

Budget vote 27: Office of the Chief Justice

Speech by Werner Horn MP, DA Shadow Deputy Minister of Justice and Correctional Services

Judicial Independence is a fundamental precondition for the rule of law, for a functional constitutional democracy and in practical terms, for ordinary citizens to be afforded a real and fair opportunity for their disputes with one another and with the state, to be adjudicated in an impartial and objective manner.

In South Africa the Office of the Chief Justice was established as a separate department in 2010, to give some effect to the constitutional imperative that the judiciary be independent, and apportioned its own budget since 2015.

From a governance perspective this held real potential to use the evolution of the OCJ as a model for how a modern, lean and efficient government department should be established and function.

When the first reports of some irregular and wasteful expenditure arose a year or two later this Parliament, often accosted for failing in its oversight duties amongst others by our Courts, warned the OCJ that the Judiciary should be beyond reproach when it comes to financial governance, and therefore it should sharpen up internal oversight to prevent the problem from recurring or becoming bigger.

Unfortunately, this was not done and just after the debate on this budget vote took place last year, we sadly learnt that three former senior officials had been implicated in major tender irregularities regarding "Caselines", a component of the court modernisation and court online system that is to be implemented at our superior courts.

Chair: In terms of the principle of separation of powers this Parliament, through its committees, is entrusted with the duty to oversee the way in which all institutions, who receive public funds to perform their functions and duties, spend it.

In this regard it is of grave concern that the Office of the Chief Justice has not been prepared to account fully to the Portfolio Committee on this "Caselines" saga.

The same type of "we are investigating it and to share what we know with you might jeopardise the investigation" which is typical of institutions who see accountability as an irritation, has unfortunately characterised the stance of the OCJ on this matter.

This should however not deter us from supporting the further evolution of the institutional independence of the judiciary. If anything, it should only awaken us to the need to be forever vigilant about ensuring that proper checks and balances and oversight and accountability systems are put in place - even in the case of the judiciary.

Chairperson: The judiciary, as far back as 2013, adopted a report on the type of court administration model it believes should be the final model that would enable full institutional judicial independence – a judicially led court administration model.

Since then, and for a full decade now, the executive has, in what can only be described as a prime example of obstinacy and obstructionism delayed, failed and refused to deal with the substance of this proposal.

Minister, the way in which you have simply, without even resisting it, allowed mediocrity to define your term up to now, is maybe best described by the manner in which you told the Portfolio Committee, on 3 May last year, that you were then about to table the Department of Justice's own

research into future court administration models before cabinet, in order to finally engage the Judiciary on their 2013 report, followed on 2 May this year, without any sense of shame, by a statement to the Portfolio Committee that you are confident that you will be able to formally engage the Judiciary “soon”. No explanation for the further twelve months delay, no sense of urgency and ultimately no sense of duty.

Chairperson: Closely linked to this, is the Lower Courts Bill, the tabling of which has been labelled as being “imminent” since 2014 and which is supposed to establish a single judiciary and bring the magistrates courts properly under the authority of the OCJ and which remains nothing more than a mirage – further laying bare the inefficiencies and failures of the Executive of this sixth administration.

Chair: While all of this might sound somewhat academic and theoretical it has a very real practical impact on the administration of justice. The half-baked way in which only the most basic of functions around court administration was transferred to the Office of the Chief Justice, could never position the OCJ to perform optimally.

The key takeaways from our oversight visits, as a Portfolio Committee, over the last year and a half to all provinces was, not surprisingly, how the current model of public works through the Department of Public Works and Infrastructure is preventing maintenance and upgrading of court infrastructure, rather than enabling it, and how officials of the Office of the Chief Justice spend most of their time begging not only Public Works, but also Department of Justice to perform the duties and functions essential to the functioning of our courts. Functions that are a natural and obvious fit for the Office of the Chief Justice and which should have been transferred to it long ago.

Minister: There is a small window of opportunity to give your term of office some semblance of credibility: Don’t delay further, act to remove the way in which the OCJ remains largely dependent on the Department of Justice and show the Judiciary and our constitutional democracy the respect that befits your office and finally deal with the substance of the proposals the executive have been sitting on for ten years. Are you up to it Minister?