

# Who should run the courts?

 By [Nicci Botha](#)

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Lady Justice is supposed to be blind, but the wheels of justice still need to turn smoothly and she still needs to pay the bills.



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So how do we balance the autonomy of the courts with the cost of running them? This was the question raised at a recent round table discussion, organised by the Catholic Parliamentary Liaison Office and the Hanns Seidel Foundation, held in Cape Town.

## Progress and procrastination

Essentially the quest is to define some sort of governance autonomy for the court system that is in line with the Constitution.

But even though South Africa has been blessed with forward-thinking chief justices since the fall of Apartheid, the process has been characterised by periods of progress and procrastination, says Professor Richard Kelland, Director: Democratic Governance and Rights Unit, University of Cape Town.

During the Apartheid era, South Africa used the Westminster system where justice administration was a unit within the Department of Justice.

Then, in 1996, the Constitution reinforced judicial independence from the State, and the Chief Justice was given increased powers and range of authority.

Section 1 of the Constitutional Amendment Act 17 of 2012 says: "The Chief Justice is the head of the judiciary and exercises responsibility over the establishment of norms and standards for the exercise of the judicial functions of all courts."

## **Subtle difference**

"However there's a subtle difference between governance and administration. When Chief Justice Sandile Ngcobo was appointed in 2009, an agreement was made with the Minister of Justice to establish the Office of the Chief Justice as a separate government department by Presidential Proclamation," says Kelland.

## **The Ngcobo Proposal**

Kelland was among the experts tasked with researching which model would work best for South Africa. And the proposal that was made was that the running of the courts be separated into two independent bodies:

- Court Administration Authority - responsible for the day-to-day operations of the judicial system such as determining pay grades, drawing up the court roll and assigning cases.
- Independent Judicial Council and Courts Advisory - responsible for the governance of the courts.

After another short period of procrastination, the current Chief Justice, Mogoeng Mogoeng, has taken up the reins again. But budget and how to fund such bodies remains the pivotal issue, he explains.

## **The view from the top**

However, John Jeffery, Deputy Minister for Justice and Constitutional Development, says that being a government department, the Office of the Chief Justice has to stand in line for budgetary dispensation just like any other body.

"Money bills can only come from the Treasury and there's only one cake. The argument that departments can take their budgets straight to Parliament is a bit of a misnomer," he explains.

## **Who faces the music?**

He says that from the department's point of view, the key issue is accountability. "Our concerns about a shared model is who is answerable and to whom?"

There are already complaints mechanisms in place for the higher courts and the plan is to roll these out to the lower courts.

"We are making a push to re-establish specialist courts, such those to hear sexual offences at regional level. The problem is many jurists don't want to serve on specialised courts as they feel being constantly exposed to a specific type of crime can be traumatic for them," Jeffrey says.

Also there is often public opinion as to the outcome of cases - think Oscar Pistorius. "It is appropriate for the judiciary not to be answerable to the people," he concludes.

Nicci Botha has been wordsmithing for more than 20 years, covering just about every subject under the sun and then some. She's strung together words on sustainable development, maritime matters, mining, marketing, medical, lifestyle... and that elixir of life - chocolate. Nicci has worked for local and international media houses including Primedia, Caxton, Lloyd's and Reuters. Her new passion is digital media.

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