

7. CONCLUSION:

This report has attempted to find solutions to the criminal court crisis, in ways which are both practical and tried and tested in legal systems internationally.

Achieving optimal use of the hours available each day is a **long-term goal** involving the co-ordination and efficiency of a great number of individuals and departments involved in the court system. Experience has shown that the creation of **extra judge days**, however, makes for dramatic results in the short-term¹.

The improvement of productivity in the High Court can be done in such a way that the existing rights and benefits of our judges are not interfered with. Measures such as the staggering of judges' vacations, for instance, do not take away an existing privilege; indeed, some judges may even welcome the new flexibility it brings.

In essence, there are 3 models whereby the recess system can be altered in order to enhance the productivity in the High Court on a cost effective basis:

1. The **staggering** of the recesses (excluding the summer recess) **without adding additional judges.**
2. The **staggering** of recesses, together with **the appointment of additional judges, allocated exclusively to the criminal pool**, which would improve productivity substantially, as well as having the benefits of the first solution.
3. The **staggering** of recesses **with a new tier of criminal judges**

¹ Through the creation of additional courts on Saturdays and other days. *Vide* footnote 95 *supra*.

who would only have a recess of **7 weeks a year and no extended leave** and who would do criminal trials exclusively, would have a dramatic impact on productivity and be extremely cost effective. Although this is the most optimum scenario, such a bench would have to be built up slowly by appointing such judges as vacancies occur from time to time in the High Court.

In 1970, such a system was introduced in the United Kingdom in order to achieve better productivity, to great effect. In the Crown Court system, which sits continuously throughout the year, "senior" and "junior" judges co-exist without any problems.

There is ample common ground for a solution which could be in the interests of both the community and the judiciary, and in line with the Constitution.

Finally, during the course of this study, which included both a historical survey of the position in South Africa as also an international survey of other countries, it became abundantly clear that there is simply no place for a **recess** in the **criminal justice system** of South Africa: the question is no longer *whether* it should go, but **how**, and, more importantly, **how soon**.

Elsewhere, where the need has arisen, other countries have altered their recess system accordingly.

There is no reason why South Africa should not follow suit. As stated by the Minister of Justice, Mr Penuell Maduna:

"Law, as we all know and should appreciate, is not a static concept. The justice system, in the interests of its own long-

term survival, must respond dynamically to the changing needs of the society that it serves. Legal reform is ordinarily a complex process and, if anything, this is more so in South Africa where the historical imperative for change has heightened the challenges facing those of us who are charged with the task of progressively transforming our justice system.”

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