to celebrate Human Rights Day at Schweizer- Reneke to continue educating members of the public about the Equality Act. All our courts in the region have been designated as Equality Courts," she said.

Magistrate Tshadi Leshomo encouraged members of the public to lodge equality cases at Equality Courts and encouraged them to visit these courts regularly.

"Anyone exposed to, or experiencing unfair discrimination, hate speech and harassment is entitled to lodge a complaint in the Equality Court," she said.

Mamusa Local Municipality Mayor, Kenneth Tshipelo, applauded the department for celebrating Human Rights Day at Schweizer- Reneke. "Personally, I believe that after this event our people in the farming areas will be in a position to lodge equality cases. It is disturbing that there are farmers who still ill-treat our people. The majority of victims are farm workers who depend heavily on these farm owners for financial assistance," he said.

Mr Kenneth Mogatswa, Manager: Legal Aid South Africa, also encouraged members of the public to report equality cases and assured them free representation. If you feel that you have been victimised, feel free to visit our office in Vryburg and we will assist you accordingly," he said.

Minister Jeff Radebe's vision of a caring justice system

Cape Town - Minister of Justice & Constitutional Development Mr Jeff Radebe says that his department plans to conduct an annual survey of victims of crime in a bid to build a more effective and caring criminal justice system.

Briefing the media about the government's plans for the Justice, Crime Prevention and Security (JCPS) cluster for this year, Minister Radebe said while contact crimes had decreased over the years, some crimes such as hijacking had increased and since 1998 there had been a dramatic rise in the number of South Africans that felt that crime was rising.

As a result, the independently conducted survey would look South Africans' perception of crime, assistance from authorities and the system. The Minister said his department would also establish three one-stop centres for victims of crime and violence while moving to improve the quality of support services rendered to those that fall victim to crime.

In addition, five more Thuthuzela Care Centres would be established in the 2010/2011 financial year. The centres fall under the National Pros-

ecuting Authority's Sexual Offences and Community Affairs unit and offer support and counselling to rape victims. The Department of Justice and Constitutional Development was also setting up a national register for sexual offenders. Deputy Justice Minister Andries Nel said that the first phase to put new convictions on the register had been completed, but pointed out that the department was battling to add previous convictions to the register, as the police database did not necessarily provide details of victims. "We are working very closely and speedily with police to try and harmonise our database as part of the implementation of the criminal justice system," said Deputy Minister. – **BuaNews**



Court backlog minus 18 000 cases - Minister Jeff Radebe

Cape Town - A project by the Department of Justice and Constitutional Development (DOJ&CD) to tackle the backlog of court cases resulted in the finalisation of 18 271 cases between November 2006 and December 2009, Minister Jeff Radebe said.

Briefing the media in Parliament, the Minister said there were currently 45 backlog courts in operation countrywide. During this year, the project would be rolled out to more regional courts as well as a number of district courts in all provinces, he said.

While police were currently increasing the number and quality of detectives in their service, which would result in more trial-ready cases, Chief Justice Sandile Ngcobo was also looking at ways to modernise court op-

erations in such a way that cases could be expedited, said Minister.

He pointed to a judges' conference in July where it was mooted that presiding officers of courts must be in control of their court, and not be held at the mercy of the accused or state, so that dates aren't pushed back and cases delayed unnecessarily.

Added to this, the National Director of Public Prosecutions Menzi Simelane had also recently issued a directive to all prosecutors that they must be in court prosecuting cases, said Minister.

Section 49 says police are allowed to use lethal force only if their lives or those of innocent bystanders are in danger.

The regulations for the licensing of liquor trading places would also be tightened to reduce substance abuse, which remains a major factor in the perpetration of crimes such as murder, assault and rape, Minister said.

The department is still working on finalising the Criminal Justice Review which aims to revamp the country's justice system.

The department would reveal more details of the review in the near future, said Minister, adding that "but I can indicate to you that it is time for action, not a time for research and policy".

– **BuaNews**

Justice tackles inequality and unfair discrimination

By Neliswa Demana

The DOJ&CD's held a Western Cape (WC) Provincial Equality Court Indaba. "The objectives of this Indaba are to engage our officers so that we hear their views on the implementation of the Act and the operation of the Equality Court," WC Regional Head Advocate Hishaam Mohamed said.

The Regional Head was welcoming delegates and outlining the purpose of the event. "We have called clerks and managers here to listen to their challenges on the day-to-day running of the courts. We hope that through our interaction we will be able to identify challenges affecting the smooth running of these courts. Thank you all for making time to participate in this Indaba," he said.

Delivering his keynote address, Honorable Justice Vincent Saldanha from the WC High Court, labeled his speech: Is equality an illusion? "In South Africa equality is essentially a social and political concept. Equality is the scandal of our past but is a foundational value of our current Constitution," he said.

Explaining the negative effects inequality and unfair discrimination have on society, Justice Saldanha said South Africans know inequality and unfair discrimination from real life experiences. "We feel inequality when we see poverty, homelessness, hunger, and fear. We are one of the world's most unequal societies in the world. If you drive in Cape Town from the airport to the city centre, you will see inequality. There you see so much poverty and wealth," he said.

He applauded the South African Constitution for prohibiting inequality and unfair discrimination. "With legislation and Section 9 of the Constitution there would be nothing to prevent the ghost of the apartheid era from becoming a reality again." He urged Equality Court officials to be accessible to the public.

He said these courts should not be in the normal court premises but rather in community halls. "These courts should be informal, in community halls and they should be people friendly. The judges in these courts should take off

their gowns, but this does not mean that they should not follow the law." Zomzi Macala from the South African Police Service (SAPS), urged the DOJ&CD to train all stakeholders who must implement the Act. "We also recommend that the community be educated about the Equality Court. The reason the court is not functioning to its full potential is because people do not know about it," she said.

Ms Macala suggested that the court system must be user-friendly. "The system must give people hope that their problems will be resolved. People must trust that we are here to help them. Summarizing the proceedings of the day and giving a way forward Advocate Samuel Rasiuba from the department Constitutional thanked the delegates for their inputs in the Indaba.

He said the department was planning to decentralize the training of officials who will work in the Equality Courts. He urged magistrates to "apply with the Justice College for training. We cannot

train people who are not interested in their job. Please submit your names to the college so that training can take place," Adv Rasiuba said.

He also mentioned that the department is in talks with the SAPS to train police on the Act. Speaking to court managers and magistrates, Adv Rasiuba asked them to make sure that the right court statistics are given. "Please ensure that the clerks give the National Operations Centre the right information. This will help when compiling our statistics and later serve as a yardstick for performance."



Top law students awarded the 2009 Ismail Mahomed prize for best law reform essay

The South African Law Reform Commission, in partnership with Juta & Co, has awarded the prestigious Ismail Mahomed Prize for Law Reform for 2009 to two law students at a ceremony held at the Constitutional Court in April 2010.

The aim of this competition, which is an annual event at the SALRC, is to encourage critical legal writing by students, while generating new innovative ideas for the reform of the law. The initiative also seeks to encourage legal scholarship and public dialogue on the link between law reform, human rights and the rule of law. The Ismail Mahomed Prize for Law Reform is a joint venture between the South African Law Reform Commission and Juta & Co. The competition was established in honour of the late Chief Justice and former Chairperson of the South African Law Reform Commission, Justice Ismail Mohamed.

The 2009 winners are Mr Theo Steyn, an LL.M graduate from the University of South Africa, for his essay entitled "Vat and e-Commerce - Still looking for answers?"; and Mr Jonathan Parsonage, an LL.B graduate from the University of Cape Town for his essay entitled "The shape of things to come? Ubuntu as a framework for the imposition of punishment in South Africa". Both winners received gift vouchers worth R10 000 each, sponsored by Juta & Co.

The competition was launched in September 2009 and LL.B and LL.M students registered at any South African university were invited to submit essays proposing the reform of any area of the law.

A panel consisting of Judge Willie Seriti (Vice-Chairperson of the SALRC and Chairperson of the Panel), Advocate Thuli Madonsela (Public Protector of the RSA), Professors Cathi Albertyn (Part-time Member, SALRC and Professor at WITS), Thandabantu Nhlapo (Deputy Vice-Chancellor, University of Cape Town), Managay Reddi (Dean: University of KwaZulu-Natal), and Pamela Schwikkard (Part-time Member: SALRC and Dean: University of Cape Town), and Ms Yasmin Sooka (Executive Director: Foundation for Human Rights) evaluated the 20 essays received.

The panel decided that the prize for this competition be awarded jointly to Messrs Steyn and Parsonage. Among the dignitaries present at the ceremony were the Minister of Justice and Constitutional Development, Mr Jeff Radebe, Madame Justice Yvonne Mokgoro, former judge of the Constitutional Court and Chairperson of the SALRC; Mrs Mahomed, the wife of the late Chief Justice; and Mr Enver Mahomed, the brother of the late Chief Justice with his family.



Mr Michael Palumbo, Secretary (Chief Executive Officer); Mr Tembeka Ngcukaitobi and Justice Yvonne Mokgoro (Chairperson)



Advocate Thulisile Madonsela



Ms Yasmin Sooka



Left: Joint winners, Theo Steyn & Jonathan Parsonage



Left to right: Edmund Beerwinkel (Juta & Co); Theo Steyn (Joint winner); Grace Kironde (Juta & Co); Justice Yvonne Mokgoro (Chairperson: SA Law Reform Commission); Mr Jeff Radebe (Minister of Justice and Constitutional Development) and Jonathan Parsonage (Joint winner)

Service delivery committee to probe the people's needs

"The committee's function is of paramount importance in the realisation of a true democratic state characterised by human rights"



By Justice Ditshego

To entrench a true reflection of a democratic state, the South African government has appointed an Ad Hoc committee aimed at assessment and monitoring of service delivery throughout the country. During its fact finding mission, the committee visited all provinces in South Africa.

This is the result of last year's National Assembly resolution of 22 September to establish an Ad Hoc Committee which will conduct oversight visits on service delivery under the theme "Working together to ensure the delivery of quality services to communities."

In Parliament the Ad Hoc Committee on Service Delivery's public hearings were kick-started in February with the aim of determining the progress made in delivering services to the people of South Africa.

The committee's chairperson, Mr Lechesa Tsenoli, said they used the hearings to determine the effectiveness of the Department of Cooperative Governance and Traditional Affairs' turnaround strategy. "Now that the department has completed its strategy we are going to establish what processes are underway. We seek feedback on the strategy and the readiness of the municipalities," Tsenoli said.

The Committee, which consisted of 43 members was divided into three groups with each holding hearings in at least three provinces.

The members of the Committee were drawn from the Departments of Human Settlements, Energy, Social Development, Health, Water and Environmental Affairs, Basic Education, Transport, and Rural Development and Land Reform. Political organisations are represented proportionally as follows: ANC

17; DA 5; Cope 3; IFP 2 while other parties will be represented by 2 members each. The committee is well aware that the Bill of Rights and its positive intentions cannot be realised until the government delivers basic services to the people.

Its work is not only limited to the examination of the effectiveness of the strategy as it carries the hopes of the current and future generations.

The committee draws its support and relevance from the country's challenging situation maimed by community protests as a result of alleged government's incapacity to

live up to expectations.

In his contributory article published in the Sowetan, Paul Hoffman from Institute for Accountability in Southern Africa said the committee's role will serve as an opportunity for government to get into grips with the reasons for some of its failures.

As the residents of this country and the members of the international community who uphold democratic values, we will be proud to hoist the flag with satisfaction after the toils and sweats of the fruitful outcomes from these works of the committee.





SAFARI WIDOW GUILTY

*Prosecutorial Insights
of the Mbokazi matter*

By Adv. Mahlubi Ntlakaza

The story in *Sowetan* newspaper of 5 March 2010 title "Safari Widow Guilty" symbolises the realisation of the National Prosecuting Authority's (NPA) vision and mission.

Guided by the Constitution, the NPA seek to ensure justice for the victims of crime by prosecuting without fear, favour or prejudice and by working with its partners and the public to solve and prevent crime. This is done with the intention of promoting a just society so that people can live in freedom and security.

The *Sowetan* story is about Celiwe Mbokazi who has been convicted of murder and robbery of her husband Franz Richter. Richter was a German tourist mongul who came to South Africa in 1952 and bought land in the Mulders-drift area, West Rand owned Heia Safari Game Ranch, Aloe Ridge Hotel and other properties countrywide.

In October 1987, the deceased, Franz Richter, brought 20 traditional Zulu Dancers from Empangeni to dance at a place called 'Zulu Kraal' inside the ranch for mainly overseas tourists and Celiwe was one of the dancers.

Franz fell in love with Celiwe Mbokazi in November 1987 when she was still 16 years old. They started to live together at Mr Richter's house inside the ranch. In the 1990s Mr Richter paid lobolo to Celiwe's parents in Empangeni. They then lived as husband and wife with 5 orphans in the house.

In 2006, Celiwe commenced an adulterous relationship with Ronnie Khumalo, a former employee at the Heia Safari Game Ranch. During August 2007, Celiwe was impregnated by Khumalo and in a desperate attempt to hide her infidelity she tried to abort the foetus without success. Eventually, she told Mr Richter about this pregnancy. Mr Richter was angry about this revelation and then told Celiwe to go back to Kwazulu Natal.

Celiwe and the deceased were living together as husband and wife until the 28th November 2007, the day of the incident. She had shared in his rich lifestyle. On the evidence the court found that it was probable that Celiwe was aware of her benefits from the deceased's will.

Her conviction was realised through the use of telephone records. Cellphone data from Vodacom and MTN was accepted as reliable evidence in terms of section 15(3) the Electronic Communications and Transactions Act 25 of 2002.

The relevant communication was between accused two, Dumisani Xulu, and Celiwe Mbokazi. Dumisani Xulu was amongst the 4 robbers who pounced on the deceased at about 10:30 on 28 November 2007. Celiwe Mbokazi, the deceased and orphans were on the way to the 'Zulu Kraal' to pay the Zulu Dancers.

Celiwe was told by the deceased before the 28th that payment will be on Wednesday at about 10:00 as opposed to the usual month end, which was to be Friday 30th. The route to the 'Zulu Kraal' is a gravel road inside the ranch. The deceased was the driver and had R23, 000 packed in envelopes for wages.

On arrival at the 'Zulu Kraal' they found that the gate was closed. The gate was then opened and then the deceased drove through and waited for it to be closed. That was when four robbers who were hiding on the nearby bushes pounced on them. They shot the deceased three times on the upper body. The robbers shouted that they wanted the deceased even though he pleaded with them to take only the money. They robbed wages for the Zulu Dancers.

Celiwe's handbag with her cellphone was also robbed. Three robbers were arrested at the same day. Two were arrested hiding in the reeds near Heia Safari and one was pointed out by the others at a nearby squatter camp. Celiwe's sim card was found on the pocket of one of the robbers. The third robber was Dumisani Xulu. His cellphone was confiscated by the police when he was arrested at the squatter camp.

Dumisani Xulu had worked at Heia Safari Ranch from February 2006 to May 2006. On the same date (07 December 2007 which was a Friday), Celiwe was arrested at the Ranch for murder and robbery of the deceased based on the fact that she was implicated by Dumisani Xulu on the second confession.

The court found that her exculpatory statement and cellphone records constituted enough circumstantial evidence against her. The date and time of paying the Zulu Dancers on the unusual day of 28th was exclusively her knowledge. She was the person who passed the information to Dumisani Xulu.

I hold the view that in convicting Celiwe the judge relied heavily on the unreported judgment of the SEBENZANI NXUMALO v THE STATE (450/2008) [2009] ZASCA 113 (23 September 2009) by Griesel AJA with Streicher and Brand JJA concurring.

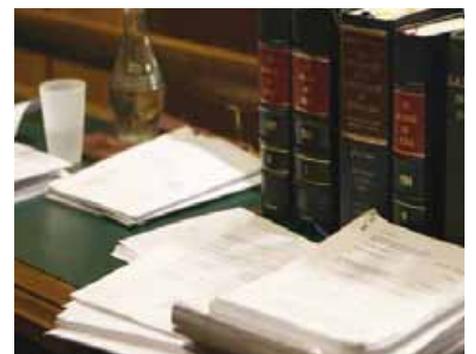
I handed a copy of this judgment during argument on the merits. The judge cited it in the judgment. This judgment, inter alia, dealt with the sufficiency of circumstantial evidence relating to cellphone communication.

On the indictment, Celiwe was charged with others for murder and robbery counts. There was also an alternative count of conspiracy against her. She was, together with other robbers, except her adulterous boyfriend Ronnie Khumalo, convicted on the main counts of murder and robbery. According to the judge, her position was comparable to someone who 'planted a bomb and looks on when it goes off' vide *S v Nhlengethwa* 1996 (1) SACR 737 (A) at 743A per Harms JA.

To put the cherry on top accused 1 and 3 were further convicted for a contravention of section 11(2)(b)(iv) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 for offering R15 000 to a Court Orderly at Krugersdorp Magistrates Court to steal the case docket of this matter. Judge Piet Meyer sentenced her to life imprisonment together with her co-accused. The sentences on the other counts were ordered to run concurrently with life sentence.

The sequel of her conviction was that Celiwe lost all the inheritance, which, inter alia, included R 1 000 000 trust fund and lifelong usufruct of Heia Safari residence.

My satisfaction was when I saw the front page pictures of the Beeld and Sowetan newspapers with a smiley face of the deceased's daughter Gaby Burgmer with both her arms lifted in the air in front of the Johannesburg High Court with a statement saying : "She is where she belongs". This was, in my view, indicative of the realisation of the vision and mission of the NPA in action.



SECURITY IS VITAL FOR JUDICIAL INDEPENDENCE



Basahleli N Thobane Security Manager: Limpopo

In terms of Section 165(1) of the Constitution the judicial authority of the Republic is vested in the courts and further state in 165(2) that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

The above two sections serve as the legal framework in which I have drawn the importance of the above topic but most importantly it has also been triggered by the attacks and killings of the judiciary including but not limited to the daily threats against the judicial proceedings and the proliferation and smuggling of dangerous weapons including drugs into the courts, the brutal attacks and abuse of the accused, prisoners and victims of crime including court-users by police and correctional officers in courts and most importantly the lack of security in our courtrooms. The continuous orchestrated, planned escapes in courts bear testimony to this reality.

As rightly indicated by the Regional Head of Gauteng, Ms Emily Dhlamini during the un-

veiling of the Victims Charter, "There would be no missing of case records if you did not promise to pay police officer a certain amount to misplace or destroy them" she said.

This challenge is also prevalent in the courtrooms and the difficulty is around the investigation thereof, as you will agree with me that we also do have Court Orderlies "voorvalle" policemen in our courtrooms.

With the above in mind, I think the envisaged vision of a strong, healthy, effective and independent judicial service pronounced by Chief Justice Sandile Ngcobo can only be realised and achieved once the department prioritises and takes a lead in introducing a legislation or measures, that will ensure the security of the judiciary, including the safe and secure conduct of court proceedings and that of court personnel at our courts and off-site including management (restrictions) of the media coverage of the court proceedings as prescribed by the courts.

Such a legislative requirement or other mea-

asures will conform completely with Section 165(4) of the Constitution which states "Organ of State, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts".

Through the research conducted, it is evident that most of the emerging democracies around the world struggle to establish court systems in which judges can apply the rule of law free from the threat of violence, hence my appeal that the leadership must take every step to ensure that our own judges, to whom so much of the world looks as models of independence, never face violent attacks for carrying out their duties. We really need not to wait for any embarrassment before we respond to this vacuum challenge.

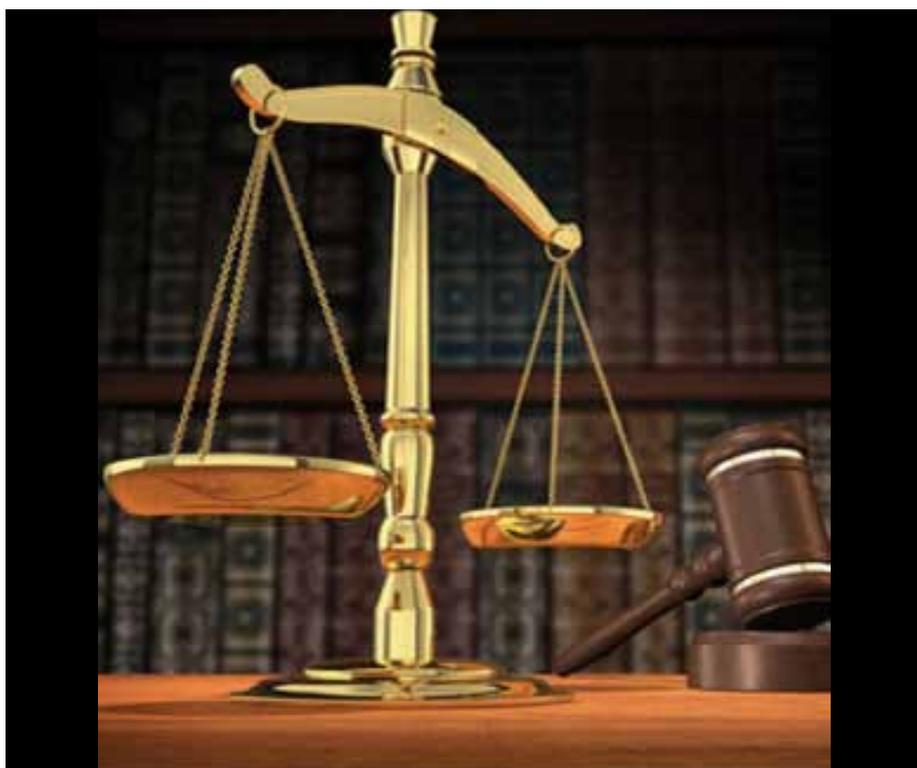
I strongly believe that the time has now come that the protection of the judiciary becomes one of the most important functions in the department and the government at large, and should be regarded as such.

In that if the judiciary are to preside over cases and render verdicts free from fear of threats and intimidation, in a safe environment, then judicial security must be a priority for my government. This step will enhance public confidence in the administration of justice.

I am of the opinion that the importance of coming up with this institutional capacity requirement that is so crucial to the preservation of the independence of our judiciary so that it can continue to serve as a bulwark protecting individual rights and liberty, cannot be under-estimated more so that its in the interests of justice and the Constitution including other international instruments related same.

We all need to agree that a nation founded on the rule of law must protect the integrity of its judicial system, which must apply the law without fear or favour. This article has been informed by real incidences that am dealing with on a daily basis.

Hope your support to this course will bear fruits for the independence of the judiciary.



Justice on the Ball for 2010

2010 Soccer World Cup Page for Justice Today

Mpumalanga ready for 2010 FIFA World Cup

By Neliswa Demana



The Mpumalanga Regional Office staff on 26 March, wore their Bafana Bafana jerseys, blew vuvuzelas, sang the national anthem and learnt the diski dance in an effort to show their support for the national soccer team.

Speaking to the excited officials National Office Internal Communication Deputy Director Lazarus Mthupi urged the officials to play their part in ensuring that South Africa hosts a successful World Cup. He encouraged employees to learn the national anthem. "Some of us do not know the national anthem. That is why we printed bookmarks with the national anthem. We want you all to learn the anthem and sing it with pride," he said.

Mpumalanga Legal Administration Director Paul Mthimunya gave a presentation on the department's readiness to host the world cup.

"The department has measures in place to make sure that we deal with any 2010 World Cup related crimes. Our systems are in place and ready," Mr Mthimunya said. He encouraged officials from the department to make sure that the courts run smoothly. "You are the most important asset to our department and our court systems," he said.

Mr Mthimunya urged officials to learn foreign languages. "We will be hosting Chile. Let us learn their language so that we are able to communicate with them. We must not forget to show our hospitality when they come here."

The officials were then given the opportunity to learn the diski dance. A competition was held between females and males. The ladies beat the males in learning and later doing the dance.

Eastern Cape region sets World Cup pace through Football Friday

By Justice Ditshego



Officials in the Eastern Cape sung and danced in celebration of the upcoming FIFA World Cup tournament. The event took

place at the justice regional office premises in East London on 05 March 2010. Opening the event, Eastern Cape regional



head Mr Vuyani Mguqulwa acknowledged the privilege granted to the province as the 2010 soccer World Cup hosts. "It is a privilege for the province to host the World Cup. This is not only for us to rejoice for this opportunity but for South Africa and the African continent as a whole," said Mr Mguqulwa.

The regional head expressed his excitement and hailed the country for proving its critics wrong by showing that both South Africa and Africa are ready to host the event of this magnitude. He said the department has an important role to play.

"The citizens of the country and the world expect justice department

to play a pivotal role and ensure a successful World Cup in South Africa." He also called upon all officials to support such a role by working and pulling together as government officials.

Being in one accord, the officials sang the national anthem after which they showed their patriotism for the country by flying the flag. Some officials embraced with both hands an opportunity to learn the disk dance and blew vuvuzelas. In closure officials pledged support for Bafana Bafana as they sang football songs to wrap the one hour event.

North West Celebrates 100 days to World Cup

By Neliswa Demana



On 2 March 2010, the North West Regional Office staff, blew vuvuzela's, sang the national anthem and signed a pledge to support Bafana Bafana. North West Regional Head Tsietsi Malema encouraged employees to continue showcasing their support and patriotism towards the National team.

"This is a major achievement. This day is one of many historic days here in South Africa. It marks 100 days to the kick off to the 2010 FIFA World Cup. As a nation we are ready to deliver a successful FIFA World Cup. It is important to rally behind Bafana Bafana and buy tickets to view this historic event.

Bafana Bafana will make us proud and I believe they are working hard daily. Personally I am overwhelmed by enthusiasm showcased by our staff towards our national team," he said.

Special Programmes Manager Ms Agnes Kenosi, applauded the national team for their recent good performance. "A draw on Wednesday improved Bafana Bafana's world rankings. As a host nation we cannot afford to be ranked below," she said.



Justice College ready for 2010 World Cup

By Neliswa Demana

The Justice College is ready to help the South African Government host a successful World Cup. The college is mandated to train foreign language interpreters and local language interpreters on court interpreting for the World Cup.

Speaking to staff, Justice College Stakeholder Management Director Lindiwe Mdebele said "We are here to provide training which is integral to the department's efforts to widen and improve access to justice. We also enable the department to meet its strategic goals by empowering employees to heighten their performance and thereby enhance organisational efficiency."

Ms Mdebele encouraged officials to wear the Bafana Bafana jersey on Fridays. "Ke nako (It's time) for South Africa to demonstrate to the world that we can do it. The event will be successful if we all support it," she said.

Training commenced in April 2010. The theoretical training took place over three days; the fourth day was spent on practical training. The event was also attended by officials from the Public Education and Communication Chief Directorate and the National Prosecuting Authority.

Mr Alberto Swanepoel, the 2010 Project Manager gave a presentation about the Justice, Crime Prevention and Security (JCPS) cluster's readiness to host the World Cup. He said the 2010 FIFA World Cup Administration of Justice Project was initiated to determine the roles of the various Integrated Justice System stakeholders. "This will ensure the effective administration of justice during the World Cup. It will fast track all criminal cases where foreigners are involved, either as a victim, witness or an accused," he said.

The project office, according to Mr Swanepoel, is available to offer support and the overall coordination of activities during the event. "We are governed by integrity and trust. We believe that high trust relationships pay good dividends in the form of a quick turnaround time, high cost savings and positive outcomes. We will go to the extreme to be ready," he explained.

Mr Swanepoel said that the Director-General for the Department of Justice and Constitutional Development, Ms Nonkululeko Msoni, requested his office to do a trial run exercises. "The trial run, if implemented correctly,

will provide us with a good understanding of our state of readiness," he said. A trial run was done at the Durban Magistrate's Court on 3 March 2010. The trial run gave a step by step process to be followed by all stakeholders who will be involved.

The project office has upgraded all dedicated court infrastructure, this includes facilities and security. A name list and roster of dedicated court clerks, court orderlies and other court officials is also complete. "There is also a name list and roster of dedicated foreign and local interpreters and dedicated volunteers," Mr Swanepoel explained.

The volunteer programme will be a legacy project for the JCPS cluster. "The department will, beyond the World Cup, look for opportunities to utilize the volunteers within the department, this will be in the form of internships," Mr Swanepoel said. A total of 158 unemployed youth were trained in 8 provinces in Customer Service Management courses. These volunteers will be deployed to assist at the dedicated court centers.

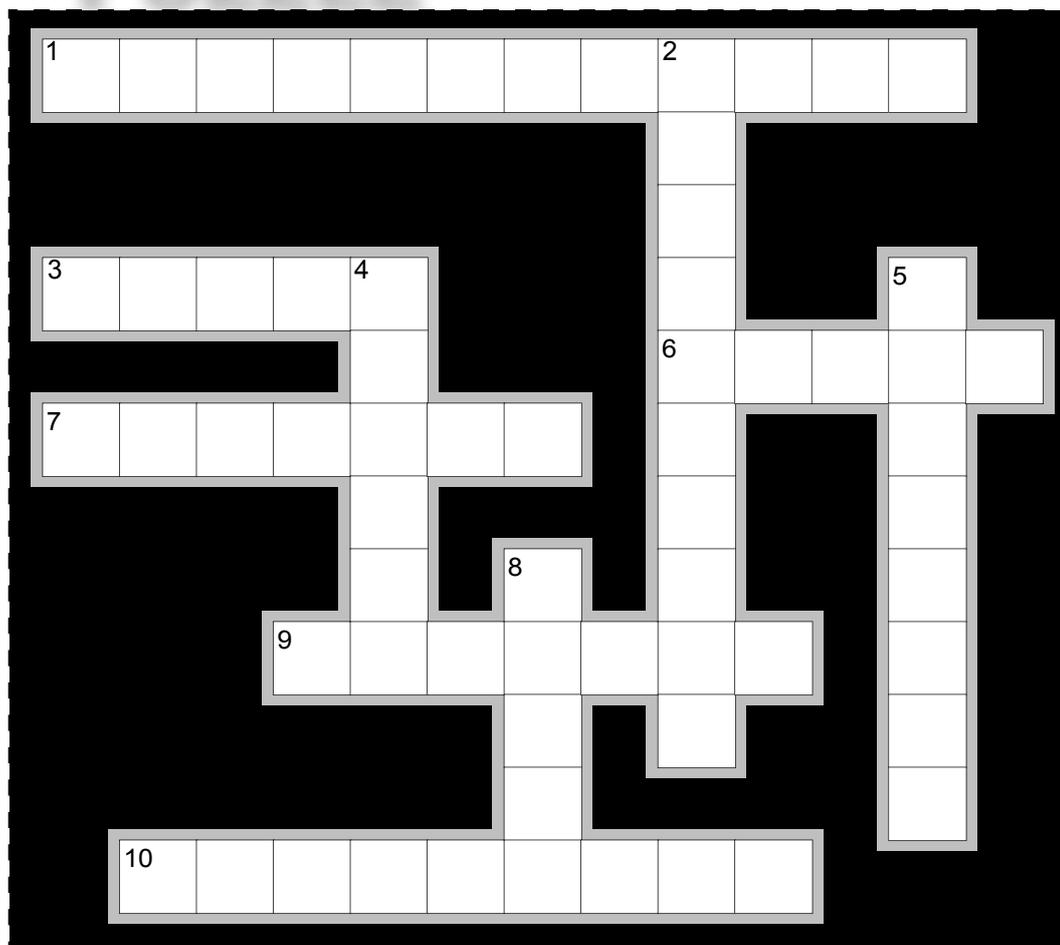
Internal Communications Deputy Director Lazarus Mothupi encouraged officials to support the national team by wearing the Bafana Bafana jersey to work on Fridays. We are here to support the Football Friday campaign. "This campaign was created to teach us about our national symbols. Under the campaign we are encouraged to fly the national flag with pride, sing the national anthem, wear the Bafana Bafana jersey and blow the vuvuzela," he said.

Mr Mothupi said "Nobody thought that South Africa would be talking about the World Cup. This is a landmark event that we should all be proud of. We have to celebrate it. It is going to be very big and we will reap the benefits afterwards."

Officials sang the national anthem and then they were given an opportunity to learn the diskidance. A step by step diskidance DVD was played for them. After learning the diskidance the employees went outside to blow the vuvuzelas.

JusticeToday
Crossword
PUZZLE

The Justice Today Crossword Puzzle has clues whose solutions can be found by carefully reading all the articles in this issue. Fill in the answers correctly and stand a chance to win. The solutions to this puzzle will be published in the next issue, along with the winners' names.



Across

1. An Act that provides for the establishment of a separate criminal justice system for children in conflict with the law.
3. LLM graduate Mr Theo is one of the winner for the 2009 Ismail Mahomed prize for best law reform essay competition
6. The Conference on Private International Law harmonises private international law rules.
7. The Products Act prohibits smoking in public places.
9. The surname of the retired Eastern Cape Judge who was hailed for his contribution to the country's judiciary.
10. A type of a cyber crime that occurs when a person steals electronic data and shuts down computers.

Down

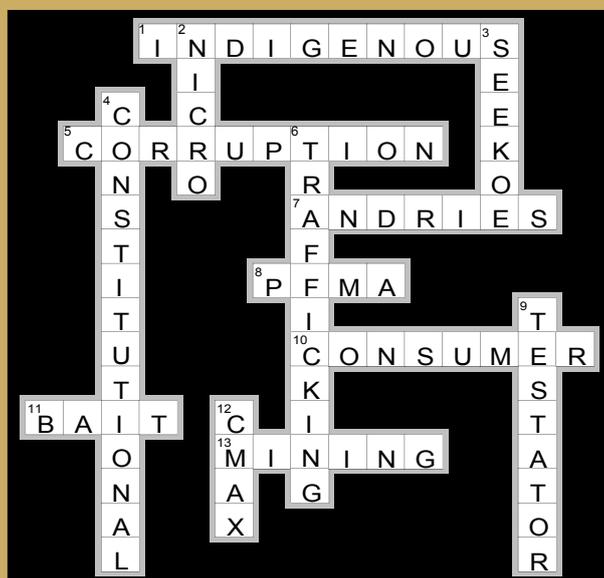
2. Care Centres established as a critical part of the country's anti-rape strategy.
4. South Africa's Chief Justice. Justice Sandile
5. In terms of Section 165(1) of the Constitution the authority of the Republic is vested in the courts
8. The crime policy that aims to bridge the technological and legal divide

NAME.....

POSTAL ADDRESS

TELEPHONE:

SOLUTION : Puzzle 7



Across

1. **INDIGENOUS**—The usage of languages in courts ensures that courts recognise the 11 official languages as stipulated in the Constitution.
3. **CORRUPTION**—A conduct or behaviour where a person accepts, agrees or offers any gratification for him/her or for another person, where the purpose is to act dishonestly or illegally.
7. **ANDRIES**—The Deputy Minister for the Department of Justice and Constitutional Development. Mr Nel.
8. **PFMA**—The acronym for the Act that ensures that all revenue, expenditure, assets and liabilities of government are managed efficiently and effectively.
10. **CONSUMER**—A is defined as a user of the goods, recipient or beneficiary of the services irrespective of whether he/she was a party to the transaction.
11. **BAIT**—The kind of marketing that advertises any goods or services in a misleading manner.
13. **MINING**—The charter that aims to achieve a global competitive mining industry for the benefit of all South Africans.

Down

2. **NICRO**—The acronym of an organisation that seeks to challenge offenders to take responsibility for their actions and to provide opportunities for constructive rather than destructive living.
3. **SEEKOE**—Head of the Truth and Reconciliation Commission in the Department of Justice and Constitutional Development. Dr Mochubela
4. **CONSTITUTIONAL**—The court that has ruled that the Constitution prohibits minimum sentencing legislation from being applied to children aged 16 and 17 years old.
6. **TRAFFICKING**—..... in persons is a worldwide problem and is one of the most lucrative criminal business globally.
9. **TESTATOR**—A person who draws up a will is called the
12. **CMAx**—The common name for the Maximum Security detention centre where the Langa 6 where detained and executed.

WIN

HOW TO ENTER

Complete the Crossword Puzzle after you have thoroughly read this issue of Justice Today. Fill in your details on the entry form and fax to 012 357 8003, attention Neliswa Demana. The first three correct entries will WIN a prize.

HAVE YOUR SAY ABOUT JUSTICE

South Africans celebrate Freedom Day on 27 April each year. Fifteen years into democracy we asked Free State

Officials at the Free State Regional Office



**Advocate
Keitumetse
Molaoa**
Masters Office
Bloemfontein

Although we have Freedom Day and the Bill of Rights, there are still some people who do not have access to basic needs. In

a democratic state it is important for government to speed up service delivery by ensuring that we all access the fruits of democracy. I think we have good policies but they need proper monitoring for them to work for our people.



Modieni Luthuli
Assistant Director:
Human Resources
Management

Freedom Day plays a crucial role in our lives because it reminds us of the first time we had the opportunity to vote for the government of our choice as the country.

This is different from the past when only the minority were allowed to vote. I usually take my kids to the park and explain freedom day and how it came into being. Freedom is partially realised because the poor become poorer while the rich become richer. This can be avoided if government could focus on their promises.

Tshepo Mokotedi
Human Resources
Officer

From my take a lot has been done by the government for people to realise their freedom. But here in Bloemfontein the whites are dominating an Appeal court.

There is a slow pace of transformation and the set targets are not yet met. Secondly the issue of Affirmative Action is lacking. If we mean to be a free country, there is a need to promote women participation and inclusion.



Damon Jacobus
Damon Jacobus
HR Officer



A lot of changes have taken place because we now see some women occupying senior management positions. Some junior officials are also exposed to recruitment processes through participation on the interview panels. But to further promote freedom in the country, there is a need to recruit more people with disabilities into senior positions. To achieve this we have to build bridges between the disabled and those in power. Abuse and misuse of power by senior managers serves as a barrier against realisation of the freedom we fought for.

Teboho Manaka
Deputy Director: Training and Development



Compared to the previous regime I think we regard ourselves as a free country. But my concern is that this freedom is mostly manifested in the lives of the elites. People at grass roots level are not given a first priority. During elections the poor are promised many things but thereafter they are not given enough attention. There is a need to move from a self-centred to a more inclusive approach. This can only be achieved through if government stick to its promises and also give confidence to the public through continuous interaction and monitoring. Our people's lack of information leads to negative actions such as damage to property as they feel neglected.

officials on what they think about freedom in South Africa



Members of the Public

Bobo Mokobi



Freedom in our country is real because we can see people of different racial groups mingling to build a better South Africa.

The recent rugby super 14 final match that was played in Orlando township is a clear indication that we embraced freedom with two

countries. That is why we remain proudly South African. But something must be done about the freedom of our farm workers through implementation of rural development programmes.

Zaid Attoumane



South Africa is among the free countries in the African continent but my concern is about freedom of its citizens without fear of any form of crime. We are still afraid to walk around town in the evening because of crime.

To ensure our freedom government must deploy more police officers to patrol all the corners of the city and fight crime as well as drug usage.

Busisiwe Mashiane



Since 1994 I think our government has done a lot to ensure the freedom of our country and its citizens.

It meant a lot to me as a young person to see a rugby match being scheduled to take place in Soweto, Orlando stadium.

This has never

happened before and it means a lot to us as South Africans.

Nombuso Mbinankomo



We have embraced freedom in our country since the dawn of democracy although there is still room for improvement.

The child labour practice is something that is not good for our freedom. Children must have an opportunity to celebrate the freedom by going

to school instead of working at a tender age for survival. They will be free if they have the right to education.

Justice Today

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the doj & cd

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