

CHAPTER 3

THE PORT ELIZABETH IJS COURT CENTRE: A CASE STUDY

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

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

Awaiting Trial Prisoner Project

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

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

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

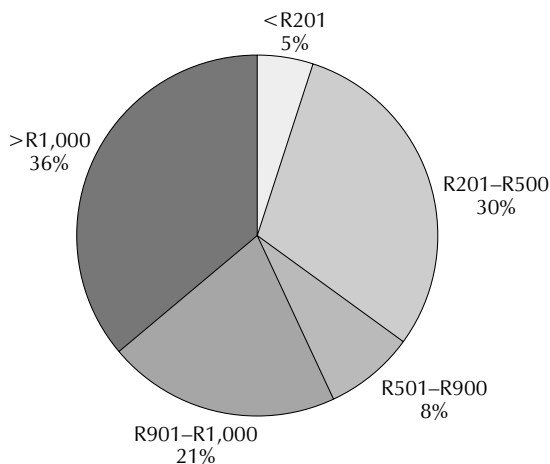
risk, it may be an infringement on the basic human rights of offenders, and has a detrimental effect on the management and control of prisoners.⁴⁷

The cost of poor bail decisions

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pre-Trial Services Centre Project

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

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

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

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

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

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

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

Arrest first, investigate later

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

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

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

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

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

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

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

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

Periodical court and identity parade facility in prison

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

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

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

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

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

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

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

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

Reception, channelisation and trial readiness

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

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

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

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

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

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

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

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

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

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

The role of the prosecution at the pre-trial stage

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

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

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

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

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

Integration of projects

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

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

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

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