

INTRODUCTION

The purpose of the PAJA e-newsletter is to share information on progress made with regards to the PAJA implementation within the Public Service. It is envisaged that the PAJA e-newsletter shall assist in creating a network of public servants interested or involved in the implementation of the PAJA. For this to materialize an information platform is required to familiarize administrators, legal advisers, Director-Generals and Ministers with activities and results on the PAJA implementation conducted by committed public administrations. Therefore, the Department of Justice and Constitutional Development (the DoJ&CD) and the GTZ (German Technical Corporation) are inviting all interested parties to send in their contributions. This might be in the form of information, observations, analysis, comments etc. The PAJA e-newsletter will be distributed exclusively through the internet up to three times annually by the DoJ&CD/GTZ.

Ooshara Sewpaul
Chief Director: Constitutional Development

I. PROJECT DESCRIPTION

Project goal: According to the Constitution of the Republic of South Africa, 1996 (the Constitution), all actions taken by public administrative bodies have to meet with the requirements stipulated in section 33 of the Constitution. This means that the Public Service is directly obliged by the Constitution to transform towards a transparent, accountable and non-discriminatory government institution. At the end of the PAJA-Project, all administrators should have the capacity to comply with the requirements of the PAJA in their daily work. It is also envisaged that everyone would be empowered to challenge an administrative decision that adversely affects them, in an inexpensive and efficient manner

What the PAJA is about: The Act extends administrative procedures with a procedural element

which ensures the opportunity to make representations. Additionally, the PAJA sets requirements for notifications informing people adversely affected by the administrative decisions about their right to reasons, appeals and judicial review. Furthermore the Act provides minimum standards for the statement of the decision and the reasons. All those requirements are obligatory. Furthermore recommendations on how to process administrative decisions which adversely affects the public are provided in the Act. The grounds for judicial review are also determined.

Mandate of GTZ: In the course of Government-to-Government negotiations between South Africa and Germany, both countries agreed to define the constitutional requirements as one of their areas of future cooperation. Thus GTZ has been mandated by the German Ministry for Economic Cooperation and Development (BMZ) to assist the DoJ&CD to implement the PAJA.

II. MONITORING & EVALUATION

Monitoring & Evaluation (M&E) is the basis for tracking surfacing problems and success. It is crucial for the project steering committee to be able to adjust the strategies and activities needed for a specific public entity. In this regard, M&E turns activism into action and assumptions into knowledge.

A milestone of the PAJA-M&E in 2006 was the State of the Public Service Report, 2006 (SOPS) published by the Public Service Commission (PSC). This M&E exercise has been assisted by DoJ&CD/GTZ. The report is accessible on the internet. <http://www.info.gov.za/otherdocs/2006/sops.pdf>

The SOPS 2006 Report reflects the poor implementation of the PAJA across Departments and that the situation has not improved significantly over the last three years. This complies



with the PAJA-Project's evaluations which disclosed that:

- There is an insufficient degree of awareness by public servants about the PAJA;
- implementation of the PAJA is not prioritized or adequately addressed by Government Departments;
- the PAJA is not being applied or systematically implemented. Government Departments neglect this area of legislative compliance; and
- administrative actions are not being undertaken as provided for by the PAJA.

These findings have initiated immediate response by the DoJ&CD and the GTZ in adjusting its strategy and planning. One outcome of the reflections is the PAJA e-newsletter.

III. PROJECT ACTIVITIES

The PAJA National Forum: The DoJ&CD/GTZ identified the need for such a forum to serve as a learning network where best practices are shared and challenges experienced are discussed. Hence, the PAJA National Forum was established in May 2006. At this meeting it was envisaged that through presentations on burning issues the forum members attempt to fill in the skills gap and learn from the process. It was also decided that the participating National Departments will take turns in hosting the PAJA National Forum meetings every three to four months. Currently, the following National Departments have shown commitment: DWAF, DPSA, DAC, DOL and DoJ&CD. The Forum met for the second time on 7 September 2006, to exchange experiences and information on implementing the PAJA in the Departments administrative procedures. A concern about the lack of participation by other National Departments at this Forum was raised. It was emphasised that it is not a name and shame Forum and if Departments have not made progress on the PAJA implementation they should not feel intimidated to attend the meeting but should feel empowered to discuss the challenges they are experiencing.

Participants then proceeded to discuss the activities and problems experienced with the PAJA implementation. Thereafter, the Chief Director: Governance Monitoring of the PSC made an informative presentation on the SOPS 2006 Report in relation to the PAJA, which was then opened for questions and discussion. This was followed by another presentation on the mapping tool developed by the DoJ&CD/GTZ. Finally, the issue of generic PAJA awareness was raised and discussed.

The Chairperson expressed her gratitude to the DAC for organising the meeting and volunteering to host the Forum at its premises. She also indicated the DoJ&CD's/GTZ's intention to initiate similar forums at the provincial sphere of government.

The next PAJA National Forum meeting will be held at the DPSA on 25 January 2007 at 09h00.

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SAMDI, in association with DoJ&CD/GTZ, will provide training to all national, provincial and local Government Departments. In addition, GTZ will fund the training of a facilitator from SAMDI who will become the SAMDI expert on PAJA. So far, a number of institutions (5) have been trained, and they are as follows:

April 2005

| Department | No of People Trained |
|-----------------------------------|----------------------|
| Social Development: North West | 17 |

April 2006

| Department | No of People Trained |
|--------------------------|----------------------|
| 1. City of Johannesburg | 19 |
| 2. Department of Housing | 16 |

| | |
|--|------------|
| 3. Economic Development & Tourism: Limpopo | 58 |
| 4. Office of the Premier: Free State | 16 |
| Total | 109 |

SAMDI is looking forward to the training of the identified official who will take over the training and co-ordination of PAJA. We are also looking forward to providing training to as many Departments as possible so that there will be accountability and transparency in the Public Service! It is our wish that as many Departments as possible book training on this programme, because this will definitely improve service delivery. Presently the response is good and it means the programme is taking off as we have received four more requests for training from Departments. We therefore expect that things will get better as time goes on.

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DoJ&CD: The Masters Office with assistance of the Justice College is currently in an intensive process of implementing the PAJA into its administrative decision making processes. The implementation is based on an action plan which was developed on the findings of a workflow mapping process in the Masters Office. The workflow mapping process was conducted in Johannesburg, on 18 April 2006, in Pretoria, on 19 April 2006, in Pietermaritzburg, on 16 May 2006 and in Kimberley, on 24 May 2006.

An analysis of 33 adversely affecting administrative decisions was conducted by assessing the respective records in the fields of Insolvencies, Deceased Estates, Guardian Fund and Curatorship. This led to findings which are now being addressed in the implementation phase which is planned to be finalized by the end of March 2007.

Currently, the Masters Office seems to be the only public administration which has entered into a PAJA implementation process directly and sys-

tematically addressing workflows ending in administrative actions.

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Department of Arts and Culture (DAC): On 10 October 2006, the PAJA-Project conducted a one day strategy workshop on the PAJA implementation with the PAJA compliance officer from DAC. The GTZ facilitator applied a systemic approach to determine the interaction between the PAJA related factors within the DAC and to make it usable for the strategic planning. As a result of this workshop a strategic plan for DAC has been drafted and will be discussed with the DAC senior management.

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Northern Cape Province: The Northern Cape Province has established a PAJA steering committee in 2002 consisting of PAJA compliance officers representing each of the Provincial Departments and is coordinated by the Premiers Office. On 12 October 2006, the steering committee met with the DoJ&CD/GTZ to consider the way forward for the PAJA implementation. Some of the outcomes of the discussion was that a project management training for the PAJA compliance officers in the Northern Cape will be held in February next year. Once buy-in on the implementation of the PAJA sub-project is obtained from the acting Director-General, evaluations mapping out workflows to monitor compliance with the PAJA will be conducted. Brief reports were provided to the meeting by DoJ&CD/GTZ related to the PAJA evaluations documented in the SOPS 2006 Report. In addition, the steering committee recommended that the focus of the existing Newsletter (legal) published by DoJ&CD/GTZ be extended to include some success stories of the PAJA implementation.

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Limpopo Province: DoJ&CD/GTZ has assisted the Department of Economic Development, Environment and Tourism to raise awareness on the PAJA for all 55 administrators working in the Wildlife Trade and Regulation section. This has been covered through three 3-day PAJA training workshops facilitated by SAMDI in co-operation with DoJ&CD/GTZ. The increase of PAJA awareness has established a favorable organisational environment within Wildlife Trade and Regulation to take the next step of PAJA implementation.

The workflow analysis was supported by DoJ&CD/GTZ and conducted by the Wildlife Trade and Regulations Directorate on the 25 and 26 October 2006. Eleven files covering applications for Hunting permits, Import and Export permits and permits for Translocation and Keeping were measured against PAJA. Since the decisions were administrative actions, all applications had been refused. On the second day an action plan with a time frame was elaborated. According to the plan PAJA will be fully implemented by mid 2007, which will be documented around August 2007 with another workflow analysis.

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SALGA (1): SALGA supports the implementation of the PAJA in the local government sphere. On 26 July 2006 the DoJ&CD/GTZ was invited to make a presentation to the SALGA Working Group on the PAJA implementation strategy of the DoJ&CD/GTZ. At this meeting it was emphasized that it is imperative that the buy-in of the representatives at various SALGA levels and forums be obtained.

The strategy of the DoJ&CD/GTZ was welcomed and regarded as appropriate for application in the local government sphere. Further presentations and workshops to enhance buy-in among the SALGA and the local government stakeholders will be scheduled.

It was decided that one district municipality in each province will be identified for implementation. The districts identified are:

- Eastern Cape – Cacadu DM
- Western Cape – Cape Winelands DM
- Free State – Thabo Mofutsanyane DM
- Northern Cape – Kgalagadi DM
- Gauteng – West Rand DM
- Limpopo – Sekhukhune DM
- Mpumalanga – Nkangala DM
- North West – Bojanala DM

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SALGA (2): On the 1 November 2006, SALGA with support of DoJ&CD/GTZ and the PSC hold a one-day conference with 40 participants representing almost the entire pilot districts mentioned above. The facilitators focused their presentations and exercises on four questions: Why became the PAJA part of the legislation? What is the PAJA about? Is progress regarding implementation done? And how can the PAJA be implemented systematically? The representatives will report back to their districts and municipalities which should contribute to the readiness to launch effective PAJA implementation.

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Bojanala District: The DoJ&CD/GTZ together with the district's senior management has simulated a workflow analysis in Rustenburg on 20 September 2006. The tool applied which is a simple questionnaire, has been deducted directly from the PAJA and was developed by the DoJ&CD/GTZ. This exercise aimed at familiarizing some of the district's senior managers with the approach used in analysing the workflows. The application of the tool resulted in effective and efficient disclosures of the PAJA compliance or non-compliance within actual applied administrative procedures. The

findings would identify and address the specific needs of the analyzed public entity and serve as a starting point for the development of an operational plan. The participants confirmed the effectiveness of the tool and indicated that more focus should be concentrated on the conversions of identified weaknesses into action related to the operational plan.

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City of Johannesburg: The DoJ&CD/GTZ has supported a 3-day training program focused on the PAJA awareness during May 2006. The training was conducted by SAMDI. The training has received positive feedback from the 20 legal advisers that attended. They were from the City's Legal Services on Town Planning and Tribunal. DoJ&CD/GTZ is awaiting senior management's buy-in to initiate a PAJA project.

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The City of Cape Town: The DoJ&CD and the Department of Public Service and Administration held four awareness raising sessions for administrators and councilors in March and June 2006 respectively. The City of Cape Town has indicated a willingness to conduct the mapping process and will revert to DoJ&CD/GTZ with a date for implementation.

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IV. UPCOMING

PAJA implementation workshop in Pretoria:
Although six years have passed since the PAJA was enacted, the SOPS Report 2006 shows that

compliance with the PAJA within all governmental spheres is very low and progress can hardly be observed. In order to facilitate the implementation of the PAJA, the DoJ&CD, in cooperation with GTZ, is offering a **two and a half day workshop** on the PAJA aimed at legal advisors or PAJA compliance officers in the Public Service dealing or wanting to be involved with the implementation of the PAJA. The workshop is limited for 20 participants.

The workshop on the PAJA implementation takes place in
Pretoria from 28 - 30 November 2006

The Workshop description and a registration form can be requested at the GTZ Project Office:

Telephone 012 322 7558
Fax 012 322 7559
E-Mail gtzadministrator@justice.gov.za

PAJA implementation workshop in KZN:

On request of the Office of the Premier in KwaZulu Natal the DoJ&CD/DPSA/GTZ have scheduled a workshop for provincial legal advisors of the Province of KwaZulu Natal. The workshop is organized by the Office of the Premier for the 4 - 5 December 2006.

V. MISCELLANEOUS

The following catch phrase was produced at one of the PAJA training sessions conducted at the City of Cape Town:

The PAJA: The RAJAH of Administrative Act.