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Enhancing policy implementation:

Lessons from the justice sector

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INTRODUCTION

*Justice is like a train that's nearly always late*¹ – Yevgeny Yevtushenko

Despite South Africa's progressive constitution and enlightened bill of human rights, the government's criminal justice machinery is not able to adequately protect those rights. South Africa's largely antiquated justice system is creaking under the weight of heavy case backlogs, and prisons overcrowded with awaiting trial prisoners. Other government departments are also struggling to implement new policies and deliver promised services, but gaps in justice are particularly important because South Africa has one of the highest crime rates in the world. Deficiencies in justice also have an impact on the police and correctional services.

This study is part of a broader project aimed at identifying gaps between policy and its implementation, and suggesting how they may be closed. The first phase of this study, presented in a prior research report, consisted of a survey of policy documents and other secondary sources;² this paper presents the results of the second phase, namely primary field and focus group research into the gaps between policy and implementation in the department of justice.

The department of justice was selected for inclusion in this project for several reasons. Firstly, many of the initial legal tasks of implementing the new constitution and thus creating a human-rights-based democratic order fell on this department. Secondly, it plays a key role in the criminal justice system, whose proper functioning has become critical to establishing a stable and peaceful society. Thirdly, justice is a national function that is nonetheless implemented in a decentralised manner through hundreds of courts. This will allow for an eventual comparative analysis with other departments whose policies are implemented via other agencies such as the provinces, local governments, or water boards.

Since it was not possible to study the entire justice system, we focused our attention on the magistrates' courts, because they deal with more than 97 per cent of court cases, and on two broad areas of policy implementation:

- policies aimed at improving court functioning and management; and
- policies aimed at improving access to justice for women and children.

We selected the first area because the poor functioning and management of the courts is resulting in a failure to uphold the rights of both victims and accused, and is creating problems for the whole criminal justice system, including the police and prisons. We selected the second because access to justice for women and children is central to creating a caring and responsible society. Furthermore, both policy areas are professed government priorities.

¹ Yevgeny Yevtushenko, *A precocious autobiography* (Harmondsworth: Penguin Books, 1965).

² L Stack and L Ntlokonkulu, *Understanding policy implementation: exploring research areas in the justice sector* (Johannesburg: Centre for Policy Studies, 2000).

The development of justice policy

One of the earliest policy-making developments in the department of justice was the creation of a planning unit, established with Danish funding, to formulate a plan for transforming the justice system.³ It took a long time to reach agreement on how the unit should be constituted, due to tensions between the new ministry and the old bureaucracy and the complex process of amalgamating the former homeland departments of justice into one national department. The managers of the department from director-general down were all white males who were accustomed to making all the decisions and drafting all the legislation.

The first step was to set up a management committee (MANCOM) comprising people from both the department and the former homelands to examine all the decisions made in the department and to provide the minister with an opinion on these decisions. A second step was the creation of a rationalisation committee of 90 people that included representatives of all the former departments of justice. This gave representatives of the former homeland departments a major say in the transformation and rationalisation of the department. One of the consequences of this was the decentralisation of the justice function, and the establishment of regional justice offices.

The department was accustomed to its management formulating policy on instruction from the minister, and submitting it to the latter for approval. The establishment of a planning unit therefore caused some tensions with the existing management. The core of the new unit consisted of a director, two varying local consultants, two Danish consultants from the Centre for Human Rights, administrative staff, and occasional advisers provided by the Danish Centre for Human Rights. It is this body that drafted the department of justice's guiding document *Justice vision 2000*.⁴ Once this document was completed, the unit was disbanded.

During 1994 and 1995 the department of justice held several consultative policy conferences with interested parties in civil society, including NGOs, community organisations, legal professionals, consultants, and legal academics. Numerous policy and discussion documents emerged from these consultations. Ultimately these ideas were incorporated into *Justice vision 2000*.

The first problem with implementing the new policy was the fact that the new ministry was not able to take proper charge of the administration of justice; this was because it had inherited a bureaucracy which was not very favourably disposed towards its new masters. This problem was however, not addressed in any meaningful way. On the contrary, the new ministry rather naively simply expected the whole department to 'buy into' the new justice policy. There were a number of aspects to this problem. Firstly, the new ministry did not try to bring all implementers on the ground on board, but restricted their efforts to senior management only, expecting that the rank structure would take care of the rest. Secondly, they simply expected that implementers would 'own' the new policy

³ Information on the early development of justice policy is taken from an interview with Enver Daniels, former special adviser to the then minister of justice, Dullah Omar, 28 March 2001.

⁴ Department of justice, *Justice Vision 2000: a draft strategic plan for transforming and rationalising the administration of justice* (Pretoria, undated).

document and, on their own initiative, seek ways to implement it. Thirdly, they underestimated the degree of disinterest and even reluctance that the new policy would provoke among many implementers on the ground, who saw it as a threat to their interests. This suggests a profound instrumentalism towards, and lack of awareness of the mindsets of, justice policy implementers. It did not seem to occur to anyone that the views of implementers might need to be taken into consideration in order to attain successful policy implementation. It was simply taken for granted that any dissatisfaction with new policies would somehow dissipate on its own.

A second major problem was that *Justice vision 2000* was very theoretical, and provided few specific guides to implementation. It was meant to form the basis for a green paper, a white paper, and then legislation, but this never happened. In other words, the implementation of *Justice vision 2000* was never clearly specified. Some of the reasons for this were a rushed approach to introducing new policies, inexperience with policy implementation, and a failure to realise that implementation could only occur on an incremental basis with short-, medium-, and long-term goals. Another reason was structural: three units in the department were responsible for the courts, and this resulted in overlapping responsibilities and blurred lines of authority and accountability.

A closer look at *Justice vision 2000* also reveals some of the reasons why policy implementation has been problematic. It defines the department's 'mission' as establishing a legitimate administration of justice that is efficient, accessible, accountable, just, user-friendly, and representative. It also seeks to promote equality, freedom, fairness, respect for human rights, and to incorporate and expand community participation in the administration of justice. Moreover, it undertakes to do this in an efficient, cost-effective, and transparent manner.

Justice vision 2000 identifies six 'visions' for the justice department:

- a single, integrated, coherent, and representative department;
- access to justice for all;
- safety, security, and freedom from crime;
- a legitimate, representative and people-friendly structural framework for the administration of justice;
- effective and efficient education, training and information systems; and
- a well-trained, representative, and evenly distributed legal profession.

Each vision statement is developed in greater detail and summarised in tabular form under the headings 'goals', 'success indicators', 'strategies', 'target', 'action', 'success criteria', 'resources', 'time', and 'responsible'. However, no time frames were provided beyond the year 2001, despite the fact that the document states:

In view of the fact that resources will always be limited, the plan will be implemented through prioritised action plans ranging from short-term, medium-term to long-term initiatives.⁵

There is little indication of any prioritisation in the document. It was therefore more of a comprehensive wish list than a strategic plan.

⁵ Department of justice, *Justice vision 2000*, p 7.

Other priorities identified outside the *Justice vision 2000* document, and subsequently implemented to a greater or lesser extent, included establishing a single prosecutorial system, formalising the role of lay assessors in the magistrates' courts, tightening bail laws, introducing minimum sentences, reviewing the legal aid system, and creating family courts.

One of the most likely reasons that justice policy has been poorly implemented is the lack of a well-formulated strategic plan. Policy in *Justice vision 2000* is formulated in a most obtuse and cumbersome way. It bristles with complicated concepts whose definitions and interrelationships are often unclear. It is hard to see how officials might translate it into implementable policy.

Soon after taking office in 1999, the new minister, Penuell Maduna, clearly recognised the problem of unfocused policy in his department. A discussion document produced by the department⁶ after a ministerial visit to various courts around the country indicated that it was to be restructured to intensify its focus on its core function of managing the courts. The document states: 'The organisational realignment is being fast-tracked in order to have in place by 1 December 1999:

- 'a strategic plan, informed by service demands, describing the core objectives, activities, goals and targets for the department and the programme for attaining [them] linked to the budgets required;
- 'an organisational structure and establishment of posts that supports the strategic plan;
- 'a service delivery improvement plan; and
- 'a comprehensive human resources plan, defining the skills and resources available as well as the training needs.'

In February 2000 the ministry launched the *Millennium 10-point plan*. It defined the department's primary challenge as providing well-managed courts that are friendly, service-oriented, and run according to the values of the constitution. The ten priorities identified in the plan were:

1. Upgrading/developing the courts.
2. Court and case management.
3. Human resources management and development.
4. Specialised courts and alternative dispute resolution mechanisms.
5. Re-engineering the maintenance system.
6. Developing an integrated approach to problems in the criminal justice system.
7. Constitutional and statutory obligations.
8. Development of effective communication and promoting community and corporate participation in programmes.
9. Transformation of the legal profession and judiciary.
10. Institutional development.

At the time of writing, a new strategic plan was being developed with the assistance of Business Against Crime (BAC) and other business agencies.

⁶ Matters arising from the statement by the minister of justice and constitutional development on the efficiency of courts made in parliament on 9 September 1999, <http://www.doj.gov.za/docs/reports/courts-efficiency.html>.

One of the most fundamental reasons for some of the gaps in implementation has been the failure to prioritise adequately. Policy has been unrealistically comprehensive. One consequence has been the failure to produce a justice white paper to guide legislation and implementation. Instead the basic guiding document remains *Justice vision 2000*.

The result has been the passage of more than 70 pieces of legislation in an attempt to be comprehensive. Another has been numerous ‘pilot projects’ set up in selected centres on the assumption that, if found to be successful, they would be ‘rolled out’ to the rest of the country. No plans for sustainability were built into these pilots. No attempt was made to estimate the total cost that would be involved if all had to be rolled out to all the major centres. Neither has there been any proper government evaluation of many of them. In a number of cases they were agreed to by the department because they fitted in with its broad objectives, and because they were favoured by donors without any real attempt to assess their suitability to local conditions.

The overall result has been an ad hoc, magpie⁷ policy approach that has been more reactive than strategic and well-considered.

A focus on the gaps between justice policy and its implementation tends to highlight areas of underperformance. The intention of this study is to identify areas where improvements could make a significant impact on policy implementation. The intention is not to underestimate the magnitude of the exercise of transforming the justice system, or to detract from the far-sightedness of many of the new policy initiatives that have been adopted.

HYPOTHESES AND RESEARCH METHODS

During the first phase of this study, the following hypothesis was developed: *The gaps between policy and implementation in justice are due to: 1) an escalation in the rate of crime, and the consequent overburdening of the courts; 2) an overambitious policy framework without adequate prioritisation; and 3) the allocation of too few resources to the department.*

The study has confirmed only the second element of this hypothesis. Since the number of cases prosecuted has been dropping steadily since the mid-1980s, poor court performance cannot be attributed to the escalation in the rate of reported crime. And, while it appears that insufficient resources have been allocated to the department for courts to function effectively, shortages of funds may also be partly be due to bad financial management practices, and to an inappropriate distribution of funding among the various justice functions.

Over and above the hypothesis, numerous other factors contributing to the gap between policy and implementation have been identified. They include:

- underprioritisation of justice nationally;

⁷ Epithet used by Jeremy Gauntlet, chair of the general council of the Bar, in an interview in September 2000, referring to the department's tendency to repeatedly shift the focus of its attention among various transitory interests without developing a strategic plan that addresses real needs.

- multiple simultaneous transformation initiatives affecting almost all aspects of the justice system;
- a failure to cost policy;
- a lack of financial management skills and systems;
- inadequate human resources;
- diversity of authority centres in justice, and a consequent lack of organisational cohesion;
- a lack of communication and co-ordination within the justice department itself as well as between justice and other, related, criminal justice departments;
- a disruption of court management systems, and
- a failure to encourage and build on successful local initiatives and to involve communities in the process of implementing justice policies.

The recommendations at the end of the study are related to these explanations of the gaps between policy and implementation.

The study is a qualitative one based on interviews, observation, and focus group sessions. Since justice policy is implemented on a decentralised basis, interviews were conducted in three provinces: Gauteng, Free State, and KwaZulu-Natal. Specific projects were also examined in the Western and Eastern Cape. Gauteng and KwaZulu-Natal were selected as they have heavy caseloads and a high demand for service delivery; moreover, they are sites for several pilot projects. The Free State was selected because, until now, the functioning of the justice system there has hardly been researched. Cape Town and Port Elizabeth were selected because certain pilot projects were reputed to have been successfully implemented in those cities.

Interviews were conducted with officials at the head office of the department of justice, regional justice offices in KwaZulu-Natal and the Free State, the department of finance, various magistrates' courts, the Justice College, and the Legal Aid Board. Interviews were also conducted with members of the parliamentary justice portfolio committee, judges of the high court and the judicial inspectorate, NGOs and academics involved in justice, some law professional associations, BAC, and members of the business team involved in facilitating the department's restructuring process and the Integrated Justice System Programme (IJSPP).

Processes were observed at a number of magistrate's courts in different regions, and at Grootvlei prison outside Bloemfontein. Ten focus group sessions conducted by Markinor with magistrates, prosecutors, lawyers, social workers, police investigators, accused persons, complainants, witnesses, heads of prisons, and international donors were also observed.

In respect of court management and functioning, the following four policy areas were examined:

- the IJSPP;
- the separation of judicial and administrative functions to improve court functioning and management;
- the creation of the National Prosecuting Authority (NPA) in an attempt to address prosecution problems; and
- the pre-trial services pilot projects aimed at facilitating case flows.

In respect of increasing access to justice for women and children, the following were examined:

- the Domestic Violence Act;
- the Maintenance Act;
- the constitutional provision that children should be detained as a last resort; and
- the establishment and roll-out of sexual offences courts.

COURT FUNCTIONING AND MANAGEMENT

The policy problem

The courts are not coping effectively with the number of cases, civil or criminal, before them. This is especially true for the lower (regional and district) courts that deal with about 97 per cent of all criminal cases. The reasons for this relate to inefficiencies throughout the criminal justice system.

About 2,5 million crimes have been reported each year since the mid-1990s.⁸ Since 1994 reported crime has increased by 14 per cent, and serious reported crime by 37 per cent.⁹ Of the reported crimes, about 10–11 per cent are prosecuted in the courts, and about 8 per cent result in convictions. These figures can vary considerably for different types of crime,¹⁰ but the global figure nevertheless gives an indication of the generally low rate of conviction of reported crimes.

There are several reasons why cases are not prosecuted. Some are withdrawn at the request of the complainant, some are withdrawn by the prosecution when a magistrate refuses to grant further postponements due to incomplete investigations, some do not proceed because the police are not able to identify a suspect, and some are dropped when not enough evidence that a crime has occurred can be found. In June 1999, 48 per cent of 244 000 cases reported were closed undetected.¹¹ No statistical analysis of the reasons for the low rate of prosecution of reported crimes is available.

The rate of prosecution has steadily dropped over the years. In 1985–6 some 480 600 cases were prosecuted, compared to about 290 000 in 1995–6 and 257 000 in 1999.¹² Conviction rates remained relatively consistent at 75–79 per cent of prosecuted cases during the same period.

Despite the low and diminishing rate of prosecution, the courts are still not coping with the volume of cases that come before them. There are many reasons for this, including a loss of experienced prosecutors and a severe shortage of administrative staff. The effect can easily be seen in the rising numbers of awaiting trial prisoners. In June 1994

⁸ Schönteich has noted that in 1996 some 2 733 363 crimes were reported to the SAP, and in 1999 some 2 380 820. M Schönteich, *Lawyers for the people: the South African prosecution service* (Pretoria: Institute for Security Studies, 7 December 2000), pp 66, 69.

⁹ Keynote address to the justice colloquium, October 2000, p 4.

¹⁰ See Schönteich, *Lawyers for the people*.

¹¹ Keynote address to the justice colloquium, p 4.

¹² See Schönteich, *Lawyers for the people*, chapter 6.

they comprised some 20 per cent of the prisoner population; by June 2000 this had risen to some 35 per cent.¹³ Furthermore, the average number of days that awaiting trial prisoners spend in prison rose from about 74 in June 1996 to about 138¹⁴ in June 2000. At an estimated cost of about R80 a day per prisoner, the cost of holding one awaiting trial prisoner for such a period amounts to about R11 000.¹⁵ With an awaiting trial prisoner population of some 59 000 in June 2000, this cost the state about R650 million per prisoner – equivalent to more than 20 per cent of the justice budget.

The poor functioning of the courts is evident from the number of hours a day that courts are sitting, the number of outstanding cases on the court rolls, and the generally below-target rates for numbers of cases that are finalised with a verdict.

In October 2000 regional courts were averaging daily sittings of three hours and 50 minutes (the target was four hours and 15 minutes), and district courts just under four hours (the target was four hours).¹⁶ Although these times were not far short of the national targets, some magistrates and prosecutors who participated in focus group sessions suggested that the targets should be higher: about five or five and a half hours a day. Their impression was that the targets are generally not being met.

The backlogs on the court rolls certainly seem to warrant higher targets. All courts operate with lists of cases to be heard on their rolls. When cases are finalised, they are removed from the roll and new cases are added. Certain numbers of cases on court rolls are regarded as normal. The target for outstanding cases on regional court rolls is 110, and for district courts 145.¹⁷

If the average number of cases per court for all the regional and district courts is examined from February to October 2000, it appears as if the backlogs have virtually been resolved (targets are being met or are not far off being met):

Table 1: Outstanding cases on court rolls, February– October 2000

	February 2000	June 2000	October 2000
Regional courts	35 084	48 409	46 617
Average per court (target 110)	116	140	129
District courts	111 363	133 064	116 869
Average per court (target 145)	150	145	125

These figures do show progress in reducing the rolls. But if the average number of cases by different types of courts in the various court divisions for October 2000 is examined,¹⁸ a different picture emerges (see tables in annexure 1).

¹³ Schönreich, *Lawyers for the people*, p 76.

¹⁴ For cases in the regional court the detention cycle time is 222 days.

¹⁵ Schönreich, *Lawyers for the people*, p 76.

¹⁶ Data supplied by the National Prosecuting Authority.

¹⁷ National Prosecuting Authority of South Africa, *Mid-term report, 2000*.

¹⁸ Calculated from data supplied by the NPA.

It is clear from the tables that overall averages disguise the problem areas. The relatively good averages shown in table 1 have been reduced by periodical courts whose outstanding rolls are generally well under target (these are courts that sit periodically rather than every day – usually in outlying areas).

Data for cases finalised suggest that most courts are not yet meeting the targets of 15 cases a month for regional courts, and 40 a month for district courts (detailed tables are given in annexure 2).

Also contributing to the poor functioning of courts are serious staff shortages and the poor quality of infrastructure, equipment, services, and security that permeate the justice system.

Most of the records relating to the administration and management of the courts are still kept manually. The electronic management of information is still in the rudimentary stages of development.

There is a severe shortage of office space, waiting rooms, and other facilities in many courts. This means that intimidation of witnesses can and does occur. It also means there is a lack of privacy in sensitive cases that does not encourage the use of the courts.

Some courts are making a conscious effort to become more service-oriented, while others are patently in the grips of a very negative ethos where people are often made to feel unwelcome and a nuisance whom nobody wishes to assist.

Many court buildings are old and dark, and cracked walls and peeling paint create an oppressive ambience. Some courts have very poor toilet facilities. In Batho in Bloemfontein, where temperatures can soar, prisoners are held in corrugated iron shacks.

Problems with services occur throughout the system. In some rural areas, basic services such as lights and water are not reliable. In other areas air-conditioning and cleaning services are dysfunctional.

Security is another problem. There are more than 500 court buildings in the country, but the department employs only 536 security personnel. In many cases, offices handling money are not adequately protected. Many courts have experienced burglaries and break-ins.

Many of the courts in the country are thus malfunctioning.

Policies and their implementation

The four policies that we examined in this study – the IJSP, the separation of judicial from administrative functions, the creation of the NPA, and pre-trial services – are briefly discussed below.

The Integrated Justice System Programme

The IJSP was established in 1998 under the criminal justice process pillar of the National Crime Prevention Strategy (NCPS). The IJSP is a partnership among the government, BAC, and the international donor community. It is aimed at developing a programme that integrates the functions of all the departments involved in the criminal justice system.

The IJSP is managed by a board comprising deputy director-generals and chief directors of justice, correctional services, the SAPS, welfare, the BAC board, and a project director. It initially reported to the NCPS ministerial committee. The intention is to es-

rector. It initially reported to the NCPS ministerial committee. The intention is to establish similar boards in each province and possibly at the local level in order to advance the implementation of criminal justice policy. The IJS has offices in Pretoria, and is funded by government departments as the integrated justice modernisation component of the Medium Term Expenditure Framework (MTEF), and by the private sector through the Business Trust.

The first step in the development of the programme was to identify the stages in the criminal justice system from crime reporting to arrest, prosecution, adjudication, incarceration and community supervision. The next stage was to identify all the obstacles to the smooth running of the system, and a third was to identify short-, medium- and long-term projects as well as fast-track solutions to some of the most urgent problems.

E-Justice is the department's basic automation project which will eventually be integrated into the integrated justice system. The project is being piloted in Johannesburg in the criminal courts, and in Durban in the civil courts.

Although there is considerable confusion in the courts about the progress and sequencing of IJS projects in general, people interviewed were positive about the IJS. One of the most successful IJS projects is the Awaiting Trial Prisoner Project (ATPP). This involves the review of cases of awaiting trial prisoners by review teams consisting of prosecutors, investigators, and correctional services officials. According to BAC, the results have been a reduced average detention cycle time from 122 to 87 days, the granting of affordable bail or passing of sentence in three quarters of the cases reviewed, and a cost avoidance of R4,5 million¹⁹ due mainly to reduced detention cycle times.

The most advanced and efficient integrated justice court centre is in Port Elizabeth. A partnership between BAC in the eastern Cape and the senior public prosecutor of the magistrates' court played a key role in establishing it. The centre comprises a channelisation court, an ATP project, and a pre-trial services component.²⁰ According to the centre, this has resulted in a reduction in the numbers of cases on the court roll; improved interdepartmental co-operation, communication and interaction; more prisoners arriving at court on their court dates; dockets being at court on the date of trial; experienced guidance for investigating officers, resulting in the improved preparation of dockets; and better informed bail decisions. This is a good example of a relatively low-cost organisational restructuring that has produced significant results.

Unfortunately the department of justice does not seem to recognise its value. A letter acknowledging receipt of a report from the centre stated in rather abrupt terms that the latter should in future address its correspondence to a different office. The damage this did in the face of so much commitment and dedication is immeasurable. It points to a lack of awareness in Pretoria of what is being done on the ground in certain courts.

Separation of judicial and administrative functions

The chief magistrates of district courts have been in charge of the management, administration, and budgets of the lower courts. As such, they have been responsible for ensur-

¹⁹ Business Against Crime, BAC Review, November 2000.

²⁰ Presentation on the Port Elizabeth Integrated Justice Court Centre.

ing that courts start on time and that all the parties are present, and for checking the records of daily court work.

This has curtailed the time that the most qualified and experienced magistrates have available for judicial work. Given the strains that courts are experiencing, the department decided to relieve magistrates of their administrative duties for a six-month trial period from 1 September 2000. These functions were to be performed by administrative officials, thus freeing up magistrates to concentrate on their core functions.

Implementation is proceeding very slowly, and only in certain courts where it is practically possible. Not all administration sections of all courts are capable of taking over these duties. In some smaller courts, especially in the rural areas, administrative staff are not equipped to take over court management functions. Some magistrates feel the department is not providing sufficient training for administrative officers, and that this is creating problems. The department is thus attempting to implement a policy without the requisite human resources and training.

Magistrates participating in the group sessions supported the separation of administration functions, arguing that it would help them to deliver better judgements, but felt it should be implemented systematically and with due regard to the workloads and capabilities of the staff at particular courts. Many magistrates started their careers as clerks, and are therefore very familiar with and skilled in administrative procedures. It makes no sense to transfer these functions unless those who take them over are competent to do so. If not, the courts will simply create more problems for themselves in the longer term.

The management of the courts by district court chief magistrates have been anomalous in terms of the hierarchy and lines of authority in the courts. District court chief magistrates are junior to regional court presidents, yet control the budgets of regional courts in their court buildings.

A similar problem exists in respect of the relationship between chief magistrates and prosecutors. Prosecutors fall under the NPA, but the chief magistrate controls the budget of their daily operations. The diversity of authority centres and crossing of lines of authority has resulted in too little interaction and co-operation among the key players in court planning and assessment.

The most serious problem in implementing the separation is a lack of managerial capacity among administrative personnel, and a failure to provide the requisite training to address this. Some magistrates feel the department is not supporting them by providing sufficient training for administrative officers. As one put it:

We are busy with the separation of functions, but the department is reneging on that because they are not training the administrators. Every day they are coming up with a new trick, and there is a new business plan for it. The whole issue will explode in six months, because they don't actually want magistrates to become independent of the department.

Although this seems to imply that a key problem is an excessive desire to control things from the centre, the instruction for separation has already gone out. But the department does appear to be ambivalent about the extent to which magistrates should become independent of the department, because of a concern that some magistrates are not

sufficiently sensitive to the ‘interests of the community, especially towards women and children’.²¹

Related to the separation of judicial and administrative functions is a pilot project, supported by BAC, under which court managers have been appointed in Johannesburg and Durban. Should this succeed, it will be done in the rest of the country. At the time interviews were being conducted for this study, the department was discussing funding with USAID.²²

The pilot project in Johannesburg was due to end in March 2001, but the Durban project was only due to start in 2001. The Johannesburg court manager has a master’s degree in management from Wits, has been appointed on a one-year contract, and is paid by BAC. The main objectives of the project are to disaggregate functions by relieving magistrates of administrative work, facilitate the co-ordination and reintegration of management around the new post of court manager, and professionalise management.

One of the main challenges facing the process in Johannesburg is the problem of capacity. Moreover, the courts are hierarchically organised and permeated by an elitist culture in terms of which administrative staff have traditionally occupied the lower rungs of the ladder. In both the Johannesburg and Durban pilots, court managers were sought from outside the justice department to circumvent some of these problems. However, this approach is not likely to be replicable throughout the country, as donors are generally unwilling to fund salaries.

The achievements of the project are reported to be that ‘ample’ time (about two extra hours a day) has been created for judicial work; court backlogs have been reduced in some courts; fewer cases are being postponed; magistrates have time to do legal research and respond to queries from judges; and the quality of judicial decisions has improved. Further benefits have been that administrative staff have felt empowered by the matching of responsibility with authority in their own areas of work, and the recognition of their role in the court process.

Some recommendations are likely to include a requirement to define the terms of reference for court managers, the need for an injection of skilled people from outside the court environment, and for adapting the role of court managers in different types of courts. In smaller courts, if administrative work is removed from magistrates, the latter are left with too little to do. How the system would apply to rural courts also needs to be worked out, as it is unrealistic to promote rural administrative clerks to court managers.

The creation of the National Prosecuting Authority

Following the negotiations in the early 1990s, the constitution provided for a single national prosecuting authority.²³ In 1998, legislation provided for the establishment of the NPA – consisting of the National Director of Public Prosecutions, the National Directorate of Public Prosecutions (NDPP), and the rest of the prosecution service. Despite great controversy at the time, it appears to have been widely accepted and even welcomed.

²¹ Interview, department of justice, March 2001.

²² Ibid, November 2000.

²³ See section 179 of the South African constitution.

Problems in relation to the prosecution service are by now legendary. Since January 1994 more than 700 prosecutors have resigned. There are currently some 2 000 prosecutors. According to Schönreich,²⁴ 52 per cent of public prosecutors below the rank of senior public prosecutor as well as junior state advocates have less than three years' experience.

While prosecutors are now governed by their own national body, they remain public servants and continue to fall under justice regional offices and chief magistrates in the execution of their functions. The creation of the NPA has had a positive effect on the morale and status of prosecutors, but the problems affecting them are still serious and they are still leaving the service in large numbers.

Prosecutors have to have the same qualifications as magistrates, but because they are civil servants they have to negotiate their salaries via the bargaining chamber. Magistrates, on the other hand, are independent of the public service, and negotiate their salaries through the Magistrates' Commission. The effect is that, while magistrates' starting salaries have risen to R179 000 a year, prosecutors' are R55 000. Overtime and merit awards for prosecutors were introduced in an attempt to go some way towards bridging this disparity, but then overtime pay was stopped and merit awards suspended. As one senior prosecutor put it: 'how is this supposed to motivate prosecutors?'²⁵ According to one regional office head, prosecutors' salary increases were negotiated subject to a reduction of court rolls, but because this was not applied to individual courts, all prosecutors received the increment whatever the quality of their work. The department, according to him, was not being consistent in its dealings with prosecutors.²⁶

In addition to bleak career prospects and poor working conditions, prosecutors also face inadequate training. Prosecutors receive six months of training at the Justice College, but this has not proved adequate to equip them for court. The college is starting a mentoring programme using retired prosecutors in an attempt to provide more appropriate training.

New magistrates are taken in three times a year. Once a prosecutor has a couple of years' experience, becoming a magistrate entails a doubling of salary. This is one of the main reasons for the loss of experienced prosecutors, which is one of the main reasons for the sluggish performance of the courts. NPA officials believe there should be two intakes of 120 instead of 60 prosecutors a year, as the service needs about 260 additional prosecutors fairly urgently to cope with the backlog of cases.

Also contributing to sluggish prosecution is the fact that prosecutors do not see a case through from beginning to end. With the exception of specialist courts, prosecutors are not assigned to particular cases. This means several different prosecutors are often involved in prosecuting the same case.

Discipline is reportedly a major problem in some areas. Inspections can be fraught, as a high percentage of senior managers in the courts are still white. Some people are apparently reluctant to write reports because they fear accusations of racial bias. Standards of

²⁴ Schönreich, *Lawyers for the people*, p 80.

²⁵ Interview at Port Elizabeth magistrates' court, November 2000.

²⁶ Interview at Free State regional office, October 2000.

evaluation for leg-to-leg promotions are not always applied uniformly, and again there is a reluctance to recommend that prosecutors not be promoted.

The appointment of 31 chief prosecutors under the NPA is believed to be contributing significantly to the alleviation of problems in the courts. They have been made responsible for court planning and reporting monthly to the NDPP. They are to train senior public prosecutors in court planning and docket screening, and are to visit all courts, interview all prosecutors, and make recommendations on training and other needs. Some 350 prosecutors have been identified as in need of urgent training.

But the creation of the NPA has led to several unforeseen problems. The first is frustration that the body has functional authority over prosecutors without administrative control, which has remained with chief magistrates. The second is a sense among some in the department that the NPA is not necessarily aligned with its objectives – witness the withdrawal of prosecutors from maintenance cases, which is discussed later. A third is tension over the investigative function of the NPA, which is normally a police role.

The NPA has been recruiting police, paying them higher salaries, and sending them, with donor funding, for specialist training with the FBI and Scotland Yard. Some police investigators in the focus group saw this as the creation of an elite investigative unit that may drain police ranks and create further demoralisation. One analyst commented that the inclusion of an investigative unit in the prosecution authority was a reactive step to deal with a crisis situation, and did not represent a properly structured and thought out approach to the reform of the criminal justice system, as important functional boundaries were being transgressed.²⁷ While elite units could motivate police by giving them something to aspire to, locating them outside the police force and in the prosecuting authority was problematic. The investigative function should consistently lie either with the police or the prosecution, or both, throughout the system. The need to urgently create a capacity for good and swift investigations that circumvented the problems besetting the police service was real, but might have been more carefully thought through.

In general, however, most people interviewed felt the NPA was a very positive development; they were particularly positive about its national director, Bulelani Nqcuca, and believed it was contributing significantly towards improving the criminal justice system.

Pre-trial services

One factor contributing to overcrowded prisons is the fact that many awaiting trial prisoners are petty offenders who could be out on bail. In one focus group session, heads of prisons in and around Gauteng estimated the proportion of petty offenders among awaiting trial prisoners at 30-40 per cent. Many of these can't afford their bail.

In response, a pre-trial services (PTS) pilot project was launched; this occurred after the minister of justice visited the United States, where the system of pre-trial services was introduced to him. The project was initially managed by the Bureau for Justice Assistance, and funded by the New York-based Vera Institute. It was handed over to the department in September 1999.

²⁷ Interview, Nico Steytler, Community Law Centre, University of the Western Cape, September 2000.

In 1997, PTS pilot projects were established in Johannesburg, Mitchell's Plain in Cape Town, and Durban. The project was later extended to Port Elizabeth. Accused are brought to PTS centres established at courts in these areas, where they are interviewed. SAPS officers then verify the information provided. Each case is checked to see if there is a previous criminal record or if the person is wanted elsewhere. PTS then composes a report on the accused, providing an evaluation of whether they pose a threat to society, and whether or not they should be granted bail. The report is then sent, with the photograph, to the prosecutor, and is intended to facilitate quicker and more just bail decisions, thus keeping the awaiting trial prisoner population down to a minimum.

An evaluation of the project published by the Bureau for Justice Assistance (BJA) in March 1999 details its strengths and weaknesses.²⁸ While it was initially very successful, especially at Mitchell's Plain, several problems have emerged mainly relating to verifying information, disrupted computer links to SAPS criminal records, and a lack of funds for PTS centres.

PTS is a good example of some of the problems that can occur with a donor-funded pilot project. It has been widely lauded by the department as one of its most successful projects. Some PTS staff interviewed even felt ministers had gained a lot of political mileage from it. The general expectation was thus created that it would be 'rolled out' to the rest of the country. And yet it seems that the department has failed to take any real ownership of it, provide for it in its budget, or communicated its plans effectively to PTS centres. Instead, PTS staff appear to have been left to work in an atmosphere of uncertainty, without resources, encouragement, or information. The pilot seems to have been conducted without any real consideration of whether or not it was realistic for the project to be extended to the rest of the country.

National officials regard PTS as a 'problem area' because it is in an intermediary phase.²⁹ They recognise that the pilots functioned reasonably well, and that bail decisions had been more informed as a result. The problem, they say, is that the Court Process Project (part of E-justice), which involves the automation of court processes, will have a major impact on PTS, because it will take over functions currently performed by PTS.

INCREASING ACCESS TO JUSTICE FOR WOMEN AND CHILDREN

One of the goals of *Justice vision 2000* was to respond to the special legal needs of vulnerable groups.³⁰ It is in this context that the need for policies in the fields of domestic violence, maintenance, children's rights, and sexual offences are addressed.

²⁸ R Paschke, Process and impact assessment of the pre-trial services demonstration project, BJA report no 3 (Cape Town: BJA, 1999).

²⁹ Interview with chief director of the department of justice, November 2000

³⁰ *Justice vision 2000*, p 16.

The Domestic Violence Act

The Domestic Violence Act³¹ (DVA) potentially broadens access to justice by widening the scope of those who may seek redress for domestic violence. It does so by broadening the definition of ‘domestic relationship’ to include unmarried couples, whether of the same sex or not; family members related by consanguinity, affinity or adoption; and allowing complaints from people who merely share or recently shared the same residence. It is therefore a potentially crucial mechanism for increasing access to justice and turning the tide of violence against women and children. Given the complexity of the issues involved in bureaucratic penetration into the private realm, it is likely to take many years for the state to guarantee the safety of women in the home. The key then is at least to have good legislation on the books and strong civil society support so that women can have access to an alternative source of legitimation.

Implementation of the DVA has clearly challenged the magistrates’ courts. Problems have arisen as a result of insufficient planning. These include negative attitudes among implementers towards the new policy, and a lack of infrastructure, training and personnel.

Despite these problems, some justice personnel, NGOs and communities have made valiant attempts to ensure that quality services are delivered. In Bloemfontein, for example, a specialised centre dealing with domestic violence has been created at the National Hospital on the initiative of a magistrate. It services the whole magisterial district of Bloemfontein and is run by a multidisciplinary team comprising officials from the departments of welfare, health, and justice; the South African Police Service (SAPS); NICRO; and the Family and Marriage Association of South Africa (FAMSA).

A study of the budget allocations for the DVA³² conducted by the Gender Advocacy Programme (GAP) warned of the need for additional infrastructure, training, and co-ordination in order to give meaning to the DVA. A year later, research for this study indicated that the problems identified by GAP were still present.

Some of the values, beliefs, and perceptions of implementers that are not in tune with the spirit of the constitution and new legislation indicate that, while legislation is necessary, it is not sufficient to effect change. Steps to effect attitudinal change are also essential.

The Justice College and the Law Race and Gender Unit (LRG) at UCT have conducted social context training courses for justice implementers. But not all those who need the training have received it, and many of those who have emphasise the need for ongoing training. Funding from the Canada Linkage Project has enabled the LRG to undertake this training, and the approach of the department of justice is to ‘buy in as long as they don’t have to pay’. Despite the co-operation of the department, the hands-off attitude to assisting NGOs that have capacity to provide crucial social context training suggests that the commitment to implementation of the DVA does not match professed priorities.

³¹ Act no 116 of 1998.

³² T Goldman and D Budlender, Making the act work: a research study into the budget allocations for the implementation of the Domestic Violence Act (Cape Town: Gender Advocacy Programme, undated).

Staff and funding shortages are problems that obstruct training. In Chatsworth, a magistrate confirmed that it was necessary to attend conferences, meetings and workshops on the DVA, but said he couldn't nominate people for training because there were no funds for this, nor staff to cover their absence. Donor funds are available on an ad hoc basis, which has allowed for some training.

The need for additional resources to implement the DVA has not been adequately addressed. One of the reasons for this has been the failure to cost legislation prior to it being passed.

The Maintenance Act

An essential goal of the Maintenance Act³³ is the efficient enforcement of maintenance. The act does not alter the common law duty of support. 'A maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents to support that child.'³⁴ A fully functional maintenance system is regarded as an important instrument of poverty relief for women and children.³⁵

Section 4 of the act provides for the NDPP, in consultation with the minister, to issue policy directives with a view to 'building a more dedicated and experienced pool of trained and specialised maintenance officers'. However, as a result of the shortage of prosecutors in the criminal courts, the NDPP has withdrawn prosecutors from maintenance cases except in the event of legal challenges. An increased workload has therefore been placed on maintenance administration clerks. One official in Johannesburg remarked that it would take years to replace the 14 prosecutors earmarked for withdrawal from maintenance, and that it was no solution to use clerks, whom they didn't have, since their existing clerks were already overloaded. Clerks furthermore tend to see maintenance work as 'punishment work'.³⁶ If this is a general attitude among clerks, it is unlikely that they will fulfil the criteria of dedication envisaged by the act.³⁷

It appears that one of the obstacles to implementation is a failure on the part of upper management to understand the organisational culture of the system. This is probably exacerbated by the divided authority structures in justice, as it is the NDPP, rather than the department, that is responsible for withdrawing prosecutors from maintenance.

According to an official at Johannesburg's maintenance court, the biggest problem is a lack of staff in all sections, and a lack of funds to employ people. There are three intake clerks who assist about 60 people each day, although about 200 people come to the court each day. There are 40 volunteer workers in Johannesburg, and these have been described as 'our pillars'. This staff shortage clearly breaches the intention of the act.

³³ Act no 99 of 1998.

³⁴ Act no 99 of 1998, section 4(b)(ii).

³⁵ Interview with deputy minister Cheryl Gillwald, November 2000, and interview at corporate planning services, department of justice, November 2000.

³⁶ Interview, Justice College, November 2000.

³⁷ Act no 99 of 1998, section (4)(b)(i).

The act provides for the minister to take all reasonable steps within the available resources of the department to appoint at least one maintenance investigator for each maintenance court.³⁸ But, due to a lack of funds, this has not occurred.

The lack of sufficient training also impedes implementation. 'There are magistrates and prosecutors who are still not trained, and women are still not able to access maintenance efficiently and quickly through the courts.'³⁹

Complaints about the maintenance courts are legion. In a focus group of complainants, women relayed their stories about their battles in these courts. Many received no satisfaction as the husbands from whom they were demanding maintenance could not be found. They believed that not much effort was put into finding these men, and this enabled them to escape their responsibilities. Women were asked to return to the courts on several occasions, at their own cost, and in many instances were still not helped.

While women generally experienced the professionals in the court as fair, most women felt the maintenance courts were cumbersome and inefficient. They were critical of the bureaucratic processes to be followed, and reported that much time was wasted on trying to find out what to do and where to go. These processes could take up an entire day. They found the clerks to be unhelpful, but were reluctant to complain as they felt officials were likely to become rude.

There were cases where clerks complained to the women about their salaries and working conditions, and indicated that these were reasons for the provision of such a poor service.

Some of the women's faith in the justice system was restored when they had contact with magistrates, who made them feel that justice was being done. But other women were still fighting for maintenance, and found the courts to be very unhelpful. They felt these kinds of cases were not treated with the seriousness they deserve.

The Maintenance Act and Justice vision 2000 proclaim the importance of an efficient maintenance system. However, the failure to provide the requisite resources, such as maintenance investigators, has meant that this has not been achieved, demonstrating a poor fit between stated priorities and the provision of resources.

Juvenile justice enshrined in the constitution: detention as a last resort

The constitutional provision for the detention of children as a 'last resort'⁴⁰ has challenged implementers of juvenile justice to provide the necessary infrastructure. Although detention as a 'last resort' is open to judicial interpretation, it is the duty of the government to ensure that it cannot be interpreted as the 'first resort'.

Despite the constitutional provision, hundreds of children still languish in jails. The causes of the problem can be narrowed down to two main issues: judicial officers who are not inclined to a children's rights approach to justice; and scarce resources, particularly in the form of safe and secure houses for children.

³⁸ Ibid, section (5)(2).

³⁹ Interview, Vincent Saldanha, Legal Resources Centre, Cape Town, September 2000.

⁴⁰ South African Constitution, Act 108 of 1996, section 28(1)(g).

Despite the constitution and statements declaring juvenile justice a priority, the lack of infrastructure and training has meant that these enshrined rights cannot be implemented.

The creation and development of sexual offences courts

Point four of the ten-point plan deals with the establishment and rollout of specialised courts, such as family, juvenile, sexual offences, commercial, and small claims courts. The establishment of specialised sexual offences courts (SOCs) is aimed at stemming the tide of sexual offences against women and children. At the time of writing there were 14 sites for these courts,⁴¹ and 10 more were planned.⁴²

The idea of a specialist sexual offences court is that all role players, including personnel from justice, health, welfare, the SAPS, and relevant NGOs be trained to deal with victims of sexual offences, and that magistrates be chosen for their sympathy towards children.⁴³ For the prosecution of sexual offences against children, the courts are equipped with closed-circuit TV, and children give evidence in a separate child-friendly room with the help of an intermediary; in some cases, anatomically correct dolls are provided. In order to reduce intimidation, there are separate waiting rooms for complainants and accused. Adult plaintiffs are separated from children so that there is no sense that an adult rape victim will be treated as a child – and also to reduce the chance of children imitating an adult's evidence. Children's waiting rooms are set up to be as comfortable and friendly as possible, with toys and children's pictures on the walls.⁴⁴

In 1999 the task of driving the rollout of SOCs was placed in the hands of the Sexual Offences and Community Outreach Unit (SOCA) of the NDPP, headed by Thoko Majokweni. This unit was established to ensure that sexual offences involving women and children were treated more seriously. To this end specialist courts have been created and additional prosecutors employed on a contract basis to deal with the huge backlogs in these cases in some areas.⁴⁵

Under the direction of Majokweni, and with the backing of the BJA, the Thuthuzela Care Centre has been established at the F D Jooste Hospital. This is a one-stop centre for survivors of sexual offences from Guguletu, Khayelitsha, and Manenberg in Cape Town. Its aim is to reduce considerably the secondary trauma for survivors of sexual offences. For example, a district surgeon is available to do a medical examination and collect fo-

⁴¹ Telephonic conversation with official at the NPA, January 2001. Sites include Kimberley, Bloemfontein, Welkom, Soweto, Pretoria, Thohoyandou, Pietermaritzburg, Durban, Umtata, Mdantsane, Port Elizabeth, Wynberg, Cape Town, and Parow.

⁴² United States deputy AG impressed, in *The People's Lawyer: Justice in Action*, 2(1), 2000, p 8. Additional sites planned are Welkom, Pietersburg, Nelspruit, Odi, George, Middelburg, Mmabatho (Morelete), Pietermaritzburg (Verulum), Vereeniging, and Mitchell's Plain.

⁴³ Interview, NDPP director of sexual offences and community outreach, Thoko Majokweni, August 2000.

⁴⁴ Interview, Majokweni.

⁴⁵ Interview, Willie Hofmeyr, NPA, November, 2000.

rensic evidence. The survivor may then have a bath and put on clean clothes provided by the centre. Only then does an investigating officer take a statement from the survivor.⁴⁶

Problems in implementing the rollout of SOCs include the lack of adequate court facilities and infrastructure, the lack of trained and dedicated court personnel, and the lack of an integrated and multidisciplinary approach. All these problems are interrelated.

Despite significant improvements in the prosecution of sexual offences, it is still inadequate. These cases are difficult to prosecute as they usually depend on the evidence of a single witness, and an adequate medical report. According to Rape Crisis, the formation of the NPA has had a positive impact. After guidelines for the prosecution of sexual offences and domestic violence were circulated to prosecutors, Rape Crisis began to receive requests from prosecutors for expert evidence. It also indicated that convictions have been achieved where the case was not necessarily strong (*prima facie*), as a result of better trained prosecutors. The degree of professionalism with which cases are handled, however, depends very much on the individual prosecutor. If she or he is motivated this usually ensures a satisfactory result, but the converse is also true.⁴⁷ The prevalence of unprofessional prosecution was confirmed by Dr Rabie, facilitator for the Integrated Criminal Justice Programme of BAC in the Western Cape, and the ATPP team at Wynberg, which found widespread mismanagement of dockets in general and those involving sexual offences in particular. Some had simply not been read by prosecutors.⁴⁸

The success or failure of the SOCs are intrinsically connected to the functioning of the courts in general. Their specialisation and designation as special projects do not make them immune to some of the same problems experienced by other courts. The fact that the control of SOCs has moved to the NDPP and out of the bureaucratic restraints of the department is a positive development. But the problems will persist for another decade if the department of justice is unable to upgrade and fully utilise existing resources, for example by ensuring that sensitised magistrates have incentives to remain in their jobs.

EXPLANATORY FACTORS

A number of reasons for the problems in implementing justice policy became apparent during this study. These included the underprioritisation and underfunding of the justice function, the extent of transformation being attempted and a lack of sound strategic planning, the failure to cost policy, the lack of financial management, the diversity of authority centres in the implementation of policy, the lack of communication and co-ordination, disrupted court management systems, and a failure to appreciate and build on successful local initiatives and community involvement. These are discussed in more detail below.

⁴⁶ Interview, Thuthuzela Care Centre, F D Jooste Hospital, Manenberg, September, 2000.

⁴⁷ Telephonic interview with Samantha Waterhouse, Rape Crisis, Cape Town, December 2000.

⁴⁸ Interview, Awaiting Trial Prisoner Project, Wynberg magistrates' court, Cape Town, October 2000.

Underprioritisation and underfunding of the justice function

The chairperson of the parliamentary portfolio committee on justice argues that South Africa needs a whole new justice system:

Justice has passed 72 essential new pieces of legislation in the last six years. The impact of 72 new pieces of legislation is astronomical. They have to be administered, financed, and monitored. Government doesn't have the systems for costing legislation. Personnel have been cut. The budget is not increasing. Most legislation is substantial and transformative. What is actually required is a whole new justice system.⁴⁹

A whole new justice system can however, only be built on the foundations of the existing one. But even this would require that justice be made a higher priority at the national level.

The poor functioning of the justice system is aggravating the security situation in the country which, in turn, is adversely affecting prospects for economic growth. It is a terrible irony that, in a country with one of the best constitutions in the world, people can spend more than three years awaiting trial.

Many departments may justifiably believe they should be given higher priority in the budget but, given the serious security situation in the country and the inability of the existing criminal justice system to remedy it, justice seems to be one of the most obvious priorities.

But what has in fact been happening to the justice budget during recent years? The annual justice allocation in the budget is determined in the context of the Medium Term Expenditure Framework (MTEF). On 30 October 2000 the minister of finance, Trevor Manuel, stated the following in the national assembly:

In the next three years we also intend to allocate significant additional resources to the departments entrusted with ensuring the security of our citizens, and with arresting and prosecuting those who threaten our safety. Allocations to the integrated justice system, will grow by R5,2 billion, or an average of 6,6 per cent a year between now and 2003/4.

However, a closer look at the MTEF document⁵⁰ itself reveals a planned reduction in spending on the integrated justice system as a percentage of the overall budget. Spending on the integrated justice system, which includes justice, correctional services, and the SAPS, is indeed set to increase by R5,2 billion from R24,8 billion in 2000/1 to R30 billion in 2003/4 in nominal terms. But, as a percentage of the national budget, spending on the IJS is set to decrease from 13,3 per cent in 2000/01 to 12,9 per cent in 2003/04. It is even worse when compared with 1999/2000, when spending on the IJS amounted to 13,5 per cent of the national budget. Spending within the integrated justice system works out at about 64 per cent for the SAPS, 24 per cent for correctional services, and about 12 per cent for justice. As a percentage of the estimated total national budget, spending on justice looks set to remain at about 1,27 per cent for the duration of the current MTEF period.

⁴⁹ Interview, Johnny de Lange, chairperson of the justice portfolio committee, September 2000.

⁵⁰ See 2000 Medium Term Budget Policy Statement.

Defence and intelligence spending, on the other hand, is set to rise from 6,4 per cent of the budget in 1999/2000 to 7,7 per cent in 2003/4. Spending on economic services is planned to increase by 1,3 per cent over the same period, and that on infrastructure by 1 per cent. Spending on social services is set to decrease by 2,4 per cent: education by 1,7 per cent, health by 0,6 per cent, and welfare by 0,1 per cent.

This seems to reflect the emphasis in the government's GEAR strategy quite clearly: create economic growth and therefore employment by spending more on economic services and infrastructure, and promoting investment. This must occur at the expense of social and protection services, the two areas where the most chronic immediate problems lie. Since economic growth and job creation will take a long time to come into effect – if they ever will on the GEAR assumptions – the short- to medium-term prospects for big improvements in the justice system are bleak. 'Doing something with nothing'⁵¹ seems to have become the rule in respect of the country's social and security problems.

The breakdown of the MTEF also reflects another interesting chain of consequences explained by a consultant to the department of finance.⁵² Because of the defence deal, and because defence is a national function, the national share of the budget has had to increase relative to the provincial share. But because the provinces are largely responsible for implementing social functions, their share of the budget has also had to increase. This has meant that other national functions, such as justice, are having to pay the price of these developments.

But that is not the end of the tale of woe for justice. Over the past few years the department of justice has been allocated more and more functions such as the TRC and the various other commissions, which have added significantly to its expenditure. Although, as a percentage of the national budget, spending on justice has increased from roughly 0,5 per cent to 1,27 per cent over the past decade, this has not been enough to offset the additional demands. This means that spending on something has had to suffer, and this has largely been management functions and the administration of justice and law. Little wonder, then, that the courts are struggling, both from a management and resource point of view.

Over the past six years the justice budget has been supplemented by significant donor funding which, on average, amounts to R90 million–R100 million annually, or approximately 3,5 per cent of the annual justice budget. This funding has helped to improve the justice system through various projects. However, it is not without its problems, such as a lack of local ownership of projects and a lack of long-term sustainability. There is also little co-ordination among different donors and between donors as a group and the department. This can complicate the department's own strategic planning as it has little advance insight into what donors are likely to fund. However, most donors are planning to reduce their involvement in South Africa over the next decade. This additional funding is therefore also likely to diminish in the long run.

⁵¹ D Budlender, *Doing something with nothing: the family centre pilots* (Cape Town: Law, Race and Gender Research Unit, UCT, 2000).

⁵² Interview, consultant to department of finance, October 2000.

Within the justice budget itself, the running of the courts has not been given sufficient attention. The courts are expected to operate on virtually the same proportion of resources that they were expected to operate on in 1990, before the escalation of the crime rate. Similarly, adequate resources have not been allocated to the increased management function the new justice system demands.

Without a detailed study of the justice budget over the past decade, it is not possible to say definitively that the justice function is underfunded. It may be that funds are inappropriately distributed. Part of the problem is certainly bad financial management, as discussed below. Another aspect of the problem is severe underfunding of administrative and prosecutorial posts, as well as underfunding of court administration generally. These aspects of justice funding require immediate attention. It may be that existing funds can be more appropriately distributed among the various justice functions, but it may also be that justice requires a higher proportion of the national budget to function effectively. This question needs urgent investigation.

International comparative data could theoretically be useful in assessing South Africa's level of spending on justice. But comparative data on justice is not only scarce, but different situations are not readily comparable. Denmark, for example, spends less than 1% of its national budget on justice, but it also has a low crime rate and a well-developed justice system. Data is also often not comparable because some figures include either policing or prisons, whereas others do not. A better approach would therefore be to determine whether or not the resources being made available to justice in South Africa are sufficient to meet local justice needs.

The extent of transformation and the lack of sound strategic planning

Arguably the most important reason for the problems being experienced in implementing policy is the lack of a realistic strategic plan. *Justice vision 2000* purports to be such a plan,⁵³ but it is aimed at achieving an ideal justice system without prioritising policies or ordering them into realistic short-, medium-, and long-term goals that are related to available resources.⁵⁴

Too little thought has gone into what it would take to implement these policies, and too few decisions about what is practical to implement and what is not have been taken. The focus has tended to be on quick fixes for individual problems rather than long-term systematic solutions.

The magnitude of the scope of transformation being attempted in justice is phenomenal. It is not being argued that the scope of transformation being undertaken is not necessary, but rather that it should be properly prioritised and realistically phased. As things stand, the focus of attention of the relatively small justice department is scattered over a very wide range of far-reaching transformative processes, including:

- merging the former 11 different departments into one national department, entailing

⁵³ The subtitle of *Justice vision 2000* is: 'A draft strategic plan for the transformation and rationalisation of the administration of justice'.

⁵⁴ A more detailed critique of *Justice vision 2000* is provided in Stack and Ntlokonkulu, *Understanding policy implementation*.

- institutional and personnel upheavals;
- adapting the role of the judiciary to fit the new constitutional and human rights context;
 - shifting the balance of power between the executive and legislature towards a more active and interventionist legislature;
 - increasing racial and gender representivity;
 - unifying the judiciary to include judges and magistrates in one system;
 - changing the role of the prosecution services from a system of independently operating attorneys-general to a more unified service led by the national director of public prosecutions;
 - transforming the Justice College to meet new training requirements;
 - transforming the structure and hierarchy of the court system;
 - introducing a new court management system;
 - ongoing reorganisations in relation to provincial regional offices;
 - transforming and streamlining the department's own management and organisational structures;
 - ongoing transformation of policy-making processes;
 - transforming the budgeting process from annual incrementalism towards zero-based budgeting in the context of medium term expenditure frameworks;
 - introducing IT systems throughout the department and courts;
 - transforming the legal aid system; and
 - transforming the educational requirements for the legal profession.

Little wonder that the department is operating under stress. As the chairperson of the justice portfolio committee put it:⁵⁵

The system we inherited was not designed to cater for 100 per cent of the population or to do what we are trying to do with it, so it is clearly strained. We are chasing our tails and reacting to hundreds of problems with no ability to see the big picture.

Justice policy is made in several units, including the policy unit, the corporate planning unit, the NPA, and the various directorates of the department. The department appears to consist of a number of little dominions attempting to operate as independently as possible from each other, with little communication or co-ordination among them.

The effect has been a vast array of simultaneous policy initiatives via policy directives, legislation, and pilot projects, without due regard for the implementation capacity of the justice machinery or the long-term sustainability of these initiatives. Wilfried Schärf, director of UCT's Institute for Criminology, calls this the legislation-driven 'multiple simultaneous change model'⁵⁶ – 'we pass legislation, throw people in at the deep end, and hope that they will swim'. The result has been that people are drowning, the courts are struggling with backlogs, court user expectations have been disappointed, and the justice system is losing the respect of law-abiding citizens.

⁵⁵ Interview, De Lange.

⁵⁶ Interview, Wilfried Schärf, Institute of Criminology, University of Cape Town, September 2000.

This is not to argue against a legislation-driven approach in general. In some cases, despite a lack of readiness to implement new legislation, and despite a lack of resources and infrastructure to implement it fully, having the relevant legislation in place serves a purpose. In the case of domestic violence, for example, the DVA offers an ‘alternative source of legitimation’⁵⁷ which serves to counter prevailing patriarchal beliefs and practices. But, more generally, a slower model of change that proceeds within the bounds of resource and capacity constraints allows change to be introduced in a more rational and effective manner.

Numerous pilot projects have been implemented in various combinations of centres, including court managers, citizens’ advice desks, family courts, sexual offences courts and PTSS. Many have been made possible by foreign funding, but are expected to be absorbed into the department’s budget, which is not growing accordingly. The department has advertised these projects widely and promised ‘roll-out’ to the rest of the country if they are successful. But no attempt has been made to cost the roll-out of all these projects, singly or in combination, or to evaluate what is practically feasible, given capacity and resource constraints. Very few government evaluations of these projects have ever been published.

All this is understandable. The ANC assumed power with high aspirations and the desire to prove that it could make a substantial difference to the quality of justice, and citizens’ access to it. It has been informed by interesting ideas from all over the world. But it had little experience of actual policy implementation; as several interviewees stated, people just want the basic judicial system to function properly. All the other ‘fancy’ ideas are nice add-ons, but only if they can be afforded once the basics are in place. This does not mean that specialist courts cannot be introduced, as they involve a reorganisation of existing resources rather than additional demands on existing resources. It also doesn’t mean that certain projects such as ATPP should be abandoned, as they are not ‘add-ons’ but are essential to the basic functioning of the justice system.

Some politicians feel that ‘you cannot prioritise in justice. Either you have justice or you do not.’⁵⁸ In other words, there is no such thing as partial justice. This attitude has been quite widespread among justice policy-makers and, in our view, is a serious obstacle to effective planning and implementation.

While *Justice vision 2000* is generally felt at least to have been a formulation of the direction in which justice was meant to move, its shortcomings as a strategic plan have been recognised. Following a tour of courts soon after taking office, the present minister of justice, Penuell Maduna, released the *Millennium 10-point plan* which was an explicit attempt to focus the department on its core function, namely operating the courts. It states that the strategic planning process must be underpinned by certain guiding principles, including that ‘plans should be focused; goals should be clearly defined, practical and attainable; and investment and intervention should make an impact at the points of service delivery’.

⁵⁷ Interview, policy analyst Patrick Heller, January 2001.

⁵⁸ Interview, De Lange.

Two other processes in government have been driving the department towards a more realistic plan. One was a brief from the department of public service and administration to the department of justice to submit restructuring and delivery plans. Justice responded by producing a huge two-volume report – known as the IIP (Integrated Implementation Plan) – for this purpose. Staff in the regions claimed not to have been consulted in the course of this process,⁵⁹ and believed the plan had been drawn up by a committee at national level. The document did not appear to be a rationalised strategic plan, but rather resembled an even more elaborate Justice vision 2000-type of document. In any event, the ministry shelved the report in favour of a business intervention to assist the department.

At the time the interviews for this study were conducted, the business report on their assessment of the department had not been finalised, but some interim suggestions were being considered. These had to do with linking the strategic plan to the budget, narrowing down the objectives of the department to what is affordable, costing of legislation, and facing up to and solving problems directly rather than ‘throwing money at them’.

The process is being conducted under the scrutiny of the president, and if it is found to be successful and achieve what government is looking for, it may be replicated in other government departments.⁶⁰

Another driving factor towards a streamlined department has been the September 2000 report of the parliamentary standing committee on public accounts on the department of justice, which requires the latter to sort out its financial management under threat of being placed under the financial management of the treasury.

Just how compatible a business approach is with the requirements of a government organisation is a question that will be key to the success or failure of the business endeavours. Profit is not the main motivating factor for governments. Status and material reward in government are determined by how large a department is, and the number of people in its various directorates. This does not favour streamlining and efficiency. Governments, in addition, have to be accountable to citizens, whereas businesses do not.

One businessman’s assessment⁶¹ of the root of the problem in justice is that leadership in the department is not well defined nor particularly skilled at leadership and management, that it has no plan that lends itself to operationalisation, and no sense of building teams to achieve its objectives. What is needed is a set of common objectives that the whole leadership adopts, so that everyone moves forward in the same direction.

A major obstacle to formulating a viable strategic plan is likely to be the entropy that seems to have set in with regard to strategic plans and business plans of any sort – the ‘gatvol’ factor. Several people we spoke to are also rather sceptical about how relevant the business recommendations are likely to be, and feel as if their own internal restructuring process has been usurped without being given a chance. Some of the dangers of using outside consultants are that implementers may not feel much ownership of the plan, which may also overlook some critical, but not obvious, aspects of implementation re-

⁵⁹ Interview, Free State Regional Office, October 2000.

⁶⁰ Interview, Business Against Crime, November 2000.

⁶¹ Interview, Business Against Crime.

quirements. This implies that the department may need to devise some means of building enthusiasm for and commitment to the plan. At least it seems that the leadership of the department has finally recognised the need for a workable strategic plan.

Failure to cost policy

A second reason for the problems in implementing justice policy is the failure to cost policy. This is related to the lack of realistic strategic planning. There have been many instances of policies being announced and widely advertised, and then halted in their tracks when resources have been found wanting. The roll-out of pilot projects such as family courts and PTS is one example, and the creation of regional offices another. The implementation of new acts, such as the Maintenance and Domestic Violence Acts, are further examples. This start–stop style of implementation is creating many disappointed expectations, and much cynicism about government’s intentions- particularly because there is such a great need for some of these policy initiatives.

Some policies have been adopted without a realistic appreciation of the likely demand for the new service, nor any evaluation of whether the available human resources would suffice for implementation. The public response to the Domestic Violence Act, for example, has been almost overwhelming, and was not foreseen. A relatively simple survey could have revealed the likely demand, and the necessary resources for implementation could have been calculated on that basis. One would have thought that public representatives would have been aware of the extent of the need for these services. The unexpectedly high response indicates either that public representatives were out of touch with the real needs of their constituents, or that they were unaware of the capacity constraints of the executive arm of government.

Although parliament has requested departments to include costings when bills are submitted, this has not yet been taken very seriously, probably because of the complexity of the task and the lack of capacity in departments to undertake it. The Promotion of Equality and Prevention of Unfair Discrimination Bill, for example, includes a short statement estimating the cost of implementation to be R50 million. There is no indication of what this costing is based on or how it was calculated, and it is therefore impossible to assess whether it is realistic or not.

Sufficient allocation of resources and the provision of training to implement a policy signals a commitment from the department to that policy that filters down to implementers. The converse is also true: a shortage of resources for implementation suggests a lack of commitment, which affects motivation levels.

The Applied Fiscal Research Centre (AFReC) has published a review of international and local practices regarding the costing of legislation.⁶² The constraints identified on costing in South Africa include a lack of human and institutional capacity to undertake costing analyses, a lack of appropriate management systems, institutional opposition to reorganisation to facilitate planning and finance functions, the reactive nature of policy

⁶² A Shall, C Barberton, & T Ajam, 2000. *Costing legislation: a review of international and local practices with a view to developing recommendations for South Africa*, commissioned by German Technical Co-operation (Cape Town: Applied Fiscal Research Centre/AFReC, University of Cape Town, 2000).

development, the speed at which policy changes are being introduced, and the fact that personnel costs consume a large proportion of departments' funds, leaving little over to undertake such costing exercises. AFREC has been dealing with the department of justice on this since 1997. So far it seems that few officials in the department appreciate the need for costing policy. According to Conrad Barberton of AFREC, the department lacks an understanding of the extent of the problem: most don't believe that there is a problem, and many of those who do don't have the power to address it.

Costing of legislation and other policy measures is one of the areas in which the business team is likely to make recommendations. An interim suggestion under discussion at the time interviews were conducted was the creation of some institutional means for linking legislation to a costing process, so that when a bill is submitted to parliament it is accompanied by a budget with a document from the treasury confirming that there are sufficient finances for its implementation. Based on the costing information provided, parliament could then decide to pass the legislation as it is, to pass it with specific time frames for implementation, to amend it to create a better fit between the policy and the available resources, or not to pass the legislation at all, given the costs of the policy and other departmental priorities.

Possible alternatives for addressing the need to cost policy include establishing a policy costing unit either within each department or within the treasury, some combination of the two, or contracting policy costing out to organisations or firms outside of government.

Lack of financial management

A glaring area of neglect in the implementation of justice policy is financial management. Not only is the DDG in charge of finances not a qualified accountant, but the department lacks a financial manager – and this despite the fact that budgets are managed and money collected in more than 500 offices. The lack of financial management is one of the primary reasons for the parlous state of the department's financial affairs. Another contributing factor is the manual system of record-keeping in which documents easily go missing, and is relatively easy to abuse. Not only are financial controls at the local level of the courts inadequate; those at management level are not in place.

One of the biggest budgeting problems for many courts, especially some of the biggest, has been top-slicing, which one interviewee referred to as a 'Byzantine game'.⁶³ Courts are given an initial budget allocation, which is then cut to correct for regional inequities in the allocations. This has led – obviously – to serious problems for those courts whose budgets have unexpectedly been cut back. This year, for example, some of the busiest courts, including Johannesburg and Pretoria, have literally run out of budgeted amounts for essential line items such as telephones and stationery. Better planning and more foresight could prevent these kinds of problems.

While the Public Finance Management Act of 1999 has been lauded as a very positive step towards tightening up the financial controls in government generally, it does

⁶³ Interview, Business Against Crime, November 2000.

lead to some practical problems in implementation. Accounting officers are criminally liable under the act if they wilfully or negligently fail to comply with its provisions,⁶⁴ and the act is a ‘huge challenge to implement’.⁶⁵ Its provisions, very generally, are to ensure effective and efficient financial systems, the economical use of resources and the management of assets and liabilities. The accounting officer may not commit a department to any liability for which money has not been appropriated. In the event of any overspending, the accounting officer has to report to the executive authority.⁶⁶

Both chief magistrates, who currently control court budgets, and regional office heads, who to some extent control the regional budgets of the department, are therefore unwilling to allow any overspending. It is for this reason that some magistrates in some courts have during 2000 ordered the cutting of telephones, spending on stationery, and other items when budgets for these items have – as was predictable, given the cuts – run out. This had serious consequences for service delivery in those courts. According to one regional office head, the cause of the lack of resources in the courts has been the additional spending needed to cover the costs of the increases in prosecutors’ salaries and the cost of the NDPP without additional funding from state expenditure⁶⁷ being made available for the purpose.

A further problem has been that chief magistrates are discouraged from saving on any items in their budgets because whatever amount they manage to save in one year is cut – plus a little more – from their budgets for that item in the following year. In the Pretoria Magistrates’ Court, for example, the budget for hotels and meals (for court officers hearing cases out of town) was cut from more than R300 000 in 1997/8 to R266 000 in 1998/9, R130 000 in 1999/00, and R62 000 in 2000/1.⁶⁸ Obviously this cannot continue indefinitely. The bottom line for the courts is the de facto instruction of ‘provide more services with less money’.

A serious indictment of the department’s financial management has been given in the report of the parliamentary standing committee on public accounts on the auditor-general’s report on the department:⁶⁹

The Committee notes with concern the many shortcomings in financial management, contained in the Report. This concern is deepened by the fact that many of the shortcomings have been reported for the past two years, with little or no improvement shown. In the view of the Committee, this has led to the chaotic state of financial management in the Department, which was illustrated by the fact that the Department was unclear as to whether it had a financial manager between 1997 and January 2000.

The committee took the view that the deterioration in the financial management of the department had to be halted immediately, insisting that the DG appoint a chief financial officer as a matter of urgency, and that, should there be no significant improvement

⁶⁴ See section 86(1).

⁶⁵ Interview, Conrad Barberton, AFReC, September 2000.

⁶⁶ See chapter 5 of the act.

⁶⁷ Interview, Free State regional office, October 2000.

⁶⁸ Interview, Pretoria magistrates’ court, September 2000.

⁶⁹ Tenth report of the standing committee on public accounts, 6 September 2000.

by the end of the financial year, 'it will request the national treasury to intervene, in terms of the Public Finance Management Act, in the financial management of the department of justice'.

The committee recommended that the decentralisation process be reviewed due to a lack of financial management capacity in the regions, and requested a number of detailed reports and financial statements from the department. It noted, in conclusion, that the department had been responsible for over 50 per cent of the unauthorised expenditure by government departments during the financial year.

While these problems remain unresolved, whatever the merits of the case for justice to receive a larger slice of the budget, it is likely to remain a lost cause. The sum spent without authorisation was reported to be R79 million. Some of those interviewed argued that the extent of unauthorised spending had been overstated. A closer look at the auditor-general's report seems to bear this out in that the amount that could be regarded as unauthorised in terms of the Exchequer Act was R21 million. The remainder included R10 million incorrectly charged against the vote, and R47 million that exceeded the amount voted after R79 million had been suspended by the department of state expenditure.⁷⁰

Some argue that overspending is inherent in justice as it is impossible to predict what the demand on the courts would be – what new policy would require, how many cases would come up, and how many witnesses would be involved, especially as there are many courts spread throughout the country. When courts have to subpoena witnesses, they cannot refuse to pay them even if the budget item has run out. This places accounting officers in an impossible bind. They are legally obliged to make certain payments, but may be criminally liable if the budget for these payments has run out.

Some argued that the cutbacks can have a positive trimming effect, but that this did not detract from the fact that insufficient funds were being allocated for the system to function effectively. One regional office head argued that the MTEF was too restrictive as an advance budgeting framework to operate in the absence of contingency margins for unforeseen new policy initiatives.⁷¹ In terms of the new public finance management regime, however, if a minister requests the department to carry out an activity for which there is no money in the budget, the DG, as the accounting officer, is obliged to refuse.

Financial management in the department is one of the main areas the business team reviewing the department has focused on. One of the interim suggestions they have considered is a means of linking the budget to the strategic plan, and thus service delivery targets. One means of doing this would be to establish a separate division in the department to focus exclusively on finances. It would need to be headed by a qualified financial director. One option is for business to second such a person to the department on an annual basis, funded by BAC. Another would be to have a team of seconded persons from auditing firms working in the department to assist the financial director which could then undertake a zero-based budgeting process, ie establish what the absolute fundamental requirements of the department are, and what they would cost. Thereafter, resources and

⁷⁰ See Report of the auditor-general on the financial statements of vote 21 -- justice for the year ended 21 March 1999 (Pretoria, 1999).

⁷¹ Interview, KwaZulu-Natal regional office, November 2000.

capacities permitting, it would establish what scope there is for additional undertakings. The department would then be in a position to let the cabinet see what the various possibilities are for the justice system within certain budgetary parameters.

Inadequate human resources

Despite the shortage of financial and material resources in the justice system, some interviewees argued that this was not the main problem. According to one judge⁷² the main problem is the lack of human resources. He argued that many things are not working because of a lack of skills, and that, in the absence of adequate skills, it was impossible to reform the system effectively. He noted that the quality of prosecution had declined dramatically, that the quality of defence was worsening, the quality of judgements was declining, and administration services were grinding to a halt.

Two main factors are contributing to the shortages of skills in the department. One is the shortage of financial resources, which also impacts on salaries and working conditions, and the other is the department's affirmative action policy in a context where government is not in a position to compete with the private sector for a very limited pool of black legal professionals. Given the domination of the profession by white males, it is fairly obvious that a policy of affirmative action is necessary to drive transformation. It may seem trite, but many have pointed out that 'numbers are not enough' and that there are a number of criteria that need to be taken into account for appointments to be made, such as the ability to give effect to the values of the constitution.

While affirmative action is necessary to increase representivity in the department, it is taking its toll in the form of unsuitable people being appointed. Resistance to change from some and the cultural difficulties in creating new integrated teams at all levels of the system are adding to the challenges facing the department. These kinds of problems are probably unavoidable, but their impact could be cushioned by more comprehensive training programmes, both for upgrading skills and for social context sensitisation.

Very important to harmonious racial relations, and thus to the success of some of the courts, have been particular individuals in senior positions who are able to sustain the loyalty of both black and white staff. In most of these cases the individuals concerned have been primarily interested in delivering a quality service, and their focus has accordingly been on performance equally applied to everyone.

Representivity among the bench, judicial officers, and the management echelon of the department is increasing at a very measured pace, but even so has not occurred without controversy. Data for changes between March 1996 and July 2000 in the racial and gender composition of judges, prosecutors, state advocates, magistrates, and the management echelon of the department is provided in annexure 3.

The percentage of white judges has dropped by 16 per cent from 90 per cent in 1996, and 74 per cent in 2000. The bench is therefore still far from being representative. The percentage of white magistrates has dropped from 67 per cent to 56 per cent, that of white prosecutors from 54 per cent to 36 per cent, that of state advocates from 82 per cent

⁷² Interview with judge, November 2000.

to 64 per cent, and that of whites in the management echelon of the department from 61 per cent to 54 per cent.

In some areas, however, changes have been much more rapid. One high court judge informed us that within one year the administration of the Johannesburg high court had changed from predominantly white to predominantly black, and the loss of skills that this involved had had serious consequences. In particular, new people did not have the experience to devise new administrative systems to deal with new problems.

Affirmative action is clearly necessary, given the skewed representation in the department. However, as has been argued, numbers alone are not enough. Where people are appointed to improve representivity despite inexperience, if this is not addressed, service delivery will continue to suffer. Given the shortage of resources in justice, raising salaries to be competitive with the private sector is not an option. To improve representivity, the department has little option but to employ relatively inexperienced black applicants. However, their need for mentoring and training has to be openly recognised and addressed if the adverse effect on service delivery is to be minimised.

Serious capacity problems are also reported at middle management levels in the department as a result of a lack of formal management education. The problem is not new but has become more serious in light of the new demands on the department for effective service delivery. A further issue is a conflict of approach between new appointees with a background in management training and incumbents who are accustomed to doing things in an established way.⁷³ Some incumbents are not in favour of the new policies, and are thus reluctant to implement them. Training courses rarely effect long-term fundamental attitudinal changes. This remains a factor in weighing up what is practically achievable.

Aside from perceptions about the quality of personnel entering the justice system, there is a serious shortage of posts, the most serious being in administration throughout the system and of professional staff at the regional court level. Details of total staffing of the department of justice in September 2000 is given in table 6 in annexure 4.

The total number of justice personnel was 13 235 – 1 608 less than the 14 843 in March 1996.⁷⁴ Since 1996, however, the total number of judges, magistrates, public prosecutors, and managers in the department has increased by more than 700. This means that at least 2 300 (1 608 plus 700) other posts have been lost. And indeed, if one compares the numbers of administrative officers and clerks employed by the department in 1996 to the number employed in 2000, there has been a decline of nearly 2 800 (from 6 897 to 4 101) of these posts (see annexure 5).

According to a department official,⁷⁵ the department has recommended to government that for the courts to deal with crime, they would need to increase their capacity by some 3 000 posts. While cabinet agreed in principle, less than 50 posts were created with the money made available for the purpose: R45 million over three years. At the same time, many existing posts are left vacant while additional new posts are created and

⁷³ Interview, Business Against Crime, September 2000.

⁷⁴ Department of justice, Personnel composition: department of justice (personnel employed on 31 March 1996), unpublished document.

⁷⁵ Interview, deputy director-general of legal services, Simon Jiyane, November 2000.

filled, as for example with lay assessors and, in theory anyway, maintenance investigators. Furthermore, the department, according to one interviewee, now has 700 legally trained people at head office instead of out in the courts, where they are needed.⁷⁶

Three issues emerge. The first is a failure on the part of cabinet to provide the resources necessary to meet its commitment to increase justice personnel. The second is inappropriate department personnel policies that leave posts vacant despite the shortage of personnel. The third is the inappropriate distribution of personnel, such as that between the national office and the courts.

Personnel expenditure in justice as a percentage of the total national budget has not changed much since 1994. Since the number of administrative posts has dropped substantially, a reasonable deduction is therefore that a higher proportion of the available resources is being spent on the professional levels in the department than when the ANC came to power in 1994. In the opinion of a consultant to the department of finance specialising in justice,⁷⁷ one of the biggest financial problems in this sector has been the rapid growth in the salary bill, both in respect of new categories of appointees such as commissioners and the Scorpions, as well as the huge increases that magistrates have been granted since becoming independent of the public service.⁷⁸ The latter is a good example of a knee-jerk response that has not noticeably improved the quality of service delivered. This has led to serious salary disparities within the department, especially in respect of prosecutors. The problem this has created in terms of the loss of experienced prosecutors means that prosecutors' salaries will also have to be substantially increased. And if they are, this will lead to major disparities between prosecutors and police investigators:

There has been a capture by employees of the resources for criminal justice which, one could even say, amounts to a scorched earth policy. I don't begrudge them their increases, but these kinds of increases are not affordable. Being nice to employees is good, but so is providing services, and the balance between those two has been poorly struck.

In the absence of sufficient posts, the department has therefore had to devise some other means of creating capacity – hence the decision to separate judicial from administrative functions in order to increase the capacity of existing judicial officers. That process, as has already been noted, has its own problems. The department has also been finalising arrangements to deal with offers made by the private sector to assist. The idea is to engage lawyers on a voluntary basis as magistrates to deal with bail applications and remands, thus allowing other judicial officers to focus on the more serious cases. Such a partnership is seen to be beneficial to both sides: providing experience for lawyers as

⁷⁶ Interview, Sheila Camerer, Democratic Alliance member of parliament and member of the parliamentary justice portfolio committee, June 2000.

⁷⁷ Interview, department of finance consultant, October 2000.

⁷⁸ Since magistrates have been taken out of the public service, their salaries are no longer determined by the central bargaining chamber. Instead, the minister of justice, after consulting with the Magistrates' Commission, makes recommendations to the minister of finance on magistrates' salaries. As a result, magistrates' starting salaries have improved dramatically. Prosecutors' salaries, however, have been left behind as they still have to bargain for their increases through the central bargaining chamber.

presiding officers, which would stand them in good stead for broadening the bench and providing the department with the scope to use its own resources more effectively.⁷⁹

Another strategy has been to make more use of temporary appointments and volunteers. In many of the courts, including Cape Town, Johannesburg and Pretoria, volunteers are being used as clerks. In Pretoria for example, there is a shortage of 72 clerks, so volunteers and students assist with clerical work.

The department is also providing for upgrading the skills levels of departmental officials, especially its management and financial management. At the time the interviews were conducted, auditors were visiting all the courts to identify the most critical areas. A tender was expected to go out for the training of everyone at court level involved with finance and provisioning throughout the country.⁸⁰

However, the workload at the courts is increasing as a result of the requirements of new laws. The department claims to be giving attention to this, but is hamstrung by budgetary constraints.⁸¹ This means that, in Chatsworth, for example, the administrative section has to deal with maintenance, domestic violence, and inquests.⁸² The quality of staff exacerbates the problem as, according to one source, the department employs many people with a standard 8 school qualification, and that means that many mistakes are made.⁸³ The result is that an intolerable overload of work is resting on the shoulders of a few competent people, who are increasingly deciding to seek greener pastures elsewhere as a result of the ensuing stress.⁸⁴

A further problem besetting human resources in the department is the lack of any IT system for performance management or training support.⁸⁵ The E-justice project is expected to cater for this. The human resources function will fit into its management information system which, in addition to paying salaries, will cater for the electronic management of performance evaluations and training needs. But performance management appears to be suffering from more deep-seated problems than could be fixed with an IT system, however advanced.

A final problem identified in relation to human resources is what interviewees described as an increasingly diminishing professional culture, as evidenced in working to rule and demanding overtime pay for every moment of overtime worked. Some argued that this was not professional behaviour, and represented a fading out of the practice of giving extra time as a voluntary service to the country.⁸⁶ The lack of commitment and service orientation appears to be a significant problem among some legal professionals in

⁷⁹ Interview, chief director of the department of justice, November 2000.

⁸⁰ Interview, Jacqui Ngeva, deputy director-general of human resources, department of justice, November 2000.

⁸¹ Interview, chief director.

⁸² Interview, Chatsworth magistrates' court, November 2000.

⁸³ Ibid.

⁸⁴ Interview, Stanger Magistrates Court, November 2000.

⁸⁵ Interview, Ngeva

⁸⁶ Interviews with Christina Murray, department of public law, and Esther Steyn, department of criminal procedural law, University of Cape Town, September 2000.

the system. One interviewee commented: ‘Given the massive problems, it is extraordinary how committed everyone is to knocking off work at 4 pm.’⁸⁷ The reasons for this change in professional ethos requires further research.

Diversity of authority centres, and a lack of communication and co-ordination

The justice function is complex from a management point of view because of the diversity of authority centres controlling the process. Justice is only one function in a serial process that starts with an arrest and ends with an acquittal or conviction. Justice cannot be managed in isolation from the other related players: the police, correctional services, and welfare.

At the moment there is not enough communication, let alone co-ordination, among these players. At the highest level of the NCPS, effective interministerial co-ordination broke down and became virtually non-existent.⁸⁸ While interdepartmental committees do exist at different levels and for different functions within these departments,⁸⁹ they do not appear to have had an impact on the rest of the system – in other words, interdepartmental communication among different levels of the hierarchy does not appear to be functioning. Implementation problems that seem relatively simple to resolve, such as which department is responsible for providing motor vehicles for verifying the addresses of accused persons, appear insurmountable. This suggests that existing mechanisms for communication and co-ordination between departments are either lacking or non-functional. Communication between police and prosecutors is diminishing, as is that between judicial officers and prison authorities. Police and prison heads are not always aware of what new justice policies – such as the bail laws or minimum sentences – are, or what the department’s objectives in relation to these policies are, and how they should relate to them. With each department operating in relative isolation, the effectiveness of the system is being compromised. Exceptions certainly occur where particular court personnel take it upon themselves to organise such co-ordination, as with the Integrated Justice Court Centre in Port Elizabeth, or the implementation of releases under supervision in Bloemfontein. But in general, departments are not communicating effectively with one another, or effectively co-ordinating their activities.

The relationship between prosecutors and police investigators is reported to have worsened in recent years. During a focus group session, investigators indicated that liaison and co-operation between them and prosecutors have deteriorated. Whereas formerly prosecutors would ask investigators to follow up certain lines of investigation, and investigators would suggest lines of questioning that might reveal important aspects of evidence gathered, this was no longer occurring on any significant scale. It does however occur in pockets, particularly where integrated justice projects are operating. Less formal

⁸⁷ Interview, Saldanha.

⁸⁸ Interview, Camerer.

⁸⁹ Interview with media services deputy director of the department of justice, August 2000.

social interaction, which often forms the basis for more formal occupational interaction between prosecutors and police investigators, has also diminished.

Within justice itself, authority is also dispersed. The Judicial Services Commission is the controlling body for judges. Magistrates fall under the authority of the Magistrates' Commission. Public prosecutors fall under the NPA. The department falls under the minister and DG of justice, and also relates to other satellite institutions such as the Legal Aid Board. Communication and co-ordination among these centres of authority appear to occur on an ad hoc basis at best. There are therefore few mechanisms for resolving problems that commonly affect all these parties. One of the factors at play in this is the principle of judicial independence, and the need to maintain a healthy distance from the executive. Also at play is the flux in the process of defining new roles for magistrates, prosecutors, and the administrative services of the justice department. Roles are not clearly defined, and this means that effective communication and co-ordination are even more difficult than under relatively stable conditions.

The mentoring relationship that used to exist between magistrates and prosecutors has apparently been disrupted in the process of transformation. The usual career path for legal professionals in the courts was from prosecutor to magistrate, with magistrates being senior to prosecutors and managing the courts. With magistrates becoming independent of the public service, and prosecutors falling under the authority of the NPA, the relationship between magistrates and prosecutors has changed fundamentally. Prosecutor training has not so far been able to fill this gap. This appears to have been one of the unforeseen consequences of the major restructuring of the judicial function. No provision was therefore made for adequately substituting for the loss of this mentoring role.

Communication and co-ordination among directorates in the department are also defective. Implementers on the ground, such as regional offices, court officials, and BACs, complain of receiving contrary messages on the same subject from different directorates. Policies and policy intentions are not clearly communicated with implementers. Neither is adequate recognition given to efforts that are being made to implement government policy effectively. Once again, this goes back to the lack of a proper strategic plan about which at least the leadership within the department has clarity and unity of purpose.

Policy development and progress in policy planning within the department is not effectively communicated to implementers. Many people in the courts have only vague ideas about what E-Justice or the integrated justice system, for example, are, what the likely future of the various pilot projects is, or when these various policies can be expected to come on stream.

Communication with the public about the justice system has improved significantly from what it was under the previous government, but is far from ideal. In most courts, including courts in remote rural areas, posters are often displayed on doors and walls about peoples' rights and about new laws such as the Domestic Violence and Maintenance Acts, and pamphlets are available about various aspects of the court processes and services. Because this communication has been effective, expectations for delivery have been raised that often cannot be met. These posters do however give an impression of a serious attempt to deliver fair and humane justice, and do succeed in alleviating the sombre atmosphere in many of the court buildings. In many courts attempts are also being

made to rewrite form letters to make them more sensitive and sympathetic. Death inquest form letters (see Annexure 6) and witness and victim summonses, for example, used to show absolutely no awareness of the sensitive emotional state of their recipients. These small changes have a significant impact on court users.

In general, however, the lack of communication and co-ordination between the related integrated justice departments, in the justice department between policy makers and implementers and between the different centres of authority contributing to the justice function, is clearly contributing to many of the problems being experienced in implementing justice policy.

Disrupted court management systems

Separation of judicial from administrative functions

The separation of judicial from administrative functions and the new court management system are, unavoidably, disrupting existing court management systems. Because chief magistrates used to be in control of the whole court staff, they could hold people to account. With the separation of these functions, oversight of the overall administration of the courts is being taken over by administrative staff. Responsibility and accountability however, continue to reside with the chief magistrate.

While the policy of functional separation seems sound in theory, the practical implications of implementation have clearly not been carefully thought out. The administration sections of most courts are suffering from severe staff shortages due to cutbacks – to the extent that they rely quite heavily on volunteers. More and more duties are thus being imposed on a shrinking body of personnel who are not being provided with the requisite training to enable them to take over these functions effectively. It is also not clear exactly how the courts are to be managed in this new system, nor how the instruction to separate these functions can be applied in the smaller courts.

New court managers

The court manager pilot project being conducted in Johannesburg and Durban is a classic example of the lack of strategic planning, co-ordination, and communication in the department. BAC was briefed by it to pioneer the court manager concept and develop a new model of court management as a pilot project for a year, to write up the results, and make recommendations. But a circular was sent out by the department to the courts in September 2000 asking if they were ready to go over to the new system of separating judicial and administrative functions. This was done without taking cognisance of their brief to BAC to make a study of the court manager concept on a pilot basis with the purpose of making informed recommendations. BAC had been assured that they had both the minister and DG on board in respect of this project, and had only agreed to invest in it if it would ultimately be used as a benchmark.⁹⁰ These assurances and agreements have ap-

⁹⁰ Interview with BAC, September 2000.

parently been disregarded. The department, however, sees the separation of powers as a wider concept than court management, and one that cannot be indefinitely stalled. While it acknowledges that court management is intrinsically related to the separation of powers, it believes the two should proceed in a phased manner.⁹¹ It is not clear how administrative functions can be removed from judicial officers without an alternative court management system being in place.

Just how the recommendations that emerge from this project will be applied to the process of separating judicial from administrative functions that is already under way without any provision for court managers remains to be seen.

Regional offices

Although justice is a national function, policy is implemented in a highly decentralised manner. There are about 250 regional courts, about 170 periodical regional courts, about 580 district courts, about 320 periodical district courts, and about 160 single-prosecutor district courts. In pursuing a policy of decentralisation, the department created nine regional justice offices, which were intended to manage the courts in each province. While some are functioning exceptionally well, others are felt to be nothing but a further obstacle to the smooth functioning of the courts.

Virtually without exception, the Free State regional office was felt to be an obstacle to the delivery of justice, and there was close to total consensus that it should be abolished. Court officials report numerous problems with it, including getting budget requests approved, a lack of response to requests, long delays in answering letters, problems with appointments, problems with access to personnel files and data, and claims of ignorance of matters that have been communicated in writing. Officials preferred to deal directly with head office with whom they experienced no problem in getting things done. As one person put it: 'It is better to communicate in writing to Pretoria than to try to communicate just over the river.'

In stark contrast to the Free State, the regional office in KwaZulu-Natal appears to be functioning extremely well. Virtually everyone interviewed at the courts in that province was very happy with his or her dealings with it. Its head has been a magistrate for 25 years, and has served in seven or the nine provinces. It has a conference centre and training facilities that are used to support the justice function in the province. Information is also readily available, and the office's annual report is exceptionally informative.

The regional office has a very active community outreach programme, and as a result has between 400 and 500 NGOs are listed with it. It has a mobile information desk that visits schools and churches and takes out posters, 'caps and cooldrinks' to distribute, while magistrates and prosecutors are introduced to people to explain what the new laws such as the Maintenance Act and the Recognition of Customary Marriages Act are, and how they work.

According to the head of the regional office, decentralisation in justice was put on ice before it had been completed in order to first build capacity. This means that while the KZN office is fully staffed and equipped, others started with scaled-down operations and

⁹¹ Telephonic conversation with Adv Du Rand, department of justice, February 2001.

were only really regional offices in name. Those regional offices collect work and send it to Pretoria – in some cases, 70 per cent of the regional work is done in Pretoria. In those cases, regional offices are playing little more than the role of a post office. The worst regional offices are reported to be the Free State, Eastern Cape, and North West.⁹²

A major factor in the success of the Durban office appears to be the extensive experience of its head. Persons less familiar with the system are likely to be far more cautious and slower in taking decisions. A second major factor in Durban's success is the fact that experienced people were brought in to fill senior positions, thus creating a high-quality leadership team. Thirdly, the office took over all administrative functions related to the region from head office. Fourthly, the leadership style of the office facilitates the justice function in the region, and is fully behind the new approach to justice policy.

Problems facing the regional offices are not insignificant. They face a lack of clear direction from the national office on where the boundaries of authority lie between the NDPP and chief magistrates in relation to prosecutors' personnel issues. A lack of clarity also exists in relation to budget matters and court provisioning. Correspondence from the regional office was reported to be attended to by junior people at head office, causing lengthy delays in resolving problems. Correspondence was also received from different sections of the national office dealing with the same issues, suggesting a lack of co-ordination between them.

The variation in the quality of regional offices presents a dilemma. In the perception of some, part of the problem appears to be Pretoria's reluctance to relinquish control and allow full delegation.⁹³ But this does not appear to have been a problem for the KZN office. In any event, the department has to decide to go one way or the other – to decentralise properly or close down the regional offices and take back the roughly 1 000 people serving in them.

According to the report of work group 2 of the justice colloquium, convened by the department of justice to discuss major issues with implementers and other stakeholders and held in October 2000:

The commission felt very strongly that structures such as the regional offices should be critically assessed – mindful of duplications, budgetary constraints and these core functions of the department of justice with a view to the possible future abolition thereof.

Several interviewees believed there was no need for a separate regional office in each province, and that, if the courts were reorganised into one cluster per province, regional office functions could be undertaken by personnel located at the main magistrates' court in the province. There would be no need for both a cluster and a regional head. This is based on the assumption that regional offices are merely duplicating national office functions, and that closing them down would save a lot of money (regional offices cost some R84 million a year in total) that could be better spent on improving the functioning of the courts by, for example, relocating the legally qualified personnel working in the regional offices to the courts. But, as one magistrate put it: 'The answer does not lie in giving con-

⁹² Interview at NPA, November 2000.

⁹³ Interview at KwaZulu-Natal regional office, November 2000.

trol back to Pretoria, but rather in the department taking ownership of the administration function and instituting serious capacity-building exercises’.

While regional offices can be better attuned to regional conditions and dynamics, and are therefore more likely to enhance policy implementation, this very much depends on the quality of leadership of the regional offices. The availability of leadership capacity in this regard is not uniform across the country. Nor is this something that can be fixed with a few training courses. While central control might thus prove to be more effective in the short run, its main shortcoming is that national offices are not as aware of regional conditions as regional offices have the potential to be. The national office does however have a high complement of experienced professional staff. One option might be to set up regional desks in the national office where regional offices are not functioning well, as a first step towards full regionalisation. This would provide the department with a good overview of regional problems, and would help to create relatively standardised practices in the relationship between the national office and regions.

The history of the policy of decentralisation and the creation of regional offices illustrates the on-off nature of policy implementation in the absence of a clear strategic plan related to focused goals and the availability of resources. It also illustrates the lack of communication and co-ordination in the department in the implementation of justice policy, as well as the confusion and disarray that result from blurred lines of authority and accountability.

Failure to build on local initiatives and encourage community involvement

Numerous local initiatives have been undertaken at several centres throughout the country to speed up case flows and realise the objectives of particular government polices. In most of these cases, the people involved are exceptionally dedicated to improving the quality of justice provided. It appears, however, that the department of justice is either not sufficiently aware of what is being done in particular courts, or is not seeking ways of building on and extending these experiences to other areas of the country.

Some examples of these local initiatives include the integrated justice centre in Port Elizabeth, the release of awaiting trial prisoners under supervision in Bloemfontein, the juvenile justice programme in Pretoria, and the family court centre in Durban.

Staff at the integrated justice court centre in Port Elizabeth discussed earlier impressed us with their enthusiasm and dedication under extremely trying circumstances. The general atmosphere is one of hard work, service, and caring. The model is certainly one that would be beneficial to replicate. As mentioned earlier, the department of justice does not appear to recognise its value.

In the absence of a PTS centre in Bloemfontein, the magistrates’ court there has been using sections 62(f) and 72(1)(a) of the Criminal Procedure Act⁹⁴ to release awaiting trial prisoners who have been granted bail of up to R1 000 but who cannot afford to pay it. In lieu of bail, prisoners can be released on warning under the supervision of a probation

⁹⁴ Act 51 of 1977.

officer or correctional official, and under conditions pertaining largely to their movements and behaviour. Prosecutors, magistrates, and correctional services members work closely together in the implementation of this approach. Court is held on Fridays at the Grootvlei prison outside Bloemfontein to process these releases. The initiative and commitment of the people involved in this exercise was, as in many other instances, inspiring. It is also an initiative that looks sustainable in the long term, as it is home-grown and implemented within existing resource constraints. It is another model that could easily be replicated.

The Pretoria magistrates' court has accommodated the NGO Criminon, which services the juvenile court. Juveniles may be diverted to the Criminon programme which provides courses in communication, literacy, how to study, and a non-religious moral code, and provides for detoxification if the juveniles are on drugs. The court has also encouraged local religious groups, schools, and NGOs to become involved in supporting the work of the court by, for example, donating toys and children's furniture for child victims' waiting rooms, and painting pictures on the walls of the children's' and juveniles' courts. They have also provided a café where people can buy refreshments while waiting for cases to come up.

The Family Court Centre pilot in Durban has created an area that is physically separated from the other courts to deal with family case matters. Staff have provided office space for several NGOs that provide supportive services, such as the Domestic Violence Assistance Programme, the Advice Desk for Abused Women, Peace Haven Community Services, and NICRO. They have also created child-friendly environments for child victims, and have provided feeding and nappy-changing facilities for mothers with small babies.

These are just some of the initiatives observed in the course of fieldwork. There are likely to be many more. It would be a worthwhile exercise for the department to audit these local initiatives and facilitate a cross-pollination of ideas among court personnel in different parts of the country. This does not seem to be happening. On the contrary, many dedicated personnel feel discouraged by the department's apparent indifference towards their efforts to implement government policies.

While individual courts are involving local communities in supporting policy implementation, there appears to be no concerted effort on the part of the department to ensure the encouragement of community involvement through collaboration with NGOs, community police forums, etc. The victim/offender programme at the Sophiatown police station and at the Newlands court, for example, is reported to have been tremendously successful in resolving cases out of court and in bringing down the crime rate in those areas. This and other similar cases of successful community involvement in implementing justice policy need to be broadened and developed.

RECOMMENDATIONS

Make justice a higher national priority

We recommend that justice be given a higher priority in the national budget. This requires a substantial analysis of the financial requirements of the justice function. This could be undertaken by the proposed costing unit (see below), or by the department of finance.

The move from a confession-oriented approach to a human rights-based, professional investigative approach requires not only progressive political will but also financial commitment. It is suggested that, at the very least, resources in the justice budget be reallocated to adequately fund magistrates' courts.

Should it prove necessary to increase the justice allocation, this would not be impossibly difficult, given that justice is a relatively small department with a budget of just under R3 billion. With a military arms deal to the value of some R43 billion over three years on the cards, when South Africa is not facing any known military threat, it does not seem unreasonable for the criminal justice system, which has to deal with a massive internal security crisis, to be allocated a slightly bigger slice of the national budget, arguments of economic growth and investment spin-offs of the military deal notwithstanding.

Prioritise policies into a realistic strategic plan

Policies must be prioritised into a strategic plan that phases transformation initiatives into realistic time frames. A strategic prioritisation unit, under the direction of division heads in the department, could be established to work in close collaboration with the parliamentary portfolio committee on justice and in conjunction with the costing unit (see below) and policy implementers in the courts. The same unit could evaluate pilot projects and local initiatives and, where appropriate, scale them up.

Cost policy, and create a costing unit

The basic functioning of the courts as well as current and proposed policies must be properly costed in order to ensure congruence between policies that are adopted and the resources available to implement them. A costing unit must be created to do this.

Ensure that heads of all divisions of the department and legislators understand and are committed to the strategic plan

Steps must be taken to ensure that the heads of all divisions in the department, including all role players involved in implementation, have clarity about the strategic plan and are committed to its implementation. These priorities must be communicated to the other relevant departments.

Provide for adequate human resources to implement the strategic plan

The salary inequities between magistrates and prosecutors must be addressed, to curb the loss of prosecutors and provide upgraded in-service training for them. Options must be costed and chosen on the basis of affordability. The necessary resources must be provided to overcome the chronic shortage of administration personnel in the courts, and provide the necessary training for them to take over court management and administrative functions, again by selecting among costed options. The shortage of professional personnel at regional court level must be addressed, and legally qualified people concentrated in the national and regional offices must be redeployed to the courts.

Upgrade financial management skills

Financial management skills throughout the courts and department must be upgraded. This would allow for a less rigid approach in the administration of court budgets, which would prevent implementation requirements being suspended, such as telephone lines being cut because that budget line item has run out.

Speed up intersectoral integration at all relevant levels

Systematic intersectoral integration must be speeded up at all relevant levels – from the parliamentary committees through the equivalent executive agencies within departments to related implementers from different departments on the ground.

Clarify lines of authority and responsibility

Lines of authority must be clarified between:

- the NDPP and chief magistrates over prosecutors;
- district court chief magistrates and regional court presidents;
- the national and regional offices;
- the national office and the courts; and
- the regional offices and the courts.

CONCLUSION

The three main findings of this study are that failures in implementing justice policy are due to:

- the fact that justice is not afforded a high enough national priority;
- the lack of a coherent and streamlined implementation strategy that accords with a realistic appraisal of the human and financial resources available to the department; and
- conflicting lines of authority, and disrupted management systems.

Three other key factors are also impeding successful implementation:

- insufficient intersectoral integration and co-operation among justice, police, correc-

tional services, and welfare at all levels from the district courts through to parliament;

- insufficient attention to and building out of existing local models of successful policy implementation; and
- demoralisation among justice personnel.

Even if justice were to be made a higher national priority, and given a larger slice of the national budget, narrowing the gap between policy-making and implementation would still require a much more neatly tailored fit between policy and the resources available for implementation. This would entail a concerted effort to limit policy-making to real priorities in terms of what is realistically and practically feasible. The boundaries of what can be achieved within those priorities could however be significantly stretched by building out the many successful low-cost local initiatives already under way, and by encouraging and welcoming the willingness and enthusiasm of local communities to help the department achieve its goals.

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ANNEXURE 1**Average number of regional cases per court by type of court and division, October 2000 (target = 110)**

	Regional courts (target = 110)	Periodic regional courts	Total
Bophuthatswana	192	84	152
Ciskei	225	84	125
Cape Province	181	132	162
Eastern Cape	545	No data	545
Free State	89	38	54
Northern Cape	122	No data	123
Natal Province	208	136	197
Transvaal	187	50	132
Transkei	118	73	90
Venda	367	No data	367
Witwatersrand	156	194	158
National	174	60	129

Average district cases per court by type of court and division, October 2000 (target = 145)

	District courts (target = 145)	Periodic district courts	Single prosecutor district courts	Total district courts
Bophutha- tswana	179	91	96	154
Ciskei	145	10	62	109
Cape Province	199	79	186	142
Eastern Cape	133	39	131	97
Free State	159	33	73	91
Northern Cape	164	33	94	71
Natal Province	184	44	93	139
Transvaal	176	31	106	113
Transkei	218	75	215	196
Venda	230	31	169	196
Witwatersrand	172	53	---	170
National	177	46	107	125

ANNEXURE 2

**Cases finalised and conviction rates per division: regional courts,
October 2000**

	Total finalised	Average finalised (target = 15)	Withdrawn	Conviction rate (per cent)
Bophuthatswana	230	14	432	63
Ciskei	58	8	18	48
Cape Province	548	11	262	69
Eastern Cape	180	10	658	62
Free State	296	5	147	63
Northern Cape	102	15	68	60
Natal Province	424	9	305	60
Transvaal	1005	11	979	59
Transkei	94	6	25	56
Venda	29	29	73	59
Witwatersrand	573	12	495	62
National	3539	10	3462	62

**Cases finalised and conviction rates per division: district courts,
October 2000**

	Total finalised	Average finalised (target = 40)	Withdrawn	Conviction rate (per cent)
Bophuthatswana	823	27	1170	75
Ciskei	350	18	608	82
Cape Province	5769	42	4912	83
Eastern Cape	2520	32	3828	88
Free State	1930	20	3538	80
Northern Cape	1573	28	1395	89
Natal Province	4015	28	4506	85
Transvaal	5458	21	8590	78
Transkei	884	25	2116	82
Venda	637	58	779	79
Witwatersrand	2549	39	2033	82
National	26 508	28	33 475	82

ANNEXURE 3

Race and gender composition of justice personnel:

Judges

Judges: numbers									
Year	INDM	COL M	BLKM	IND F	COLF	BLKF	White		Total
							M	F	
1996	16			2			154	6	178
2000	9	5	25	1	1	6	126	11	184

Judges: percentages									
Year	INDM	COL M	BLKM	IND F	COLF	BLKF	White		Total
							M	F	
1996	9			1			87	3	100
2000	5	3	14	0,5	0,5	3	68	6	100

Magistrates

Magistrates: Numbers									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	10	12	23	4	657	178	321	32	1237
1998	15	13	27	5	644	194	395	57	1350
2000	35	33	47	14	641	219	449	80	1518

Magistrates: Percentages									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	0,8	1,0	1,9	0,3	53,1	14,4	25,9	2,6	100
1998	1,1	1,0	2,0	0,4	47,7	14,4	29,2	4,2	100
2000	2,3	2,2	3,1	0,9	42,2	14,4	29,6	5,3	100

Prosecutors

Prosecutors: Numbers									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	40	77	72	39	445	433	399	133	1638
1998	43	92	79	49	396	415	489	152	1715
2000	37	117	88	70	316	400	665	291	1984

Prosecutors: Percentages									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	2,4	4,7	4,4	2,4	27,2	26,4	24,4	8,1	100
1998	2,5	5,4	4,6	2,9	23,1	24,1	28,5	8,9	100
2000	1,9	5,9	4,4	3,5	15,9	20,2	33,5	14,7	100

State advocates

State advocates: numbers									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	2	4	8	1	122	64	19	8	228
1998	4	3	8	5	96	60	25	9	210
2000	4	7	4	5	71	63	36	19	209

State advocates: percentages									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	0,9	1,8	3,5	0,4	53,5	28,0	8,4	3,5	100
1998	1,9	1,4	3,8	2,4	45,7	28,6	11,9	4,3	100
2000	1,9	3,3	1,9	2,4	34,0	30,2	17,2	9,1	100

Management echelon

Management echelon ⁹⁵ : numbers									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	1	1	0	0	97	5	59	4	167
1998	3	3	8	1	109	20	62	14	220
2000	8	8	15	4	121	19	69	18	262

Management echelon: percentages									
Year	Indian		Coloured		White		Black		Total
	M	F	M	F	M	F	M	F	
1996	0,5	0,5	0	0	58	3	35,5	2,5	100
1998	1,4	1,4	3,6	0,4	50	9	28	6,2	100
2000	3	3	5,7	1,5	46,2	7,3	26,3	7	100

⁹⁵ The management echelon includes the: attorney-general, deputy attorney-general, director-general, deputy director-general, chief director, deputy director, divorce court president, family advocate, chief family advocate, senior family advocate, chief administrative officer, principal legal administration officer, chief magistrate, special grade chief magistrate, chief master, senior deputy master, supreme court master, chief supreme court master, deputy supreme court master, deputy director pr, national director public prosecutions, deputy director public prosecutions, director public prosecutions, deputy director public prosecutions, regional court president, state attorney, deputy state attorney, chief state law advisor, deputy chief state law advisor, principal state law advisor.

ANNEXURE 4

Department of justice staff by category, race and gender, September 2000⁹⁶

Category	African		Indian		Coloured		White		Total
	M	F	M	F	M	F	M	F	
Management: Nat & Reg	33	14	3	2	6	2	36	7	103
Percentages	32	14	3	2	6	2	35	6	100
Management: sub-offices	30	5	2	6	5	2	70	11	131
Percentages	23	4	2	4	4	2	53	8	100
Legal Personnel	1265	468	95	188	152	100	1150	798	4216
Percentages	30	11	2	4	4	3	27	19	100
Other Personnel	2825	2482	91	176	245	387	479	2100	8785
Percentages	32	28	1	2	3	5	5	24	100
Totals	4153	2969	191	372	408	491	1735	2916	13235
Percentages	31	23	1	3	3	4	13	22	100

Source: Office of the deputy minister of justice.

ANNEXURE 5

Administrative officers and clerks in the department of justice, 1996 and 2000⁹⁷

Admin Officers & Clerks	B.M.	B.F.	I.M.	I.F.	C.M.	C.F.	W.M.	W.F.	Total
March 1996	2106	2482	35	67	70	89	324	1724	6897
%	31	36	0,5	0,5	1	1	5	25	100
July 2000	1110	1071	47	102	84	187	158	1342	4101
%	27	26	1	2	2	5	4	33	100

Source: department of justice documents: personnel composition: department of justice: personnel employed on 31 March 1996 and 31 July 2000.

⁹⁶ Data provided by the office of the deputy minister of justice, Cheryl Gillwald.

⁹⁷ Department of Justice documents: Personnel composition: Department of Justice: Personnel employed on 31 March 1996 and 31 July 2000.