When the Family Court Pilot Project (FCPP) was born during 1998-1999, there was much excitement that finally family law disputes were being given the attention they deserved, recognizing that the family was a fundamental unit of our society.

The project was founded on a vision to provide specialized protection to the family; offering accessible services that are sensitive to the needs of the community; and operating according to simple and appropriate procedures, applying ADR (Alternative Dispute Resolution) and a therapeutic approach to disputes in a user-friendly environment. That it was introduced as a pilot indicated that it was a test, to learn and to improve.

Benefits and innovations
The FCPP introduced the Divorce Court in the Magistrates’ Court at Regional level. Despite the belief that the Family Court at this level would not enjoy a positive public image or the confidence of the public (Hoexter Commission), they are used extensively by all racial groups and have led to a reduction of the Divorce Court roll in the High Court. Their success contributed to realizing the aims of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) since women do not have to remain in marriages that do not work simply because they cannot afford a divorce. These courts are truly accessible.

All family related matters were placed under one roof and some courts also included administration of estates and breach of the peace orders. The pilot projects were set up with few resources. They used what already existed in terms of space and staffing, with a top-up budget from National Office. Despite these constraints, some projects became creative and innovative. Durban introduced a reception area to direct the public (not for screening), as well as a Penalty Court to deal with the criminal aspects of family law disputes. Cape Town introduced a support desk for divorces, run by non-legal volunteers and Johannesburg introduced a creche, ad hoc mediation and the Presiding Officer established a relationship with traditional leaders.

Inefficiencies/malformation
The pilot projects have inefficiencies such as fragmentation, insufficient protection of the family, non-specialized assistance, multi-forum appearances, staffing and spatial needs.

The integration of Family Court service delivery has been frustrated by a fragmented legislative framework, with different Acts underpinning the various areas of family court work. In spite of this obstacle, there is a great deal more integration in service delivery that can be achieved in the interim without overarching legislative reform. Minor legislative amendments have been proposed to provide the Family Advocate with the power to deal with all family related matters as well as to address the problem of acting appointments of Presiding Officers of the Divorce Court. The interim model provides for a reception area which is the first point of contact between court users and the Family Court. It will schedule the court user for attention by an appropriate staff member and a preliminary screening to ascertain the nature of the problem and initial data capturing to track records of all matters that any individual has in the Family Court, to alleviate multi fora appearances. With an automated case flow management system this will be done at a click of a button.

The court user will then be referred to the Rights Education component to inform him/her of his rights and obligations, remedies available and procedural requirements, since the majority of court users are not very literate. Then the court user is referred to the ADR component for mediation by Family Court staff or accredited service providers. Where it is not possible to mediate, the court user is referred to court for adjudication, as well as to non-legal support services such as counseling and offender rehabilitation programmes. These referrals take place at reception stage voluntarily or the court may order them.

Now it is up to the implementers to make a success of the Blueprint, otherwise it will not be worth the paper it is written on.

STRENGTHENING THE FAMILY COURTS IN SOUTH AFRICA - REFORMING THE MALFORMED?

Raesibe Tladi
Family Court Task Team Chairperson

To quote Sandra Burman, Emma Dingle and Nichola Glasser ‘It is far from clear exactly what has come into existence, whether it is permanently or only temporarily malformed and what its future is. What is obvious is that it is not as it was intended to be by its progenitors.’

It is the Department and Family Court Task Team’s view that such inefficiencies should not become permanent and that Family Courts do have a future. Thus, together with Chaskalson & De Jong Consultancy a strategic framework for family courts – the Blueprint – was developed to address these inefficiencies and strengthen the existing pilots into a working model to be rolled out to other provinces. It is also to be used to inform overarching legislation for the Family Courts, which is a long-term goal.

The blueprint
The nine interim policy principles governing the courts are that they should:
1. Deal exclusively with comprehensive service delivery in maintenance, domestic violence, children’s court and divorce.
2. Provide services in an integrated manner.
3. Provide users with relevant substantive rights education services.
4. Provide users with substantive legal advice and assisted form completion.
5. Where appropriate, embrace the use of alternative dispute resolution and build this service directly into workflows.
6. Be staffed and supported by appropriately skilled people who will receive specifically developed training in order to enable them to perform their functions.
7. Operate in terms of their specific designated budget and move towards performance-based budgeting.
8. Operate within clear management and reporting lines.
9. Be subject to on-going monitoring and evaluation that is uniform in nature.

The blueprint will form their functions.

The nine interim policy principles governing the courts are that they should:
1. Deal exclusively with comprehensive service delivery in maintenance, domestic violence, children’s court and divorce.
2. Provide services in an integrated manner.
3. Provide users with relevant substantive rights education services.
4. Provide users with substantive legal advice and assisted form completion.
5. Where appropriate, embrace the use of alternative dispute resolution and build this service directly into workflows.
6. Be staffed and supported by appropriately skilled people who will receive specifically developed training in order to enable them to perform their functions.
7. Operate in terms of their specific designated budget and move towards performance-based budgeting.
8. Operate within clear management and reporting lines.
9. Be subject to on-going monitoring and evaluation that is uniform in nature.

The integration of Family Court service delivery has been frustrated by a fragmented legislative framework, with different Acts underpinning the various areas of family court work. In spite of this obstacle, there is a great deal more integration in service delivery that can be achieved in the interim without overarching legislative reform. Minor legislative amendments have been proposed to provide the Family Advocate with the power to deal with all family related matters as well as to address the problem of acting appointments of Presiding Officers of the Divorce Court.

The interim model provides for a reception area which is the first point of contact between court users and the Family Court. It will schedule the court user for attention by an appropriate staff member and a preliminary screening to ascertain the nature of the problem and initial data capturing to track records of all matters that any individual has in the Family Court, to alleviate multi fora appearances. With an automated case flow management system this will be done at a click of a button.

The court user will then be referred to the Rights Education component to inform him/her of his rights and obligations, remedies available and procedural requirements, since the majority of court users are not very literate. Then the court user is referred to the ADR component for mediation by Family Court staff or accredited service providers. Where it is not possible to mediate, the court user is referred to court for adjudication, as well as to non-legal support services such as counseling and offender rehabilitation programmes. These referrals take place at reception stage voluntarily or the court may order them.

Now it is up to the implementers to make a success of the Blueprint, otherwise it will not be worth the paper it is written on.