

CONCLUSION

By looking at the promises made by the various criminal justice system departments, their capacity, workload and outputs it is possible to realistically and fairly consider how the departments actually performed. Departments which promise to achieve certain goals and then fail to reach these, notwithstanding that they had the capacity and resources to get the job done, failed in their responsibility and should be held to account. Departments that agree to accomplish specified deliver targets, but fail because their workload increased unexpectedly or because they lacked the capacity or resources to meet their targets, also need to account for the way in which they approach their planning processes.

To be fair, it is not an easy task to manage criminal justice system departments—especially while rates of crime remain consistently high, and the transformation of the public service generally, is taking its toll on staff morale and departmental stability. As individual criminal justice departments are part of a larger interrelated system, their performance is affected by the actions of other departments in the system. Moreover, the underlying reason for the criminal justice system's existence—crime and lawlessness—is largely caused by exogenous factors over which the criminal justice system has little influence. While these difficulties are recognised, they should not serve as an excuse for poor performance while over 20,000 South Africans are murdered a year.

On balance, the three criminal justice system departments performed satisfactorily during the period under review. Where appropriate, performance indicators were available over time, the departments tended to show improvements in their performance during 2001 and 2002. Regrettably—and this applied primarily to the SAPS—a number of potentially useful performance indicators were not collected by the departments or not released for public consumption.

Capacity constraints

What emerged clearly for all three departments was that they face significant capacity constraints. Too many extremely serious and violent crimes, such as

murder, rape and armed robbery, are not solved by the police service. Those that are solved collect dust on prosecutors' desks as the case backlog in the courts has grown and months pass between an arrest and the finalisation of a trial. This, in turn, is resulting in unprecedented overcrowding in the country's prisons.

The need for additional police officers is being addressed as the treasury has provided the funds for the recruitment of an additional 30,000 entry level constables by early 2006. It remains to be seen what difference these additional police officers can make to unsolved cases. Even with a shortage of officers, the SAPS has been able to arrest a large number of people and refer an increasing number of cases to court. The SAPS' limitation lies in the fact that many serious cases are not solved. This requires honed detective skills which are acquired through on-the-job experience—something the new recruits will acquire only with the passage of time.

If the criminal justice system continues operating the way it has, the prosecution service, the magistracy and corrections will need additional personnel, court rooms and prisons to enable them to cope with their expected workload in the years to come. While more prosecutors were employed and prisons opened during the period under review, the influx of cases and prisoners undermined this increase in human and capital resources.

Inexpensive alternatives

Larger budgets could alleviate the crisis facing the criminal justice system. The resources required to do this effectively are likely to be prohibitive, however. During the period under review the treasury was allocating a tenth of government expenditure to the criminal justice system—about the same amount as was devoted to health-related expenditure in a country with the largest HIV-positive population in the world. While young entry level constables may be affordable, prosecutors and magistrates with law degrees can demand considerably higher salaries and benefits. Prison wardens are not exceptionally well paid, but a standard prison costs hundreds of millions of rand to build and further millions to run.

There is much that can be done to improve the operational effectiveness of the criminal justice system without substantial additional resources. For example, the effective use of plea bargaining and diversion can reduce the pressure on the country's courts in an inexpensive manner. At the time of

writing the legal mechanisms for plea bargaining and diversion had been on the statute books for some time, yet only a few high profile cases had been finalised through the formal plea bargaining process, and less than 1% of cases referred to court during 2002 were diverted. Judicial officers are legally obliged to set bail at an amount which falls within the financial means of the individual accused person. Yet, at the end of 2002 some 6,500 unsentenced prisoners were awaiting trial behind bars because they were unable to afford bail amounts of R500 or less.

In 1997 the Department of Correctional Services concluded a study establishing that the electronic monitoring of offenders in community corrections is cost-effective and reduces the level of non-compliance when offenders are placed under house arrest. Electronic monitoring could consequently reduce the level of prison overcrowding by reducing the risk of releasing offenders on community corrections. Such a system also promises to be more effective and cheaper than the present system whereby departmental officials physically check on the whereabouts of parolees and persons on community corrections. Yet, at the time of writing, the electronic monitoring of offenders had not been introduced.

Further research is needed to establish why the courts are not operating more productively. While courts are sitting for longer hours, the average district court secures one conviction per working day only, while the average regional court takes almost a working week per conviction. Some courts have established court centres to channel non-trial cases to special reception and bail courts, thus allowing the remaining courts to focus on trials only.⁹⁶ This is a step in the right direction. Given the inordinate delays in the court process, and the large number of investigated cases which are withdrawn by the prosecution service, it is possible that the police tend to 'arrest first and investigate later', whereby criminal investigations begin only *after* a suspect has been arrested. It is also possible that many investigations are not done thoroughly enough for the prosecution to take the cases to trial.

Making choices

Criminal justice policy makers will have to make bold and innovative decisions to boost the performance of the criminal justice system in a cost effective way.⁹⁷ Given the present crisis, it is crucial that bottlenecks within the system, such as the case backlogs in the courts, are addressed rapidly.

As a result of its central position in the criminal justice process, the performance of the prosecution service is crucial to the smooth running of the whole system. A poorly performing prosecution service detrimentally affects the ability of the prison system to rehabilitate the prisoners in its care. If prosecutors process cases slowly, or do not apply their minds properly to accused persons' request for bail, the number of unsentenced prisoners goes up. This causes overcrowding in the country's prisons and makes it difficult for prison wardens to adequately look after sentenced prisoners and rehabilitate them. Moreover, if the prosecution service does not operate optimally, witnesses are discouraged from testifying and many guilty accused are acquitted of the charges against them. This lowers police morale, and fosters public perceptions that crime pays, creating public disillusionment in the ability of the criminal justice system to effectively fight crime, and reducing the system's deterrent effect.

It is cheaper to address problems in the prosecution service than those in other areas of the criminal justice system. It costs millions to construct a reasonably sized prison in South Africa, and another R35,000 a year for every prisoner.⁹⁸ At the end of 2002 the country's 56,000 unsentenced prisoners were costing the state R1.9 billion a year. The cost to the state of employing one prosecutor is the same as accommodating five unsentenced prisoners.

Instead of spending money on building prisons to accommodate the ever growing number of unsentenced prisoners, such money would be better spent employing more prosecutors and building court rooms. For example, if the number of unsentenced prisoners could be halved, the expected saving would allow a doubling in expenditure on the National Prosecuting Authority. A strategic decision to divert spending from corrections to prosecutions may be necessary to lower the case backlog in the courts, reduce the number of awaiting trial prisoners and permit the courts to focus on trials instead of postponements and lengthy bail applications.