E - M A N T S H I

A KZNJETCOM Newsletter

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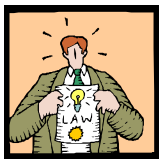
Welcome to the twenty-first issue of our KwaZulu-Natal Magistrate's newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

The Firearms Control Amendment Act, Act 28 of 2006 which was published on 22 August 2007 in Government Gazette No. 30210 will amend the Firearms Control Act when it is put into operation. Some of the important amendments which magistrates must be aware of are the following:

a) The definition of ammunition is substituted by the following definition 'ammunition' means a primer or [complete] cartridge.
Likewise the definition of a cartridge is amended as follows:
"'cartridge' means a complete object consisting of a cartridge case, primer (whether rimfire or otherwise), propellant and a bullet or shot, as the case may be."

b) The following definition is added for a muzzle-loading firearm:
(a) a barrelled device that can fire only a single shot, per barrel, and requires after each shot fired the individual reloading through the muzzle end of the barrel with separate components consisting of a –
(i) measured charge of black powder or equivalent propellant;
(ii) wad; and
(iii) lead bullet, sabot or shot functioning as a projectile, and ignited with a flint, match, wheel or percussion cap.

c) Section 3 of the principal act will now read as follows:
"General prohibition in respect of firearms and muzzle loading firearms

3. (1) No person may possess a firearm unless he or she holds for that firearm –

(a) a licence, permit or authorisation issued in terms of this Act [**for that firearm**]; or

(b) a licence, permit, authorisation or registration certificate contemplated in item 1, 2, 3, 4, 4A or 5 of Schedule 1.

(2) No person may possess a muzzle loading firearm unless he or she has been issued with the relevant competency certificate".

d) A muzzle loading firearm is now also included in the provisions of section 103 and 104 of the Act as a firearm.

e) There is the following addition to Section 103 of the Act:

"(6) This section does not apply in respect of the payment of an admission of guilt fine in terms of section 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(7) When a person becomes or is declared unfit to possess a firearm or muzzle loading firearm in terms of this section, the court dealing with the case must determine the duration of unfitness, which duration must depend on the seriousness of the conduct which gave rise to the unfitness and which may not be less than 10 years calculated from the date of conviction.".

Recent Court Cases

1. MABUZA v THE STATE [2007] SCA 110 (RSA)

It is not a prerequisite for a fair trial that there is a verbatim recording of the magistrate's explanation of the rights of unrepresented accused and the response of the accused.

Our courts have indeed established guidelines dealing with what Goldstone J described in *S v Radebe*; *S v Mbonani* 1988 (1) SA 191 (T) as the

'general duties on the part of judicial officers to ensure that unrepresented accused fully understand their rights and the recognition that in the absence of such understanding a fair and just trial may not take place.'

He went on to say that:

'If there is a duty upon judicial officers to inform unrepresented accused of their legal rights, then I can conceive of no reason why the right to legal representation should not be one of them. Especially where the charge is a serious one which may merit a sentence which could be materially prejudicial to the accused, such an accused should be informed of the seriousness of the charge and of the possible consequences of a conviction. Again, depending upon the complexity of the charge, or of the legal rules relating thereto, and the seriousness thereof, an accused should not only be told of this right but he should be encouraged to exercise it. He should

be given a reasonable time within which to do so. He should also be informed in appropriate cases that he is entitled to apply to the Legal Aid Board for assistance. A failure on the part of a judicial officer to do this, having regard to the circumstances of a particular case, may result in an unfair trial in which there may well be a complete failure of justice. I should make it clear that I am not suggesting that the absence of legal representation *per se* or the absence of the suggested advice to an accused person *per se* will necessarily result in such an irregularity or an unfair trial and the failure of justice. Each case will depend upon its own facts and peculiar circumstances.' (at 196 F-I).

This court quoted these dicta with approval in *S v Mabaso* 1990(3) SA 185(a) at 203 C-G and they have frequently been referred to since.

When the state intends to rely on a specific sentencing regime, as in the present matter, our courts have in the same vein insisted that a fair trial requires that

'its intention pertinently be brought to the attention of the accused at the outset of the trial, if not in the charge-sheet then in some other form, so that the accused is placed in a position to appreciate properly in good time the charge that he faces and the possible consequences (*S v Ndlovu* 2003(1) SACR 331 (SCA) at para 12)'.

And it is evident, as Lewis JA said recently in *S v Sikhipa* 2006(2) SACR 439 SCA at para 10. that

'where an accused is faced with a charge as serious as that of rape, and especially where he faces a sentence of life imprisonment, he should not only be advised of his right to a legal representative but should also be encouraged to employ one and seek legal aid where necessary. It is not desirable for the trial court in such cases merely to apprise an accused of his rights and to record this in notes: the court should, at the outset of the trial, ensure that the accused is fully informed of his rights and that he understands them, and should encourage the accused to appoint a legal representative, explaining that legal aid is available to an indigent accused.'

But while the trial of an unrepresented accused might be unfair if he or she is not properly informed of rights that are relevant, it does not follow that the failure to record the fact that he or she was so informed, (verbatim or otherwise) equally renders the trial unfair. On the contrary the failure to record what was told to the accused does not impact upon the fairness of the trial and cannot by itself render the trial unfair. To the extent that the contrary was held in *Thompson* and *Sibiya*, those cases were wrongly decided.

2. WESSELS v PRETORIUS [2007] SCA 108 (RSA)

A father can be liable for injury to a passenger where he permits his minor son to drive a vehicle without supervision and the passenger is injured

On Saturday, 2 March 2002 Benjamin Pretorius was a matric student just short of his seventeenth birthday. On the afternoon of that day he was one of four teenage passengers on the open back of a truck (a 'bakkie') belonging to the appellant and

driven by his son Albert (then aged 16 years and 10 months), an unlicensed driver. The vehicle had just left the appellant's farm and entered the Mareetsane road in the Lichtenburg area. It was travelling at about forty kilometres per hour when Albert performed a manoeuvre known as a 'handbrake turn'. That apparently requires a sudden application of the handbrake with a simultaneous drag on the steering wheel. If skilfully executed on a loose surface - the Mareetsane road was sand or gravel - the vehicle will slew to a stop in its original direction of travel after having turned a full circle. Such a stunt excites the youth, no doubt because of the inherent hazard that it involves. The trial judge (Landman J) seems to have accepted that immediately before the incident Albert warned Benjamin and the other passengers of his intentions. Benjamin, unfortunately, either did not hear or did not respond appropriately because he was not holding on to the roll bars (or any other part of the bakkie) at the critical moment. He was thrown off and suffered grievous injuries. By the time of the appeal all the aforegoing facts were common cause.

The court was satisfied that the respondent succeeded in establishing on a balance of probability that Albert in fact possessed the appellant's permission to use the vehicle on the afternoon of 2 March 2002. Whether that consent was granted expressly one does not know; it was certainly the subject of an unspoken understanding between father and son which was sufficient to overcome whatever limitation generally prevailed on such use.

The respondent had to prove that the appellant was negligent in allowing Albert to drive the vehicle and such negligence was causally connected to the injuries suffered by Benjamin (see, eg, *De Beer v Sergeant* 1976(1) SA 246 (T) at 251 D-G; *Godfrey and Others v Campbell* 1997 (1) SA 570 (C) at 577E-580I). Counsel for the appellant argued that both parents knew Albert to be a competent driver and that the conduct which gave rise to the claim was not reasonably foreseeable by them in the circumstances. But the conclusion does not follow from the premise. The performing of the stunt did not detract from Albert's skill as a driver. Nor did it *per se* matter that he was, to the knowledge of the appellant, not in possession of a licence to drive on public roads. The appellant's negligence lay rather in giving unrestricted access to the vehicle to a boy who lacked both maturity and judgment in circumstances where it should have been obvious that peer pressure might adversely influence his decisions in driving that vehicle. The conduct of the appellant was no different in principle from the case of a person who has control of a dangerous object (e.g. a firearm, a motor vehicle or a bottle of poison) and gives such control into the hands of another whom he ought to know is ill-equipped, by reason of physical or mental infirmity, lack of insight or self-control, to exercise proper or sufficient supervision over that object to prevent harm being caused to himself or others. Such abandonment of control is culpable and the person who allows it is liable for damage which results (within the confines of legal remoteness).

In the present instance the appellant admitted in cross-examination that he was aware that teenagers are not always obedient, sometimes behave badly and take chances. Although he did not believe that his son would behave irresponsibly, he conceded that he would not go so far as to say he thought that would never happen. It is notorious that when groups of teenage boys (with or without girls) come together

in circumstances where there is opportunity to show off or assert themselves, the potential for overstepping the bounds of reasonable behaviour is present. Misuse of a motor vehicle by speeding or acting the daredevil is an easily foreseeable hazard in such an environment. A prudent father would have taken the steps reasonably necessary to prevent his son from falling into either the temptation or the danger, either by withholding consent or by securing the keys. The appellant did neither.

The court concluded therefore that the respondent succeeded in proving that the appellant negligently made his vehicle available to his son in the circumstances in which he ought reasonably to have foreseen that the boy might use it so as to cause harm to himself or others. The damage which resulted was causally connected to his negligence. That was sufficient to impose personal liability on the appellant.

1. S v. N. 2007(2) SACR 398 (ECD)

Direct imprisonment for juvenile with previous convictions on a petty theft charge inappropriate.

The accused, a 15-year-old boy, was convicted of stealing a loaf of bread valued at R3, 25, and sentenced to eight months' imprisonment. On automatic review the High Court proceeded in terms of the proviso to s 304(2) (a) of the Criminal Procedure Act 51 of 1977, which empowered the Court to review a magistrate's decision without first obtaining his or her comments if the Court was of the opinion that the decision was clearly not in accordance with justice, and if delay would prejudice the convicted person. The conviction was in order, but the sentence was not. The theft of a loaf of bread was the archetypal petty theft. It should have been obvious to the magistrate that, in these circumstances, direct imprisonment, even for a boy with behavioural problems, was entirely inappropriate and disproportional to the crime. Nothing could be done to undo the time the accused had spent in prison (from 13 December 2006 to 6 March 2007), but, to reflect the reality of what had happened to him, the sentence of eight months" imprisonment would be replaced with a sentence of two months and three weeks' imprisonment, backdated to 13 December 2006. This should not be considered as an endorsement that this was an appropriate sentence for a 15-year-old, even with four relevant previous convictions, convicted of stealing a loaf of bread.

2. S v. QWABE 2007(2) SACR 411 TPD

If juvenile already sentenced to correctional supervision a further sentence of correctional supervision may be inappropriate.

The accused, a 16-year-old boy, was charged with assault with intent to do grievous bodily harm. He was not legally represented. Upon conviction he was sentenced to a period of correctional supervision. The matter came before the High Court on review.

Held, that the accused had been properly convicted. However, the printed form used for the sentence of correctional supervision had been completed by the magistrate in a slovenly fashion. It was unclear what the conditions of the accused's house arrest were. It was of the greatest importance that such a form be completed

meticulously so that no doubt existed as to the court's order. For this reason alone the sentence must be set aside. (At 413a-b.)
Held, further, that the magistrate had had insufficient information before him to enable him properly to consider sentence. It appeared from a social worker's report that the accused was already undergoing a period of 12 months' correctional supervision. This was something which the magistrate ought to have taken into account. Unfortunately, the probation officer's report *in casu* had not been a thorough one, and it left the magistrate with insufficient information to decide whether a further sentence of correctional supervision would be appropriate. (At 413*c-i*.)
Held, further, that even though the offence had been a serious one, it was necessary to have regard to the rehabilitation of the accused and to the probable effect of a further period of correctional supervision. The sentence of correctional supervision which he was already serving might have the desired rehabilitative effect, and the imposition of a further sentence of corrective training was, in the circumstances, inappropriate. (At 414*e-i*.)
Held, accordingly, that the magistrate should rather have postponed the passing of sentence unconditionally for a period terminating at the end of the existing sentence of correctional supervision, and ordered that, in the meantime, the accused be placed under the supervision of the Department of Correctional Services. (At 414*i*-415*a*.)
Sentence set aside. Postponement of sentence in terms of s 297(1)(*a*)(ii) of the Criminal Procedure Act 51 of 1977 ordered. Accused placed under supervision of corrective officer of Department of Correctional Services in terms of s 290(1)(*a*) of Act 51 of 1977.

From The Legal Periodicals

HOCTOR, S.

"Sentencing reckless or negligent driving" 2007 Obiter 111.

KELLY-LOUW, M.

"The right of access to adequate housing: Does it prevent an execution order?
2007 JUTA BUSINESS LAW, v 15(1), p 32.

MAKAKABA, P.

"Rubber cheques: Busting some myths"
2007 JUTA BUSINESS LAW, v. 15(1), p 17.

BROUWN, B AND MEINTJIES-VAN DER WALT, L.

"The use and misuse of statistical evidence in criminal proceedings"
VOL 32(1) JOURNAL FOR JURIDICAL SCIENCE p 1.

FERREIRA, S.

"Adoption, the Child Care Act and the Children's Act"
V 20(2) 2006 Speculum Juris 129.
(If anyone wants a copy of any of the above articles you request it from gvanrooyen@justice.gov.za)

Contributions from Peers

UNSWORN OR UNAFFIRMED EVIDENCE: WHEN ADMISSIBLE

Introduction
The general and peremptory rule is that in criminal proceedings no person may be examined as a witness unless he or she is under oath, as prescribed in section 162 of the CPA. This provision is subject to the exceptions in sections 163 (1) [affirmation] and 164 (1) [unsworn or unaffirmed evidence] of the CPA. It is the latter provision which is the subject of the present focus, owing to the numerous higher court decisions resulting from irregularities in the application of its principles in the lower courts.

The underlying operational principle
Common to each of the three provisions of the CPA referred to is the fundamental principle that if a presiding officer is not satisfied that a witness has the capacity to distinguish between truth and falsity, that witness is not competent to testify. It is from this basic premise that a presiding officer will proceed to apply these provisions.

Section 164 (1) of the CPA
"*Any person who, from ignorance arising from youth, defective education or other cause, is found not to understand the nature and import of the oath or affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation: Provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding judge or judicial officer to speak the truth, the whole truth and nothing but the truth.*"

A series of higher court decisions relating to the application of this provision will be referred to below in order to establish with clarity what the current legal position is:

S v Malinga 2002 (1) SACR 615 (N)
The accused was convicted by a regional court of raping a nine year old girl and referred to the High Court for sentence. The High Court confirmed the conviction and imposed sentence, but granted leave to appeal against the conviction.
The complainant gave her evidence through an intermediary without being sworn in or warned to tell the truth or asked whether she understood an oath. During the course of the complainant's evidence the magistrate interrupted her and indicated that the court had omitted to formally warn the witness. The following questions were

put to her:
"*Do you know the difference between truth, that which really happened, and lies, make up stories? Yes your worship.*
And people who come to Court they are expected to speak only the truth? Yes your worship.
And will you continue to tell the truth hereafter? Yes your worship."
In setting aside the conviction and sentence it was held that before applying the provisions of section 164 (1), a finding must be made that the witness does not understand the nature and import of an oath and, in order to reach such a finding, there must be some form of preliminary inquiry. If after such inquiry the court finds that the witness does not have the capability to understand the nature and import of an oath, it should establish whether he or she knows what it means to speak the truth. In the instant case the record did not reveal that any inquiry was made to establish whether the complainant was able to understand the nature of an oath neither did it reveal any finding made by the magistrate as required by section 164 (1). Non compliance with this provision, therefore, rendered the evidence given by the complainant inadmissible.

Director of Public Prosecutions, KwaZulu-Natal v Mekka 2003 (2) SACR 1 (SCA)
The respondent was convicted by a regional court of rape and indecent assault of a nine year old girl and sentenced to 10 years' imprisonment. On appeal, and in setting aside the conviction and sentence, the NPD held that the magistrate failed to inquire from the complainant whether she understood the nature and import of the oath and that such failure constituted an irregularity rendering the complainant's evidence inadmissible.

The proceedings in the regional court preceding the complainant's testimony were recorded as follows:
"*Court: M. how old are you?*
M: I'm nine years.
Court: Do you go to school?
M: Yes.
Court: What standard are you in class?
M: Standard 2.
Court: You're a clever girl. All right, do you know the difference between truth and lies?
M: Yes.
Court: What happens to you at school if your teacher finds out you are telling lies?
M You get punished.
Court: All right, it's very important you tell us the truth today in court and you're warned to tell the truth."

The regional magistrate conceded that she never inquired from M whether she understood the nature and import of the oath or whether she considered the oath to be binding on her conscience before admonishing her to tell the truth, but added that she believed that due to the complainant's tender age she would not have understood the nature and import of the oath and therefore merely admonished her to tell the truth after she was found to be a competent witness who knew the

difference between truth and falsehood.

The SCA, in its judgment referred to *S v Malinga (supra),* but did not follow it. In concluding that the magistrate did not commit any irregularity by allowing the complainant to testify after having warned her to tell the truth and in upholding the appeal, the court, referring to and confirming the correctness of its previous judgment in *S v B* 2003 (1) SACR 52 (SCA), held that an inquiry is not always necessary in order to make the finding required by section 164 (1) and that the mere youthfulness of a witness may justify such a finding. The fact that the magistrate, after having established the age of the complainant, proceeded to inquire whether she understood the difference between truth and lies and then warned her to tell the truth was a clear indication that she considered that the complainant, due to her youthfulness, did not understand the nature and import of the oath. The magistrate confirmed this in her reasons and the magistrate did, therefore, make a finding that the complainant was a person who, from ignorance arising from youthfulness, did not understand the nature and import of the oath.

Lewis & another v S [2003] JOL 11219 (C)
Both *B* and *Mekka* [*supra*] were applied and followed by the court in dismissing a contention that the evidence of a 14 year old witness was inadmissible because the magistrate omitted to hold an inquiry before he formed an opinion that the witness did not understand the nature and import of the oath or affirmation. The court held that nothing more is required of the presiding judicial officer than to form an opinion that the witness does not understand the nature and import of the oath or affirmation due to ignorance, arising from youthfulness, defective education or any such like cause. The record of proceedings showed that the magistrate was informed by the witness that he was 14 years of age before he tendered his evidence, and arising from this information the magistrate had formed an opinion that the witness did not understand the nature and import of the oath or affirmation. Based on this opinion the magistrate proceeded to admonish the witness to speak the truth, the whole truth and nothing other than the truth.

S v Chalale 2004 (2) SACR 264 (WLD)
In an automatic review before Borchers J (Marais J concurring), the two State witnesses were aged 17 and 15 respectively. In both cases, the magistrate failed to inquire from them whether they understood the meaning of taking an oath: He simply admonished both to tell the truth in terms of section 164 (1) of Act 51 of 1977. The Court held that before the provisions of section 164 (1) can be utilized, the judicial officer is required to make a finding that the witness does not understand the nature and import of the oath due to 'ignorance arising from youth, defective education or other cause'.

Referring to *B* and *Mekka* [*supra*] the court held that where, in this case, the witnesses were 17 and 15 years old, there was no information available to the magistrate upon which he could form an opinion that they did not understand the nature and import of the oath and that in the court's experience, youths of 17 and 15 years usually do understand the import of the oath: The opposite can certainly not be presumed and this was a case where, in order to reach the finding required by

section 164 (1), the magistrate should have made the necessary inquiries.

The judgment in *S v Gallant* (an unreported case of the Eastern Cape Division of the High Court delivered on 19 July 2007: Case No. CA&R 69/06) by Revelas J (Plaskett j concurring) reveals an interesting dimension to the topic and seems to be at variance with *B* and *Mekka* on one material aspect where it held that:
"*[17] The Magistrate seems to have assumed that because the three witnesses were of the Islamic faith, they would automatically object to the prescribed oath and would not be prepared to take the oath. He erred in doing so. Once he deviated from administering the oath in terms of section 162 of the Act, and attempted to administer an affirmation and admonition as envisaged in sections 163 and or 164 of the Act, he compounded his error by not applying the latter sections properly either. In respect of his attempt to apply section 164, he should first have established whether the complainant and her brother understood the oath. Any finding as to the inability to take the oath must be preceded by some form of enquiry or investigation, albeit not an express or formal one. This, the Magistrate also failed to do. (Vide: S v B supra at 64F, and S v Sikhipha 2006 (2) SACR 439 (SCA)).*
[18] Even though the complainant was eight years old when the alleged incident occurred, she was eleven years old when she gave evidence. Without any enquiry, there could be no proper finding that her youthfulness was the basis for not administering the oath. Neither was there an indication that her education was defective (she was in Grade 5) to the extent that she could not understand the oath. In S v Pienaar 2001 SACR 391 (C) the Magistrate in the court a quo was criticized for assuming that a thirteen year old person was too young to understand the oath. It was further held that even younger persons might regard the oath as binding on their consciences and their evidence should rather be on oath, than not. The same principles apply with even more force, to the testimony of the complainant's brother.
[19] The Magistrate's attempt to establish whether the complainant and her brother knew the difference between truth and lies when he admonished them was also insufficient for purposes of compliance with section 164 of the Act. The remarks of Rose-Innes J in S v V 1998 (2) SACR 651 (C) at 652 h-i, in respect of admonishing a witness are apposite:
"Similarly where a witness does not understand the religious sanction of the oath and resort is had to section 164 to admonish the witness to speak the whole truth, the witness cannot be so admonished unless she comprehends what it is to speak the truth and to shun falsehood in her evidence. This capacity to understand the difference between truth and falsehood is thus an prerequisite for the oath, the affirmation and an admonition in terms of section 164."
[20] In my view, there is merit in the appellant's counsel's submission that to simply ask a witness whether Allah and the parents of the witness "like truth", and whether she knows the difference between truth and lies, is to leave the witness to decide, (instead of the Magistrate by further enquiry), whether the witness indeed knows the difference."

Conclusion
No doubt the reader may well be asking: What has changed since *Malinga* then? The answer, in my view, lies in what was said in *B (supra)* in par. [15] and *Sikhipa*

(*supra)* in par. [13] of the respective judgments where it was held that there is no express requirement in section 164 (1) that a presiding officer must hold an investigation or formal enquiry to establish if a witness understands what it means to take an oath. It may for example happen that, when there is an attempt to administer the oath or obtain an affirmation, it comes to light that the person concerned does not understand the nature and meaning of the oath or affirmation. Sometimes the youthfulness of the child called will, in itself, indicate that the child is ignorant of the meaning of an oath and in such case, no further investigation need be conducted. Nothing more is required than that the presiding judicial officer form an opinion that a witness does not understand the meaning of the oath or affirmation, owing to ignorance arising from youth, defective education or other cause. Where, however, there are no such self evident indications, the record should reflect the factors that precipitated the opinion. Although preferable, no formal recording of a finding is required.

The conclusion would seem to be that the record of proceedings should at least reveal some objectively ascertainable fact or circumstance from which it can be established that the witness does not understand the meaning of the oath or affirmation. Although each case will depend on its merits, it may be wise to err towards caution and thoroughness, rather than inviting one's judgment for second-guessing. For that reason it is necessary to inquire whether the witness concerned understands the difference between truth and falsehood for purposes of the admonition [the question whether such an inquiry needs to be held was not decided in *B*, *Mekka* and *Sikhipa*, and therefore, *Malinga* and *Gallant* remain binding on this aspect].

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Senior Magistrate: Durban

If you have a contribution which may be of interest to other Magistrates could you forward it via email to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or by fax to 031 3681366 for inclusion in future newsletters.

According to recent media reports the Big Business Working Group presented President Mbeki with a report entitled 'Review of the Criminal Justice System' at a meeting on 3 August. The report has yet to be presented to the full Cabinet. Apparently the report identifies a number of reasons for the poor performance of the criminal justice system (police, courts and prisons) followed by, amongst others, the following recommendations:

- **the creation of a permanent *'justice system operations team'* comprising senior detectives (and forensic experts) and senior prosecutors, and a permanent *'justice system strategy team'* comprising the relevant directors-general and heads of agencies;**

- **the appointment of a person (e.g. a minister) without executive powers to coordinate and manage the new *'justice system'*; and**

- **the increase of the number of detectives to between 25% – 33% of the total establishment of the police (i.e. from approximately 22 000 to between 40 000 – 52 000)**

There is no denying the serious problems that continue to exist within the criminal justice system, and every attempt to improve its effectiveness and efficiency should be welcomed. Of special importance is the 'rediscovery' of the sound principle of good detective-prosecutor cooperation during the process of investigation and prosecution. Increasing the number of detectives should also go a long way in relieving what is currently an impossible workload and in ensuring better quality and more successful investigations.

However, and keeping in mind that much of the content of the report has yet to be made public, the proposal does give rise to a number of pertinent questions. For example:

- **What about the capacity of our correctional facilities (prisons)? Improvements in the capacity and efficiency of the police and courts will certainly result in larger numbers of convictions and prison sentences.**

- **At what level will the *'justice system operations team'* operate? If the idea is to appoint such a team only at national level its impact will be very limited. For the success of this initiative it is important that such a 'team' also operate at least on a regional level. (At this stage it is unclear what the mandate of such a team will be, but it is assumed that part of its responsibility will be to ensure that criminal investigations receive proper attention, that they are efficiently prosecuted and that all**

possible obstacles in this process are timeously identified and addressed).

- **What will the relationship be between the new justice system and the JCPS Cluster (Justice, Crime Prevention and Security)? The JCPS already exists with the purpose of coordinating activities within the criminal justice system at both national and provincial level.**

- **What authority will the 'minister' responsible for the new justice system have to perform his/her coordinating and management functions *vis-à-vis* the other ministers whose ministries play a role in the criminal justice system? Ministers and other senior officials are notoriously reluctant to comply with 'instructions' or requests from their colleagues. This is one of the main reasons why the 1996 National Crime Prevention Strategy (NCPS) failed. The NCPS did not fail so much because of its inherent weaknesses, but because of bureaucratic obstacles.**

- **What will the legal framework (mandate) for the new justice system and its 'organs' be? For example, will it be legislated for or will an existing Act be amended to accommodate the new system?**

Generally speaking, this initiative is a step in the right direction. But, if it is to have any real impact, this must be just the beginning of a much more comprehensive approach to crime. There seems to be a fixation with the criminal justice system as the ultimate solution to South Africa's crime problems. Important as it may be to 'fix' the criminal justice system, it remains only one part of the solution. The criminal justice system will forever remain a response to crime and therefore we also need to start looking at proactive solutions. The idea of improved coordination is the right one, but we need to coordinate at a higher level all government efforts to combat crime, both those that are proactive and those that are reactive. It is clearly important to address the problems in the criminal justice system, but this must be done as part of a more comprehensive and authoritatively coordinated approach that will also address the socio-economic causes and other conditions conducive to crime.

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