



Criminal Justice Strengthening Project

A Feasibility Study

Feasibility Study

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Feasibility Study for Criminal Justice Strengthening Project

INTRODUCTION

Since 1994 the entire Public Service has been driven by political pressure to transform and increasingly by public pressure to deliver a more effective service. The Criminal Justice Sector (CJS) in particular faces extreme criticism for its failure to keep South Africans safe and to bring perpetrators to justice. In an attempt to meet the increasing demands upon it, the entire CJS has been engaged in a multitude of transformative and restructuring processes. This in itself is both stressful and unsettling but the changing environment has also created a skills vacuum which threatens to paralyse both management and staff.

Our two year experience with the Department of Public Prosecutions in KwaZulu-Natal, in interventions in the Durban Magistrates' Court, and the High Court Offices in Durban and Pietermaritzburg has shown that this environment has enormous repercussions for service delivery. Absenteeism rates soar, motivation and commitment to the organisation are dissipated. Quality of service declines, internal relations deteriorate and managers become impotent faced with a system they no longer understand, while the public is faced with an increasingly poor service and negative attitudes.

Our experiences over the last two years have shown that it is possible to effect change and build sustainability and competence in Public Service Departments. For example our work with the KZN Prosecuting Authority has demonstrated that implementing a well structured, integrated management development plan can, in a relatively short period, impact positively on the system. For example in Durban Magistrates Court the absenteeism rate has fallen from an average of 73.4 days per month (with a monthly cost of R86 202) to 36 days per month in a six month period. This was a 51% reduction in sick leave with a cost saving of R46 787 per month. More staff at work then contributes to more hours in court.

However, the CJS is made up of a number of interdependent Departments and any attempt to improve public confidence in the system requires that all roleplayers contribute to the outcome. It became apparent that improving performance in one sector alone will not solve the problem, rather there needs to be a coherent coordinated initiative which addresses the needs of the wide range of players in this sector.

The Durban Magistrates Court seemed to be an ideal site of a larger multi agency intervention since it is the hub of interaction for the primary role players in the system. It is also the largest court in KwaZulu Natal and second largest in the country. We felt this would provide us with a geographical site in which a workable model could be developed and where transferable learning could occur.

PURPOSE OF FEASIBILITY STUDY

As we began to think of how we could widen the scope of our original intervention in order to impact positively on the whole system we felt it was important to check our

assumptions. Was Durban Magistrates Court an appropriate site and would their be support for such a large scale project.

An additional concern highlighted by our work with the KwaZulu-Natal Prosecuting Authority was to find out why so many previous donor driven projects had either failed or were perceived to have failed. Over the last five years an innumerable number of “ad hoc” projects have been run within the environs of the Durban Magistrates’ Court and we were cautious of introducing yet another discrete project into a “project weary” environment.

Methodology

The broad methodology we employed in conducting the feasibility study included :

- o Interviews with 46 key people in 4 provinces. They came from academic, ngo and departmental backgrounds and are listed in the appendix.
- o Consultation with 2 international experts in law reform and organisational development
- o A review of current documentation including departmental policy, ngo reports and evaluations
- o Internet based research
- o The hosting of working discussion group

ENVIRONMENTAL BACKGROUND

The current status of the Criminal Justice Sector in South Africa is largely defined by the overarching 1996 National Crime Prevention Strategy (NCPS). This strategic framework requires different spheres of government to collaborate in order to identify and implement multi agency solutions to the crime problems facing South Africa. The current policy documents and strategic plans, including the Department of Justice’s “Vision 2000”, have all been constructed around this original framework.

The departments within the CJS who are expected to collaborate are the Department of Safety and Security, Department of Correctional Services, Department of Welfare and Department of Justice, which includes the now independent National Prosecuting Authority.

To address bottlenecks in the criminal justice process an Integrated Justice System (IJS) initiative, governed by a board consisting of the four key national departments, the NPA, Business Against Crime (BAC) and the SITA (State Information Technology Agency), was established in the late 1990s. The IJS has the objective of transforming the criminal justice system into one which is modern, efficient, effective and integrated, and since it’s inception numerous projects have been spawned in attempts to achieve this objective.

A key component of the IJS is the multi million Rand E-Justice project which has, as its flagship, the Court Process Project. This project was initiated in late 2000 and has a long-term implementation timeframe but is currently nearing the end of its pilot phase in Durban, Johannesburg and Pretoria Magistrates' Courts. The intention is to roll this project out following the pilot phase. As an interim short term solution, a semi-automated court and case management system has also been implemented at a number of courts where case backlogs are particularly high. This initiative, under the direction of BAC and termed the IJS Court Centre Project, also seeks to improve court and case management at magistrates' court level. However the software used by the Court Centre Project is not compatible with the larger E-Justice software which has led to some controversy.

The most recent project initiated by the Department of Justice is the Criminal Justice Strengthening Programme (Re aqa Boswa) which proposes to develop a blueprint for a decentralised court services model whereby the Department of Justice regional headquarters will be replaced by a number of hub centres. Again KwaZulu-Natal has been selected as a pilot site. This project is funded by USAid through BAC, and Price Waterhouse Coopers have been awarded the tender to develop the model.

In addition numerous smaller or more localised projects have been initiated at various centres. These include Family Court Centres, Sexual Offences Courts, Hijacking Response Projects and several internal projects dealing with systemic management and human resource issues.

The introduction of these projects, many of which are uncoordinated and overlapping, has resulted in discontinuous change which has severely impacted on staff confidence and morale. In this uncertain environment relationships between the various units have also deteriorated enormously as individuals retreat and protect existing power bases – a “hold on to what I know” attitude. The relationship between magistrates and prosecutors has been particularly acrimonious, in part due to historic resentment because of the salary discrepancy between the two disciplines. This stems from the fact that the magistrates profession was removed from the public service in 1995 which allowed them to negotiate salaries outside of public service constraints.

FINDINGS OF FEASIBILITY STUDY

It attempting this feasibility study it was our intention to produce a document detailing input from the various stakeholders which would provide

- data around the level of support for a large scale intervention,
- clarity on the issues which would need to be addressed within such an intervention,
- the possible hindrances that such an intervention would face and
- the potential impact of such an intervention

We have organised our finding around these broad themes.

Level of Support for the Proposed Intervention

In many interviews we encountered some initial wariness at the thought that we might introduce “another project”. When we made it clear that it was our intention to

link and enhance existing initiatives, we found support from everyone. Each role player was keen for an initiative which linked, anchored and enhanced the many diverse current initiatives.

At decision making level we were able to secure, among others, the support of Mr S Jiyane, Managing Director Court Services, Mr Langenhoven, Regional Director KZN Department of Justice, Ms S Batohi Director KZN Prosecuting Authority, and Mr Mabaso, Chief Magistrate, Durban. This provides us with a level of access which will ensure that the intervention can engage with Departmental strategies and plans.

Externally we met with numerous NGO's and have agreements in principle with Law Race and Gender, the Institute for Security Studies, Strategy and Tactics, NICRO, the Institute for Multicultural Initiatives, as well as BAC.

We have also had several meetings with the provincial heads of Public Works and have secured their commitment as partners in this multi agency endeavour.

As a result of these interviews we believe that there is sufficient support for such a project to make it a viable prospect. Since the interviews were all based on a "possible" project it would have been pre-emptive to gather substantive evidence of support ie in terms of matching finance or commitments to certain activities.

Issues Which Would Need To Be Addressed

Poor Management of the System

The most striking theme that emerged from all of our discussions was that poor management was crippling the system. This is supported even within internal Department of Justice documentation which highlights "the lack of appropriate skills in the management of courts and the limited supervision and management of service delivery points"¹ as being one of their key challenges. This fundamental issue was raised by everyone we spoke to and seemed to have three contributory factors :

1. Limited Management Capacity

The majority of the individuals in key provincial managerial positions have neither the skills nor the capacity to perform to an acceptable standard. Fast track appointments lack experience and skills, whilst "old guard" managers shaped by the previous systems, are set in their ways and have entrenched practices which are no longer relevant or acceptable. Furthermore, there is no culture of organisational learning and so expertise is neither transferred nor shared.

The environment is also being shaped by external consultants who interact only at the most senior national levels and whose expertise is built primarily on Northern Hemisphere models. Their language of implementation is both unfamiliar and baffling as they begin to create "business units", talk about "KPI's", create "hub centres" and demand "SLA's" from local management who simply don't

¹ "National Establishment and Provincial Structure KZN" PowerPoint Presentation, Department of Justice and Constitutional Development September 2002

understand the concepts or the terminology. Of those interviewed 100% of all respondents recommended that management development be a priority for any initiative. This lack of capacity among managers also has the greatest impact on public perceptions of the justice system.

2. Communication

Poor internal communication has resulted in a situation where managers lack the information necessary to perform their tasks. Informal communication channels are often racially based and exclusionary. At the end of this feasibility study the lack of shared information became apparent even among heads of departments and senior officials who we interviewed.

Many of those interviewed felt that the various IT interventions would be a partial solution to this communication problem, though it was also acknowledged that the value of the technology depended on the quality and capacity of the users.

All of those interviewed at provincial level felt that the re establishment of the provincial Integrated Justice System (IJS) meetings would contribute to improved communication. Due to poor co ordination and a lack of clarity about purpose, these meetings stopped early in 2002 and these issues would have to be addressed to ensure the future success of this important forum.

3. Relationships

Transformation of the system has led to a breakdown in relationships with Department of Justice identifying “dysfunctional working relationships” as a challenge to the transformation process. Previously relationships were the glue which held the system together, and this “glue” was often racially based. With the appointment of a more diverse team conflicts tend to coalesce around race and gender causing deeper divisions. Poor human resource systems and subjective evaluation processes have contributed to these conflicts around race. There is an urgent need for new “glue”. Effective and equitable systems and consistently implemented processes could become this new glue.

Many of respondents, especially lower ranking ones, have a perception that the system has been dehumanised – “it doesn’t care about me so why should I care?” is a comment we often heard. This is exacerbated by the fact that most transformation initiatives are driven at national level with little consultation at local level, leaving people feeling like pawns in a game.

The lack of cohesion within the sector means that rather than working together to address problems each group blames the other and claims to be the victim. This culture of blame is detrimental to the system and there is a need to foster the skills of collaborative problem solving. Also, many respondents noted there was a need to create an understanding of what an integrated justice system entailed, and to clearly define how each discipline contributes to the whole. At present everyone sees themselves in isolation and as powerless victims of the system.

Lack of human resource capacity

Over the past six years there has been an considerable brain drain in this sector with many of the most skilled and experienced taking their packages. The police and prosecution service have been severely affected by this skills deficit. The career path limitations within the prosecuting authority means that many skilled prosecutors are lost to the magistrates corps since salaries are so much better. The lack of skills and experience among prosecutors and detectives was constantly raised as a contributing factor to low conviction rates and the high awaiting trial prison populations.

The interpreters seemed to be an “invisible” group. They were never raised as problematic without probing on our part, but once questioned 100% of the respondents said they were hugely problematic, with high rates of alcohol abuse, absenteeism, as well as low morale and poor levels of supervision, all of which impact negatively on service delivery.

Physical environment

It was often noted that the physical environment of most courts contributes to the dissatisfaction of both users and staff. Durban Magistrates’ Court in particular with its old apartheid design has been poorly maintained with the lifts not working, the air-conditioning broken down, and the water supply contaminated all of which contributes to a poor environment for service delivery. Improvements to the building are currently underway but depend largely on co ordination between the Departments of Justice and Public Works.

Rural courts were also cited as being severely under resourced in terms of their physical environment.

The limited space at most courts means that victims of crime are often traumatised a second time by having to sit with the perpetrator while they wait for their case to be called. All respondents shared the view that the system often fails to deal sensitively with the victim and that better waiting facilities are long overdue.

Hindrances That The Intervention Would Face

When asked what they thought the key hindrances of such an initiative would be the majority of respondents felt that securing buy in from individuals would be the greatest problem. This was followed by concern that while individuals would often pay lip service to buy in this was not always followed by action.

Many people emphasised how important it would be to spend time on preparatory work, buy-in and building relationships. These issues were also seen as the primary reason why so many projects had failed or were perceived to have failed. Experience has shown that a lack of ownership in a project meant that externally driven processes were either undermined or simply ignored and once the external facilitator left the project disappeared. Time spent developing the project and building co operative relationships helps avoid suspicion, and enables the facilitators to identify problem personalities early on as well as develop strategies for coping with hindrances..

Other concerns raised included the problems of co ordinating such a large scale intervention within a difficult and often dysfunctional environment. A few people (less than 10%) were concerned that “turf wars” would occur between us and other NGO’s who might feel threatened by such an initiative.

While none of the respondents raised this issue we feel a further hindrance might be that as we expose the non performance of key individuals within the system we might find some resistance to our involvement.

Potential Impact

Most respondents felt that the impact of such an initiative would be an improved capacity amongst managers to manage performance within the CJS. This would most easily be measured through improved customer satisfaction and through the achievement of each departments internal targets. Over a longer term the potential impact would be that courts within KwaZulu Natal become functional centres ensuring access to justice. While no respondents considered that a reduction in actual crime could be considered a measurable outcome of such an initiative, an effective and efficient justice system was seen as one key component to reducing crime.

A change in the publics perception of the criminal justice sector, brought about by improved levels of service, would be one of the most important longer term impact of such an intervention. Any experience of a lack of justice impacts seriously on peoples sense of satisfaction with government and their belief in the safety of the country as a whole.

CONCLUSION

Our original brief was to focus on the delivery of this multi agency initiative at the site of the Durban Magistrates’ Court only. More than 50% of those interviewed felt that Durban Magistrate’s Court was an ideal site, 8% felt that a smaller courts would benefit more and be easier to manage. In fact only 10% of people advocated a regional initiative, however in analysing and interpreting the data we received we are convinced that while Durban might provide the critical fulcrum for the initiative, it is vital that provincial management be the primary target.

An additional reason for focussing on provincial management is that managers at the Durban Court form part of a provincial team and will be unable to initiate or implement improved systems without the support of their colleagues. Also, the system will become fractured, if things are done differently in Durban. This is one reason why many successful small geographically specific initiatives fail to become institutionalised.

We were also concerned about the level of national support that would be necessary and raised this with many provincial and national role players. They were unanimous that provincial support was the key to success as improved service delivery is the mandate of each provincial director. It also emerged that national support, without provincial, or regional, buy-in had undermined several of the

previous initiatives. People still seem put out by projects they felt were imposed on them with facilitators saying "...I've spoken to Bulelani and he supports this ..."

Nevertheless it is important that any external intervention is in line with national strategies and plans and uses similar language and terminology. This is vital since too many initiatives are run with little understanding of the contexts and conditions within the public service.

This study has conclusively shown that a longer term large scale multi sector intervention at Durban Magistrates' Court would be feasible. However, it has also shown that for this to be sustainable it is necessary for provincial management to undergo a critical shift in attitude and ability. The present level of incapacity among regional management must receive urgent attention if any longer term initiative is to be sustained. This must increase managers' capacity to manage themselves as individuals and should encompass their attitude, should increase their self esteem, improve their ability to change and adapt, help them to overcome procrastination and cope with personal issues of time management and assist them to manage anger and adversity. Unless they can manage themselves, they will be unlikely to manage their staff.

**Glenda Caine
Iole Matthews**

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List of Individuals Interviewed for Feasibility Study

Mr J Sibeko	Chief Prosecutor Durban Region
Mrs V Melis	Senior Public Prosecutor – Family Court, Durban
Ms Z Mtuli	Senior Public Prosecutor, Durban
Mr R Sansom	Chief Prosecutor Southern KZN
Mr Mabaso	Chief Magistrate Durban Region
Adv R Stuart	Deputy Director KZNPA (Chair IJS)
Ms M Ondayan	Durban Magistrates Court Manager (BAC)
Mr C Brimacombe	BAC Durban Region
Mr D Boardman	BAC Project Facilitator IJSP
Mr R Dhaniram	Assistant Director Public Works
Mr O Mzulwini	Durban Court Service Manager : Dept of Public Works
Mr S Jiyane	Managing Director : Court Services Dept of Justice
Mr M Schonteich	ISS Senior Researcher
Mr R Paschke	High Court Advocate (ex Vera / BJA)
Mr E van der Colff	BAC Project Director, Gauteng
Prof W Scharf	Associate Professor UCT Criminology
Mr MJ Langenhoven	Dept of Justice Regional Head KZN
Mr B Fanaroff	Resolve Crime and Security Solutions
Mr H Scheepers	Director General Training: Justice College
Ms C van der Riet	Director : Justice College
Ms S Batohi	Director KZNPA
Mr J Carstens	European Union
Ms G Wannenburg	SAIIA
Ms C Dawson	NICRO
Ms F Vahed	NIM
Mr M Todd	CPF Area Board Deputy Chair
Mr K Barden (via email)	
Mr S Tait	UMAC
Mr B Groen	Senior Public Prosecutor : Special Section
Mr P Gastrow	ISS
Mr P van Straaten	BAC Court Project Facilitator PE
Mrs Zwane	Head of Admin : Durban Magistrates Court
Mr T Sardini	LRG (Law Race and Gender Unit UCT)
Ms V Karth	LRG
Ms P Osman	LRG
Spt Govender	SAPS Detective Services
Dir T Soomaroo	Durban North Head of Detectives SAPS
Dir Ntanjana	Area Commissioner North Durban SAPS
Dir Stokes	Deputy Area Commissioner North Durban SAPS
Adv C DeBeer	Dep Director National Court Services NPA
Mr Q Sedibe	General Manager Corporate Services NPA
Mr J Skosana	Project Leader : Dept of Justice
Mr R Morris	OSF
Mr Larry Oelhart	Tectonics Colorado
Mr M Mpshe	Director Public Prosecutions, Pretoria