Reinforcing reigns of terror

Justice denied by the (non)implementation of the Domestic Violence Act

Hayley Galgut
Attorney at the Women's Legal Centre

While it cannot be denied that individuals subjected to acts of domestic violence have the right to apply for a protection order in terms of the Domestic Violence Act ("DVA"), it is with concern that community based and non governmental organisations as well as lawyers engaging with gender based violence have noted an increase in the number of cross protection orders being applied for and indeed granted in terms of the DVA.

While this is not at first alarming, further investigation reveals the emergence of a disturbing pattern and one that is unwittingly being facilitated by the manner in which the DVA is being implemented in our Magistrate's Courts.

The pattern referred to is that of an abuser applying for and being granted a protection order against the victim of his violence after the victim has secured such an order against him. What is more alarming is the fact that women have allegedly been told by presiding officers that they need not waste their or the Court's time defending the application on the return day as the story is always the same and that some presiding officers consider it "*fair*" for each party to have a protection order against the other.

One woman even reported being told that as long as she didn't do anything to breach the civil order against her, there was no harm or prejudice associated with the granting thereof.

Disingenuous Applicants who are vexatious and malicious in their applications and who deliberately withhold information relating to the existence of protection orders against them at the time of applying for a protection order against their victims not only wilfully mislead the court, abuse the process and make a mockery of the purpose of the DVA but also, a system that fails to incorporate effective safeguards against such conduct serves to deny legitimate complainants access to justice and perpetual protection from their abusers.

This is exacerbated by, *inter alia*:

- the lack of a centralised database that identifies the number of court files open between the same parties;
- the failure on the part of Magistrates to enquire from both Applicants and Respondents whether or not other protection orders have been issued either against them or in respect of their ongoing dispute;
- the inability of Magistrates to verify the answers given; and
- the failure of investigating officers and prosecutors to deal with breaches of protection orders holistically, with one investigating officer responsible for all the matters arising in respect of the same parties, one prosecutor dealing with and joining, where possible, all the matters arising between the same parties; and one Magistrate hearing and adjudicating the said cases.

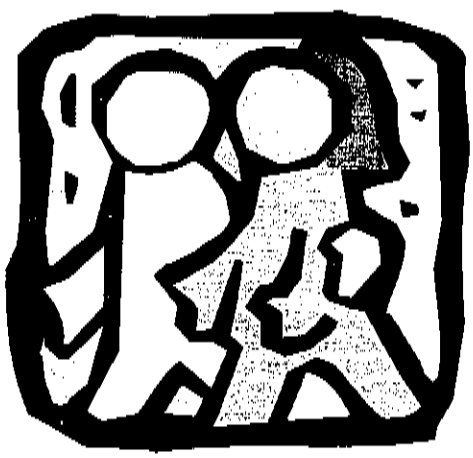
It is in part this failure at all levels to deal with matters arising between the same parties holistically that results in low conviction rates and even lower penalties for repeat abusers of the DVA. It is hard to imagine a different outcome when the full picture and specifically the context and history of the parties is so rarely before the court.

Of further concern is the effect of this systemic issue on victims of domestic violence. In short abusers reinforce and entrench their reigns of terror over their victims- now with the assistance of the very justice system and through the mechanisms of the very legislation intended to afford protection against gender based violence. Victims learn through engaging in this process that in reality there may be little or no protection available to them and they live with the fear of having a civil order against them which may be maliciously invoked by their abusers at any stage – the knowledge whereof serves to reinforce their fear and magnify their experience of their abuser's power over them. They also come to perceive the justice system as having failed them. It is precisely this ongoing failure that causes many women in need of protection to lose confidence in the ability of the justice system to provide them with the maximum protection the law can provide, or any protection at all.

In circumstances such as these, granting protection orders, or refusing to set '*cross protection orders*' aside when ill begotten, amounts to providing abusers with an effective, and State sanctioned, tool to continue their reigns of terror. At is simplest, it amounts to Courts protecting abusers at the expense of their victims, usually the most vulnerable members of society, namely women and children.

The rights of life partners

Anashri Pillay
Public Law Dept, UCT



Volks NO v Robinson and others Case CCT 12/04, decided on 21 February 2005, dealt with the constitutionality of section 2(1), taken together with section 1, of the Maintenance of Surviving Spouses Act 27 of 1990. Section 2(1) provides:

> If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the provision of his reasonable maintenance needs until his death or remarriage in so far as he is not able to provide therefor from his own means and earnings.

The term 'survivor' is defined in section 1 of the Act as 'the surviving spouse in a marriage dissolved by death'. The issue before the court was whether the exclusion of a surviving partner of a life partnership from the definition of 'survivor' and the consequent denial of the benefit set out in s 2(1) amounted to unfair discrimination, in violation on s 9(3) of the Constitution.[1]

The partnership in question was between the appellant, Mrs Robinson, and a Mr Shandling. The undisputed facts were that Mrs Robinson and Mr Shandling had been in a permanent life partnership for sixteen years. They did not have any children together and were never married. They had shared a flat for approximately twelve years (at para [3]). Mr Shandling had provided Mrs Robinson with financial support and she had been accepted as a dependent in his medical aid scheme in January 2000 (at para [5]). Mrs Robinson had also nursed Mr Shandling though periods of illness (at para [6]). Mr Shandling had left a car, most of the contents of the flat they had shared and an amount of R 100 000 to Mrs Robinson (to whom he referred as 'his friend') in his will (paras [7]) and [15]).

Relying on the test in *Harksen v Lane NO and Others* 1998 (1) SA 300 (CC); 1997 (11) BCLR 1489 (CC), a majority of the judges (Skweyiya J with Chaskalson CJ, Langa DCJ, Moseneke J, Ngcobo J, Van der Westhuizen J and Yacoob J concurring) found that, as marital status is a listed ground in s 9(3) of the Constitution, unfair discrimination was presumed to exist (at para [50]). However, the majority went on to find that this presumption was rebutted. The majority's reasoning focused on the importance of marriage and family as societal institutions (at paras [52] – [54]) and on the freedom of choice partners who cohabit without being married have to continue or to end the relationship (at para [55]). There was some acknowledgement of the fact that the freedom of choice may sometimes be a fiction. On the situation where the 'deceased male partner refused to marry the woman who cared for him, put everything into the relationship...' Skweyiya J stated 'There is a strong argument that partners ought to be obliged to maintain each other during their lifetime in certain circumstances' (at para [59]). However, this did not weigh heavily enough to lead to a conclusion of unfairness. There are a number of bases on which the majority judgment may be criticised.

According to *Harksen* (above) one looks at a number of factors broadly related to the impact of the discrimination in determining unfairness:

> (a) the position of the complainants in society and whether they have suffered in the past from patterns of disadvantage ... (b) the nature of the provision or power and the purpose sought to be achieved by it ... (c) with due regard to (a) and (b) above, and any other relevant factors, the extent to which the discrimination has affected the rights or interests of complainants and whether it has led to an impairment of their fundamental human dignity or constitutes an impairment of a comparably serious nature (at para [51]).

Although the majority mentioned the 'impact test', the above factors were neither specifically referred to nor applied in the judgment. In particular, the issues of the position of the group in society and the extent to which rights, interests or dignity were impaired were not really canvassed in the equality analysis.[2] In discussing the *right to dignity*, the court concluded that the legislation did not send the message that Mrs Robinson's dignity was less worthy of protection than that of someone in a marriage. Rather, it simply indicated that there are fundamental differences in the nature of the relationships (at para [62]).[3] The majority then considered the social and economic vulnerability of certain

women in the context of cohabitation (at para [64]) but concluded that this was 'part of a broader societal reality that must be corrected through the empowerment of women and social policies by the legislature' (at para [66]).

Thus, although the impact of the provision on Mrs Robinson's dignity was discussed, a full consideration of the impact on her rights and interests as well as the rights and interests of *others in her position*, as demanded by the *Harksen* test is missing. Moreover, it is not clear what the majority considered the purpose of the legislation to be and why that purpose would be undermined by extending the relevant benefit to needy survivors of certain categories of life partnerships.[4] Parts of the judgment indicated that the legislation related broadly to the protection of marriage as an institution, other parts indicated that the purpose was to provide for the duty of support to continue beyond the death of one of the spouses. On either view, it is difficult to see how extending the benefit to certain, limited categories of life partners, would do damage to the purpose.[5]

In contrast, the potential for serious infringement of the material interests of surviving partners is patent. As stated in the dissenting judgment of O'Regan and Mokgoro JJ, the group being considered in the case were 'those who, upon the death of their partner, are unable to provide for their own reasonable maintenance needs from their own resources' (at para [124]) and this group has limited recourse to common law protection of their interests (see para [127]).

One of the main problems with the majority judgment was the failure to consider the constitutionality of the provision in the context of the group, rather than the individual, affected. This was also a criticism levelled at the majority judgment in *Harksen*.[6] Another area of concern is the majority's justification for applying a particular brand of judicial restraint which was also featured in *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* 2002 (6) SA 642 (CC); 2002 (11) BCLR 1117(CC). The majority judgment indicated that, where broad social problems are implicated, the court will leave it to the legislature to deal with them (see paras [66] and [67]). Cases of systemic disadvantage, by their nature, involve complex social issues. In cases where gender plays a role, these issues are even more difficult to address because of the 'ancient, all pervasive' nature of sexism.[7] This may be a reason to follow what Sachs J referred to as a 'non-prescriptive remedial path'.[8] It should not be a reason to deny a vulnerable group relief.

Notes

1. There are a number of very interesting issues canvassed in the judgments. These include standing, leave to adduce further evidence, locating the issues within the broader context of family law rather than matrimonial law (see the dissenting judgment of Sachs J) and other differences between the dissenting judgments. However, due to limitations of space, the focus here is on the application of the equality test.
2. The impact test is more fully considered in the dissenting judgment of O'Regan and Mokgoro JJ. See paras 124 – 126.
3. See the dissenting judgment of Sachs J at para [203] on the 'moral disapproval' and 'conventional disdain' with which unmarried couples treated.
4. See the order proposed in the dissenting judgment of O'Regan and Mokgoro JJ.
5. See para 233 of Sachs J's dissenting judgment on this issue.
6. See C Albertyn and B Goldblatt 'Facing the challenge of transformation: difficulties in the development of an indigenous jurisprudence of equality' (1998) 14 SAJHR 248 at 263. The authors make the point that Mrs Harksen was not a litigant likely 'to evoke sympathy' but that 'the Court should have been able to see beyond the particular litigant...to appreciate the situation of others affected by the provision'.
7. Sachs J at para [163]).
8. At para [239]).

What would you do?

By Anashri Pillay
Public Law Department, UCT

The respondent (before the Constitutional Court) had been convicted before a Canadian court on a charge of having sexual assaulted a young girl in Ontario. Prior to his sentencing, he fled the country and was traced to South Africa. The Canadian court then sentenced him in his absence. Canadian authorities requested his extradition from South Africa to serve this sentence. Section 10 of the Extradition Act 67 of 1962 provides:

> If upon consideration of the evidence adduced at the enquiry referred to in section 9 (4) (a) and (b) (i) the magistrate finds that the person brought before him or her is liable to be surrendered to the foreign State concerned and, in the case where such person is accused of anfence, that there is sufficient evidence to warrant a prosecution for the offence in the foreign State concerned, the magistrate shall issue an order committing such person to prison to await the Minister's decision with regard to his or her surrender, at the same time informing such person that he or she may within 15 days appeal against such order to the Supreme Court.

Section 11 of the Act gives the Minister a qualified discretion to extradite the individual concerned. Such a decision would be subject to judicial control. The extradition magistrate found that the respondent was 'liable to be surrendered'. Respondent argued that the magistrate should have taken the fair trial rights in section 35 of the Constitution into consideration in deciding whether he could be surrendered - sentencing in absentia violates the right 'to be present when being tried' and the right 'to adduce and challenge evidence'. What would you do? Should the magistrate's decision have been reversed?

Answer on page 7

Alternative sentencing for perpetrators of intimate partner violence

Venessa Padayachee
Nicro: National Programme Specialist: Victim Support Services

Introduction

Although significant changes have been achieved in last decade in South Africa through victim-oriented intervention, the problem of violence in gender relations has not as yet been solved. Domestic violence in South Africa continues unabated and appears to be escalating. Recently perpetrator programmes have been identified as a key preventative strategy by organizations working in the area of gender-based violence.

Who perpetrates DV?

Women are particularly vulnerable to abuse by their partners in societies where there are marked social inequalities between men and women, rigid gender roles, cultural norms that support a man's right to inflict violence on his intimate partner and weak sanctions against such behaviour.[1] Tactics used by these perpetrators are used by many groups or individuals in positions of power.[2]

Most perpetrators of DV are men and may fall into one of three types:[3]

- *'Cyclically emotional volatile perpetrators'* – emotionally dependent on their partner's presence, and have developed a pattern of escalating tension that is defused by an act of aggression towards the partner followed by a period of contrition. Cycle often progresses from psychological abuse to increasingly severe physical violence.
- *'Over-controlled perpetrators'* – developed pattern of control relying more on psychological than physical violence.
- 'Psychopathic perpetrators' – lack emotional engagement or feelings of remorse, and likely to be also involved in male-male violence and other criminal behaviours.

Nicro's work with perpetrators of intimate partner violence

Nicro has recently introduced an innovative programme that focuses on perpetrators. The programme aims to hold perpetrators systematically accountable as well as to optimise intervention and support for women and children and to understand the structural causes of violence rooted deeply in the fabric of our society.

Programme design

The programme is based on the theory that violence is used to control behaviour of others and focuses on the following interventions:

- Exploring with each abusive man the intent and source of his violence;
- Encouraging participants to take responsibility for their actions and the impact of these actions on themselves, their partners (the victims), their families, their communities and others who are affected.
- Creating a supportive, non-threatening and psychologically enabling environment in which perpetrators can explore and identify ways to change abusive behaviour patterns and develop new, healthier ways of communication and interaction.
- Running parallel support groups with victims. Children affected are referred to specialist organizations.

Court-mandated participants

The preferred option for admission to the NICRO programme is referral as a condition of a suspended sentence.[4] The proposed conditions include:

- participation in assessments,
- completion of intensive six month psycho-educational, cognitive-behavioural group-work programme, combined with individual and community work,
- a follow-up programme, and
- participation in a longitudinal evaluative study.[5]

Perpetrators are sent to NICRO for an assessment to determine their suitability for the programme which is followed by an assessment report. Criteria for admission include:

- no history of excessive violence and severe abuse (assess lethality of violence, potential harm to victim as per risk assessment tool),
- no imminent danger to the victim,
- no previous sentence for acts of domestic violence that constitute serious criminal offences e.g. assault with a deadly weapon,
- no perpetrators that have evident psychopathic tendencies.
- is willing to take responsibility for actions.

The selected participants are further assessed on admission and a specific programme involving a combination of suitable interventions is developed for each perpetrator. A final report on completion of programme is sent to the court.

Early termination can occur if there is a violation of the conditions of the client contract or of the suspended sentence. Feedback to the court will be given after the longitudinal study period.

The court order and the threat of sanctions is viewed as a favourable framework, since it allows for a reaction by society that condemns the acts of violence and explicitly makes it clear to the perpetrator that in the

future the community will no longer accept this behaviour. The threat of legal consequences is aimed at ensuring compliance.

Where are the programmes available?

Western Cape: Mitchells Plain; Kuilsriver;
Eastern Cape: Port-Elizabeth; East London; Queenstown;
Kwazulu-Natal: Ntuzuma;
Gauteng: Vaal; East rand; Soweto..
From 2007 Nicro plans to implement projects in all nine provinces.

Key points for the interaction of the programme with the courts

- Safety of individual victim and community must be the first priority.
- Mandatory sentences should be applied and not suspended in cases of serious acts of domestic violence where the complainant's life is at risk
- Referrals for individual counselling alone as a condition of a suspended sentence, has been reported to be ineffective in work with perpetrators of intimate partner violence. Combi-nation of individual, group, and community work is preferred.
- Pre-sentence reports ensure magistrates are provided with adequate information for sentencing.[5] Probation officers who conduct the investigations should also consult with victim service organizations and perpetrator programmes to determine suitability for programmes in or out of prison. Expediency with regard to the finalization of these reports needed to prevent unnecessary delays.
- Cases referred from the civil court are problematic due to a lack of adequate legal sanctions as magistrates cannot mandate participants to attend programme.
- The criminal justice system plays a key role in evaluating the impact of such programmes through assisting with the tracking of repeat offences.

Concluding remarks

Perpetrator programs will continue to be met with scepticism, until society is able to see evidence of impact. NICRO is committed to developing this programme into one that works for perpetrators, victims and society. Without referrals to an appropriate programme the perpetrator may never understand the intent and source of his violence, or be able to explore and identify ways to change abusive behaviour patterns and develop new, healthier ways of communication and interaction.

We believe abusers are capable of personal transformation. However in developing these programmes we should always take cognisance of the danger a woman living with an abusive man faces, especially when she attempts to leave the relationship. We should not fall into the trap of believing that most men will stop their violent behaviour and give up the power they have acquired over their partners during or after the programme, but should nevertheless believe that they all have the capacity to change and control their violent behaviour.

It can therefore be said that alternative sentencing for perpetrators of intimate partner violence is appropriate in certain instances and should be used to end the cyclical nature of intimate partner violence.

For further information on this programme, please contact Venessa Padayachee at 021 462 0017.

Notes

1 World Health Organization -*Intimate Partner Violence*, 2002
2 Duluth, Minnesota, Education Groups for Men who batter
3 Mintz HA, Cornett FW. *When your patient is a batterer. What you need to know before treating perpetrators of domestic violence*. Postgrad Med 1997; 101:219-221, 225-228.
4 In programs run in USA there is debate around effectiveness of court-mandated participants versus voluntary referrals.
5 There are ethical issues around forcing a person to participate in a research study... am not sure of the feasibility of such a request from the court. We include it as a condition, because of the fact that one of the serious challenges in evaluating the impact of such programmes is the inability to track perpetrators after they leave the programme. Any reliable statements on lasting impact of programs have to be evaluated over several years.
6 Skelton A, *'Alternative sentencing review*, CSPRI Research paper series No 6, P45, May, 2004/ 'because of pressure on magistrates to work according to certain quota's and performance indicators ... reluctant ... call for pre-sentence reports and keep matters on the roll for longer. A different set of indicators ... promotion of alternative sentencing.'

Giving youth a second chance

The ARMSA / Toastmasters International Youth Leadership Project targeting youth offenders kicked-off on Saturday 9 April 2005 at Pollsmoor Prison. The project with the theme 'Give our Youth a second chance' will run over 8 weeks (excluding Saturday 30 April) until Saturday, 4 June 2005. Guests at the opening function included the Honourable Judge Hannes Fagan (Inspecting Judge of Prisons), Mr Gordon Metter (Toastmasters International) and several Regional Magistrates. Twenty youth offenders will be taught leadership skills and the art of public speaking by Toastmasters International. Regional Magistrates will also address the participants on several relevant legal issues like plea and sentence agreements, the Act on minimum sentences, appeal procedures, etc. Mr Mogz Naidoo (son of Regional Magistrate Judy Naidoo) and a group of 5 IT honours students from UCT will give computer literacy classes to another group of twenty youth offenders.

16 days of activism – the rest of the country

Soma Naidoo
Vice President Publications
IAWJ (South Africa)

The South African Chapter of the International Association of Women Judges was very active in a number of the Provinces, in addition to KwaZulu Natal where very successful programmes to strengthen the 16 Days of Activism Campaign were held.

In most provinces, both the Magistrates Courts and High Courts played an active role, with judges and Magistrates being very visible. Some provinces, such as the Western Cape and the Free State started their campaigns on the first day, i.e. 25 November 2004.

The Western Cape chose the theme "MASIVIWE – Let us be heard" to commence their programme on 25 November 2004 which was held at the Khayelitsha Magistrates Court, situated in an area where there is a high incidence of violence against women and children. Numerous NGOs, as well as the Regional Office of the Department of Justice were involved in the activities, with the former setting up information tables to assist the public. Lunch was provided for all who attended. White roses, which were donated by a local nursery, and white ribbons were distributed to those present.

The enthusiasm and dedication of the judiciary was quite evident when one of the Chief Magistrates in the Western Cape was observed handing out white roses to taxi commuters along the roadside! A number of high profile speakers addressed the gathering of over 600 people. Among them were High Court judges, Magistrates, female members of Parliament, the Regional Head of the Department of Justice in the Western Cape and the wife of the Western Cape Minister of Safety and Security. The Honourable Mayor of Cape Town, Councillor Nomaindia Mfeketo was the keynote speaker at the event. The print and audio media were also in attendance. Deputy- Judge President of the Cape, and Treasurer of the South African Chapter of the IAWJ represented the Chapter in a radio interview.

Another interesting initiative was a visit on 06 December 2004 to the female prison at Pollsmoor where a substantial collection of books was donated to the prison library.

The Chapter's Free State co-ordinating committee were kept busy throughout the 16 days with various activities. On 25 November 2004, they distributed 1000 white ribbons, pledge postcards and posters, supplied by the Department of Justice, to the Supreme Court of Appeal, the Free State High Court and Magistrate's Courts at Bloemfontein, Bethlehem and Welkom, as well as to a number of NGO's in the different areas.

About 500 pledge postcards were signed and returned to the co-ordinating committee. Members of the judiciary in the High Court as well as Magistrates Courts played a pivotal role in raising awareness of the extent and gravity of violence against women and children in this country.

The Free State was very fortunate to have had the participation of the Supreme Court of Appeal where ribbons and postcards were distributed to the staff. Judge Belinda Van Heerden gave a number of informal talks to groups of staff members and explored with them ways in which they and the public could become involved in combating the scourge of violence against women and children.

On 01 December 2004 the Magistrates Courts and the normally austere Free State High Court were abuzz with various activities. A table decorated with candles featured prominently at the Bloemfontein Magistrates Office. Advice desks were set up and Magistrates, Prosecutors and Social Workers were on hand to speak to members of the public and answer their questions. Videos on violence against women and children were also shown. The Free State High Court boasted an advice desk, where judges and other staff members distributed ribbons and postcards and were on hand to speak to those present about the significance and purpose of the 16 Days of Activism Campaign. The desk was visited by several judges of the Free State High Court, including the Judge President, who all pledged their support for the campaign. NGOs and CBOs were also very actively involved in the activities at the High Court.

The 16 Days of Activism Campaign was certainly given a huge boost in the Limpopo Province where all 37 Magistrates Offices participated. In all the offices, the activities were a joint effort of the various role players involved in the justice system. The campaign was widely publicised in the media and even people in the most remote villages streamed to the different Magistrates Offices to participate in the day's activities.

Pamphlets on Domestic Violence and Maintenance, which were obtained from the Department of Justice, white ribbons (an extra 1000 of which were made by the staff at the court in Polokwane) and pledge postcards were distributed to staff members and the public. Advice desks were set up at all the different offices where free legal advice was given by Magistrates, Prosecutors and members of the legal profession on such topics as Domestic Violence, Maintenance, HIV/AIDS, rape, pregnancy and divorce. Trained counsellors in HIV/AIDS, trauma and abortion were on hand to assist those who needed such help and arrangements were made for follow-up counselling.

An interesting way to raise awareness was through marches or 'road-shows' which were held in Mapulaneng, Lephalale, Tshilwavhusiku and Seshego. The Magistrates Office in Sekhukhune approached the issue of violence against women and children from the angle of the revival of African Culture and Moral Regeneration which they believed were essential for the eradication of such violence. The concept of Ubuntu was also advocated as a means of preventing violence against women and children. In most centres, food and drinks, sponsored by community leaders, businesses and attorneys were provided for the people participating in the various activities.

Similar activities were held in the remaining provinces, albeit on a smaller scale. The South African Chapter of the International Association of Women Judges can, therefore, be justifiably proud of the efforts of its members in strengthening the 16 Days of Activism Campaign, raising awareness, nationally, of the crisis of violence against women and children, and forging ways in which to deal with the problem.

Snippets from the Minister's budget speech

'In August last year I was moved to apologise to women of this country regarding the ironic situation we found ourselves in, whereas we were celebrating a decade of freedom, we still had on our statute books outdated and discriminatory pieces of legislation such as the Black Administration Act and the Section 1(4)(b) of the Intestate Succession Act 1987. I am therefore pleased to report that legislation to repeal the Black Administration Act and to bring the Customary Law of Succession in line with the Constitution is being finalised. I hope to table these two Bills into Parliament during the second half of the Parliamentary programme for this year...

Our priorities for the 2005 financial year are:

- Transformation of the judiciary, including the alignment of the Judicial Services Commission and the Magistrates Commission
- The Criminal Justice System Review
- Improving and monitoring court capacity and performance
- The Masters' Offices...

The District Courts managed a conviction rate averaging 87%, exceeding the target of 85% for the last year. The district courts have also managed to attain their target in reducing case cycle times. The set cycle times for District Court cases prescribes that 90% of all cases should not be in the roll for longer than 6 months.

Regional Courts, on the other hand, realised a conviction rate of 75%. The number of finalised cases by the end of January 2005 represented a 15% increase as compared to the previous year.'

What would you do? (from page 3)

The answer!

The High Court reversed the magistrate's decision but the Constitutional Court's judgment supported the magistrate's interpretation of section 10 of the Extradition Act. The term 'liable to be surrendered' had to be read in its context. It did not give rise to an obligation on the South African state to surrender the individual concerned. Within the scheme of the Act, the Minister would subsequently decide to order extradition or to refuse it. The Minister is given the power, under section 11 of the Act, to take considerations of justice and reasonableness into account in making this decision. This is the point at which fair trial and other relevant fundamental rights would be interrogated. The Constitutional Court emphasised the fact that the Minister's decision is subject to judicial control. Under section 10, the magistrate had to determine only whether the offence concerned was an extraditable in terms of the extradition agreement and whether there was anything in the Act, taken together with the extradition agreement, preventing extradition.

Director of Public Prosecutions, Cape of Good Hope v Robinson 2005 (1) SACR 1 (CC).

bits & PIECES

Budget allows for 40 additional magistrates

A large part of the Justice Department's R5.9bn budget for the coming new financial year will go towards improving the performance of courts. This is according to the Estimates of National Expenditure document, tabled in Parliament by Finance Minister Trevor Manuel ahead of his Budget speech. The document pegs spending over the medium term at R5.9bn in 2005/06, R6.5b in 2006/07, and almost R7bn in 2007/08. Of these amounts, almost R2.3bn will be allocated to court services in 2005/06, R2.6bn in 2006/07, and over R2.8bn in 2007/08. Over the three years, the Department of Justice and Constitutional Development has set aside R697m to improve court efficiency and appoint additional personnel.

Forty additional magistrates will be appointed, and about 1 000 vacancies will be filled at court level to enhance capacity and administrative support. More personnel will be appointed to speed up prosecutions. The department will maintain its focus on improving courts by building more court facilities, and at least two community courts will be established in each of the nine provinces, to address area-specific crime problems and ensure speedy and effective justice.
IOL 24/2/2005

Magistrate sacked by Mabandla

Justice and Constitutional Development Minister Brigitte Mabandla has sacked Grahamstown Magistrate Reuben Mantantana (54) following a disciplinary hearing by the Magistrates' Commission in Pretoria. The Commission recommended Mabandla terminate Mantantana's services. It would not say what the charges against Mantantana were, but The Herald quoted Grahamstown acting Chief Magistrate Ephraim Mgingci as saying Mantantana had been dismissed on charges of s exual harassment and destroying a court record. Mgingci said Mantantana apparently used 'sexually abusive' language towards a female contract employee of the court. Mgingci said Grahamstown Chief Magistrate Judy Roberson had opened a case against Mantantana after she discovered that he had destroyed a court record and created a new one. The controversial magistrate had given people 'inappropriate' sentences, many of which were overturned by the High Court following appeals. The Herald 28/4/2005

LRG workshops

A number of magistrates have called LRG wanting to know about workshops in 2005. Funding constraints no longer allow us to present workshops quite as often as we did in the past or on an ad hoc basis. Some courts and individual magistrates have come up with innovative ways to implement ongoing judicial education interventions in their areas (ask Louis Radyn of KZN about his R27 scheme!). We anticipate donor funding for a number of new and exciting projects in the near future, but also hope to work together with you all at identifying and accessing alternative sources of funds and other ways in which to ensure that together we ensure that judicial education is sustainable.

OBITUARY

Stanley Velapi Matebe

10/11/57 – 9/5/2005

By Chief Magistrate Swart
Mitchells Plain Court

It is with great sadness that we inform you of the passing of our colleague and dear friend, magistrate Stanley Matebe, Acting Senior Magistrate and Head of Office, Khayelitsha Court.

Stan, as he was fondly known, matriculated in 1978 and obtained a B Iuris-degree at the University of Transkei in 1983.

From 1984 – 1986 he was employed as a court interpreter and Clerk of Court at Wynberg Magis-trate's Court.

He was appointed as a public prosecutor at Wynberg Court in 1986, a position he held until 1996. During the latter years of this period he became Control Prosecutor at Mitchells Plain Court, before moving on to prosecute in the Regional Court.

He was appointed as a magistrate in 1997, a position he held until his untimely death on 9/05/2005. From January 2004, Mr Matebe was the Acting Senior Magistrate and Head of Office at Khayelitsha Magistrate's Court.

We will miss his wry smile and his shy laugh. The ease with which he dealt with potentially confrontational situations will always be remembered. Controversy never surrounded him.

Above all he will be remembered for the compassionate and humane manner in which he dispensed justice to the community of Khayelitsha.

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