

Evidence-Based Governance in the Electronic Age

Case Study

Legal and Judicial Records and Information Systems in South Africa

This case study has been prepared by the International Records Management Trust and does not reflect the views of the World Bank nor the Government of South Africa.



*A World Bank/International Records Management Trust
Partnership Project*

July 2002

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INTRODUCTION

- 1 *Evidence-Based Governance in the Electronic Age* is a three-year project delivered in partnership between the World Bank and the International Records Management Trust. It involves coordinating a global network of institutions and organisations to facilitate the modernisation of information and records systems.
- 2 Records, and the information they contain, are a valuable asset that must be managed and protected. Records provide the essential evidence that a particular action or transaction took place or that a particular decision was made. Records support all business functions and are critical to the assessment of policies and programmes, and to the analysis of individual and organisational performance. Without reliable records, government cannot administer justice and cannot manage the state's resources, its revenue or its civil service. It cannot deliver services such as education and health care. Without accurate and reliable records, and effective systems to manage them, governments cannot be held accountable for their decisions and actions, and the rights and obligations of citizens and corporate bodies cannot be upheld.
- 3 New technologies provide great potential to improve services and efficiency, but the evidence base upon which governments depend must continue to be protected and preserved. For initiatives such as e-government and e-commerce to be successful, governments must have access to information that possesses certain crucial characteristics: the information must be available, accurate, relevant, complete, authoritative, authentic and secure.
- 4 The aim of the *Evidence-Based Governance* project is to make records management a cornerstone of the global development agenda. The challenge is to rebuild and modernise information and records management systems in parallel with complementary measures to improve the broader environment for public sector management. The project represents a major opportunity to integrate records management into global strategies for good governance, economic development and poverty reduction.
- 5 During the first phase of the project, studies were carried out within the World Bank and in a range of countries to explore the requirements for managing personnel, financial and judicial records in a hybrid, electronic/paper environment. This report is one of thirteen case studies that illustrate the issues involved. The studies have been supplemented by findings derived by a global discussion forum involving senior officials and records and archives professionals. The knowledge gathered through these means is providing the basis for the development of assessment tools to measure the quality of records and information systems in relation to clearly defined functional requirements and benchmarks. The project will develop tools for use in the three areas of study: personnel, financial and judicial records systems. Ultimately, the information gathered will also help to define the requirements for global capacity building for managing electronic records.
- 6 The case studies have been chosen to represent differences in geographic regions, administrative structures and resource environments. The management of legal and judicial records has been examined in Argentina, Ecuador, The Gambia, Singapore

and South Africa. These countries give a broad geographical spread and represent different degrees of development in financial reform and the use of electronic records.

- 7 This report covers a visit to South Africa by Andrew Griffin and Kelly Mannix from 22 to 26 July 2002. The purpose of the visit was to examine the improvements to records and information systems that are being undertaken by the Judiciary in South Africa. A secondary purpose was to test the prototype of an assessment tool for legal and judicial records and information systems. Findings from the case study are being used to develop the assessment tool. The assessment tool will be published separately from this report.
- 8 The case study represents a snapshot in time. The observations it contains were current as of July 2002. Since then, new developments and improvements have taken place on a regular basis and therefore the case study does not represent the situation at present. It is hoped that the findings in this report will highlight issues that will continue to arise in many other situations.

Acknowledgements

- 9 Grateful thanks are extended to all those who assisted with the visit and provided information on the various initiatives and projects discussed. Particular mention goes to staff of the National Archives and Records Service (NARS) and the Department of Justice for their co-operation and assistance. A full list of people consulted is at Appendix A.

EXECUTIVE SUMMARY

- 10 The 1996 Constitution of the Republic of South Africa established a unified judicial system that comprises the Constitutional Court; the Supreme Court of Appeal; the High Courts; the Magistrates' Courts; and any other court established in terms of an Act of Parliament. All courts function in terms of national legislation, and their rules and procedures must be provided for by national legislation. The National Prosecuting Authority (NPA) was established in 1998 as part of the Department of Justice and became an independent authority in April 2001. Under the NPA, Public Prosecutors institute and conduct criminal proceedings on behalf of the state. The Department of Justice and Constitutional Development is responsible for administering the courts and for constitutional development. It performs these functions in conjunction with judges, magistrates, the National Director of Public Prosecutions and Directors of Public Prosecutions. (paras 21 to 27 and Appendix B)
- 11 The transformation of the justice system is one of the greatest challenges facing the government. The Department of Justice is undergoing a restructuring process. One of the goals is to improve service delivery and to ensure that the business of the courts is conducted efficiently and cost-effectively. This includes improving the productivity of the courts and making justice more accessible and affordable. Integration of the justice systems in the 'independent homelands' has been a difficult process. Document control is poor in some homelands, and procedures are not always followed. The Department of Justice has granted traditional leaders powers to

become commissioners of oath, with the intention of bringing justice services closer to rural communities. (paras 28 to 29)

- 12 Court and legal structures are described in detail. These include: superior courts (the Constitutional Court, the Supreme Court of Appeal and the High Courts); regional and district courts; chief's courts; family court centres; the National Prosecuting Authority; and other legal and judicial bodies, such as the South African Law Commission and the Truth and Reconciliation Commission. Pressures on the courts are discussed. (paras 30 to 56)
- 13 Each court or group of courts (criminal, civil, etc) is responsible for its own records. Records management is seen as an integral part of the management of court business, not as a separate skill or discipline. Day-to-day guidance on the management of court records, the use of forms, and other matters is provided in codified Instructions on 'Archives', issued by the Department of Justice. The responsibilities of the National Archives for managing the nation's records are also set out in the Instructions. The Instructions appear to have limited use and predate the constitutional changes in South Africa. Automation of court processes and record keeping systems is being introduced or developed, sometimes independently. (paras 57 to 63)
- 14 Opinions vary on the issue of the disposal of court records. High Court cases in Pretoria are kept by the Court for 20 years and then transferred to the National Archives. However, the National Archives is constrained by limited storage space and questions whether permanent preservation of all High Court records is justified. The National Archives has advised the Department of Justice of the need to update retention and disposal schedules. Staff of the State Information Technology Agency (SITA) and Department of Justice state that disposal instructions should be the same for electronic records as they are for paper records. However, this aspect of electronic records management will need more thought. (paras 57 to 63)
- 15 At the national level, the e-justice programme began with the aim of introducing an Integrated Justice System (IJS). An Integrated Justice System Board was established in 1997 to integrate the activities of the legal and judicial sector. The objective of the programme is to re-engineer business processes using the necessary technology to ensure effective integration of the component parts of the justice system. The Digital Nervous System component of the IJS programme provides ICT infrastructure throughout the Department of Justice. The Integrated Case Management System component includes the Court Process Project, designed to provide for automating civil and criminal case management systems in magistrate's courts. Pilot projects have been launched in Johannesburg for the civil system and in Durban for the criminal system. (paras 68 to 87)
- 16 Court processes and record keeping systems and procedures vary depending on the court and the type of case. Observations are made on procedures in the following: Magistrate's Court, Pretoria - criminal and civil cases; the Magistrate's Court Judicial Deposit Account System; and procedures and systems at the High Court., Pretoria. (paras 88 to 168)

- 17 The Court Process Project is regarded as a world class, flagship project of the Integrated Justice System. One of the aims is to create and maintain most documents in digital form. A semi-automated court and case management system is being developed as an interim solution to deal with unacceptably high case backlogs. Called the IJS Court Centre Project, its aim is to provide a single point within a court from which the entire court process can be managed. The overall objective is to reduce the average case cycle time. A pilot system has been developed for criminal and civil cases. (paras 169 to 215)
- 18 Archival functions have been devolved to the provinces, but the National Archives Act still places huge oversight responsibility on the National Archives of South Africa that may create problems given the level of its resources. There needs to be agreement between the National Archives and provincial archives about the responsibility for court records. For practical and cultural reasons, court records are likely to be most usefully kept in the province in which they were created. However, the National Archives still needs to set records management standards for central and provincial government. The National Archives offers four-day training courses for records managers in client offices. (paras 216 to 223)
- 19 IT specialists do not yet recognise that protecting and preserving electronic records over time is a records management function. The National Archives has established a list of electronic document management system (EDMS) products that meet archival and records management standards. It has begun an internal pilot project to introduce an electronic records management programme, using an electronic document and records management (EDRM) system called Cyberdocs. A functional/user needs specification is about to be finalised. The intention is to introduce ERM within the National Archives both to manage e-records created by the Archives and to build staff capacity to understand and recommend strategies and courses of action to other government departments. (paras 224 to 231)
- 20 Various records managements issues arise in the management of court records in South Africa. The National Archives needs to reach agreement with provincial archives about responsibility for court records. There are concerns about the security and availability of records in the courts which need to be addressed. The National Archives also needs to work with the Department of Justice on updating retention and disposal schedules, and the Department needs to ensure implementation of the procedures in the schedules once this has been done. Guidance on the management of court records in the codified Instructions also needs updating. In addition, the National Archives is the appropriate body to set metadata standards for records. As the National Archives develops its own expertise, it will be in a stronger position to issue policies and standards for electronic records management, to influence practices and to provide training. However, the small number of trained and knowledgeable staff in the Archives is a limitation. (paras 232 to 245)

JUDICIAL SYSTEM AND INSTITUTIONS

The Constitution and Integration of the Justice System

- 21 The Constitution of the Republic of South Africa (1996) includes a Bill of Rights. The rights of access to courts and the rights of arrested, detained and accused persons are of particular relevance here. Under the Constitution, every accused person has the right to be assigned a legal practitioner at the state's expense 'if substantial injustice would otherwise result'. There is also a right of access to information held by the state. Though not directly relevant to this study, the Promotion of Access to Information Act (2000) has significant implications for record keeping, including the records generated and maintained by the courts. See Appendix B for further information.
- 22 Under the apartheid regime, there were four white-ruled provinces and nine nominally independent black homelands or 'bantustans'. The new Constitution provided for nine, non-racial provinces comprising combinations of the old provinces and homelands. The challenges posed by these changes in terms of administration and government infrastructure have been immense.
- 23 The Constitution established a unified judicial system for South Africa. This consists of:
- the Constitutional Court
 - the Supreme Court of Appeal
 - the High Courts (including any high court of appeal established by Act of Parliament)
 - the Magistrates' Courts
 - any other court established in terms of an Act of Parliament.
- 24 All courts function in terms of national legislation, and their rules and procedures must be provided for by national legislation. South Africa follows a Romano-Dutch system of law.
- 25 The Constitution also provides for a single prosecuting authority. The National Prosecuting Authority (NPA) was established in 1998 as part of the Department of Justice and became an independent authority from 1 April 2001. Under the NPA, Public Prosecutors institute and conduct criminal proceedings on behalf of the state.
- 26 The Department of Justice and Constitutional Development is responsible for administering the courts and for constitutional development. It performs these functions in conjunction with judges, magistrates, the National Director of Public Prosecutions and Directors of Public Prosecutions.
- 27 South Africa has eleven official languages. Any of these languages may be used in the Courts. Interpreters therefore play a vital role in the delivery of justice.

- 28 The transformation of the justice system is still one of the greatest challenges facing the government. The Department of Justice is undergoing a restructuring process. One of the goals is to improve service delivery and to ensure that the business of the courts is conducted efficiently and cost-effectively. This includes improving the productivity of the courts and making justice more accessible and affordable.
- 29 Restructuring the justice systems in the ‘independent homelands’ has been a difficult process. Document control is poor in some areas, and procedures are not always followed. The Department of Justice has granted traditional leaders powers to become commissioners of oath, with the intention of bringing justice services closer to rural communities. Various other initiatives are under way to improve services or to reduce the burden on the justice system, including the establishment of community, municipal and traffic courts. Family Court centres have also been established as pilot projects. (see para 47).

Court and Legal Structures

Superior Courts

- 30 The superior courts are the Constitutional Court, the Supreme Court of Appeal and the High Courts.
- 31 The Constitutional Court deals exclusively with matters relating to the constitution and its interpretation, protection and enforcement. It is composed of a President, Deputy President and nine other judges appointed by the President of the country on the advice of the Judicial Service Commission.
- 32 The Supreme Court of Appeal, situated in Bloemfontein, is the highest court in respect of all other matters. It is composed of the Chief Justice, Deputy Chief Justice and a number of judges of appeal determined by Act of Parliament. The Court has jurisdiction to hear and determine an appeal against any decision of a High Court.
- 33 A Superior Courts Bill has been prepared to rationalise the structure, composition, functioning and jurisdiction of the High Courts. The Bill proposes that there should be a High Court for each province of the country, with Gauteng Province having two High Courts (Northern and Southern). Local divisions are proposed in respect of each High Court, and existing provincial or local divisions of the Supreme Court that are not converted into the High Court of the province concerned could become local divisions of the High Court. A provincial or local division would have jurisdiction over all persons in its own area. These courts could hear matters of such a serious nature that the lower courts would not be competent to make an appropriate judgment or impose a penalty.
- 34 The High Court may try all offences. Decisions of the various divisions of the High Court of South Africa are an important source of law. Prior to the adoption of the interim Constitution in 1994, judges did not make new laws, but interpreted and applied existing common law rules and legislation. However, in many cases a judicial decision established a new rule of law by interpretation, and was thus termed a

judge-made law. The 1996 Constitution allows judges to interpret, apply and implement as well as to correct law.

- 35 The President appoints judges of the High Court on the advice of the Judicial Service Commission. The Commission also advises government on matters relating to the Judiciary and the administration of justice. Candidates for appointment to the Commission are interviewed in public hearings. According to the Constitution, a judge may only be removed if the JSC finds that he/she suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct.
- 36 The Land Claims Court and the Labor Court have the same status as the High Court. The Land Claims Court hears matters for the restitution of land rights lost as a result a racial discriminatory land laws. The Labor Court adjudicates matters relating to labor disputes.
- 37 The Commercial Court was established to remove these cases from other courts and allow more time, if it is necessary, for them to be heard.

Regional and District Courts

- 38 The Minister for Justice and Constitutional Development has powers to divide the country into magisterial districts and to create regional divisions consisting of a number of districts. Regional courts are then established to hear matters within their jurisdiction. Unlike the High Court, the penal jurisdiction of the regional courts is limited by legislation. Although the regional courts have a higher penal jurisdiction than magistrates' courts, an appeal cannot be made to the regional court against the decision of a magistrate's court. The appeal must be made to the High Court.
- 39 Magisterial districts are grouped into 13 clusters headed by chief magistrates or senior magistrates. This has provided uniform court management systems throughout the country and addressed the imbalances in the former homelands. There are 432 magistrate's courts in the country.
- 40 A magistrate's court has jurisdiction over all offences except treason, murder, rape and certain other cases, such as serious armed robbery. Most criminal cases are heard by a magistrate in a district court (an estimated 90% according to one magistrate interviewed). The regional court has jurisdiction over all offences other than treason. Thus, regional courts may try all cases that are heard in the High Court, including murder. However, for cases involving life imprisonment, the regional court can convict, but not pass sentence. A high proportion of regional court cases are appealed because of the severity of the sentences.
- 41 Criminal jurisdiction in regional courts is limited to not more than 15 years' imprisonment or a fine not exceeding R300,000. Apart from certain special provisions, district courts can impose a sentence in criminal case of not more than three years' imprisonment, or a fine not exceeding R60,000.

- 42 Civil jurisdiction is limited to claims not exceeding R100,000, but it is understood that senior magistrates can hear cases with a claim of up to R200,000. Cases involving civil claims not exceeding R3000 are heard by a commissioner in the small claims court. Well over a hundred small claims courts have been created.
- 43 The Ministry of Justice appoints magistrates on the recommendation of the Magistrates' Commission. The Magistrates' Commission is concerned with the appointment, promotion, transfer and discipline of individual judicial officers in the lower courts, as well as advising the Minister in relation to general matters such as salaries and legislation. Though a single, unified Judiciary is the aim, it is not likely that the Judicial Service Commission and Magistrates' Commission will be combined.
- 44 Regional courts are headed by a President of the Court, and district courts by a Chief Magistrate.
- 45 Beneath the Chief Magistrate are the senior magistrates and magistrates, the clerks of court and 'line managers' such as the court manager. Reporting to the magistrates are the court staff: control officers, senior administration clerks and clerks. The Chief Magistrate of the Pretoria courts is regarded as dynamic and forward-looking, always looking for funding to improve working conditions and public areas. Within the courts there are many unpaid volunteers working to acquire experience. They receive neither allowances nor expenses. On the other hand, there are many unfilled vacancies in the courts. Following appointment, staff remain temporary until they have received four successful quarterly reports. Training is done largely on the job. With the move towards automation, courses in basic computer skills are being run by the Department of Justice for different categories of staff, such as clerks, interpreters, prosecutors and magistrates.

Chiefs' Courts

- 46 People who have committed offences under common law or indigenous law and custom may be tried and punished by an authorised chief or headman or his deputy in a chief's courts. Certain serious offences specified in the relevant legislation are excluded. Civil claims arising from indigenous law and custom may also be heard by a chief, headman or deputy. Litigants have the right to choose whether to institute an action in the chief's court or a magistrate's court. Appeals against a judgment of a chief's court are heard in a magistrate's court.

Family Court Centres

- 47 Pilot Family Court Centres have been established in Johannesburg, Cape Town, Durban, Port Elizabeth and Lebokakgomo. The ultimate aim is to establish centres throughout the country. Distinct from other courts, the Family Court Centres handle all family law-related disputes such as divorce, maintenance, domestic violence, children's court procedures and the administration of deceased estates. Use is made of alternative dispute resolution through mediation, counselling, conciliation services and family group conferences. Litigation is used as a last resort only when it is clear

that other methods are not suitable. 'Family magistrates' hear cases concerning the family. Family advocates assist the Family Court where children are involved.

National Prosecuting Authority

48 As already noted, the National Prosecuting Authority (NPA) is an independent national authority employing public prosecutors who institute and conduct criminal proceedings on behalf of the state. The NPA also includes the Asset Forfeiture Unit (dealing with the seizure of assets) and a number of sensitive functions, such as special operations investigating units. There are approximately 70 or 80 prosecutors divided between district and regional courts. Within Pretoria, for example, there are three or four prosecutors, depending on work load.

Other Legal and Judicial Bodies

49 Besides the Judicial Service and Magistrates' Commission, there are a number of other bodies and institutions that are relevant to the judicial function. In recent years, the South African Law Commission, concerned with reform of legal systems, has become a 'community-orientated' institution consulting with involving interested parties and the public in the process of law reform.

50 The Rules Board for Courts of Law is a statutory body empowered to make or amend rules and procedures for the High Courts, the Supreme Court of Appeal and the subordinate courts.

51 The Truth and Reconciliation Commission presented its report to the President of South Africa in five volumes in October 1998. The work of dealing with applications to the Commission was continued by the Amnesty Committee. Other commissions include the Human Rights Commission and the Commission on Gender Equality.

52 The Justice College provides training of legal staff, including magistrates and prosecutors as well as court staff. Records management training is also offered.

53 A Legal Aid Board is an independent statutory body providing legal aid to indigent persons. Justice Centres operated by the Board handle both criminal and civil matters for those who pass a means test. Many more Justice Centres are planned.

Pressures on the Courts

54 A visit to a 'Canalisation Court' in Pretoria illustrated the pressure on the lower court system. The Court was crowded with accused persons waiting for their cases to be called. There was little space available for members of the public. Those on remand were brought up from cells beneath the court. People on bail waited inside or nearby. Lists of cases to be heard were posted outside the court. Trials do not take place in the Canalisation Court. The accused are either placed on remand or granted bail until the case goes to trial in one of the Pretoria courts. Serious cases, such as armed

robbery or rape, are not initially heard in the Canalisation Court, but are prepared to go direct to trial.

- 55 A senior magistrate interviewed estimated that about seven out of ten cases that come to court are short of information. If the Prosecutor is not satisfied with the readiness of the case, he/she makes a request to the presiding officer for the accused to be remanded pending further investigation. The defence, too, sometimes asks for an adjournment. Cells beneath the court enable accused charged with serious crimes, such as robbery or rape, to be held securely until the case is called.
- 56 The same magistrate recalled that up to the about the mid-1990s he had heard about five cases a day. However, after this date it became impossible to finalise five cases a day, some of which took up to three days to finalise. By about 1997, the magistrate was hearing up to 16 cases a day, but was sometimes unable to finalise any of them.

RECORDS MANAGEMENT IN THE COURTS

- 57 The next section provides more detailed description and analysis of record keeping issues. The present section deals with general issues and observations.
- 58 Each court or group of courts (criminal, civil, etc) is responsible for its own records. Records management is seen as an integral part of the management of court business, not as a separate skill or discipline. In the Pretoria Regional Court, for example, twelve 'control officers', reporting to the Court Manager, have responsibility for the records of the courts that they cover. However, clerks are responsible for the day-to-day safekeeping and control of records in use in the courts.
- 59 Courses in records management are provided at the Justice College in Johannesburg.
- 60 In South Africa, both criminal and civil case records are public records and are open to inspection, normally on payment of a fee. A visit was made to the public counter near the Civil Case Records Room in the Pretoria Regional Court where attorneys were seen consulting case records.
- 61 Day-to-day guidance on managing court records, the use of forms and other matters is provided in codified Instructions on 'Archives', issued by the Department of Justice. These are in loose leaf form so that pages and sections can be replaced when updated. The bulk of the Instructions cover the closing and disposal of case records. The Instructions appear to be of limited use. They include a file plan for policy, administrative and correspondence files. However, the plan is said to have been designed in the 1960s or 1970s, predating the constitutional changes in South Africa. The responsibilities of the National Archives for managing the nation's records are also set out in the Instructions.
- 62 Within the National Office of the Department of Justice there is a section dedicated to records management. Court officials in Pretoria reported that if there is an issue regarding records, the courts approach the records management section of the National Office. The National Office then discusses the issue with stakeholders

(including the National Archives if appropriate), provides advice and, if necessary, issues an instruction or circular.

- 63 Automation of court processes and record keeping systems is being introduced or developed, sometimes independently. At the national level, the e-justice programme began with the aim of introducing an Integrated Justice System (IJS). A component of the IJS, the Court Process Project (CPP) aims to computerise court and case management. Both the IJS and CPP are described in detail later in this report. Some computerised systems are already in use, such as the Judicial Deposit Account System (JDAS). (see paras 147 to 153). There were also some *ad hoc* or home-grown systems, such as those found in the Pretoria High Court. Again, these are described later. The Department of Justice is aware of the Pretoria High Court systems and in the longer term it aims to standardise all systems.

Retention and Disposal of Judicial Records

- 64 In the lower courts, all records are destroyed except registers, such as Criminal Record Books¹, which are transferred to the National Archives (or presumably in future to provincial archives) ten years after closure. Previously, all criminal case records were reviewed by retired magistrates so that particular cases of interest could be selected for permanent preservation. However, the volume of cases makes this approach impractical.
- 65 Opinions vary on the issue of the disposal of court records. An example was cited of a convicted person who was granted a Presidential pardon 20 or 30 years after the original conviction, but whose records had already been destroyed or could not be found. A court official argued that destruction of all records relating to an individual case was difficult to control because the records could be kept in a number of locations (for example, by the police and the courts).
- 66 High Court cases in Pretoria are kept by the Court for 20 years and then transferred to the National Archives. However, the National Archives is constrained by limited storage space and questions whether permanent preservation of all High Court records is justified. Some High Court officials in Pretoria are of the view that large quantities of High Court records, or the bulk of records within most cases, could be destroyed. Many cases are routine, though some records, such as divorce cases, could have long-term retention requirements. However, it was reported that most judges are against wholesale destruction, in part because of the risk of losing records of precedence. When the Truth and Reconciliation Commission was sitting, there was a ban on the destruction of records. This may have encouraged the view that records should not be destroyed. The National Archives has advised the Department of Justice of the need to update retention and disposal schedules.
- 67 Staff of the State Information Technology Agency and the Department of Justice state that disposal instructions should be the same for electronic records as for paper records. The idea is that case records should not be destroyed but should be 'archived' (downloaded and stored) until the end of the retention period. Staff of the

¹ The purpose of Criminal Records Books is described in paras 111 to 116.

Department of Justice IT Section feel that data or records will remain on the system and will be migrated to new systems when new versions of software are issued. This issue needs more thought.

INTEGRATED JUSTICE SYSTEM (IJS) AND E-JUSTICE

68 South Africa has embarked on an e-Justice programme designed to support and strengthen the Department of Justice and Constitutional Development within an Integrated Justice System. The programme components are:

- the Digital Nervous System (DNS) project to provide the ICT infrastructure throughout the Department and the common platform for applications²
- intranet using Microsoft Sharepoint portal software. This will deliver applications to users via a common browser interface. The network will hold all forms and templates, case records and the Department's knowledge base
- Financial Administration System
- Management Information System
- Court Process Project (CPP): the automation of court and case management (see paras 169 to 215)
- Court Centre Project: semi-automated court and case management as an interim solution to unacceptably high backlogs (see para 170)
- automation of staff leave processes to reduce fraud and inaccurate record keeping.

69 An Integrated Justice System (IJS) Board was established in 1997 to integrate the activities of the legal and judicial sector. The objective is to re-engineer business processes using technology to ensure effective integration of the component parts of the justice system. Among the major initiatives are:

- developing a common system architecture
- establishing an infrastructure that enables the IJS
- establishing a Virtual Private Network (VPN)
- implementing a biometric Identification System: fingerprints, photo images and a database of DNA samples

² The lack of capacity in the telecommunications infrastructure is a major problem in South Africa. It is said that government departments currently have less bandwidth than a typical US household.

- introducing an Integrated Case Management System to encompass work-flow, document management, event notification, scheduling of resources and management of information.
- 70 The Integrated Case Management System component of the IJS programme includes the Court Process Project, designed to automate civil and criminal case management systems in magistrate's courts. Pilot projects have been launched in Johannesburg for the civil system and Durban for the criminal system. More information on these pilots is provided at paragraphs 194 to 215. The goal of the Department of Justice is to implement the system in all 450 magistrate's courts in the country.
- 71 A consortium (including the AST Group, one of South Africa's largest information and communication technology companies) had been awarded a 212 million rand contract over two years to assist with the e-Justice programme. This consists of providing and implementing connectivity for the Digital Nervous System (DNS) project in terms of communications and network, desktop deployment including hardware and software, migration of legacy data/systems and initial training.
- 72 The performance of routine functions will change, and in areas where there is currently less automation, the need for change management will be greater. Among the issues recognised are the fear of job change and the risk that court staff will not use the new systems. Individual courts are required to identify change management issues and communicate them to the project team.

Digital Nervous System (DNS)

- 73 The DNS creates connectivity within the Department of Justice. It links the Department's servers to the State Information Technology Agency (SITA) thereby 'piggybacking' on SITA's infrastructure. It is anticipated that 611 sites will be incorporated in two years. Key issues governing deployment and its sequencing have included the theft of equipment and budget and facility constraints.
- 74 The DNS project encompasses six areas:
- communications: e-mail
 - research: Internet access
 - work processes: word-processing, spreadsheets, document and information management, human resources systems and procedures
 - court processes
 - financial services
 - capacity building.

- 75 The network will be a Wide Area Network (WAN) using SITA's ICT infrastructure. The objective is to install 13,000 access points for PCs and printers, allowing for growth over the next seven to eight years. Roughly half the PCs required for initial installation will be purchased new and half will be refurbished or redeployed existing equipment. PC deployment is dependent on network points, and the number of network points are determined by the building. Policies are agreed for purchasing new PCs, deploying old PCs and managing human resource issues. All new computers must be compatible with the platform, an especially important consideration for remote site management.
- 76 Equipment has been purchased for the network management centre, and a suitable secure location is being sought. The network management system will require the following elements:
- anti-virus protection
 - management of remote sites: all sites will be managed via one central administration point
 - 'mission critical' sites, for densely populated areas that serve many people, and rural sites
 - a central help desk
 - software support through a Microsoft enterprise agreement. (Support will be available from Microsoft 24 hours a day, seven days a week. Upgrades of the Office XP and Windows 2000 operating system and software will be included in the service agreement.)
- 77 Prior to deploying the DNS, an assessment will be conducted at each site to identify legacy systems (such as, databases, records and information held on computers, and templates and macros for conversion). This will help in making provision for migrating data that needs to be available through the DNS. Current data will be migrated from individual PCs to the fileserver. The data to be migrated will need to be checked for accuracy, currency and relevance before migration.
- 78 SITA will provide quality assurance, monitor and check data migration and 'sign off' sites as they are completed. Telkom (South Africa's leading communications operator) will provide telephone lines for communications connectivity.
- 79 To assist implementation, each site is required to fulfil certain roles and responsibilities. They must:
- provide a co-ordinator/facilitator for office access (via key control)
 - identify templates and macros for conversion to the new system
 - identify legacy systems for conversion to new applications or to operate from the new platform

- filter communications from the DNS project team to the site
 - designate an official for signing off on e-mail names and Internet Protocol (IP) addresses
 - designate authority for checking in/out hardware, such as laptops
 - identify a suitable staff member for training on back-ups of servers and maintenance of back-ups tapes to be stored in off-site locations
 - provide a help desk contact to filter queries and maintain a log of help desk interactions.
- 80 Security rules and regulations will stipulate the provision of a firewall to prevent downloads and disallow unauthorised software installation. Individuals who violate security through disseminating viruses or by visiting unauthorised sites will be disciplined.
- 81 An 'Active Directory' for e-mail will contain relevant and up-to-date information about employees and will be populated by data from the Department's Human Resources Services. Rules governing, for example, the format for individuals' names will help to prevent multiple entries and improve access. Access privileges will be determined according to job functions and responsibilities.
- 82 Not all users will have Internet access. Access rights will be decided by the business unit. The portal, when installed, will use role-based permissions to determine who has access to what level of the portal.
- 83 Training and capacity building will be both formal and informal and will include skills upgrading and certification. There will be three phases:
- Phase 1: building basic computer literacy
 - Phase 2: training in desk top software
 - Phase 3: identifying 'super users' to help other users with more advanced training.
- 84 Approximately 10,000 PC users require some training. Training arrangements are based on 'seats', with each seat representing a PC user. Training is conducted over seven days and takes place at eleven training centres. The cost is 60 Rand/per day/per user. Ten people are trained at a time. E-learning CDs will be used to support other training programmes. Support to users is provided by various means, including technicians, e-learning CDs, super users and the help desk.
- 85 It is understood that the training budget relies upon donor funds and is under threat.
- 86 In July 2002, the DNS project is at the following stage:
- 10,595 out of 13,000 network points have been established

- the network has been installed in 80 sites in Johannesburg, Cape Town, Pretoria and Durban; these 80 sites represent 80% of the computer users
- project support teams have been set up in each area
- 56 of 80 servers required are in place
- 28 sites have been approved for installation
- PC and printer deployment is on track and 1600 PCs are in place
- 11 training venues have been established.

87 The Court Process Project is described in more detail in paragraphs 169 to 215.

COURT PROCESSES AND RECORD KEEPING SYSTEMS

88 The following observations are intended to illustrate typical processes within the court system, and the record keeping systems that support them. Because of the time constraints for the visit, some steps and procedures are not described in complete detail. However, the information should provide a snap shot of some of the processes and records systems.

Magistrates Courts, Pretoria: Criminal Cases

89 Depending on the type of offence, different processes initiate a case. In a typical criminal case, a person is arrested by the police, charged and kept in police custody before being brought to court or released and served with notice (a summons) to appear in court.

90 The police station creates a docket and completes a charge sheet. A mainframe system is used to open a docket for an accused person and register the case. The same information on the paper charge sheet is recorded on the front cover of the docket. The docket contains the diary and documentation of the investigating officer, affidavits and other evidentiary documents relating to the case. (Further information relating to dockets is provided in paragraphs 106 to 110). The investigating officer is also required to include any instructions or information that will be needed by the prosecutor conducting the trial, such as an objection to bail. Following preparation, dockets are sent or taken to the court. In more serious cases, the investigating officer brings the docket to the court with the arrested or accused person.

91 The Clerk of Court's office at the courts serves as the control point through which records are captured in court record keeping systems. The police send or bring the docket and a copy of the summons to the Clerk of the Court/Clerk's office, where a Register of Control Documents (or Summons Control Register) is used to list cases by summons number. The Register is printed each day to provide a record of cases coming before the courts.

- 92 Specialist courts deal with fraud or drunk driving offences, juvenile cases and other particular types of cases. Other cases go to the Reception Court (Canalisation Court) where all first appearances, remands, bail applications and guilty pleas are heard and a decision is made regarding which court will hear the case.
- 93 New dockets that come to the Canalisation Court are examined by a pool of prosecutors³ who decide whether there is sufficient evidence to proceed with the case and prosecute the accused, whether the case should be withdrawn or whether to instruct the investigating officer to carry out further investigations. If further investigations are required, the prosecutor writes instructions about necessary action on the docket for the investigating officer. The investigating officer receives the docket in person, or it can be sent to the police station via the police liaison officer in the court.
- 94 If the case does not proceed, the docket is returned to the police station with an explanation of the decision. Records of these cases are required to be destroyed within a fixed period.
- 95 If a case proceeds, a new charge sheet (form J15) is drawn up by the prosecutor and passed to the Clerk of the Court. A warrant of arrest or summons is also issued if necessary. At this point, a court record is created and a case number assigned.⁴ A summons is also prepared by the prosecutor in triplicate. One copy is passed to the sheriff to be delivered to the accused; one copy is sent to the police station concerned with the case; one copy is retained by the court with the case record. Evidence is held in a safe room and noted on the charge sheet with a control number.
- 96 At the Canalisation Court, the case is referred or allocated to a Trial Court where another prosecutor will deal with it. A manual gives guidance on whether cases should be heard in the district, regional or High Court. Details of cases are included on the court roll displayed outside the court on a notice board.
- 97 For some cases, if there is an admission of guilt, for example, in a traffic case where a fixed fine can be paid within a time limit, the case does not go to court and a case number is not issued. The fine can be paid at the police station and forwarded to the court where it will be certified by a magistrate and will serve as a conviction record. Other cases involving an admission of guilt proceed to court. Records of admissions of guilt are filed by an admission of guilt number and kept by the court for three years. If there is no admission of guilt, the case goes to court to be heard before a magistrate.
- 98 If there is sufficient evidence, the public prosecutor charges the person in court, leads with evidence by the state witnesses (such as the police) and cross-examines the witnesses of the accused. A prosecutor who is not satisfied with the information

³ Public Prosecutors prosecute the accused in magistrates' courts on behalf of the state and decide whether there is sufficient evidence to proceed with the case and prosecute the accused person.

⁴ A sticker with a number in sequence pre-printed on it is placed on the charge sheet, and the case number is written on the docket cover. A typical case number is in the form 29/05223/2002 (where 29 is the number of the court, 05223 is a sequential number, and 2002 is the year in which the case record was opened).

relating to the case can request that the accused be placed on remand for further investigations. On other occasions, the defence might request an adjournment.

- 99 Lists of cases to be heard are prepared each day for the courts. They include details of the accused, offence, police station concerned, criminal record number and charge sheet. Cases are heard in a particular order, for example, remand cases first, followed by cases involving guilty pleas and so on. A limit is placed on the number of cases heard by courts, but the number is set very high due to the volume of cases. To meet the requirements of the new constitution (Section 35: Arrested, detained and accused persons), the court is required to provide photocopies of the charge sheet for the defence.
- 100 The outcome of the accused person's court appearance is recorded on a special form attached to the charge sheet. When the case is completed, the docket is returned to, or collected by, the police station concerned, and the charge sheet is taken by a court orderly to the Clerk of Court's Office for filing. In postponed cases, the docket is returned to the Clerk of Court's Office and filed in the proper location for active cases. Misfiles are known to occur, and missing documents and case records are common in remanded cases.
- 101 In cases involving bail, a copy of the charge sheet is sent to the Prisoner's Friend Office, where bail is paid. A court orderly brings the charge sheet to the Clerk of Court's Office for filing.
- 102 If the accused person receives a suspended sentence, the file is brought back to the Clerk of Court's Office and transferred to the file room.
- 103 When the court closes, an interpreter will be responsible for providing a record of the decision or verdict to the Clerk of Court. The Criminal Record Book is used to document the decision (see paras 111 to 116).
- 104 All processes are manually recorded and tracked. The case management system depends on Criminal Record Books, maintained for each court. The Criminal Record Book is described in more detail in paras 111 to 116. An objective of the Integrated Justice System Court Process Project is to computerise case flow management by entering and maintaining data about individual cases in a case management system. More information about the Court Process Project is in paragraphs 169 to 215.
- 105 In the Pretoria lower courts, all cases are recorded on audio cassettes (see paras 143 to 146). For cases appealed to the High Court, the cassette recording is transcribed. The magistrate who presides over the case is required to provide the reasons for decisions. Four copies of the document containing the reasons are sent to the High Court with one copy for each of the Appeal Court judges⁵.

⁵ An 'appeal' is not the same as a 'review'. Review refers to a review of case decisions by a higher authority in a magistrate's court, for example, a review of a magistrate's decision by a senior magistrate. Experienced magistrates are able to give sentences of up to six months without review. Not many cases are set aside for review.

Example of Criminal Case Record Keeping

Dockets

- 106 A docket created at the police station contains items such as the diary and documentation of the investigating officer, affidavits and other evidentiary documents relating to the case. All correspondence in the case docket is entered in the investigation diary⁶.
- 107 When sent or taken to the court by the police, dockets are entered in a register and are date-stamped; the name of the prosecutor to whom the case has been allocated is also written in the register so that when or if the docket is returned to the court it will be assigned to the same prosecutor. The docket will then be passed to the prosecutor's clerk who can arrange for it to be sent back to the investigating officer at the police station via the police liaison officer at the court.
- 108 When a docket is returned to the police station, it is passed to the officer in charge of dockets, who goes through the docket to check for instructions. The docket officer can also give instructions to the investigating officer. Following action by the investigating officer, the docket can then be transferred to another officer to check whether the instructions have been carried out before it is returned to the state prosecutor. Investigating officers have been known to remove the comments of other officers from the docket, even though the comments were necessary to the case.
- 109 It was reported in Pretoria that often dockets are not available in magistrate's courts on time, leading to postponements or possibly withdrawal of the case. The docket is supposed to be in the court three days before the date set for the trial, but frequently this does not happen. It was said that the police claimed they had insufficient vehicles to convey dockets to court, but court officials felt it was also due to a lack of discipline.
- 110 The docket stays with the Prosecutor during the trial. Some prosecutors take case records home to work on them outside office hours. When not in use, dockets are required to be sent to the Clerk of Court's Office for filing.

Criminal Record Books (J546)

- 111 The Criminal Record Book constitutes a manual case management system. The intention is that the books will be replaced by an automated system developed as part of the Court Process Project.
- 112 Each criminal court has a separate Criminal Record Book for each day of the working week. Summary details of each case to be heard are entered in the book from the charge sheet completed by the prosecutor. The relevant book is taken to the court when the particular case is heard.

⁶ A typical docket is divided into sections: section A includes admissible evidence; section B is used by the police for internal correspondence, for example, relating to forensic investigations; section C includes the investigation diary, communications between the police and prosecution service, and so on.

- 113 The Criminal Record Book records the names of the prosecutor, interpreter and clerk of court, the case number assigned by the police, the court's case number, the name of the accused, the crime and the verdict. The police number is useful if there is a need to go back to the police station for more information about the case. The order of the court or sentence, and any remarks, are also recorded in the book by the magistrate. An interpreter completes other details in court and is responsible for taking the book back to the Clerk of Court when the court closes.
- 114 For purposes of distinction, new cases are entered in blue; new details for old cases are entered in red.
- 115 If a case is postponed, the magistrate writes the date of the next hearing in the Criminal Record Book as well as on the charge sheet (case file) and the file is returned to the Clerk of Court to be filed by the date the case is next to be heard, and by court number, in the file cabinets for active cases. If a case is finalised in court, the case file is returned to the Criminal Cases Record Room (see below).
- 116 Criminal Record Books are transferred to the National Archives for permanent preservation ten years after closure.

Criminal Case Record Room

- 117 The criminal courts have their own Record Room, distinct from Record Rooms for other types of cases such as civil and family. Case records are filed by case number in standard boxes. Case records that are too voluminous for the standard-size boxes in use are kept separately in larger non-standard boxes. Typically, the records relating to a case consist of the charge sheet, proceedings (forms, summary notes, etc) and the audio cassette recording of the evidence given in court. The paper records are stapled or pinned together and attached by a metal fastener to an envelope containing the audio cassettes.
- 118 The Record Room for criminal cases has a dedicated clerk, though this member of staff performs other non-records work when required. The Record Room clerk keeps a working list for all finalised cases, arranged by case number, court and year. As cases are destroyed at the end of their retention period, a red line is drawn through the case number in the list and the number of years after which the case record was destroyed is also recorded. This work is scheduled so that in the course of a year, the clerk goes through all the cases in a box (for example, court 14, cases 1-450) and removes records that have reached their destruction date and annotates the list accordingly. Documents are manually shredded and recycled by being sold to a paper manufacturer.
- 119 Various retention periods are applied, as specified in the codified Instructions. Typical retention periods are two, three or seven years, depending on the type of case. However, the actual retention period also varies depending on the outcome of a case. For example, for records of a case that results in a seven year suspended sentence, retention will be for the full seven years, even if that type of case is normally retained for a shorter period.

- 120 A request form is required to be completed for access to a case record. Once the form is completed, the case record is retrieved and charged out to the requesting officer.

Magistrates Courts, Pretoria: Civil Cases

- 121 For civil cases, an attorney prepares a summons which is brought to the Process Clerk's Office counter where a fee is paid to register the case. The summons is stamped with a numbering machine and given the next case number in sequential order.
- 122 A clerk passes the summons to a sheriff to be served on the defendant or respondent who has five days to respond. In cases against the state, 21 days are allowed. The sheriff provides a return (or 'evidence') of service to the Process Clerk's Office to prove that the summons has been served.
- 123 Documents relating to a case (original summons, return of service, supporting documents, etc) are placed in a civil case file cover. Case files are sorted according to case number and distributed to clerks. There is a high volume of cases in the Pretoria civil courts, and 100 cases are distributed daily to each clerk.
- 124 Minor matters (such as small debts) are normally settled by 'default judgment'. The clerk checks all requests for default judgments to ensure that the documentation is complete and correct; if it is, judgment is granted. The clerk stamps the front cover of the docket and the original summons. The date, judgment, amount and signature are recorded. A copy of the judgment is provided to the attorney for the defendant so that the fine can be collected or other action taken. Sheriffs are responsible for enforcing warrants of execution.
- 125 Cases where default judgment is not requested or granted are dealt with by a magistrate. The defendant is required to file an affidavit and the case then proceeds according to civil law, with a date set for a hearing. Cases are distributed by the senior civil magistrate.
- 126 All these processes are recorded manually. As with criminal cases, the intention is to replace manual record keeping with an automated system as part of the Court Process Project (see paras 169 to 215).

Civil Case Records Room

- 127 Civil case files are stored in standard-size boxes, each box containing some 50 cases, though certain cases, of course, generate large volumes of records. There are approximately 200,000 civil cases in Pretoria in 2001, excluding small claims heard in the small claims court. Therefore, a conservative estimate is that the Records Room holds in excess of 4000 boxes for this single year alone.

- 128 Case records are retained for 10 years. However, if no action has been taken in a case after the initial summons and there are no further proceedings, the case record is destroyed after one year in accordance with the time limit on a claim. The time limit on civil claims against the state is three years, and records of these cases are therefore kept for this period. Where case records are contained within a cover, this indicates that the case has proceeded further than the summons, making identification simple. All other files are destroyed after 10 years. No magistrate's court civil case files are transferred to the National Archives.

Children's Court

- 129 The Children's Court in the Pretoria Regional Court hold inquiries and issues orders that promote the rights of children in need of care and that are judged to be in the best interests of the child. Children are defined as people under 18 years of age. The court also considers applications for adoption. Teams including social workers, legally trained professionals, psychologists and other specialists work closely together in the Children's Court. Social workers are involved in monitoring progress and making recommendations.
- 130 The court's orders can refer a child to foster care, a children's home or place of safety. Such orders are used as a last resort and have a maximum provisional period of two years at a time. Alternative dispute resolution mechanisms, such as mediation and family group conferencing, are also used. Court proceedings are held *in camera*, and only certain persons are allowed in the court. The Children's Court has its own magistrate who is on standby at all times.
- 131 In the Pretoria Regional Court, the public area of the Children's Court has been made welcoming, in contrast to other parts of the court. It is attractively carpeted and furnished, and there are playrooms for children and facilities for mothers and their babies.
- 132 There have been approximately 600 cases registered to date in the Children's Court. The register of cases includes basic details: the name of the child, date of birth, names and addresses of parents, order of the court and date. Copies of all relevant documents for each case are placed in a case file. Reports of investigations are also included. Case files are confidential. They are filed by case number and kept in locked cabinets. Current files are held in the office of the Clerk of the Children's Court. Closed files are kept in a strong room or vault and finalised cases are transferred here at the end of each year. Closed files are destroyed after ten years.
- 133 All records are created manually by the clerks of the Children's Court. An index of children's names provides a cross-reference to the case number. Even a simple automated index would greatly reduce the effort of checking whether a child is already the subject of an existing case.

Adoption Department

- 134 The Adoption Department of the Pretoria Regional Court is staffed by one person. All records are created and managed manually. Cases for 2000-2002 are kept in the office. Older files are kept in a record room some distance from the office. Potential adoptive parents approach the department either directly or through a social worker. In order for adoption to take place, both biological parents are required to give their consent. Access to adoption files is strictly controlled. Cases can also be referred to the Children's Court if, for example, a biological parent objects to adoption.

Domestic Violence Section

- 135 'Victim empowerment' is regarded as a key aspiration of judicial reform. This includes:
- providing counselling of victims
 - providing legal information to parties
 - offering anger management training
 - assisting parties to complete forms
 - balancing the rights of perpetrators with those of victims
 - providing support services to survivors of domestic violence
 - granting interdicts or protection orders.
- 136 In a case of domestic violence, the applicant makes a statement about the alleged assault, threat or abuse, which is recorded on an Application for Protection Order. Forms are available in English or Afrikaans. Statements can be taken by a clerk, but social workers can also be involved in helping a complainant initiate a case. Basic details of the case are recorded in a register (date, applicant, respondent and so on) and a case number is assigned. A case file is created. Completed forms for an interim protection order are sent to a magistrate.
- 137 If a protection order is granted, a copy is made for the complainant, and the original is served on the respondent. A register is also kept of orders granted. A copy of the order is also placed in the case file, and a warrant of execution issued. If the respondent fails to comply, he/she can be served with the warrant and arrested by the police, charged with failing to comply and brought to court.
- 138 Access to records is limited to lawyers, applicants and respondents, and court officials. Records are filed by case number. There were 4391 registered cases of domestic violence in 2001.

Maintenance Cases

- 139 Maintenance cases are governed by the Maintenance Act (1998) which was implemented in 2001. Prosecutors are rarely used except when there is a direction to do so from the National Prosecuting Authority (NPA). The processes in a typical maintenance case are set out in the paragraphs that follow.
- 140 A complainant comes to the court and a clerk makes a record of the complaint. A summons is issued against the defendant and passed to a sheriff of the area in which the defendant resides. The summons is served and a return of service is generated for the court's records. A date is then set for the case to be heard in the maintenance court. Evidence is taken and an order is made. Maintenance payments made under an order are tracked by the Judicial Deposit Account System (JDAS) (see paras 147 to 153). Formerly payments were tracked manually on a record card. If an increase in payment is sought by the applicant, the process is repeated. Non-payment can become a criminal matter involving the criminal courts.
- 141 A file is created for each maintenance case. A computerised case tracking system generates the file number. However, older files are kept according to a legacy numbering system⁷.
- 142 Maintenance case files are required to be destroyed three years after closure. However, large quantities of case files containing last documents dating from 1997/98 still exist, indicating that destruction is not being carried out, or not being carried out according to the requirement. Records of cases in the computer system are supposed to be deleted three years after the case is closed, but there was no evidence that this occurs.

Audio Recordings and Transcriptions

- 143 In the Pretoria lower courts, all cases are recorded on audio cassettes. Machine operators in court keep track of the case proceedings (who was speaking) and the contents of each cassette. Previously, transcriptions were prepared by court staff, but this function has been outsourced to a commercial company at a charge of R8 per page of transcription. A day's court proceedings can be transcribed into 400 pages or more. Outsourcing is necessary because there were so many delays: for example, transcriptions were not prepared within the seven day limit for review cases.
- 144 The transcription of proceedings is verified by the magistrate who heard the case. He/she is required to go through it for accuracy, using his/her own notes of the case for comparison. Amendments to the transcription have to be made within a fixed time limit. Problems with the recording system are known to occur and comments such as 'inaudible' appeared in some of the transcriptions inspected.

⁷ New style numbers are in the form of a continuous string, for example, 1001013121. Old style case numbers from the manual system are in the form 001/03097/99, where the first element is the court number, the second element is the case number in sequence and the third element is the year in which the file was opened.

- 145 Cassettes are held in a special envelope with an index sheet on the front.
- 146 Cassettes containing recordings are re-used after varying periods, depending on the case. For example, cassettes for acquittal cases are reused after three months. Recordings of proceedings resulting in a suspended sentence are kept for a longer period related to the term of the suspension.

Magistrate's Court Judicial Deposit Account System (JDAS)

- 147 Magistrate's courts throughout South Africa are responsible for administering trust monies (mainly bail, fines and maintenance). There is no uniform system for handling trust monies. Some courts have automated accounting systems, but most offices still use a hand-written card system and manual cash books. These systems were regarded as generally inefficient, labor intensive and open to potential embezzlement.
- 148 The Pretoria Magistrate's Courts uses the Judicial Deposit Account System (JDAS) as an accounting system to track and reconcile receipts and payments (bail money, fines and maintenance payments). The system is not used to capture witnesses' fees (for travel and subsistence when attending court), which are controlled through a vote account. Though it is used in a limited sense for case management purposes, for instance by the Process Office to register cases, JDAS cannot be used to determine the status of a case.
- 149 The system covers all 45 lower courts in Pretoria and enables a record to be kept of the daily cash book. The version in current use (version 2.1) provides an audit trail, but cannot provide all the journals that are needed and is not able to perform an end-of-day reconciliation. Staff in the Pretoria Deposit Account checking office have designed their own form and manual system for daily reconciliation purposes. Reconciliations are prepared on Excel spreadsheets, working from daily transaction listings for system users. In the Pretoria office visited there are ten system users, and when usage is high, the operating speed is said to be slow. JDAS generates its own sequential control number, the CTR number.
- 150 The system was developed by the Department of Justice during the justice system's transitional phase when eleven justice systems were being integrated. It was implemented in April 1999, replacing the DANYE system. The database was programmed in SQL on a Unix platform. Each user office had its own server. Users in the Pretoria office claim that not enough time was spent on a needs analysis during system development, with the result that the system does not meet all functional requirements.
- 151 There is no archiving of data; all data is held live on the system. Daily back-ups are carried out, but this is not part of any one job description; two members of staff perform the back up in rotation in the morning and at night. Back up tapes are kept in a safe away from the server. Manual back-ups are performed on the server nightly after office hours, and the tapes are backed up twice a week. At the time of the visit, the uninterrupted power supply unit had burnt out a few days previously and had not been repaired or replaced.

- 152 A new version of the system (JDAS 2.2) is being developed and piloted in Bloemfontein Magistrate's Court. The new system will be able to generate the necessary ledger totals and calculate daily balances. The intention is that it will be rolled out to other courts. It is also intended that JDAS 2.2 will be integrated into the court process system that is under development.
- 153 The aim of JDAS 2.2 is to ensure:
- better collection and safekeeping of monies
 - improved disbursement to beneficiaries
 - more efficient case management
 - an interface with banking and other systems (for example, maintenance monies can be deposited and withdrawn at ATMs)
 - a central database of information
 - links to financial management systems
 - automated reconciliation.

High Court, Pretoria

- 154 In the High Court in Pretoria, three senior registrars report to the Chief Registrar. Reporting to the senior registers are ten registrars, 15 senior registrar's clerks and 15 or 16 registrar's clerks. A clerk attends a judge in court. A registrar's clerk acts as registrar in the Motion and Divorce Courts. Training of court staff is mainly in-service.
- 155 The High Court comprises a number of different courts, including Motion, Criminal, Civil, Patent and Appeal. The Judge President allocates judges to cases. State advocates are not able to choose a judge. Judges are rotated between courts or types of case (criminal, civil, criminal appeals and so on). Civil cases were previously heard continuously and were divided between the judges available. Because of the increase in the number of cases, 25 cases are now assigned to each of seven judges to be heard each day. Few criminal cases are heard. However, those that come before the High Court can be of very long duration; some cases have taken five or more years to be decided.

Civil Cases

- 156 A typical procedure is illustrated by a divorce case. An attorney draws up a summons and lodges it in the High Court at the General Office. The General Office registers it

and assigns a case number⁸. The summons is then passed to the sheriff to be served on the defendant. The original summons and the return of service come back to the High Court and are placed on the court file. Other processes follow as motions are filed by the attorney and the case is set down for hearing. A simple automated system on a stand-alone computer is used to prepare the Motion Court roll (see para 161). The court roll is posted on a notice board. Each attorney has a pigeon hole within a designated area in the High Court, where orders of court are placed for collection.

- 157 No Record Book or Register is kept for civil cases. Judgments are written on the case file cover.
- 158 There are about 35,000 to 37,000 civil cases a year. Court proceedings of all cases are mechanically recorded. Since January 2001, audio recordings have been on CD. The quality of recording has proved to be better than cassette tapes and allows the judges to go back over recordings easily to listen to evidence given in court. All High Courts now use this system.

Criminal Cases

- 159 Typically in a case heard in the High Court, the Police investigate the offence and prepare the docket. This is passed to the Director of Public Prosecutions (DPP) to decide whether to prosecute. If the case is to be prosecuted, a charge sheet is drawn up, and a list of witnesses and other relevant documentation is prepared. The High Court receives the documents from the DPP and opens its own case file for the charge sheet and other records, such as documentary exhibits, and assigns a case number. The DPP, in conjunction with the Judge President of the High Court, sets down the matter for hearing, and the High Court receives notice that the case has been set down for a particular date.
- 160 The state advocate holds the court's case file during the hearing of the case. Judges see only the charge sheet and summary of the case before the trial. The remaining documents are seen during the trial.
- 161 The judges' clerks maintain a Criminal Record Book, similar to that kept by the lower courts.

Automation

- 162 Some *ad hoc* automated systems have been introduced in the Pretoria High Court at the Chief Registrar's initiative. Funded internally, the systems appear to achieve efficiency gains. They were designed and implemented by a programmer employed by the court and include a procedure that compiles Motion Court rolls and Divorce Court rolls. Divorce Court rolls are prepared for the three courts, which sit each Friday. They provide a list of cases to be heard by case number and court number. Copies are sent to the judges and to all relevant parties. The Motion Court roll system

⁸ An example of a case number is 20059/2002, where the first element is a number in a single sequence commenced at the beginning of the year and the second element is the year in which the case was registered.

has a search facility enabling a case to be found by its case number and indicating the location of the file. A manual case register has recently been supplemented with another simple computer system developed in-house by the General Office of the High Court. This system provides an index of cases and a search facility.

- 163 The Chief Registrar of the High Court anticipates that the in-house systems will eventually be replaced as part of the Court Process Project (CPP). There have been contacts between the High Court and the State Information Technology Agency (SITA), for example, to carry out a work flow analysis in connection with the CPP.
- 164 Within the courts, the perception is that outside contractors often fail to understand how the courts operate and how they are resourced. The systems that they design can fail because of a lack of understanding of the processes being automated. A pre-trial service project that replicated a system in the United States was cited as an example. The system allowed information about bail applications to be confirmed by telephone. However, it was found to be essential for the police to carry out a physical check of the photo-id to confirm an accused person's identity.

Archives/Record Room

- 165 High Court case files are held in a large storage area in case number and year sequence in standard boxes containing an average of 15 files. Cases that generate a large quantity of records are kept in binders and not boxed. It is estimated that there are 300,000 files in storage in the Pretoria High Court.
- 166 A disposal instruction indicating transfer to the National Archives after 20 years was visible on the outside of boxes. Until 2001, the retention period for High Court files was 30 years. While some cases, such as those relating to divorce, will continue to be used over a long period, case files are rarely used after 10 years. The Chief Registrar commented that a ten year retention period prior to transfer to the National Archives would be feasible if the National Archives had sufficient storage space. The National Archives will need to indicate its readiness to receive records before the disposal instructions can be put into effect. There appears to be little contact between the High Court and the National Archives. However, disposal requirements are apparently under discussion.
- 167 Files are known to be misplaced, usually due to misfiling. More commonly, however, the difficulty lies in tracking files that are already in use. Previously, clerks were required to take files personally to judges of other offices, but the volume of work has made this impossible. A case tracking system is needed.
- 168 Certified copies of documents can be obtained on request, using a standard form. A separate form is completed to request to see a case file. For pending cases, only the parties involved can see the file. Records for finalised cases are designated public records and are available to all.

COURT PROCESS PROJECT

- 169 The Court Process Project (CPP) is expected to overcome the difficulties resulting from strain on manual processes that have overrun their capacity. It is regarded as a world class, flagship project of the Integrated Justice System. It has a medium- to long-term timeframe.
- 170 A semi-automated court and case management system is being developed as an interim solution to deal with unacceptably high case backlogs. Called the IJS Court Centre Project, its aim is to provide a single point within the court from which the entire court process can be managed. The overall objective is to reduce the average case cycle time.
- 171 In summary, the objectives of the CPP are to:
- reduce processing time
 - eliminate fraud/corruption
 - track cases electronically
 - automate the scheduling of resources
 - provide electronic real-time communication
 - provide accurate and current management information
 - improve the efficiency of court management
 - convert paper systems to electronic systems
 - reduce trial delays
 - improve access to information
 - reduce duplication of data entry
 - reduce the incidence of lost dockets and case files
 - improve the administration of prisoners.
- 172 Sixteen tender proposals were received for the CPP. Phambili Consortium, a leading South African IT consultancy and professional service, was awarded the contract. Phambili had previously undertaken projects for the South Africa Police Service, Department of Correctional Services and Department of Justice and Constitutional Development. The CPP was launched in July 2000. Implementation is being led by the Director of Information Technology, Department of Justice, supported by a team of senior officials from the State Information Technology Agency (SITA) and from each of the Departments involved in the Integrated Justice System.

- 173 The project is attempting to address the problems caused by the volume of cases and information about cases, particularly in the larger magistrates' courts. Major bottlenecks occur in document and file handling, and it is not unusual for lost or misplaced files to result in delays and postponements of hearings. In the late 1990s it was estimated that up to 50 case files a day were lost or misfiled in Johannesburg alone. A factor in selecting Johannesburg for the pilot project (see paras 196 to 204) was pressure from the Chief Magistrate to find ways of dealing with case backlogs and lost files.
- 174 In the larger courts it has become increasingly difficult to manage the processing of cases due to lack of information about their status. Delays in processing cases have added to case cycle times, increasing the number of people waiting for trials. The average period during which prisoners await trial has lengthened dramatically, leading to increased costs.
- 175 The increasing number of cases has also put pressure on the storage available for paper-based case files. Delays in magistrates' courts have led some attorneys to file cases in the High Court, which adds to case loads. The new regional structure of the justice system has established additional reporting channels and placed extra burdens on existing business systems. Without an integrated system, there is a failure to share information within the justice sector, and relevant information is often duplicated.
- 176 While law abiding citizens have lost confidence in the justice system, illegal activities have flourished. The greatest impact had been on the disadvantaged.
- 177 Three possible solutions are being investigated:
- customising an existing solution that works in the South African environment (extensive customisation would be required)
 - developing a bespoke system (costs would be prohibitive)
 - configuring a commercial off-the-shelf tool that meet the needs of the Department of Justice (the chosen option).
- 178 The new system will link the Department of Justice with the Director of Public Prosecutions, South Africa Police Service, Department of Correction Services and the Department of Social Development.
- 179 It is designed to automate case management in the lower courts (civil, criminal, commercial, etc) by routing workflow, managing work load, notifying events, generating and managing forms and documents, and scheduling resources, such as court rooms and judges. The intention is to use Documentum as the electronic document management system. Retrospective scanning of paper files/documents into the system is being considered. Unfortunately, Documentum does not have a robust records management functionality.⁹

⁹ Documentum may require customisation to meet records management requirements, as stated in the guidelines issued by the National Archives, *Guide to the Management of Electronic Records in Government Bodies*.

- 180 Security provisions need to include the following:
- a virtual private network (VPN) to ensure the secure transmission of data over telecommunications lines
 - role based permissions, using biometric identification (finger print) and smart cards to determine the level of system access and privileges
 - data encryption
 - secure firewalls.
- 181 The CPP has to be implemented sequentially. The Digital Network System project has to precede the CPP so that it can provide the necessary infrastructure of WANs and LANs. Basic computer literacy training for users is also a prerequisite as it will provide basic-level training in the Judicial Deposit Account System.
- 182 Most of the technical skills needed to develop the CPP are already available in South Africa, either through commercial companies or within SITA. Part of the project design has involved strengthening skills in SITA and in the Department of Justice, which will manage technical support. Good technical documentation should help to ensure maintenance of skills and procedures even if key staff are lost.
- 183 The computer programme that supports the initiative was developed at Middelburg Magistrate's Court, Eastern Cape Province, where it has been operating since December 2000. The intention is that the system will be rolled out to 26 sites throughout the country by the end of July 2002.
- 184 Between December 2000 and April 2001 the system in Middelburgh had already demonstrated the following improvements in productivity and use of resources:
- average use of courts per day increased from 3 hours 45 minutes to 5 hours
 - the number of cases finalised per month increased from 101 to 216
 - the number of cases withdrawn because dockets were not at court decreased from 20 to nil.

Court Process Project: Approach

- 185 The Court Process Project requires changes in the way the courts function and a re-engineering of business processes. In civil cases, automation will cover the whole range of tasks ranging from managing interaction between courts and private attorneys and sheriffs, to registering and managing case documentation, scheduling hearings, recording the results of hearings and issuing notification of the outcome. In criminal cases, automation will facilitate the interaction between the courts and the Police Service, Welfare Offices, Department of Correctional Services and the management of court case files up to adjudication.

- 186 Success may be impeded by the fact that judicial systems are based on tradition and may not be open to innovation. There are many change management issues to deal with in order to change the working culture. Some new court rules and procedures are also needed.
- 187 Ultimately, most documents will be created in digital form. The system will make use of a web-based forms generating application, using XML. Paper exhibits will be scanned, and digitised photographs of non-paper exhibits, such as a gun, will be held in the system. In such cases, the gun will only be produced in court on the day of the trial.
- 188 The pilot is intended to be a 'proof of concept' that will serve as the basis for the tender specification for main project.
- 189 Stakeholders have had an opportunity to discuss the functionality of the system. Road shows have been held so that court staff can discuss issues of concern. To allay fears about technology and job loss, magistrates and staff have been invited to look at the system and make suggestions. Users have also been able to test the system in the development stage, which has enabled programming bugs to be eliminated. This programme has been so successful that the courts have put pressure on the Department of Justice to install the system.
- 190 The project has encountered some unexpected problems. The police have been using a mainframe system for 20 years (the Crime Administration System) and it was assumed that the staff would have basic computer skills. However, the project discovered that many had never used a mouse.
- 191 Budget restrictions have made it impossible to back scan all documents. Furthermore, neither case transcription nor video or digital recording of proceedings are part of the current phase of the project. It is envisaged that sound recordings will continue to be made in magistrate's courts at present. Digital recordings are technically feasible but are regarded as too expensive. However, the Department of Justice expects to introduce digital recordings at some point in the future.
- 192 The long-term vision is not a paperless court system but rather a significant reduction in the quantity of paper over the next ten years. The existing manual system will run in parallel for some time to provide a back-up. Paper documents, such as original wills, will continue to be used by many people. The project also needs to take into account litigants' levels of literacy and computer literacy. Paper records will continue to be kept in dockets or paper files.
- 193 The aim is to establish service centres, for example in Soweto, where people can access the system electronically. These centres could be run as franchises. Users of the services would be able to register, obtain a smart card and be allocated an electronic pigeon hole.

Court Process Pilot Project

- 194 During the case study, SITA and Phambili provided demonstrations of the prototype criminal and civil systems at the SITA laboratory outside Pretoria. The sections that follow describe observations made during the demonstrations.
- 195 The criminal system has been easier to design than the civil system because there are fewer laws and rules determining the processes and because the state is always one of the parties to a case. For civil cases, with the potential for more than two parties and the more numerous processes, the design has proved to be far more complex. The civil system is being piloted in Durban and the criminal system in Johannesburg. Both pilot systems will provide a base line from which improvements and refinements can be made.

Criminal System

- 196 Using the automated criminal system, a public prosecutor, working with a police official, receives a docket two days prior to the date of the hearing and ensures that the docket is ready for trial. A simple data management programme registers cases and captures and manages the case information contained in each docket and charge sheet (name, address, and ID of the accused, the date of arrest and so on). This data can later be changed if any of the information is found to be incorrect. Once a case is prepared and an accused person is charged and committed for trial, the system allocates a case number for use within the Judiciary.
- 197 All first appearances, remands, bail applications and guilty pleas are heard in a Reception Court. This ensures that the other courts deal with trial-ready cases only. Case details are forwarded to the prosecutor who decides whether to proceed with the case, in which case a trial date is set, or to refer the case back to the police for further investigation.
- 198 To provide a reliable means of identifying the accused, the person's photograph and finger prints are also captured by the system in PDF format and linked with the person's identification number (criminals have been known to intimidate others into appearing in court for them). The system also manages the court rolls and tracks the awaiting-trial period of each detained accused person.
- 199 The system is designed to be proactive. The aim is for the first court appearance to take place within 48 hours of case preparation. The system assigns a case to a court, prosecutor and magistrate. It finds an available Reception Court and allocate a time for the accused person's first appearance.
- 200 The case record held in the system is designed as a virtual docket to be added to as the case proceeds. Original documents such as birth certificates can be scanned into the system.
- 201 Magistrates and court officials can view the record via a Case Properties screen. A smart card inserted into the computer is used to identify and authenticate users. The smart card includes a user ID, finger prints and a digital signature.

- 202 As a case proceeds, details are entered in the case record and the information gathered is used to manage the case and court resources and to provide data for management purposes. When the accused makes a first appearance in court, the plea is entered in the system. If the plea was 'not guilty', the system makes a 'booking' for the trial court and the trial is scheduled. The system tracks the status of a case and indicates in the form of colour coding whether a next step or action has been taken. An 'audit trail' is built in and can easily be viewed via a menu option.
- 203 Court Rolls can be called up by the system to inform users of cases to be held and their location (case number, date, court room and magistrate). Management information can be extracted to identify, for example, which cases have been on the court roll for 60 days, 90 days or 6 months.
- 204 The electronic charge sheet (form J15) is in the same format as the paper version. The system generates other e-forms and authorises them by checking the signature on the smart card and performing additional security checks.

Civil System

- 205 As already noted, automating of civil case management has posed challenges because of the complexities of procedures and processes and the many different routes that cases could take. Complexities include multiple defendants, many different claims in one case and cases in which a claimant becomes a defendant. At first, the vendors were unable to accommodate a case in which there were hundreds of defendants in one claim and to produce the required electronic forms.
- 206 The system enables cases to be initiated by the completion of forms. Summonses and warrants can be submitted on line or as e-mail attachments. The system checks the forms for authenticity and completeness. A validation process establishes whether the case is new and should be allocated a case number or whether it is related to an existing case and should be linked to that case record.
- 207 Case details are held in a database which is updated as a case proceeds; data held can be used to populate forms that are generated by the system. Menus provide lists of forms that can be called up by typing in the case number. Documents can be attached to any form and become part of the virtual case folder. Forms are in PDF format.
- 208 Attorneys can use the system to view cases either through the internet, using a networked office computer, or in a service centre managed by court officials. Notes can be added to the system and designated as either 'public' or 'private' (seen only by the immediate user).
- 209 In the future, an attorney will be able to use the system from his/her office to enter a booking in court diaries. Currently, an attorney has to send a clerk to the scheduling clerk of the court to make a booking for a motion court or trial court. In the medium term, the electronic booking system in the courts will have to work in parallel with the old paper system. The case scheduling system has to be flexible without changing the

civil code, taking into account legal and court parameters, such as time limits, or whether the case involves the state or private parties.

- 210 A typical procedure involves calling up the Summons Commencing Action (Ordinary) screen which the attorney or his/her clerk completes with details of the parties and the nature and particulars of the claim. The system performs the initial cost calculations, which can be updated later, and the fees calculated to be collected. The system allocates civil claims according to whether they can be dealt with by a court clerk or by a magistrate.
- 211 When a summons is successfully submitted, it is given a case number¹⁰ and assigned an internally generated check number. A signature is then applied electronically. The summons can be viewed on the screen with the Justice logo and data and time stamp added.
- 212 Following ‘registration’, a sheriff is sent an instruction to serve the document on the defendant. The sheriff can either download the document directly from the system or the attorney can mail it to the sheriff. As in the manual system, the defendant has five days after service of the summons (and sheriff’s confirmation of service, which can be done electronically) in which to respond and admit guilt or defend. If the time limit has lapsed without a response, the plaintiff can ask for a default judgment.
- 213 The Request for Default Judgment form is a feature of the system that should speed up the civil process. If a judgment is successful, a request can be made for an automatic warrant which the system generates and sends to the attorney. The attorney checks and signs the warrant and sends it back to the Clerk of the Court to be executed by the sheriff. In the existing manual system, this process takes about 40 days but the aim is to reduce this time to four days.
- 214 A case can be ‘pending’ to await advice, but the case remains allocated and will be tracked by the system so that it cannot be overlooked or forgotten.
- 215 The civil system has the potential to help people in remote areas who can not easily visit big cities, as long as there is local internet access. The system also helps to control case flow. Management statistics can be compiled to, for example, monitor the speed with which clerks deal with cases.

ROLE OF THE NATIONAL ARCHIVES AND RECORDS SERVICE

- 216 The National Archives (NARS) was established in 1919, with responsibility for the archives of the whole country.
- 217 The National Archives of South Africa Act (1996) sought to give greater clarity to the Archive’s role and to strengthen the management of public records from creation to disposal. For example, the Act charges the National Archives with ‘the proper management and care of public records in the custody of governmental bodies’. A

¹⁰ A typical case number is 893-2002-JHB, where the first element is a serial number, the second the year in which the case is initiated and the letter element is the district in which the case is heard.

public record is defined as ‘a record created or received by a governmental body in pursuance of its activities’, and a governmental body as ‘any legislative, executive, judicial or administrative organ of state (including a statutory body) at the national level of government’.

- 218 Though the 1996 Constitution scheduled ‘archives’ as a provincial competency, the National Archives is required to set the broad framework and standards for archives and records management, leaving the nine provinces to draft their own archives legislation within the framework. Provincial archives are intended to be autonomous bodies. The aim is that, by 2003, the remaining provincial offices of the National Archives will have become provincial archives. However, some provinces may have less capacity or infrastructure to manage their records effectively than others. Therefore, a key objective is to build provincial capacity to manage the records of government in both paper and electronic form.
- 219 Despite the devolution of archival functions to the provinces, the National Archives Act places a huge responsibility on the National Archives of South Africa, given the level of its resources. The Records Management Division has only ten professional staff, serving not only central government, but provinces that still lack a complex archives infrastructure. With statutory powers to oversee record keeping systems in all government bodies, including the Judiciary, the National Archives must in theory approve all file classification schemes prior to implementation. The purpose of this oversight is not only to control the organisation of records from their creation, but also to enable more systematic and coordinated decisions to be made about disposal when the records have served their business purposes.
- 220 There needs to be agreement between the National Archives and provincial archives about the responsibility for court records. For practical and cultural reasons, court records should be kept in the province in which they were created. Some court records are already kept in provincial archives.
- 221 New legislation is planned to govern electronic evidence and documents. The issue of electronic records is discussed in more detail below.

Training by the National Archives

- 222 The National Archives offers a four day course for records managers in client offices (central government, provincial offices, local authorities, statutory bodies). These courses are held once a month and are fully booked for six months. The National Archives is also considering options for delivering appropriate training to registry clerks.
- 223 The National Archives is considering a programme of training to build capacity in records management at the provincial level.

E-GOVERNMENT AND ELECTRONIC RECORDS MANAGEMENT

- 224 E-government objectives are based on four key pillars. These are intended to:
- leverage economies of scale to procure IT hardware and software in a coordinated manner and to avoid exploitation by IT vendors
 - foster inter-operable government systems and avoid unnecessary vendor lock-in
 - promote e-government security to foster citizens' confidentiality and privacy on information in government systems
 - eliminate unnecessary duplication to make best use of valuable resources and eliminate inconvenience to the citizen.
- 225 The State Information Technology Agency (SITA) was founded under the provisions of the State Information Technology Act (1998) to provide a cost-effective range of IT and e-government services to government departments. The agency was formed from the IT divisions of the Defence Force, Police and Security Organisation, an independent statutory body under the Ministry of Public Service and Administration.
- 226 The National Archives, like other government ministries and bodies, has a service level agreement with the agency. SITA determines IT policies and holds procurement power for the whole of the government. All products must meet interoperability standards as determined by SITA. The agency manages IT assets in its client offices and pays for staff and maintenance of equipment and systems. Routine system problems are required to be dealt with by SITA technicians within four hours on a call out basis. More serious problems, such as a server crash, are dealt with immediately.
- 227 IT functions that were part of government bodies are now largely subsumed by SITA. For example, the IT officer who was formerly a member of staff of the National Archives is now employed by SITA and is based in the SITA building outside Pretoria. The Information and Systems Management (ISM) section of the Department of Justice that previously provided IT skills and support as a function of corporate services has become a management, as opposed to technical, unit. The laboratory for the Court Process Project (see paras 169 to 215) is located in the SITA building where it is used for training and demonstration purposes.

Electronic Records Management Strategy: Role of National Archives

- 228 IT specialists do not always recognise that protecting and preserving electronic records over time is a records management function. The challenge for the National Archives is to raise awareness of the need to apply records management principles to electronic records and to position itself to provide advice and guidance on electronic records and information management.

- 229 The National Archives has established a list of electronic document management system (EDMS) products that meet archival and records management standards (based on United States Department of Defence specifications). Five qualifying products have been identified¹¹.
- 230 The National Archives has begun a pilot project to introduce an electronic records management programme, using an electronic document and records management (EDRM) system called Cyberdocs. A functional/user needs specification is about to be finalised. The intention is to introduce the system internally to manage e-records, and to build the capacity of Archives staff to understand and recommend strategies and courses of action to client departments for dealing with e-records. The parent department of the National Archives has purchased a licence for the product. Testing is to be carried out in conjunction with the vendor.
- 231 The aim is to begin using the system in October 2002. Staff who already have computer skills are due to receive intensive training so that they can pass on expertise to others in the organisation. Document management requirements (including a file plan) are still being analysed. The objective is to be able to save documents immediately into the file plan. The National Archives intends to explore the possibility of a partnership with a public or private body to provide skills and service for long-term digital preservation. SITA tendering and procurement processes will apply.

RECORDS AND INFORMATION MANAGEMENT: KEY ISSUES

- 232 The National Archives needs to reach agreement with provincial archives about the responsibility for court records. For practical and cultural reasons, it is preferable that court records should be kept in the province in which they were created. However, some provincial archives do not yet have the resources or facilities to fulfil this function. Currently, court records are in paper form, but in future they will increasingly be digital. A sensible policy is needed to ensure that records of permanent value to the nation are preserved.
- 233 These are concerns about the security and availability of records in the courts. Dockets are not made available by the police on time, leading to the postponement of cases. Investigating officers have been known to remove the comments of other officers from dockets. Missing documents and case records are common in remanded cases. Prosecutors take case records home to work on them outside office hours. These concerns indicate a lack of physical and intellectual control. Systems are needed to ensure that records are secure and available when needed.
- 234 The National Archives needs to position itself so that it can provide advice and guidance on electronic records management. It has already made a commendable beginning by establishing a list of electronic document management system (EDMS) products that meet international standards for archives and records management:

¹¹ Documentum, the electronic document management system chosen for the Court Process Project is not an electronic records management product; it will require customisation to meet RM requirements as stated in the Archives Instructions and *the Guide to the Management of Electronic Records in Governmental Bodies*.

Guide to the Management of Electronic Records in Government Bodies. However, the Archives must have the resources and the authority to ensure that its recommendations are understood, accepted and followed.

- 235 There is a danger of over-centralisation of IT support if SITA provides a national service to many thousands of clients offices. SITA has set high service standards that may be very difficult to achieve. A basic level of self-sufficiency would make a real difference in that systems could be largely maintained by the offices that use them.
- 236 Questions have been raised as to whether all magistrate's court cases can be routinely destroyed, whether any are of permanent value and whether certain types of cases can be automatically destroyed at the end of their retention period. The National Archives need to work with the Department of Justice, in consultation with all stakeholders, to update retention and disposal schedules for court records, based on a realistic assessment of users' needs, present and future, and the resources and costs involved in selecting records and preserving them permanently as archives. When retention and disposal instructions have been agreed, the Department of Justice needs to ensure that they are implemented. While some disposal practices seem to work well, for example in the Criminal Cases Record Room in Pretoria, in other areas there is evidence that destruction is not being carried out when records have reached the end of their retention period, for example, maintenance case files.
- 237 There are other issues in relation to the retention and disposal of electronic records. Migration strategies need to be defined for non-current or inactive records with long retention periods. Decisions about whether they will be held off-line or migrated to other storage media need to be resolved at the start of automation projects, not at a future date when it may already be too late to preserve essential records.
- 238 All disposal must be authorised by the National Archives, but it is not clear how this will work in practice. It may be that authorisation will be granted automatically at scheduled intervals with the explicit consent of the Archives or that consent must be obtained when records have reached the end of their retention period and are ready to be destroyed. There needs to be clarity about when records that have permanent or enduring value will be transferred to the Archives. Measures need to be put in place to ensure that the media and format of the records meet the standards of the National Archives.
- 239 Day-to-day guidance on the management of court records is provided in codified instructions, issued by the Department of Justice and made available to court staff. These instructions contain outdated information and guidance, and it is important that they should be reviewed and updated regularly. Substantial changes and additions will need to be made to take account of the automation of record keeping systems.
- 240 The Case Process Project has been successful in involving stakeholders and users in discussions about the functionality of the system. Road shows, discussions and opportunities for testing have helped to allay fears, increase ownership and provide a good chance of successful implementation.

- 241 Increasingly, information about cases will be held in electronic form. The objectives are to capture actions and processes digitally and provide the evidentiary record of those actions and processes in electronic form. Safeguards are needed to preserve the reliability, security and accessibility of electronic data over time. Systems need to be in place to ensure that electronic records survive intact, and that vital data that surrounds the records (the metadata that gives them context and preserves their content and format) is also captured and preserved. It is this data that validates the record. Without it, the accuracy, integrity, authenticity, reliability and accessibility of records held in the CPP cannot be maintained.
- 242 The National Archives is the appropriate body to set metadata standards for records. A concern is that Documentum, the document management system chosen for the Court Process Project, is not regarded as an electronic records management product and does not have a robust records management functionality. It will need to be customised to incorporate security and access requirements, as well as the necessary retention and disposition scheduling. Again, the National Archives is the appropriate body to ensure that electronic systems meet records management requirements, as stated in the *Guide to the Management of Electronic Records in Government Bodies*.
- 243 It is necessary to preserve the integrity of legacy information and records that are migrated to the new systems if the records are to provide reliable evidence of decisions and actions. Checks need to be in place to ensure that legacy data is migrated intact and essentially unaltered. Data that is entered from manual systems must also be checked and validated for accuracy and completeness.
- 244 Consideration is being given to scanning documents and paper files into the system. Decisions need to be taken about which documents should be scanned, how they will be described and whether the digital version will supersede the paper as the 'original' or authentic copy. If retrospective scanning is to be undertaken, a cost-benefit analysis will be needed to ensure that this is an economically feasible option.
- 245 As the National Archives develops its own expertise, it will be in a stronger position to issue policies and standards for electronic records management, to influence practices through its leadership and to provide training. However, the impact of the National Archives will be limited by the small number of trained and knowledgeable staff.

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ACCESS TO INFORMATION

The Promotion of Access to Information Act (2000) is being implemented in stages. The Act covers access to records of public and private bodies. Sections 10, 14, 16 and 51 of the Act came into operation on 15 February 2002.

Section 10 requires that the Human Rights Commission must, within 18 months of the commencement of Section 10, compile A GUIDE in each official language, FOR people wanting to exercise their rights under the Act.

Section 14 requires that within six months of the commencement of this section, or the coming into existence of a public body, the 'information officer' of the body concerned must compile, in at least three official languages, a manual containing, among other details, a description of its structure and functions, contact details sufficient to facilitate a request for a record of the body and a description of the services available.

Section 16 requires the national department responsible for government communications and information services to publish contact details of the information officers of every public body.

Section 51 requires that private bodies must, within six months after the commencement of this section, or the coming into existence of a private body, compile a manual containing, for example, contact details, a description of its records and sufficient information to facilitate a request for access to a record of the body.

Regulations regarding the promotion of access to information were published in the Government Gazette on 15 February 2002. These make provisions for the publication and availability of the guide to be compiled by the Human Rights Commission, referred to in Section 10 of the Act, and for the availability of the manuals for public bodies and private bodies, referred to in Sections 14 and 16 respectively. The regulations also specify the fees for reproduction of records, guidance on the forms to be used for requests for access and guidance in relation to appeals against decisions concerning access.