

MENDING THE FRACTURES

**Lessons Learnt from a
Five-year Intervention to
Strengthen the Criminal
Justice Sector in
KwaZulu-Natal**

Iole Matthews

Matthew J. Smith

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Strengthen the Criminal Justice Sector in KwaZulu-Natal

Iole Matthews & Matthew J. Smith

Independent Projects Trust

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Independent Projects Trust

Suite 3, 4 The Crescent, West Way Office Park, Westville, 3630 South Africa

www.ipt.co.za / www.justiceforum.co.za

ABBREVIATIONS

BAC	Business Against Crime
CJS	Criminal justice system
CJSP	Criminal Justice Strengthening Project
CP	Chief Prosecutor
CPF	Community Police Forum
DOJ	Department of Justice
DOJ&CD	Department of Justice and Constitutional Development
DPP	Director of Public Prosecutions
DDPP	Deputy Director of Public Prosecutions
IJF	Integrated Justice Forum
IJS	Integrated Justice System
KZNPA	KwaZulu-Natal Prosecuting Authority
KZNPS	KwaZulu-Natal Prosecuting Service
LCMC	Lower Court Management Committee
NDPP	National Director of Public Prosecutions
NPA	National Prosecuting Authority
NPS	National Prosecuting Service
NCPS	National Crime Prevention Strategy
PIJF	Provincial Integrated Justice Forum
PIJSF	Provincial Integration Justice System Forum
SAPS	South African Police Service
SETA	Sector Education and Training Authority
SPP	Senior Public Prosecutor

The Independent Projects Trust (IPT)

Founded in 1990, the Independent Projects Trust is a facilitation, training and research organisation which seeks to work with organisations, both public and private, that are undergoing transformations owing to political, social and economic changes.

The IPT has a wide range of associates with extensive experience who, over the last 18 years, have developed a methodology which ensures effective consultative and collaborative problem solving processes within targeted organisations. A primary focus of the IPT's work is on building and strengthening interpersonal and intergroup relationships.

Acknowledgements

This book is the culmination of five years of work within the courts of KwaZulu Natal. We would like to thank the Atlantic Philanthropies for their unprecedented commitment to five years of funding for this project. We would also like to acknowledge the many Magistrates, Prosecutors and Court Officials without whom we could never have delivered this project.

“The ordinary administration of criminal and civil justice ... contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem and reverence towards the government”

Alexander Hamilton, The Federalist (1787)

Mending the Fractures

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Chapter I

Introduction

INTRODUCTION

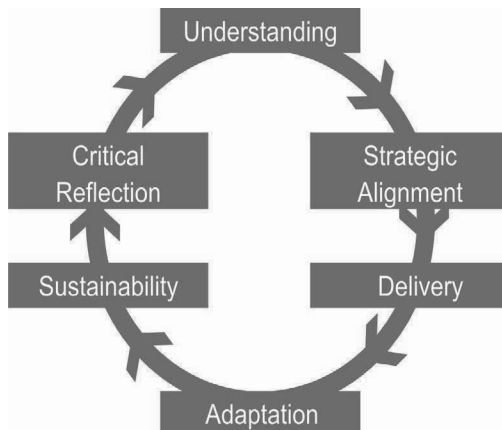
In 2002, the Independent Projects Trust (IPT) with funding from The Atlantic Philanthropies embarked upon the Criminal Justice Strengthening Project (CJSP), an ambitious venture designed to support transformation of the criminal justice sector in KwaZulu-Natal. Since that time the project has enabled the IPT to participate in a wide range of innovative activities with key role players in the sector. In this monograph we document these activities and the lessons learnt from this intervention. It has been our intention to capture the thoughts and processes of the intervention, to provide a record, and most importantly, to share the knowledge gained during these five years.

This monograph begins with a brief overview of the context in which we were operating, an outlining of the analytical framework and a summary of the factors that shaped the original design of the intervention, as well as details regarding the objectives of the project.

Using the analytical framework outlined below the authors attempt to draw out the lessons learnt from working with the KwaZulu-Natal Prosecuting Service, the Department of Justice's court support services, the magistrates, and the KwaZulu-Natal Provincial Integrated Justice Forum. The monograph reflects on these lessons and ends with several recommendations for consideration by other agencies which may be involved in similar public sector transformation programs in the future.

The Analytical Framework

Previous work that IPT conducted as externally funded implementers in a range of sectors revealed that a number of key steps were necessary in any project cycle to maximise the successful achievement of objectives. These are identified in the model below:



These phases are further explained as follows:

Understanding: This phase involves getting to know the individuals and the relationships within the target organisation or department. Our experience has been that one has to understand the systems and processes in order to provide a response which is in line with organisational strategy and needs. This is a time consuming and taxing phase and can only be done by building relationships with people at all levels of the organisation. However only when this is achieved can one provide an empathetically designed intervention which has the buy-in, support and commitment of a wide range of role-players. This requires a person with a strong aptitude to deal with the challenges of building robust working relationships.

Aligning Strategy: Once the understanding phase is complete one has to begin align project objectives with those of the target organisation or department in order to obtain buy in and support for mutually beneficial outcomes. This is done by finding areas of synergy, by proactively identifying opportunities in order to embed project objectives within existing programmes and initiatives and by utilising internal terminology and idiom to create a coherent strategic language.

Delivery: This is often the most obvious and visible aspect of the project and involves the sourcing of information and skills, providing workshops, training events and discussion fora, and the facilitation of all these processes. In this phase it is often best to start small and move on to critical mass. It is during the delivery phase that one begins to see evidence of increased capacity amongst recipients and evidence of change.

Adaptation: As the project gathers momentum there is a constant influx of new role players who impact on project dynamics and, as each intervention has an effect on the environment, there is a need for constant review and adaptation. Also the more work one does, the greater one's understanding of the environment and so once delivery is underway there is a need for continuous modification and adjustment in both project language and activities to suit the varying and changing environments. What is appropriate in the early stages of a project is not always appropriate later on. This responsive nature was key to IPT's success and the value of flexibility and innovation through the life of a project cannot be emphasised enough.

Sustainability: A successful project requires that systems and structures arising from the intervention become institutionalised, that staff are allocated to the process teams, and that they remain in place. It is essential that new processes become an established part of the system. It is also imperative that coaching and mentoring be made available for key individuals in order to build enough capacity within the organisation to sustain the new way of operating.

Critical Reflection: Throughout the project it is vital to spend time reviewing, talking and listening to partners. This critical reflection is used to inform adaptations to strategy and to design future interventions.

The model is cyclic, reflecting the dynamic nature of the process, and the end of one process often provides the foundation for the start of a new one. The six sequential steps also recur at various levels within a larger project, especially when an intervention is run within a wide range of environments. However, the sequential description of the process does not exclude movement back and forth between steps during the project, often creating loops within the larger cycle.

Context

Since South Africa's first the democratic election in 1994 the public service has been under political pressure to transform and under public pressure to deliver a more effective service. Achieving the desired changes has been particularly difficult "given the high ideals set by government in 1994 and the depths from which the country had just emerged".¹

The stress upon the criminal justice system during the first few years of democracy was exacerbated by a marked increase in crime and violence. This experience was similar to that of other countries undergoing a transformation from authoritarian to democratic rule. Research has shown that in almost all cases, such transitions are accompanied by equally dramatic changes in economic and social circumstances, some of which have resulted in higher levels of crime.²

In the five years leading up to this project the South African criminal justice environment had been particularly chaotic with a number of dramatic structural shifts within the sector. These included the post-1994 unification of the old South African Department of Justice with the justice departments of the four independent homelands; the de-linkage of the magistracy from the executive control of the Department of Justice by the Magistrates Act (1993); the establishment of the Magistrates Commission, a statutory controlling body for magistrates; and, in 1998, the implementation of the National Prosecuting Authority Act, which brought a new and separate prosecuting authority into existence by removing prosecutors from the direct control of the Department of Justice. These changes were underscored by a new democratic dispensation and a constitutionally enshrined Bill of Rights. The various Acts, whilst ensuring a separation of powers which strengthened the rule of law, created considerable fractures in the justice system.

- 1 Everatt, D and Maphai, V 2004. *The Real State of the Nation; South Africa after 1994*. Johannesburg: Interfund
- 2 Shaw, M 2000. *Crime and Policing in Transitional Societies* University of the Witwatersrand, Johannesburg: Konrad-Adenauer-Stiftung

In 1996 the South African government introduced the overarching National Crime Prevention Strategy (NCPS) which required different government departments³ to collaborate in order to identify and implement multi-agency solutions to the crime problems facing South Africa. This eventually saw the establishment of the Integrated Justice System (IJS), an interdepartmental forum of senior managers that reported to the Inter-Ministerial Security Cluster.

The formulation, and the subsequent implementation, of this strategy coincided with a number of other major transformation projects implemented by state institutions. Consequently the strategy proved impossible to implement in a system that lacked synergy and cohesion, was poorly equipped to deliver on its mandate and where internal turf wars for position and resources sapped time and energy. As noted by Eric Pelser and Antoinette Louw⁴ in an assessment of crime prevention, the NCPS was from the outset compromised by differing political needs and competition among officials in the Department of Safety and Security. In defence of government, it could be noted that it was precisely because of “its forward-looking nature and view of crime as a complex and multi-layered problem that the NCPS ultimately represents the kind of ambitious policy making which

Background to the South African Court Structure

Following the Union of South Africa in 1910, a Supreme Court of South Africa was formed, with provincial and local divisions in the then four provinces – the Cape, Natal, the Orange Free State, and the Transvaal. An Appellate Division in Bloemfontein heard appeals from the other divisions of the Supreme Court and set precedent which were binding countrywide.

The ‘independent states’ created during the apartheid era established superior courts in their own territories.

Post 1994, in terms of the new Constitution, the existing provincial and local divisions of the erstwhile ‘Supreme Court’ (including the courts in the so-called independent states) were renamed High Courts, and the Appellate Division was re-established as the Supreme Court of Appeal. A new superior court, the Constitutional Court was established to decide matters based on Constitutional provisions. Other superior courts were also created in terms of separate legislation, and included the Land Claims Court and the Labour Appeal Court.

In addition to these superior courts, district and regional magistrates courts hear “minor” civil and criminal matters. Decisions of lower courts are not reported.

Adapted from Amanda Barratt and Pamela Snyman “Researching South African Law”
<http://www.llrx.com/features/southafrica.htm>

3 The Department of Safety and Security, Department of Correctional Services, Department of Welfare, Department of Justice and Constitutional Development, and later on the newly independent National Prosecuting Authority.

4 Pelser, E and Louw, A 2002. Where Did We Go Wrong? A critical assessment of crime prevention SA *Crime Quarterly* 2(November)

a government in transition is probably incapable of implementing effectively.⁵”

These problems were compounded when funding, which had originally be made available from the Reconstruction and Development Fund (RDP), began drying up, seriously undermining many departments’ commitment to the NCPS. Moreover, the uncertainty around funding had the unintended effect of creating interdepartmental rivalry, driving the departments further away from each other as they each competed for bigger budget allocations.⁶

By 2000, there was a serious service delivery crisis in the criminal justice system. The experience of post apartheid transformation difficulties had contributed to high levels of stress, dissatisfaction and demotivation among prosecutors, magistrates and administrative staff. Public expectations of justice in a democratic South Africa shifted focus to the poor performance of key individuals and departments and the notable increases in incidents of crime, all of which contributed to public dissatisfaction regarding service levels within courts throughout the country⁷ The emerging culture of human rights also created the general perception that the rights of offenders were taken much more seriously than those of the victims.

Public frustration translated into political pressure, and individual departments within the criminal justice sector responded with a series of uncoordinated and reactive initiatives in an attempt to resolve the many impasses and delivery blockages in the criminal justice process.

The most ambitious of these initiatives was the multi-million Rand E-Justice programme, managed under the auspices of the IJS. The goal of E-Justice was to transform the justice system into one which was “modern, efficient, effective” and would deliver “swift justice through improved business supported by a modern technology infrastructure”⁸ This programme generated a number of pilot projects, including IJS Court Centres, awaiting trial prisoner projects, and the Criminal Record System (later the Automated Fingerprinting Information System) amongst others. In addition, further information technology interventions were piloted in a number of courts under the banner of the Court Process Project.

At the same time, the Department of Justice and the National Prosecuting Authority (NPA) identified and initiated a series of transformation initiatives. These interventions were mostly small regional projects, often in partnership with donor agencies. They

5 Brocklehurst, H, Stott, N, Hamber, B and Robinson, G (nd) Lesson Drawing: Northern Ireland and South Africa. *Indicator SA* 18(1):89 - 94

6 Masiza, Z and Ntlokonkulu, L 2002 *Enhancing Policy Implementation; Lessons from the national crime prevention strategy* Research Report No. 96, Johannesburg

7 Matthews, I 2001 *Final Report on Pilot Intervention with KwaZulu-Natal Public Prosecutors : December 2000 – December 2001* Durban: IPT

8 BAC pamphlet – need full details for this reference

included Family Court Centres, Sexual Offences Courts and Hijacking Response Projects. In addition, a number of localised internal projects were initiated to deal with management and human resource issues.

Despite the worthy intention behind these multiple projects, their uncoordinated implementation had negative side effects as personnel began suffering from “project overload”. Faced with discontinuous change and limited change management capacity and guidance, absenteeism rates soared while staff motivation and commitment dissipated. At the same time, poorly implemented employment equity and performance management systems caused the deterioration of internal relations within departments and seriously undermined staff morale. Trust diminished while the public continued to receive a poor service coupled with increasingly negative attitudes from staff.⁹

It was within this context that IPT launched the Criminal Justice Strengthening Project in 2003.

BACKGROUND TO THE PROJECT

After a number of years of working within communities and schools IPT began to work with the South African Police Service (SAPS) in late 1997. These early projects were designed to improve relationships between the SAPS and the communities and schools with whom we were already working, and to assist in the delivery of community policing, which was a national imperative. During this period community policing forums (CPFs) were being established and IPT’s long history of conflict resolution work enabled the organisation to play an important role in facilitating dialogue and problem solving processes between communities and the police.

Between 1998 and 2002 IPT implemented three projects that provided a foundation for the Criminal Justice Strengthening Project (CJSP). The first was a victim empowerment project run with SAPS within KwaZulu-Natal and the Eastern Cape, which gave us a first-hand view of the issues facing victims of crime. The second was a service delivery improvement project with SAPS, which highlighted the lack of an interface between the SAPS and the prosecution service. This appeared to be a serious fracture within the system and one that contributed to the poor delivery of justice. The third project, which emanated from the previous two, was in partnership with the KwaZulu-Natal Prosecuting Service (KZNPS) and was aimed at improving their capacity to deliver an effective service. During the first year of the latter project it became apparent that there was a dire need for multi-sectoral co-ordination and co-operation to ensure the delivery of justice to the public. This need was the subject of

9 Rauch, J 2001. *IPT Prosecution Project Report*

a feasibility study included in the second year of the project. This study is explained in detail in the following section.

Critical reflection of these projects over the four years and evaluations of the impact achieved by the projects convinced IPT that a piecemeal approach to reforming the criminal justice system would only achieve limited results. The funder, Atlantic Philanthropies, had meanwhile also embarked on reflections of their own around projects they had funded within the criminal justice system over several years. They similarly concluded that there was a need to “concentrate resources in one region and seek to make an impact through an intensive intervention at all levels of the criminal justice system”¹⁰

Initial discussions between IPT and Atlantic Philanthropies and the findings of IPT’s feasibility study led to a request from IPT for Atlantic to provide funds for a five-year intervention, which became known as the Criminal Justice Strengthening Project.

FINDINGS OF THE FEASIBILITY STUDY

In order to understand the foundation on which the Criminal Justice Strengthening Project was based, it is useful to consider the findings of the feasibility study, which was conducted as part of the third project, mentioned above, that aimed to improve the capacity of the KZNPS to deliver an effective service. The feasibility study aimed to test the assumption that a natural progression of a successful intervention within the prosecution service would be to ‘spread’ the intervention to the Department of Justice, magistrates, SAPS, the Department of Correctional Services, and other relevant government departments that were part of the criminal justice sector.

The study was conducted over six months in late 2002 and consisted of a literature review, discussion groups and interviews with 46 key people in four provinces¹¹. The overall findings supported the proposition that a large-scale provincial intervention had a significant likelihood of contributing to improved co-ordination and service delivery and that there would be enough support from key departments and individuals to warrant the effort. In the research process a number of key hindrances to the delivery of justice were identified.

10 Kraak, G 2001. Correspondence. 27 September, Durban.

11 Caine, G and Matthews, I 2002 *Criminal Justice Strengthening Project: A Feasibility Study* Durban: IPT

Key Obstacles to the Delivery of Justice

1. *Poor Management of the System*

Poor management was crippling the system. “[T]he lack of appropriate skills in the management of courts and the limited supervision and management of service delivery points”¹² was highlighted as being one of the major challenges within the Department of Justice.

It was acknowledged that many individuals within key provincial positions lacked the basic managerial skills needed to ensure an acceptable standard of performance. Fast tracked appointments lacked on the job experience and skills, whilst “old guard” managers, shaped by the previous system, tended to be set in their ways and had entrenched practices that were no longer relevant or acceptable. Furthermore, there was no culture of organisational learning and any expertise in the system was neither transferred nor shared. All of those interviewed recommended that management development be a priority for any initiative.

2. *Poor Internal Communication*

Poor internal communication resulted in a situation where managers lacked the information necessary to perform their tasks. Informal communication channels were often racially based and exclusionary and heads of departments expressed their concern at a poor base of knowledge and information sharing in the system.

All of those interviewed at provincial level felt that the re-establishment of the Provincial Integrated Justice Forum¹³ (PIJF), which had previously been disbanded due to lack of commitment from various stakeholders, could contribute to improved communication.

3. *Poor Interpersonal Relationships*

A number of people interviewed went so far as to identify “dysfunctional working relationships” as the primary challenge to the transformation process. Previously, relationships were the glue that held the system together, and this “glue” was often based on common interests or focussed around race. When conflicts arose in the new and more diverse teams the issues were initially

12 *Source* Department of Justice and Constitutional Development PowerPoint Presentation 2002 *National Establishment and Provincial Structure KZN*

13 Intended to be a provincial version of the National Integrated Justice System forum, a co-ordinating body intended to consist of the various provincial heads of department within the criminal justice sector and relevant stakeholder departments.

perceived to be around race and gender. This was the case at times, but we established that inadequate human resource systems and subjective evaluation processes contributed to these perceptions of racism and prejudice. There was an urgent need for new “glue” and effective and equitable systems that would be consistently implemented throughout the system

The lack of cohesion within the sector meant that rather than working together to address systemic problems, individuals and groups blamed one another. This culture of blame was widespread and detrimental to the efficient functioning of the system. We established that there was an urgent need to foster the skills of collaborative problem solving.

4. *Need to understand the integrated justice system*

Many respondents noted the need to understand the implications of an integrated justice system and define how each discipline contributed to the whole. As Bulelani Ngcuka, then National Director of Public Prosecutions, noted: “there is no common and shared understanding amongst officials of how the job that each one of them does fits in with the paramount objective of the criminal justice system”.¹⁴

5. *Low morale*

All interviewees felt that the low moral experienced amongst staff at all levels was a major problem that hampered co-operation. It was apparent that people saw themselves as powerless victims of the system and the deficient human resources system exacerbated these perceptions.

6. *Lack of human resource capacity*

Since 1994, there had been a considerable loss of expertise in this sector with the resignation of many experienced and technically skilled staff members. From January 1994 to December 1997 alone, some 630 prosecutors resigned and, while prosecutors who left the service were replaced, the high personnel turnover resulted in a sharp decline in the average experience of prosecutors with 24% of prosecutors in late 2000 having less than 18 months experience, and a further 28% having less than 36 months experience¹⁵. In addition, career path opportunities within the prosecuting authority are limited. Prosecutors can become senior public prosecutors and then chief prosecutors, but with only about 30 chief prosecutor posts available nationally, there are limited opportunities for

¹⁴ Ngcuka, B 2002. Keynote address *Challenges Facing the Criminal Justice System*

¹⁵ Schönteich, M 2001. *Lawyers for the People* pp 113 Pretoria: Institute for Security Studies

advancement. Many skilled prosecutors were lost to the Magistracy, which is seen to carry more kudos and better remuneration.

Similar problems were experienced in the SAPS as many skilled detectives left for positions in the private security industry. The lack of skills and experience among both prosecutors and detectives was seen by interviewees as a key contributing factor to high awaiting trial prison populations, lengthy trial hearings and low conviction rates.

7. *Physical environment*

Respondents also claimed that the poor physical environment of most courts contributed to the dissatisfaction of both users and staff. Rural courts, in particular, were cited as being severely under-resourced in terms of their physical environment, including the state of buildings, sanitation and air conditioning, as well as administrative resources like photocopy machines and paper, fax machines and phones.

The limited space at most courts meant that victims of crime were often traumatised for a second time by having to sit with the perpetrators while waiting for their case to be called. All respondents shared the view that the system often failed to deal sensitively with the victim and that the provision of improved waiting facilities were long overdue.

Further findings of the feasibility study

The data collected reinforced the value of the strategy alignment aspect of our model. People emphasised the need for any external intervention to remain in line with national strategies and plans and to utilise similar language and terminology. This was considered of vital importance since there were too many examples of initiatives led by consultants or non-governmental organisations that were conducted with little understanding of the context and conditions within the public service.

IPT's earlier work had shown that the systemic organisational change envisaged could only be achieved over a substantial time frame. As a result the proposed project needed to run for a minimum of four to five years. By late 2002, Atlantic Philanthropies, based on the findings of the feasibility study, granted the funds to IPT to conduct a five-year project to “**improve capacity amongst managers to manage performance within the criminal justice system, which would be measured through improved customer satisfaction and through the achievement of each department's internal targets.**¹⁶”

16 The use of internal targets as a project measurement tool was seen as an important mechanism to ensure alignment of objectives.

In the short to medium term (two to five years), the intended outcome was to improve the level of service being delivered to members of the public in the court environment. A number of indicators were identified for this outcome, including:

- Improvements in case finalisation rates
- An increase in the utilisation of court hours
- Improved case management processes
- Greater integration and communication between the relevant role players

Three of these four indicators were aligned with those already being measured in varying degrees within the various criminal justice departments. The fourth – greater integration and communication – was considered important by all role players, but measurement indicators did not exist.

With these outcomes in mind, the project was conceived as a large scale multi-agency initiative with a number of entry points and a wide range of activities. IPT was of the view that KwaZulu-Natal would provide the ideal fulcrum for a multi-agency initiative for the following reasons:

- IPT had an established presence in the province
- A number of Departmental initiatives were being piloted there
- KwaZulu-Natal was sufficiently representative of the demographics of South Africa to provide a learning environment.

The aim was for this to be a provincial rather than a regional initiative, especially since so many small, donor driven, and geographically specific initiatives were successful at a regional level, but fail to become institutionalised due to their limited localised impact¹⁷.

The Criminal Justice Strengthening Project was designed around three deliverables, two of which would fall primarily within the mandate of IPT, while the third was shared with other service providers who would be brought on as project partners. The three deliverables were:

1. **Facilitation and co-ordination** – The focus would be upon building relationships, strengthening communication, improving advocacy and lobbying capacity and developing networks. In addition, this aspect intended to facilitate effective skills transference and to provide managers with a “practice” space to exercise their problem-solving skills.
2. **Monitoring and evaluation** – A key aspect of the project was the proposed development of a replicable model with detailed documentation regarding successes and failures. The monitoring and evaluation activities were vital to provide a record of activities and evidence of outcomes, for the effective

17 Sansom, R 2002. Personal interview. October, Durban Magistrates Court

management of knowledge within the sector, and to facilitate learning within the project. (The production of this monograph was seen as one outcome of this aspect.)

3. **Training and development** – In order to address the dearth of skills in the sector and to build capacity we aimed to provide a wide range of training and development initiatives, which included an extensive management development programme, specific training in information technology, human resources, labour relations and strategy development.

With the above deliverables in mind, IPT embarked on the project in early 2003. The following chapters provide an account of our experiences within each sector.

Chapter 2

KwaZulu-Natal Prosecuting Service

KWAZULU-NATAL PROSECUTING SERVICE

Historical background to the NPA

In 1997 the ANC endorsed the transformation of the prosecuting authority from 12 fragmented authorities each with its own Attorney General into one national structure, headed and controlled by a national director of public prosecutions (NDPP), with one prosecuting policy applicable throughout the country.¹⁸ The establishment of this national prosecuting authority in 1998 was followed by further calls for change in the manner in which this newly established entity would operate. Bulelani Ngcuka, the first NDPP, speaking at the inaugural national public prosecutors conference in August 1998 noted that “we can change institutions, and we can even change the faces, but what is required is a far more fundamental change in our operation. We need prosecutors who see themselves as ‘lawyers for the people’”.

In 2000 President Nelson Mandela issued a further challenge for the modern prosecutor to “become a lawyer for the people” and went further to note that “it is your duty to build an effective relationship with the community and to ensure that the rights of victims are protected. It is your duty to prosecute fairly and effectively according to the rule of law; and to act in a principled way without fear, favour or prejudice. It is your duty to build a prosecution service that is an effective deterrent to crime and is known to demonstrate great compassion and sensitivity to the people it serves.”¹⁹

Despite these laudable intentions the NDPP found it particularly difficult to achieve the vision of a single, united prosecuting service that could make a significant contribution to the fight against crime. By 2000 “morale was low, salaries and conditions of work were hopelessly inadequate and frustrations were running high”²⁰. In fact, so much of the national effort in the first few years of the NPA was spent trying to resolve salary issues with the Department of Justice.

By 2001, when IPT first began to work with the KwaZulu-Natal Prosecuting Authority prosecutors had been involved in several years of protracted salary disputes and had recently been promised Christmas bonuses that were never received. The court environment was severely under-resourced with buildings often in a poor state of repair, case backlogs were unacceptably high with disposal rates lower than the influx rate and a large number of prosecution posts were vacant. The then provincial director for public prosecutions, Advocate Mokotedi Mpshe, suggested in an interview with IPT that there were several internal problems within the prosecution service that also needed to be addressed. In particular, he referred to:

18 Peace and Stability Conference Resolutions from the ANC’s 50th National Conference, 16-20 December 1997

19 International Association of Prosecutors Address By Nelson Mandela, 31 August 2000 Johannesburg, South Africa

20 Presentation at NPA Strategic planning meeting held at Magaliesburg, 11-12 March 2004

- Racism
- Poor communication
- Absence of a strong sense of common purpose among staff
- Absence of systems for stress management.²¹

Overall there was acknowledgement that things needed to change, but the system seemed to be “paralysed by anachronistic practices, fruitless consultations and debates and the poor support service by an agonising bureaucracy”.²² IPT’s research supported this and found that although the concept of transformation was broadly accepted the actual process of transformation was disorganised and poorly implemented. This had created strong feelings of resentment, accusations of “reverse racism”, a belief that there was a deliberate resistance by the “old guard” and conflicts fuelled by a lack of common purpose and understanding²³.

The NPA commenced with a strategic planning process in late 2000, developing for the first time a vision and mission statement with strategic objectives aimed at influencing public confidence in the criminal justice system, reducing the crime rate and the efficacy of the criminal justice system.²⁴ However there was little impact within the organisation below the most senior management ranks. During 2001 and 2002 the focus of the organisation was around improving court performance through setting, and attaining, targets such as increased court hours, increased finalisation rates and decreased case cycle times. There was a strong tendency for managers to be “operational” rather than “strategic” and the primary drive at provincial level was to meet the numerical targets set by the national office.

It must be acknowledged that this target-focussed management style achieved some success in improving court hours and conviction rates and went some way towards reducing backlogs. However the volume of outstanding cases on the court rolls continued to climb. And the focus on purely quantitative statistics led to the manipulation of data with little effort put into solving the real problems within the system.

By early 2003 the NDPP acknowledged that a more effective strategy was needed to improve performance within the prosecuting authority. This resulted in substantial shifts within the organisation, a drive to develop a strategy to transform the organisation and a more aggressive adoption of the Balanced Scorecard methodology²⁵. By mid-April 2003, a key performance area included for senior managers was the following:

21 Mpshe, M (Adv) 2001. Personal interview. January, High Court, Pietermaritzburg

22 Ngcuka, B 2000. *Challenges Facing the Criminal Justice System* Keynote address, DOJ&CD Colloquium

23 Matthews, I and Dube, J 2001. *Baseline Assessment Report and Recommendations* Durban: IPT,

24 Internal memo “Transformation in the NPA – Guidelines”

25 Kaplan, R.S. and Norton, D.P. 1996. *The Balanced Scorecard: Translating Action into Strategy*. Boston: Harvard Business School Press.

“to manage and direct the development of the strategic plans for National Prosecuting Service (NPS)”²⁶.

Since the KwaZulu-Natal Prosecuting Service (KZNPS) had partnered with IPT in the two-year pilot project²⁷ during 2001 and 2002, the initiation of the Criminal Justice Strengthening Project in 2003 was essentially a continuation of our previous intervention. Because of this existing strong relationship with management and IPT’s extensive understanding of the environment we were able to immediately address the strategy alignment phase of the model (as illustrated previously).

Strategic alignment

At the start of the CJSP, IPT offered to facilitate a workshop with provincial managers to develop the 2003/2004 provincial strategy. IPT met with the newly appointed provincial DPP, Advocate Shamila Batohi and the NDPP, Mr Bulelani Ngcuka, as part of an introduction process, to explain the project and to define what IPT’s contribution might be during the balance of the project. During this meeting Ngcuka insisted that in facilitating any strategy sessions we should utilise the Balanced Scorecard²⁸ since this would be the methodology used within the organisation in the future. He also agreed to attend the proposed workshop with key members of his executive team.

At this workshop, which was attended by the entire provincial management structure²⁹ IPT conducted a brief review of the 2002 strategic plan to identify issues that had hindered the full implementation of that plan. While most of the discussion focussed on blaming others, such as the judiciary, the SAPS or the NPA head office, for any failures in performance or delivery, two relevant issues emerged. One was the lack of communication within the organisation and the second was the complaint that the national office did not provide sufficient administrative support to enable staff to perform to their full capacity. In addition, managers conceded that they had neither referred to the strategy in management meetings nor made any significant changes in order to achieve any of the strategic objectives.³⁰ It was obvious to the facilitators that there had been limited understanding at operational level of the effort and commitment necessary to drive the implementation of strategy.

26 NPS Progress Report on Key Performance Areas, 30 April 2002

27 Improving Management Capacity within the KwaZulu-Natal Prosecuting Authority

28 The use of the Balanced Scorecard, essentially a strategy implementation tool, in an organisation that had no existing strategy was problematic. The scorecard requires a fairly sophisticated understanding and capacity to collect metrics – a requirement the KZNPA continuously struggled to fulfil.

29 The provincial management structure consisted of the director, six deputy directors, six chief prosecutors and 18 senior public prosecutors

30 Matthews, I 2003 *Strategic Planning Workshop on 23/25th March 2003*

After reviewing what had worked and, more importantly, what had failed during 2002 IPT, together with the managers, identified the strategic themes and objectives for 2003. During the course of the two day workshop the provincial managers addressed the primary issues of strategy: Who would be responsible for what? How would they put their plans into action? When would they be able to see results? How would they measure them? How would they take the strategy to the rest of the organisation?

The result was a fairly comprehensive strategy plan, which was further refined at a series of meetings that IPT facilitated over the next month or so and which provided the means to align the objectives of the CJSP with those of the KZNPA.

The timing and success of this workshop – three weeks before the national strategy workshop – coupled with visible participation of senior national and provincial management meant that KwaZulu-Natal was able to both influence the national process and align provincial efforts with the broader national agenda. This enabled IPT to embed the project within a larger organisational change process.

Alignment and adaption

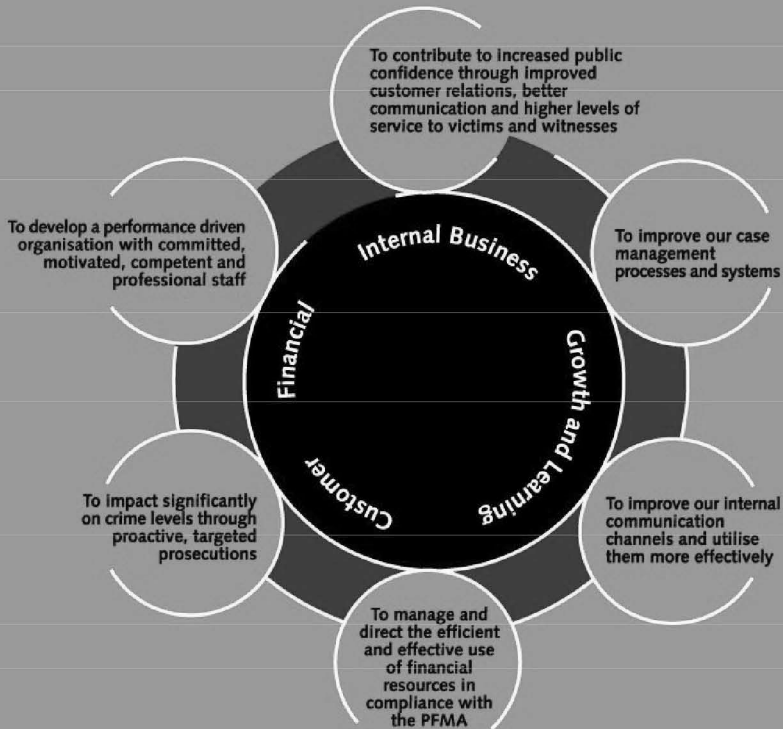
During this process of strategy development a critical factor identified was the need to more effectively share the strategy with the rank and file within the organisation. In response to this issue IPT agreed to provide support and facilitation for a series of strategy roadshows to be held in each of the six clusters³¹. In the original planning IPT had not anticipated this type of event. Consequently it was the first adaptation in response to an unexpected opportunity to get buy-in from prosecutors throughout the province.

The purpose of the roadshows was to introduce the strategy plan to rank and file prosecutors and to allow the provincial management to demonstrate their commitment to achieving the strategic goals. As part of our support for these events we produced KZN Prosecuting Authority 2003 Strategy Map brochures, which were handed to prosecutors at the roadshows. These brochures served a dual purpose – for use internally to facilitate easy reference to the strategy objectives and activities, and as handouts for external roleplayers such as the SAPS and Judiciary in order to explain the KZNPA strategy.

The six roadshows were held over an intensive eight days in late May 2003 and involved visits to all six clusters. The distance travelled was in excess of 3,000 kms and the length and breadth of the province was visited. This was the first time that ordinary prosecutors within the NPA had ever had an opportunity to engage, firsthand,

³¹ The KZNPA consists of six prosecutorial management regions called clusters, each under the management of a chief prosecutor and a number of senior public prosecutors.

KZN Prosecuting Authority 2003 Strategy Map



To provide an **effective prosecution** service which is **prompt, vigorous and fearless**, in the public interest, **guided by the Constitution and Bill of Rights**, where all are treated with **humanity and sensitivity**



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
 Die Nasionale Vervolgingsgesag van Suid-Afrika

Figure 1: KZN Prosecuting Authority 2003 Strategy Map

around issues of strategy with their provincial director of public prosecutions (DPP), Advocate Shamila Batohi. Each roadshow involved a presentation of the strategy by the provincial director followed by facilitated discussions to engage each area in identifying how best they could contribute to implementing this strategy. Staff heard the commitment to a strategic plan from Advocate Batohi herself and responded with a high level of allegiance. By the end of this process all prosecutors in the province knew about the plan and its objectives. The value of the direct communication was indicated in several comments received from prosecutors including the following:

“There has been positive interaction with the DPP who has restored the morale of the prosecutors”

“Involvement of the DPP was welcomed by the prosecutors as this gesture was interpreted that the Director was in tune with the needs of the prosecutors”

The firsthand and face to face explanation of the strategy and the opportunity to discuss and debate it was highly valued and helped make staff feel they were part of a process.. Prosecutors commented that they had “gained a sense of direction”; that the process had “inculcated a more focussed approach to service delivery” and that “the participatory spirit and grass root approach during the road show on the provincial strategic plan was well received and appreciated”.³²

With a strategy plan in place and the roadshows completed, IPT sought to determine how best to further support implementation of the strategy. This process began by identifying those strategic objectives that required skills and processes that were lacking within the organisation. This provided the CJSP with the opportunity to plan interventions that would fill these gaps and build the capacity of management.

One of the strategic objectives in the strategy was “to develop a performance driven organisation with committed, motivated, competent and professional staff”. Two key activities that had been identified as critical to achieving this objective were to “manage performance within the organisation by utilising performance management and disciplinary processes” and to “manage absenteeism”³³.

At that time the NPA’s corporate services unit, which was responsible for all human resource matters, was plagued by internal problems that resulted in poor service delivery to staff members and high levels of resentment by prosecutors towards the unit.³⁴ Advocating how the strategy would contribute to changing the existing

32 Sibeko, E 2003. Minutes of Report Back Meeting on Provincial Strategic Plan. 17 June, Pietermaritzburg

33 KZN Prosecuting Authority 2003 Strategy Map pamphlet

34 Complaints about the corporate services unit were raised at every workshop and strategy session we ran throughout the life of the project. This was also an issue raised, often vociferously, at all the national meetings we attended.

culture, the provincial DPP said the organisation was one that “does not care about its members; tolerates unprofessional conduct and bad attitudes; recruits unskilled personnel; is inconsistent in its application of rules and tolerates a lack of discipline”³⁵ and that this was a situation that could no longer be tolerated if the organisation was to move forward. It was apparent that the CJSP could provide considerable support in this priority area.

Delivery

Given the limited capacity of the NPA’s corporate services unit it was evident that comprehensive support would be needed for managers trying to manage the high absenteeism, poor performance and other disciplinary problems that were plaguing the organisation. For the remainder of 2003 the focus of the CJSP was on building the capacity of managers within the system and this support became one aspect of the delivery phase, which included the training of managers in various aspects of labour law and human resource management.

The primary target group identified for the training were the deputy directors of prosecution, who were located at the two High Courts, and the chief prosecutors, who were responsible for managing performance in all the province’s lower courts. This group was identified on the assumption that an improvement in performance amongst senior management would impact favourably down through the organisation and contribute to the improved skills of middle-level management. The workshop training that this group received included:

- Conflict management
- Training in personnel selection and recruitment
- Chairing disciplinary hearings
- Performance management, including managing incapacity
- Computer skills training

“This is the first time in 30 years of being in the public prosecution services that I feel I have actually learnt something, and it is certainly the first time I have ever experienced management related training that was of any use...IPT have delivered training at a level we have never been exposed to before.”

Delegates Comment

As a result of our earlier projects which provided the “understand” phase, IPT was able to ensure that all of these workshops were customised for the organisation and included the use of appropriate terminology and language, which reflected the real constraints inherent to a government department. For example, IPT utilised internal NPA documentation when developing the human resource management material in order to provide examples from the real environment. The training included role plays based on actual cases and referred to relevant incidents shared with us during the numerous conversations with staff as we built relationships within the

³⁵ Batohi, S (Adv) 2003. Presentation. May, KZNPA Regional Roadshows.

organisation. This was particularly important as it gave our training the credibility that is often lacking when consultants work within an organisation. In addition, staff knew that we had a long term commitment to effecting internal change, and, as a result, we experienced a high level of co-operation and dedication from all the staff with whom we dealt.

We also provided an outsourced bureau system to capture and analyse absenteeism trends as well as the monetary cost of absenteeism to the organisation. These statistics were made available to all managers and presented at monthly management meetings. Highlighting consistent absentee offenders was intended to make it easier for managers to deal with individuals who were compromising the system. In addition, IPT provided managers within the KZNPA with access to a human resource expert who provided one-on-one coaching and dealt with questions regarding disciplinary enquiries or managing incapacity issues. This service was used extensively during the course of the project.

The “sustainability” phase of the analytical model suggests that the long term success of a project requires that systems and structures arising from the intervention become institutionalised and that capacity is built within the organisation to ensure new processes become an established part of the system. To encourage this IPT adapted the monitoring and evaluation process to provide support for the development of an internal monitoring mechanisms using the Balanced Scorecard. This was an important part of the intervention because it was the view of IPT that appropriate and relevant measurement would act as a prime motivator for organisational change – a reference to the somewhat clichéd tenet that ‘what gets measured gets done’.

Initially we assisted in the development of a monthly data-gathering process for the provincial management committee (Promanco). This committee, comprising the director, deputy directors and chief prosecutors met monthly and provided the director with information that would be included in KwaZulu-Natal’s report to national management.. As part of this process, each chief prosecutor contributed a monthly report summarising cluster-based activities.

Name	Cluster	Planned Outputs		Date
Objective	Outputs	Key Activities	Resource Issues	
1. To contribute to increased public confidence through improved customer relations, better communication and higher levels of service to victims and witnesses	Marketing and media coverage contributes to increased public confidence in NPA	1. Develop a provincial marketing campaign		
Actual Outputs1				
1. Draft provincial marketing campaign plan attached				
Constraints / innovations2				
1. Have yet to clear this plan with NPA spokesperson, but have consulted all Chiefs and will finalise plan by next month - see attached letter from National				
Planned outputs for the coming month				
Objective	Outputs	Key Activities	Resource Issues	
1. As above	Marketing plan	1. Will finalise plan and get it signed off at national level		
2. To impact significantly on crime levels through proactive, targeted prosecutions	Resources are utilised to address priority crimes	2. Will liaise with SAPS to determine priority crimes. 3. Hope to appoint specialist prosecutors to target these crimes before month end		
Critical reflection				
1. Marketing plan taking longer than hoped, but we seem to have everyone on board and hope this will improve relations with the press 2. Now that we have a visible plan it would appear that people seem more motivated as they now know in which direction we are going				

Figure 2: Monthly Scorecard

Reports submitted by each chief spoke directly to the different components of the KZNPS strategy, thereby tracking actual progress. The CJSP assisted in this process by trying to incorporate the statistical court data, which was already being collected on a monthly basis for the NPS.

During the first year, IPT compiled a monthly scorecard based on the information collected. This was presented at the Promanco meeting to highlight successes achieved by the KZNPA, as well to raise issues of concern. The intention in facilitating these sessions was to provide a demonstration period during which members of Promanco would be able to experience the process of critical reflection and understand the value that accurate and relevant data would bring to the decision-making process. We were to hand the process over to them at the end of the first year.

However, the demonstration process, and by default the learning process, was hampered by the fact that collection of relevant information proved difficult and data was often unreliable. For example, much of the data reflected issues and problems largely out of the control of prosecutors like statistics of court hours, outstanding court rolls and finalised cases, all of which were part of bigger problems in the system.

Court hours, for instance, depended on a number of factors such as the presence of magistrates, clerks, interpreters, witnesses, and the performance of SAPS investigators. This gave rise to a feeling amongst prosecutors that the data collection process was unfair and misrepresented their work performance.

There were also complaints that statistics were easily manipulated, especially from those who felt that by giving accurate figures they would be unfairly judged against others who were being more selective and clever in the presentation of their statistics.

While the available data did expose existing and potential problem areas the purely quantifiable data being collected meant there was no indicator of causal factors. Since most problems could be attributed to a range of role players, the absence of any capacity to drill down into these problems and unpack them meant the existing information did not help with decision-making.³⁶

It was also difficult to get people to report on qualitative issues, particularly since performance rewards did not take this aspect into account. What was particularly frustrating was that in passing discussions one often heard about interesting and innovative initiatives undertaken at a local level, but these were rarely being

³⁶ These problems in part led us to adapt our strategy to shift support for the measurement of court performance to the multi-agency Provincial Integrated Justice Forum (PIJF)

incorporated into management reports. Management's lack of overt support for new and/or innovative ways of doing things may have contributed to this omission. In addition, government departments have a history of authoritarian leadership in which individual action was discouraged, and there is a tendency to focus on doing what the "boss wants" rather than on responding appropriately to local issues. There was also no mechanism to qualify these initiatives and so they played a limited place in performance reviews, rendering innovation pointless for career prosecutors.

Despite these problems, which were evident at the end of 2003, the concept of strategy as a meaningful management tool had begun to gain some support. IPT felt this was worth reinforcing and in November 2003 facilitated a series of strategy review sessions for each cluster. As a result the CJSP produced a four page newsletter, which highlighted the successes of various clusters in terms of strategy implementation, including:

- A 200% drop in the absenteeism rate within one management area alone
- Housebreaking cases being channelled to special courts resulting in an impressive increase in conviction rates
- One cluster established a practice of community consultation with victims or families in certain categories of cases
- In another cluster "Project Fix-It" fast-tracked 30 "old cases" substantially reducing the backlog
- Help desks were set up in several clusters to assist the public

While IPT was providing support and working at a provincial level there was also a great deal of activity occurring nationally. During 2003 a series of consultative workshops facilitated by the national office had been held in all the provinces, resulting in the adoption of a new national scorecard with transformation as a central objective on the NPA strategy map. The national director also clearly signalled his commitment to ensuring that the NPA became a strategy driven organisation. In February 2004 at a NPA national conference, Project Serurubele was launched to drive strategic planning and transformation in the NPA. This was followed in March and April 2004 by 11 regional conferences facilitated by the Serurubele team. The establishment of Serurubele had a mixed impact on the project. While we suddenly had substantial national support for our provincial efforts to foster a strategy driven organisation, the downside was that an already stressed environment was put under further pressure by the initiation of another 'project'.

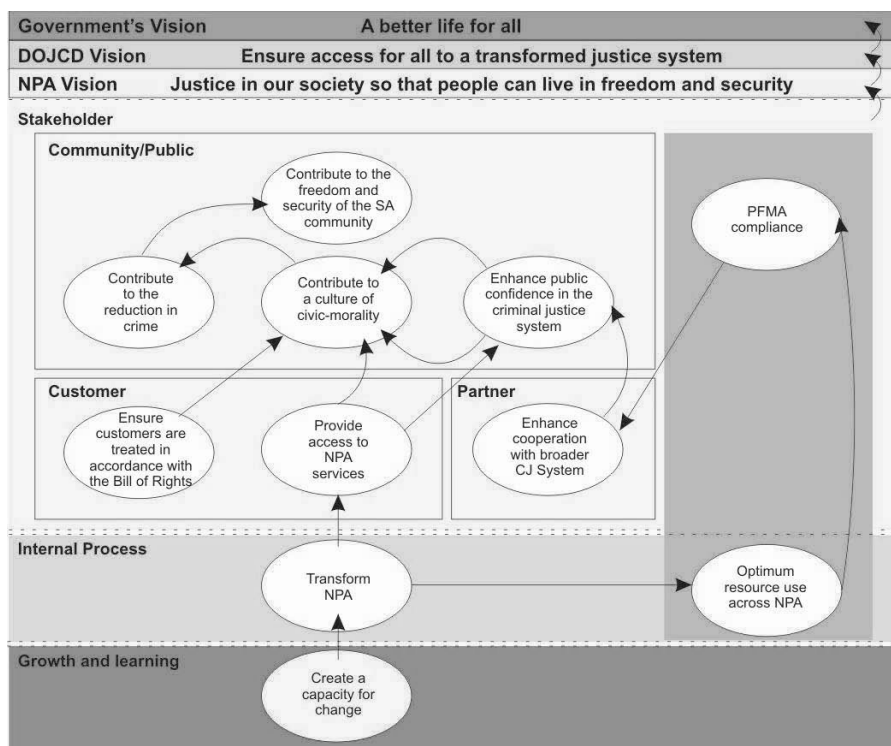


Figure 3: An early NPA strategy map

IPT, once again, had to adapt the CJSP to respond to the constantly changing environment. A decision was taken to foster greater involvement at national level and align the content and processes of the CJSP with the developments at the national office.

With this in mind, IPT offered to facilitate the provincial strategic planning workshop again in early 2004. The events at national had created the expectation that in future managers would be held accountable for achieving strategic objectives. This led to greater participation and vigorous debate during the provincial strategic planning workshop as no one wanted to accept objectives that were unachievable and for which they would be held accountable!

At this workshop it was clear that there had been considerable growth in management's capacity to participate effectively in such processes. Understanding of the concepts of strategic planning and issues around implementation seemed to have increased within the group and discussions were of a significantly higher standard than at previous strategy planning sessions.

However, the development of measures for a provincial strategic plan was still constrained by the lack of capacity within the organisation around accessing and analysing relevant and reliable data, a key aspect of the Balanced Scorecard methodology, which is essentially a tool for tracking and measuring results of strategy. There were two problems with finding appropriate measures: One was that the “impact” of one individual department’s efforts within the criminal justice system is extremely difficult to assess. For example the old favourite “court hours” is a measure that can be attributed to magistrates, interpreters, SAPS and witnesses, while it is almost impossible to say with any certainty whether an improvement is a result of the prosecutor’s actions. Hence, there is a tendency to fall back on “activities” as a source of data as this is easy to monitor and record. The second problem resulted from the low value placed on “time for reflection” in an organisation that ran most of its operations in a crisis management mode. Developing indicators and the means to collect the information is time consuming and requires consistent effort that was impossible to muster.

Measurement remained a problem throughout the life of the programme. The Serurubele unit began to advocate a change of paradigm regarding monitoring. It noted that “... the success of the organisation must be measured by the extent to which it achieves the results it set out to produce rather than the activities it has carried out or the outputs it has generated ...; and the outcomes themselves must be measurable”. However, finding measurable outcomes for a single role player remains a problem in a system that is as inter-dependent and, unfortunately, as unco-ordinated as the criminal justice system. By late 2007, as the project came to an end there was the development of a new anti-crime plan which began to suggest a comprehensive measurement tool was needed for the whole criminal justice system which would fall under a single overarching controlling ministry. By 2008 a criminal justice system review was underway to establish the viability of such a structure.

Nevertheless, over the course of the project there was a definite shift from measuring activities to trying to measure impact. This was made evident when the DPP established a monitoring team, which reported to the KZN corporate services manager. This team was given the mandate to take over IPT’s facilitation role at Promanco meetings. In IPT’s view this was an important milestone, demonstrating an increased commitment to the principal of measuring results and a growth in confidence amongst management.

Beginning to plan its delivery strategy for 2004, IPT engaged in critical reflection on what had been achieved this far. Throughout 2003 the CJSP training intervention had focussed on senior management, that is, deputy directors and chief prosecutors.

The assumption being that learning amongst senior management would impact favourably down through the organisation and contribute to improved skills amongst middle-level management. IPT had anticipated an improvement in morale amongst more junior members as increased capacity would lead to improved management within the organisation. In fact, a number of chief prosecutors did display more effective management techniques, but there was no evidence of skills transferral to senior public prosecutors (SPPs) via organisational learning. The ongoing poor service rendered by NPA's corporate services unit continued to impact negatively on morale and the unit's inability to timeously fill vacancies contributed to human resource gaps which impacted negatively on performance.

As part of IPT's process of critical review it had become evident that SPPs were becoming an increasingly important intermediary in management structures, shouldering more and more responsibility for staff and performance management. SPPs complained of high levels of stress and about the implementation of "strategy" as "another thing" on their increasingly long "to-do list".

As a result of this expressed stress and burn-out Advocate Batohi asked IPT to conduct a two-day session with the 24 provincial SPPs in April 2004 to introduce some basic stress management techniques and to assist them to manage the variety of demands put on them. This was useful for IPT and our model because it would help shape and adapt the further intervention.

Over the two days of the workshop it became clear that there was a dislocation within the management structure. Complaints were made about high workloads, poor communication, a lack of clarity around performance requirements and inconsistent management practice between clusters. A constant refrain from the SPPs was that they were expected to instantly become managers as soon as they were promoted, without acquiring the skills needed for this new role. It was clear that SPPs needed to be included in any future management development process.

Following the workshop, it was agreed by the DPP and IPT that if all interventions were to include SPPs, there might a greater impact on the organisation. In response to this the CJSP began to review a number of management development programmes. The outcome was a partnership with Milpark Business School to run a seven-day Management Development Programme with the entire management component in the KZNPS, this time including the SPPs.

Milpark and IPT designed a programme to build the skills levels of managers who would have a direct or supporting role in developing and implementing strategy, and performance management systems. The intention of this programme, which was entitled "*Implementing a strategically aligned performance appraisal process*

through the value chain”, was to equip the director, deputy directors and chief prosecutors, as well as SPPs with a congruent set of information, theory and practical skills.

The content of the workshop began with four one-day sessions on

- Creating an understanding of the business environment through the value chain and operations management
- Finance
- Business transformation and people management
- Strategic planning

This was followed two weeks later by a three-day session focussing on performance management. At this session it became apparent that, for most managers in the NPS, the assessment of performance would continue be difficult since there were no performance standards or indicators for prosecutors within the system. The lack of clear and measurable performance indicators meant that assessments were seen as subjective, so staff built up levels of resentment, dissatisfaction and were suspicious that race was a motive. Nevertheless, the workshops were seen as a valuable opportunity to discuss these issues and for managers to share their, often very different, perceptions of what was an acceptable level of performance amongst prosecutors. These were quite difficult workshops to facilitate as simmering personal issues and previous conflicts surfaced regularly.

One outcome of this workshop was that manager’s tolerance of non-performers decreased and levels of disciplinary action increased in the province.

Sustainability

The intractability of the system was highlighted in an evaluation of the management training programme run by the Milpark Business School. In the evaluation, 91% of participants felt the course met their requirements, but many expressed concern that the environment within the NPA would restrict their ability to implement what were seen as “business” management skills. This resistance or inability to transfer accepted management practice into the existing environment (which was demanding business manager skills from their SPPs) was a continuous theme throughout the life of the CJSP and recurred in number of different settings.

It was particularly apparent in our human resources intervention. Early successes were negated by a disturbingly poor service from the national corporate services unit. At the outset of the project, some chief prosecutors and SPPs referred cases for possible boarding or termination of service to corporate services. Despite having followed the correct procedures, matters then came to a standstill and staff continued

to be paid their full salaries irrespective of the fact that in some cases they had exceeded their sick leave allocation by as much as 18 months. As late as May 2006 this was still the case, as reported in *The Mercury*, a KwaZulu-Natal newspaper, under the headline: “Millions paid since dismissals two years ago – Fired prosecutors draw full pay”. The article noted that the NPA had paid out salaries of close to R2million to two prosecutors who remained on full pay, despite being dismissed from their posts over two years previously.³⁷

The inability of the NPA to address the poor performance of its corporate services unit created one of the greatest hindrances to improved performance within courts at a provincial level. As the project progressed, it became increasingly difficult to motivate managers to address non-performance and abuse of sick leave and leave due to the fact that so many of the cases stalled or died at the national level. More importantly, the inefficiency of the Corporate Services division to deal with widespread staff vacancies left the courts understaffed and had an extremely adverse effect on the overall functioning of courts.

Despite these issues the sustainability of the CJSP was demonstrated at a 2005 provincial strategic planning workshop, funded by the NPA, at which prosecutors participated in presenting the strategic plan of each cluster. The event was organised and facilitated entirely by the KZNPS staff with no outside assistance and the energy and enthusiasm, as well as the technical competency, reflected an enormous growth in the organisation since 2002. National representatives who attended the workshop remarked that they had not seen such a visible commitment to transformation in any other province.

A review four months later noted a list of achievements including:

- Increased engagement with partners: prosecutors were able to demonstrate a much greater level of interaction and co-operation with other criminal justice agencies as well as with NGOs and CBOs. This included increased participation in community policing forums, higher numbers of referrals for mediation and diversions, improved case-flow management and reductions in awaiting trial prisoners. This was particularly evident in the Provincial Integrated Justice Forum (see Chapter Five) where the KZNPS played an increasingly active role and actively drove case-flow management at court level.³⁸

³⁷ Broughton, Tania *The Mercury*, 29th May 2006

³⁸ This was seen as achieving one of the KZNPS strategy plans key objectives of “greater integration and communication between the relevant role players”

- Case management processes were improved via a number of initiatives. Specialised courts were used increasingly. A drug court and two community courts³⁹ were established, and there were more referrals to the asset forfeiture unit.
- The use of targeted prosecutions especially around drugs and housebreaking cases had a visible impact on crime in a number of areas
- There was also a marked increase in media coverage of effective prosecutions and success stories which had a positive impact on public perceptions of the NPA as “lawyers for the people” and as a crime fighting unit.

By late 2005 the involvement of the KZNPS in community courts, as well as with various cluster initiatives regarding targeted prosecutions, led to the acknowledgement that a more flexible, community-driven response to crime was needed. At a strategy review session prosecutors noted the need for a response that would address high levels of crime and increase public engagement with the criminal justice process in an environment that had limited resources. Further discussions raised the questions of how the NPA could make justice more visible and accessible to communities, and develop more flexible and proactive responses to the high number of awaiting trial prisoners and the increasing number of juveniles within the system.

After providing three years of intense facilitation, training and resource support IPT’s exit process began towards the third quarter of 2005 and by the end of 2005 the provision of services to the KZNPS had decreased substantially with the majority of project resources being directed at the other role players such as the Department of Justice and magistrates.

By 2006 the innovation and advances made within KwaZulu-Natal under the leadership of Advocate Batohi contributed to her appointment as project leader for two national strategic projects for community prosecution and restorative justice.⁴⁰

³⁹ The community courts, especially the one established at the Point in Durban, were to become key focus areas for the Department of Justice and NPA and 2006 would see the initiation of community prosecution as an important driver around providing a responsive, community driven service.

⁴⁰ During 2006 and 2007 the IPT, in partnership with the NPA, secured funds from the Danish Embassy to provide project management and evaluation for a two-year pilot project to test the viability of community prosecution as a strategy for crime prevention.

Chapter 3

Department of Justice and Constitutional Development: Court Support Services

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: COURT SUPPORT SERVICES

BACKGROUND

When IPT began to interact with the Department of Justice (DOJ) in 2003, they were eight years into a transformation process that had begun in 1995 with the amalgamation of 11 previous departments of justice of “homeland” states into one national Department of Justice and Constitutional Development. By 2003 Re Aga Boswa⁴¹, one of the Department’s flagship transformation projects, was at the centre of this transition process aimed at enhancing service delivery, efficiency and cost-effectiveness.

Our first intervention with the DOJ began at the Durban magistrates’ court, which had been the site of a pilot project between 2000 and 2003. The pilot aimed to test the viability of a court management model where the administrative support services, then being performed at a regional office, would be migrated to the courts themselves. The model involved the appointment of a court manager and administrative systems which would absolve magistrates and prosecutors from administrative tasks in order to allow them to focus on adjudicating and prosecuting cases. This dissolution of the regional office and restructuring of the hierarchy meant that in mid-2003, when we began to discuss the inclusion of the DOJ in the project, the provincial structures were largely in disarray and there was no provincial manager with whom we could interact. However, the Durban magistrates’ court had an active and enthusiastic court manager and, since IPT’s work with the KZNPS had begun in this court, we understood the environment and were well known to many of the administrative staff. It was for these reasons that the first intervention with the DOJ occurred within this court, rather than at provincial level.

Understanding and strategic alignment

While IPT already had knowledge of the broader environment our lack of working experience within the DOJ required that we spent some time in the “understand” phase. Our first activity, a two-day strategic planning workshop, reflected a combination of the first two steps of our model – understanding and strategic alignment.

The decision to facilitate this workshop came about following a discussion with the Durban court manager. Attended by managers and a representative group of staff members, the workshop was intended to identify and understand the issues that were impacting negatively on service delivery and to assist with the development of strategic objectives to address issues that could be resolved at a regional level. As

41 A Sotho phrase meaning restructuring or “we are rebuilding”

with the KZNPS, a central theme that emerged during discussion was the need for “management development”. This capacity gap was identified immediately by the group and confirmed through our various interventions over the next two years. In the course of the workshop, participants identified a number of hindrances which included resource shortages, poor communication, poor management, bad attitudes and low morale, a lack of training opportunities and high case backlog.



By the end of the workshop the group had agreed on a strategy with eight objectives, viz to:

1. Use resources better;
2. Ensure the transformation of people and the organisation;
3. Initiate a training programme for staff members;
4. Promote better internal relations;
5. Improve communication;
6. Improve morale and behaviour between and amongst staff and management;
7. Create a better physical environment; and
8. Address the backlogs in the criminal court section.

Replicating the model that had been successfully utilised with the KZNPA IPT agreed to assist with the production of a series of pamphlets and posters that illustrated the strategy. The posters were displayed throughout the court building in order to “market” the strategy and ensure its visibility to both staff and court users, and

provide the court manager's telephone number for members of the public who were not happy with the service they had received. The pamphlets were distributed to all staff in the court. The obvious gap in previous strategies was the failure to broadcast and communicate it to the staff and customers which is what made this a significant step in developing a common focus.

Delivery

Following the development of this local strategic plan, IPT was then able to focus on providing support during the implementation of the strategic initiatives that had been developed. Experience with the KZNPS showed that measurement of strategic implementation was vital and, as a result, IPT offered management a one-day workshop to provide the tools and knowledge for monitoring and evaluation of their strategy.

For the remainder of the year IPT continued to work with this management team to identify the competency gaps that were hindering their ability to execute the strategy. Continued high absenteeism and unmanaged poor performance gave rise to workshops for supervisors on chairing disciplinary enquiries and managing employee incapacity. These workshops were held in conjunction with two-hour information sessions for all staff, during which current absenteeism statistics and costs were presented. The process was supported by mentoring from human resource consultants, as had been done previously with the KZNPS.

We again established a bureau system to measure and monitor incapacity and absenteeism amongst court staff. This provided a monthly analysis of sick leave to assist managers to deal with employee incapacity and non-attendance.

A recurring complaint that emerged in discussion with managers and staff was that poor inter-personal relations within the DOJ caused ongoing stress and dissatisfaction. This was compounded by having to deal with the historically poor relationships between staff and the public. The environment is adversarial and emotional as the cases regularly include maintenance claims and disputes, divorce and child abuse cases, and situations where customers are either emotional and disappointed with the system, or in breach of it. A number of people suggested that these poor internal relations were often a reaction to the external pressures.

At the request of senior managers a two-day conflict management workshop was held where IPT allowed participants to look at the way they dealt with conflict in their personal lives as well as at work, where many of them regularly encountered difficult customers.

As mentioned above, a need that emerged at the strategic planning workshop in late 2003 was for a training programme within the court. There was a provincially appointed Human Resource officer in place who is theoretically responsible for training but this person has a high workload and receives little support from management.

Without IPT's presence training would have disappeared from the agenda of the courts management. Instead the inclusion of training in the strategy and the broad involvement of management and staff in identifying this as a real need led to the establishment of a training committee who agreed to drive this strategic initiative. This committee obtained a training room at Durban magistrates' court, which was a real achievement since space is limited and there is intense competition for it.

Adaptation

Our first instance of adaptation in the DOJ intervention came when the training committee identified court interpreters as a target group for specialised training. The court interpreter service had been neglected for years and considered unimportant. Historically this service was intended for the illiterate who did not understand English or Afrikaans, which were the two court languages. Interpreters lacked knowledge of the specialised evidential processes and terminology which have arisen around issues such as DNA testing and other technological developments. This was a serious hindrance to the delivery of justice. The identification of interpreters needs demonstrated both a commitment to meeting the needs of all staff in the department and the clear prioritizing of needs according to customer focused service delivery.

By August 2004 a series of workshops for interpreters had been organised. These workshops included training in fingerprints and ballistics, DNA analysis and body fluids. In the 2004/5 performance-appraisal process, the interpreters who had attended these workshops achieved an above average rating.⁴² It was noteworthy that interpreters gave up their days off to attend the training sessions. In the CJSP experience they were the only group ever to do so.

Another successfully implemented initiative was the effort to address the case accumulation (or backlog) at the clerk of the criminal court. A committee devised a roster where each section was asked to provide one staff member to work on the backlog. Six months later the backlog had been halved. Unfortunately this initiative was subsequently disrupted by severe staff shortages, which, together with chronic absenteeism, were constant difficulties faced by this project across all government departments.

42 Luthuli, S and Marais, K 2... *Report On The IPT's Specialised Interpreters Training Programme*; IPT

By the end of 2004, IPT believed that the successes within Durban magistrates' court and the enthusiasm that had been generated would provide the foundation for shifting the intervention to a provincial level. The lack of a provincial manager in the DOJ during the year had precluded any provincial dialogue, but by early 2005 a provincial senior court manager, who was based in Pietermaritzburg, had been appointed. However, despite a number of positive meetings and verbal commitments IPT was never able to accomplish the shift to an intervention at provincial level. Training interventions and workshops were hindered by regular postponements and cancellations due to the constant turmoil and restructuring experienced at the national level. IPT observed that the Re Aga Boswa programme created a situation where senior people struggled to create a coherent organisation within impossibly optimistic time frames. Throughout 2005 there was confusion as to what direction the DOJ was moving in and constant uncertainty about positions and structures within the organisation, an example being first the disbandment and then, later, the reintroduction of regional structures. In addition, many interventions offered by IPT were already being delivered by the national office. In fact, over the course of the project a number of departmental workshops were held regarding labour law, human resource issues and management development. However, these workshops were often superficial in content and no follow-up support was available. Participants were introduced to ideas and concepts that are often difficult to apply in a government environment without long term coaching and support.

It also appeared that the DOJ had suffered a substantial loss of power when the magistracy and prosecuting authority moved away from its direct bailiwick. In trying to carve a meaningful role for themselves within the criminal justice system, DOJ managers described their contribution as one of providing a service, but it appeared that the department was very protective of its role and that there was a strong need to "own" processes in a fairly exclusionary way. While ownership is vital to delivery it poses some problems when the departments lack capacity to delivery. At a restorative justice conference held in Cape Town in late 2006 Judge Eberhard Bertelsmann, the chair of the committee addressing overcrowded correctional facilities, gave an opening speech in which he directed comments at senior DOJ officials asking them to consider the value of not trying to do everything, but rather to let non-governmental organisation's partner with them in achieving the objectives of the justice system.

Despite our inability to engage effectively at either a national and provincial level, work at the Durban magistrates' court continued. A number of external factors affected the project, including the resignation of the Durban court manager and the appointment of a new incumbent, which meant there was a gap in delivery while IPT re-established the relationship. Any change in management causes shifts in the organisation as staff re-align themselves and in this case staff grievances and simmering tensions escalated. In order to address some of the concerns the new

court manager asked IPT to conduct a perceptions audit to identify levels of staff satisfaction or dissatisfaction concerning leadership, teamwork, communication, rewards and recognition. This survey was done for all the sections within Durban magistrates' court and was followed by facilitated feedback sessions between managers and staff within each section.

At the request of managers, IPT also ran a workshop on the Balanced Scorecard. Since DOJ had adopted this as their strategic implementation tool, managers at the court, who were expected to complete Balanced Scorecard templates, were concerned about their lack of understanding of this complex tool.

In July 2005, IPT again facilitated a workshop for the management team to allow them an opportunity to review and reflect on the achievements of 2004/2005 and refine their objectives for the rest of the year. As they reflected on the previous year they noted that there had been some significant successes since 2003. The social and training committees had both been effective in achieving a number of their intentions. The members of the training committee, now called the education, training and development committee, were satisfied that they had achieved some objectives, such as analysis of training needs although not all these needs could be catered for, due to budget and time constraints. It was obvious that they had also learnt from their efforts when it was noted that administrative systems needed to be tightened up and that all training nominations or outside training should in future be sent through the human resources section so that attendance records could be kept. The social committee had achieved the objective of getting people together and staff were being involved in the different "celebrations" such as gender issues, Child Protection Week and International Drug Awareness Day, which had not happened in the past. A common room where people could sit and have lunch and tea together was still to be established and since the building was undergoing renovations, the committee decided to continue to lobby for this facility.

Over time personnel from Durban's court support services had begun to see themselves as significant stakeholders in the delivery of justice and recognised that they played an important role in ensuring effective court performance. Historically, these personnel felt that they were treated in a disrespectful manner and that prosecutors and magistrates sometimes used these clerks as "runners". It was noted that things had begun to change over the last year of the project as confidence in the section improved and even the relationship between interpreters and prosecutors was said to have improved.

However, communication remained a problem within the office and management agreed to visit each section and address the staff. Attendance and commitment within the communication committee had been uneven and the compilation of a

newsletter had petered out. It was agreed at these joint meetings that the committee should be re-established and the newsletters should continue. It was also agreed that a “letter box” should be placed in the staffroom in order to encourage feedback to management, although it was said that the supervisors and management really had changed with regard to their open door policy and it was now very easy to speak to them about problems.

Following this workshop with staff and management, IPT was able to work with management to refine their strategy resulting in a revised set of objectives that focussed on improving service levels and co-operation with others in the system. The objectives were to:

- Increase public confidence through improved customer relations, better communication and higher levels of service to victims and witnesses
- Impact significantly on crime levels through effective and efficient support to the judiciary and prosecutors
- Develop a performance driven organisation with committed, motivated, competent and professional staff

Critical Reflection

The consensus of the management group was that they had benefited enormously from the “managing employee incapacity” and “chairing disciplinary enquiry” workshops. They felt that the content had helped with real problems they were experiencing. They also noted that the facilitators were approachable, making people feel relaxed and unafraid to ask questions.

Many people felt that the individual coaching provided by the human resources consultant after the workshops had played a large part in their capacity to manage more effectively. It had been important in maintaining commitment, since, according to staff members, there had previously been very little follow-through within the department. The coaching also allowed IPT to assess the impact of training following the workshops. During these processes it became apparent that while the DOJ was more effective than many departments in supporting the management of poor performance due to incapacity and ill health; managers were having difficulty with poor performance due to misconduct. Staff would do something wrong and be called in and spoken to, but the staff knew that there would be no real consequences should their performance not improve.

IPT’s ongoing interaction with managers revealed that a significant gap in the system was the dearth of clear performance documentation, including performance agreements. This was being addressed by national DOJ offices and the CJSP was able

to support the process by working with supervisors. By late 2005 management had developed performance agreements that were accepted by the individuals under their supervision. This contributed to a clearer framework for managing performance.

By the end of 2005, IPT felt there were limits as to what the CJSP could achieve at court level. It was increasingly difficult to work with the department at a provincial level due to further restructuring. The regional offices had been largely disbanded as part of the Re Aga Boswa project in 2004. During 2005 the regional head was replaced by a senior court manager's office. By 2006 a new national DOJ director had been appointed as part of a further revised structure, which also involved the re-establishment of the regional office and the appointment of a new regional head. The constant changes in structure and roles made it difficult to establish relationships. Individuals that IPT did interact with often could not commit to longer term processes since they did not know where they would find themselves in the future.

IPT made the strategic decision in 2007 to focus support on the co-ordinating structures that were in place, namely the Provincial Integrated Justice Forum (PIJF) and to increase support to the magistracy since these two groups were regarded as having the most impact on improving court performance. In addition, our work with the department had in some sense shifted with our participation in the development of the Court and Case Flow Management Guidelines, but this involvement was at a national level and on a very specific issue. (See Page 82)

Chapter 4

The Magistracy

THE MAGISTRACY

IPT began to actively engage with the magistracy early in 2003. As we had never interacted directly with magistrates in the past, time was spent on the “understand” phase of the process model. We researched the context and structure to identify where best to introduce the intervention. Feedback from within the magistracy, as well as from other departments, convinced us that there was a real need to engage magistrates concerning matters of performance, capacity and attitude.

There is general agreement that the performance and demeanour of a magistrate has an immeasurable impact on the court, its functioning and the conduct of the other role players. The magistrate is seen as the role model for the court. The late Chief Justice Ismail Mahomed said that “it is in the magistrates’ courts that justice is tested in its most crucial, most pervasive, most voluminous, most pressurised, and logistically most demanding dimensions – in literally thousands of cases every day. The continuous struggle for the legitimacy and the efficacy of the instruments of justice is substantially lost or won in the magistrates’ courts”.⁴³ It is for this reason that the magistracy certainly is a critical partner in any attempt to improve performance within the CJS.

Given the relatively autonomous structure of the magistracy, this was a very different environment from the other departments within the CJS. The lack of any conventional and identifiable

In South Africa there are more than 400 magistrates’ courts served by more than 1,400 magistrates.

Magistrates’ courts in South Africa are the lower courts and the courts of first instance and decide all matters provided for by an act of parliament. As such, they deal with the great majority of court cases. The presiding officer in these courts is called a magistrate.

Magistrates’ courts are divided into regional courts and district courts. These courts have jurisdiction in civil matters where the value of the claim does not exceed ZAR100,000 and in criminal matters where the possible sentence does not exceed three years imprisonment or a fine of ZAR 60,000. More serious criminal matters are heard in the regional magistrates’ courts, as district magistrates’ courts cannot pass a sentence of more than three years. Magistrates’ courts have no jurisdiction over the offences of treason, murder or rape. These courts may also not decide on the constitutionality of any legislation or on any conduct of the president of South Africa.

There are a number of magistrates’ courts that specialise in certain types of matters, such as the sexual offences courts that are based in several centres.

⁴³ Mahomed, Ismail 1998. Address by Chief Justice I. Mahomed to the Second Annual General Conference of the Judicial Officers’ Association of South Africa in Pretoria on 26 June 1998. *The Judicial Officer*, Vol. 1, No. 2, pp. 47-52.

“management structures” meant that in this case IPT could not replicate the same approach used with the KZNPS and DOJ&CD as there was no departmental strategy within which we could embed the project; in fact, there was no “department”. IPT needed to find a different way to engage with magistrates and so began to talk to them and explore various options.

BACKGROUND

Historically magistrates were appointed from the ranks of the public service, particularly former prosecutors, rather than the legal fraternity. In contrast, almost all judges came from the senior counsel of the Bar.

Prior to 1993 magistrates fell under the Public Servants Act of 1957, which regulated their conditions and periods of service, as well as issues regarding discipline and dismissal. As public servants they received directives from the DOJ and could be accused of misconduct if they failed to obey a direct order from that department. In addition, magistrates were dependent on departmental merit assessments for promotion and salary increases. Many role players felt that this compromised magistrates’ independence.

However, in 1993, the Magistrates Act (1993) saw the de-linkage of the magistracy from executive control and the establishment of the Magistrates Commission as the statutory control body for magistrates⁴⁴. While the Act gave magistrates an increased level of independence some role players still argued that there was too much power vested in the office of the minister of justice. Since then the magistracy and the DOJ&CD remain administratively interlinked despite ongoing debate around issues of the independence and accountability of the magistracy. As of 2006 magistrates’ salaries continue to be administered by the DOJ despite having been reallocated from the budget of the Department of Justice and Constitutional Development (DOJ&CD) to the state revenue budget. Training for magistrates is also delivered almost exclusively by Justice College, the official training arm of the DOJ&CD.

As a consequence of this process magistrates found themselves in a “no mans land” On the one hand, they were still dependent on the DOJ&CD for administrative support, but were left without strong management structures, access to budgets or representation at a national level.

44 This de-linkage eventually contributed to the Department of Justice and Constitutional Development reallocating non-judicial administrative duties from magistrates to the newly created court managers in 2003/4.

Adaptation

It was in this context that, during early discussions with the KwaZulu-Natal chief magistrate, IPT identified the then inchoate provincial training committee as a possible vehicle through which to initiate interaction with the magistrates. The provincial training committee had been formed in 2003 at a combined cluster meeting of district court magistrates in KwaZulu-Natal and six members of the magistracy had been nominated to form a judicial education and training sub committee. Their mandate was to facilitate “training opportunities wherever and whenever they present themselves and to co ordinate activities in this regard”.⁴⁵

This training committee had been formed shortly before IPT became involved with the magistrates and the members were magistrates with little or no knowledge of training or the training environment, so the first initiative of the CJSP was to engage the services of a specialist training consultant. IPT provided the committee with information about the National Qualifications Authority’s Sector Education and Training Authority (SETA) and specifically the Police Security Legal and Courts SETA, and also outlined the procedures for accessing money for training and development from the National Skills Fund. IPT could not utilise the usual methodology for strategic alignment since the magistrates had neither a strategic plan nor the capacity or legal framework to develop one. However, we facilitated a workshop to help formulate a needs-based plan for the training committee with the intention of synchronising our intervention with this training plan. This was our attempt at a strategic alignment as defined in the model.

Strategic Alignment

For the remainder of 2003, the committee, which now called itself the KwaZulu-Natal Judicial Education and Training Committee (KZNJetCom) held a number of meetings. At the same time, IPT worked with the committee to set up a database to identify what training had historically been provided to district court magistrates and what further training was needed. We also helped the committee to develop a draft generic skills profile of magistrates that could be used as a basis for identifying ongoing training requirements.

As this process developed, magistrates identified a wide range of training needs, but it became apparent that they did not have access to a budget to meet these needs. Justice College provided only a limited number of training opportunities and was in a state of flux with changes in directorship and the usual hiatus that accompanies changes of this nature. It was evident that an alternative vehicle was required to support the existing educational initiatives, one that would be cost effective and flexible enough to provide a wide range of learning opportunities. In March 2004

⁴⁵ Laue, R 2003. Email correspondence. 11 August, Durban

three magistrates from the training committee proposed peer learning as a method to address the education and training needs of magistrates within KwaZulu-Natal⁴⁶.

At the recommendation of a member of the training committee, Magistrate Gerhard van Rooyen, IPT contracted Tony Sardien of the Law, Race and Gender Research Unit at the University of Cape Town to facilitate a workshop in July 2004 for training committee members and area cluster heads. The purpose would be to allow them to consider the potential of peer learning as a vehicle for the continuing professional development of magistrates.

Delivery

At this workshop a number of goals were identified by the training committee and provincial cluster heads. They felt there was a need to:

- Increase the amount of training or mentoring and peer facilitation available in the province
- Promote peer learning and enhance peer learning skills
- Develop the capacity of magistrates to perform their functions
- Find ways to benefit from others' expertise and share problems at the workplace
- Increase exposure across fields of practice – that is, civil cases, sexual offences and so on
- Change mindsets by sharing information and ideas
- Increase efficiency through better court management
- Learn more about social context in the work environment
- Form a network amongst magistrates
- Develop a programme for KwaZulu-Natal judicial training committee

From the outset of this workshop, it was clear that the magistrates present felt peer learning was a viable option for developing judicial skills and knowledge, and that getting to know each other and sharing experiences was important. The building of relationships was seen as essential for establishing a peer network.

During these early discussions, it was also suggested that a combination of the benefits of peer learning and the existing judicial mentoring⁴⁷ process would be a feasible way to support learning amongst magistrates. In order to be successful as mentors, or peer learning facilitators, magistrates would need to acquire new skills and pass them on effectively.

46 This followed one of the committee members', Magistrate Gerhard van Rooyen, attendance at the UCT Law, Race and Gender Research Unit's "Learning for Change Conference" in September 2003

47 Justice College had piloted a Mentorship Project through the Canada-South Africa Justice Linkage Project during 2001-2002

Following this workshop IPT agreed that providing support for peer learning would create an ideal leverage point for the project and ensure project impact.

A follow-up workshop, attended by the same group, was held in August 2004. Participants were introduced to the concepts of adult learning and judicial education, as well as peer learning and its application to the education and training of district court magistrates in KwaZulu-Natal. Time was spent on the practical skills of giving and receiving feedback, which would be needed by magistrates acting in a facilitation role. The workshop ended with participants developing implementation plans for peer learning activities within their area clusters, or courts, and agreeing that training would become a regular item on the agenda at area cluster meetings with the training committee acting as a “clearing house” for training-related matters.

An agreement was also reached on a monitoring and evaluation process to ensure that early problems and successes could be shared as training tools. A follow up workshop was organised with the intention of providing the group with a structured feedback and learning process.

Critical Reflection

This third workshop, held in April 2005, was used to evaluate the process thus far and define the way forward. Each magistrate presented a report and it was soon apparent that each had approached their task in a different way. Individual members tended to use the resources available through their positions as deputy chief magistrate, area cluster head or head of office to carry out their committee tasks. There had been no prior agreement on standards of implementation for the peer learning programme,

What is Peer Learning?

According to participants at the first peer learning workshop for KwaZulu-Natal magistrates, peer learning involves an informal network for managers of magistrates who face similar challenges and experiences. Peer learners might share good practice and knowledge, make contacts and resolve problems together. The purpose is to support the ongoing improvement of learning and provide a framework for engaging in constructive reflection on professional practice.

Peer learning neither forms part of an appraisal mechanism, nor is designed to determine promotion, or to investigate ‘under-performance’. Such intentions are not viewed as helpful in promoting the main aims of peer learning, which are to extend and enhance skills through refining existing strategies and learning about new ones. It has a development and improvement orientation, not a judgemental one.

but when the group were asked to critically reflect on what they had done they were able to make a number of observations

- Training committee members prioritised consultation with participant magistrates and these consultations communicated respect for the active partners in the learning process,
- Ron Laue, the KZNJetCom chair, facilitated access to resources and information and the presentation of the peer learning activities at courts provided a context for more focused discussion of these resources and the feedback received indicated greater awareness of ongoing peer learning.⁴⁸

During this third workshop, participants were asked to share their experiences of facilitating peer learning events. The discussion that followed confirmed the versatility of peer learning. Examples showing this versatility included the following:

- At a larger court magistrates who had queries relating to substantive law, as well as practice and procedure, were asked to research the law relating to that issue. They also looked at how other magistrates' court were dealing with the same problem. These findings were circulated to other magistrates for their perusal and comments and this was followed by a meeting at which a uniform way of dealing with that particular type of matter was decided on.
- Relevant articles were regularly circulated to everyone in the division by email.
- The opportunity was provided to provide debate around differing application and interpretation of Acts, for example, the Arms and Ammunition Control Act. A magistrate (often the most junior) would prepare a lecture on the topic and this would be followed by debate and discussion.
- Areas held regular meetings to discuss court-related problems, including those experienced by magistrates in their working environments and relating to the the interpretation of ambiguous legal provisions.
- A number of clusters successfully included other role players, such as SAPS and interpreters, in peer learning activities. This served to strengthen local networks, build working relationships and broaden the knowledge base.⁴⁹

As a result of the magistrates having little access to additional resources, they had to incorporate peer learning opportunities without incurring extra costs. As a result most peer learning activities were incorporated into a range of "ordinary" activities.

This review workshop helped IPT identify achievements and evaluate the impact thus far.

48 Tony Sarden Draft of proposed case study "The Formation and Development of the KwaZulu-Natal Training Committee" 2005

49 Peer Learning Report; Everglades Hotel 20/22 April 2005 IPT

Feedback from the magistrates revealed the outcomes of the CJSP included the following:

- Queries from magistrates about difficult issues decreased following peer learning discussions.
- Improved working relationships with other role players such as SAPS.
- Initial participants continued to meet and with sustained interest and commitment to co-operation on training and development.
- Field practice reports indicate positive developments in a number of courts – one cluster held a capacity building meeting due to very low disposal rates and in less than six months had reduced outstanding cases from 160 to 46.
- More than 30 articles on peer learning issues were developed and made available to others in the judicial environment
- Relationships were strengthened and there was greater interaction amongst magistrates
- Better use was made of information technology, including the use of email to enhance learning and communication.⁵⁰

While the CJSP ended in December 2007 the members of KZNJetCom continued to facilitate peer learning sessions throughout the province, the E Mantshi newsletter increased its circulation and continued to appear each month. By late 2008 the Lower Court Management Committee had initiated discussions to establish similar structures in all the provinces.

50 Peer Learning Report; Everglades Hotel 20/22 April 2005 IPT

Chapter 5

Provincial Integrated Justice Forum

PROVINCIAL INTEGRATED JUSTICE FORUM (PIJF)

“Like many other things, co ordination is a positive good, easily defended as long as there is no price. If the effort of co-ordination seriously runs down the energies and the resources of the officials involved, however, then co-ordination may have to be dispensed with here and there....”⁵¹

BACKGROUND

The South African Cabinet adopted the National Crime Prevention Strategy (NCPS) in 1996. The NCPS comprised four key strategic pillars, namely:

- reformation of the criminal justice system,
- the changing of public values and attitudes,
- environmental design and
- transnational crime.

While the NCPS had a predominantly national focus, the White Paper on Safety and Security made up for this oversight by providing the provinces with the powers to decide on their crime prevention needs.⁵² Provincial summits were organised in each province in 1997 to provide feedback on the NCPS, and for the development of integrated provincial plans based on the national strategy, as well as to mobilise multi-agency and citizen resources in aid of crime prevention efforts. The aims of the summits were:

- To identify crime prevention priorities
- To identify provincial role players for possible crime prevention programmes
- To identify location and responsibility for provincial programmes
- To establish provincial co-ordination teams for crime prevention programmes
- To involve all government departments and civil society organisations in crime prevention activities in the province.⁵³

Following these provincial summits regional heads within the DOJ&CD were directed by their national office to promote and facilitate participation in crime prevention strategies at a provincial level. In KwaZulu-Natal the KwaZulu-Natal Crime Prevention Strategy Committee (KZNCPSC) was hosted by the provincial Secretariat for Safety and Security and meetings were held throughout 1999. By the end of that year the provincial heads of the core criminal justice departments reviewed the mechanisms needed to ensure the NCPS could be executed at provincial level.

51 Quester, G 1974. *The Continuing Problem of International Politics* New York: Holt Rinehart, p113

52 Masiza, Z and Ntlokonkulu, L 2002 *Enhancing Policy Implementation; Lessons from the national crime prevention strategy* Research Report No. 96, Johannesburg

53 J Rauch, “The 1996 Crime Prevention Strategy” CSVR Paper

They agreed that the provincial secretariat did not have the capacity or resources to drive the initiative and the DOJ would be better placed to do so. The committee changed its name to the Provincial Integrated Justice System Forum (PIJSF) with the legal section of the DOJ acting as the secretariat for the forum.

The first meeting of the PIJSF was on 2nd May, 2000. Members comprised representatives of the judiciary, the National Prosecuting Authority, SAPS, Department of Correctional Services, Business Against Crime (BAC), the Department of Social Development (previously Welfare), the KwaZulu-Natal Road Traffic Inspectorate, the Durban Justice Centre, the KwaZulu-Natal Community Policing Forum Board, and the Department of Public Works. Minutes from these meetings indicate that the PIJSF dealt with a wide range of matters, including prison accommodation, awaiting trial prisoners, detention of minors, backlogs in court rolls, mobile courts, and case review teams.

However, by the eleventh meeting, held in November 2001, of the forum, which had by then been renamed the PIJS Board, resolved “that because of the non-participation by officials of sufficient seniority to make binding decisions or commitments on behalf of their departments and because no meaningful data was furnished whereby the success of the board’s efforts could be gauged, the vision and strategy of the board had to be re-stated and the appropriate departmental representatives identified”.⁵⁴

The next meeting of the Board on 15th February, 2002, was chaired by the then director of public prosecutions in KZN, Advocate Mokotedi Mpshe. He reported that he had been unable secure any interest in, or commitment to, the board from the primary stakeholders and it was agreed that the board should be dissolved.

The Re-establishment of the PIJF

Despite the perceived failure of this multi-agency forum, it clearly had the potential to provide a vehicle for co-operation and co ordination within the criminal justice sector in the province. When IPT conducted the feasibility study in late 2002 a number of people recognised and commented on the loss of this potential when the forum was discontinued. It was widely believed that an effective forum could be key to improving service in KwaZulu-Natal. In addition, the issues that had appeared on the agenda continued to be those which plagued the justice system for example, the overcrowding of prisons, court backlogs and the detention of juveniles remained serious problems.

During the feasibility study, IPT had identified the re-establishment and effective functioning of the integrated justice forum as one of the project objectives and had

⁵⁴ Adv C Roberts, Dept of Justice “Background to the PIJS” available on www.justiceforum.co.za

allocated a portion of the project resources for this purpose. In early 2003, two events occurred which allowed us to leverage this process. In May, a combined portfolio committee from national parliament visited the province. At the conclusion of their visit they reiterated the need to have a provincial forum to address the pressing issues in the criminal justice system. At the same time, IPT was facilitating the KZNPS provincial strategic planning process, where a key strategic objective identified was the active participation by the prosecuting authority in a provincial forum of stakeholders.

As an outcome of these two events the DPP initiated a meeting with the chief magistrate and deputy provincial commissioner of SAPS to discuss the re-establishment of such a structure. IPT offered to provide a venue and, more importantly, secretarial and administrative support, to the forum.

The first formal meeting of the Provincial Integrated Justice Forum (PIJF) was held on October 8, 2003. It was attended by representatives from the primary role players in the criminal justice sector, including the magistracy, DOJ&CD, the KwaZulu-Natal Prosecuting Service, SAPS, Correctional Services, the Independent Complaints Directorate, the KwaZulu-Natal Law Society and the Legal Aid Board

The minutes reflect a commitment by the participants to their regular attendance and to focus on issues of a strategic nature rather than on day-to-day operational issues. It was agreed that the minutes would be widely distributed to ensure greater awareness of the forum.

IPT supported PIJS meetings from 2004 to 2006 by arranging the venue, supplying refreshments and providing secretarial and administrative support. The provision of a venue was particularly important since it gave senior people from the various participating departments a neutral place to meet and this improved the interaction and sense of “being able to speak freely” in the presence of all role players.

From 2004, the administrative services that had been provided by IPT were supported by the acting registrar at the Durban magistrates’ court, who served as secretary to the forum. This was an important development since it began to demonstrate commitment to the process from within the system which IPT hoped would contribute to the forum’s sustainability. Another significant development was the increased support the forum received from the judiciary at the highest level in the province. Judge Achmet Jappie of the KZN High Court division took over the chair of the PIJF and continued in this role for the duration of the project.⁵⁵

While the members had always agreed that discussion should focus on strategy, in

⁵⁵ Judge Jappie was still chair of the forum at the time of writing in November 2008

reality it usually focussed on operational issues. An example from a number of early meetings was an ongoing debate about the regular unavailability of SAPS vehicles to transport prisoners from Westville Prison to the courts. This lack of available transport was identified as a primary contributor to the courts starting late. This difficulty, attributed to ongoing mechanical problems with vehicles, was discussed at a number of meetings to no avail. Finally, one provincial director, in exasperation, questioned whether it was even worth meeting if the most senior leadership in the province could not even solve this seemingly simple mechanical problem. The outburst seemed to have some effect on the forum members who began to drive a more “delivery focussed” and aggressive agenda. Incidentally, the vehicle problem was solved and never reappeared on the agenda.

Over time a number of major issues were kept on the agenda, such as:

- Pre-trial conferences;
- CCTV court-to-prison linkages;
- Targeted prosecutions;
- Integrated justice system structures;
- Overcrowding of prisons;
- Community courts; and
- Implementation of case flow management.

By 2005 the PIJF had gone from strength to strength. One noteworthy achievement was that the participants from core departments who had attended the first meetings in late 2003 continued to faithfully attend. Notwithstanding, it became evident that regular attendance of representatives from other departments, which did not have criminal justice as a core responsibility, was also essential. Two departments in particular, Health and Education, while having very different mandates from those directly responsible for criminal justice, were important contributors. By mid-2005, the forum had succeeded in getting representatives from both these departments to the meetings.

By this time, the agenda was taking up almost a whole day and there was debate on how to make the committee more effective. This resulted in the establishment of two subcommittees – one focusing on juveniles awaiting trial and the other on evaluation and monitoring.

At its first meeting the **Subcommittee on Juveniles Awaiting Trial** identified an issue that was relevant to the entire sector, that of numerous ad hoc initiatives to deal with prison overcrowding and problems associated with it, without any co-ordinated or collective plan. Another significant gap identified was the dearth of common information regarding departmental initiatives and plans. Departments did not share data effectively and had little idea of what was taking place in other sections and so failed to make critical linkages.

The second subcommittee, on **Monitoring and Evaluation**, was established to co-ordinate and collate the wide range of statistics being generated by the various departments. This small committee consisted of a representative from the NPA, the DOJ and the SAPS as these are the departments in the justice system that have the most comprehensive system for data collection. It was agreed that this committee would provide quarterly feedback based on the statistics currently being gathered by the NPA since these best reflected and measured court performance.

IPT was of the view, by the end of 2005, that the PIJF was well and truly established with consistent and active attendance from all relevant stakeholders. It was apparent that, with the establishment of the monitoring subcommittee, members began to reflect more critically on the impact, or lack of it, of the forum. It was agreed that 2006 should start with a strategic planning session to clarify the forum's purpose and to set some measurable objectives for the year. It was also decided that there was a need to clarify IPT's role and to understand what expectations the committee members had of the organisation.

Strategic Alignment

This strategy planning session documented the notable achievements of the PIJF from 2003 to 2005. These included:

- The forum had succeeded in establishing solid working relations between key departments.
- The fact that the forum functioned, and was able to identify problems that needed addressing, was in itself seen as an achievement.
- The establishment of subcommittees to deal with specific matters such as children's issues and statistics assisted the PIJF in its work.
- The forum functioned well with good attendance from participants.
- The forum tackled a number of key issues such as the problem of juveniles in detention, CCTV linkage, community courts, and the management of children in the criminal justice system.
- The the first step in the development of a statistical monitoring tool was seen as a great achievement, as was the PIJF's contribution to the production of the Court and Case Flow Management manual.
- The fact that a Judge with the necessary authority chaired the forum was seen as significant in that it represented the true leadership and authority inherent to the criminal justice system – something which was previously not as evident and which was now securing commitment and accountability from other participants,
- The existence of the forum was further consolidated through its inclusion in the "Justice Forum" website set up by IPT, with the minutes of each meeting published on the website for easy viewing.

- The PIJF also acknowledged the role the IPT had played, noting “the professional and effective way in which Independent Projects Trust (IPT) facilitated and enabled the forum to have effective meetings. This relates specifically to the logistical arrangements, the recording and distribution of minutes, the establishment of a forum web page etc.”⁵⁶

However, as part of the process of critical reflection the PIJF also acknowledged some challenges that would require greater attention in 2006. Two of these points of concern also reflected ongoing problems within the criminal justice sector. A lack of communication between and within departments was identified as a hindrance to achieving the forum’s objectives. In addition, it was noted that unresolved issues were often not followed up. Both of these areas of difficulty reflect the poor levels of communication and accountability within government departments.

Discussion on these issues led to an action list for 2006. This included improving communication at all levels, increasing participation in the PIJF to include representation from the Law Society and Bar Council (criminal court defence representatives), and improving the information base of the forum to ensure that decisions were based on reliable data. The PIJF’s purpose was also defined as follows: The purpose of the PIJF is “to develop an integrated approach to improving the efficiency of the criminal justice system in the province... to provide a space for role players to communicate and enable inter-sectoral collaboration.”⁵⁷ The forum was also seen as an ideal vehicle for the promotion of the delivery of justice to the people in an efficient and effective manner, supported by a monitoring process that paid specific attention to court performance.

By March 2006, four crucial areas were identified for attention:

- The reduction of the number of awaiting trial prisoners (especially children)
- The improvement of the response of the justice system to children who are witnesses and victims
- The improvement of the efficiency of the criminal justice system – this was to be achieved through:
 - The implementation and monitoring of Case Flow Management
 - Reduction of awaiting trial prisoners
 - Better measurement of numbers of children in custody or in the system
 - The need to reduce the levels of crime – this was to be achieved in the following ways
 - Through a restorative justice approach
 - Through a proactive approach to dealing with crime

56 Pearce, B 2006 “PIJF 2006 Strategic Workshop Report” 30th January 2006

57 Pearce, B 2006 “PIJF 2006 Strategic Workshop Report” 30th January 2006

Having provided support in an unobtrusive manner, the role of IPT was officially acknowledged in 2006 and a more formal agreement was reached whereby the IPT would:

- Continue to provide administrative and logistical support to the forum and subcommittee meetings,
- Act as an information clearing house for members of the forum and maintain a database of relevant information to be accessed by members,
- Play a liaison role and be an information and referral centre
- Do research and collect data on key areas of interest to the PIJF and its strategic objectives, and
- Provide logistical and information-based support to subcommittees,

Our support for, and involvement in, the PIJF had a considerable influence on the CJSP itself. Once again it is useful to refer to the project model. Having gained a deep understanding of the dynamics involved in multi-agency initiatives such as this one, and having embedded our intervention in the PIJF's strategy, IPT was able to adapt its response in order to deliver the most appropriate and effective intervention.

An example of this "adapted response" was the establishment of a website for the PIJF (<http://www.justiceforum.co.za>). This was provided to meet the need for shared information between the various departments. There was often information generated in one department, which would have added value to a number of other departments but there was no conduit for sharing this information. Apart from the purely practical difficulties of sharing information, there was also a psychological issue. Each department had a silo mentality, in which they worked vertically with limited interaction across departments or even across units within departments – much like neighbours living right next door to each other would keep to themselves and not benefit from common mutual interaction. This meant that people often felt at odds with one other, rather than recognising that there were numerous opportunities for co-operation. The website was established as a means to make relevant information available and also to encourage innovative thinking on solutions for the criminal justice system.

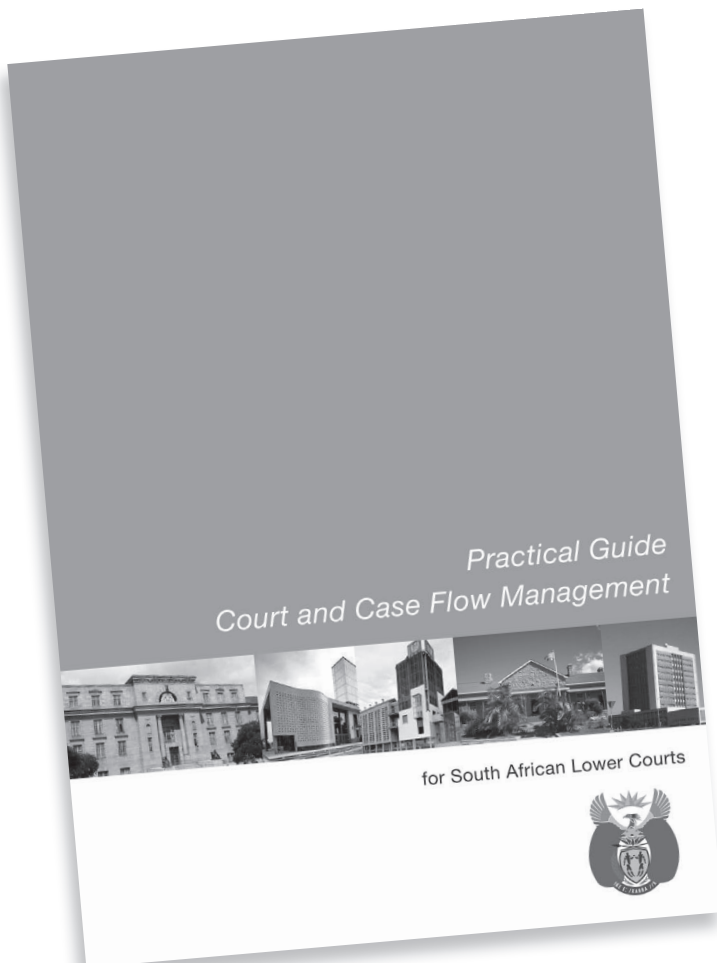
During the development of the website IPT found that we had to access almost all the material ourselves because very little was forthcoming from the committee or the participating departments. However, over time, this improved and the use of the website amongst role players increased substantially. A number of departments asked us to add their documentation to the website and the minutes of various provincial meetings were made available on the site. For example, departmental strategies were circulated, internal memos that impacted on others were made available, and updates around issues such as admission of guilt fines were shared amongst all role players.

Chapter 5.1

DEVELOPMENT AND PUBLICATION OF A *PRACTICAL GUIDE TO COURT AND CASE FLOW MANAGEMENT IN LOWER COURTS IN SOUTH AFRICA*

DEVELOPMENT AND PUBLICATION OF A *PRACTICAL GUIDE TO COURT AND CASE FLOW MANAGEMENT IN LOWER COURTS IN SOUTH AFRICA*

Another example of the IPT's flexibility to adapt to the constantly changing environment during the project was our support for the development, publication and implementation of formal court and case flow management guidelines. These guidelines were developed by a special task team of the Judiciary's Lower Court Management Committee (LCMC), a national body established to address performance within the lower courts. The development of documented guidelines for case flow management seemed to be in line with the objectives of the CJSP, since they would provide broadly agreed standards of performance as well as clearly define roles and responsibilities for the various players in the criminal justice system. This was sorely



lacking in a system which had become fragmented and dislocated to the extent that it had allowed many individuals to abdicate their responsibilities. It was apparent to IPT that the primary problem was not confusion over roles, but more that no one seemed to be held accountable to these roles by their peers or the system. IPT hoped the guidelines might provide the tool needed to hold individuals accountable.

The following objectives were included in the terms of reference of the LCMC, which was funded by the DOJ:

- To sensitise all role players on the implementation of case flow management;
- To discuss the guidelines in order to streamline the processes and to implement bench marks;
- To stimulate partnerships and consensus on case flow management;
- To collect data on barriers and shortfalls for the reduction thereof;
- To compare standards of case flow at different courts and encourage sharing of ideas;
- To encourage uniformity on case flow management at lower court level; and
- To introduce training and research on case flow management.⁵⁸

The LCMC conducted countrywide visits of court centres between March 2003 and July 2004.⁵⁹ In a report on these visits, it was noted that “case flow management existed [in South Africa] until the introduction of separation of functions (powers) resulted in this concept falling by the wayside.”

By mid-2003, the LCMC, in consultation with the NPA and DOJ, had formulated guidelines on how case flow management should be implemented in the lower courts. September 1, 2003 was the date set for implementation. The formulation of the guidelines was followed by a consultation process. Meetings were convened at different courts and the heads of the lower court judiciary were requested to invite all stakeholders in the criminal justice system

However, by late 2004, a draft document was still being circulated amongst stakeholders and making slower progress than was expected. At that time IPT facilitated a one-day workshop to edit and draft the KwaZulu-Natal contribution to this document. It was the view of IPT that a major obstacle to awakening enthusiasm and energy in response to the guidelines was the fact that they were being distributed for comment in a badly typeset format, which was then poorly photocopied or printed. The document looked “official” and dull, was difficult to read and had no

⁵⁸ Report of the LCMC Subcommittee On Case Flow Management: Burgers Park Hotel, Pretoria 30th August 2004 to 3rd September 2004

⁵⁹ With support from USAid via a BAC project

visual impact. We identified the need for a more contemporary, progressive approach to produce an attractive document which was both pleasing to the eye, yet practical in purpose. As a result IPT asked a graphic designer to provide a better layout with photos and clear typesetting. Samples of these were distributed at a large case flow management workshop at Port Shepstone on the South Coast and to members of the PIJF. The reaction was instant and gratifying as suddenly there was interest in the guidelines. An interesting sideline was that the lack of branding meant that the guidelines were seen as belonging to everyone rather than being imposed by one particular department.

Over the next few months, the process became obstructed by a lack of funds within the DOJ for printing and distribution and by infighting around ownership of the document and the authority to implement it. In response to this situation, IPT met with the LCMC task team under the chairmanship of Mr Joe Raulinga, Regional Court President, Limpopo province, to discuss the possibility of funding the printing of the guidelines in the form of a handy A5 size booklet.

In October 2005 “A Practical Guide for Court and Case Flow Management for South African Lower Courts”⁶⁰ was published with forewords by Joe Raulinga, representing the magistracy; Meme Sejosengwe, chief director of court services in the DOJ&CD and the national director of public prosecutions Advocate Vusi Pikoli. The publication of the document with these forewords was a real achievement that explicitly demonstrated the commitment of the three key role players and lent enormous credibility to its contents and purpose.

One of the primary objectives of the CJSP had been that “case management will improve with greater integration and communication between the relevant role players”. IPT was of the view that the implementation of the case flow management guidelines would be a substantial contributor to this objective. 7000 copies were printed and distributed to the major role players across the country. It was included for easy access and downloading on both the Justice Forum and DOJ&CD websites and over the next year it was circulated widely. The “orange book” became a catalyst which saw provincial case flow management workshops being held throughout the country. These were paid for by the DOJ&CD and supported by senior judges and magistrates.

Within 18 months case flow management became a hot topic within the criminal justice sector and by mid-2007 it was a generally accepted concept. The concise yet simple easy to follow format seemed to hit the right notes across the spectrum of role players, making it both acceptable and accepted. In a nutshell, the guidelines had

60 Practical Guide: Court and Case Flow Management 2005 for the South African Lower Courts
Copyright Justice College Pretoria ISBN 0-620-34679-5

broken new ground in South African and opened the way for a more co-ordinated, structured way to expedite an improvement in the way the criminal court operated.

The NPA developed extensive case management policy and procedures as part of an internal delivery project and also developed their own training guide and despatched a team of specialist trainers to every division in South Africa to train prosecutors on the understanding and application of case flow management principles ; magistrates generally accepted that they were the main drivers of efficient court and case management; and the DOJ&CD began to actively seeking ways and means of supporting this process. Such has been the demand for the booklet that stocks were exhausted by the end of 2007 and there are still requests for additional copies. International interest extended the ambit of importance of the booklet, with copies been provided to interested institutions in Australia, Ghana and the United States.

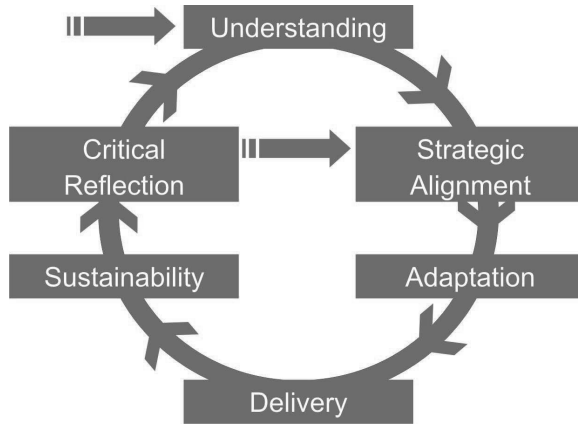
In late 2008 a process is underway to produce an updated, enhanced edition of the booklet.

Chapter 6

Lessons Learnt

LESSONS LEARNT

The previous four chapters provide a variety of examples of how the CJSP set about mending the fractures within the CJS in KwaZulu-Natal. This chapter serves to revisit the model introduced in chapter one of this monograph and highlights the main lessons learnt during the six different steps of the analytical framework (shown below).



Step 1: Understanding

As noted earlier, understanding refers to getting to know the individuals, their relationships with one another and the environment within the organisation or department. This knowledge enabled IPT to proactively identify opportunities to embed project objectives within existing departmental processes and it also ensured we got appropriate buy-in and commitment from different levels within departments.

The initial needs assessment process done in each department was key to gaining support and buy-in for the project. In most cases it was done quite informally as a series of meetings with key people to discuss needs and expectations. In the case of the KZNPA it was done more formally with face-to-face interviews. Regardless of the methodology, the process allowed us to spend time “learning” the lingo, getting a feel for the environment and developing a sense of the constraints and mindsets of the group. This was one of our key success factors since our understanding of the environment gave us credibility, we were able to tailor our language to the group and we were able to suggest changes and interventions that were practical and possible. This insider knowledge meant IPT was able to anticipate areas of resistance and put recommendations in a context that made sense to the organisation.

The IPT key learning experience is that it is vitally important to engage in this process at both the national and local level since the disparity between what is said and believed at a national level is often vastly different from the reality on the ground.

IPT very rarely found that the dialogue at a national level bore any resemblance to the situation at local or even provincial levels. This disjunction is most clearly borne out by reading departmental annual reports and then talking to the staff on the ground who are actually doing the work.

The needs assessment process was key to building relationships with people within the various departments. In this sort of project, where an organisation such as IPT is sited outside of the organisations, with no formal department mandate and no official drivers, the only way to gain buy-in and commitment is through a strong relationship built on trust and a belief that you are on “their” side. This means that all interventions require that facilitators spend a fairly large proportion of time, especially in the early part, in what can most easily be described as “making friends”.

Equally important during this phase is the need to understand the wider environment and what other service providers are providing. This is particularly important in the strategic placement of the intervention and ensuring that it is possible to synchronise with other interventions within the environment. A large part of the value provided by IPT during the CJSP came from our widespread networks and reputation as an organisation that can easily access information and resources within the sector.

Key Lesson: No matter how brilliant the consultant’s ideas and recommendations, if you don’t get the understanding, interest and support of people within the system, a lot of organisational energy goes into resisting the proposed intervention.

Key Lesson: What a department says it is doing and what is actually happening are often two very different things. Get into the system, meet the people and clearly understand the environment in order to be able to provide any relevant support.

Key Lesson: Knowledge is power and sharing that knowledge is especially powerful. Very few organisations within any multi player sector have access to the full range of players and departments. IPT’s wide network and interventions in a variety of departments gave us a unique insight into issues and allowed us to act as a catalyst for problem solving.

Step 2: Strategic Alignment

IPT's ability to integrate the project within each department's internal strategy, thereby ensuring the objectives of the CJSP were in line with those of the organisation, was another key success factor.

This was important in creating a situation where we could obtain buy-in and support around mutually beneficial outcomes. This also meant that there were internal drivers that supported project activities and likewise project activities were seen as being a valuable resource to achieving organisational goals. The old maxim of "what gets measured gets done" was proved true numerous times as there was a marked increase in energy and commitment once an activity became something that required reports to management. For example, once the NPA national office identified performance management as a management role, which would receive a score during annual assessments, there was a marked increase in interest and delivery around this issue.

Staff within organisations also saw a personal value in the intervention which would not have been as clear without the link to strategy. This also created a synergy between IPT and our partners – we were all playing on the same team. We were further able to secure the intervention by providing assistance in monitoring the strategy which gave us a legitimate role in being able to provide some critical analysis and push for delivery on the objectives.

One result of this strategy was a very symbiotic relationship which created a cycle of influence. Through project achievements, IPT was able to influence the development of national strategies, and similarly shifts in national strategy influenced the level and type of support offered by the project. Over the five years of the CJSP KwaZulu Natal was often seen to be a source of innovation within the criminal justices system and while due credit must be given to the individuals within the system IPT is of the view that the CJSP was able to strengthen this capacity. As one of the magistrates on KZNJetCom said in an email to IPT noting that the LCMC intended to establish JetCom structures in each province "...We actually started on 6th June 2003 and IPT was there from the beginning: that's why and how we started, remember? Otherwise where would we (not) be now"⁶¹

A review of the CJSP also generated the following comment from one chief prosecutor in KZN, "IPT must be seen as an invaluable partner to the contract. So much has been learnt and gained through this partnership, not only in respect of organisational values but also by countless individuals who have been trained or participated in the many workshops and projects. A considerable area of work and management ethic was rapidly deteriorating and a lot of this backward slide stopped dead in its tracks

61 Laue, R 2008. Email correspondence. 3rd September.

and re-routed instead to different but more productive ways of doing things. There may have been a lot of trying and testing along route, but there has also resulted a considerable amount of sustainability in these changes. And, importantly, a more noticeable willingness to sustain.⁶²

Key Lesson: If it's not important to individuals in the organisation, it's not going to happen. And if the goals of a project are not linked to the goals that staff will have to answer for, the project's requirements will always come second, regardless of how important or valuable the project might seem to be.

Step 3: Adaptation

Modifying and adjusting project language and activities to suit the varying environments was another key step in the project cycle. It was very important throughout the project that IPT remained responsive to the needs of the beneficiaries. This included not making assumptions about what each department might need in terms of the intervention. Very often the solutions which seemed so obvious from the outside are impractical once you understand the internal culture and dynamics within departments. IPT found that initial workshops around relationships, such as the conflict resolution and communication workshops, were an ideal vehicle for identifying relevant future interventions. Almost all the departments had experience of conflict and staff dissatisfaction around the manner in which change processes had been handled over time and these early workshops stimulated discussion around relationships and the need for co-operation. These workshops, coupled with the early needs assessment interviews and discussions, also gave staff a sense that the intervention that followed had been crafted with their input rather than imposed upon them. Over time this consultative approach built a substantial level of support for the CJSP and IPT.

It was also important to be flexible regarding the evolving needs of the recipient organisations since their needs changed as various initiatives began to uncover unexpected information, as new skills and knowledge saw a shift in behaviour, and as these changes began to impact on the environment. Moreover, by being receptive we were also able to deal with the unintended consequences of the intervention, especially those issues that had not been acknowledged or which had not existed before the intervention.

An example of this occurred while working with prosecutors at Durban's magistrates court. After a number of working sessions to discuss issues impacting on performance, a key concern emerged around the number, allocation and distribution of prosecutors within this large court. It was finally agreed that there was a need to actively lobby

62 Sansom, R 2008. Personal interview. Durban, 27th October.

the national department for additional staff and IPT was asked to support this process. At that point it was suggested that IPT prepare a very clear and logical argument to support this request and so an informal audit of staff numbers was conducted. The surprising result was that the court was not severely understaffed as had been believed by managers, but rather that they were experiencing an unacceptably high level of absenteeism. This led us, unexpectedly, to provide workshops and support around the management of sick leave, incapacity and poor performance. While this intervention eventually proved to be a key aspect of the larger project, it was not an area of intervention that we had anticipated in the planning stages of the project.

Adaptation requires service providers to have an open and enquiring mind. One needs to be constantly on the look out for potential areas of impact and in the case of the CJSP, this became easier as the project expanded within multiple departments. Identifying gaps in the system, which were impacting on performance, was much easier when you could hear the situation described by multiple and diverse role players.

For example, it was during a series of case flow management meetings that it became obvious that the late arrival or unavailability of interpreters was consistently raised as a factor in court delays. IPT subsequently found out that interpreters also had very high absenteeism rates and, through the DOJ court services training committee at the Durban Magistrate's Court, the interpreter's were identified as a key target group for specialised training. Talking to the interpreters themselves it was evident that they felt isolated and rejected by others in the system and had limited access to skills development opportunities. The CJSP was able to provide a two pronged response. Firstly IPT was able to access training for interpreters at the Durban Magistrate's Court around key skills identified by themselves, such as training in specialised evidential processes and terminology, such as ballistics, fingerprints and DNA analysis. Secondly, IPT provided training around the management of absenteeism and sick leave to managers in the section.

Increasingly, over time, many of our partners became much more involved in defining their needs, often to the point where they would identify a need, find a service provider and then call to ask whether the CJSP was in a position to pay. Access to quick turnaround and decision making within IPT proved invaluable.

Over the course of the project IPT found that the various departments began to interact more co-operatively. This enabled us to adapt the intervention from working separately with each department to one in which we were able to provide support in a more holistic manner. A key example of this would be the support of the Provincial Integrated Justice Forum (PIJF) and the establishment of the PIJF website.

The numerous national transformation projects within the CJS meant that we found ourselves working within constantly changing environments and so adaptation became a key step in the project cycle. IPT had to continually monitor what was being demanded from a national perspective to ensure the project supported rather than contradicted those imperatives. In addition, the DOJ would also often suddenly provide training in some of the areas we had identified for the CJSP and so, rather than repeat what was already being delivered IPT simply changed what was on offer. Then again we also found that some of the training offered by national departments was so superficial as to be completely useless and in these cases we were able to supplement what was offered with additional training and expert support. A key example was the often superficial performance management training in both the DOJ and NPA, which mostly left people confused and unable to implement the performance management system.

IPT was often asked to help with, or participate, in areas that we did not believe would contribute to the project's overall objectives. These occasions required difficult decisions around whether to contribute anyway, as a relationship building exercise, or to refuse and only support core project activities. In the end we leaned towards the latter with a focus on only supporting activities that could clearly be linked to project objectives. We had been very open with our partners regarding the project objectives and our obligation to the donor in order that we could refuse support when necessary without engendering bad feelings. Some of the things we did not support included internal office functions, team building requests when the problem was poor management, motivational talks when little had been done to address systemic and structural problems and requests from individual offices or individuals that could not be replicated.

Key Lesson: Keeping a constant focus on the project's larger objectives is vital as a danger of this approach is how easy it is to get shifted off track by the changing needs within the various organisations.

Key Lesson: In order to respond quickly and within a wide variety of areas of expertise the delivery organisation needs to be well networked with access to a range of reliable and reputable associates. This also means that organisations that "sell" a particular product or model of intervention are trapped in providing that specific product and so are less able to shift when the clients' needs change. The flexibility around not being tied to a specific, predetermined service or product became an advantage to IPT.

Step 4: Delivery

What is actually delivered is the key aspect of any project. The intention of the CJSP had always been that delivery would be co-ordinated by IPT, but supplied by a wide range of specialists who could be utilised as and when needed. This was a model best suited to our need for adaptation and fast response times. In many ways this is the easiest stage of the project cycle since there is complete control over the delivery process – we employ the service provider, we source the content, we provide the venues and we manage the process. This model worked well throughout the project demonstrating that a small core project team can have considerable impact within a much larger environment through the use of contract service providers.

However, there was one drawback to this system. IPT found that increased breadth of interaction meant we were able to substantially increase our access to information. For example, as both our associates and ourselves attended various meetings we were included on internal mail lists; attendance at one meeting often resulted in invitations to other meetings; we got to know individuals in the system and were phoned directly for information; and information flowed in from all sides. This would work efficiently if there were only core staff from one organisation, but problems began to develop as more and more contract or associate staff began to liaise with different role players and built their own relationships with target groups. It became quite difficult to ensure that information was shared effectively and IPT struggled with the need to develop a mechanism to manage information within our organisation. As the project grew some value was lost because we were less able to keep track of the diverse threads of information being generated within the project.

Conversely delivery became easier as we worked with more and more role players in the sector. It became apparent that when an organisation is seen to be successful in one area, it is much easier to gain support from new partners and there was often some pressure to include other departments ahead of the planned schedule. As our knowledge of the sector grew we were also able to add greater value and the relevance of the interventions increased with that understanding.

IPT's reputation preceded our entry into each new department, which while making that entry easier also created pressure to protect that reputation. It was important that we were consistent and reliable. An important consideration when using external consultants who may come with different values and methods of interaction but who are seen as part of IPT.

Delivery within the project also led to a number of unexpected benefits. Our work with the prosecutors around managing incapacity led to the consultant contracted by IPT being employed by the NPA's corporate services unit to deliver that same

training to management on a national basis. Because of our provincial involvement we were able to participate in a number of national processes in both the NPA and DOJ over the period of the project. These included the performance management role-out, the Serurubele strategic development process and the development of the Case Flow Management Guidelines. Our early strategy sessions in 2001 led to our being employed to facilitate the NPS strategy development process the following year and IPT was contracted to work with both the Asset Forfeiture Unit and the Special Investigation Unit during the period of the project. This developed our broader understanding of the environment and widened the overall impact of the project.

IPT found a need for repetitive training – especially training relating to managing employee incapacity. We had requests for these workshops on a regular basis and only after the third or fourth workshop did people begin to demonstrate real understanding. This seemingly limited ability for transference from theory to actual application in the workplace led us to provide on site mentoring around disciplinary and human resource management issues. This was more successful than just providing once off training.

Printing of the Case Flow Management Guidelines played a small but important role in entrenching case flow management within the system by providing a very visible and marketable catalyst for the ongoing discussions and developments around case flow. Eighteen months after their publication the concept of case flow management is being widely implemented and is part of the strategic objectives of the magistracy, DOJ and NPA. While case flow management was an existing internal initiative, and not one initiated by the project, the CJSP was able to provide some real impetus to the process, contributing to its current high profile.

Key Lesson: Delivery as a stand alone intervention has limited long term impact – one has to couple this with changes in the actual system. There are numerous examples in the criminal justice system of excellent initiatives that are successfully delivered in partnership with NGOs which then collapse once the funding ends or the NGO moves on to another project. For pilot initiatives to become sustainable a number of systemic changes must occur. As examples, performance measurement criteria must change, internal processes must change and be embedded in the system, directives must go out and procedures must be put in place to support the new behaviour.

Key Lesson: Avoiding dependency is important since it is much easier for people in the system to simply ask an externally funded NGO to provide a service than to deal with the bureaucracy within the system. IPT managed this by remaining in constant dialogue with our partners about the temporary nature of the project and ensuring that where possible, activities and responsibilities were located within the system.

Our focus was on providing support to enable the system to deliver, rather than to take on the role of delivery ourselves.

Step 5: Sustainability

Shifting from delivery to sustainability was slightly more difficult. It is generally acknowledged that training workshops as stand alone interventions are rarely effective and that post training support is vital to build capacity. We also believed that it was necessary to support key people whom we believed had the aptitude and will to drive the process over time. One example of moving from “delivery” to “sustainability” was the establishment of a junior management development course for the training unit in the NPA in KwaZulu-Natal. Originally this was a two day training workshop for control prosecutors, the first level of management within the organisation, hosted and delivered by IPT, at the request of the senior public prosecutor responsible for training. However, over the next two years this process became more collaborative with material development and facilitation being shared by the IPT consultant and the NPS training team. By the end of the project the material and process had been handed over to the NPS for future delivery. Although the problem of funding for an external venue remains one that will have to be dealt with internally at the conclusion of the project this was a sustainable intervention that will continue.

A key strategy for ensuring sustainability was to provide support to those champions within the system who were trying to drive innovation. Individuals already in the system are often the primary source of new ideas or processes but in many cases they are stymied by managers or colleagues reluctant to take risks or upset the status quo. We were often able to provide support for these endeavours by providing funds, lobbying (we could raise controversial issues with less risk than they could) or by accessing expert advice. With this support individuals could demonstrate effective and successful initiatives following which the powers within the system would often leap on board and take full ownership of the idea since the risk had now been substantially reduced.

An example of this was the printing of the Case Flow Management Guidelines – once they existed and were distributed they developed a momentum of their own and suddenly a host of activities were spawned in a remarkably short time.

Sustainability was also achieved by ensuring that all activities and initiatives were developed with consultation and strong internal support. This meant that there was a commitment to keeping things working within the organisation, which would not have existed if we had imposed solutions. In the early days we often played the role of catalyst in trying to identify potential solutions. Over time we found that more and more problem solving processes were happening without our intervention and we

were often only brought on board to support the implementation process. Gradually we moved from helpers to partners. An example of this is the NPS code of conduct, which was developed as part of the KwaZulu-Natal prosecuting authority's provincial strategy. When this provincial code of conduct was developed it was quickly seen as a potential "quick win" by the personnel at the national office who supported the printing of a brochure and hosted a public launch of the code in Pietermaritzburg. Because it was seen as a "quick win" which could be published rather than as a tool for the establishment of standards of behaviour within the organisation it was quickly forgotten despite the high profile "launch" – this is a common problem in the organisation where "events" are seen as achievements and there is pressure to do very visible things as proof that the system is improving. However, this focus means that longer term implications are often ignored and that ongoing sustainability is poorly planned for.

IPT's efforts to ensure sustainability also gave rise to one of our greatest quandaries – in order to ensure sustainable change does one focus at a national level or is it most achievable at a more manageable local level?

To achieve a fully functional system one must have a functional and competent national office. However, in the absence of that, one can achieve some improvements in a "ring fenced" local area and lessen the impact of dysfunctional central management. If an organisation works at a provincial level it has to accept at the outset that there are limits to what can be achieved. The various attempts of the CJSP to improve human resource management at a provincial level is an example of this. While improvements in provincial management were seen almost immediately these were negated over time as managers became disenchanted by the way poor delivery at a national level undermined their local efforts. When extreme non-performers were dealt with correctly at a local level, then later reinstated by a national corporate services unit we saw a marked decline in the efforts to actively manage non-performance. Time and time again cynical and disappointed managers asked what would be the point of taking the initiative.

In the end it became apparent that one needs to work simultaneously at both local and national levels. At a national level there is a need for clear policy and effective systems as performance measurement is driven at this level and can have an impressive impact on behaviour. Leadership at this level can also provide a fundamental driver for change within an organisation. This was a gap within the CJS that hampered change and created opportunities for resistance. The NPA in particular struggled with changing leadership and conflicts between their management and national government. Working at national is long term, political and often fraught with bureaucratic red tape, while it is often easier to develop immediate solutions at a local level.

At a local level one can often generate innovative, realistic solutions to problems involving multiple role players. The fact that those working at this level are facing the problems on the daily basis can bring a greater urgency to their efforts to solve the issues. And regardless of what happens at a national level the actual activity always has to take place on the ground. Commitment, understanding and drive are vital at that level, ingredients that are often ignored in the rush to compliment national policy.

Key Lesson: Impact is achieved through working at multiple levels within the hierarchy of an organisation. Choosing one over another is much less effective as one can get caught in the blockages caused by poor internal communication and disjunctures between national and provincial structures .

Step 6: Critical Reflection

Critical reflection of our experiences over the four years prior to the CJSP convinced IPT that a piecemeal approach to reforming the criminal justice system could only achieve limited results. It was this view that led to the development of the Criminal Justice Strengthening Project.

Within the project itself critical reflection took two forms, summative and formative. Formative critical reflection implies ongoing reflection, which allowed us to constantly adapt the project to meet the changing needs of the beneficiaries as we talked to partners and listened to what they had to say about the project. Summative critical reflection occurred as we prepared this monograph and were thus given the opportunity to think back on what worked and what did not.

Two external evaluations were conducted over the course of the five years and these contributed to both our learning and our thinking around the intervention.

While working within an environment that was subject to a multitude of “transformation” processes, was a challenge for the CJSP staff, it was particularly difficult for the personality type frequently found amongst the legal fraternity. These are individuals who are fact focussed and often resistant to new ideas or process and the inculcated idea of ‘precedence’ encourages a focus on what has happened rather than on what is possible.

On the positive side, the constant modifications in the sector provided the project with a fertile environment within which to lobby and advocate for change. Nothing was sacred and there were numerous opportunities to influence and shape processes. Lessons learnt in the province were found valuable at national level, where there was a desperate search for visible, short term successes. A number of provincial initiatives

within the NPA found their way into national strategy, including the establishment of a NPS Service Charter, which had been drafted in KwaZulu-Natal in 2003 and was adopted by the National Prosecuting Service in 2004.

However, while it became increasingly evident that there were numerous improvements at an individual behavioural level, the actual system was extremely resilient and self-sustaining which made structural change at a provincial level very difficult. Consequently, much of the project's success was dependent on IPT's personal relationships with enthusiastic and committed individuals who drove innovation and change, rather than on any systemic response to the project's inputs. This is another example of why IPT prioritises relationship building, and why projects that are implemented from the top down tend to fail once the funding runs out. Finding "leaders" within the system is vital and it is noteworthy that these people are not always in positions of formal authority

In closing it seems appropriate to quote one of those individuals who, when asked if he would undertake this journey again, answered "Absolutely! If the destination was as satisfying as the achievements attained, then the experience and effort to accomplish *this* journey and reach *our* destination was even more gratifying. And even more so in the knowledge that we were not alone as travellers."

Then again, destinations are seldom permanent. In our field of work they cannot be. And so we move on....

In 2002, the Independent Projects Trust (IPT) with funding from The Atlantic Philanthropies embarked upon the Criminal Justice Strengthening Project (CJSP), an ambitious venture designed to support transformation of the criminal justice sector in KwaZulu-Natal. Since that time the project has enabled the IPT to participate in a wide range of innovative activities with key role players in the sector. In this monograph we document these activities and the lessons learnt from this intervention. It has been our intention to capture the thoughts and processes of the intervention, to provide a record, and most importantly, to share the knowledge gained during these five years.

The Independent Projects Trust (IPT)

Founded in 1990, the Independent Projects Trust is a facilitation, training and research organisation which seeks to work with organisations, both public and private, that are undergoing transformations owing to political, social and economic changes.

The IPT has a wide range of associates with extensive experience who, over the last 18 years, have developed a methodology which ensures effective consultative and collaborative problem solving processes within targeted organisations. A primary focus of the IPT's work is on building and strengthening interpersonal and intergroup relationships.



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