

ISSUES IN LAW, RACE AND GENDER

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**Doing something with nothing:  
The family centre pilots**

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## ACRONYMS USED

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CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
DPP	Director for Public Prosecutions
Famac	Family Mediators Association
Famsa	Family and Marriage Society of South Africa
IMC	Inter-ministerial committee on young people at risk
LRG	Law, Race and Gender Research Unit
MTEF	Medium-term expenditure framework
NGO	Non-governmental organisation
Nicro	National Institute for the Prevention of Crime and Rehabilitation of Offenders
RDP	Reconstruction and Development Programme
Saam	South African Association of Mediators
SAPS	South African Police Service

## I Introduction

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In late 1998, South Africa's national Department of Justice established five pilot family centres.\* Each of the centres brought together four key family-oriented legal services – divorce, family violence interdicts, maintenance and non-criminal children's issues. The pilots were established without any new legislative base aside from the deracialising of the former black divorce court. One of the aims of the pilot was to inform the drawing up of comprehensive and integrated legislation on family law. Another aim was to see how a country with limited financial and other resources could provide a user- and family-friendly service. This report tells how four of the five pilots have "done something with nothing" – or with very little.

The early documents on the pilots stressed the need for monitoring of progress from the beginning. Unfortunately, there has been very little monitoring to date by either government or civil society. There has also been very limited contact between the five pilots and even less communication with those not centrally involved.

The Law, Race and Gender Research Unit (LRG) at the University of Cape Town is one of the many non-governmental organisations which has an interest in the pilot projects. LRG has since 1995 provided training to magistrates on the social context in which they operate, with a special emphasis on race and gender issues. It has also previously conducted research in related areas. The current report was commissioned by LRG in the hope that it could inform both their own knowledge and practice, and the knowledge and practice of their non-governmental colleagues around the country.

In the course of the research, it became evident that people within government were also hungry for knowledge about what they saw as an impor-

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\* In interviews and documents the words "centre" and "court" were often used interchangeably. Some informants have taken a stand on this issue, and prefer the term "centre" to encompass the non-court aspects. Some use the term "family court" to refer to the divorce component only. In this report I have mostly used the term "centre", except where quoting directly from documents and interviews.

tant and interesting project. By the time this research was undertaken, several of the centres had started developing plans for local monitoring. This report will, hopefully, provide a broad brush-stroke national picture against which the individual centres can develop more detailed and comprehensive local monitoring and evaluation.

The report has clear limitations. Firstly, it is based on visits and interviews to only four of the five pilots. Unfortunately, the "missing" pilot is the only one operating in a predominantly rural area. Second, while the 40 interviewees cover virtually all the "types" of actors directly involved in the pilots, the coverage is far from comprehensive for any individual centre. Some of the apparent differences between centres may therefore represent viewpoints rather than real differences (Annexure 2 is a list of interviewees). Third, I, as researcher, have no formal legal training. Legally-trained readers will thus probably not have all their questions answered.

Given these limitations, the report must be seen as an attempt to raise questions and issues which require further investigation.

- Part 2 of the report provides the background to the pilots. It describes their history and the governing structures, budgets and accommodation in each of the four centres studied.
- Part 3 looks at each of the components of a family centre – the four key components mentioned above, juvenile justice, the family advocate, and other components present or planned at some of the centres.
- Part 4 discusses some general issues which emerged during the research. It looks, in particular, at the differences in how these issues have been addressed in the four centres.
- Part 5 consists of a brief conclusion.

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## Background

### 2.1 History

In 1983 the first Hoexter Commission Report was released and recommended the establishment of a separate family court. The government subsequently tabled legislation on the setting up of divorce courts at magistrates court level. The legislation was passed, but never brought into operation.

Years later, in 1996, the idea of a family court was taken up in the post-apartheid Department of Justice's Vision 2000 document. This document proposed two pilots initially, in Cape Town and Umtata, to be expanded later to one pilot per province. After drawing up the Vision, the Department looked into the matter and at first concluded that it was not feasible to establish a pilot family court project. Despite this finding, in February 1997 the Department appointed a task team to draw up a concept document on a family court.

The task team reported in March 1997 and concluded that it was indeed possible to establish a family court within existing legislation. They acknowledged the arguments previously advanced by the Department as valid, but felt they "should not be a stumbling block to the implementation of the project" (Memorandum of 17 March 1997). The task team proposed working towards a family court with a separate identity, tailored procedures, and proper backup in the form of mediation, counselling and other support services such as exists in countries like Australia. They knew, however, that this was impossible in the short run given the limited resources of the country. They therefore proposed an incremental approach. As explained in a Department memorandum:

Realizing that it will take some years to get the necessary legislation, infrastructure and human resources in place, the Task Team ... recommended that pilot-project family courts should be established as soon as possible... The pilot-project courts will operate in terms of the existing fragmented legislation.

The Black Administration Act of 1929 covering the black divorce courts was duly amended. From April 1998 these courts were able to serve people of all races rather than only African people. The original idea was to estab-

lish one pilot, in Port Elizabeth, but this number was then increased. Chief magistrates in selected sites were requested to establish a local steering committee comprised of relevant staff, local legal practitioners and non-governmental organisations (NGOs). This committee was then furnished with a "shopping list" (see Annexure 1) of the prerequisites for a family centre.

In October 1998, after some delays in writing rules and making appointments, the centres began operating. Five pilot sites were selected – Durban (in KwaZulu-Natal), Cape Town (in Western Cape), Johannesburg (in Gauteng), Lebowakgomo (in Northern Province) and Port Elizabeth (in Eastern Cape). At the time I conducted this research – between August and October 1999 – all the centres were operating, and two had had official launches (Cape Town in January 1999 and Durban in September 1999). The other two centres studied were hoping to hold official launches before the end of the year.

The second Hoexter Commission reported in late 1997. The proposals were very similar to those of the first Hoexter Commission, but even more ambitious. In the words of one informant, the Hoexter model is the ideal, "Rolls Royce", version. It is, however, clearly too expensive given current resources.

At the time of the research the "comprehensive" legislation envisaged for the family courts was still not complete. There was, however, a team comprising Cheryl Loots (head of the task team), Barbara Hechter (chief family advocate), Zeldá Moletsane (Johannesburg presiding officer) and a representative from Justice's legislation section working on it.

In the research I did not enquire why the five particular sites were chosen as pilots. There were, however, pointers as to possible motivations.

**Durban** magistrate's court already had a juvenile assessment centre. More importantly, it had developed its own proposal for a family centre before the pilots were mooted by head office. The early proposal was spearheaded by prosecutor Val Melis, family advocate Mary O'Gorman, and social worker Margaret Niemand. By mid-1997 the three had developed a business plan and budget for the centre which included an allocation of R300 000 to refurbish the premises, R300 000 for additional staff, R200 000 for training and R30 000 for pilot-related expenses. The hope was that these amounts would be forthcoming from the Inter-ministerial Committee (IMC) dealing with juvenile justice.

The original proposal was halted on the grounds that the group putting it forward was too unrepresentative in race terms. In January 1998, after intervention by then Minister Dullah Omar and the head of the local transformation committee, the Campus Law Clinic of the University of Natal hosted a

meeting to establish a new, more inclusive steering committee. This laid the basis for the current Durban family centre.

Informants said **Cape Town** was chosen because three of the four core components were already together at the Cape Town court. The fact that the chief magistrate, Mr B Jooste, had been designated as heading the pilot in Vision 2000, no doubt also played a role. A Cape Town informant said that, as in Durban, the court had discussed establishing a family court even before notification from head office and had gone as far as putting up a notice advertising the integrated services.

As noted above, the initial task team proposal was for one pilot, to be situated in **Port Elizabeth**. The motivation here appears to have been the enthusiasm of the then chief magistrate, Mr Kondile, who was a member of the task team. An added attraction was that the black divorce court was already sitting in Port Elizabeth.

**Lebowakgomo** was chosen to represent a very rural situation, as opposed to the urban nature of the other four. **Johannesburg** was apparently not on the original list of pilots. It was included only after lobbying by non-governmental organisations (NGOs).

While there are big differences between the sites, they are in some ways strange choices in terms of the communities they serve. The Durban NGOs from the start pointed out that the demographic profile of Durban magisterial district was far from representative of the province, or even of urban areas in Kwazulu-Natal. The same could be said of Cape Town, situated as it is in the centre of the metropole. The unhappiness of the Durban NGOs was reportedly shared by then Minister Dullah Omar, and the NGOs were asked to suggest an additional site in Kwazulu-Natal. To date, however, Durban remains the only pilot in the province.

## 2.2 Budgets

The Justice 2000 document of 1996 estimated that R1 014 000 would be needed for family court pilot projects. It did not specify what this figure represented – for example, whether it was for consultants and other expenses at the national level or for actual implementation. An annotation to the budget recorded that the amount did not include recurrent costs and that these would need to be calculated separately.

In the event, it appears that the pilot projects as eventually implemented were expected to proceed without any funds additional to available budgets. Thus a March 1997 memorandum notes that a pilot project family court can be established "quickly, efficiently and at no extra cost to the state immediately". It does, however, add that "it may be that the requirements will alter

later and that expenditure of a capital nature will have to be incurred" (p4). It does not clarify what is to happen in terms of operating costs.

The United States Agency for International Development (USAID) provided funding of R500 000 for the pilots. There are, however, restrictions on the use of the funds. USAID specified that the money could not be used for structural changes to any of the courts or for recurrent costs of the individual centres. Since mid-year the money has been used to pay the salary and expenses of Terry Mphelo, as national coordinator of the pilots. USAID specified that R400 000 should be used for training or workshops. It seems that most people were not aware of this possibility until Mphelo spread the message.

While they received no money from the national department, some of the centres have managed to access some funding elsewhere. In all centres I was told about the R1m or more secured by the **Lebowakgomo** centre. Some said that this came from the provincial office. Others said that it was donor funding. Lebowakgomo's report to a coordinators' workshop held in Durban in mid-1999 records a budget of R1,154m provided by the regional Department of Justice, and a further R2 000 donation by the Carl & Emily Fuchs Foundation for purchase of toys. There were, however, still problems. The report notes that a motor vehicle approved in terms of reconstruction and development programme (RDP) funding on 1 January 1999 had still not been delivered to the project, and that a telephone extension from the magistrate's court had taken six months to "materialise".

In **Durban** it seemed at first that the project would be able to access R500 000 from the Inter-Ministerial Committee on young people at risk on condition that juvenile justice was in some way included in the centre. This possibility sparked off detailed planning, including the drawing up of several business plans and budgets. The process took some time and finally the centre was informed that the juvenile justice money was no longer available. Although no money came from this source, many players elsewhere – including the national task team – continued to believe that Durban had received funds in this way.

The Durban centre did receive some funds through the ordinary magistrate's court. In 1998/9 an amount of R385 000 was set aside specifically for the centre project. Some of this money was used for refurbishing the premises. An amount of R171 000 set aside for the divorce presiding officer was not spent as her salary was provided from another budget. The special line item for the family centre has apparently fallen away in later budgets. While it existed, there were often heated discussions within the steering committee between the NGOs and Justice representatives as to how it should be spent, processes for choosing between providers, and so on.

In **Cape Town** the regional office used some left-over donor funding to provide payments for the "volunteers" who provide advice on divorce (see below). This funding will, however, run out at the end of 1999 and it is unclear what will happen then.

No money was allocated at the outset for additional staff at any of the centres. Three of the four components – maintenance, family violence, and children – already had staff, although often these components were severely under-resourced. Some of the centres have managed to organise some additional magistrates, clerks or other staff from the court or regional budgets. In the divorce component, the new staff are generally on secondment, or acting.

In the absence of resources, staff have proved resourceful. The concept document on the court notes that, after a steering committee had identified what was missing in terms of the "shopping list", Justice would assist with missing elements "provided that it can obtain the funds to do so". (The twelfth item on the list is, in fact, "funds"). At the same time it encouraged the committees to obtain donations and sponsorships for additional items which could help to create a family-friendly atmosphere.

There were several instances where there had been donations in kind, for example the cheerful pictures on the walls of the children's court rooms in both Durban and Port Elizabeth. In several other centres staff spoke about how they used their own money for plants and other decorations. The use of donations and own money started before the introduction of the family centres. Some of the older staff, in particular, had concerns as to whether receipt of such donations was legal or would be interpreted as some sort of corruption. One informant said that the funding issue had, in fact, been sorted out in that donations had been approved for all family-related issues.

A few other examples suggest the range of ways in which financial and material resources have been accessed.

In **Johannesburg** presiding officer Zelda Moletsane used the R5 643 intended for furniture for her own office to pay for signage. One of the maintenance magistrates approached the Community Chest for R8 000 to improve the waiting room adjacent to children's court. The chief magistrate "donated" benches from the central court to the family centre venue but, as he expressed it, this was simply "robbing Peter to pay Paul". The latest progress report notes that the Johannesburg centre hoped by November to have set up a trust so as to raise funds independently from foreign donors and local business.

The **Port Elizabeth** centre, like the Cape Town one, has been furnished with furniture from Truth and Reconciliation Commission offices. A school

has apparently promised to help create a nappy change room before the end of the year. Plascon has donated paint and a local woman offered to do the painting, but at the time of the interview the centre was still trying to raise the R600 to pay her.

Some Justice Department informants argued that by setting up the pilots without additional resources, they would ensure that the model developed was replicable. They spoke about optimising resources, and were proud that they had been able to introduce initiatives of benefit to members of the community within existing resources. Proposals from the Johannesburg presiding officer repeatedly stress that most of the improvements will carry no budgetary implications.

This argument does not, however, explain the lack of clarity about the situation in respect of funds. The lack of clarity was evident in several centres. For example, minutes of a **Durban** meeting with Cheryl Loots in August 1998 state that the centre had not been allocated a budget because no needs statement had been submitted. Loots also suggested that some funds might be available on the basis that Durban was a model court. Later minutes record the buying of a TV from model court funds, but also record ongoing distress on the part of NGOs that staff have not completed a needs statement.

The **Cape Town** court's report to the Durban workshop in September noted that "(c)onfusion still exists as to who should take the financial responsibility for the court. It has resulted in a to and from between the Regional Office and Cape Town Court."

In **Johannesburg**, NGOs said they had spent eighteen months asking about budgets, had still not been given a clear response, but believed that money was meant to be forthcoming from the regional office. In **Port Elizabeth** minutes of a meeting of February 1998 record a representative from the provincial office as saying that some funds will be available, but that he is not sure of the amount. A letter of October 1998 from the chief magistrate reports that head office has still not reacted in respect of a budget for alterations to the court building.

One of the problems, discussed further below, is that the family centre brings together components which fall under different authority structures and so have separate budgets. Three of the components fall under the magistrate's court. The divorce component is at this stage somewhat unspecified but is seen, ideally, as residing at the regional level. The pilot itself has been instigated from the national sphere. The family advocate, which should be part of the centres, gets its money from the national Justice budget, but through a separate channel in the regional office. The lack of clarity is particularly acute for the divorce court, which is a new structure and so can't

rely on historical budgets. In Cape Town there have been serious difficulties in accessing even basic supplies such as stationery.

### 2.3 Accommodation

An early memorandum on the family court pilot project notes that it will involve "refurbishment of premises". One change which has occurred in all four centres is the bringing together of different services under one roof. In all four there have also been attempts to establish a clean, comfortable and user-friendly environment. The extent of the changes, and their success, varies.

**Durban's** family centre is situated on the first floor of the Somstev Road magistrates' building. The centre has a distinct presence in that it is separated off from the rest of the building by doors at each end. The centre has been newly painted and is bright, cheerful and clean. The divorce court moved to the building during May 1999. One weakness is that the divorce court registrar and staff are not within the centre, but rather in an adjoining passage. Even this location had to be struggled for, as they were originally offered the basement. Relocation of the family advocate from their mid-town offices – or even the provision of service on selected days – is being delayed by lack of satisfaction with the offered accommodation.

Three NGOs are accommodated within the Durban centre, each with their own office. The juvenile justice assessment centre is across the main hallway from the family centre.

**Johannesburg's** family centre is situated in a large concrete building on Main Street. This building previously housed the black divorce court, was to be converted to a civil court, but was then allocated for the family centre from January this year. The centre is spread over three floors, but shares the building with some other services, such as Home Affairs. The building is drab, but there have been some attempts to improve it, for example with colour-coded signage. After problems with public works cleaners, the court obtained approval to hire a private contractor. One Johannesburg innovation not mentioned in other centres was the installation of two public phones.

Family advocate staff come to the Johannesburg centre each week but their main offices are at the high court. Five NGOs are accommodated within the centre and have been allocated unused court rooms. These are large, but not ideal in terms of layout. A further NGO and the attorneys' association have been allocated offices but had not installed themselves at the time of my visit.

**Cape Town's** family centre is housed on the second floor of the Iustitia building in central Cape Town. The centre shares the premises with other services such as the master of the court. The building is the conventional,

court building and the allocated premises are cramped to the extent that some senior staff share offices. One room has been allocated for the "volunteers" employed by the family centre. There is no room allocated for NGOs. The family advocate is housed at the high court at the other end of town and does not have regular time at the family centre.

Port Elizabeth's family centre is housed in two separate buildings three doors apart. The buildings, one of which was previously the Industrial Court, are located in what one informant described as the "seedy" North End area. The buildings do not resemble courts and have very small signs. The family centre is situated a few blocks from the main Law Courts. There are plans to extend the latter and then relocate the family centre there. However, one informant noted that this multi-million rand extension was likely to take "multi-million years" to implement.

Many informants complained about the dirtiness of the Port Elizabeth buildings although some suggested that there had been real improvements in this respect. Documents record a decision that there should be no smoking in the buildings. During my visit I nevertheless came across several smokers.

As in Johannesburg, informants reported difficulties in getting public works staff to do their job. One compared the situation at the centre with that in the high court, where there were "six cleaners [who] shine up the brass staircase". Steering committee minutes suggest that people serving time under correctional supervision be employed as cleaners, but it is unclear how this would fit in with the desire to separate the family system from the criminal justice system.

The Port Elizabeth family advocate's office is situated up the hill from the high court in the Central area of the city. This is a long distance from the family centre on public transport, but a short distance on the highway if one has access to private transport. The family advocate does not currently work from the family centre on a regular basis, although there are plans to start this on a one day a week basis. One room has been allocated for NGOs, and is used by the Family and Marriage Association of South Africa (Famsa) on Monday mornings and the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) on Tuesday morning.

Creches have been discussed at three of the four centres. Durban court already had a staff creche when the family centre was established. The number of children placed at the creche has apparently been falling and the court has suggested that the creche taken over by the family centre and used, as well, to accommodate parents who visit the centre with small children.

There are mixed feelings within the steering committee about the proposal. Some members are suspicious as to whether they are being used to take

over a failing concern. They also point out that the creche is on the floor below the centre. While there is a door and staircase from the centre to the creche below, they feel that both parents and children will be unwilling to be separated in this way. They suggest instead that a childminder be employed in the centre's waiting rooms. The name of the staff creche - Little Bandits - has not increased the attraction of the facility.

In Johannesburg a new creche has been established. The Bambi (Bambie in some documentation) is currently staffed by one of the interpreters but the centre is hoping to employ a professional teacher part-time. The creche is privately run and, as in Durban, its permanent "beneficiaries" are the children of staff. Parents attending court are charged R5 per hour if they can afford this. The creche caters for children from three months to five years. The centre has also created space on an upper floor where older children can run around without disturbing the courts.

In Port Elizabeth the plan is to wait until the development at the New Law Courts before establishing a creche.

All centres have waiting rooms although in some cases these seem intended for children rather than adults without children. In Port Elizabeth an informant explained that by providing at least two waiting rooms, parties in conflict would not need to sit together. Despite the waiting rooms, in all centres there were people waiting in the corridors. In some instances it seemed that people feared they might be forgotten, or lose their place in the queue, if they sat in the waiting rooms. In all centres except Port Elizabeth there were benches provided in the passages. These were clearly insufficient in Johannesburg, despite the chief's magistrate's "donation" of benches from the main court.

The centres have differing facilities in terms of food and drink. Johannesburg has given contracts to two private kiosk operators, one on the first and one on the second floor. The food sold is cheap. There are, however, some complaints about the levels of cleanliness. The Durban court has installed vending machines offering a range of coffees and cocoa (but no tea!), as well as chips and chocolates. There are also people who vend sandwiches and other snacks at mealtimes. Some members of the steering committee are concerned about the tensions that vending machines with commercial snack food will create for poor parents who visit with their children.

In Cape Town an NGO informant reported that staff sometimes offer tea, or even sandwiches. In Port Elizabeth there were hopes in late 1998 that an empowerment project for women at Stepping Stones, the juvenile justice project, would result in a tuck shop at the Centre. If this did not happen, there were plans for vending machines. At the time of my visit, neither were in evi-

dence.

At least two of the centres have experienced problems related to security. Civil courts generally are not considered as requiring strict security, particularly when compared with criminal courts. The difference in the case of family courts is that they deal with significant amounts of money in respect of maintenance. This poses a clear security risk.

In Johannesburg there have been at least two incidents. One was an armed robbery in which an amount of R90 000 was taken at gunpoint and two NGO workers injured. Since these incidents a private firm has been contracted to guard the premises. There is now a security guard and electronic checking device at the entrance.

In Port Elizabeth the people dealing with maintenance payments are behind a locked security gate. The practice is for them to come out to call in clients a few at a time. The arrangement is considered unsatisfactory by many of the stakeholders. At one of its recent meetings the steering committee established a sub-committee to look into the matter.

In Durban there have been discussions in the steering committee as to whether there should be security at the door to the centre. This arises out of a concern around the safety of those who complain about domestic violence rather than the monetary concern of other centres. However, while all stakeholders acknowledge the problem of security against violent family members, some committee members are worried about the message that police or other security at the door would give.

## 2.4 Governing structures

When Justice decided to institute the pilots, the chief magistrates in each of the areas was asked to convene a steering committee to check on the "shopping list" and generally drive the process. The steering committees were intended to include people from Justice as well as those from elsewhere.

After the initial phase, the chief magistrate generally handed over the steering committee and the project itself to another member of staff. In Durban, Des Rothman, the chief commissioner for child welfare, and Bethuel Ngwenya of the Campus Law Clinic, currently serve as co-coordinators of the committee. This joint coordination has been in operation from the start of the initiative proper, although the NGOs were previously represented by Bethuel's predecessor at the Clinic. In Johannesburg, Zeldi Moletsane, the divorce presiding officer, coordinates the committee. In Cape Town Johan Venter, commissioner for child welfare, was the original coordinator. He handed over the chair to Elizabeth Baartman, the presiding officer of the divorce court, after she was appointed. In Port Elizabeth Hannes Claassen,

the president of the divorce court, was previously coordinator but handed over this role to Felicia Dzulane, the new maintenance magistrate, early in 1999.

All the Justice coordinators play their coordinating role alongside other duties. Des Rothman appears to be in the best position in this respect as Petra Booysen, the other commissioner for child welfare, is able to carry most of the children's court role. Rothman is therefore free to devote time and energy to the centre as a whole. Felicia Dzulane is the most overstretched coordinator. She is currently doing the work of three people – her own job as well as that of two missing maintenance magistrates.

Durban's steering committee is by far the most vibrant. Since October 1999 it has been meeting monthly, but previously met on a two-weekly basis, and has good attendance from the NGO side. Originally Justice was represented only by Des Rothman. The NGOs insisted that, in line with a non-hierarchical ethic and broad involvement, participation should be extended to other staff. Some additional staff are now active and enthusiastic members. However, other staff said that they attended irregularly. They cited workload and a perception that the forum was a talk shop as reasons.

The minutes of Durban steering committee meetings are very detailed and illustrate the depth with which each and every issue is discussed. Both Justice and NGO informants acknowledged that the interaction has at times been difficult. Minutes record disputes as to whether NGOs should have any say over business and management plans. The minutes of a September 1998 meeting record a strong statement from Des Rothman that Justice does not intend "to relinquish complete control over the project in favour of the NGOs."

Despite the tensions, all felt proud of having worked through difficulties in the interests of the project as a whole. Further, it was clear from both minutes and interviews that members were often not simply divided along Justice-NGO lines. The most bitter conflict appears to have been within Justice, between the divorce and other components.

Johannesburg's steering committee also meets regularly, but on a monthly rather than bi-weekly basis. In Johannesburg the NGOs have constituted themselves into a forum which meets separately, but has representation on the combined steering committee. Several informants pointed to the key role that Lebo Malepe of Tshwaranang Legal Advocacy Centre plays in keeping the forum together. She herself acknowledged that this prevented her doing other work, but said she is committed to continuing if this is necessary to take the project forward.

I did not see minutes of the Johannesburg steering committee meetings.

From verbal reports, it appears that the major disputes have been within Justice rather than between the NGOs and Justice. Again the rift is between the divorce component and the others. However, while in Durban the divorce component seems less committed to the family centre concept, in Johannesburg it appears to be some top staff in other components who are less enthusiastic. There were, for example, reports that more junior staff are sometimes prevented from attending the steering committee meetings on the grounds that they are too busy.

**Cape Town's** steering committee appears to be weaker than those at other centres. The committee met fairly regularly in the buildup to the launch, but did not meet again until Terry Mphelo's visit in September. There is now a commitment to rebuilding the committee. Some NGOs, legal practitioners and other "outsiders" were on the committee from the start. However, some of the leading NGOs working in family-related areas were not invited and seem very uninformed about the initiative. Attendance by NGOs is extremely limited, even among those who are invited. Centre staff say that they expect NGO participation and interest will improve if and when they can offer NGOs accommodation.

In **Port Elizabeth** there have also been two phases, corresponding more or less with the leadership of Hannes Claassen and Felicia Dzulane. The latter phase began, as in Port Elizabeth, after the inspiration of a Durban workshop where coordinators from all five centres came together. The Port Elizabeth committee has agreed that it will now meet on a monthly basis, on the first Friday of each month. There has already been some success in recruiting new members. Some informants were dubious as to whether the committee would now flourish, but at least one was very upbeat. One problem is the short time allocated as the meeting is held during the one-hour lunch break. Another problem is poor attendance to date. The second of the three recent meetings had particularly poor attendance, but it appears that outside participants were not informed of the date. The set time may improve attendance in the future.

Besides the NGOs, the different centres have tried to involve lawyers on the steering committee. In some centres, informants complained that the legal associations showed little interest or commitment. Port Elizabeth is an exception in this regard. Belinda Hartle and Doris Ndlovu have served as good guardians of the interests of both their peers and of unrepresented people attending the centre.

The steering committees also include government representatives from outside Justice. Social welfare, for example, is important because of their involvement in children's matters. Port Elizabeth minutes record the repeat-

ed absence of representatives of the South African Police Service (SAPS) and the resultant inability to address serious blockages. After special efforts on the part of centre staff, a senior SAPS person attended the most recent meeting and promised to take up the accumulated concerns.

## The components

All four centres include four components – divorce, maintenance, interdicts and children. The difference in “leaders” has to some extent influenced the amount of attention given to the four components in the different centres. In Cape Town and Johannesburg, with divorce officers as coordinators, more serious attention has been paid to the divorce area than in other centres. In Durban, where Des Rothman was given charge of the other family elements prior to the establishment of the centre, divorce has lagged behind. The NGOs, which play a strong role in Durban, have also paid less attention to divorce. In Port Elizabeth Felicia Dlulane has only fairly recently filled the coordinator post and it is Sidette Kotze, the family violence magistrate, who appears to have been most reactive. While she denied that she occupied the position, another informant referred to her as the “co-coordinator” of the centre.

The national task team focused its attention on divorce in the first year of the project as this was the “new” area, at least in legal terms. With the appointment of Terry Mphelo as national coordinator, the task team is hoping that the other components will be strengthened.

### 3.1 Divorce

The national task team acknowledges that it has, to date, focused its attention primarily on divorce as the area in which the legal change deracialising the black divorce courts more or less coincided with the introduction of the pilots. In practice the divorce component has not, however, always played a leading role within the centres.

The jurisdiction of the divorce courts currently still follows that of the former black divorce courts. There are three divisions covering areas which most informants agreed were “ridiculous”. The Durban registrar, in particular, has a complicated, time-wasting and expensive role to play in arranging court rolls long-distance and couriering files back and forth. The situation is better in Port Elizabeth where the local clerk has been designated as compe-

tent to carry out a range of registrar functions.

The **North East** division of the divorce court is based in Durban, and the registrar is now housed in the same building as the family centre. The area covered is enormous. It extends through KwaZulu-Natal, Mpumalanga, North-West, Northern Province and a portion of Gauteng, including Pretoria. There are two pilot courts in this area – the Durban court and the one situated in Lebowakgomo in the Northern Province. The acting president is Mr Rasefate, who is based in Lebowakgomo, but also holds court in Pietersburg and Thohoyandou. Mr Rasefate served as the first chair of the national task team and had thus been involved in the initiative from the beginning. He has also played an important role in other transformation processes at the national level.

Charles Madern, the previous presiding officer, is acting president in Durban but spends most of his time on circuit across many provinces. Fikile Luvuno previously did mainly criminal work in Mhlabathini. She was appointed as presiding officer in October 1998 on a contract basis and covers cases in Durban. Luvuno was appointed by the then Deputy Minister of Justice, apparently over-riding task team recommendations in the interests of having an African incumbent.

The **Southern** division is also large. It covers the previous Cape Province plus the Transkei and Ciskei areas. There are two pilots in this area – Cape Town and Port Elizabeth. The president is Hannes Claassen, who is the only current president to have held this position in the black divorce court. Another incumbent was apparently appointed in late 1998 but did not arrive to take up the job. The post was then advertised in late December 1998. The timing of the advertisement provoked a perception among attorneys that Justice was trying to retain the *status quo* rather than sincerely looking for new blood. The official seat of the court is in King Williams Town. However, Claassen spends one in every two weeks sitting in Port Elizabeth and the rest of the time on circuit.

Elizabeth Baartman, the presiding officer in Cape Town, was previously a civil magistrate in Wynberg. She currently sits in Cape Town, but there are plans for a circuit to the Southern Cape. One informant said that the reason this had not occurred was a lack of resources. Another informant said that they were waiting for sufficient cases to make a trip worthwhile. There is talk of establishing a family centre at Mitchells Plain. A steering committee has been established and a few meetings held. One holdup is that the premises are not yet ready. If and when it is established, it will be served by Baartman.

The **Central** division is smallest in terms of geographical area, but large in terms of population served. Ex-magistrate Zelda Moletsane, who was former-

ly with the gender unit of the national Justice Department, has been appointed as acting president until a permanent appointment is effected in 2000. Sholto Herman, who formerly worked in the black divorce court as an attorney, serves as the second presiding officer in Johannesburg. The main seat of the court is in Johannesburg. However, since the establishment of the pilot, staff have arranged for additional towns to be proclaimed as circuits. A recent memorandum asks for still further towns to be proclaimed.

Cape Town and Johannesburg have both introduced important innovations in their approach to divorce.

In Cape Town developments have been facilitated by the new court's strong relationship with the high court. Wayne Deck, the registrar, is seconded from the high court. The latter has seen the advantages for itself in the new system and transfers all unopposed new cases to the new court. The high court's roll has apparently been reduced by 1 800 cases and, in the words of one of the NGO observers, staff at the high court are now "smiling". Cape Town's divorce court has meanwhile issued over 3 000 summonses. While everyone reports that Baartman and Deck work extremely hard, the court does not appear to be putting efficiency above compassion and understanding. There was one report that Deck's workload prevented his providing explanations to applicants. However, the person who said this observed that this should not, in fact, be his task.

The seriousness with which the Cape Town court takes the new dispensation has resulted in another innovation there. In Cape Town all divorce applicants with minor children are strongly encouraged to complete "Annexure A". This form is one that must always be completed in a high court application in respect of a marriage involving minor children and requires details of the arrangements made in respect of the children. Ideally the family advocate should check all these annexures and produce a report where it perceives problems. It is here where the Cape Town system breaks down. Because of the workload, to wait for the family advocate would result in long delays. As a result, Baartman occasionally goes ahead and issuing divorce orders without a report where the other party is uncontactable and the applicant (usually the woman) indicates that she is happy.

Annexure A is not completed for all cases with children in other centres. In Johannesburg, for example, applicants are asked to complete this form only if there appears to be conflict over children. The official regulations state that annexure A is only applicable to the high court. The national task team has nevertheless asked all centres to use the annexure and has requested an amendment to the regulations on the grounds that they may be unconstitutional. At the time of the research, this amendment had still not been effect-

ed.

In Johannesburg an important innovation is the way in which Zelda Moletsane approaches her work. From her previous position in the gender unit, Moletsane has a strong appreciation of constitutional and other human and gender rights. She brings these strongly to bear in her judgments. She refers, for example, to sections 9 (equality), 28 (children) and 36 (limitation of rights) of the Constitution, relevant aspects of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human Rights.

In all centres informants spoke about other improvements in the system. Importantly, divorces are significantly cheaper in the divorce court than in the high court. The cost of issuing summons, for example, is R20 rather than R80. The full cost of a divorce could be under R200, after adding R20 for a revenue stamp, R30 for photocopied documents, and R80-R100 for the sheriff.

The court is seen as more user-friendly and accommodating of people who want get a divorce without legal assistance. A Cape Town NGO informant described how those representing themselves in the high court would always look and feel intimidated. In the divorce court, on the other hand, it was far more usual to be unrepresented, and Elizabeth Baartman helped people through the procedures. Similarly, in Durban Fikile Luvuno spoke about how she tried to treat divorce applicants with dignity and friendliness. She also tries to make the meaning of the proceedings clearer to parties, rather than indulging in the formulaic "prayer A, B, C granted" of the high court.

The quickness of the service differs between centres. The regulations cause an initial delay in this respect. In the divorce court one must wait at least a month between issuing summons and securing a court date. In the high court the waiting period is only ten days. After this initial delay, there are differences between centres in terms of waiting time. In Cape Town there is virtually no delay and an applicant can sometimes secure a divorce date for the following week. This compares well with the high court, where people wait for two to three months for a court date. In Durban, registrar Charles Jardine estimated it would take a month from closing pleadings to the court date. In centres where there is a circuit, the delay in the divorce court can be much longer. In Johannesburg, even though there are permanent presiding officers, the roll is full and the waiting period is at least two months. In Port Elizabeth, divorce court applicants must wait at least a month, while they can get a date in the high court within ten days.

The waiting times partly reflect differences in workload. Informants suggested that Durban and Port Elizabeth carry relatively light loads, while Cape Town and Johannesburg are very busy. As noted above, Cape Town - with

only one officer - has issued over 3 000 summonses since April 1999. Johannesburg, with two presiding officers, issued 9 685 summonses in the 12-month period to June 1999.

Durban had granted close on 700 divorces between January and June 1999. Fikile Luvuno was said to have an average of ten cases a day. Registrar Charles Jardine felt that Luvuno would be able to carry a heavier load if demand went up. The court has put some effort into publicising the existence of the court among lawyers. In Port Elizabeth several informants said they were surprised at how few cases there were and wondered whether this reflected a lack of knowledge of what was available.

**Legal practitioners** have been unhappy about some of the changes and the way they have been introduced. An April 1998 letter from the Law Society of the Cape of Good Hope to the Rules Board noted the society's displeasure at not being consulted about the tariffs and rules. They found this "particularly offensive given that the profession has, by way of its representatives at meetings of the local steering committees appointed to manage the pilot project Family Courts, communicated its willingness and desire to participate in this work".

One of the biggest complaints of practitioners is the low fees. The divorce court fees are scale A, which is the lowest magistrates' court scale. This is clearly of benefit to poorer clients, but makes the court unattractive to lawyers. Further, the rules state that costs can only be awarded if there is "good cause" - it is not automatic even when a case is "won". The result, reported in several centres, is that many lawyers avoid the divorce courts, preferring to take their clients to the high court. This is not serious for unopposed cases, where applicants can comfortably represent themselves. It is serious for opposed matters, where applicants need the assistance of experts in terms of information, to correct power imbalances between parties; and to try to avoid the serious economic consequences which divorce has for so many people - women in particular.

In the past, the high court catered for Indian, coloured and white applicants, and for those African applicants who were either rich enough, or had a complicated enough case, to use the high court. Today the divorce courts serve people of all races. Fikile Luvuno estimated that in Durban five out of ten applicants are white, three Indian and two African. In Cape Town, Elizabeth Baartman estimated that 50% of applicants are coloured, 40% white, 3% Indian and 7% African. While the low percentage African might seem surprising given that this was previously the black divorce court, it must be remembered that previously the Southern Divorce Court only visited Cape Town for two days every three months.

In the past the division between the high court and the black divorce court was along race lines. Today it is along class lines, with the distinction fuelled by lawyers who prefer to take their cases to the high court. The perception or fear among many observers is that the divorce courts will tend to deliver "rough justice". The dilemma was acknowledged from the beginning in a position paper on enabling legislation on family courts. The paper noted that the "challenge facing the Family Court is to strike a balance between quick and inexpensive access to justice on the one hand and quality justice on the other". In the October week-long training for presiding officers and family advocates, Judge Kathy Satchwell laid particular stress on the importance of delivering a high quality service in the divorce courts so as not to perpetuate the class divisions between this and the high court.

In addition to the fee issue, the Cape Law Society suggested a number of practical amendments which would promote the inquisitorial system, facilitate transparency and speed up processes in terms of information about the parties. Some of these would bring the divorce court in line with the situation in the high court, while others were innovations beyond current high court procedures. For example, at present divorce court cases are not reportable and do not establish precedent. Practitioners and the family advocate have asked that this be changed. Making cases reportable would elevate the status of the court, increase accountability and predictability, and allow associated professionals to render a more expert service.

The early memoranda on the family court suggested that they should cover all **forms of relationship**, including gay relationships. At present the courts deal only with civil marriages. I was told that the Recognition of Customary Marriages Act would come into operation in January 2000. Zelda Moletsane prepared a paper on the issue for the October workshop for presiding officers and family advocates. Nevertheless, it remains unclear what role the family centres will play. One informant was adamant that the two systems could not be combined. Another observer suggested that the new Act would result in a lot of litigation and that the family court would have an important role to play in implementation. She was worried that government lacked an implementation strategy. She said it seems that government believed that drawing up regulations was the same as implementation.

The Black Administration Act under which the divorce courts operate provides for the use of assessors. The memorandum of March 1997 notes that the participation of assessors "could help to save marriages". It is not clear whether any of the courts has used assessors to date.

### 3.2 Maintenance

In the course of research on the family centres, I came across 1997 plans for maintenance pilot projects. These were to be situated in Mitchells Plain and George, rather than at the family centre pilots. The maintenance legislation has since been changed as proposed in these plans, and will be implemented later this year. It is not, however, clear what happened to the idea of maintenance pilot projects.

Within the family centre pilots, maintenance is generally an area in which very little appears to have been achieved. **Cape Town** is probably performing best. This is, however, not really a result of the introduction of the family court concept. Cape Town has for many years been known as a court which provides a relatively woman-friendly and equitable maintenance services. Much of the credit must go to Johan Venter, who – as commissioner for child welfare – was the first convenor of the Cape Town steering committee.

Admittedly, Cape Town probably faces somewhat smaller problems than other centres. Firstly, the area it serves is smaller in terms of population than many other areas. Secondly, it is a relatively wealthy area and thus many of the defendants will have the money which makes orders and payments more feasible.

**Johannesburg** serves an enormous population. It is reportedly the biggest maintenance court in the country and has been the focus of a lot of organisation around the issue. One particular area of concern is the extremely long delays in matters coming to court. Johannesburg is the only centre in which NGOs are working with the court specifically on this issue. Both the Maintenance Action Group and the Maintenance Forum have volunteers at the court each day to assist applicants. However, according to one informant, the clerks often ignore the work of these NGOs when dealing with the applicants. There were reports on attempts by the two maintenance magistrates in Johannesburg to deliver a more user-friendly service. These are often stymied by what happens at the clerk level, and by some resistance at management level. One informant reported that the attempts to change maintenance had been seen by some Johannesburg players as "a political thing from Dullah Omar".

In **Port Elizabeth** I saw queues of maintenance applicants as well as some defendants waiting to be served when I visited. The centre coordinator, Felicia Dzulane, serves as the maintenance magistrate. She should be assisted by two further magistrates, which would free her up for some coordination activities. New magistrates were only recently appointed. At the time of the interview they were attending the new compulsory introductory course at Justice College and Dzulane was thus still working on her own.

In **Durban** there is no NGO involvement at present, and maintenance staff have minimal involvement in the steering committee. Maintenance will, however, be the focus of the first monitoring and evaluation efforts at this centre. The section was busy on the day I visited and staff were working into and through the lunch break.

In all the centres there were indications that the maintenance staff were overworked. And in at least one other centre, maintenance staff were working in the lunch break. Further, while only Cape Town did not have waiting rooms, in all four centres there were people waiting in the corridors. During the afternoon the centres generally appear much emptier – even deserted. This could be because the centres send home those who they know will not be served. It could also be that magistrates and other staff are using the afternoons for administration and other tasks in which they are not dealing directly with clients.

Informants expressed some hope that the coming into the effect of the new Maintenance Act would address some of the problems in the maintenance arena. It is, however, unclear how the new Act will address the problem of workload.

### 3.3 Family violence

Unlike in other pilots, in Port Elizabeth the centre seems to have advanced more energetically in the area of family violence than in the other three core components. Sidette Kotze is the magistrate in charge of this section. She is supported by a full complement of six clerks.

Even before the introduction of the family centre, Kotze was working with NGOs such as Famsa and Nicro. One example of the cooperation is that, about two years ago, a clerk was seconded to the Ncedo rape crisis centre at Dora Nginza Hospital to help those who presented there and needed an interdict. (This clerk was later withdrawn by the Port Elizabeth court on the basis of limited resources.) More recently, the family violence component cooperated with the two NGOs to offer a week of training on maintenance and domestic violence at five venues in the townships as well as at the centre.

Currently Famsa and Nicro provide staff or volunteers who are available at the centre between 9 and 12 on Mondays and Tuesdays respectively. Applicants for interdicts are referred to these NGOs if the clerks or magistrates consider them suitable for mediation. The Nicro volunteers, all of whom work for no pay, said that they had been provided with basic training as well as a list of available resources to which they could refer people.

In Durban all three NGOs which work from the centre premises focus on

family violence. Lawyers for Human Rights is able to provide legal advice, while Peacehaven and the Advice Desk for Abused Women provide assistance in completing the application forms as well as some advice and mediation.

In all centres the family violence component is responsible for issuing **peace orders** as well as interdicts. In several of the centres it appears that these orders are being issued to people who qualify for an interdict. In Durban we met a woman who had just been issued with a peace order yet whose complaint was against a boyfriend with whom she had co-habited. In Johannesburg an informant said it was a "privilege" to get an interdict.

Many informants - including some from the Department of Justice - explained that the peace orders were not worth the paper they were written on. Several observed that by reporting to her partner that she had obtained a peace order against him, a woman might "provoke" more violence against which she would have no immediate protection.

In both Durban and Johannesburg, Justice Department staff were said to be promoting the idea of peace orders in preference to interdicts. In Durban one of the NGOs also appeared to favour the weaker measure. The Durban statistics record 1 506 peace orders issued between January and mid-September 1999, as against 800 domestic violence interdicts (*The Independent*, 18 September 1999). In Port Elizabeth, on the other hand, there is more sensitivity to the dangers. The clerks there actively discourage applicants from applying for peace orders. In Cape Town one of the magistrates said that he would certainly "frown on" giving a peace order when a person is entitled to interdict relief. He suggested that there should be an instruction from the department that this should not happen.

As with maintenance, new legislation in the form of the Domestic Violence Act of 1998 will bring significant changes, but was not yet in operation at the time of the research. The new act will come into force in December 1999. Some informants were hopeful that the wider definition of relationships in the amendment would bring an end to the problems in respect of peace orders. This view could well be over-optimistic as at present the orders are being issued even when the relationship falls well within the ambit of the current act. A further concern is that few staff appear to have received training on the amendment and that there are no other services or counselling to accompany the legal process.

### 3.4 Children

The commissioners for child welfare and their staff deal with matters such as fostering and adoption which fall under the Child Care Act. Individual com-

missioners have played a strong role in some sites. The current co-coordinator in Durban is a commissioner for child welfare, as was the original coordinator in Cape Town.

Informants in several centres suggested that the children's sections had introduced many of the ideas associated with the centre before it was established. As one put it, it "is not a big thing or change. It simply continued." They referred in particular to long-term relationships with NGOs. In general, the relationships were with the more traditional, established and, perhaps, conservative NGOs rather than those which were previously active participants in the anti-apartheid struggle.

There was little evidence of the children's NGOs at the centres, although they are represented on most of the steering committees. One reason for their physical absence could be the nature of the work. Unlike in components such as maintenance and interdicts, where applicants come and wait at the court, children's matters are usually prescheduled. Where NGOs are involved, they can thus come at the appointment time rather than being permanently at the centre.

The children's sections appeared to be less busy than other components. The statistics for Durban showed that the section there dealt with 364 enquiries between January and mid-September 1999, as against 40 child support interviews daily in the maintenance section (*The Independent* on Saturday, 18 September 1999).

A staff member in one centre claimed that the court "runs perfectly", has experienced clerks, and a generally child- and user-friendly and caring environment. An NGO representative in the same region complained that the court was sometimes "unresponsive, rigid" in their desire to deal with matters quickly.

### 3.5 Juvenile justice

None of the centres includes juvenile justice. Officially there has not yet been a final decision as to whether this component should, or should not, be part of the family centres. In each centre informants said that there was not unanimity on this issue. However, a clear majority of those I interviewed indicated that they themselves were not in favour of inclusion. Most interviewees were particularly antagonistic towards sexual offences against children being included, on the basis that this would bring adult criminals into the system. But many were also against including juveniles who were themselves in trouble with the law.

The inclusion of juvenile justice was promoted most strongly in Durban. To some extent the motivation there was financial in that initially it appeared

that the centre would be able to access funding from the IMC if it provided for some aspects of juvenile justice. This was, however, not the only motivation. There are still people there and elsewhere who argue that, to provide a holistic and integrated service to children, the services should be integrated. They argue further that by linking juvenile justice with the "softer" family system rather than the harsh criminal one, the new approach which aims at integrating young people in trouble with the law is more likely to succeed. They argue that this is increasingly important as the attitude towards criminals hardens with policies such as refusal of bail and minimum sentences.

As noted, in Durban the juvenile justice assessment centre is across the passage from the family centre. Port Elizabeth has a separate juvenile justice pilot, called Stepping Stones. The pilot is some distance from the family centre, in Bethelsdorp, a former "coloured" area. Stepping Stones has a representative on the family centre steering committee but the relationship between the two pilots seems weak.

From reports, Stepping Stones is working well. Unlike the family centre pilots, it had dedicated additional funding which no doubt has contributed towards its success. Research and financial projections suggest, however, that the system, if replicated, would be highly cost-effective. One of the original arguments for amalgamation with the family centres was financial, on the basis that social workers would be shared. If the costing projections on Stepping Stones are correct, there is less incentive to amalgamate from the juvenile justice side.

### **3.6 Family advocate**

Barbara Hechter, the chief family advocate, is an enthusiastic and committed member of the national task team. Terry Mphelo, the national coordinator, previously worked as a social worker with the family advocate. Hechter has a vision which sees the family advocate providing mediation services far beyond the current ambit, and reportedly even beyond the ambit of family matters, and has conducted discussions on this with a range of stakeholders. There are others within the family advocate structure who see the need for a reconceptualisation and broadening of the structure's powers in relation to children's or family matters.

To date the family advocate has played a limited role in most of the pilots. Cape Town appears to be the only centre where all divorce applicants with minor children are required to fill in annexure A for scrutiny by the family advocate. In some other centres it is not clear that the family advocate is operating well even for cases with serious problems. In Durban, an NGO representative noted that whereas they had regular referrals from the high court,

they had as yet received none from the divorce court. The situation in Durban could, however, improve. The day before my visit the family advocate visited the centre and explained to staff of the divorce component how their system worked and what the different forms entailed. Durban is also the only centre where I heard of serious discussions about the family advocate moving into the same building.

At present even in Cape Town the family advocate is not available at the centre on a regular basis. In other centres, family advocate staff are present – or plan to be present – at the centre one day a week. They propose that cases requiring their attention be scheduled for that day. But even if this approach is adopted, people involved in cases requiring in-depth investigation will have to visit the family advocate's office which are usually some distance from the centre.

In all divisions those whose cases are dealt with on circuit are particularly badly serviced because the family advocate does not appear in these courts at all. A Port Elizabeth informant noted that they were fortunate in that the divorce officer was prepared to make orders without the family advocate's presence if the parties were both present, or if one could produce an argument why this should be done. The informant nevertheless said that it would be preferable for family advocate staff to go on circuit so as to be able to give guidance to local social workers who do not have experience in dealing with divorce issues.

One cause of the "under-performance" of the family advocate in the new divorce courts is legislative. The relevant Act has not yet been amended to require the same protection of children's interests in the family court as in the high court. The amendment would be a simple one and there is widespread acknowledgement that the current disparity is iniquitous and probably unconstitutional. Further, as one informant pointed out, it is precisely children in family court divorces who are more likely to require protection as so few of the parties have legal assistance.

Another cause of "under-performance", and a possible reason why the amendment has not been effected, is the shortage of resources. Informants in most of the centres spoke of the heavy workload of the family advocate. Renee Claassen, the family advocate in Port Elizabeth, pointed out that the staff complement of the family advocate has remained constant while the number of tasks has expanded since the passing of the 1987 act which established them. She listed applications in terms of the Hague Convention on Child Abduction, the Divorce Court Amendment Act, applications in terms of Act on the Rights of Natural Fathers of Children born out of Wedlock, protection in terms of the Children's Status Act where marriages are annulled,

best interests of children in temporary orders under the Amended Act on Domestic Violence, best interests of children in terms of the Dissolution of Customary Unions, best interests of children in applications to remove children out of the country where one party withholds consent, mediation at the pilot project of the family court in terms of divorce and family violence, and training of other departments in terms of children's and women's rights.

The new role in respect of domestic violence will come into effect in December 1999. In Port Elizabeth, at least, the matter has been discussed and there are clear plans as to how to bring the family advocate in. The role of the family advocate in domestic violence was not mentioned in any of the other centres. The issue was not discussed in the week's training for family advocate and divorce staff in October.

The current staff of family advocate offices is not only too small, but also probably relatively unsuited to dealing with African clients, given that few African divorces previously occurred in the high court. Port Elizabeth's application for an interpreter was refused on the grounds that there is insufficient need and they are thus forced to rely on an administrative assistant for this service.

One way of dealing with understaffing is to bring in outside assistance. The family advocate in Johannesburg is already working closely with one outsider for whom it provides accommodation. Childs is coordinated by Annemarie Wentzel, a psychologist, and provides evaluations and a parenting programme but limited mediation. Childs charges for the service according to a sliding scale based on income. The family advocate is very pleased with the relationship and estimates that the private practitioners who offer their services carry 40% of the workload of the office. Childs has been allocated accommodation at the family centre but had not yet taken up the offer at the time of my visit.

In terms of mediation, in Johannesburg and Durban Barbara Hechter arranged for mediation training courses. Both lawyers and those without legal training were invited. Participants paid for the course. They were meant to spend some time with the family advocate as part of this training, although it is unclear how many did. On conclusion of the training, participants were urged to volunteer their services to the family advocate to assist with the workload. The suggestion met with resistance on two grounds. Firstly, it appears there was to be no payment for the service. Secondly, the lawyers in particular were said to be unwilling to operate without some formal system of supervision.

Johannesburg has an in-house mediator in the form of Aubrey Nxumalo, to whom the centre has assigned an office. According to a funding proposal

prepared by the centre, Nxumalo also provides services to clients in the circuit court areas. From his own self-description, Nxumalo focuses his attention on the interests of the children and thus serves a similar function to the family advocate. Nxumalo does not have a matric, but does have training in mediation. All informants stressed his ability to deliver a culturally-sensitive service. The funding proposal notes that the service lightens the workload of the court as it results in fewer cases referred for litigation. There seemed widespread satisfaction with the quality and importance of the services he offered, although one informant noted that there was no objective or formal way of appraising this as against the "rules, checks and balances" of the family advocate.

The main difficulty lies in the sustainability of the in-house service. Nxumalo was previously employed in a temporary post as an interpreter, at a salary of R3 000 per month. The money came to an end several months ago and Nxumalo has since been working every day at the court without pay. Zelda Moletsane has submitted a full motivation and funding proposal to head office for his services. She has also proposed that the medium term expenditure framework in future provide for a mediator. At the time of the interview, she had received no response to the proposal.

### **3.7 Other components**

Some of the centres provide other services in addition to the core components. Johannesburg advertises that it deals with deceased estates and family support services in addition to the other services. Cape Town advertises that it deals with mental disorders. It is possible that the other courts are also dealing with these and similar matters.

A memorandum on the family courts dated March 1997 proposes that family centres should include the solemnisation of marriages among the services offered. This was not mentioned in any of the interviews, or in any other documents.

## Discussion

### 4.1 One-stop shop

In most centres there were informants who were cynical about what had been achieved at the family centres. A common assertion was that there had been a shift in location, so as to bring different services under one roof, but little more.

The term "one-stop (family) shop" is used frequently in referring to the family centres. The meaning of the concept is not simple. One of the problems relates to jurisdiction. The jurisdiction of the divorce courts extends over an entire region, of which there are three in the country. Even where a region has been parcelled out between different presiding officers, each will usually be responsible for divorces in more than one magisterial district. Maintenance, family violence and children's courts, on the other hand, are dealt with on the basis of magisterial districts. The relevant law usually states that a person must apply in the area where they live or work. The difference in jurisdiction means that the family centres as they now stand are only one-stop shops for those who live or work in the magisterial district in which the centre is situated.

Vision 2000, written in 1996, situates the family court concept firmly within the development of a provincial system of justice. The initial plan was to have two pilots, in Cape Town and Umtata. The next step would have been to establish at least one pilot in each province. Clearly these plans were later changed. However, the task team would still like to have a jurisdiction in each province by early 2000. It is hampered by the fact that this will require the creation of new posts. At the time of the interview they were trying to get the necessary funding included in the medium term expenditure framework (MTEF) plans for the cycle beginning April 2000.

Meanwhile I was told by several informants that the deputy minister hoped to have established 20 centres by the end of the year. There were differing interpretations as to what this meant and its feasibility. There were indi-

cations – although often contradictory – of family centres at other centres than the five pilots. In some cases these might involve three components with divorce being offered on circuit. These could also, to some extent, be considered one-stop shops. In other cases, for example, Mitchells Plain, divorce is not yet offered at all. It is highly unlikely that divorce circuits can ever be offered in all magisterial districts.

A second question in relation to one-stop shops relates to the extent to which clients are likely to be involved in more than one of the components at any one time. Some informants suggested that this would happen rarely. Others pointed out cases where officials were either having to duplicate work – and so pose an extra burden on clients – or making incorrect decisions because they lacked the knowledge of what was happening in relation to a client in another component. An NGO informant reported that she had seen in the US how officials met to discuss particular cases. She said officials would then agree that one person deal with all related issues rather than requiring a client to be serviced by more than one.

Divorce and family violence could overlap often. Ongoing violence could result in a partner to a marriage applying for an interdict. This could occur either before a divorce action is instituted, or while the process is in motion. In two centres there were indications that family advocates were unhappy with the issuing of interdicts restricting access where they had been dealing with a case for some time. A memorandum from the Attorneys' Association of the South Eastern Cape of November 1998 noted that the lack of prior consultation in such a case would "obfuscate... recommendations or suggestions".

Maintenance and divorce should also have many overlaps. Maintenance is applicable in any situation where parents are separated, including where they are not married. On the other hand, all divorces involving minor children have a strong likelihood of raising the issue of maintenance. Ideally one would like the two issues to be dealt with simultaneously. This is, however, the exception rather than the rule in the family centres. Most often the custodial parent is advised to approach the maintenance court to sort out maintenance. Given the weaknesses in the latter system, this imposes an enormous burden.

The family advocate bears responsibility for ensuring the best interests of the child in divorce settlements. However, as noted elsewhere, the family advocate's functions have not been officially extended to the divorce court and – apart from Cape Town – the office is only brought in for a minority of divorce court cases. In addition, even in the high court, the family advocate generally does not consider maintenance. Indeed, the family advocate does

not have official authority to make a recommendation in respect of a maintenance order. In both the high court and the divorce court the usual practice is to include an order for maintenance in the divorce order only where the parties have reached agreement. This is far more likely in the high court where, firstly, most cases involve lawyers and, secondly, the non-custodial parent is more likely to have financial resources to pay.

The task team has encouraged the family courts to consider maintenance in divorces. In Johannesburg and Cape Town this seems to be happening in a significant number of cases, although one NGO informant said that she still received complaints that it was not happening in legal aid cases. The process in Johannesburg is facilitated by the presence of the on-site mediator. In Cape Town, the strong relationship between the maintenance and divorce officers probably plays a role.

A range of informants stressed the importance of settling issues of access and maintenance simultaneously. Several observed that parties often saw the two as related. They observed that non-custodial parents were unwilling to pay for a child with whom they did not have contact. Settling maintenance during divorce could go some way to relieving the workload of the maintenance court. Not settling maintenance has serious negative consequences for the custodial parent. A parent who has to go repeatedly to the maintenance court to deal with this issue wastes time and money in doing so. One informant pointed out that the person might also lose their job if the employer gets tired of repeated absences to attend court as the courts operate only during work hours.

A third question in relation to one-stop shops is whom it is intended to serve. In talking about the benefits, informants were as likely to speak of the benefits to legal practitioners as to those to applicants. However, at least one of the informants seemed to be referring to practitioners who would want to assist in a divorce on the same day as a criminal matter. This benefit would only accrue where, as in Durban, the family centre is in the main court building. This is a situation that most advocates of family centres see as far from ideal. A practitioner said that it was unlikely that she would benefit from the one-stop shop. Practitioners are, in fact, usually involved mainly in divorces and children's issues, with applicants more likely to be without assistance for interdicts and maintenance.

A fourth question relates to organisational structure. In several of the centres informants suggested that the family centre needed to be established as a separate unit. The unit should include all components, and have its own budget, administration and authority structure. At present this is far from being the case.

The divorce presiding officers are public servants, employed by and accountable to the Ministry of Justice. The magistrates for the other components are appointed by the Magistrates' Commission and jealous of their independence from the public service. The prosecutors are accountable to the Director for Public Prosecutions (DPP). This divided authority structure has caused serious conflict in Johannesburg and Durban between the divorce and other components. The conflict and resultant lack of cooperation in both centres forced the Department of Justice head office to intervene. Despite intervention, the conflicts are still clearly evidence in Johannesburg. A report of May 1999 openly acknowledges the difficulties:

The major challenge facing the sustainability of integrated and coordinated family court services is the deeply entrenched divisions between sections within the family court centre... Each of these sections has its own head who is governed by laws and rules different from the other section. As a result, it is not easy to deal with a single issue without giving wrong impressions to the head of section.

The divided authority structure goes together with a budgetary split. The divorce court in each centre has a separate budget from the other components, which all fall under the magistrate's court. Control over the budget goes alongside control over resources such as the buildings, and how they are used. This too has been a source of conflict, particularly in Johannesburg.

#### **4.2 Non-governmental organisations**

An early project memorandum suggests that NGOs should assist, participate in decision-making, monitor, conduct research, and make recommendations in respect of the family centres. In a meeting in Durban in August 1998 Cheryl Loots described the role of NGOs as including monitoring and evaluation, lobbying, training, services, inputs on appointments, access to and evaluation of all documents, and reporting on progress.

NGO involvement was thus, from the start, seen as central to the success of the family centres. There are, nevertheless, big differences in the extent to which NGOs have been involved in the different centres. There also seem to be important differences in how the various NGOs and staff see this involvement.

The NGO presence has been strongest in Durban. In terms of physical presence, Peacehaven, the Advice Desk for Abused Women and Lawyers for Human Rights currently operate from the premises of the centre. All these three offer assistance primarily in connection with interdicts. Peacehaven has, in fact, closed their previous office and now uses the centre as their main

premises. In terms of other components, the Legal Resources Centre has recently suggested forming a consortium of NGOs to offer assistance in the area of maintenance.

The Durban steering committee has developed a code of conduct and application form to be used in allocating space to other NGOs. At the time of the interview Black Sash (for maintenance) and Nicro (for children) had applied. Court staff intimated in the interviews that no further space would be available, and that these NGOs would have to operate from the passages. The NGOs were unaware that this was the case and angry that they had filled in long forms under what seemed false pretences. There was also some unhappiness about the level of detail required on the form when NGOs did not have the same detail about the internal operation of the court.

**In Johannesburg** Lungelo Women's Organisation, the Maintenance Action Group, the Maintenance Forum, and Tshwaranang operate from the premises, although not all are full-time. The centre has offered space to Childs, an NGO which currently operates from the family advocate office. The offer has not been taken up, despite a special arrangement for a room on the second rather than third floor. Several informants said that the reason appeared to be the policy of other NGOs not to charge fees. Childs currently usually charges for the services it offers from the family advocate office.

**In Port Elizabeth** Nicro and Famsa operate from the premises. Staff noted that the physical presence of NGOs increased the likelihood of applicants' using their services, either when referred by the court, or when clerks suggested the NGOs might help.

**In Cape Town** there is no space allocated for NGOs. A Cape Town informant acknowledged that the lack of accommodation could be one reason for the limited interest displayed by NGOs in the pilot.

Besides these NGOs, there are other non-governmental actors who assist, or have offered to assist, at the centres. In Johannesburg students from the University of Witwatersrand and Rand Afrikaans University lighten the load of the clerks and registrar by assisting with divorce pleadings. The centre has also allocated an office to the attorneys association. This will be staffed by a clerk who will provide basic administrative services. In Port Elizabeth an attorney from the Legal Aid Board assists every Monday afternoon in expediting the divorces of couples where there is family violence. At the time of the interview Sidette Kotze was negotiating with Vista University for paralegals to assist with maintenance. In Durban Des Rothman reported in March 1998 that the University of Durban-Westville had offered to make final year students available to assist with maintenance. The university did not come back to the centre. Rothman has not followed up on the grounds that the

service will not be worthwhile if the university does not have the commitment to follow through and be consistent.

In each centre there are NGOs on the steering committee which do not provide services from the centres. Some of these NGOs are providing services which assist the court and its clients even though they are not physically located there. One example is the Nicro Women's Centre in Cape Town, which deals primarily with abused women. Nicro has organised a system of volunteer student advisors from the Universities of Cape Town, Western Cape and South Africa. The students work under the supervision of trained staff. In simple matters they assist the women to complete divorce forms. With opposed matters, they attempt to call the defendant in and reach an out-of-court settlement. If this does not succeed, they refer the women to legal aid or attorneys. The relationship between the family centre and Nicro was described as "informal and ad hoc" but appears to work well. Elizabeth Baartman attended a session with the volunteers where she explained how they can assist.

The relationship between the courts and the NGOs differs between centres, and sometimes within centres according to which staff and NGOs are involved. In Johannesburg respondents spoke about open resistance from some staff to NGOs having a presence. And in one centre maintenance staff said they did not see any role for NGOs in their component. In other cases there were more muted complaints – for example, that the NGOs which had been given office space were not always there for the full hours promised.

On the other hand, some NGOs pointed out that they should, in fact, be paid for their services. Firstly, by offering services they were lightening the load on the centre staff. Second, they pointed to research which suggested that NGOs provide services more cheaply than government and that by contracting them government would thus be saving money. There was also a suggestion that the NGOs should be better integrated into and informed about what happened in court, so that clients would not need to repeat their story so many times.

Often it appears that Justice Department staff have favoured the more traditional – and perhaps more conservative – NGOs. This need not be intentional, but would reflect the backgrounds and knowledge of the staff involved. The choice affects the nature of the services offered. In evaluating the Ncedo project at Dora Nginza Hospital, Sureshni Moodliar noted a similar pattern. She pointed out that – unlike the older, conservative NGOs – progressive feminist organisations like Rape Crisis are more likely to adopt a gender-sensitive approach (personal communication). In my interview with one of the Durban NGOs, the representative reported that they were hoping

to open a shelter. When asked whether this was for abused women, she responded that it would be open to anyone – they did not discriminate. Her response suggests a lack of understanding of the gendered nature and dynamics of domestic violence.

The family courts are not the only courts which are using NGOs and providing them with facilities. The examples described below, all of which relate to family matters but at courts other than the family pilots, should be able to be emulated at the family centres.

In Cape Town, the NGO 'Mosaic' has established advice desks to assist with domestic violence applicants in Bellville, Goodwood and Wynberg and has advanced plans for further desks in Mbekweni and Fransch Hoek. The volunteers attend an intensive training course which equips them to provide crisis counselling as well as more practical assistance to both applicants and clerks. They are closely supervised on a weekly basis by the organisation's community workers. In August 1999 the number of women assisted was 365.

The organisation is privately funded. Wynberg court provides the organisation with R50 a month, which goes towards tea, coffee, sugar, toilet paper (for applicants' tears) and lollipops for the children of applicants. The court also allows the organisation to use its photocopy machine. The other courts are not as supportive. The volunteers received no payment apart from R30 to cover transport and lunch.

Also in Cape Town, Nicro Women's Centre reports a good relationship with the maintenance section in Mitchells Plain. The Centre attempts to mediate between the partners and arrive at the basis of an agreement. The maintenance officers are reportedly "chuffed" because this cuts down on their own work. Nicro advisors are allowed to sit in when the couple meets with the officer. By so doing they provide some support to abused woman who would otherwise be disempowered in the presence of the abuser.

### 4.3 Advice desks

The Johannesburg report for the period to 30 May 1999 notes that head office had undertaken to assist with the establishment of advice desks which would do reception, screening and assessment, referral to appropriate agencies and provision of legal information. By the time I did the research none of the centres had a functioning advice desk. In other countries there is often a full screening service through which all those wanting to use a family centre must pass. The screening serves to provide potential clients with information as to the services on offer. In doing so it saves the time of both staff and clients.

In Durban there is a solid structure just outside the centre which is intended as a dedicated advice desk which would screen and advise all comers.

Irish Aid provided money for two desks in the court as a whole. By careful budgeting this third, and extra, desk was allocated for the family centre. Money has also been allocated to provide a computer.

The outstanding problem in Durban is staffing. The other two advice desks are operating but the family centre desk is currently unused. There are conflicting stories as to whether it will be staffed by volunteers from NGOs or by centre staff. While there are strong arguments for using staff, particularly if they are to have access to case records, the Justice Department says that it has neither the funds nor personpower.

In Johannesburg Zelda Moletsane approached NGOs about providing a paralegal advice service. The NGOs, while realising the importance of the service, said they were not able to provide this full-time. Moletsane subsequently spoke to Cheryl Loots of the national task team about approaching the paralegal association and was told that the communication division would arrange this. To date nothing has happened.

Meanwhile Irish Aid also provided funding for advice desks in Johannesburg. These have been established in the main magistrate's court. The chief magistrate says he is planning to establish one at the family centre and that it will be staffed by clerks together with security staff. At present, by default, the private security guards at the entrance provide some directions to those who enquire.

In Port Elizabeth previous minutes talk about the existence of an advice desk on the first floor. I did not see such a desk during my visit. At present, the security guards at the entrance can provide limited logistical directions. A recent set of minutes talks of plans to access Irish Aid money.

In Cape Town there is no general advice desk, and people must again rely on the security guards at the entrance. For divorce cases there is, however, a system of "volunteers".

The idea of the volunteers came up during the planning stages for the pilot. NGO informants described how they had been contacted by Justice for ideas on how such a service should be arranged. A group from the regional Network on Violence Against Women came together and developed guidelines as to how they thought such a volunteer system should be organised. Drawing, in particular, on an unhappy experience in Mitchells Plain, they stressed the need for strong coordination if several players were to be involved. They also offered training.

The Department of Justice did not take up the Network's offer or, it seems, even come back to them. The next communication was an invitation to the launch of the centre and a request for the organisations to put forward names of volunteers. None of the organisations I spoke to put forward names. They

said that too little time was given in which to do so. They also said that they would not find people prepared to work for nothing.

Justice went ahead and developed its own scheme – perhaps drawing on the Network's idea that one needed a coordinated approach. Twenty individuals were recruited, primarily from advice offices and community organisations rather than NGOs. A week-long course was organised, during which participants heard from family mediators and the family advocate, as well as receiving input on muslim and customary law, the marriage system in general, and listening skills.

Fourteen of the twenty who were trained now work on a roster system which provides for two volunteers each day of the week. While they are termed "volunteers", they in fact receive an amount of R70 for each day worked. Up until now Elizabeth Baartman has provided supervision through weekly meetings. Since the beginning of October 1999, a coordinator has been employed. The coordinator will receive R150 per day for two days a week, but informants suggested that she would be working further days unpaid. The centre sees the coordinator's role as including outreach, liaison with other groups and administration. As noted above, the funding for the scheme comes to an end in December 1999.

As is clear from the description of the training, the volunteers are intended to assist only with divorce. All those who approach the centre for divorce are required to go first to the volunteers. There they are informed of the possibility of mediation and, if interested, provided with referrals. One informant referred to the "many NGOs" offering mediation, but it seems that referral is probably primarily to the family mediators association, Famac. This is a professional grouping of divorce mediators which provides co-mediation by lawyers and non-lawyers.

Several informants noted that the referrals were not working particularly well. They said that the volunteers did not have a good understanding of mediation and that many of the referrals were unsuitable. In particular, Famac will not accept cases involving domestic violence. This excludes a large number of the divorce cases coming to the court. Where the volunteers are much more useful, is with the practical tasks of assisting people with filling in the necessary forms and checking these before the person is sent on to the registrar.

Despite the weaknesses, centre personnel seem pleased with and proud of the volunteer system. The day I visited there were three advice-givers assisting in the volunteers room and a small queue outside of people waiting for their assistance. An outside informant complained that the volunteers were irregular in attendance and insufficiently trained.

#### **4.4 Mediation**

A position paper on enabling legislation for family courts is clear that mediation should be an integral part of a fully-fledged family centre. It reads as follows:

The family court shall have a social component known as family court mediation, conciliation and counselling and a court component which principally deals with the legal nature of family disputes.

One of the early project memoranda from the Department of Justice stated that mediation and counselling should be offered by all the centres and that this would require that space be allocated for NGOs and the family advocate.

A memorandum of March 1998 suggested that the South African Association of Mediators (Saam) should be engaged to perform mediation services for the pilot. It noted that the Association had already submitted a proposal and budget in this respect to the Department. The writers of the memorandum were confident that, given the pilot nature of the project, they would be able to secure donor funding for this purpose. It seems that they were over-optimistic in this last respect.

Currently the family advocate and the on-site Johannesburg mediator provide mediation, but this is primarily in relation to children.

Documents and discussion suggest that many stakeholders have a vision of broader mediation and conciliation services being offered by the family centres. This would, for example, include partners who do not have children, or families where the issue at stake is not divorce. In Port Elizabeth Nicro and Famsa offer some mediation in relation to domestic violence. The Nicro pamphlet describes their service as "victim offender mediation". It explains that it allows the couple involved in domestic violence to talk about what has happened; discuss their feelings about violence and the relationship; and suggest actions that can be taken "to make the wrong right and heal the relationship". The service is offered on site by the volunteers one morning a week, but Nicro also offers home discussions. A couple is allowed one chance to use the service. The pamphlet promises that the family court will impose no other sentence on the perpetrator if there is cooperation in the mediation.

Some Justice informants expressed the need to have dedicated social workers employed by the centre. They stressed that the social workers should be employed directly, rather than through the Department of Welfare. This suggestion would be endorsed by the family advocates, many of whom have expressed frustration over their lack of control and consultation over who is allocated, and over losing staff with the necessary special skills.

Overall, Justice staff tended to say that it should be NGOs rather than offi-

cials who provide mediation. One motivation was financial - informants pointed out that the NGO services were free. Another motivation related to time. Justice staff said that mediation significantly lengthened the consultation process with each client and that, given their workloads, they could not provide the service. A third motivation related to skill. Staff acknowledged that their training had not prepared them to undertake mediation and counselling.

While there was general support for mediation, there was also some concern that clients should not be forced to mediate where they did not wish to do so, or where it was inappropriate. Thus Elizabeth Baartman is quoted as saying that it is "not ... our place to force this down people's throats. If somebody says, 'I have reached the end of the road and I want a divorce', then it is our job and will be our policy to try to get that through as soon as possible." (*Cape Argus*, 29 January 1999)

Similarly, Rashida Manjoo reflects on the NGO experience of offering counselling to complainants in domestic violence cases. Manjoo acknowledges the:

valid criticism... that the public is not notified that the option, to use the counselling and/or the legal service agency rests in the hands of the victim and is not compulsory. The impression that has been created is that the public has to use such services before gaining access to the court staff. This in effect can amount to a denial of access to justice when it is sought but delayed by other interventions which are not a formal component of the court system (unpublished, 31).

#### **4.5 Monitoring and evaluation**

From the beginning, project documents stressed the need for monitoring and evaluation given that this was a pilot which the Department hoped to replicate. The original business plan within the 1996 Vision 2000 made provision for project monitoring and evaluation and both narrative and financial monthly reports. A later memorandum on the pilot projects notes that "ongoing monitoring" of the pilots is "essential".

At a Rape Crisis Centre function in Port Elizabeth in late November, Vusi Pikoli, director-general of Justice, reportedly stated that the family centre pilots were being regularly monitored and evaluated. However, the task team acknowledges that it has done virtually no monitoring. The team asks for monthly reports from the pilots but at the time of the interview was receiving these only from Elizabeth Baartman in Cape Town. In Johannesburg I was given three reports which Zelda Moletsane had prepared for the steering

committee and had also forwarded to the national office. The first report covered the period 1 October 1998 to 30 May 1999, the second the period 1 June to 2 September 1999, and the third 11 to 30 September 1999. The latter reports promise monthly reports in future. A Justice person felt that these and other existing reports were of limited use and that there should be guidelines as to what to cover, so they did not cover "only accommodation". With a national coordinator now in place, it would also be useful for her to submit periodic reports to both head office and each of the pilots so that everyone is kept abreast of developments nationally.

A particular weakness of the Johannesburg reports is that they focus primarily on the divorce component. The reports acknowledge this. They note that Mr Dama, the senior magistrate, will (more correctly, should) report on the other components. This weakness reflects the lack of a good working relationship between the divorce and other components in this centre.

The Justice documents suggest that the centres should utilise the services of local universities and NGOs for monitoring purposes. There seems to be widespread agreement that this should happen but little has happened so far. Many who spoke on the topic felt that head office should have produced more assistance or guidelines for monitoring at an early stage. It was hoped that the appointment of Terry Mphelo as national coordinator would spark off some monitoring and evaluation action. It seems that this has started as during my visit all centres spoke of new plans. However, in general these plans were neither advanced nor concrete.

**Cape Town** is to some extent an exception. The Centre for Socio-Legal Studies at the University of Cape Town has been conducting research in the areas of divorce and maintenance for several years. One component of this research involves in-depth monitoring of the new divorce court. Methods include sitting in on cases, inspecting files, and interviews with Justice personnel and practitioners. Further, while the primary focus is Cape Town, the Centre is doing similar, but more limited, research in the Eastern Cape. The first reports are due by the end of this year and Cape Town informants expressed their strong interest in receiving the findings. Other centres are unlikely to find the resources to undertake research and monitoring of similar detail and expertise. This case study could, however, provide some indications as to key issues on which more limited exercises can focus. A limitation of the research is its restriction to the divorce component.

As noted, other centres also have some plans in respect of monitoring and evaluation. In **Johannesburg** Ishwaranang has been given the mandate to take things forward and Lebo Malepe was hoping to start work in November. Documents of 1998 state that maintenance queues would be monitored by

staff and NGOs, and that a customer satisfaction questionnaire was to be completed by January 1999. It does not seem that either has happened thus far.

In **Durban** the NGO co-coordinator, Bethuel Ngwenya of the Campus Law Clinic, tabled a concept document on monitoring and evaluation at a steering committee some time ago. The Clinic has since entered into an agreement with Black Sash to do work in the area of maintenance. The plan is for students to conduct structured interviews with people waiting in the queues as well as with service providers. Researchers will also work through the records of maintenance cases over a period of twelve months. Black Sash has previously conducted similar research in other courts.

These first steps in monitoring and evaluation in Durban are occurring against the background of an ongoing debate as to what should be covered in monitoring and by whom. This centre seems to be the only one which at this stage is talking about monitoring NGO activity as well as centre activity. Some centre staff are questioning why they should be monitored by NGOs if they are not monitoring NGOs. The report of the centre to the Durban workshop notes that "(w)hen it comes to evaluation, monitoring and training, this must be accomplished in a manner consistent with the independence of the judiciary". Some NGO informants said they were concerned that critical comments in evaluation might be seen as contrary to the spirit of partnership. The concern was said to arise out of a bad experience with other government departments.

In **Port Elizabeth** Karen Muller of Vista University has been invited on to the steering committee with a view to her being the monitor. Muller is considered well-qualified for the tasks – she was previously a prosecutor and her doctorate focused on children in the court environment. The monitoring has not started as the centre has not yet been able to provide her with a clear brief.

#### **4.6 Interaction between sites**

There has been surprisingly little interaction between the different pilot sites. The only components which seem to have been in regular contact are the family advocates offices. As noted above, these have often been only peripherally involved in the centres.

The national task team has organised some interaction between the presiding officers of the divorce court. In early July 1999 all the presiding officers were brought to a meeting in Johannesburg. One observer noted that the meeting consisted largely of "window-dressing" with participants unwilling to discuss the challenges openly.

About mid-year there was a get-together in Durban for coordinators of all the pilots. This event was apparently suggested by NGO players in Durban. Attendance differed between centres. Zelda Moletsane, for example, was unable to attend because of lack of funds but a Johannesburg NGO representative attended. In Durban both staff and NGOs were invited.

All informants who had attended the workshop spoke about how useful and inspiring it had been. For those from centres such as Durban which had moved forward, it was an "eye-opener". They felt proud of what they had achieved despite the bureaucratic and other obstacles. In the case of centres which had been slower to get off the ground, exposure to other's achievements appears to have evoked some competitive spirit. Even those who had not attended spoke about what had been said. This suggests that participants were excited enough to give detailed reportbacks.

The Durban workshop occurred at more or less the same time as Terry Mphelo's appointment. Some NGO participants expressed unhappiness that her appointment was not announced at the workshop despite her being among those present. This lack of openness built on earlier resentment that some centres only became aware of the post being advertised after the closing date. On the more positive side, since her appointment Terry has visited centres and told them about the funds available for training and workshops. This, together with the inspiration of the Durban event, has given new life to the pilots. In each centre I visited, I was told of planned activities which would take advantage of these resources.

#### **4.7 Training and workshops**

The Justice memoranda on the family centre note that training will be central to their success because of the very big differences in approach from what officials would have been accustomed to. A memorandum of June 1997 from Mike Horton to Enver Daniels, advisor to the then Minister, suggests that Justice College, together with NGOs, should be responsible for gender and race sensitivity training. It suggests further that the College should draw up a manual for training magistrates in divorce, custody, access and division of matrimonial estates.

Training has been limited up to now. Magistrates in the divorce courts were the most obvious candidates for training, as this was a completely new area for them. Before the inception of the pilots, Justice College trained 80 magistrates for family courts. However, the new presiding officers were not necessarily chosen from among those trained. Zelda Moletsane seems to have had the confidence to start on her own, and even to innovate. Elizabeth Baartman learnt the ropes through going on circuit with Hannes Claassen. In

her interview she said that the arrangement had been "very satisfactory" and she continued to feel confident in the knowledge that Claassen was at the other end of the phone. Fikile Luvuno learnt by spending time at the Johannesburg court and also by observing Charles Madem.

Outside of divorce, in Durban the NGOs at an early stage offered to provide free training on a range of topics for centre staff. A survey among the staff revealed that only a small proportion were prepared to attend training on a Saturday, while attendance during the week was almost impossible because of the workload. There were also indications of other problems. For example, the survey revealed that some staff were opposed to different levels of staff – clerks, magistrates and others – being trained together. There was also the suggestion that some components did not have anything to learn, perhaps in particular from NGOs. The training offered did not get further than a strategic planning workshop for NGOs and staff in May 1998. The event, held on a Saturday, had poor attendance from staff.

My interviews revealed a recent upsurge in training in all the centres. This is largely explained by the appointment of Terry Mphelo and her spreading of the message that the USAID funds are available for this purpose. The biggest event was a full week's training for all divorce court presiding officers and family advocates at Justice College in mid-October. Most of my visits occurred prior to this training. One informant interviewed afterwards spoke about how useful it was. She was particularly impressed by the presentations of Judges Kate O'Regan and Kathleen Satchwell.

At the centre level, Johannesburg was planning training for staff from all components, including the family advocate, in late October. Some informants said NGOs would also attend. Lebo Malepe of Tshwaranang, the main mover on the NGO side, was coordinating the event. The focus was described in documents as focusing on "co-ordinated and systematised services", but one informant said the focus was diversity.

In Port Elizabeth maintenance staff recently attended a course in East London on the new maintenance act and subsequently reported back to other staff. On 28-9 October they were planning training for staff, the steering committee and NGOs on the new domestic violence act. This training was to be conducted in collaboration with Justice College. An NGO workshop, to help the organisations work out their role, was planned for 11-12 November. Terry Mphelo was reportedly to attend the workshop.

**Justice College** has played some role in training of staff but the role differs between centres. The College is currently in the process of decentralising its services, and the development is uneven. Durban was one site where informants spoke about local training. However, the NGOs complained that at least

one event in which they were involved was cancelled at the last moment, with no compensation for the time they had spent preparing. Durban NGOs also complained about the lack of coordination between different parts of government, such as the College, and the Director of Public Prosecutions office. In Cape Town there was also a complaint about a cancelled Justice College course, this time for clerks.

Several centres acknowledged that the College in Pretoria offered courses on maintenance and domestic violence. However, they said that shortage of staff prevented attendance. They said there was no-one to stand in for staff who were already doing more than one person's job.

In this research I did not look in any depth at the training of clerks. However, several informants remarked on this aspect. In Port Elizabeth informants noted that the training of a clerk and the delegation of registrar duties had assisted in lessening costs of a divorce in terms of both time and money. More generally, informants noted that the new direction within Justice was to give clerks increased skills and responsibilities. This was intended both to relieve the burden on other officers as well as to provide a better and more informed service to the public. In several centres clerks from different components have already undergone some training. This appears to have covered both technical skills and knowledge and a new, user-friendly approach to their work. Most informants welcomed this development but said that far more training was needed before it became a reality.

In several centres senior staff suggested that they themselves, or other magistrates, could provide good training. They said that this would be both cheap and easier to fit in without disrupting workloads. Johan Venter in Cape Town already does such training in the three areas of maintenance, interdicts and children. The divorce clerks in Cape Town meanwhile observed the "marathon" session in the high court, where the court has four judges and two rolls operating at the same time to catch up on backlogs. In Johannesburg, Zelda Moletsane spoke about a two-day training for clerks in Vryburg in which she covered issues related to diversity and divorce.

#### **4.8 Staff and user-friendliness**

One of the motivations for establishing the family centres was to provide a family- and user-friendly service. Many informants, both from the NGO and government side, spoke about this aspect. Most agreed that there had been definite improvements. Some spoke about the need for further progress.

Some informants – and particularly those in the smarter centre of Durban – noted that the cosmetic changes to the buildings had helped to induce a change in attitude among staff. They said that staff felt proud of being part of

the new centre. Even in the less fancy Cape Town surroundings, staff were said to feel motivated and proud to be part of what they saw as a new unit.

In Johannesburg informants said that the divorce court had, after the first extension of service to non-Africans, discriminated against black clients and attorneys, but had since improved noticeably. A change of staff was said to account for part of the improvement. Also important was the stress which Zelda Moletsane places on passing on the new vision of human rights, human dignity and quality service. The message has been passed on through training and workshops. It is also evident in more physical terms. Outside the maintenance room, for example, there is a notice to members of the legal professions that everyone will be served on a first-come-first-served basis and that lawyers should wait their turn and complain to the registrar or president if there is a problem. The notice to lawyers suggests that discrimination does not occur only on the basis of race, but also on the basis of money and status.

In Port Elizabeth Doris Ndlovu, the representative of the National Association of Democratic Lawyers, has pointed to ongoing discrimination against unrepresented clients in terms of how long they must wait. The phenomenon is almost certainly not restricted to Port Elizabeth. For example, in another centre an NGO worker told how her clients were never forced to wait. She said centre staff knew her and she therefore did not need to stand in a queue. Personally I was sometimes concerned that the cases of clients were delayed or interrupted while staff dealt with me as the (white) researcher. In other cases there was an apparent lack of privacy where cases were taken forward while I was in the room.

However, overall, in conducting the research I was struck by the levels of politeness, friendliness and willingness to help in all centres. Some people indicated that they were busy and could ill afford time, but from the first phonecall from the unknown caller (me), they were polite.

Many of the Justice Department informants spoke about how much they preferred their own work to work in the criminal courts. They spoke about how they felt they were assisting women, children and families rather than locking people up. Some said that, given the low status of family matters in the Justice system and the poor prospects for career advancement, they had initially been loath to work in this area. Subsequently, however, their sense of purpose and commitment had grown. Several of the staff said they had attended the social context courses run by the Law, Race and Gender Research Unit. They said that these had confirmed their ideas as to how courts should operate.

#### 4.9 Publicity

There has been little media coverage of the family centres apart from the publicity around the opening of the Cape Town and Durban courts. Both NGO and Justice informants expressed concern that people were not aware of what the centres could offer. They were particularly concerned at the lack of information in local languages. One informant from an NGO working in the area was clearly confused as to the difference between the family centre and the family advocate. She and others said that if the Department of Justice produced accessible material, they would be able to distribute it to those they worked with.

The lack of publicity also affects the attitude of lawyers. Lawyers are often the first port of call in divorces. If they do not understand what the pilot centres are doing, and how they differ from the previous black divorce courts, they are less likely to recommend the centres to their client. They will prefer to go to the more prestigious (and higher-paying) high court, where they feel the matter will be attended to by an experienced judge rather than someone at magistrate's level. Some centres have made efforts to inform legal practitioners. Nevertheless, I was told that many lawyers remain uninformed about the initiative.

The task team has argued that they want to limit media coverage for fear of raising expectations. Several of the centres have, however, started their own publicity campaigns. Some have, for example, organised or participated in workshops with NGOs and CBOs in the townships. Some have organised open days on different topics. In several centres divorce court staff have also reached out to attorneys associations.

Cape Town already has a pamphlet although, during my visit, security staff told me that there were no more available. Port Elizabeth is copying from the Cape Town example, which they saw at the Durban workshop, in planning their own pamphlet. Informants in Port Elizabeth expressed frustration at the bureaucracy involved in producing it and the difficulty in accessing the limited funds necessary to print it. An informant categorised the bureaucracy's ongoing attempts to scrimp in terms of money as a tendency to serve "Pretoria" rather than serving the public. Johannesburg reported that they had already designed a pamphlet and submitted it to head office for "further consultation and printing".

## Conclusion

### 5.1 Conceptualisation

A memorandum of March 1997 notes that "perceptions about the role and function of family courts differ widely. For the purposes of this document it would not serve any useful purpose to attempt to define the concept." The document then goes on to discuss some characteristics of family courts/centres. However, it does not seem that there has since been a clear statement to clarify differing perceptions about roles and functions. Throughout this research exercise there were repeated **calls for a clearer conceptualisation or guidelines** as to what was expected. The only alternative viewpoint was that of a senior magistrate, who said he did not believe in "remote control" from the centre, and that even the "previous regime" had not specified how they should act beyond budgetary guidelines.

There has been some exposure to approaches elsewhere in the world but this has not always been satisfactory. In some cases people have visited other countries but provided limited reportbacks. In one case, in Durban, the steering committee only heard after the event that a prosecutor who is not associated with the family centre had been sent with USAID money. After asking for feedback, they then received only a two-page report.

Des Rothman and Zelda Moletsane have not been part of visits to family centres elsewhere but have done serious reading on their own. They and others appear to have drawn primarily from the United States and Australian models. What emerges repeatedly in the reports from those who have visited or read, is the importance of screening those who come to the centre so as to direct them to the most appropriate service, and of providing social services at the centres. In South Africa social services are currently provided primarily by NGOs while screening is extremely limited.

In the absence of central guidelines, some of the centres have developed their own. Durban's report to the Durban workshop lays out a detailed conceptualisation of mission, vision, management plan, and so on. In

Johannesburg Zelda Moletsane developed a clear action plan during a consultation with other roleplayers during October 1998. Exposure to these examples inspired Port Elizabeth to set aside time at their November 1999 meeting to develop their own policy document. They acknowledged, however, that a one-hour meeting might not be sufficient.

### 5.2 Sharing of Information

In addition to calling for clearer guidelines, many informants said they would have appreciated **greater sharing of information** between pilots. The argument against sharing of information is that by allowing each pilot to develop its own character, Justice could learn from a wider range of approaches. Most informants appreciated the importance of experimentation, but felt that sharing of ideas would both spark off new ideas and encourage each centre to greater achievements.

The limited sharing of information is exacerbated by the **absence of effective monitoring** at any of the centres. Ongoing monitoring should be central to any pilot, as it is on the basis of monitoring results that decisions must be made about whether, and how, to extent the initiative to further centres.

Communication has improved somewhat since the Durban workshop and since the appointment of Terry Mphelo. One informant noted that Terry now phones herself without a centre having to take the initiative. Others reported that there were still delays in receiving feedback from head office on requests.

### 5.3 Commitment and Innovation

The research revealed an inspiring level of **commitment and innovation**. The roleplayers realised the need for change, and were prepared to work to achieve this even without what would appear to be necessary ingredients. In the words of one Justice informant: "It was a political decision to have the pilots, to get things going. We respect that and are keen to assist for the benefit of communities."

The progress was achieved often in the **absence of budgets, sufficient staff or central direction**. This is not to argue that the absence of basic resources is a good thing. It is to express surprise that people were prepared and able to "do something with nothing". If resources had been provided, progress might well have been faster and more impressive.

Progress was sometimes achieved in the face of **opposition** from one or other player. One of those characterised by other informants as sometimes resisting change noted that change is not easy for any human being. What is interesting is that there is no simple predictor of resistance to change. Many

of the "old guard" are among the most enthusiastic about the project. Many of the most avid workers are white. Many are men.

#### **5.4 Unevenness**

The research revealed significant differences in levels of development both between centres and within centres, between components. In particular, maintenance appears to have been relatively neglected at all centres. This is particularly disturbing given that this component probably affects the largest number of women (and children) in each centre.

#### **5.5 Leadership**

The research revealed the importance of having **strong and committed leaders** and innovators. Some informants worried about the reliance on such leaders and wondered whether the initiatives would fall apart should they leave. While the role of the leaders is critical, what is impressive is the number of people who have been prepared to follow their lead.

What the Department of Justice needs to ask is how it can make the tasks of those who are committed easier. This will be especially important as the role of the centres expands with possible expansion to further centres, with the coming into operation of the maintenance and domestic violence amendments and the new law on customary marriages.

## **ANNEXURE I**

### **"Shopping list" for family court implementation**

- Court rooms for maintenance, divorces, children's court
- Three waiting rooms, one for children, and two others for adults, fully fitted. The children's room to have toys, and the adult waiting rooms to have plants, television sets, video machines
- Two offices for mediation, one for a psychologist, two for consulting in, one for the family advocate, two for NGOs, one for the information/advice desk/security, as many Offices for administration as will be required, to include offices for interpreters and Clearicle (sic) staff
- Six chambers for magistrates
- Furniture for all the above. This is to be itemized.
- Two judicial officers for the divorce court, one for interdicts, two for the maintenance court, and one commissioner of child welfare
- At least six interpreters
- Clerical/administrative/security staff, the number of each category yet to be determined
- Evidence recording facilities
- Faxes, telephones, computers, fotocopiers (sic), security counter, and other office equipment required
- Rules for the conduct of proceedings
- Funds
- Any other requirement which may be identified

## ANNEXURE 2

### Interviewees

Felicity Adams, family violence clerk, Port Elizabeth  
Renee Anthony, NICRO Women's Centre, Cape Town  
Lilian Artz, Institute of Criminology, University of Cape Town  
Elizabeth Baartman, presiding officer, Cape Town  
Charlton Bashe, chief magistrate, Johannesburg  
Hilda Boikanyo, Black Sash, Cape Town  
Petra Booyens, assistant commissioner for child welfare, Durban  
Sandra Burman, Centre for Socio-Legal Studies, University of Cape Town  
Renee Claassen, family advocate, Port Elizabeth  
Adrian Collingwood, lawyer and ex-magistrate, Durban  
Felicia Dzulane, maintenance magistrate, Port Elizabeth  
Cookie Edwards, KwaZulu-Natal Network on Violence Against Women  
Sue Folb, Famac, Cape Town  
Rebecca Freeth, Western Cape Network on Violence Against Women  
Beth Goldblatt, Centre for Applied Legal Studies, University of Witwatersrand  
Savi Govender, Peacehaven Community Service, Durban  
Belinda Hartle, attorney and member of steering committee, Port Elizabeth  
Charles Jardine, divorce registrar, Durban  
Sidette Kotze, family violence magistrate, Port Elizabeth  
Cheryl Loots, national task team  
Fikile Luvuno, divorce presiding officer, Durban  
Lebo Malepe, Tshwaranang Legal Advocacy Centre, Johannesburg  
Rashida Manjoo, independent, Durban  
Roeline Miller, Mosaic, Cape Town  
Raesibe Mojapelo, director legal services, Western Cape  
Zelda Moletsane, presiding officer, Johannesburg  
Mandisa Monakali, Ilitha Labantu, Cape Town  
Marie-Therese Naidoo, Black Sash, Durban  
Thembi Ndlovu, maintenance magistrate, Durban  
Thantasa Ngabase, Nicro volunteer, Port Elizabeth  
Noreen Ramsden, Southern Natal Childrens Rights

Des Rothman, commissioner for child welfare, Durban  
Petunia Seabi, family advocate, Johannesburg  
Julia Sloth-Nielsen, Community Law Centre, University of the Western Cape  
Nombuyi Somdaka, Ilitha Labantu, Cape Town  
Belinda van Heerden, law faculty, University of Cape Town  
Ciska van Dyk, Nicro volunteer, Port Elizabeth  
Joan van Niekerk, Childline, Durban  
Johan Venter, commissioner for child welfare, Cape Town  
Johan Vorster, commissioner for child welfare, Port Elizabeth

Appointments were made to interview Terry Mphelo, national programme coordinator, and Bethuel Ngwenya, Durban co-coordinator. Unfortunately these appointments were cancelled at the last moment due to other important commitments.

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