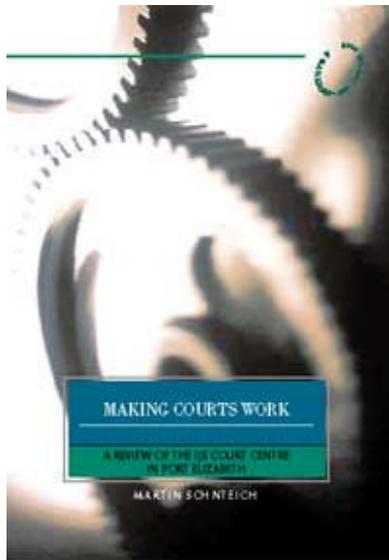


Making Courts Work

A Review of the IJS Court Centre in Port Elizabeth



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ISS Monograph No. 75

October 2002

**Institute for Security Studies
Pretoria, South Africa**

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FOREWORD

Business Against Crime (BAC) South Africa was established in 1996 as a solution to then president Nelson Mandela's invitation to business to join the government's fight against crime. Today, we proudly reflect a unique partnership between business and government at all levels, one that is regarded as one of the best practices of its kind internationally.

Business Against Crime Eastern Cape was founded in 1997 in the belief that the collective application of resources provided by individual companies to address blockages within the criminal justice system would be more effective than individual efforts. Our primary role has been the neutral facilitation and project management of the integrated approach to problem solving within the criminal justice system.

The Integrated Justice System Court Centre is the fulfilment of the drive and determination of committed individuals and teams within the criminal justice system to achieve the mandated vision of addressing blockages and drastically improving service delivery to the community of the Eastern Cape.

The research monograph is a record of the impact of this unique partnership between business and government in the Eastern Cape, with particular focus on the Integrated Justice System Court Centre in Port Elizabeth, Nelson Mandela Metropole, South Africa. Seen as a shining light in our nation, the centre was officially launched by Dr Penuell Maduna, Minister for Justice and Constitutional Development, on 17 August 2001.

The sound relationships built within the project have born fruit to the benefit of all role-players involved. We express our sincere appreciation to the South African Police Service, Departments of Justice, Correctional Services and Social Development for their dedication to the success of this national priority initiative.

We are deeply grateful to Martin Schönreich of the Institute for Security Studies for his invaluable research and the compilation of this monograph.

It is hoped that this monograph will contribute to a better understanding of the challenges faced by the criminal justice system in the South African context, and that it will encourage policy makers and practitioners to consider the implementation of an integrated approach to problem solving, planning and resourcing in a bid to improve service delivery to the community.

Kevin J Hustler
Managing Director
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Eastern Cape

ACKNOWLEDGEMENTS

The Integrated Justice System Project is funded by the Business Trust through Business Against Crime (BAC) South Africa, and supported by provincial BAC offices and business sponsors.

The success of the Integrated Justice System Court Centre Project at the New Law Courts in Port Elizabeth would not have been possible without the contributions, both financially and in kind, of all the business sponsors and patrons of BAC Eastern Cape.

The research and publication of this monograph was funded by Spar Eastern Cape, as part of their ongoing commitment to BAC Eastern Cape. The other sponsors of this publication are the funders of the Institute for Security Studies' Criminal Justice Monitoring Service: the European Union, the Ford Foundation, Standard Bank, the United States Agency for International Development (USAID), and the United States Embassy in South Africa.

The research for this monograph would not have been possible without the assistance and co-operation of the following people: Kevin Hustler (MD, BAC-Eastern Cape); Pieter van Straaten (IJS Project Manager, BAC-Eastern Cape); Jana Noomé (Project Manager, BAC-Eastern Cape); Hannelie Bakker (Senior Public Prosecutor, Port Elizabeth); Peter Rothman (Chief Magistrate, Port Elizabeth); the staff of the Court Centre at the Port Elizabeth New Law Courts; Nonkosi Cetywayo (Regional head: Department of Justice and Constitutional Development, Eastern Cape); Rapphepheng Mataka (Provincial Commissioner of Correctional Services, Eastern Cape); Ross Mpongoma (Provincial Police Commissioner, Eastern Cape); Mzwayi Ntsuluba (Director of Public Prosecutions, Eastern Cape); Matt Gennrich (Chairperson, BAC-Eastern Cape); Lorraine Glanz (Directorate: Court Information, Department of Justice and Constitutional Development); and Deon Boardman (IJS National project facilitator).

The support of the aforementioned individuals throughout the research process is gratefully acknowledged. It must be stressed, however, that any errors and misinterpretations contained in this monograph are those of the author alone.

ABBREVIATIONS AND ACRONYMS

AFIS	Automated Fingerprint Identification System
ATP Project	Awaiting Trial Prisoner Project
Assault GBH	Assault with the intent to inflict grievous bodily harm
BAC	Business Against Crime
CCP	Court Centre Project
CPP	Court Process Project
IJS	Integrated Justice System
NCPS	National Crime Prevention Strategy
NPA	National Prosecuting Authority
PE	Port Elizabeth
PTS	Pre-Trial Services
SAPS	South African Police Service

EXECUTIVE SUMMARY

Comparatively South Africa has one of the highest levels of recorded violent crime in the world. Beyond the direct death, misery and trauma crime inflicts on its victims, other consequences of crime include feelings of insecurity, disillusionment with the state's ability to protect its citizens, vigilantism, emigration and reduced foreign investment. In short, crime has become one of the biggest impediments to the establishment of a free, prosperous and peaceful society in South Africa.

It is the purpose of the criminal justice system to combat, prevent and reduce crime. It seeks to do this by processing cases and offenders speedily and effectively and by handing down appropriate sentences to those convicted of an offence.

South Africa's criminal justice system is not performing optimally. Of the 2.6 million crimes recorded in 2000 (and many crimes are never reported), only 8% resulted in the conviction and punishment of the perpetrators. The slow investigation and prosecution of cases is creating unmanageable numbers of awaiting trial prisoners. In early 2002 the country's prisons had an approved occupancy level of 105,000, but were holding 175,000 inmates.

To address bottlenecks in the criminal justice process an Integrated Justice System (IJS) initiative was developed in the late 1990s with the objective of transforming the criminal justice system into a modern, efficient, effective and integrated system.

The flagship court management project of the IJS is the Court Process Project. However, this project has a long-term implementation timeframe. As an important interim solution, a semi-automated court and case management system was implemented at a number of courts where case backlogs were particularly high. This initiative, termed the IJS Court Centre Project, seeks to improve court and case management at magistrates' court level.

The IJS Court Centre Project provides magistrates' courts with an electronic case management system, together with more effective ways of organising the

flow of work in the court environment. The Court Centre brings together all criminal justice role players in one physical environment, and facilitates co-operation between them to ensure that cases are better prepared for trial.

The New Law Courts in Port Elizabeth have been at the forefront of developing the IJS Court Centre Project in South Africa. One of the strengths of the Port Elizabeth IJS Court Centre is that it evolved gradually over time, adding components to the centre as its capacity expanded and additional role players committed themselves to the centre's overall objective.

The vision of the IJS Court Centre at the Port Elizabeth New Law Courts is to drastically improve service delivery by:

- reducing the court case cycle time;
- reducing the awaiting trial prisoner cycle time;
- utilising court hours more productively; and
- improving the conviction rate.

The IJS Court Centre in Port Elizabeth incorporates the following concepts and initiatives:

- The Awaiting Trial Prisoner Project, whereby efforts are made to reduce the amount of time accused persons remain incarcerated awaiting trial.
- The Pre-Trial Services Centre Project, which seeks to reduce poor bail decisions by providing judicial officers with relevant information on persons applying for bail.
- A periodical court and identity parade facility at the local prison. These facilities reduce the flight risk of incarcerated accused escaping while being transported to or from court.
- A reception court used for bail hearings and postponements, thereby freeing up all other courts for trials.

The IJS Court Centre in Port Elizabeth successfully integrated the aforementioned projects and best practices. The Court Centre implemented a computer-based case roll management system in 2001 that keeps an electronic record of the whereabouts and status of every case in the system, including the status of the accused.

During 2001 the Court Centre processed 10,300 cases. Of these cases 3,682 were processed up to the point where they were ready for trial – an average of about 200 per month. This is an impressive figure given that the cases the centre processes include serious crimes such as murder, rape, aggravated robbery and fraud.

On average, in cases processed by the Court Centre, the number of days that passed between the accused person's first appearance in court up to the point that the case was ready for trial, declined over the course of 2001. Between the first and fourth quarters of 2001, the average number of days between a first appearance in court and trial readiness decreased by over 40%.

Over a three-year period the IJS Court Centre in Port Elizabeth facilitated the release of some 1,700 awaiting trial accused from prison. This saved the various accused some 58,000 incarceration days. The Court Centre managed to avoid costs of almost R5 million for the corrections department over this period.

The Port Elizabeth Court Centre's integrated approach, whereby representatives of four government departments are all given a role to play, is the key to the centre's success. By closely involving them in the work of the centre, each of these departments takes on the responsibility of making a success of such a collaborative approach, thereby improving the service the departments deliver to the public and court users.

The Port Elizabeth Court Centre has a fifth partner which has been crucial to its success: organised business in the form of Business Against Crime (BAC). This is so for a number of reasons. Firstly, the BAC-appointed IJS project manager had the necessary neutrality and independence to get different government departments to work together for the greater good and ensure the success of the Court Centre. Secondly, the private sector is able to enhance skills and support capacity building within the South African criminal justice system through direct access to the business skills of sponsor companies.

Improving the day-to-day functioning of the criminal justice system is one of the most important, but also one of the most difficult, goals for policy makers to achieve. The IJS Court Centre in Port Elizabeth has achieved this goal in three short years. Through the entrepreneurial skills and financial backing of the private sector, and the enthusiasm and talent of a number of criminal justice employees, the centre has radically altered the way the criminal justice system works at an operational level at one of the country's busiest courts.

INTRODUCTION

South Africa's criminal justice system is not performing optimally. In 2000 almost 2.6 million crimes were recorded by the police (up from 2 million in 1994). Of these the prosecution service took on 270,000 cases (the remainder being unsolved or withdrawn), with slightly more than 210,000 ending in a conviction of the perpetrators. That is, only 8% of recorded crimes resulted in a conviction. For some serious crimes the number of convictions as a proportion of recorded cases was even lower.

The slow investigation and prosecution of cases is creating unmanageable numbers of awaiting trial prisoners. In December 2001 the country's prisons had an approved occupancy level of 105,000, but were holding 175,000 inmates – more than a third of whom were awaiting trial.

These dismal figures are of more than just academic interest. How well South Africa's criminal justice system functions is important for several reasons. If perpetrators are apprehended and convicted timeously and effectively, certain crimes can be reduced. A functional system helps to deter some potential offenders from committing a crime. An effective and efficient justice system inspires confidence among victims and witnesses and encourages them to participate in the criminal justice process, thereby leading to the arrest and conviction of offenders. Finally, criminal justice successes – especially if well publicised – are essential for boosting public confidence in the government's ability to reduce crime and make people feel safer.

In 1996 Business Against Crime (BAC) investigated blockages in the criminal justice system. The investigation recommended that many blockages needed to be addressed across all criminal justice departments. This resulted in the Integrated Justice System (IJS) initiative.

The IJS requires people with specific technical skills, knowledge of the criminal justice system, and the ability to plan in a practical and achievable manner – in essence, people who can assist with project implementation. Yet these are often the very skills that are in short supply within government

departments. Skills needed by the IJS government departments are project and programme management skills, and related business skills (i.e. skills which bring a sound fiscal and financial approach to a project, and the skill to develop clear objectives which are measurable and output-orientated).

This monograph is about one IJS project, the Port Elizabeth Court Centre Project, in which the private sector and the state have worked together in a symbiotic relationship. The Port Elizabeth Court Centre has become a beacon of hope for South Africa's poorly performing criminal justice system. Within three years, using the best practices from a diversity of subsidiary projects, the Port Elizabeth Court Centre has significantly improved the performance of one of the busiest magistrate's courts in the country.

CHAPTER 1

THE SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM: WEAKNESSES AND PROBLEM AREAS

Crime in South Africa

Measuring crime, particularly over sustained periods, is fraught with difficulties. Recorded crime levels undercount the real levels of crime as they do not reflect unrecorded crimes. For crime to make it onto the official police records two things need to happen. Firstly victims or witnesses must report it to the police. Secondly the police must record the crime in their records.

According to Statistics South Africa's 1997 national Victims of Crime Survey, crimes involving valuable and insured property are mostly reported. For example, 95% of vehicle thefts, 60% of vehicle hijackings and 59% of burglaries are reported. Less serious property crimes and interpersonal violent crimes are more often not reported than reported. Thus, only 41% of robberies, 38% of assaults and 28% of thefts of personal property are reported.¹

During the first four years after South Africa's political transition in 1994, overall crime levels almost stabilised, albeit at very high levels of especially violent crime. Between 1994 and 1997, recorded crime increased at an average of only 1% per year. Thereafter levels of recorded crime, measured from one year to the next, increased at an escalating rate. Overall crime levels increased by almost 5% between 1997–98, 7% in 1998–99, and 7.6% in 1999–2000 (Table 1).²

The latest available crime statistics at the time of writing are those for the period January–September 2001. During the first nine months of 2001, 1,844,000 crimes were recorded by the South African Police Service (SAPS); up from 1,464,000 over the same nine-month period in 1994. If the January–September period for 2001 is compared with that of 1994, the number of recorded crimes increased by 26%.³

While recorded crime increased between 2000 and 2001, the rate of increase is slowing down. If the first nine months of 1998 are compared with 1997, recorded crime increased by 4%. Thereafter, recorded crime increased by 7%

Table 1: Percentage change in the number of crimes recorded, for two four-year periods between 1994 and 2000

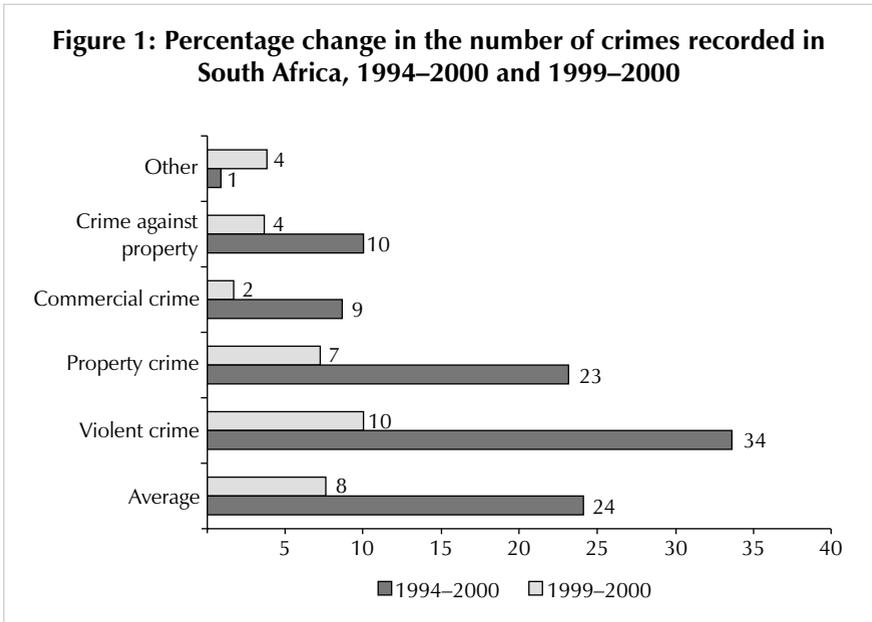
Crime type	1994–1997	1997–2000
Murder	–8%	–12%
Rape	23%	1%
Aggravated robbery	–18%	59%
Robbery (common)	63%	66%
Assault GBH	12%	17%
Housebreaking	7%	17%
20 most serious and prevalent crimes	3%	21%

(1998/99) and 8% (1999/00). The January–September 2001 period experienced a 2% increase compared to the same period in 2000 – the lowest year-on-year increase since 1996/97. While the figures indicate a slowing down in the rate of increase of recorded crime in 2000/01, it needs to be remembered that this is occurring at a point where recorded levels of violent crime are extraordinarily high. The time period is too short, moreover, to draw a firm conclusion whether recorded crime might be entering a declining phase, or whether the first nine months of 2001 reflect a period of stabilisation (as was the case during 1996), after which recorded crime will continue to escalate.

The crime rate (as measured per 100,000 of the population) increased from 5,173 crimes in 1994, to 5,635 crimes in 2000.⁴ At the 2000 level, the total risk of being a victim of crime per person per year is 5.6%, even before unrecorded crimes are considered.

While murder levels declined after 1994, overall levels of violent crime have experienced the greatest increase compared to all other crime categories. Between 1994 and 2000, violent crime increased by 34%, property crime by 23%, violent crime against property (i.e., arson and malicious injury to property) by 10%, commercial crime by 9%, and drug- and drunken driving-related offences by 1%. When measured over the 1999–2000 period, the same trend emerges, with violent crime increasing at the greatest rate (Figure 1).

Consistently high levels of violent crime – and the extensive media coverage of it – have resulted in a significant increase in the public’s feelings of insecurity.



Annual Human Sciences Research Council (HSRC) public opinion surveys ask a nationally representative sample of respondents about their feelings of personal safety. In 1994, almost 75% of respondents said they felt safe, while less than 20% felt unsafe. At the end of 2000, respondents were almost equally divided with 44% feeling safe and 45% feeling unsafe.⁵ (The HSRC’s 2001 survey does not include a question on feelings of personal safety.)

Crime in Port Elizabeth

Recorded crime rates differ significantly between provinces. In 2000, the highest provincial per capita rates of serious crime were recorded in Gauteng, and in the Western and Northern Cape. Overall, the Eastern Cape fared well, coming sixth or lower in the crime rankings out of the nine provinces, with the exception of stock-theft (3rd position) and murder (5th).

Crime levels in the country’s metropolitan areas tend to be higher than in the country as a whole. Most factors associated with high crime rates characterise cities to a greater extent than they do small towns. Population density, for example, is thought to be associated with crime, in that greater concentrations

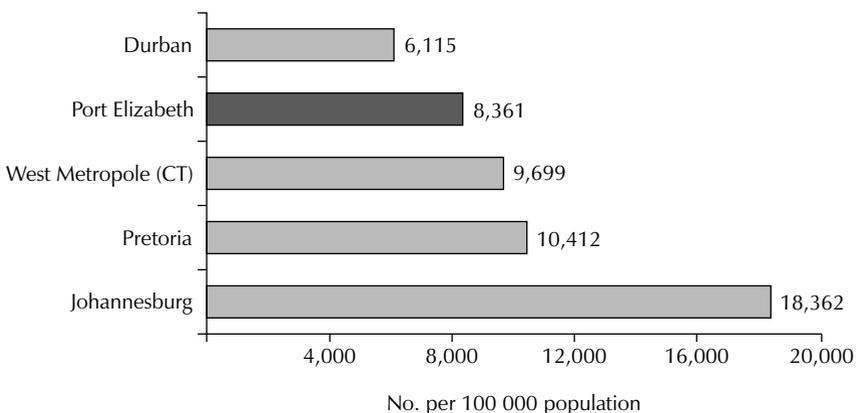
of people lead to competition for limited resources, greater stress and increased conflict. Other factors that characterise urbanisation, such as overcrowding and high levels of gang activity, are mainly evident in urban areas and are known to be related to criminal activity.⁶

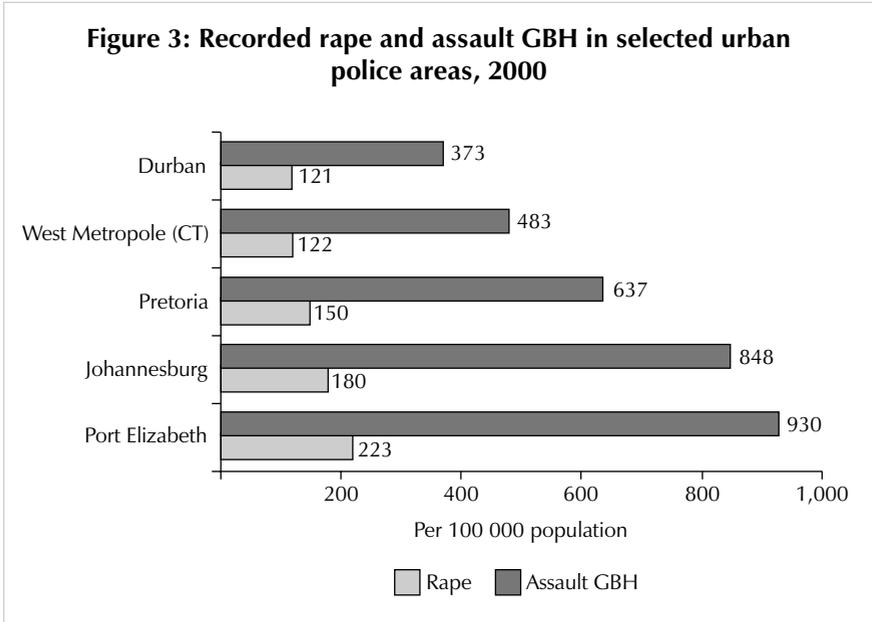
Recorded crime levels vary between cities.⁷ On the basis of recorded crime figures for 2000, Johannesburg has significantly higher levels of crime than other large cities. In 2000 just over 18,300 crimes were recorded per 100,000 residents of the Johannesburg police area, compared to 8,361 for Port Elizabeth. During 2000, people living in Johannesburg were over two times as likely to be victims of crime as those in Port Elizabeth (Figure 2).

In respect of a wide range of recorded serious crimes, Port Elizabeth is one of the safer metropolitan areas in the country. This can partly be attributed to police initiatives that successfully target high-crime areas in Port Elizabeth, and inter-departmental co-operation in the form of successful Integrated Justice System projects.

In 2000 there were 105 recorded murders for every 100,000 residents of the Johannesburg police area, followed by Cape Town, Durban and Port Elizabeth (all 72), and Pretoria (35). During 2000 the national recorded murder rate was 49 per 100,000.

Figure 2: Recorded crime rate in selected urban police areas, 2000





In respect of robbery with aggravating circumstances (i.e. robbery involving a dangerous weapon), Johannesburg was also at the top of the list for 2000, with 1,565 robberies per 100,000 of the population, followed by Pretoria (449), Durban (440), Cape Town (378) and Port Elizabeth (322).

A number of violent crimes are called “social fabric crimes” by the SAPS, because many of these offences are committed by people known to one another in familiar environments. It is in respect of the social fabric crimes of rape and serious assault where Port Elizabeth fares poorly. In 2000 Port Elizabeth had the highest per capita recorded rate of rape and assault with the intent to inflict grievous bodily harm (assault GBH), compared to other large South African cities (Figure 3).

Rape and assault statistics should be treated with caution as many cases are not reported. The figures are nevertheless interesting because they differ markedly from those of other crimes. The consistency in the ranking of areas for rape and assault GBH suggest that the nature of the two crimes are related. Many of these offences undoubtedly occur in the domestic and social context between people who know one another, or in the context of criminal gang activity.

Compared to national crime trends, Port Elizabeth appears to enjoy relatively low increases in the levels of recorded crime. The number of crimes recorded in the Port Elizabeth police area increased from 63,500 in 1994, to 67,600 in 2000 – an increase of just over 6% over a seven year period. This compares favourably with the national trend. In South Africa the number of recorded crimes increased by 24% between 1994 and 2000. During 2000, about one-third of the crimes recorded in Port Elizabeth involved violence or the threat of violence, while half were property-related crimes.

While overall recorded crime levels increased moderately in Port Elizabeth, some crimes decreased. Between 1994 and 2000, murder, assault GBH, theft out of motor vehicle, and commercial crime decreased. An even greater number of serious crimes declined in Port Elizabeth between 1999 and 2000 (Table 2).

Drug-related crime increased significantly between 1999 and 2000 in Port Elizabeth. This is largely attributable to intensified police action to crack down on those possessing and dealing in drugs. Drug-related crime, like

Table 2: Percentage change in selected crime in the Port Elizabeth police area

Crime type	1994–2000	1999–2000
Murder	–2%	+4%
Attempted murder	+5%	–5%
Rape	18%	–2%
Assault GBH	–14%	–1%
Robbery – aggravating	+27%	+12%
Burglary – residential	+26%	–6%
Burglary – business	+10%	–5%
Theft of motor vehicle	+8%	+2%
Theft out of motor vehicle	–11%	–10%
Commercial crime	–37%	–7%
Drug-related crime	+8%	+47%
Total of 20 most serious crimes	+6%	+4%

drunken driving offences, relies primarily on police action for its detection. An increase in these types of crime is consequently a positive indicator of police performance.

Operation Crackdown

In April 2000 the SAPS launched a three-year strategy, the National Crime Combating Strategy, also known as “Operation Crackdown”. The strategy has two primary objectives. Firstly it aims to reduce or stabilise crime in the approximately 10% of police stations where more than 50% of the country’s serious, violent and organised crime is recorded. Secondly it aims to improve public confidence in the police, and to improve public perceptions of safety by targeting crime-prone areas for aggressive high density street-level policing. Countrywide, 127 stations have been targeted as “Crackdown” stations. Of these 21 are in the Eastern Cape and nine in the Port Elizabeth police area: Bethelsdorp, Gelvandale, Kwazakele, Motherwell, New Brighton, Humewood, Kabega Park, Mount Road and Walmer.

These operational activities are supported by medium-term social crime prevention initiatives aimed at addressing the socio-economic and development deficits conducive to high rates of criminal activity in these areas. The idea is to stabilise crime levels in the selected high crime areas by 2003 to such an extent to enable normal crime management and to create a climate conducive to socio-economic development.

Performance of the criminal justice system

South Africa’s criminal justice system is not performing optimally.⁸ In 2000, in the region of 2.58m crimes were recorded by the police. Of these, approximately 610,000 (24%) went to court, and the prosecution service took 271,000 (11%) cases to trial. These resulted in slightly more than 211,000 (8%) convictions, the other cases being withdrawn or settled otherwise.⁹

In other words, out of the initial 2.58 million cases recorded, 8% resulted in the conviction of the perpetrators. For some serious crimes the number of convictions as a proportion of recorded cases was even lower. For car hijacking it was 2%, aggravated robbery 3%, arson 4%, residential burglary 5%, and rape 7.6%. To phrase it differently, in 2000 only one out of forty-three car hijackers whose crimes were recorded, were convicted and punished for their crimes.

It is difficult to identify reliable and fair performance indicators for the criminal justice system. It is the purpose of the criminal justice system to combat, prevent and reduce crime. In accomplishing this purpose the performance of the criminal justice system is influenced by a variety of issues – such as prevalent societal values, unemployment levels, and the proportion of young men in a population – factors over which it has no control.

Similarly, it is difficult to identify accurate and equitable performance indicators for one part of the criminal justice system. The performance of an individual part of the criminal justice system (such as the police, prosecution, or prison service) is also influenced by outside factors, over which the individual part or the system as a whole has little or no control. One such factor, for instance, is the willingness of members of the public to report crime to the police.

The performance of one section of the criminal justice system is also influenced by other parts of the system of which it forms a vital part. For example, a widely used performance measurement for the prosecution service is the number of recorded crimes that result in a conviction. However, the strength of the prosecution's case and its ability to secure a conviction depends not only on the skills of the prosecutor, but also on the proficiency with which the case is investigated by the detective service, and the reliability and honesty of the state witnesses. A prosecutor has only limited control over such factors. However, a good and diligent prosecutor will exploit the limited control that he has and – to use the present example – guide and assist the detective in the investigation of the case, and consult thoroughly with witnesses. The conviction rate thus remains a useful performance measurement tool for the prosecution service, provided the aforementioned limitations are taken into account.

It is consequently possible to develop performance indicators for individual parts of the criminal justice system, as long as the limitations of the indicators are recognised, and the indicators are seen holistically as reflecting the performance of an integrated and inter-dependent system.

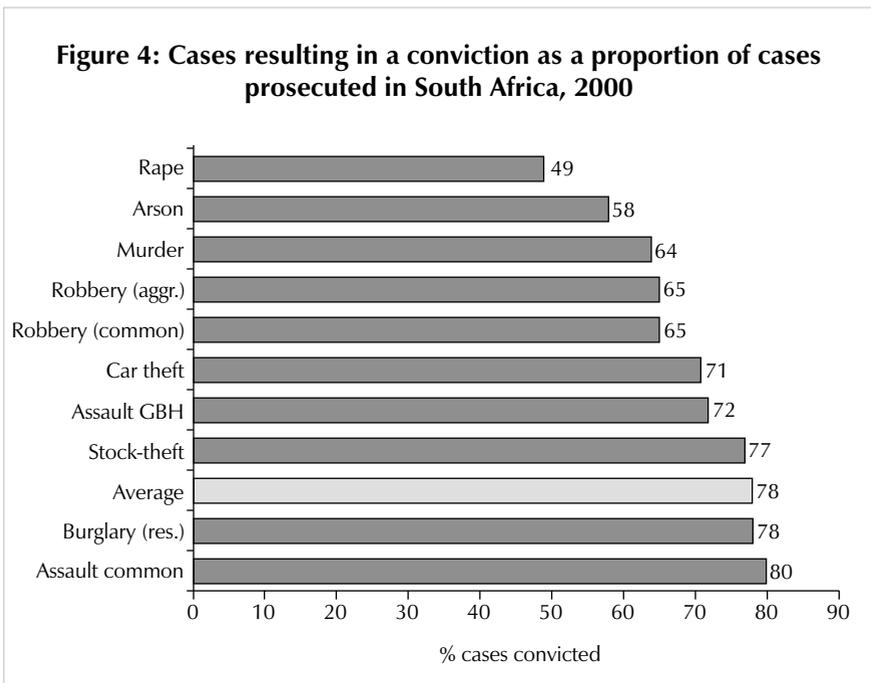
Two important indicators can be identified by which the performance of the criminal justice system can be measured. Firstly, the number of cases that the police solve sufficiently well for the prosecution to decide to take on the case in court. Secondly, the number of cases that result in a successful prosecution. The South African criminal justice system is performing poorly on the basis of the first indicator, but well on the second.

Conviction rate and declining prosecutions

Of the 271,060 cases the prosecution service took on in 2000, convictions were obtained in 211,760 cases. That is, once cases are successfully processed through most of the criminal justice system, with the suspects ending up in the accused box in court, their chances of being convicted are a high 78%. Unlike the police, however, prosecutors have the luxury of being able to decide which cases to take on. Generally, the prosecution service elects to proceed in the prosecution of a suspect only where “there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution”.¹⁰

There is a considerable variation in the conviction rate between types of crime, however. During 2000, over 75% of common assault, residential housebreaking and stock-theft prosecutions resulted in a conviction, while prosecution rates for arson and rape were below 60% (Figure 4).

While the prosecution service is successful in convicting most of the offenders it prosecutes, the number of cases taken on by the service declined at a



time when recorded crime was increasing. In 1994/95, 350,200 prosecutions and 260,900 convictions took place. This decreased to some 271,100 prosecutions and 211,800 convictions in 2000. The number of serious crimes, as recorded by the SAPS, increased by 481,000 between 1994 and 2000.¹¹ Between 1999 and 2001 there has, however, been an increase in the number of prosecutions and convictions.

In other words, while the number of recorded serious crimes increased by 24% between 1994 and 2000, the number of prosecutions dropped by 23% and convictions by 19%. The chances of the average offender being caught and punished consequently declined between 1994 and 2000.

Case withdrawals

In 2000, 46% of the cases referred to court by the police were withdrawn in court. This is not surprising in cases where the victim and the offender are known, or even related, to each other and where the victim might decline to testify against the accused, nor in cases where the trial might be unreasonably delayed due to outstanding investigations (e.g. a district surgeon's report). Unsurprisingly, therefore, as a proportion of the number of cases sent to court by the police, about half of rape and assault cases are withdrawn in court.

However, about half of all residential housebreaking, robbery, and car theft cases that were referred to court in 2000 were also withdrawn by the prosecution service. For these crimes it is unlikely that the victims are the reason for the high number of withdrawals. The more likely reasons are inordinate delays in the investigation of these crimes, and the failure of witnesses to testify in court. The latter might be because witnesses are intimidated from attending court by the criminals they are supposed to testify against. Many burglaries, robberies and car thefts are committed by crime syndicates who do not hesitate to intimidate those who might testify against them. Moreover, some witnesses might have no faith in the criminal justice system, and elect not to testify for this reason.¹²

During 2001, 423,890 cases¹³ were withdrawn by the prosecution service. Of the withdrawn cases, 92% were withdrawn at district court level, and 8% at regional court level. Thus, of all the cases dealt with by the prosecution service during 2001, just over half were withdrawn. A further 37% resulted in a conviction and 9% in an acquittal.

Since 1996 there has been a steady increase in the number of cases withdrawn by the prosecution service. The marked increase in the number of withdrawn cases after 1999 is partly the result of an initiative started in mid-2000 by the National Prosecuting Authority (NPA), to encourage prosecutors to withdraw cases which are flawed in some way and not ready to proceed to a successful prosecution.¹⁴

The increase in case withdrawals has limited the impact Operation Crackdown has had on prosecutions and convictions. Between 2000 and 2001 the number of cases referred to court increased by 30%. Over the same period the number of case withdrawals increased by 44%, while the number of prosecutions and convictions increased by only 16% and 15% respectively.

Outstanding and finalised cases

Since April 1999 the National Prosecuting Authority's Court Management Unit has collected data on the number of finalised and outstanding criminal court cases. This is too short a period to enable a reliable identification of performance trends. Nevertheless the figures give a good indication of the magnitude of the case backlog the prosecution service is facing.

Between April 1999 and July 2001, the country's regional courts (which deal with the bulk of all serious criminal trials) finalised an average of 3,010 cases a month, but had an average of 43,500 cases per month outstanding on the courts' rolls. The actual number of cases finalised per month by the regional courts increased over the 28-month period, but the number of new cases coming into the system increased at an even greater rate. As a result more cases were outstanding on the regional courts' rolls in July 2001 than in April 1999. As part of a January 2000 performance agreement, regional courts should finalise an average of 15 cases per month.¹⁵ By July 2001 the average regional court was finalising just less than 10 cases a month, some five cases per month below target.

District, regional and high courts

Over 95% of all criminal trials take place in the magistrates' courts (also known as the lower courts). There are two types of magistrates' courts: regional courts and district courts. The former are staffed by regional court prosecutors and regional court magistrates, the latter by district court prosecutors and magistrates. The prosecution staff at larger magistrates' courts are managed by a senior public prosecutor.

Only the most serious crimes such as brutal murders, particularly violent rapes, robbery with aggravating circumstances where someone is seriously injured or killed, and fraud involving large amounts of money, are usually prosecuted by state advocates in the high court. The vast majority of murders, rapes and robberies, and crimes such as attempted murder, child abuse, kidnapping, sexual offences, housebreaking where the intention is not only to trespass, fraud and theft where the loss exceeds R40,000, and car theft, are prosecuted in the regional court.¹⁶ More minor offences such as assault, most forms of theft and fraud, malicious injury to property, most drug-related offences, drunken driving offences, and other driving-related offences are prosecuted in the district court. Unless legislation provides otherwise, regional courts have the jurisdiction to impose a maximum period of imprisonment of 15 years (and a fine of up to R300,000), while district courts have the jurisdiction to impose a maximum period of imprisonment of three years (and a fine of R60,000).¹⁷ There is no sentencing limit for the high court.

According to the National Prosecuting Authority, 184,253 uncompleted criminal cases were outstanding at the end of 2000 and were carried over to 2001. A further 756,801 new criminal cases entered the magistrates' or lower court system during 2001.¹⁸ No figures are given for the high courts, but less than 5% of all criminal cases end up there.¹⁹ Of the new cases for 2001, 55,178 (or 7%) went to the regional courts where most serious crimes are tried, and 701,623 (93%) went to the district courts where less serious offences are prosecuted.

In 2001, 358,123 cases were finalised with a verdict: 81% resulted in a conviction and 19% in an acquittal, or not guilty, finding. Of the cases finalised with a verdict about nine-tenths (88%) were finalised in the district courts and 12% in the regional courts. The conviction rate was higher in the district courts (83%), compared to the regional courts (66%).²⁰

Between 2000 and 2001 there was a marked increase in the number of cases referred to court (Figure 5).²¹ This is the likely result of the police's new operational approach, also known as "Operation Crackdown". The operation is a high-density, zero tolerance-type police and army operation, and has taken place in high crime areas since April 2000. Some 462,000 arrests were made during the first twelve months of the three-year operation.²²

The 16% increase in the number of prosecutions between 2000 and 2001, was less than the 24% increase between 1999 and 2000. Between 2000 and

Figure 5: Cases processed by the prosecution service, 1996–2001

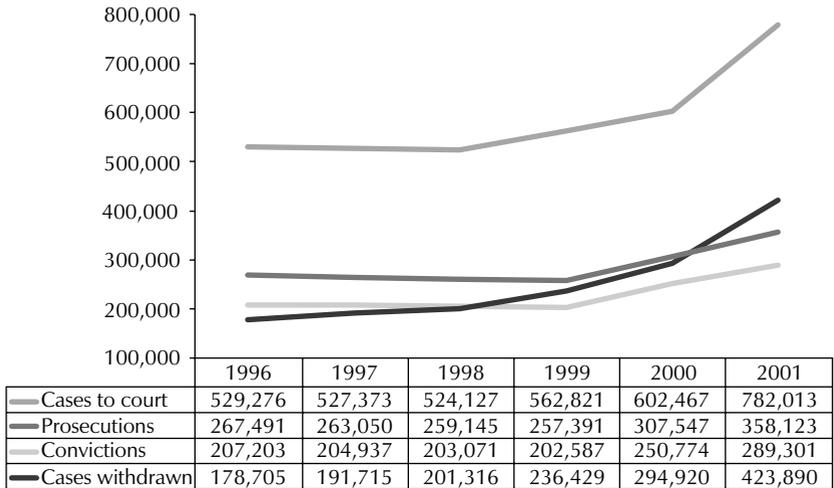
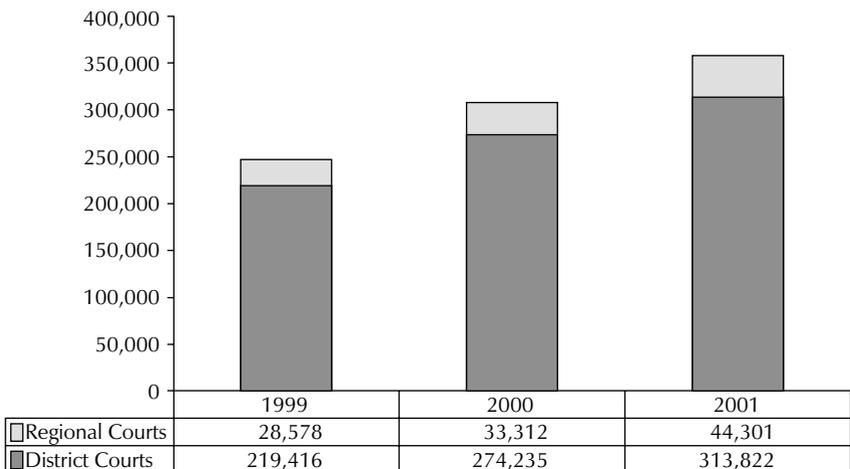


Figure 6: Number of cases finalised with a verdict in district and regional magistrates' courts in South Africa, 1999–2001



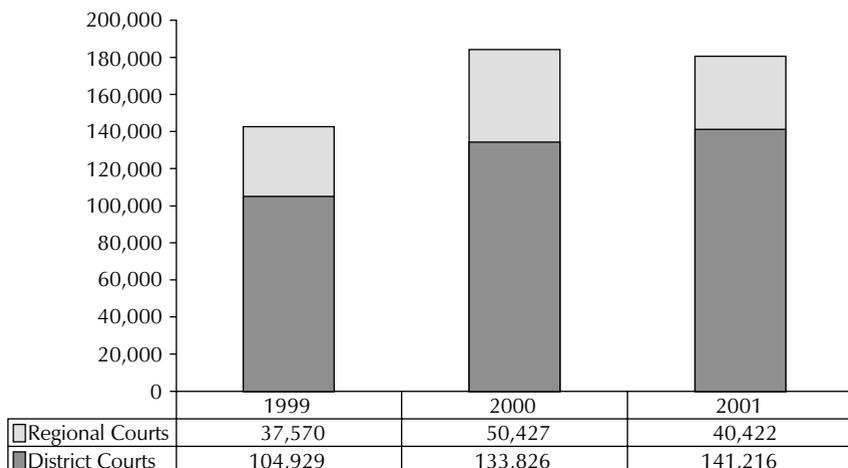
2001 the number of regional court prosecutions went up by 33% and the number of district court prosecutions by 14% (Figure 6).

At the end of 2001, 181,638 lower court cases were outstanding or had not been finalised (Figure 7). This represents the backlog of cases the courts had to contend with at the beginning of 2002. The backlog is high given that the number of outstanding cases at the end of 2001 was equal to just over half of all cases prosecuted during that year.

In October 2000 the National Director of Public Prosecutions, Bulelani Ngcuka, pointed out that the 180,000 criminal cases outstanding in the country's courts at the time, would take prosecutors two years to deal with, excluding any new cases.²³

Compared to 2000, the number of outstanding cases decreased by 1% during 2001 – a significant achievement given that the number of new cases referred to court increased by 30% over the same period. This decline in outstanding cases was achieved by a 20% reduction in outstanding regional court cases. (Outstanding district court cases actually increased by 6%).

Figure 7: Number of lower court cases outstanding nationally at end of year, 1999–2001



The decline in outstanding cases during 2001 would not have been possible without the approximately 150 Saturday courts and additional courts that were operational during that year. These courts disposed of almost 15,000 cases between February and December 2001 – 62% of them regional court cases.²⁴

While Saturday and additional courts contributed to the finalisation of a substantial number of cases, the productivity of the average magistrate's court declined. During 2001 the average district court secured 130 convictions (down from 137 in 2000) and the average regional court 114 convictions (down from 135 in 2000). Given that district courts mainly deal with minor offences, 130 convictions per average court per year – or a conviction every other working day – is low.

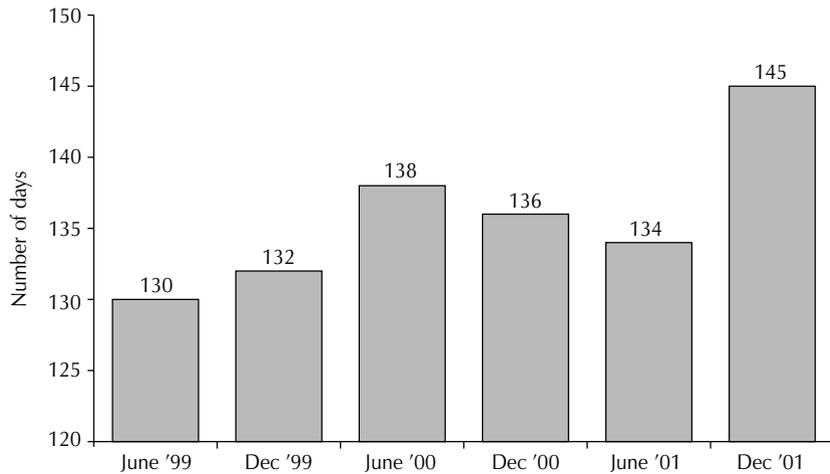
Regional courts deal with serious crimes such as murder, rape and armed robbery. Trials in the regional courts typically involve a number of state witnesses and the presentation of non-oral evidence such as blood samples and district surgeons' reports. As a result many regional court trials last a number of days. Given the slow rate at which regional courts are able to finalise cases, it will take these courts some time to reduce the backlog of cases.

Detention cycle time

Some accused are incarcerated while they await the outcome of their trial. This is because the courts refuse to grant them bail, or because bail is set at an amount that is unaffordable to the accused. There are a number of factors that determine the length of time an accused spends in prison awaiting the finalisation of his or her trial. The speed with which the police finalise the investigation, the length of the trial, and the number of postponements the accused requests during the trial are all factors which lengthen the awaiting trial period of an accused, and over which the prosecution has little or no control. However, in many cases there are delays in the finalisation of trials because the courts' rolls are badly managed, something over which the prosecution has some influence.

The detention cycle time, or the average length of time unsentenced prisoners remain incarcerated until the finalisation of their trials, increased during 2001; from 136 custody days in December 2000 to 145 custody days in December 2001 (Figure 8). In mid-1996 the detention cycle time was a relatively low 76 days.

Figure 8: Average number of days unsentenced prisoners incarcerated nationally, 1999–2001



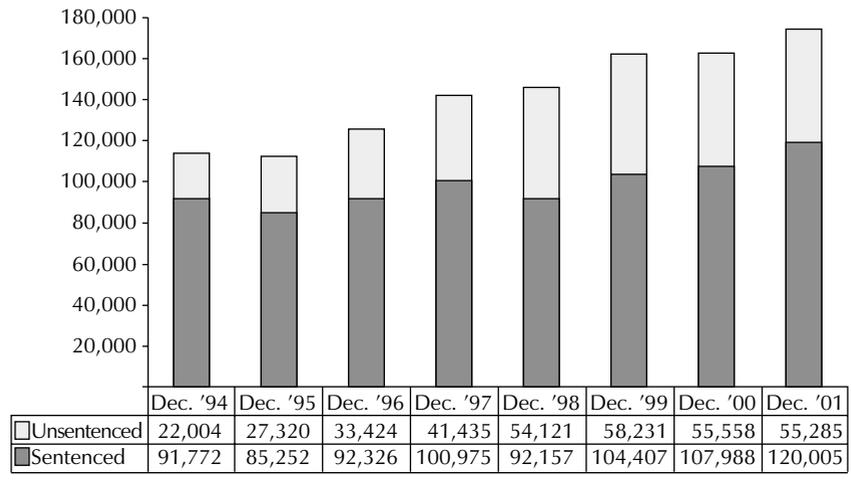
This means that on average, at the end of 2001, accused persons were imprisoned for four-and-a-half months awaiting the finalisation of their trial. Such delays in the processing of cases involving awaiting trial prisoners place a considerable financial burden on the department of correctional services. In 2001 a prisoner cost the department approximately R88 a day. Multiplied over an average of 145 custody days, this comes to almost R13,000 per average unsentenced prisoner.

The average detention cycle time varies significantly between the provinces. In February 2002 provinces with above average detention cycle times were the Limpopo Province (208 days), Gauteng (157 days) and Western Cape (155 days). The Northern Cape had the lowest detention cycle time of 92 days, with the Eastern Cape in the third lowest position (108 days).

Prison overcrowding

The number of unsentenced prisoners increased from 19,571 in June 1994 to 55,285 in December 2001 – a massive increase of 183%. Over the same period the number of sentenced prisoners increased from 79,987 to 120,005 – an increase of 50% (Figure 9).

Figure 9: Changes in prisoner numbers, 1994–2001

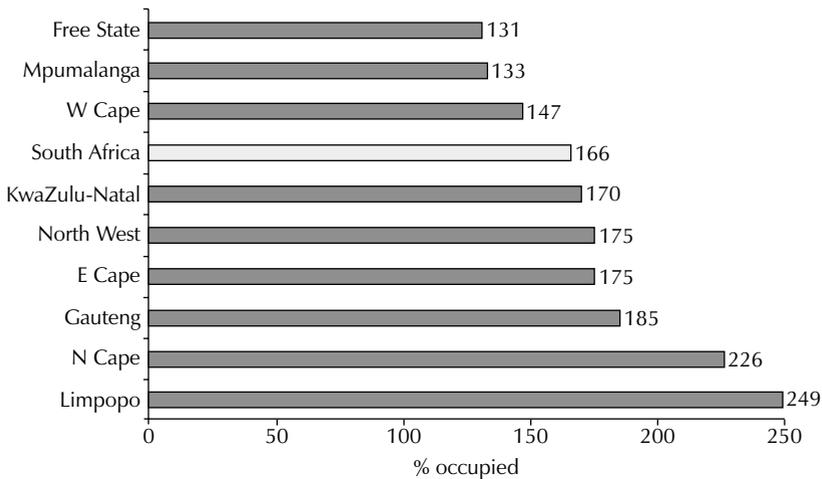


Between May 2000 and June 2001, the number of unsented prisoners decreased by 16% from 61,590 to 51,559. This decrease is largely attributable to the release, in September 2000, of some 8,200 prisoners who could not afford to pay bail amounts of R1,000 or less and who had been charged with non-violent offences. The National Prosecuting Authority also encourages prosecutors to withdraw badly investigated cases and to work longer hours, in an attempt to reduce the number of unsented prisoners.²⁵

Notwithstanding the short-term decrease in the number of unsented prisoners, South Africa’s prisons are overcrowded. In December 2001 the country’s 239 prisons were holding 175,290 inmates but had an approved occupancy level of only 105,435. In other words, the national prison occupancy level was 166%. The province with the highest level of overcrowding was Limpopo Province with an occupancy level of 249%. The Eastern Cape’s prisons had an occupancy level of 175% – the fourth highest of the country’s nine provinces (Figure 10).

High levels of overcrowding place considerable strain on the human and capital resources of the department of correctional services. This impedes the department’s ability to manage its prisons and rehabilitate prisoners. According to the department, overcrowding has an “adverse effect on offenders, staff and

Figure 10: Prison occupancy levels (%) by province, December 2001

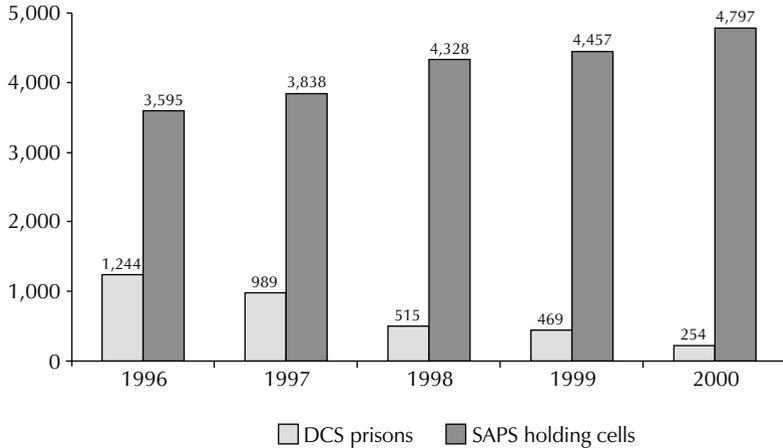


the safe custody of prisoners".²⁶ Overcrowding exacerbates tension, hostility and aggression between prisoners, and between prisoners and prison personnel. During 2000/01, 2,361 assaults by prisoners on prisoners were recorded by the department (up from 2,271 in 1999/2000), and 619 assaults by prison personnel on prisoners (up from 559).²⁷

Speaking in February 2001, the minister of correctional services, Ben Skosana, highlighted the problem the department is facing with the spread of HIV/AIDS in prison. According to Minister Skosana, "overpopulation, which leads to over-utilisation of sanitation facilities, contributes to poor standards of cleanliness and sanitary conditions in some prisons, and the spread of communicable and contagious diseases".²⁸ The prison environment tends to exacerbate factors that lead to the spread of HIV/AIDS. High-risk sexual behaviour (such as unprotected sex), sexual abuse, rape, gang violence, the sharing of skin piercing instruments for tattooing, and the high turnover of offenders which inhibits the treatment of sexually transmitted diseases, all lead to a higher transmission rate of HIV/AIDS among prisoners. The number of natural deaths in prison have increased from 186 in 1995, to 1,087 in 2000 – a massive increase of almost 500%.²⁹

A potential further consequence of overcrowding is an increase in escapes. To the department's credit, the number of persons escaping from correctional

Figure 11: Number of prisoners who have escaped from prison and SAPS holding cells nationally, 1996–2000



services’ facilities is declining. In 2001, there were 227 escapes, down from 254 in 2000 and 1,244 in 1996. However, because of the lack of prison space, an increasing number of prisoners (primarily awaiting trial) are held in SAPS holding cells. During 1996, some 1.4m people passed through police holding cells. In 2000 this had increased to 1.6m. One result of this increase has been a rise in the number of people escaping from police holding cells, from 3,595 in 1996 to 4,797 in 2000. Consequently, the total number of prisoners who escape from prisons and police holding cells has increased since 1996 (Figure 11).

Given the above performance indicators, it is apparent that the South African criminal justice system is unable to act effectively as a deterrent against crimes that can be policed, and against criminals who could be deterred. The day-to-day activities of the criminal justice system, such as the investigation of crime, the prosecution of offenders, and the processing of criminals through the system, are occurring at low performance levels.

Public perceptions of the criminal justice system

In mid 1999 the Institute for Security Studies conducted a survey in the Eastern Cape to gauge the public's attitudes to the criminal justice system and the punishment of criminals.³⁰

The survey revealed that, on average, within a two-year period every third adult inhabitant of the Eastern Cape became a victim of crime. Most crimes were reported to the police, but less than a third of respondents who did so were satisfied with the police's response. Crimes reported in rural areas were the most likely to end up in court. Rural crime victims were, however, least likely to be satisfied with the outcome of the court proceedings.

Only a minority of respondents felt that the criminal justice system was performing well or had improved since 1994. Most respondents were critical of the government's crime fighting performance. Urban and white respondents were the most critical of the government's performance, while rural and black respondents were the most positive. In their evaluation of the various professions that work in the criminal justice system, respondents were most critical of prison officials and uniformed members of the police. They were most praising of judicial officers and police detectives.

CHAPTER 2

THE INTEGRATED JUSTICE SYSTEM PROJECT

IJS objectives, benefits and aims

In terms of a November 1998 report by the Integrated Justice System User Board, the main objective of the Integrated Justice System (IJS) is to transform the criminal justice system “into a modern, efficient, effective and integrated system”.³¹ Achieving this objective will bring about the following benefits:³²

- reducing the cost of the criminal justice system;
- providing information on criminals and crime where and when it is needed;
- identifying persons with histories of prior criminal activity quickly and reliably;
- providing mechanisms to identify repeat offenders, to expedite their arrest and prosecution;
- automatically notifying stakeholders in the criminal justice system when repeat offenders enter the criminal justice process;
- basing decisions on bail, community diversion, prosecution, sentencing and incarceration on accurate and timely information; and
- channelling relevant information to crime victims.

According to Business Against Crime (BAC), the implementation of the IJS will provide South Africa with a world-class criminal justice system; “one that will lead to swift and appropriate punishment of criminals, serve as a deterrent to crime, and that will ultimately contribute substantially towards ridding South Africa of unacceptable levels of crime”.³³

Background to the IJS

National Crime Prevention Strategy

The criminal justice enterprise includes most of the work of the South African Police Service, the Department of Justice (including the National Prosecuting Authority), the Department of Correctional Services; and those aspects of the programme of the Department of Welfare that concern victims, youth crime

prevention and juvenile justice (this is a relatively small proportion of the work of the Department of Welfare). Each of these departments receives its own budget allocation; each has its own minister and director-general. Historically, each department tended to focus on its own priorities, and there were significant problems at the interfaces between them. Some of these problems were identified by the National Crime Prevention Strategy (NCPS).

Business Against Crime has long been involved in attempts to reform the criminal justice system in South Africa.³⁴ BAC was established in 1996 when then president Nelson Mandela invited business to join hands with the government in the fight against crime. BAC was founded on the belief that collective application of resources provided by individual companies to address problems within the criminal justice system would be more effective than individual efforts.

Working relationships with provincial governments and provincial heads of departments within the criminal justice system necessitated the establishment of BAC on a provincial basis. BAC Eastern Cape was established in March 1997, its board members being drawn from business, local and provincial government, the criminal justice system and civil society.³⁵

Soon after the adoption of the NCPS by the government of national unity in May 1996, BAC assisted the NCPS implementation structures with an investigation into blockages in the criminal justice system. The investigation was conducted by Andersen Consulting in late 1996, and produced a report which highlighted two sets of possible areas for intervention. One set was referred to as the 'A' list of critical priorities for intervention. Many of the items on that 'A' list were issues that needed to be addressed across *all four* criminal justice departments – *enterprise-level* issues – such as management of people and information, human resource development, and IT infrastructure.

Integrated Justice System

At the end of 1996, government made some funds available to assist with the reform of the criminal justice system, and some of the items on Andersen's 'A' list were selected for implementation. Among these was an investigation into the enterprise-level process and information management in the criminal justice system – which became known as the *Integrated Criminal Justice System (IJS)* initiative.

To transform the criminal justice system into an effective and integrated system, an IJS-User Board was established in early 1997, on which senior

members of the four aforementioned government departments were represented. This was followed by the establishment of the IJS-Project Office, staffed by facilitators of the core departments and professionals seconded by BAC. According to the BAC-appointed IJS Programme Director, Hardie Fourie:

The IJS is not an IT system. It is a business re-engineering enterprise: one business with four business units (four government departments). This understanding is vital, otherwise there will be fierce competition between the four departments over the budget. The aim of the IJS is to provide a management system to manage this “enterprise” like a good business.

The goal is to manage an offender and his or her case through the system in order to achieve swift and efficient justice. The criminal justice system should be a deterrent to crime, but the deterrent effect only comes about if suspects are brought to book rapidly. This will, eventually, bring about a reduction in crime, although such a reduction is also dependent on other factors such as low unemployment, growing the economy, etc.³⁶

Mulweli consortium

In February 1998 a comprehensive six-month investigation was initiated by a group of consultants, the Mulweli Consortium, to consider how an integrated criminal justice system should function and how the criminal justice system could be transformed. The approach taken was to review the business processes involved in managing an offender in his or her journey through the criminal justice system.

The investigation concluded that the criminal justice system was running out of capacity. There was an unacceptably high number of case withdrawals and undetected cases, and low conviction rates. Courts had huge backlogs of cases and prisons were overcrowded with an alarming increase in the number of awaiting trial prisoners.

The investigation identified numerous blockages which impeded the effective operation of the criminal justice system. These related to, among others, functional and business integration, policy alignment, timely access to criminal record history, timely notification of events, imbalances in the level of automation of departments and incompatible information technology, and a lack of quality information and information sharing.

Solutions were developed to deal with the blockages that impeded the creation of an integrated criminal justice system. The Mulweli Consortium's report to government contained:

- A new vision for the criminal justice system – which was significant as it was the first time a common vision had been proposed for all four departments.
- Business process and information models.
- Identification of the blockages that contribute most to the delays in the criminal justice process.
- An implementation approach for 96 quick-fix projects, 26 fast-track projects, and six enterprise-level projects.
- A financial analysis, suggesting that it would cost R2 billion to address all the problems in the criminal justice system.

On the basis of the Mulweli report, the IJS-User Board produced a report that was used to draft a cabinet memorandum proposing a government approach to criminal justice reform. Cabinet approved the IJS-User Board report in 1998. Six enterprise-level systems were identified as the minimum necessary components of an integrated criminal justice system:

- Identification services, allowing for the identification of people within the system.
- Criminal history information management, allowing for easy access to criminal record information by those components of the system which need it.
- Docket management by the police and the prosecution service.
- Event notification to reduce delays and non-appearances.
- Business intelligence to support the entire system.
- IT infrastructure to support the entire system.

Modular approach and 2000 Plus strategy

It was becoming clear that the Mulweli approach would be extremely expensive, as it envisaged a total replacement of existing IT systems. An alternative to the Mulweli approach had to be found. According to the IJS-User Board, "the only option available" was a *modular approach*, which would see different components of the criminal justice process being re-engineered in sequence, instead of attempting to overhaul or re-engineer the entire system

in one process.³⁷ Much of 2000 was spent re-conceptualising the IJS within this new modular approach, which was approved in August 2000.

Further restructuring processes in the departments and the refining of the modular approach led the IJS-User Board to produce a new vision for the IJS initiative – the “IJS 2000 Plus” strategy – in February 2001.

In the new “IJS 2000 Plus” strategy document, the collective mission of the four criminal justice departments is defined as follows:

To reduce crime. We are accountable to the public and the state, in rendering an accessible, fair, speedy and cost-effective system of justice, in the interest of a safer and more secure South Africa. We will achieve this by integrating the management of cases and offenders through the four departments, supported by the necessary enabling technologies.

The new IJS consists of the following elements:

- An *architectural plan* clearly defining the integration of the justice system. This architecture will have to take into account the existing systems within each department.
- A *virtual private network* for the four departments, to provide the necessary security and stability of the network.
- Providing access to *electronic (IT) infrastructure* in all four departments.
- A common method of identifying persons, cases and key business requirements in each of the departments. Central to this is the *Automated Fingerprint Identification System (AFIS)*.
- A court and case management system that includes docket management, case tracking facilities, event notification, inmate tracking and resource scheduling. This system is now referred to as the *mini-IJS* because it consists of the essential functions required within the IJS.
- *Data warehousing* facilities, supported by business intelligence functions.

IJS Court Centre Project

The flagship court management project of the IJS is the Court Process Project. However, this project has a medium- to long-term implementation time frame. As an interim solution, a semi-automated court and case management system is being implemented at a number of courts where case backlogs are

unacceptably high. This initiative, termed the IJS Court Centre Project, aims to provide a single nodal point within a court from where the entire court process is managed. The primary objective is to reduce the average case cycle time.³⁸

The Court Centre Project had its beginnings in the late 1990s, when senior officials of the justice department, in conjunction with the US-based Bureau of Justice Assistance, sought to build trust in the criminal justice system by designing and implementing projects that made the criminal justice system more effective.³⁹ In the United States, the Bureau of Justice Assistance had demonstrated that New Yorkers, too poor to afford bail but with strong, verifiable ties to their communities, could safely be released before trial. This was done through a pilot Pre-Trial Services Programme in the city. Evidence of a viable alternative to bail changed the way judges in New York make release decisions in criminal courts, thereby reducing the awaiting trial population there.

One of the major problems besetting the South African criminal justice system is the high trial turnaround time and growing awaiting trial prisoner population. The solution was a Pre-Trial Services (PTS) Project and an Awaiting Trial Prisoner (ATP) Project for South Africa. Both projects brought together a team of professionals from various government departments at the court where the projects were running, and reviewed every new case individually to ensure that there was no outstanding information that would delay the court to reach a decision in respect of accused persons' right to be released pending their trial. This ensured that accused who did not pose a flight risk, a risk to witnesses or a risk to evidentiary material were released on bail at an amount which was affordable. Where possible, prosecutors and judicial officers were encouraged to set bail conditions that did not involve money for underprivileged accused.

Both projects were initially intended to be a "quick-fix" for the specific problems relating to awaiting trial prisoners. However, according to Elco van der Colff, director of the court efficiency programme of the IJS Programme Office, only about 10% of criminal cases involve awaiting trial prisoners, and the problem besetting the justice system was much wider than only the high awaiting trial prisoner numbers.⁴⁰ As a result the ATP Project evolved into the integrated Court Centre Project (CCP).

The CCP is made up of a number of separate but integrated services. It brings together representatives from each of the relevant criminal justice depart-

ments (safety and security, justice, correctional services and welfare) to create an integrated team that seeks to facilitate an expeditious court process. For example, if a prisoner does not arrive at court on time, the correctional services representative has the responsibility to follow up with the feeder prisons of the court at which the prisoner is kept. An experienced prosecutor and a SAPS official receive all dockets two days prior to the date of the hearing, and ensure that the dockets are ready for trial. If a police docket does not arrive at court, a representative from the police tracks down the docket at one of the local police stations.

A further service provided by the CCP is improved information management. A user-friendly and simple computer-based data capturing and data management programme is used to store and manage the case information contained in each docket and in the charge sheet. The system also manages the court rolls, and tracks and controls the awaiting trial period of incarcerated accused. One of the spin-offs of the electronic database is that clerks of the court no longer have to manually sift through charge sheets and court records at the end of every month to establish which cases are still outstanding on the courts' rolls. Through the CCP such information is available electronically and in "real time" at any time and on any day of the month. This assists managers with the management of court rolls, and allows for the identification of trends such as the number of juveniles standing trial, the length of the life cycles of cases and the number of dockets that are missing or have been tampered with.⁴¹

The CCP includes the establishment of reception courts, where all first appearances, remands, bail applications and guilty pleas are heard. This ensures that only trial-ready cases are dealt with in other courts.

The IJS Court Centre establishes and integrates the following aspects of court and case management:

- reception court;
- pre-trial services;
- bail applications;
- case fast-tracking;
- overcrowding of prisons;
- improved service delivery; and
- appropriate management of juvenile accused.

Imprisoned children

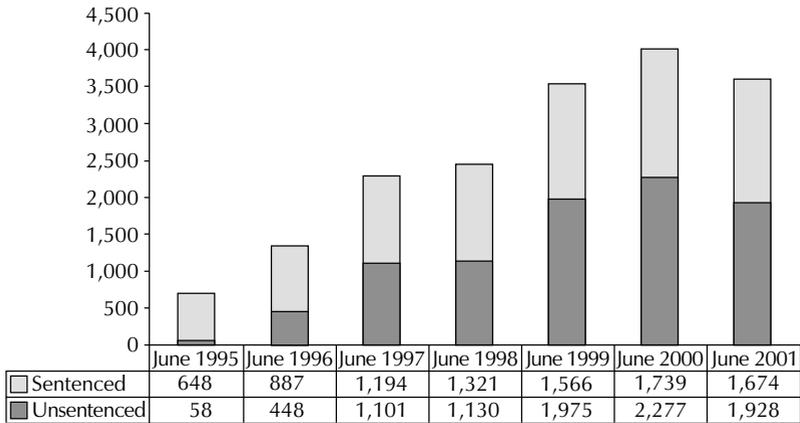
According to the Correctional Services Act of 1998 prisoners who are children (i.e. under the age of 18 years) must be kept separate from adult prisoners and in accommodation appropriate to their age.⁴² Every prisoner who is a child must be provided with social work services, religious care, recreational programmes and psychological services. Moreover, every prisoner who is a child and is subject to compulsory education must attend and have access to such educational programmes whilst incarcerated.⁴³

A 1996 amendment to the Correctional Services Act radically altered the manner in which unconvicted children can be detained awaiting trial.⁴⁴ According to the amendment, children under the age of 14 years may not be detained in a prison or police cell for more than 24 hours after being arrested, but must be placed in the care of their parent or guardian or in a place of safety.

Children between the ages of 14 and 18 years may not be detained in a prison or police cell for more than 48 hours, unless a judicial officer has reason to believe that the child's detention is necessary and in the interests of justice and the security of the public, and if no secure place of safety is available for the detention of the child within a reasonable distance of the court. However, children aged between 14 and 18 years must be detained in a prison if they are accused of having committed a serious violent crime, which would warrant such detention. Under such circumstances children detained in prison need to be brought before the court every 14 days for the court to reconsider its detention order. For a court to find that a child should be detained in prison, the prosecution must present oral evidence on the risk of the child absconding, the risk the child could pose to other children awaiting trial in a place of safety, and the disposition of the accused child to commit offences.⁴⁵

The 1996 law was intended to reduce the number of incarcerated children in South African jails. However, given the country's high crime levels, a lack of secure places of safety for unsentenced children, and the fact that some children are involved in the commission of serious and violent crimes, the law has not had its intended effect. Between June 1996 and June 2001, the number of incarcerated children increased from 1,335 to 3,602, or by 170%. The number of incarcerated unsentenced children increased from 448 to 1,928 over the same period, or by 330% (Figure 12).

Figure 12: Number of children (<18 years) in custody nationally, 1995–2001



The 1996 law significantly increased the workload of prosecutors, for a variety of reasons. Firstly, cases involving child offenders are often postponed to give the investigating officer enough time to locate their parents or guardians so that such children can be placed into their care. Under certain circumstances the prosecution also has to call the investigating officer to give evidence to the effect that the accused child’s parents or guardians are untraceable.

Secondly, where children are sent to prison awaiting trial, they have to appear in court at 14-day intervals, a process that further takes up the time of the court and the prosecution.

Thirdly, with age being a crucial determinant of whether an accused child is sent to prison or to a place of safety (or home with his parents), most adult accused with youthful looks claim to be under the age of 18 years. The prosecution then has to send such accused to the local district surgeon so that an age assessment can be performed on them. Should the accused dispute the district surgeon’s assessment, the prosecution has to lead the evidence of the district surgeon to convince the court of the correct age of the accused. As a disproportionately large proportion of accused are juveniles, prosecutors devote much time and effort on persuading judicial officers of the correct ages of accused persons.⁴⁶

Fourthly, many awaiting trial children escape from the places of safety to which they are allocated, or abscond from the care of their parents or guardians. Young accused are more likely to commit crimes (such as burglary, assault, robbery and shoplifting) in groups, compared to their adult counterparts. It is not unusual for the police to arrest a group of four or five children who are all suspects in the same investigation. If even one accused from such a group disappears, the whole case usually has to be postponed until the accused is found and re-arrested, by which time another accused from the same case might have disappeared. If even one of the accused from such a group is detained in a prison the case can be postponed for only 14 days at a time.

CHAPTER 3

THE PORT ELIZABETH IJS COURT CENTRE: A CASE STUDY

In April 2000 a group of officials from the Departments of Justice and Constitutional Development, Correctional Services and the SAPS came together to develop a common vision of better service delivery to the community. This vision included a more effective criminal justice system process, centred around the magistrates' courts situated in the New Law Courts in Port Elizabeth. This gave birth to the concept of the IJS Court Centre.

One of the strengths of the Port Elizabeth IJS Court Centre is that it evolved gradually over time, adding components to the centre as its capacity expanded and additional role players committed themselves to the centre's overall vision. The three primary components of the centre – the Awaiting Trial Prisoner Project, Pre-Trial Services Centre Project, and the periodical court and identity parade facility at the local prison – are discussed below. Moreover, the manner in which new cases, and cases that have been postponed for further investigation, are received, channelled and made trial ready by the Court Centre, are discussed.

Awaiting Trial Prisoner Project

The initiative of the Port Elizabeth IJS Court Centre can be traced back to the launch of the Awaiting Trial Prisoner Project (ATP Project) in April 1999.

South African prisons are extremely overcrowded – in some instances, prisons house more than double the number of offenders for which they have been designed. This situation is partly due to the large number of prisoners who are awaiting trial, and the excessive length of time it takes for a case to be finalised in court. An awaiting trial prisoner is any unsentenced prisoner who has been granted bail but is unable to pay the bail amount set by the court, or a prisoner who has been denied bail and consequently remains incarcerated until the finalisation of his trial.

The cost of housing unsentenced prisoners is no less a problem: it is estimated to be R1.3 billion a year. In addition, overcrowding of prisons presents a security

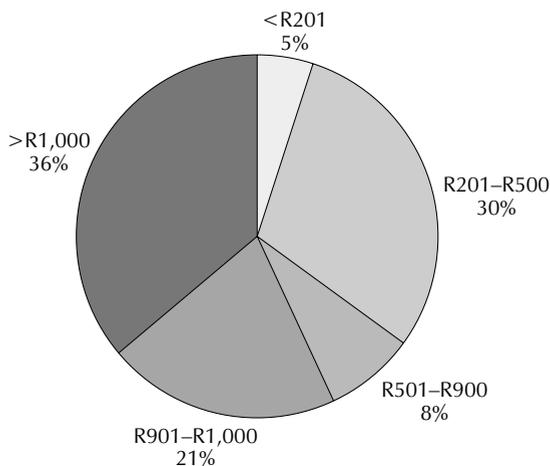
risk, it may be an infringement on the basic human rights of offenders, and has a detrimental effect on the management and control of prisoners.⁴⁷

The cost of poor bail decisions

In terms of the law, once a judicial officer makes a finding that an accused person should be granted bail, the bail amount set should be individualised so as to be affordable to the accused before court. This is, however, often not the case. In August 2001, for example, some 17,500 accused persons were in prison awaiting trial even though they were granted bail. Most of them could not afford the bail amount set.

A closer analysis of the August 2001 figures reveals that almost 900 imprisoned accused had been granted bail of less than R201, while a further 5,300 prisoners had been granted bail of between R201 and R500 (Figure 13). Many of these prisoners would have been awaiting trial for relatively minor offences. Moreover, an awaiting trial prisoner costs the state almost R90 a day. It consequently makes financial sense – aside from humanitarian considerations – to drastically reduce the number of such awaiting trial prisoners.

Figure 13: Incarcerated prisoners granted bail according to bail amount set, August 2001



The Department of Correctional Services has in the past taken several actions to reduce the high number of awaiting trial prisoners. However, the absence of an integrated approach to the problem has made these efforts a futile exercise. It became evident that what was needed was a cross-cutting or inter-sectoral approach to managing the awaiting trial problem.

A pilot project to address the problem was initiated by the Integrated Justice System in 1999. The main aim of the project was to reduce the amount of time spent in prison by prisoners awaiting trial. This is achieved by reviewing each case individually, and taking steps to ensure that cases are finalised in the shortest possible period. The reviews are carried out at a local level by an integrated team of professionals from the departments of Justice and Constitutional Development, Correctional Services, Welfare and the SAPS.

One of the pilot sites was St Albans Medium A Prison, about 30 kilometres outside of Port Elizabeth – the main feeder prison for the Port Elizabeth magistrate’s court. The Eastern Cape Awaiting Trial Prisoner Project began in April 1999, primarily with the goal “to integrate the efforts of the departments of Correctional Services, Justice, SAPS and Welfare and to facilitate the acceleration of awaiting trial prisoners’ cases”.⁴⁸

As a pilot site, the Eastern Cape ATP Project set itself the aim of identifying best practices to address the blockages in the criminal justice process, and to implement actions that would improve service delivery.

The key functions of the ATP Project are to review cases involving awaiting trial prisoners, identify blockages within the criminal justice process, and to expeditiously finalise cases involving awaiting trial prisoners. According to the blueprint of the Eastern Cape IJS Court Centre:

All the cases associated with the Awaiting Trial Prisoners... had to be reviewed in order to identify blockages within and between the departments that could be rectified, and hence to ensure the finalisation of the cases in the shortest possible period.⁴⁹

At the time the ATP Project commenced, St Albans Prison had a major overcrowding problem. Much of the problem had to do with the high number of awaiting trial prisoners who did not need to await the finalisation of their trials while incarcerated. The situation in St Albans Prison in March 1999 was as follows:

- The prison was accommodating 3,200 prisoners but had been designed to hold only 1,397.
- Almost a third (32.7%) of awaiting trial prisoners had been granted bail at amounts they could not afford. Moreover, 10% of awaiting trial prisoners had been granted bail of R100 or less. Most of these prisoners would have been charged with relatively minor offences such as common assault, shoplifting, malicious injury to property and trespassing.
- A quarter of awaiting trial prisoners had been incarcerated for six months or longer, and 7% for 12 months.

The ATP Project identified the cases of three categories of prisoners for review: those whose bail had been set at less than R1,000; prisoners who had been incarcerated for longer than six months awaiting trial; and awaiting trial prisoners who admitted to the charge(s) against them and wanted to plead guilty. Cases falling into these categories were then individually evaluated and processed.

ATP Project cases are evaluated by a case review team, consisting of prosecutors, correctional services officials and police officers. Thus, awaiting trial prisoners who want to plead guilty are identified by prison wardens who complete a guilty plea form with such prisoners. Throughout this process prisoners are informed of their rights and assisted should they wish to apply for legal aid. Prisoners are also informed about the procedures to be followed should they wish to plead guilty.

The correctional services member of the case review team then evaluates the guilty plea forms. Where a form indicates that the prisoner is genuine about pleading guilty and admits to all the elements of the offence, the correctional services member of the team initiates the process of requisitioning the identified prisoner to attend court for the purposes of pleading guilty. While this is going on the SAPS member of the case review team obtains the case docket relating to the identified prisoner. This docket is then presented to the prosecutor on the team. It is the prosecutor who has the final say whether to accept the plea of the accused on the basis of the incriminating evidence contained in the case docket. If the prosecutor is prepared to accept the plea the case is placed on the court roll as quickly as possible so that it may be dispensed with.

It is crucial to the success of the ATP Project that the case review team members are both experienced and bestowed with the necessary authority to get things done in their respective departments or organisations. For example, in

respect of the SAPS member of the team, an experienced investigating officer of the rank of captain or higher who knows the police stations falling within the jurisdiction of the court, and who understands the criminal justice process, is required.⁵⁰ Similarly, the prosecutor on the team needs to be senior and experienced enough to lead the team and make decisions about which guilty pleas to accept and which to reject.

According to the blueprint of the Eastern Cape IJS Court Centre, a number of elements of the ATP Project that contributed towards its success were identified.⁵¹ Firstly, the project was developed by the members of the case review team and their senior colleagues. In other words, the project was not imposed on local criminal justice officials, but driven by the key role players in Port Elizabeth. Secondly, the ATP Project was developed to reflect the specific localised needs existing in the criminal justice process in Port Elizabeth. Thirdly, the members of the case review team were carefully selected for their knowledge of the criminal justice process, their seniority and dedication to the project.

The ATP Project ensured the speedy finalisation of cases that would otherwise only have been finalised on their allocated, but later, court date. This substantially reduced the finalisation cycle of criminal cases. Moreover, cases that should not have been on the court roll in the first instance were removed from the court roll, thereby considerably reducing the court roll. Prosecutors who handled such cases were then trained to avoid similar mistakes.

In the event of the collapse or finalisation of a court roll on a certain day, the ATP Project team sought to assist with other tasks: cases were identified, witnesses contacted, accused requisitioned and the matter placed on the roll within a couple of hours. This prevented the loss of valuable court time, and also resulted in the earlier finalisation of cases.

The project also strengthened the working relationships between the justice department, the SAPS, and the department of correctional services. Investigating officers became keen to assist the members allocated to the project, as they realised that their cases would be finalised earlier. Similarly, correctional services officials became more effective in ensuring that prisoners were brought to court upon receipt of requisitions, as they realised that prison numbers were being reduced.

The justice department, and more specifically the prosecution service, benefits as follows from the ATP Project: cases are finalised earlier and the loss of

court time is minimised; the number of outstanding cases on the courts' rolls is reduced; and the working relationship and co-operation between the prosecution service and the other criminal justice departments is enhanced.

For the Department of Correctional Services the benefits of the ATP Project are also numerous: cases of many awaiting trial prisoners are fast-tracked, thereby reducing the overall expenditure to the department; many guilty awaiting trial prisoners identified by the project start to serve their sentences earlier, thereby reducing the overcrowding situation in the awaiting trial section of the prison; and the co-operation between the department and other criminal justice agencies is enhanced.

The ATP Project assists the police service by reducing the average case loads of detectives, decreasing the time it takes to get a case trial ready, and improving the conviction rate.

Pre-Trial Services Centre Project

Many persons accused of relatively minor offences, who are not a risk to society or likely to flee, are often detained unnecessarily. Pre-Trial Services (PTS) seek to reduce poor bail decisions, which in turn lead to overcrowded prisons.

When an accused is released on bail certain conditions automatically apply – such as the condition that the accused must return to court and stand trial. However, in addition, judicial officers may impose “special” conditions of release on bail, which can be divided into two categories.⁵²

- Conditions which seek to ensure that the accused person stands trial by making it difficult for accused persons to abscond or flee. Such conditions typically stipulate that the accused must surrender his passport, not leave the magisterial district, or report to the local police station once a week.
- Conditions which are designed to prevent the recurrence of, or persistence in, unlawfulness while awaiting trial - for example a condition that the accused does not communicate with state witnesses or tamper with evidence.

PTS offers a better alternative to the money-based bail system by encouraging judicial officers to make greater use of bail conditions as mentioned above, and the supervision of accused persons who are released from custody.

PTS provides the court with a report on the accused persons in custody, containing verified information about the accused person's community ties, employment, previous convictions, residential address, and other information needed for a bail decision. This information enables the court to make more appropriate bail decisions. This means ensuring that high-risk, dangerous and repeat offenders are detained while awaiting trial, but also that low-risk, petty, first time offenders are released from custody. In order to facilitate this release PTS attempts to strengthen supervision of bail conditions as a viable alternative to money-based bail.

Staff at the Port Elizabeth Pre-Trial Services Centre take approximately 20 minutes to interview an accused.⁵³ Where necessary, PTS (which has the use of two vehicles) physically goes out to verify the home address given by an accused. However, during busy times – especially on a Monday when new cases that have accumulated over the weekend enter the system – PTS lacks the staff and resources to physically verify addresses and spend long times interviewing individual accused.

Once PTS personnel have finalised their interview and background check of an accused, they compile a bail recommendation. The recommendation, which is attached to the charge sheet, contains information relevant to the judicial officer for making an informed bail decision. In instances where bail is set, PTS tries to assist the accused to raise the money so that bail can be paid at court. Otherwise the accused can only again pay bail at prison.

Arrest first, investigate later

A 1997 study by the Bureau of Justice Assistance of some 7,000 accused at three magistrates' courts (Mitchells Plain, Johannesburg Central and Durban), found that police warnings and police bail are used far less than legally permitted, with the result that 80%-90% of accused are in custody at their first court appearance.⁵⁴ Moreover, most of the accused (65%-80%) in the three courts were charged with non-violent crimes.

In serious cases a bail decision is postponed for a formal bail application. A bail application may also be postponed for up to seven days where the court has insufficient information to make a decision or where an unrepresented accused is waiting for legal representation. A significant number of bail decisions in Durban (19%) and Johannesburg (14%) were postponed.

Actual convictions and sentencing of people at first appearance is less than 2%, the study found. This is contrasted with a finalisation (through sentencing) rate of 60% in New York City. Like in South Africa, most people in New York are charged with less serious offences. In New York, however, these people usually plead guilty in exchange for community service or an agreed lighter sentence.

Two important differences between the USA and South Africa should be taken into account when making this comparison. Firstly, unlike the USA, South Africa did not have a formal plea bargaining system until late 2001. Secondly, in South Africa criminal records are seldom available at first appearance. In New York a court will not hear a case unless the criminal record of the accused is available. In New York this is obtained electronically within hours of arrest whereas in South Africa, until recently, it has taken two to three months to manually obtain the previous record information.

The impact of PTS is similar to that of the Awaiting Trial Prisoner Project (see above). It results in a reduction in the time taken to prepare a docket for trial, facilitation of bail applications, improved docket quality and consequent higher conviction rates, better bail decisions and, crucially, a reduction in the number of awaiting trial prisoners.

As the Department of Correctional Services does not have photographs of the prisoners in its care, some prisoners do not answer to their name – or intimidate someone else to take on their identity – when they have to attend court. This results in unnecessary postponements as the required prisoners are not brought to court, or the incorrect prisoners are transported to court. In some cases persons accused of serious and violent crimes have taken on the identity of persons accused of minor offences, by intimidating the latter. Once taken to court, such accused are usually granted bail on the basis of the minor charges against them, thereby allowing serious offenders to escape.

An important function of the PTS Centre at the Port Elizabeth New Law Courts is the taking of electronic photographs of all detained accused that go through the PTS Centre for their first court appearance. The photographs are then printed on the back of the detention warrant which accompanies an accused back to prison. In this way prison wardens can physically identify awaiting trial accused that have to return to court on a future occasion.

A further benefit of the PTS Centre in Port Elizabeth has been its ability to identify persons who are wanted on other charges or are members of suspected crime syndicates. The Centre circulates the photographs and personal details of accused to local police stations and specialised police units in the province. In this way, investigating officers have identified accused for whom a warrant of arrest had been issued or who were suspects in other cases. Such information can be crucial for the state to successfully oppose bail.

Periodical court and identity parade facility in prison

As part of its mandate to identify blockages within the criminal justice process, and to develop a best practices model, the ATP Project identified a bottleneck in the Port Elizabeth New Law Courts.

The ATP Project used one court as a reception and channelisation court; that is, a court which exclusively dealt with non-trial matters such as remands, bail applications, guilty pleas, age assessments in respect of juvenile accused, and so forth. This court sought to take the largely administrative and procedural work away from the other courts, allowing the latter to focus on trials. The ATP Project quickly realised that the reception and channelisation court developed a huge and unmanageable case roll. Moreover, the ATP Project argued correctly, the many incarcerated awaiting trial accused, brought to the court on a daily basis, posed a flight risk. Such accused also consumed significant correctional services and police resources as they had to be transported between prison and the court by prison officials, and guarded at the court by uniformed members of the SAPS.

Based on the above considerations, a process was set in motion to establish a periodical court at St Albans prison.⁵⁵ This court is not in session every day but only periodically, depending on the demand for its services. The establishment of the periodical court was facilitated by the fact that a fully equipped court room was already in existence at St Albans prison – in the past the court had been used for internal Department of Correctional Services trials. Moreover, no structural changes were necessary to the court as it was accessible to the public from the public visiting area at the prison. This fulfilled the constitutional requirement that accused persons have a right “to a public trial”.⁵⁶

The implementation plan for the establishment of a periodical court at St Albans Prison is structured in three phases. The initial phase entails remanding

only cases involving awaiting trial prisoners who have not received bail, and whose cases are not trial ready. That is, during this phase, trials involving awaiting trial prisoners are still conducted at the Port Elizabeth New Law Courts. The second phase covers the holding of trials at the periodical court involving cases that originate within the prison, such as where a prisoner is found with illegal drugs or where one prisoner assaults another. The final phase of the project expands the role of the court to hold trials that originate in police precincts surrounding the prison. At the time of writing, the first phase of the project had been implemented.

The benefits of the periodical court at St Albans Prison are many, and accrue to all the criminal justice departments in the area. An average of 20 to 40 remand cases are dealt with at a weekly sitting of the court. The risk of awaiting trial prisoners escaping is significantly reduced, and both the police service and the correctional services department save personnel and transport costs. Finally, the periodical court ensures that cases involving awaiting trial prisoners who have been refused bail are ready for trial once they are remanded to the Port Elizabeth magistrates' court.

A further bottleneck in the criminal justice process identified by the ATP Project was the existence of only one identity parade facility in the Nelson Mandela Metropole, which "caused a major blockage within the Integrated Justice System".⁵⁷ This is a facility situated some 70 kilometres from St Albans Prison, where the vast majority of suspects who need to take part in an identification parade come from. This meant that Department of Correctional Services officials or police officials had to transport prisoners 140 kilometres for the purposes of an identification parade – a clear waste of time, scarce capital and human resources, and a heightened escape risk.

BAC facilitated a feasibility study and consulted with the departments of Correctional Services, Public Works and the SAPS about establishing an identity parade facility at St Albans Prison. Agreement was reached whereby the police service contributed the funds, and correctional services the labour, to construct a modern identity parade facility – including one-way glass to enable witnesses to point out suspects in a private and non-threatening environment. The facility allows prisoner access directly from the prison, thereby substantially reducing the risk of escape and doing away with all transport costs involving incarcerated awaiting trial suspects. It was also found that the prison environment produced a ready supply of volunteers who were prepared to participate in an identity parade line up.

Reception, channelisation and trial readiness

To fully exploit the benefits of the aforementioned services (i.e. the ATP Project, PTS Project, and the prison-based court), the Port Elizabeth Court Centre also has a police liaison officer, experienced prosecutors with the responsibility of making cases trial ready, and a channelisation or reception court.

A senior SAPS liaison official receives all police case dockets two days prior to the date of the court hearing, and ensures that the dockets are ready for their court appearance. For example, the official verifies that state witnesses have been subpoenaed and that the necessary forensic reports have been filed in the docket. The dockets are then passed on to the relevant prosecutors to give them enough time to peruse the dockets and prepare themselves for trial.

The Court Centre is staffed by three experienced prosecutors. All incoming police dockets are distributed to these prosecutors as follows: murder dockets, first appearance dockets (i.e. dockets in respect of accused persons who still have to appear in court to, for example, apply for bail or obtain the services of an attorney), and non-first appearance dockets, where further investigations are likely to be necessary. It is the responsibility of the prosecutors to get the dockets ready for trial as quickly as possible, and to decide to which courts the cases will eventually go for trial. Exceptionally serious cases are allocated to the high court, while less serious offences are allocated to the district courts.

The Centre-based prosecutors peruse all new and remand dockets to ascertain whether they contain the necessary incriminating evidence for a reasonable prospect of a successful prosecution – the criteria laid down by the National Prosecuting Authority for deciding whether to prosecute an accused.⁵⁸

Given their experience, these prosecutors are able to understand the contents of a case docket quickly and identify gaps in the evidence the state requires to successfully prosecute an accused. The prosecutors liaise directly with the investigating officers of the case dockets – either in writing, telephonically or even in person – to guide them in their investigations and instruct them on what evidence to collect and which statements to take.

Before a trial can begin, the prosecution must formulate a formal charge against the accused, providing some details on the particulars of the alleged offence.⁵⁹ This enables the channelisation court prosecutor (to whom all new

cases go) to ask the accused whether he would like to plead to the charge(s). Should investigations still be outstanding, the charge sheet will assist the channelisation court prosecutor in determining whether to oppose bail or not, based on the likely charge(s) that will eventually be levelled against the accused.

The Court Centre prosecutors also make the necessary written entries on police dockets guiding investigating officers through their investigations. Moreover, these prosecutors place written instructions on the dockets for the channelisation court prosecutor: whether to postpone the case (e.g. for further investigation, for an age assessment of the accused, or for trial to another court), or whether to withdraw the charges against an accused. In this way the channelisation court prosecutor – who is burdened with having to process dozens of cases a day – simply has to follow the instructions of the Court Centre prosecutors.⁶⁰

If requested to do so by the defence, the prosecution must reveal most of the information – such as witness statements and forensic reports – contained in the police docket.⁶¹ The Court Centre’s prosecutors who perform the docket trial readiness function deal with both these issues.

Finally, the Court Centre prosecutors determine in what type of court (high, regional or district) bail applications should be heard. These prosecutors liaise with the legal representatives of the accused or the legal aid officer on duty, to expedite the holding of bail hearings at the first acceptable opportunity for both parties.

The role of the prosecution at the pre-trial stage

After a crime is reported to the police, an investigating officer or detective is assigned to the case. The investigating officer thereupon proceeds to investigate the case. Once sufficient evidence has been collected against a suspect to make out a credible case, the investigating officer presents this information to a prosecutor in the form of a police docket which contains the various written statements and documents relating to the accumulated forensic evidence. The prosecutor peruses the docket to establish whether there is sufficient evidence against the alleged suspect(s) to justify a prosecution.

A common alternative to the above scenario is where the police arrest a crime suspect before they had the opportunity to conduct any major investigations. This usually occurs where a criminal is arrested in the act of committing a crime, or where a serious crime has been committed and there is a risk that the suspect could disappear or tamper with evidence should he not be arrested immediately. Once the police have arrested and charged a suspect they are obliged to take the suspect before a court within 48 hours.

Whichever of the above two scenarios occurs, once the prosecution is given a police docket on an accused, one of four things must happen:

- The prosecution may ask the investigating officer to further investigate the case. This is a common request, especially in more intricate cases. To convict an accused of the crime(s) with which he has been charged, a prosecutor has to prove all the elements of the crime against the accused beyond a reasonable doubt. On the basis of their legal training and courtroom experience, prosecutors generally know how much evidence they require to warrant prosecuting a person. If such evidence is outstanding it is their responsibility to guide the investigating officers on the cases they are dealing with to complete their investigations, so as to fill any potential gaps in the prosecution's case.
- The prosecution may decide that the evidence contained in the police docket is sufficient to warrant instituting a prosecution against a suspect. However, the decision to prosecute someone is taken with caution. Before the prosecution elects to prosecute a suspect it must be satisfied that the case against the suspect has been thoroughly investigated and that a conviction is likely. Once an accused is acquitted of a charge levelled against him or her by the prosecution, such an accused can generally never again be prosecuted for the same offence, even if more evidence should subsequently come to light which would have persuaded a court to convict the accused.
- The prosecution may decline to prosecute and instead opt for pre-trial diversion or some other non-criminal resolution for the accused. Pre-trial diversion frequently happens in the case of juvenile accused who have committed relatively minor offences (being their first offence), and who admit their wrongdoing. Prosecutors are permitted to decline to prosecute such accused on the condition that they, for example, perform community service or make some restitution to their victims.

- Finally, the prosecution may decline to prosecute without taking any action against a suspect. In deciding whether to decline to prosecute someone the prosecution needs to take into account three broad factors. Firstly, the nature and seriousness of the offence, taking into account the effect of the crime on the victim, the manner in which it was committed, the motivation for the criminal act, and the relationship between the accused and the victim. Secondly, the interests of the victim and the broader community, and, thirdly, the circumstances of the offender.⁶²

Integration of projects

The Court Centre is a logical evolution from the existing Awaiting Trial Prisoner Project, the Pre-Trial Services Project and the channelisation and reception court at the Port Elizabeth New Law Courts. What was required was the integration of the ATP and PTS projects with the SAPS liaison office at the court (ensuring a smooth and timeous flow of dockets between police stations and the Court Centre), and the creation of a “docket trial readiness function”.

It is the absorption and incorporation of all the aforementioned services that create the Court Centre (i.e. ATP Project, PTS Project, the channelisation and reception court, the police liaison office, and docket trial readiness). In essence the Court Centre in Port Elizabeth is “an integration of all the projects and best practices learnt from these various projects”.⁶³

The Court Centre received a computer-based case roll management system in mid-2001 that keeps an electronic record of the whereabouts and status of every case docket in the system, including the status of the accused. A simple, computer-based data capturing and data management programme is used to store and manage the case information contained in each docket and in the charge sheet. The system also manages the court rolls, and tracks and controls the awaiting trial period of each detained awaiting trial accused.

The Port Elizabeth New Law Courts are busy with about 6,000 cases on the district court rolls at any one time.⁶⁴ The Court Centre is staffed by about 20 people seconded from the National Prosecuting Authority, the departments of Justice and Correctional Services, the SAPS, and the Legal Aid Board.⁶⁵

CHAPTER 4

PORT ELIZABETH IJS COURT CENTRE: APPRAISAL AND EVALUATION

Background and objectives

According to the Department of Justice's 2000/01 annual report, the Integrated Justice System Court Centre Project initiative seeks to provide a single nodal point within a magistrates' court from where the entire court process is managed. The overall objective is to reduce the average case cycle time.⁶⁶

The implementation of the initiative is managed on a multi-sectoral basis. The IJS Programme Office (supported by BAC) assists with the national and provincial co-ordination of the project, and conducts presentations to provincial management structures and to stakeholders at each court site. The justice department provides the computer hardware and makes data captureurs available who capture base line data and all information relating to outstanding cases on the court roll at each site. The National Prosecuting Authority installs the computer hardware and software at each project site. Following data capture, training is given to the Court Centre officials and the project is handed over to the local agents of the criminal justice system.⁶⁷

The vision of the Integrated Justice System Court Centre at the Port Elizabeth New Law Courts is "to drastically improve service delivery".⁶⁸ The objective of the Court Centre is to (Table 3):

- reduce the court case cycle time;
- reduce the awaiting trial prisoner cycle time;
- utilise court hours more productively; and
- improve the conviction rate.

Performance of the Court Centre

At the time of writing the Court Centre is fairly new. The Centre was officially opened in August 2001, but has been operating since March 2000. Some components of the centre – such as the Pre-Trial Services Centre – have been operating since early 1999.

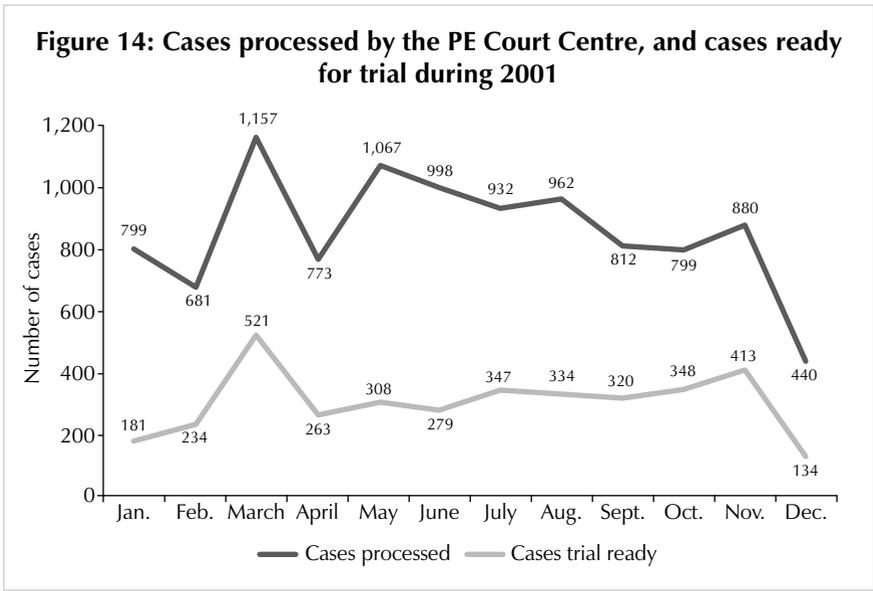
Table 3: Port Elizabeth Court Centre services and objectives⁶⁹

Project services	Objectives of Court Centre Project
Reception/ channelisation court	<ul style="list-style-type: none"> • Process dockets that are not trial ready, to avoid clogging all courts with remands. • Ensure that an informed background on the accused is given at the first bail hearing. • Give the accused an opportunity to apply for legal aid assistance on the first appearance.
Pre-trial services	<ul style="list-style-type: none"> • Better prepared dockets. • Dockets ready for trial. • Identify suspects wanted on other charges.
Bail applications	<ul style="list-style-type: none"> • Bail applications are heard in bail courts, thereby freeing up other courts to conduct trials. • Court Centre ensures that bail decisions are well informed, taking into account the amount of bail individual accused can afford.
Case fast-tracking	<ul style="list-style-type: none"> • Identify cases where the incarcerated accused wants to plead guilty. • Identify cases that have been on the case roll for long periods. Bring cases forward for trial at request of investigating officers and legal representatives.
Reducing prison overcrowding	<ul style="list-style-type: none"> • The Court Centre software monitors the number of prisoners awaiting trial, and determines the cycle time of each case. It also alerts Centre staff of accused who are detained awaiting trial for longer than a certain period of time.
Improving service delivery	<ul style="list-style-type: none"> • Management of the court roll leads to increased court hours. The proper preparation of case dockets for trial boosts the conviction rate.
Managing juvenile accused	<ul style="list-style-type: none"> • Probation officers involved in the project deal directly with all juvenile accused. The aim is to keep juvenile accused out of prison.

For the purposes of this publication a decision was made to provide Court Centre performance indicators until the end of 2001, as these are all available at the time of writing. Furthermore, it was decided to provide Court Centre performance indicators from the time that they have been reliably collected. In most instances this means that statistics for the 2001 calendar year are used, in some cases performance data for 2000 is used as well. Readers should be aware that in some cases a year, or even two years, is too short a period to enable a reliable identification of performance trends. Most new systems – especially one such as the Court Centre which involve a number of government departments and a multitude of role players – experience teething problems before they operate at an optimal level. This should be borne in mind in the interpretation of the Court Centre’s performance indicators, which are discussed below. While some performance indicators are extremely positive, others reveal relatively little improvement in performance. It is probable, however, that the latter indicators will improve as the Court Centre and its staff matures and processes are fine-tuned.

During 2001 the Court Centre processed 10,300 cases, or an average of 858 per month. Of these cases 3,682 were processed up to the point where they were ready for trial – an average of 209 per month (Figure 14). This is an impressive figure given that the cases the Centre processes include serious

Figure 14: Cases processed by the PE Court Centre, and cases ready for trial during 2001

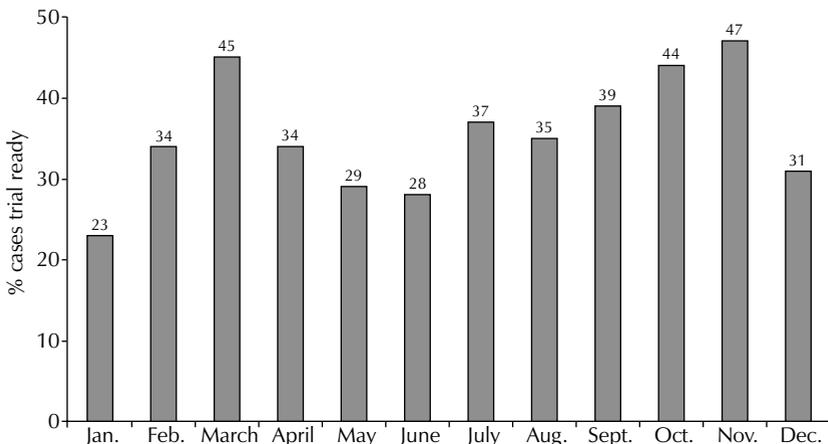


crimes such as murder, rape, aggravated robbery, and fraud. As many murder and aggravated robbery trials can, for example, take a number of days to finalise, it is clear that the Centre is processing enough cases up to the point that they are ready for trial, so as to keep a number of trial courts busy.

The decline in the cases processed and ready for trial between November and December 2001 is a result of the fact that many detectives, prosecutors and other court staff are on leave during this period, or take time off work to study for end of year examinations. Traditionally December and January are months when the country's courts experience a reduction in output.

During an average month in 2001 just over one-third (36%) of cases processed by the Court Centre were made ready for trial. Over the 12-month period January to December 2001, the Court Centre was able to significantly improve the proportion of cases that were made ready for trial. During the first half of 2001 a monthly performance above the annual average was achieved during one month (March) only. During the second half of 2001, a greater proportion of cases was readied for trial in four out of six months (July, September, October and November), than the annual average. Moreover, during August the monthly proportion of cases readied for trial missed the annual average mark by only one percentage point (Figure 15).

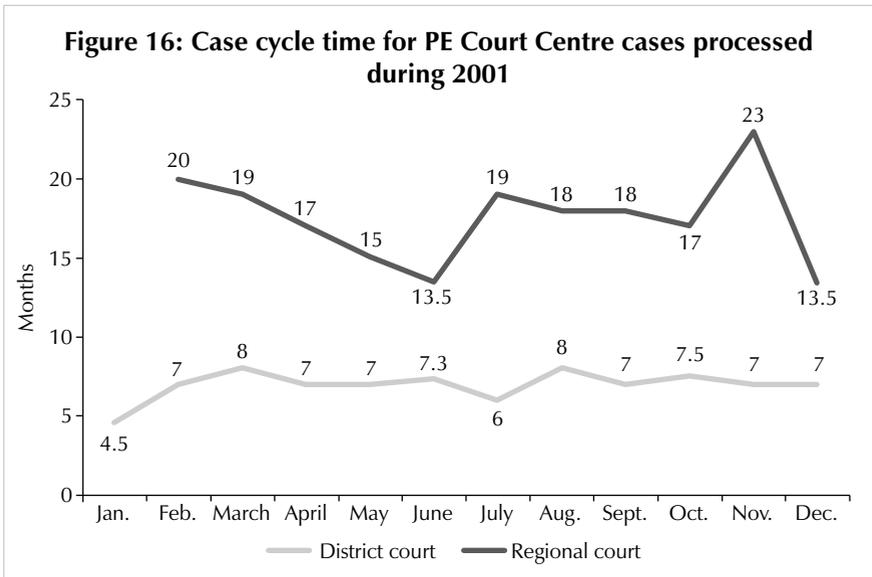
Figure 15: Cases trial ready as a proportion of cases processed by the PE Court Centre during 2001



The case cycle time is measured from the time when a case is placed on a court’s roll (usually on the day the accused appears in court for the first time), to the point when it is finalised. (The case is either withdrawn, the court acquits the accused, or, in the case of a conviction, a sentence is imposed on the accused).

During 2001 the average case cycle time for cases processed by the Court Centre was sixteen months for regional court cases and seven months for district court cases. During that year the monthly case cycle time for district court cases did not change much. The monthly case cycle time for regional court cases did, however, experience noteworthy changes over this period: initially decreasing from an average of 20 months in February to 13.5 months in June, and increasing thereafter (Figure 16).

It is understandable that regional courts take longer to process the cases that come their way. Regional courts deal with serious crimes such as murder and rape. Trials in the regional courts typically involve a number of state witnesses and the presentation of non-oral evidence such as blood samples and district surgeons’ reports. Regional court prosecutors also need more time to prepare and consult with their witnesses than do their district court counterparts.



The case cycle time figures do not show any improvement in 2001. However, the Court Centre and its staff do not have exclusive control over the speed with which cases are finalised or removed from the courts' rolls. For example, the investigations in a particular case may be finalised quickly and the matter set down for trial. On the trial date the accused requests the services of a new defence attorney. Such a request is usually granted. On the next trial date the

Under-utilisation of available court hours

During May 2000 the Court Management Unit in the office of the National Director of Public Prosecutions investigated why so many court hours are not utilised.⁷⁰ The investigation sheds some light, not only on why many court hours are lost, but also on why trials can take a long time to be finalised.

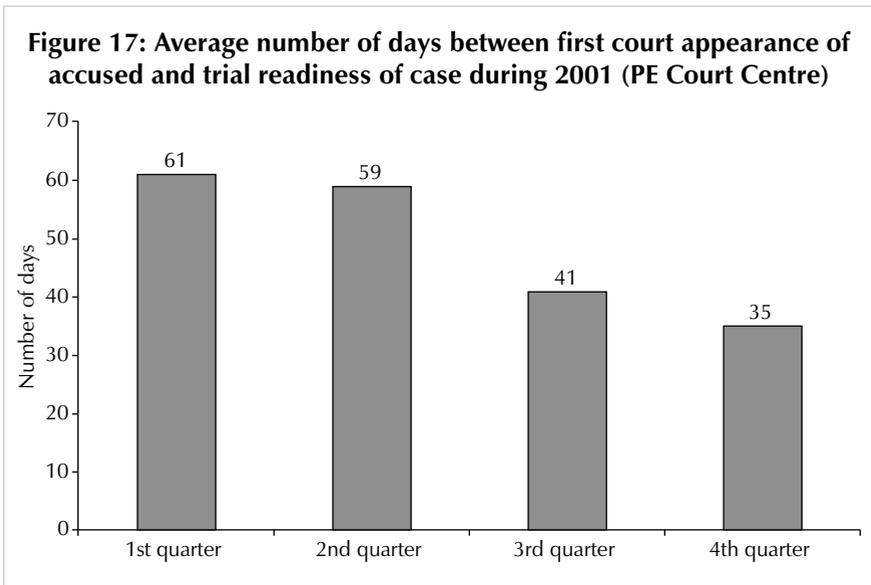
The investigation found that in the district courts the most common reason why court time was not fully utilised, was that the courts' rolls were finalised. That is, during May 2000 some 6,300 hours of potential national court time were lost because courts had completed their work for the day before closing time. There are a number of possible reasons for this. For example: prosecutors, who are responsible for managing the rolls of the courts they work in, do so badly; witnesses who should have come to court fail to do so, with the result that trials planned for the day cannot proceed; or the accused ask for a postponement of their trials because they want to obtain a new attorney or because they are feeling ill. Other common reasons for lost court hours in the district courts were that magistrates were not available at the time the prosecution and defence were ready to proceed (2,990 hours lost), because the accused or his legal representative was not ready to proceed at the allotted time (1,519 hours lost); or because the prosecution had to consult with their witnesses during court time (1,445 hours lost).⁷¹

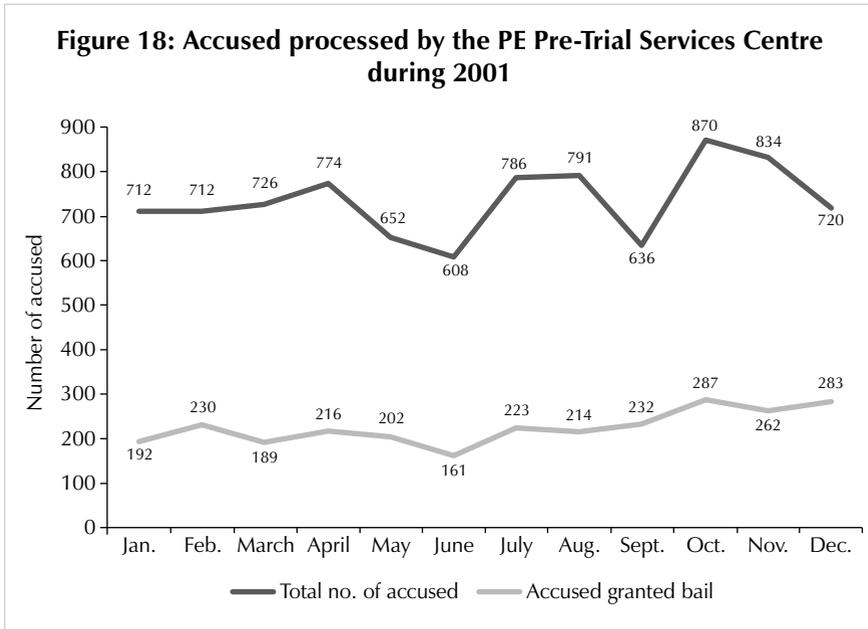
In the regional courts the most common reason why court time was not utilised fully was that the accused or his legal representative was not ready to proceed at the allotted time or was late arriving at court. During May 2000 some 1,271 hours were lost nationally because of this. This was followed by the courts' rolls being finalised (1,066 hours), the prosecution consulting with state witnesses during court time (681 hours), witnesses arriving late at court or not at all (523 hours), and magistrates not being ready to proceed when asked to do so by the prosecution (169 hours).

case starts but is not finalised in the allotted time. The trial is then postponed to the next available date. On that date the magistrate may be ill, in which instance the case would have to be postponed again, and so forth. In none of these examples the delay is as a result of the prosecution, police or any of the other departments represented in the Court Centre.

Court Centre staff, courtroom prosecutors and police investigators have substantially more control over cases up to the point when the trial begins. Delays between an accused person’s first appearance in court and the beginning of the trial are usually a result of incomplete police investigations. Incomplete investigations, in turn, could, among other factors, be the result of inefficiencies in the police detective service, or because the prosecutor dealing with the case does not give coherent and informed instructions to the case’s investigating officer.

The number of days that passed between the average accused person’s first appearance in court up to the point that the case was ready for trial, declined over the course of 2001 for cases processed by the Court Centre. Thus, during the first quarter of 2001 the average number of days between an accused person’s first appearance in court and the Court Centre processed case being ready for trial was 61 days. This declined by over 40% by the fourth quarter of 2001, to 35 days (Figure 17).

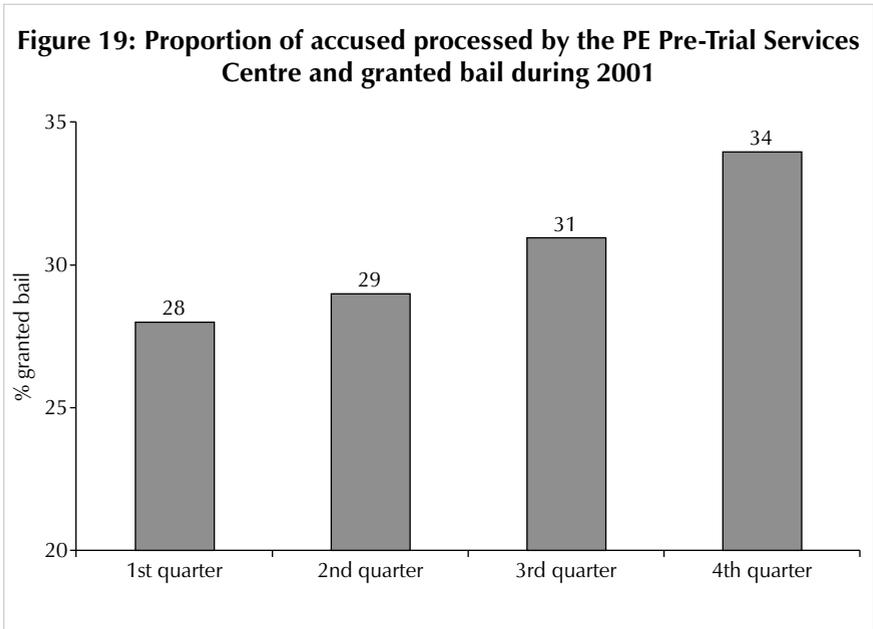




The Court Centre's Pre-Trial Services Centre processed 8,821 accused during 2001, or an average of 735 a month. Over the same period, 2,691 accused who had passed through the Pre-Trial Services Centre were granted bail – an average of 224 a month. During the first quarter of 2001, 611 accused processed by the Pre-Trial Services centre were granted bail. During the fourth quarter of that year 831 accused were granted bail (Figure 18).

Calculated in a different way, the Pre-Trial Services Centre's impact becomes clearer. During the first quarter of 2001, just over a quarter (28%) of accused who were processed by the Pre-Trial Services Centre were granted bail (Figure 19). During subsequent quarters of 2001 this percentage increased to 29% (2nd quarter), 31% (3rd quarter) and 34% (4th quarter). Between the first and fourth quarters of 2001, the proportion of accused processed by the Pre-Trial Services Centre, and granted bail, increased by 21%.

In addition to the work of the Pre-Trial Services Centre, the Port Elizabeth Court Centre used other methods of reducing the number of awaiting trial prisoners. The Court Centre seeks out incarcerated awaiting trial accused who might plead guilty to the charge(s) against them. This is especially the case in respect of persons charged with relatively minor offences who would be



unlikely to receive a lengthy prison sentence, or would receive an alternative to a prison sentence, upon their conviction. Some accused spend unnecessary time in prison awaiting trial when, in fact, they intend pleading guilty to the charge(s) against them. Because of a misunderstanding of court procedure, or because they are waiting for the services of a state-provided defence lawyer, such accused can end up spending more time in prison than if they had been given the opportunity to plead guilty at the time of their first court appearance.

Officials from the Department of Correctional Services are given the task to identify awaiting trial accused who wish to plead guilty. Such officials are carefully selected. They need to have a certain level of seniority and experience, and be persons of integrity to minimise the possibility that unscrupulous officials place undue pressure on awaiting trial accused to plead guilty against their will.⁷² There is also the added safeguard that judicial officers are obliged to enquire from accused persons who wish to plead guilty, whether they are doing so of their own free will.

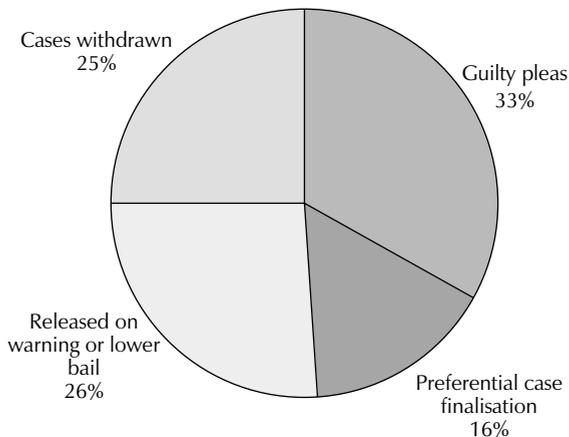
The Court Centre further prioritises cases involving incarcerated accused awaiting trial. Given preference in this way, the status of imprisoned awaiting

trial accused is expedited. If they are acquitted they are released, and leave the system. If they are convicted, they remain in prison but obtain the status of sentenced prisoners. Sentenced prisoners are more manageable for the Department of Correctional Services.⁷³ Unlike their awaiting trial counterparts, sentenced prisoners may partake in work and vocational programmes in prison. Sentenced prisoners can also be released on parole before the expiry of their sentence, while awaiting trial prisoners who are denied bail have to remain in prison at least until the finalisation of their trials.⁷⁴

The Court Centre also identifies incarcerated awaiting trial accused who have been granted bail, but who do not have the means to pay it. In appropriate cases such accused are requisitioned from prison and brought before a court where the prosecution requests that the bail amount be reduced or that the accused be released with a warning.

The Court Centre peruses all dockets involving incarcerated awaiting trial prisoners with the view of withdrawing charges in frivolous cases, or in cases where the evidence against the accused is insufficient for a reasonable prospect of securing a conviction.⁷⁵ Nothing prevents the state recharging

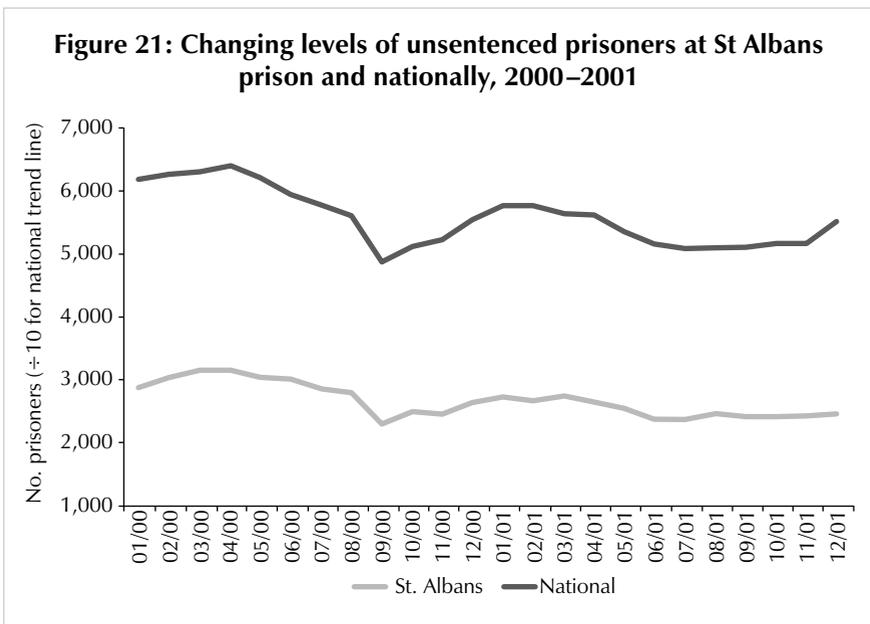
Figure 20: Reasons for the early finalisation of cases involving incarcerated awaiting trial accused, PE Court Centre, April 1999–March 2002



such accused again at a later stage, should new incriminating evidence come to light.

Over a three-year period (between 1 April 1999 and 31 March 2002), the Port Elizabeth Court Centre facilitated the release of some 1,700 awaiting trial accused from prison through the various methods described above.⁷⁶ Of these, 33% were released because they were identified as wanting to plead guilty, 16% because their cases received preference and could be finalised more rapidly in this way, and about 25% each were released with a warning or because a lower affordable bail amount was set, or because the charges against them were withdrawn (Figure 20).

According to the calculations of the Court Centre, these initiatives saved the various accused more than 58,000 incarceration days. A prisoner – irrespective whether in prison awaiting trial or as a sentenced prisoner – costs the Department of Correctional Services more than R80 a day. Multiplied over the saved incarceration days, the Court Centre managed to avoid costs of R4.9m for the corrections department over the three year period (or about R135,000 per month).⁷⁷ This is a substantial amount of money for the

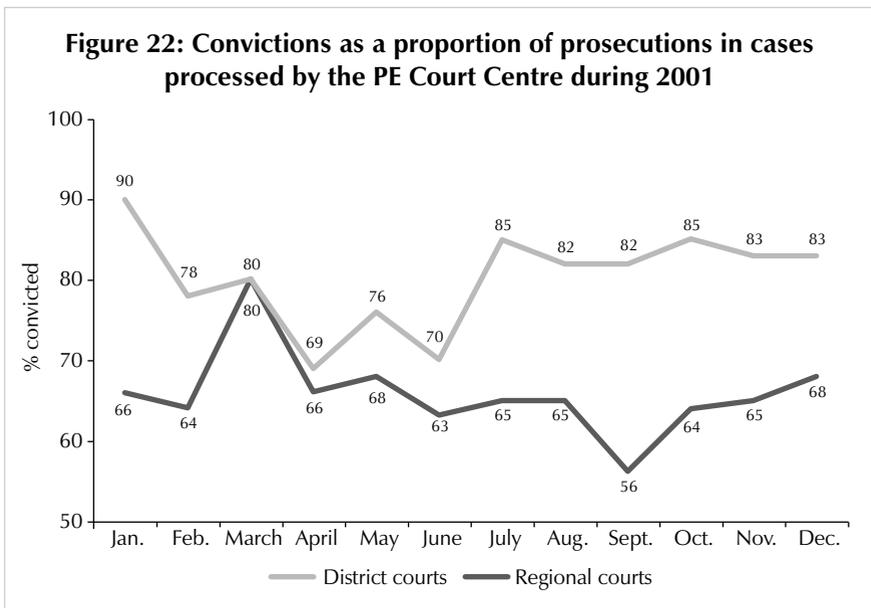


criminal justice system, given that many prosecutors earn less than R135,000 a year.

A consequence of the Court Centre's focus on reducing the number of awaiting trial prisoners, is the decrease in the number of unsentenced prisoners held in St Albans prison (the main feeder prison for the Port Elizabeth magistrate's court). Between January 2000 and December 2001, the number of unsentenced prisoners held at St Albans prison declined from 2,882 to 2,457 prisoners – a decrease of 15%. Over the same period the number of unsentenced prisoners held in all the country's prisons declined from 61,563 to 55,285 prisoners – a decline of 10%.

For the purposes of Figure 21, the number of unsentenced prisoners incarcerated in the country as a whole during 2000 and 2001 is divided by ten. This has been done so that both trend lines fit on to the same graph and are of a similar magnitude to be visually compared with one another (Figure 21).

Cases processed by the Court Centre have a respectably high conviction rate. During 2001, four-fifths (80%) of district court trials and almost two-thirds (66%) of regional court trials resulted in a conviction (Figure 22). The discrepancy in the



conviction rate between courts closely reflects the national picture, where conviction rates in the district courts are higher than in the regional courts.

A valuable spin-off of the Pre-Trial Services Centre is its ability to identify wanted fugitives among the newly arrested persons who pass through its doors. The benefits this brings to the criminal justice system and the country as a whole are difficult to measure but are likely to be substantial.

Research has shown that the majority of serious crime in a society is committed by a relatively small proportion of criminals. It is estimated that approximately 10% to 20% of criminals are responsible for 80% of all serious crimes committed.⁷⁸ These are professional criminals, criminals involved in the organised crime milieu and criminal gangs, and people who start off their criminal careers committing petty offences and then progress to more serious offences at shorter intervals as they realise that they can get away with their actions. Consequently, it is possible that a number of potentially serious crimes are prevented for every fugitive or wanted person identified by the Pre-Trial Services Centre.

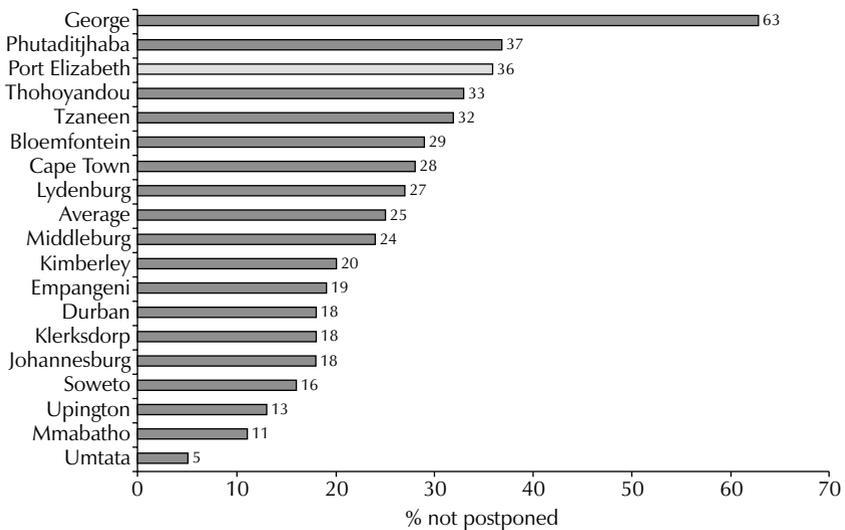
During 2000 and 2001 the Court Centre identified 1,197 (or an average of almost 50 per month) fugitives in this way – primarily people who had a warrant of arrest outstanding against them, and suspects in crimes committed in other parts of the country. The Pre-Trial Services Centre takes photographs of all the accused that it processes. This enables the centre to proactively distribute the photos of accused it suspects of having committed crimes elsewhere to relevant police precincts. This permits detectives in other parts of the country to recognise such accused.

In 2001 the Institute for Security Studies was commissioned by the National Prosecuting Authority to conduct a public and court user opinion survey regarding attitudes to service delivery in the magistrates' courts. One component of the survey was an exit poll whereby 100 persons (50 state witnesses and 50 crime victims) were interviewed at 18 magistrate's court sites in the country. The survey was conducted in October and November 2001 and included the Port Elizabeth magistrates' court.

One of the questions respondents were asked as they were leaving the court building was whether the case in which they had to testify as witnesses for the prosecution was postponed on that day. On average a quarter (25%) of the respondents throughout the country stated that their case had not been postponed. The best performing court covered by the survey in respect of

this question was George, where almost two-thirds of respondents said that their case had not been postponed. The Port Elizabeth magistrates' court had the third best ranking out of 18 in respect of the question with just over one-third (36%) of respondents stating that their case had not been postponed (Figure 23).

Figure 23: Courts where respondents said their cases had not been postponed, 2001



CHAPTER 5

THE WAY FORWARD: ROLLING OUT THE COURT CENTRE NATIONALLY

Identifying best practices

A BAC produced document on the IJS Court Centre lists the benefits that the Port Elizabeth Court Centre has had on service delivery:⁷⁹

- better communication with all role players who are accessible within one centre;
- improved productivity with motivated Court Centre participants physically located in one centre;
- integrated management of the court roll, docket court readiness, docket flow and docket security; and
- improved resource utilisation through the centralisation and shared use of equipment and human resources.

Given the Port Elizabeth Court Centre's contribution to improving service delivery and boosting the performance of the criminal justice system in a variety of ways, the question needs to be asked: What is the secret of the Court Centre's success? This is not an academic question. The Court Centre concept is being introduced in numerous courts throughout South Africa – almost 30 by mid-2002.⁸⁰ Identifying the best practices developed by the Port Elizabeth Court Centre will permit other centres to avoid mistakes and replicate tried and tested strategies that are successful.

Business–government partnership

There is little doubt that the Court Centre's integrated approach, whereby representatives of four key government departments (safety and security, justice, correctional services and welfare) are all given a role to play, is the key to the Centre's success.⁸¹ By closely involving them in the work of the Centre, each of these departments takes on the responsibility of making a success of

such a collaborative approach, thereby improving the service the departments deliver to the public and court users.

The Port Elizabeth Court Centre has a fifth partner which has been crucial to its success: organised business in the form of Business Against Crime. This is so for a number of reasons.

Firstly, the private sector tends to have skills that are in short supply within the South African criminal justice system. Most senior criminal justice managers at local level are former practising magistrates, prosecutors, police officers and prison wardens who were proficient at their jobs and were then promoted into management positions. There are some advantages to such a system. For example, a court manager with a background as a prosecutor or magistrate has an intimate understanding of the work done by his subordinates. The disadvantage of such a system of promotion is that many magistrates, prosecutors, police officers and prison wardens are not necessarily good managers. Moreover, they have generally not received any training in management skills.

It is fair to say that the state lacks the human resources required to effectively implement the Integrated Justice System. This lack of resources is at its greatest in respect of project management skills and, to a certain extent, information technology skills.⁸² The success of the Port Elizabeth Court Centre relies heavily on project management skills to integrate and streamline the various components of the Centre, and to co-ordinate the activities of the Centre's professional staff who are employed by a number of different government departments. BAC Eastern Cape provided a full-time project manager to the IJS in the province, who devoted much of his time to assist and conceptualise the Court Centre in Port Elizabeth.

Secondly, to get different government departments to work together for an extended period of time is usually fraught with difficulties. Each of the IJS-related departments has separate budgets, ministers and different mandates, who all too often jealously protect their interests.⁸³ The BAC-appointed IJS project manager for the Court Centre had the necessary neutrality and independence to convince the different departments to work together for the greater good. The ability of BAC to act as neutral facilitators between different departmental interest groups created a lot of synergy between the governmental role players involved with the Court Centre.⁸⁴ In the case of the Port Elizabeth Court Centre it further helped that the BAC project manager had a policing background. This gave him credibility among the Centre's criminal justice personnel, and imbued the project manager with a keen

understanding of the practical workings and bureaucratic intricacies of the criminal justice system.⁸⁵

Thirdly, business is more flexible than government. Not tied down by public service regulations, public sector unions, budgets which require parliamentary approval, executive policy decisions and steep hierarchical structures of decision-making, business can procure skills and resources, and adapt to a changing environment much more rapidly than state departments can. In the case of the Court Centre, BAC through its business sponsorships could at short notice refurbish the Centre, send Centre staff on training courses, and use its staff to work on Court Centre-related activities – something that would have been difficult for public servants and their departments to do.

Finally, the criminal justice system can function effectively only if the different departments work together. However, because of the reasons already mentioned and the lack of capacity in many departments, this kind of co-operation is often lacking. As a result departments and their staff can get so focused on their own activities that the “bigger picture” is ignored. BAC, with its mandate to assist with the implementation of an *Integrated Justice System*, is in a strong position to keep everyone’s energies focused on achieving the overall objective of developing a Court Centre where the activities of four departments are seamlessly integrated.

Relationship building

A strength of the Court Centre in Port Elizabeth is that a number of key BAC members – the provincial chairman, managing director and the BAC project manager for the centre – devoted a lot of their time building sound relationships with the different government departments involved with the Court Centre Project.

According to Matt Gennrich, BAC’s Eastern Cape chairman, “the relationship-building phase [with departments] is crucial prior to the implementation process of the Court Centre”.⁸⁶ Kevin Hustler, BAC’s managing director in the province, echoes these sentiments: “Continuously nurturing criminal justice system contacts and relationships, at both a strategic and operational level, is vital.”⁸⁷

The BAC-appointed IJS project manager, Pieter van Straaten, drew up the implementation plan for the Centre jointly with all the relevant provincial heads of departments. Only once this had been achieved did he develop the structure

of the Centre in conjunction with local departmental officials who were senior enough to make decisions without requiring prior approval from their provincial head-office. According to van Straaten, “crucial to building up good relationships with role players in the criminal justice system was the emphasis BAC placed on its supportive role – that it [BAC] was there to support, and not to prescribe to government departments what they should do”.⁸⁸

All relevant role players should be involved in the process of setting up a Court Centre. Prosecutors, magistrates, administrative staff, clerks of the court, court orderlies, and legal aid board personnel are just some of the groups that need to be included in such a process. All these role players need to be informed about what the Court Centre is, how it operates and how it will benefit them. Such role players should also be asked what they would like the Court Centre to do for them. If possible, such suggestions should be incorporated in the development of the Court Centre. “The Court Centre should be sold as a product to all who will be affected by it. Further, the Centre must accommodate the needs of all the role players that will be involved in its operation.”⁸⁹

People are the crucial resource

It is difficult for people to work effectively under stressful conditions, especially if their success is dependent on all the members of a team. As with most criminal justice personnel, the staff of the Port Elizabeth Court Centre work under difficult conditions: limited and insufficient resources and staff, and high workloads. Moreover, Court Centre staff members come from different departments, with varying salaries, leave and other employment-related benefits.

The reason the Court Centre works effectively is largely because of the motivated personnel that work there. Most of the Centre personnel are experienced and relatively senior. They consequently do not need to be micro-managed, as they are proud of the quality of their work and possess the necessary sense of responsibility not to let the work of the Centre and their team members down.

The choice of Court Centre personnel is consequently important. Ideally, Court Centre personnel should volunteer to join the Centre, and their selection should occur on merit and ability alone.⁹⁰ According to Kevin Hustler, it is important to build momentum and enthusiasm with achievable short-term goals that can be converted as “quick-wins”.⁹¹ Matt Gennrich identifies three important characteristics of good Court Centre staff: they must be committed

to change and the process of the Centre; they must be good communicators; and they must be self-starters who accept responsibility.⁹² Hannelie Bakker, senior public prosecutor at the Port Elizabeth magistrates' court, advocates the creation of permanent posts for Court Centre personnel to create the necessary continuity and team cohesion among the personnel of the Centre.⁹³

CHAPTER 6

CONCLUSION

Opinion polls reveal that after unemployment, crime and lawlessness is of the greatest concern to all South Africans. High levels of crime lead to death, loss and destruction, feelings of despair and insecurity, emigration and the loss of badly needed skills, vigilantism and a loss of trust in the institutions of government and the constitution.

Throughout South Africa communities are increasingly engaging in vigilante activity. This is largely as a result of popular perceptions that the country's post-1994 constitutional order and criminal justice system are at best ineffectual when it comes to fighting crime or, at worst, afford greater protection to criminals than law-abiding citizens. In its annual report for 2000 the Independent Complaints Directorate (a statutory oversight body of the South African Police Service) described a "dramatic" hardening of public attitudes towards the rights of criminals. "There seems to be a growing, popular perception that the constitutional rights of criminals are being protected above those of their victims," the directorate reported.

Most vigilante actions are localised and disorganised affairs. There are important exceptions to this, however. Mapogo-a-Mathamaga, for example, which openly advocates corporal punishment for suspected criminals, claims to have 70,000 fee-paying urban and rural members.⁹⁴ Notwithstanding the fact that some of Mapogo's leaders are facing charges of murder, assault and kidnapping, the organisation enjoys widespread support among middle class suburbanites in cities such as Pretoria and Johannesburg. A Markinor poll amongst commercial farmers in early 2001 found that almost two-thirds of respondents would "take the law into their own hands" if farm violence were not stopped.

More recently, a spate of sexual attacks on young girls, including the alleged gang-rape of a nine-month old baby girl and the rape of a five-month old, has drawn harsh reaction from the public and politicians alike. A man suspected of raping a five-year old girl was stoned to death in Soweto after residents set his house alight.

Clearly something needs to be done. Colombia and the Russian Federation present a stark warning of what South Africa could become if vigilante groups, criminals and the corrupting power of organised crime are left unchallenged.

The South African transition brought about a restructuring of the criminal justice system, the abolition of a number of laws, policies and operating procedures, and the rapid formulation of a plethora of new ones. A range of institutional and other constraints mitigated against the success envisaged for these interventions and programmes. Chief amongst these was the lack of assessment of the actual requirements for implementation – in short, the gap between the development of new (sometimes very ambitious) policy, and the managerial capacity, skill and resource requirements available for its implementation. This, as well as the increase in the number of cases processed in the South African criminal justice system, has resulted in the operational weakening of a number of criminal justice functions.⁹⁵

Since mid-1999, after the appointment of new ministers responsible for safety and security and justice, there has been a notable shift away from long-term policy making and crime prevention towards improved, tough and visible law enforcement. This is illustrated by the high-density, zero tolerance-type police and army operations taking place in high crime areas since April 2000 in terms of the police's Operation Crackdown. Governmental policymakers have also responded to increasing levels of lawlessness by promulgating a range of tougher laws.

A tough law-enforcement approach can be helpful, but not if the criminal justice system lacks the capacity to deal with large numbers of arrests. As a result of Operation Crackdown some 462,000 crime suspects were arrested within a one-year period – an amazing figure, representing in excess of 1% of the country's population.⁹⁶ However, most of the arrested persons were never prosecuted, as the courts, unable to cope with such a massive influx of cases, withdrew cases in record numbers. While laws can help, they take time to be adopted by the operational personnel of the criminal justice system and often end up infringing the rights and civil liberties of all.

One of the major flaws in government's approach lies in its inability to expeditiously rectify glaring weaknesses in the criminal justice system. Yet, how well the criminal justice system functions is important for several reasons. Firstly, a relatively small proportion of offenders is believed to commit the majority of serious crimes, and especially organised crime. If these perpetrators are apprehended and convicted timeously and effectively, certain crimes

can be reduced. Secondly, a functional system helps to deter potential offenders from committing a crime. Thirdly, an effective and efficient justice system inspires confidence among victims and witnesses and encourages them to participate in the criminal justice process, thereby leading to the arrest and conviction of offenders. Finally, criminal justice successes – especially if well publicised – are essential for boosting public confidence in the government’s ability to reduce crime and make people feel safer.

Improving the day-to-day functioning of the criminal justice system is one of the most important but also one of the most difficult goals for policymakers to achieve. It is relatively easy to pass a law, produce a new policy or instruct police officers to be “law enforcers” instead of focusing on crime prevention. It is considerably more difficult to change people’s attitudes, and managerial and operating systems within – and between – government departments, and to instil a spirit of co-operation and enthusiasm among worn out and under-resourced criminal justice employees.

It is this latter difficult goal which the Port Elizabeth IJS Court Centre has achieved in three short years. Using the entrepreneurial talents and skills of the private sector, some external business funding, and the latent enthusiasm and talent of criminal justice employees, the Centre has radically altered the way the criminal justice system works at an operational level, at one of the country’s busiest courts.

NOTES

- 1 *Victims of Crime Survey 1998*, Statistics South Africa, Pretoria, 1998.
- 2 *Provincial crime specific statistics for the period January to December 1994 to 2000*, Crime Information Analysis Centre, Pretoria, 2001, <http://saps.org.za/8_crimeinfo/bulletin/942000/index.htm>.
- 3 M Schönteich, *2001 Crime trends: A turning point?* SA Crime Quarterly 1, July 2002, pp 1–6.
- 4 S V Tshwete, media statement by the minister for safety and security, Cape Town, 31 May 2001.
- 5 *Attitudes to National Issues in South Africa*, Human Sciences Research Council, Pretoria, 1994 and 2000.
- 6 L Glanz, *South African cities under siege*, Indicator Crime and Conflict 2, Winter 1995, p 17.
- 7 Because the boundaries of city governments do not match those of the SAPS, the city analysis in this monograph is based on a selection of ‘police areas’ that best represent the cities discussed.
- 8 Caution needs to be exercised when comparing the annual number of cases recorded with the annual number of cases undetected, withdrawn, sent to court, and prosecuted and convicted (also called the ‘yearly-review’ method). Cases recorded during one year are often investigated and prosecuted during the following year. For example, the investigation of a complicated murder case reported in December 1999 might be finalised in mid-2000. The prosecution of the case may occur only in 2001. Rates based on the yearly-review method are premised on the assumption that the statistics are stable from year to year and that there is no growth or decline in backlogs. The advantage of the yearly-review method is that it is quick to collect data for an entire population. The yearly-review method is widely used both in South Africa and internationally. Moreover, a study which tracked the outcome of individual cases (also called the individual case tracking method) came to similar results as the yearly-review method. See R Paschke, *Conviction rates and other outcomes of crimes reported in eight South African police areas*, Research paper 18, Project 82, South African Law Commission, Pretoria (undated).

- 9 For a detailed description of the categories see M Schönteich, *Assessing the crime fighters. The ability of the criminal justice system to solve and prosecute crime*, ISS Papers 40, September 1999, pp 6–10.
- 10 This is the test prosecutors are supposed to use when deciding whether to institute a prosecution against a suspect. See *National Prosecuting Authority of South Africa Policy Manual*, October 1999, Pretoria, p A.3.
- 11 *The incidence of serious crime in South Africa between January and December 2000*, Crime Information Analysis Centre, Pretoria, 2001. E-mail to the author from Inspector Ina du Plessis, Crime Information Analysis Centre, Pretoria, 27 July 2001.
- 12 A 1996 survey of people on the Cape Flats (outside of Cape Town) found that most disapproved of, and were dissatisfied with, the performance of the SAPS and the courts. Overall, perceptions of the police and the courts were worse among those who had been victimised. Moreover, perceptions of the police and the courts were the most negative among those who had laid a charge and had had contact with the police and the courts. See, C Africa et al, *Crime and community action: Pagad and the Cape Flats, 1996–1997*, POS Reports 4, June 1998, p 11.
- 13 For a discussion of the various reasons why cases are withdrawn see M Schönteich, *Lawyers for the people. The South African prosecution service*, ISS Monograph Series 53, March 2001, pp 93–94.
- 14 Interview, Marnus Steyn, Court Management Unit, National Prosecuting Authority, Pretoria, 23 October 2000.
- 15 *National Prosecuting Authority of South Africa mid-term report*, 2000, p 8.
- 16 *National Prosecuting Authority of South Africa Policy Manual*, op cit, pp B.22 – B.25.
- 17 Section 92(1), Magistrates' Courts Act no. 32 of 1944, as amended, read with GN R1411 (Government Gazette 19435) of 30 October 1998.
- 18 *National Prosecuting Authority Annual Report 2001/2*, Pretoria, 2002, annexure B.
- 19 Over 95% of all criminal trials take place in the magistrates' courts (also known as the lower courts). Only the most serious crimes such as serial murders and particularly violent rapes are prosecuted in the high courts.
- 20 The conviction rate being the number of cases convicted as a proportion of the number of cases prosecuted.
- 21 The data for this figure comes from two different sources. The data for the years 1996–1999 is from the police's Crime Information Analysis Centre, while the 2000 and 2001 data are from the NPA's Court Management Unit. The NPA has been collecting court-related performance statistics since mid-1999. Compared to the police, the NPA is more intimately involved with what happens in the

- country's courts. Consequently use is made of NPA court-related statistics whenever these are available. Readers should note, however, that the CIAC and NPA statistics do not always coincide. Thus, for 2000 the NPA recorded 307,547 prosecutions compared to the police's 271,057. No prosecution statistics for 2001 had been released by the police at the time of writing.
- 22 *New plan to 'chop farm attacks*, Pretoria News, 14 February 2001.
 - 23 G Chuenyane, *Prosecutors struggle with load*, Sowetan, 12 October 2000.
 - 24 National Prosecuting Authority, *Annual Report 2001/2*, op cit, p 5, and Department of Justice and Constitutional Development, medium-term strategic framework (2000–2005), court services, <<http://www.pmg.org.za/docs/2002/appendices/020528court.htm>>.
 - 25 S Masuku, *Providing a 'correctional' service? Overcrowding in South African prisons*, Nedbank ISS Crime Index 5(5), September–October 2001, p 3.
 - 26 *Department of Correctional Services Presentation to the Select Committee on Security and Constitutional Affairs*, Cape Town, 7 June 2000.
 - 27 *Department of Correctional Services, Annual Report 1 January 2000 to 31 March 2001*, Pretoria, 2001, p 70.
 - 28 B Skosana, Parliamentary media briefing by the minister of correctional services, Cape Town, 12 February 2001.
 - 29 *Office of the inspecting judge, Annual Report 2000, Prison & Prisoners*, Cape Town, 2001.
 - 30 M Schönteich, *Justice versus retribution: Attitudes to punishment in the Eastern Cape*, ISS Monograph Series 45, February 2000.
 - 31 D C J Burger, et al, *Summary report of the Integrated Justice System*, 17 November 1998, p 3. The same objective is also contained in IJS Project: Executive summary, 20 September 1999, p 3, which is attached to the Business Against Crime business plan submission to Business Trust on the Integrated Justice System, 27 September 1999.
 - 32 D C J Burger, et al, op cit, p 11. Virtually identical benefits of the implementation of the IJS are contained in Business Against Crime business plan submission to Business Trust on the Integrated Justice System, 27 September 1999, p 2.
 - 33 Business Against Crime business plan submission to Business Trust on the Integrated Justice System, 27 September 1999, p 1.
 - 34 See M Shaw, *Crime and policing in post-apartheid South Africa. Transforming under fire*, David Philip Publishers, Cape Town, 2002, p 24.
 - 35 *The Integrated Justice System Court Centre. A blueprint of the Eastern Cape experience April 1999–February 2002*, BAC Eastern Cape, Port Elizabeth, 2002, p 1.

- 36 Interview, Hardie Fourie, IJS Programme Director, Pretoria.
- 37 *An evaluation of the BAC IJS-Project Office (1 July 2000 – 30 June 2001)*, Institute for Security Studies, Pretoria, 15 June 2001 (unpublished report).
- 38 *IJS Court Centre Project*, Department of Justice and Constitutional Development, Business Unit: Court Services, Pretoria, (undated), p 1.
- 39 The South African Bureau for Justice Assistance (part of the US-based Vera Institute of Justice) commenced its work in 1997. See, <<http://www.vera.org/>>.
- 40 Courting success, <<http://www.196.44.4.153/pubs/display/scripts/DispArticle/DispArticle.asp>>.
- 41 Ibid.
- 42 Section 7(2)(c), Correctional Services Act no. 111 of 1998.
- 43 Section 19, Correctional Services Act no. 111 of 1998.
- 44 Section 29, Correctional Services Act no. 8 of 1959, as amended by the Correctional Services Amendment Act no. 14 of 1996.
- 45 Section 29(5A), Correctional Services Act no. 8 of 1959, as amended by the Correctional Services Amendment Act no. 14 of 1996.
- 46 See M Schönsteich, *The dangers of youth? Linking offenders, victims and age*, Nedcor ISS Crime Index 3(5), September–October 1999, pp 22–28.
- 47 *Integrated management of awaiting-trial prisoners*, Bi-annual newsletter: NCPS 1(1), June 2000, p 4.
- 48 *The Integrated Justice System Court Centre*, op cit, p 8.
- 49 Ibid.
- 50 Interview, Ashwill Simon, previous SAPS ATP Project case review team member, Port Elizabeth, 27 February 2002.
- 51 *The Integrated Justice System Court Centre*, op cit, p 14.
- 52 See R Paschke, *Toward sound bail: The accused and pre-trial services*, Crime & Conflict 15, August 1999, pp 33–36.
- 53 Interview, Ms Hannelie Bakker, Senior Public Prosecutor, and PTS staff, Port Elizabeth, 26–27 February 2002.
- 54 R Paschke, op cit, pp 33–36.
- 55 This involved a promulgation in the Government Gazette (no. 21221, 2 June 2000) establishing a court seat for a periodical regional and district court.
- 56 Section 35(3)(c), Constitution of the Republic of South Africa Act 108 of 1996.

- 57 *The Integrated Justice System Court Centre*, op cit, p 27.
- 58 This is the test prosecutors are supposed to use when deciding whether to institute a prosecution against a suspect. See *National Prosecuting Authority of South Africa Policy Manual*, op cit, p A.3.
- 59 Section 84(1), Criminal Procedure Act no. 51 of 1977.
- 60 Interview, Ms Hannelie Bakker, Senior Public Prosecutor, Port Elizabeth, 26 February 2002.
- 61 As set out in *Shabalala and Others v Attorney-General Transvaal and Another 1995 (2) SACR 761 (CC)*, the prosecution may oppose access to documents contained in the police docket (or part of a docket) where: there is a real risk that the identity of an informer may be disclosed; state secrets may be revealed; state witnesses may be intimidated; the proper ends of justice may be impeded; policing methods and investigative techniques may be disclosed; or confidential co-operation between various police forces may be revealed.
- 62 *National Prosecuting Authority of South Africa Policy Manual*, op cit, pp A.5–A.6.
- 63 *The Integrated Justice System Court Centre*, op cit, p 30.
- 64 Interview, Hannelie Bakker, op cit.
- 65 For a breakdown of the Court Centre personnel and the staffing levels for each of the individual Court Centre services see *The Integrated Justice System Court Centre*, op cit, p 31.
- 66 *Department of Justice and Constitutional Development Annual Report*, 30 April 2000 – 31 March 2001, 2001, paragraph 2.115, p 24.
- 67 *Ibid*, paragraph 2.119, pp 24–25.
- 68 *Business Against Crime Eastern Cape Annual Report*, 2000–2001, Port Elizabeth, 2001, p 7.
- 69 *The Integrated Justice System Court Centre*, op cit, p 32.
- 70 M Schönteich, *Lawyers for the people. The South African prosecution service*, ISS Monograph Series 53, March 2001, pp 108–110.
- 71 It needs to be borne in mind that individual prosecutors throughout the country were responsible for keeping a record of statistics on hours lost in their courts. This methodology lends itself to potential bias as some prosecutors would have hesitated to blame themselves for lost court hours.
- 72 Interview, Piet Steyn, Provincial Head: Inspectorate, Department of Correctional Services, Port Elizabeth, 28 February 2002.
- 73 *Ibid*.

- 74 Interview, Rapphepheng Mataka, Provincial Commissioner (Eastern Cape): Department of Correctional Services, St Albans prison, 27 February 2002.
- 75 Interview, Peter Hundermark, Provincial Co-ordinator (Eastern Cape): Legal Aid Board, Port Elizabeth, 28 February 2001.
- 76 *The Integrated Justice System Court Centre*, op cit, p 21.
- 77 Ibid.
- 78 M Schönreich, *Rocky road ahead? Crime in South Africa over the next ten years*. Paper presented at the 2000 annual national conference of the Security Association of South Africa, Midrand, 12 October 2000.
- 79 *The Integrated Justice System Court Centre*, op cit, p 32.
- 80 *IJS Court Centre Project*, Department of Justice and Constitutional Development, Business Unit: Court Services, Pretoria, (undated), p 5.
- 81 Interview, Ross Siphon Mpongoma, Provincial Commissioner (Eastern Cape): South African Police Service, Bisho, 26 February 2002.
- 82 *An evaluation of the BAC IJS-Project Office (1 July 2000 – 30 June 2001)*, op cit.
- 83 Interview, Peter Rothman, Chief Magistrate: Port Elizabeth, Port Elizabeth, 28 February 2002.
- 84 Interview, Kevin Hustler, Managing Director: BAC Eastern Cape, Port Elizabeth, 26 February 2002.
- 85 Interview, Ross Siphon Mpongoma, op cit.
- 86 Interview, Matt Gennrich, Chairman: BAC Eastern Cape, Port Elizabeth, 1 March 2002.
- 87 Interview, Kevin Hustler, op cit.
- 88 Interview, Pieter van Straaten, Project Manager: BAC Eastern Cape, Port Elizabeth, 27 February 2002.
- 89 Interview, Willie Pretorius, Senior Public Prosecutor, Port Elizabeth, 27 February 2002.
- 90 Ibid.
- 91 Interview, Kevin Hustler, op cit.
- 92 Interview, Matt Gennrich, op cit.
- 93 Interview, Hannelie Bakker, op cit.
- 94 M Sekhonyane and A Louw, *Violent justice. Vigilantism and the state's response*, ISS Monograph Series 72, April 2002, p 36.

- 95 See, E Pelsler, J Rauch, S Henkeman, *DFID review: Safety, security and access to justice* (unpublished discussion document), Institute for Security Studies, Pretoria, 30 March 2001, p 11.
- 96 *New plan to 'chop farm attacks*, op cit.