

## Appendix B: Address by the South African Minister of Justice, Dr Dullah Omar

### THE ROLE OF THE DEPARTMENT OF JUSTICE IN CRIME PREVENTION PARTNERSHIPS

#### INTRODUCTION

There are two fundamental prerequisites to successful crime prevention: firstly, the involvement of the community and secondly, a multi-agency approach. Partnerships with the community in crime prevention programmes are crucial to their successful implementation, and strategies which cut across state and other departments often have the best chance of success.

These two principles are deeply-rooted in the National Crime Prevention Strategy (NCPS). It refers to the fact that "... crime cannot be prevented or reduced without the active involvement of citizens, community groups and civil society organisations. State departments are largely helpless without the support of citizens ... Effective crime prevention requires that communities are actively concerned and involved in all aspects of crime prevention."

The NCPS also notes that the core departments in the criminal justice system were historically not bound by a common policy framework in respect of crime prevention. This approach to planning led to the generation of fragmented solutions, and reinforced the perception that the criminal justice system is weak and ineffective. Although the core departments of the criminal justice cluster are committed to joint planning, the tradition of working in isolation is hard to break. However, considerable progress has been made and the departments of Safety and Security, Justice and Correctional Services are presently engaged in joint budgetary planning, which will effectively tie the three departments to an integrated approach to the management and provision of safety and security and criminal justice.

#### PARTNERSHIPS WITH THE COMMUNITY

Victims are often referred to as the gatekeepers of the criminal justice system, since the system relies on the co-operation of members of the community to report crime, identify perpetrators and provide witnesses. For this co-operation to take place, society must have a firm belief in the effective functioning of the system. However, victims in South Africa have been marginalised in the past in the

criminal justice system and their needs have not been met. The Department of Justice sees the provision of effective and appropriate redress for victims as one of its core values. It is actively involved in developing a victim empowerment approach which includes a successful witness protection programme and improvement in the management of witnesses, such as giving feedback on case progress and providing comfort facilities at courts.

Extensive consultation with a wide range of roleplayers has taken place in order to establish a victim-centric approach within the criminal justice system. Victim empowerment forums have been established in each of the nine provinces and the Department of Justice is actively involved in these forums. Their aim is to develop policy and to improve the delivery of services to victims of crime. The work has focused on support for women and child victims.

The Department of Justice considers it crucial to involve members of the public in the justice system. This participation is important in ensuring that the administration of justice remains in touch with real community experiences of factors which lead to disputes. However, for participation to become a reality, ordinary citizens need to believe in the relevance, legitimacy and effectiveness of the justice system.

The Department also believes that it is important for ordinary citizens to have access to justice, which implies more than just access to lawyers and to courts. People must have access to mechanisms and procedures which help to solve disputes so that they do not need to take the law into their own hands. Access to justice is therefore linked to the quest to eliminate violence. The more processes or mechanisms to resolve problems are created, the more areas where problems develop into disputes can be narrowed down.

To make justice accessible to the majority of people, an affordable and 'user-friendly' legal process has to ensure that all, even the poorest, have access to justice. This requires that people should be able to use the law or the courts without the involvement of lawyers for less complicated matters.

Various informal judicial structures have emerged over the years:

- Customary courts apply indigenous law and operate mainly in rural areas, headed by chiefs and headmen.
- Religious courts apply religious laws to its members and concentrate primarily on personal and family law, attending to marriage, divorce and custody matters.
- Peoples courts (not 'kangaroo courts') mainly apply the social norms, values and ethics prevalent in the community.

- Community courts generally operate in townships where they are primarily administered by civic and other community-based organisations.

Community courts should be distinguished from the kangaroo courts which existed within a political context in the 1980s, when 'mob justice' was meted out by people who did not represent structures which would ordinarily deal with justice issues in those communities. These only served to create an unsavoury reputation for popular justice.

The Department of Justice is committed to ensure that communities participate in, and have access to justice. This will be achieved by communities and the legal profession becoming conscious of their responsibilities and transforming themselves, and the development of structures in the communities, like community courts, that will mainly use mediation to resolve problems.

#### INTERDEPARTMENTAL CO-OPERATION

One of the responsibilities of the Department of Justice in the implementation of the NCPS is the co-ordination and integration of its activities with those of all roleplayers who are involved in crime prevention. Specific initiatives in which the Department of Justice is involved, are discussed below.

#### Bail

During the past few years, a number of serious crimes have been committed by accused persons while out on bail. The Department of Justice has been concerned about the matter of bail and the system by which bail is granted. An NCPS investigation into the granting of bail was conducted. The proposals flowing from the investigation are being implemented by the Department of Justice and the South African Police Service (SAPS). The most important are the provision of intensive training for detectives and prosecutors on all aspects relating to bail; the establishment of an integrated information system for the bail system; the creation of special bail courts where possible; and the better management of investigations and court cases.

Furthermore, legislation with regard to bail was amended in 1996 and 1997 in order to make it more difficult for an accused, charged with a serious offence, to be granted bail. The main features of these amendments were as follows:

- making it an offence when an accused person who was released on bail does not attend court;
- making it generally more difficult for an accused person to be granted bail in serious cases;

- providing the possibility of a court refusing bail where the release will disturb public peace or undermine public peace and security;
- ensuring that, in serious cases, accused persons have to convince the court that it will be in the interest of justice to release them on bail;
- placing a duty on the accused or legal adviser to disclose previous convictions and pending charges; and
- making provision for the cancellation of bail on various new grounds.

## Pre-trial Services

With the help of the US Bureau of Justice Assistance, the Minister of Justice instituted a pilot project on pre-trial services. This project addresses the dire need to provide the courts with more information on an accused than is presently available when considering bail. This will enable courts to make more informed decisions regarding the granting of bail. The project is also designed to make the justice system more accountable and to provide for community participation.

Pre-trial services function in the following manner:

- All accused persons are interviewed and photographed at pre-trial offices, where bail and supervision officers obtain an accused person's demographic information, the names of references and details of any assets owned by the accused.
- Pre-trial officers check the information given by the accused, making phone calls, talking with family members, and visiting homes and places of employment. Once verified, the information is given to the court.
- The information is stored in a custom-built computer database. The database will be linked to the SAPS Criminal Records Centre in order to provide information about previous convictions before a bail decision is made. This is the first link in a national justice information system, paving the way for efficient criminal justice administration and moving justice into the 21st century.
- Pre-trial services do not take away the discretion of the magistrate in making bail decisions, but simply provide the court with detailed information.
- Upon release of the accused, pre-trial services will endeavour to ensure that accused persons stand trial.
- Communities or witnesses can help the court to make a better bail decision by giving information to the courts.

Pre-trial services pilot projects have been instituted in Mitchells

Plain, Johannesburg and Durban, and an initial evaluation has indicated that considerable success has been achieved. Repeat offenders who have committed a second or third crime while out on bail have been identified and the pilot projects have had an impact on the overcrowding in prisons. At Pollsmoor Prison, the awaiting trial population who had been released on bail but who could not afford to pay, has declined from 75 per cent to thirty per cent in less than a year.

Pre-trial services encourage magistrates, when considering petty offences, to set conditions to bail rather than monetary amounts. This has meant that dangerous persons are less likely to be released on bail and petty offenders are released on warning or on affordable bail.

Pre-trial services have been expanded to include the management of witnesses, as the case tracking system included in the pilot projects provides for reminders to be sent to witnesses regarding court dates. Waiting facilities at courts have been provided and community volunteers offer assistance to witnesses on court procedures. Telephone facilities, refreshments and television sets are provided in waiting rooms.

### Witness Protection

A witness protection programme was identified in the NCPS as a key initiative which could contribute to the reduction of crime. A draft Bill on Witness Protection was promoted during 1998. In terms of the Bill, the role of the Attorney-General changes significantly: in future, all decisions regarding the protection of witnesses will be taken by the Directorate: Witness Protection. The public, through participation in panels to assist the Director, could play an active role in the decision whether a person should be protected.

The programme has proved to be very successful. During the past two and half years, the number of persons under protection has increased from forty to 700. It was reported from the Western Cape that, as a result of the programme, convictions are now obtained in cases involving gangsters. Similarly, the North West Province has reported success in cases involving violence in the mines as a result of this programme. Prosecution in a number of well-publicised cases would not have been possible without the witness protection programme.

### Awaiting Trial Prisoners

The Department of Justice serves on a task team established by the NCPS to formulate a management plan with guidelines and procedures for reducing the unsentenced prison population. The report produced

by the task team identified problems with overcrowded prisons, the completion of trials, the administration of bail laws, fragmented monitoring instruments, the unavailability of interdepartmental structures to manage awaiting trial prisoners and the detention of suspects for less serious offences.

The task team proposed the following solutions:

- the avoidance of delays in the completion of trials by implementing legislation to simplify criminal procedures;
- prisoners awaiting trial to be advised to apply for reduction of bail amounts or for release on their own cognisance;
- a review of the money-based bail system;
- the three departments to streamline their monitoring mechanisms in order to co-ordinate information on awaiting trial prisoners; and
- establishment of interdepartmental structures at the most effective levels to monitor awaiting trial prisoners.

## Children

Cabinet decided on 7 December 1994 to establish a core group of ministers chaired by the Minister of Health, which will be responsible for the ratification of the Convention on the Rights of the Child (CRC) and the development and implementation of a National Plan of Action for Children of South Africa, in order to give effect to the goals of the 1990 World Summit of Children, as well as the provisions of the CRC.

This core group consists of the ministers of Health, Welfare, Education, Water Affairs and Forestry, Justice and Finance. It is assisted by a steering committee, consisting of the corresponding Directors-General, and is responsible for the drafting, co-ordination, implementation and monitoring of the action plan.

The justice sector was mandated to investigate the question of children, more specifically, children in the criminal and civil justice system. The Justice Sectoral Work Group formulated its terms of reference in 1995, and established the following goals:

- ensuring that the best interests of the child are protected within the criminal and civil justice system;
- ensuring that the child is not subjected to neglect or abuse;
- ensuring in criminal matters that the child has the right to be treated in a manner that takes account of his or her age;
- establishing a separate juvenile justice system;

- addressing the problems related to children involved in all forms of abuse;
- protecting children from using and trafficking in narcotic drugs;
- addressing problems related to children of divorcing, divorced, separated or single parents;
- promoting justice that is sensitive towards children;
- promoting the CRC within the broader framework of a human rights culture; and
- raising awareness of the CRC among the public.

The South African Law Commission is studying the establishment of a separate juvenile criminal justice system with principles of restorative justice at its core. An issue paper was published and made available for comment to all interested parties. It is expected that a discussion paper, based on workshops and consultations, will be published in the near future.

The Department of Justice has also embarked on projects to create a child-friendly atmosphere in courts. It is envisaged that facilities such as separate waiting rooms and specialised services for children will be extended to all courts countrywide. The Department has installed approximately 186 closed circuit televisions in both urban and rural courts for the purpose of creating a conducive environment for child witnesses. One-way glass has also been installed in a number of courts where children testify. A child has the right to testify in his or her own language and court interpreters and sign language interpreters are therefore employed for this purpose.

## W o m e n

At the United Nations Fourth World Conference on Women held in Beijing in 1996, it was stated that the "... Department [of Justice] plans to take integrated measures to prevent and eliminate violence against women and to facilitate the prosecution of perpetrators of violence." To this effect, the Department is involved in various activities to combat violence against women.

On 25 November 1996 - the International Day of No Violence Against Women - the Minister and the Deputy Minister launched a public campaign on the prevention of violence against women. The campaign is based on raising public awareness and strategic planning within the Department, in co-operation with other roleplayers

An Intersectoral Task Team, consisting of members of the departments of Justice, Safety and Security, Health, Welfare and Correctional