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THE JOHANNESBURG
ATTORNEYS ASSOCIATION

Dear Honoured Guests and Colleagues

CHAIRPERSON'S REPORT PRESENTED AT THE JOHANNESBURG ATTORNEYS ASSOCIATION ANNUAL GENERAL MEETING HELD ON THE 12TH SEPTEMBER 2017

1. It is a pleasure to welcome you all to the 75th Annual General Meeting of the Johannesburg Attorneys Association.

2. I would like to thank the Executive Committee and the numerous sub-Committee members of the JAA for all their hard work, dedication and for the time that they have devoted representing our members in the various forums. It is important to note that all these members render their services without remuneration and do so, for the benefit of the profession.

3. I specifically would like to thank Jacque Tarica for always being available to attend to member's queries, and ensuring that all issues are followed up at various meetings with the courts and relevant stake holders. Mr Tarica played an integral role in co-ordinating urgent meetings when the North Gauteng High Court did not have Court file covers.

4. The executive committee members for the year under discussion are Jacques Tarica (Co Vice Chair), Wendel Bloem (Co Vice Chair), Chantelle Gladwin-Wood (secretary), Katherine Gascoigne (Treasurer), Nakka De Klerk (GLC Councillor), Hoosen Sader (GLC Councillor), Nicci Sauli-Koren (LSNP Councillor), Janine Schmahl, Sisa Nhlabati, Anton Theron (GLC Chair), and myself. Mrs Riekie Erasmus also served on the committee until May 2017.

5. The JAA's main office situated at the Gauteng Local Division High Court and its satellite offices at the Johannesburg and Randburg Magistrates Courts are the pivots of the JAA activities. As such, the JAA are heavily reliant on Angela, Ivy, Hilda, Portia and Thulani. The dedication they have shown in ensuring that these offices run smoothly and are functioning should be applauded.

VARIOUS FORUM MEETINGS ATTENDED BY THE JAA

6. The JAA has been involved with various stakeholders in the profession, and the main committee is involved in the following areas:-

6.1. MAGISTRATES COURT COMMITTEE:-

The Magistrates Court committees have had regular meetings in the following jurisdictions:-

1) Johannesburg;

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2) Randburg; and

3) Protea Magistrate Court.

6.1.1) <u>Elevators:-</u>

We note that access to the Central Divorce Court (Family courts) as well as the Johannesburg Magistrate Court has been restricted because of non-functioning elevators. Access to these courts has become impossible for the elderly, disabled, and practitioners.

The elevators are constantly under repair and members of the public and the profession are unable to access the courts with ease, as a consequence thereof. It must be noted that these courts are frequented by the elderly, mothers with infant children, and the disabled.

6.1.2) <u>PROTEA MAGISTRATE COURT (SOWETO):-</u>

There are insufficient buildings at this court, which has increased in usage, and responsibilities since the inception of the civil court. At present, the court has had to use containers which are converted into offices to accommodate the rapid expansion.

The civil court has resulted in higher demands for courts and office space. The JAA together with the Soweto Legal Fraternity has requested the court for office premises. The aim is to set up an office for the purpose of assisting practitioners and members of the public with essential administrative services.

At present, some practitioners have to postpone matters in order to draft documents and court orders to bring matters to finality. This is as a consequence of no direct access to a computer and printing facilities at the courts.

Due to space constraints, we assume that if space does become available, it will be in the form of a converted container office.

We have partnered with the Soweto Legal Fraternity in their infancy, and will continue to empower this association as they grow and will work closely with them.

6.1.3) <u>LIBRARY ASSOCIATION MEETING:-</u>

A meeting was convened to deal with the aspects of updating the current books, statutes and journals, as well as updating the Magistrates access to Legislation at the Library situated at the Johannesburg Magistrates Court.

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6.1.4) RANDBURG COURT:-

The committee have dealt with issues regarding the removal of attorneys pigeon holes, lack of service delivery at the court, delayed filing, the prevention of attorneys uplifting court documents to make copies, the method of ITC recording judgements, and effective dispensing of justice.

6.2) HIGH COURT COMMITTEE:-

We have two upcoming workshops planned; the first of which shall be on the ***"Practice in the Motion Court",*** (in light of the Consolidated Practice Manual), which will be followed by a workshop addressing feedback on the current Pre Trial Certification procedure.

The current difficulties arising from this court are as follows: trial dates being brought forward; the typing of court orders; fraudulent court orders and access to archived court files.

This committee highlighted the importance of the consolidated practice directive and assisted to some extent with the collation of earlier versions.

Elevators:-

We have noted that access to Gauteng Local Division has been restricted especially for the elderly, disabled, and practitioners. This occurs when the elevators are not operating. In these instances anyone seeking access to these courts are faced with a situation of climbing 10 or 11 floors.

6.3) JAA OFFICE COMMITTEE:
(Refurbishment of JAA Offices at the High Court)

The Johannesburg Attorneys Association undertook a refurbishment of the offices, which have now been concluded.

Practitioners and members of the public have more space to work in, with computer systems and copiers that are faster and more efficient. This assists legal practitioners and the public immensely on a daily basis, and will result in a reduction of costs of copies to all.

6.4) PROPERTY LAW COMMITTEE:-

The Property Law Committee has been extremely active with both the protection of the law, and the development of the law. The committee has played a vital role in the current case of Proxy Smart, which is currently sub –judicae, and which will affect the current standards in property conveyance.

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The JAA committee entered as amicus curie in the Chantelle Jordan Constitutional Court case, to support the interpretation of section 118, viz to clarify the purchaser's liability in respect of the seller's historic municipal debt, arising out of a sale of property. Gascoigne Randon & Associates assisted the JAA probono in this regard, and the JAA used advocate Mark Oppenheimer to assist with research and legal argument in the Constitutional Court. In addition, the JAA made submissions on the duties and obligations of Conveyancers, which were potentially adversely affected by the arguments before the Constitutional Court by the various municipalities. A copy of the court's decision can be found on the website. The court upheld the interpretation of section 118(3) supported by the JAA.

This committee is at present considering the Property Practitioners Bill, including the aspect relating to paralegals dealing with occupational rental and hand-over, arranging the ECC and other certificates, and whether paralegals should be excluded from the current wording of the proposed bill. It is also engaging with the GISEC (Gauteng Interdepartmental Stakeholders' Committee) regarding rates clearance certificates and township developments, and is considering and dealing with several cases of where municipalities are interpreting SPLUMA in a manner that adversely affects property owners and conveyancers.

6.5) <u>ROAD ACCIDENT FUND:-</u>

We have been requested to attend meetings where the Road Accident Fund requests an audience with the Honourable Deputy Judge President and acting Deputy Judge Presidents.

The RAF have raised in meetings throughout the year, aspects of panel attorney training, matters standing down, obtaining of RAF contact details, draft orders by consent letters, etc.

The training by the RAF and engagement with practitioners and the judiciary aims to improve the current system, in bringing matters to finality and also aims at saving wasted costs.

The sub -committee are currently considering and doing a study on the HPCSA and its rulings, and we call on all practitioners to provide this sub- committee with feedback in this regard.

The introduction of RABS and its implications on members of the public are also being considered, and members are urged to forward comments and concerns to this forum.

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6.6) HIGH COURT PRECINCT- GAUTENG LOCAL DIVISION:-

The JAA have convened meetings with various stakeholders such as Judge Sutherland, Johannesburg Society of Advocates, Ms Zoleka Sondlo (court manager), the JDA and many others, to discuss suitable methods of dealing with inner city improvement of districts in and around the court precinct.

The objective is to improve security, cleanliness and to aid the other CID operating in the area, which in turn, will facilitate the public and legal practitioners alike.

Much progress has been made in relation to the 'clean up' of the area directly around the court, but much work remains. The JAA would like to thank all of the relevant stakeholders for their assistance thus far, including (especially) Judge Sutherland, Zoleka Sondlo, the JDA and the Johannesburg Society of Advocates.

The JAA continues to liaise with the relevant stakeholders about the possibility of establishing a voluntary CID or the court joining an existing CID in order to further promote the cleanliness and safety of the court and the area surrounding same.

6.7) GAUTENG LOCAL DIVISION EFFICIENCY ENHANCEMENT COMMITTEE:-

The next meeting is due to be held on the 20th September 2017, and we shall provide further feedback subsequent to this meeting.

6.8) WORKSHOPS:-

The Johannesburg Attorneys Association has held the following workshops thus far:-

1) Candidate Attorneys Workshop;

2) Joint Workshop on the Legal Practice Act with NADEL Johannesburg;

3) Process of executing against immovable property (In association with Schindlers);

4) Workshop on rates clearance certificates in conjunction with the Soweto Legal Fraternity.

We have to thank the offices of Schindlers and Webber Wentzel Attorneys for making their facilities and boardrooms available to the JAA and its members.

6.9) MEETINGS WITH THE PAA:-

The Johannesburg Attorneys Association as well as the Pretoria Attorneys Association executives convened to form an umbrella body where both associations can work together ,for the effective functioning of the courts, to deal with issues arising from each respective court and to find suitable solutions for the public and practitioners.

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6.10) PROBONO HELP DESK AT JOHANNESBURG DEEDS OFFICE:-

The Johannesburg Attorneys Association together with Probono.org launched a help desk at the Johannesburg Deeds Office. To date the project has been running smoothly with many law firms and practitioners offering their precious time and expertise to this help desk. The JAA continues to meet with the relevant stakeholders (including the Johannesburg Deeds Office, Probono.Org and the PAA) in order to enhance the performance of this office, and to encourage practitioners to give of their time on a probono basis to serve the public's dire need for probono assistance in this area of our law.

6.11) WEBSITE:-

The decision to report to our members by way of electronic media has seen increased activity on the site and convenience for our members. All communications are approved beforehand by our Communications Committee which consists of Nakka de Klerk, Jacques Tarica, Katherine Gascoigne, Chantelle Gladwin-Wood and myself and my two co-chairs. The e-mail drops and postings on our website are sent out regularly by our internal editorial committee competently headed by Chantelle Gladwin-Wood and expertly assisted by Kiri Exton.

Members will notice that the website is continuously updated and restructured to be more user-friendly. The committee urges all our members to constantly refer to our website as this is regularly updated to communicate important issues, especially those issues which may need quick action or reaction. Members are invited to

forward articles for publication and the editorial committee will add these in our e-mail drops and website.

A reminder to members that the JAA has a facebook page, which is carried a number of interesting news updates.

6.12 PROVINCIAL EFFICIENCY ENHANCEMENT COMMITTEE (PEEC)

This body meets on a quarterly basis under the chairmanship of Judge President Mlambo. The PEEC meetings are attended by senior members of all the stakeholders of the Courts in Gauteng and the attorneys are represented by the Johannesburg and Pretoria Attorneys Associations.

All issues of a broader nature, particularly those that could not be resolved at other forums, are raised at the PEEC meetings. This includes service delivery levels of the administration section at all courts which continue to be of concern to practitioners.

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6.13) CASE FLOW MANAGEMENT MEETINGS AT THE GAUTENG LOCAL DIVISION, JOHANNESBURG

This body also meets on a quarterly basis under the chairmanship of Deputy Judge President Mojapelo. These meetings, of which the JAA is the secretariat, are attended by senior members of the stakeholders of the High Court in Johannesburg.

The matters raised in these forums are more restrictive to the Johannesburg area and are regularly covered in our e-mail drops and inserts on our website.

One of the issues worthy of mention is that of Trial Readiness Certification (TRC). Whilst the ultimate goal of the TRC is the same as that of the Chief Justice's Practice Directive, the TRC procedure adopted in this Court is peculiar to the Gauteng Local Division because of the volume of civil trials in this Court. The TRC is currently viewed as a "work in progress" and Nakka De Klerk and Jacque Tarica, together with members of the JSA High Court Committee, form part of the Honourable DJP Mojapelo's Monitoring Committee that convene once a month to deal with problems experienced by practitioners in implementing the TRC procedure.

6.14) LIAISON MEETINGS WITH THE OFFICE OF THE CHIEF JUSTICE

These meetings, which were initiated by the JAA in 2010, are attended, *inter alia*, by the office of the Chief Justice, the Chief Registrar and the Court Manager of the High Court. The meetings are designed to be a pre-cursor to the PEEC and High Court

Case Flow meetings in an attempt to streamline issues beforehand. At the liaison meetings, we address administrative problems in the High Court that have come to our notice.

6.15) GAUTENG LOCAL DIVISION IT COMMITTEE

This Committee is chaired by Judge Spilg. The committee considers various IT related problems at the Joburg High Court, including the problems that the public are having accessing documents stored off-site, the typing of court orders, missing files and electronic service and storage of files and court documents, problems with internet accessibility of judges in the court, telephone lines being down, and other related issues that impact on the functioning of the courts and the ultimate delivery of justice.

6.16) LIAISON MEETINGS WITH THE JOHANNESBURG, RANDBURG AND PROTEA REGIONAL COURTS AND DISTRICT MAGISTRATES COURTS

Meetings are held on a regular basis and are attended by the judiciary and administration of both courts as well as the Sheriffs servicing the areas within those Courts' jurisdictions. Members are encouraged to communicate concerns/ problems to us on a regular basis so that these can be raised with the stakeholders at the meetings.

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6.17) PRO BONO OFFICES- HIGH COURT, JOHANNESBURG

The LSNP Pro-Bono office has been opened down the passage from our office at the High Court. This was done so as to facilitate the JAA assistance to the Pro-Bono office.

We implore practitioners to volunteer their services at this office in order to fulfil their pro-bono obligations.

It will be recalled, that the JAA was instrumental in launching this initiative by donating a heavy duty photocopier to the pro bono office. We continue to offer support wherever we can.

6.18) INTERACTION WITH OTHER ORGANISATIONS:-

The JAA will continue to interact with various stakeholders within the legal profession to deal with issues of common concern. We have met with NADEL, SLF, JSA, GLC and PAA and we are planning meetings in the near future with the BLA, SAWLA, and the LSSA.

7. NEED FOR A VOLUNTARY ASSOCIATION IN THE NEW DISPENSATION:-

We are entering a phase where the administration of the profession as we know it, will be controlled by the Legal Practice Council in terms of the LPA. Attorneys will require the continuation of the trade union function under the new dispensation.

We as the JAA, will continue to play an active role in ensuring the proper functioning of courts, promoting and championing access to courts for disabled individuals, access to justice, upholding constitutional rights, training for candidate attorneys, workshops for legal practitioners, development of a court precinct, and ensuring that business centre facilities are available at various courts for practitioners convenience.

At a time when “lawyer bashing” in the media has become the norm, we are interested to hear from our members how we, as the JAA, can increase any of our trade union functions, not only for our members, but the profession as a whole.

The JAA and PAA has arranged a meeting with the LSSA to enquire further about the role the LSSA will play in the new dispensation, and members are urged to keep a lookout on the website for further developments.

8. The JAA will continue its useful and productive interaction with the judiciary, and we would like to thank and applaud the judiciary in both the High Courts (particularly Judge President Mlambo and Deputy Judge President Mojapelo). We also thank the Regional Courts and the Magistrates Courts for the open door policy they have with the JAA and their willingness to resolve issues and problems as speedily as possible.

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9. Before this report is concluded, the JAA acknowledges the loss to the profession by the deaths of various Judges, Magistrates, Advocates and Attorneys who have contributed to the profession and its development. Our condolences to the family and friends of all those that have passed away during this past year.

10. SUB-COMMITTEE REPORTS:

The reports of the various sub committees are attached hereto for your perusal.

11. I am advised by the General Secretary that 12 nominations for members have been received, so no election needs to be held in terms of the constitution. We welcome the new committee member namely, Leigh De Sousa Spagnoletti. We wish to advise that the Constitution allows the committee to co-opt two more members, and with the implementation of the LPA, and the co-option will be vital.

11. Members are welcome to forward enquiries and should certain matters require a workshop, these will be arranged, for the benefit of practitioners.

Kind regards,

Yusuf Wadee
CHAIRPERSON

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REPORTS

Compiled by Nakka De Klerk:-

1. MATTERS ARISING FROM THE MAGISTRATES AND REGIONAL COURT CIVIL SUB-COMMITTEE MEETINGS HELD AT JOHANNESBURG

1.1 Practitioners attending the trial certification hearings are to be fully prepared so that a trial date can be allocated. The practitioners are required to confirm that they have consulted face to face with the client at least two months prior to the hearing. If counsel is briefed, counsel must confirm that he/she is satisfied with the pleadings. Magistrate Chaitram advised that a telephonic consultation should suffice.

1.2 Bare denials do not constitute a defence resulting in amendments and applications for postponements at the 11th hour. In 1 out of every 10 matters a proper defence is pleaded. To plead that the defendant was not negligent is a conclusion of law, the facts must be pleaded. Practitioners are to take exceptions timeously.

1.3 Where a matter is certified trial ready, a trial date is allocated 25days in advance, giving practitioners 4 days within which to serve and file a notice of set down. Accordingly all trial preparation and discovery is to be finalized before trial certification is applied for.

1.4 Practitioners are still not Indexing &Paginating the original contents of the court file, which is to be done no later than 10 days before the trial. In many instances indexed and paginated copies of pleadings and notices are filed in court. Defective service or non- service of summons cannot be condoned.

1.5 There are still problems with the sheriff's returns of service relating to the travelling allowances charged by the sheriff's. Some sheriff's charge R89.00 others R450.00. Plaintiffs and or their representatives should be querying amounts charged by sheriff's, and require the sheriff's to tax their accounts. There are instances in divorce matters, where the sheriff's charge the Plaintiff's appearing in person R450.00 to serve. In Small Claims Court matters the sheriff's charges are excessive and judgment is only granted for a portion of the fees charged by the sheriff's.

1.6 Certain sheriff's have advised that they are subjected to abuse by practitioners who use abusive and vulgar language towards them. Certain practitioners are also not paying sheriff's accounts. In future unpaid sheriff's fees will be treated as unprofessional conduct and reported to the Law Society.

1.7 The new summons machine which was installed is now working.

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1.8 Practitioners apply for trial dates, and on the day of the trial do not proceed on trial. This sometimes results in unnecessary expenses being incurred by the state, in instances where the presence of sign language interpreters and interpreters in general have been secured to be in attendance on the day of the trial. At the Pre-Trial Certification hearing practitioners are to advise whether they will be requiring the services of an interpreter at the trial.

1.9 Practitioners pay money into court as security, however they do not claim same back, and in some instances money has been paid in as far back as ten years ago with the result that the monies are paid over to treasury. Letters are being forwarded to practitioners in this regard, with little or no response.

1.10 Mrs van der Merwe after 48 years of service has retired as the sheriff of Johannesburg South. Her area for service has been cut up into four areas, however no point to point map has yet been finalized. Ms June Thompson has been appointed as the new sheriff for Johannesburg South and her email address is admin@sheriffumzimkulu.co.za.

1.11 Mr Ramolefe is in charge of the civil section as Mr Madubela has been moved to the court in Protea.

1.12 Warrant of execution should take no longer than 5 days to be issued. If difficulties are experienced, with the granting of default judgments and/or issuing of warrants, practitioners can email the details to Magistrate Koen who will look into the matter.

1.13 Magistrate Koen advised that several Ex Parte Applications were being brought to stop evictions with allegations that no court order had been granted and that the sheriff's were acting illegally. In some instances the order had been granted in the High Court.

Due to the fact that there are illegal court orders in circulation, the sheriff's have to provide the court order to the SAPS otherwise they will not provide police assistance for an eviction. Court Orders will only be verified where the station and / or the Sheriff have a suspicion that the order may be fraudulent
A separate register is kept at court for eviction matters and enquiries can be made at court to verify a court order.

1.14 Four lifts at the Family Court have for a considerable period of time not been working. This has resulted in the public not being able to attend court timeously and has resulted in matters being struck from the roll for non-attendance.

2. MATTERS ARISING FROM THE HIGH COURT MEETINGS WITH OFFICIALS FROM THE OFFICE OF THE CHIEF JUSTICE, THE COURT MANAGER AMD THE REGISTRAR

2.1 A Practice Directive for Taxations is being prepared which will be applicable to both the Pretoria and Johannesburg High Courts. The draft Directive will be presented to the JAA for comment.

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2.2 No notification of the fact that a trial date had been changed was being communicated to the attorneys directly by fax and/or email. The only notification were lists being forwarded to the JAA to post onto their website, which notification does not reach all the attorneys. This has resulted in numerous matters being struck from the roll in instances where the attorneys had no knowledge of any date having been changed. According to statistics for the last quarter of the term for 2016, a 1000 matters had been struck off the roll. This situation should not arise in future as the Registrar has been instructed not to allocate earlier trial dates to matters already allocated a trial date with a long waiting period.

2.3 In order to speed up the typing of court orders the orders are being typed, referring to the draft order being made an order of court. Minor amendments or deletions are initialled by the judge, but ideally the matter should stand down for the draft order to be re-typed. No handwritten draft orders are accepted except in urgent matters.

2.4 Difficulties arise where draft orders are incorrect and are made orders of court. Where it is a patent error, practitioners are to approach the judge in chambers, to have the order rectified. In other instances representatives from both parties would have to approach the judge in chambers.

2.5 Court files for the years 2007, 2008 and mid 2009 have been scanned. A help Desk in Room 004 is manned by Ms Manku who can assist with accessing these court files. Duplicate files will be opened by the registrar, if a matter is to be enrolled. There are four registrars who can sign a certificate that the court file content is in accordance with electronic format thereof.

2.6 For quality assurance and to avoid fraudulent warrants being issued on incorrect court orders, warrants of execution are to be submitted to the registrar for signature together with the court file, and collected the following day. If the court file is not available it will take time for the registrar to listen to the audio. Warrants that are to be issued in respect of default judgment orders that have been granted are to be submitted to the registrar for default judgments on the 10th floor, who distributes same to Mr Coetzee who distributes them amongst the other registrars for signature.

2.7 The lifts at the High Court were not functioning properly, and were not stopping on all the floors. Litigants were being stuck on the ground floor, and did not arrive in court on time, some in a wheel chair could not access the courts, due to the unavailability of lifts. The problems with lifts and air conditioners appears to be a problem country wide.

2.8 A list of office numbers and telephone numbers of personnel at court and the function of each office is available on the JAA website.

3. MATTERS ARISING FROM THE MAGISTRATES AND REGIONAL COURT CIVIL SUB-COMMITTEE MEETINGS HELD AT RANDBURG

3.1 The court manager has decided to close the pigeon holes indefinitely. As instructed, we suggested that the JAA takes over the management of the return of the court files on a regular

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basis and the acting court manager, Ms. Maanda, informed us that she does not find it acceptable to hand over this responsibility to the JAA as the final responsibility rests with them;

3.2 The court manager has requested that we come up with solutions that would be acceptable to the court for the pigeon holes, remembering that they do not have the infrastructure or manpower to email or fax the necessary documents;

3.3 The court is struggling badly with a lack of manpower and resources at the moment and there is a general moratorium on the employment on new staff unless it is to fill a critical post;

3.4 There is no formal agreement between the court and the JAA and this has been raised at external meetings. However, Ms. Maanda has defended the JAA on the basis that the JAA fulfils a very important role at the court;

3.5 The number of default judgements have increased from approximately 180 (one hundred and eighty) default judgements to approximately 300 (three hundred) per week and this is the reason for the delay with a lot of default judgements being returned by the court;

3.6 The court is going to start insisting on identity documents being presented when drawing files;

3.7 There is a apparently a huge amount of bribery by messengers and the court manager has asked that it be impressed upon messengers that bribery will not be tolerated;

3.8 In a PIE eviction application and summons situation, the Magistrates would prefer that the summons and eviction application are brought under the same case number;

3.9 The Magistrates requested that we bring our own interpreters for trials as there are often not court interpreters available, even in the event that an interpreter is arranged in advance. This often causes unnecessary postponements.