

PMS in the magistrates courts of Botswana: The unintended consequences of public service change

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This paper explores the implementation of public sector performance reforms in Botswana magistrate courts to improve service delivery. The authors argue that it is imperative for management to consider the possibility of the unintended outcomes in public sector reforms something that is normally ignored when introducing change. Critical realist philosophy has been adopted as a guiding paradigm for this study. The main contention is that the social world exists independently of the researcher. In this study realist philosophy was used together with the case study methodology to give context. In the courts performance management was supposed to help improve service delivery by reducing court congestion, legal costs, and delays. However, the findings suggest that this has not been the case because of gaming and manipulation of performance measures. A principal constraint in writing this paper was the absence of relevant literature in Botswana. Data was sourced from one organisation used as a case study. Problems like the backlogs of cases and delays affect both the fairness and efficiency of the judicial system. Efficiency has to take account of other factors. Developing performance management systems that incorporate measurement and evaluation in the public sector continues to be a key challenge. Both the positive and negative effects of PMS must be embraced.

Key words: New Public Management (NPM), public sector reforms, gaming, manipulation, dysfunctionality, unintended outcomes of public reforms.

INTRODUCTION

There has been a significant increase in the use of performance-management systems in the public sector internationally (Bouckaert and van Dooren, 2003). These systems are widely implemented, but also criticized (De Bruijn, 2002; Bouckaert and Peters, 2002; Holzer and Yang, 2004.) Managing and measuring performance has also been one of the key drivers in the reform of the public sector. Gianakis (2002) termed this development as one of the central planks of the "reinventing government" movement. For many nations, performance measurement is an important tool for increasing public accountability (Alam, 2009). It is seen as some kind of performance barometer that may provide data on how effectively and efficiently public services are delivered (Buscaglia and Maria, 1996). As a result performance measurement has fostered a move towards a contract

culture, government officers are now required to sign performance agreements with supervisors committing themselves to deliver specific output (Alam et al., 2010). Performance Management concept is based on the principle that subordinate bodies should be controlled through contractual arrangements which are then linked to strategic goals (Goddard and Powell, 1994).

Over the years the government of Botswana has launched a number of reforms in the public service as a drive to enhance productivity (Hope, 1997; Ayeni, 2001). These reforms were designed and formulated to fundamentally change the thinking and practice of public sector management by introducing new management initiatives. One such management reform currently being implemented by the government in the entire public sector, ranging from all government ministries and departments is the performance management system (PMS) (Marobela, 2007). The judiciary as one of the crucial arms of governance is consequently involved in the implementation of PMS. In the execution of its duties the judiciary in Botswana is divided into the Court of Appeal, the High Court,

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the Magistrates Courts and the Customary Courts. The focus of the research is centred on the performance measurement system that has been implemented in the magisterial level of the judiciary.

The Nation's Vision 2016 plan document, which is seen as a roadmap for the country's development to the year 2016 (Republic of Botswana, 2002), directs that Botswana will be a crime-free society with zero tolerance for criminal activities in 2016 (www.vision2016.co.bw). The letter and spirit of the Vision dictates that the judiciary should deliver justice for all (Brookings Institution, 1990) without fear or favour, affection or ill will and within a reasonable time. In line with this objective the Administration of Justice (AOJ) developed a ten-year Strategic Plan for the period 2001 to 2010. (Administration of Justice Strategic Plan 2001 - 2010).

The Plan stipulates that the primary objective for the Magistrates Courts is the resolution of disputes in a just, peaceful and timely manner. To achieve this, the AOJ has published and set the following mission:

1. To develop, maintain and sustain efficient and effective judicial system that dispenses justice fairly, impartially and expeditiously.
2. To uphold human rights, democracy and the rule of law in accordance with the Constitution of Botswana. Botswana Daily News 13th February 2007 (www.mcst.gov.bw/dailynews).

In terms of the Strategic Plan the AOJ has resolved that the magisterial bench should be a dispute resolution mechanism that is, accountable and responsible branch of the judiciary. The plan is rightly concerned about equity but mistaken in suggesting that the delivery of justice is measurable. Measurement has therefore become one of the core values of the AOJ in the provision of its service. The strategic plan has set the minimum standards of performance that must be expected in the Magistrates Courts of Botswana. Various performance management systems for example Performance Appraisal, Performance Based Reward System (PBRS) and Balanced Scorecard have consequently been introduced for the Magistrates Courts as part of a drive to enhance the productivity. Here remuneration is measured against work output, which is also assessed through measurable goals and plans, commonly referred to as "milestones" by government officials.

The research examines the unintended results of the implementation of these reforms and the impact of the change in the Magistrates Courts of Botswana. The study further reviews the extent to which such change shape workplace behaviour. One important but often brushed aside dimension of public sector management is gaming or playing the performance game. That is, a form of resistance used by employees to circumvent control when they fear that the management practices that come with change are more likely to affect them negatively when they don't meet the set standards. For example, claiming to have achieved certain targets by giving data

depicting a rosy picture in terms of the results of the reforms. Hence the purpose of the research is to investigate the unintended outcomes of the measurement system within the Courts in Botswana.

In the process the paper will evaluate whether the interventions introduced are able to adequately measure the performance of the magisterial bench. In this vein the research assesses whether the performance measurement systems facilitate increased productivity in the Magistrates Courts system being the target to be cured by the reforms. However, first, the study locates performance management within the framework of the new discourse of management, the new public management (Marobela 2008).

METHODOLOGY

Contemporary management research now acknowledges the centrality of philosophy (Ackroyd and Fleetwood, 2000). Accordingly, Amaratunga and Baldry (2001) caution that ignoring philosophical issues can compromise the quality of research because philosophy helps in methodological clarity and the research design. Hence any methodology must be embedded in a given philosophical standpoint that projects the worldview of the researcher. In this respect, the study has adopted critical realist philosophy as a guiding paradigm for the case study. A realist perspective is based on the work of philosopher Roy Bhaskar (1978). Bhaskar's main contention is that the social world exists independent of the researcher. This outlook is outlined by Wikgren (2005) who posits that:

A distinctive feature of a realist philosophy is that ontology (the theory of being, which has strong implications for the conceptions of reality) is seen as distinct from epistemology (the theory of knowledge), which means that scientific theorising is based on the assumption that there exists a mind-independent reality ...

This differentiation between the being and knowledge of the being is crucial to a core theory of realism called stratification. A stratified reality acknowledges that there is need to go beyond the surface which is experienced through observation of the events. Hence, the importance for the researcher to penetrate deeper in order to understand the connections and explain the generative mechanism behind observed phenomena Sayer (2000). In this study a realist framework was opened to the role played by the different agents and structures in facilitating or constraining implementation of performance management system in the magisterial bench of Botswana. During data collection and analysis the interaction with respondents helped to understand the complexity of planned change from above and also how the unintended outcomes not easily observed by management can work to frustrate targets using mechanisms and relations at different levels.

The Case study has been found suitable for researching government as a holistic unit (Al-Arkoubi and McCourt, 2004). In terms of relation to philosophy case study is suitable to realism because they are both interested in context. In this case, the study focus not only one government department but on explaining the relationship of the unit with overall structure of governance and global management practices. For this study, case research is not used in order to draw generalisation. Rather the focus is on using case study to learn the distinctive features of implementing performance management system in the magistrates' courts of Botswana. Input was received from personnel who were involved in the performance management system in the AOJ. Assessments of past and present programs were studied to ascertain reasons for failure or success.

A principal constraint in writing this paper was the absence of

relevant literature in Botswana. However, this research seeks to clarify or expand on the literature relating to public sector performances management.

The doctrine of new public management

New Public Management (NPM) assumes different meanings to different people. However, it is widely viewed as a performance management reform concept increasingly applied in the public sector to promote productivity through work measurement. It is also linked to the neoliberal ideology for instance to privatisation of public services. As Common (1998) puts it, "privatisation and NPM often appear to go hand in hand as policy options". One of the main doctrines of NPM is managerial discretion combined with transparent targets and ex-post control by result or performance (Hood, 1991). Setting targets, evaluating output information and applying rewards and sanctions represents a specific type of regulatory system.

Performance management allows a lot of autonomy and flexibility in the use of allocated resources and in choosing the means and measures. However, the price public bodies have to pay for their increased freedom is to accept a more rigid performance-management system, which includes performance indicators, performance monitoring and performance assessment as also suggested by (Alam et al., 2010). The system is thus a mixed one that prescribes both centralization and decentralization, and it is an empirical question in which direction it will tip in practice. NPM can therefore, be defined as a set of particular management approaches and techniques, borrowed mainly from the private sector for profit and applied in the public sector (Hood, 1991). It is sometimes perceived as an ideology based on the belief in the efficacy of markets and competition, and in the business like management ideas and practices (Marobela, 2008; Krawchuk and Schack, 1996).

In 1992 the publication of the book "Reinventing Government" by Osborne and Gaebler presented an overview of a number of strategies that were designed to improve the performance of public organisations. Osborne and Gaebler in their book advanced the cause of NPM very strongly making reference to 'the rise of entrepreneurial government' in the USA and claimed that 'a similar process is under way throughout the developed world, and that it was inevitable'. Public Services have consequently come under increasing pressure to improve their efficiency and effectiveness, reduce their demands on taxpayers, but maintain the volume and quality of services supplied to the public. In the drive to achieve these goals the result has been that public service organisations have been subjected to the introduction of various management techniques. Hood (1991) argues that NPM in general represents the marriage of "administrative reform" with 'business type managerialism'.

Many nations are now spending more attention, time and money on performance measurement and evaluation in the public sector more than ever before (Pollitt and Bouchaert, 2004; Alam and Hoque, 2010). Botswana is no exception to the trend. Locally evidence of the NPM regime is shown by the number of reforms the government of Botswana has launched in the public service to enhance productivity (Hope, 1997). According to Ayeni, (2001) Botswana has always implemented public sector reforms in response to new changes. Some of the reforms identified by Ayeni include:

1. Decentralisation
2. Commercialisation and Privatisation
3. Work Improvement Teams
4. Computerised Personnel Information System
5. Business Process Engineering
6. Organisation and Methods Review
7. Human Resource Management System

The new human resource management system being implemented by government is a departure from the old human resource practices which revolved around recruitment, training and compensation. The primary objective of the new human resource management reforms is performance management. Specifically, the concept of strategic human resource management (SRHM) is used to drive the organisational strategy. This is achieved by linking two components of strategic management, strategic planning and strategic execution (Goetsch and Davis, 1994). Thus drawing the relationship between overall organisational goals (vision), for example in a government ministry or a department with monitoring of individual performance goals as suggested by Alam (2009). Such measures are then defined in terms of targets or "Key performance areas" to use public sector terminology. These are then aligned to rewards, hence the performance related pay. Ultimately the link is drawn between individual appraisal and the service quality of the organisation and the basis is customer satisfaction.

What is performance measurement in NPM?

Performance measurement and management is a component of the NPM though it has a long history in public administration and its focus has changed over time (Bouckaert and van Dooren, 2003; Sundström, 2004). The main hypothesis of this concept is that performance management will enhance efficiency and improve performance without having a negative effect on other goals and values (Pollitt et al., 2004). A basic feature of performance management is the assumption that a distinction can be drawn between a politically dominated goal-formulation process and a technical/administrative implementation process involving considerable freedom for the agency in question to select appropriate means.

According to Amaratunga, and Baldry (2001) measurement is a key element of performance. To demonstrate this they quote common adages associated with managerial attempt to put a measurement stick to performance, for instance, they cite "you can't manage what you cannot measure" The problem in measuring is that invariably they tend to impose control in work organisation. Unfortunately this presents more problems than it offers a solution. For as Goddard and Powell (1994) have found, "such functionalist approaches to organizational control impose a priori assumptions of what should be measured to achieve control. Control in practice, therefore, is defined in terms of the perspectives of those who design the control systems". Researchers have found that such gaming strategies have been adopted to effectively frustrate management in varied ways. For example Gbadamosi et al. (2004) have termed such false performers the "charlatans". Cullen and Reback (2002) appropriately termed this conduct as "tinkering towards accolades". These unintended consequences of implementing change are assessed as they affect employee commitment to the organisation, an important factor behind organisational performance. For example, the managerialization of the public sector includes processes by which an occupational group claims to be the possessor of a distinctive and valuable sort of expertise, and uses that expertise as the basis for acquiring organisational and social power. They also indicate ways in which topics of public and political concern become colonised owned, even by popular types of knowledge in ways that organise power relations (Clarke et al., 2000) (McLaughlin et al., 2002).

In addition, Performance Management is however, a rather cumbersome technique that is likely to be complex to implement (Pollitt and Bouckaert, 2004). In the study view, change does not take a linear route involving a series of logical steps. As Pollitt asserts implementation is problematic because a change process is not only political but a subjective process. For example, who decides the measurement standard and how a legal outcome that involves different stakeholders can be measured from the output of one

participant. In the end performance management and individual assessment have wider implications for organisational performance. Issues such as morale, motivation, job security and commitment which are normally affected by changes in management practices deserve consideration in order to assess the general impact of any reform.

It has been acknowledged that only recently has the academic community begun to direct their assessment on whether the reformers' claims for improvement were credible and convincing (Pollitt, 1995; McLaughlin et al., 2002). More recently there has been a more substantial volume of the academic writing that has begun to explore and evaluate the seeming consequences of NPM (Pollitt, 2002). The purpose of this paper is to add to that body with special reference to environment in Botswana.

Special features of the public sector

The advent of NPM has created a lot of debate and research on the virtues of performance management in the public sector. This has led the concept of NPM to be subjected to a lot of academic rigour. For example Adcroft and Willis (2005) focused on the empirical evidence on the use and usefulness of performance measures in the public sector and in particular the health and educational systems in the United Kingdom.

The study noted that one of the recurring themes of NPM as both practice and theory is the importation of practices into the public sector from the private sector. Research has noted a number of special features of the public sector that make the use of performance measures complex.

Dixit (2002) stresses two peculiar features of the public sector that distinguish it from the private sector.

The special features noted by Dixit (2002) relate to the issues of multiple principals and multiple tasks. Logically caution must therefore, be taken against the trend of the wholesale importation of practices into the public sector from the private sector (Alam et al., 2010). This is because the factors that foster corporate entrepreneurship in the public sector differ from those factors that foster performance management in the private sector. Public sector organisations operate within a different environment with different obligations, accountabilities and objectives than the private sector firms. Performance management techniques in the public sector cannot therefore be imported blindly from one sector to the other without taking cognisance of the features that make the public sector unique.

This differential objectives, ethos and values are normally ignored by proponents of the new managerialism because they see private and public management as basically the same. The view is that this significant distinction should therefore, be borne in mind in any performance measurement scheme in the public sector (Alam Khalifa, 2009).

Positive effects of performance measurement in the public sector

One of the central difficulties in measuring the performance of all organisations is complexity.

This echoes the findings by Smith (1995) that government's performance is difficult to measure. Performance in the public sector is determined by a multitude of different internal as well as external factors and conditions.

There are however, a number of positive effects of performance measurement that can be reaped in the public sector. De Bruijn (2002) highlights the positive traits of performance measurement as follows:

1. Transparency - an organisation can make clear the service or products it supplies.

2. Learning – an organisation takes a step further when it uses performance measurement to learn. The transparency created may teach an organisation what it does well and where improvements are possible.

3. Appraising and sanctioning – appraisal may be followed by a positive sanction if performance is good or by a negative sanction if performance is insufficient.

Taylor and Pierce (1999) concluded that there is a positive correlation between performance measurement and productivity. This correlation can be established in terms of the motivation, job satisfaction, staff retention, career development, etc. Performance management can also enhance the productivity and change the culture of a nation during a period of transition as established by the study conducted by Sevic (2005) in Serbia. Another benefit is that measurement can also promote the level of service delivery in public organisations like municipalities as shown by Pollanen (2005).

Negative effects of performance measurement in the public sector

Adcroft and Willis (2002) expressed their doubt on the impact and effectiveness of performance measurement systems in the public sector. They argued that it is highly unlikely that the outcomes of NPM and performance measurement will be significant gains for any of the crucial stakeholders in the public service provision. Research has also made it clear that performance assessment in the public sector is not without problems or unintended consequences. Thiel and Leeuw (2002) appropriately referred this predicament as the performance paradox in the public sector. Put differently Dixit (2002) noted that tasks in the public sector are inherently immeasurable.

One of the major drawbacks of performance measurement in the public sector is that the schemes are vulnerable to manipulation by the agents. Bouchaert and Balk (1991) wrote and identified what they coined as "13 diseases of public productivity measurement" which result in dysfunctionality. These diseases were the result of wrong assumptions underlying measurement, measurement errors, and problem concerning the content, position and amount of measures. Similarly Smith (1995) wrote about eight unintended consequences of monitoring and investigating (auditing) performance. Some of the unintended consequences noted by Smith (1995) were that the use of performance indicators can inhibit innovation and can lead to gaming as well as the undesirable result of putting emphasis on the phenomena that can be quantified in the performance measurement scheme at the expense of unqualified aspects of performance.

The unintended consequences and the gaming tactics mirror some of the negative effects that led Adcroft and Willis (2005) to conclude that performance measurement schemes were unlikely to deliver significant improvements in performance across the various services in the public sector to which they were applied. Significantly it is pertinent that Smith (1995) had observed that in the British National Health Service, it was agreed that patients were supposed to be on a waiting list for an operation no longer than 2 years. This measure appeared successful, as the average waiting time decreased. However, on further inspection it was found that the waiting time only began after the first hospital consultation. Consultation was postponed to decrease the waiting time and the reality was that the average waiting time did not decrease at all but was merely shifted in time. The indicator did not accurately reflect performance; it reported an improvement where there was none. This was therefore, a manipulation of the performance indicator which created credit where none was due.

The unintended outcomes include the fact that improved performance in one area might well be the result of a retargeting of

resources which *ceteris paribus* means worsening performance elsewhere. Additionally some of the negative side the findings made by Ladd (1999) established that schools competing with each other in terms of performance are not willing to share their best practices with each other. This means that performances measurement might have an adverse effect on the relationships between the officials in the public sector. Earley, (1993) however, reckons that teamwork and related management approaches (for example, total quality management, just in time) have given major credit for the Japanese firms' success as global competitors and Western firms are increasingly adopting team-based work arrangements. To be effective teamwork requires cooperation and sharing among individual employees (Dertouzos, Laster and Solow, 1989). Consequently employees' relative emphasis on self-interests versus those of the collective can significantly affect the success of teamwork initiatives in the public sector. For instance, the study reckon that the new human resource practices promote performance based reward remuneration and this tends to make people work more individually and compete against one another even though work is essentially a cooperative endeavour.

RESULTS

The research noted that there are special features that make the magisterial bench unique and distinguishable from the private sector firms in Botswana. One of it is that in the execution of her jurisdiction each magistrate is encountered by multiple stakeholders and principals. For the process and the wheels of the criminal justice to get in motion each of the stakeholders must have performed their duties. The relevant stakeholders are:

1. The Clerk of Court – This is the custodian of all criminal records. Without the record no criminal trial can commence.
2. Accused – He/She is the very reason why the court is sitting in the first place.
3. The Public Prosecutor – this is the representative of the State in all criminal proceedings.
4. Defence Lawyer – In terms of the Constitution an Accused is entitled to a legal representative of his choice.
5. Witnesses – They play an important role to play in a criminal trial for both the prosecution and defence.

The interests at stake in a criminal trial involve many principals and the magistrate is not an island in the delivery of criminal justice. Apart from the dispensation of criminal justice a sitting magistrate is responsible for the determination of civil disputes, maintenance issues as well as a lot of administrative functions. These numerous tasks consume a lot of each magistrate's disposal time. What then is the impact of these findings on the performance of a magistrate in terms of the expectation in respect of criminal justice? The research established evidence that the existence of multiple stakeholders and multiple tasks impacts negatively on individual magistrates' performance. Even if the magistrate is anxious to proceed with a criminal trial it was noted that in the event that some of the stakeholders were not in a position to

proceed with the trial then there is very little a magistrate can do. For instance at times the magistrate cannot advocate proceeding with the trial in the absence of the defence lawyer, the Prosecutor, Accused or the witnesses.

The Public Prosecutor, the lawyer or witness might not be available due to poor health or some other reason. The trial will not proceed and that will not be on account of the lack of efforts on the part of the magistrate. In short a criminal trial can only proceed in the event that each of the stakeholders is ready and in a position to proceed with the case. A criminal trial is therefore, a function of teamwork and in the absence of teamwork criminal justice gets to a standstill.

The research further revealed that the existence of multiple tasks has resulted in the emergency of gaming behaviour in the magistrates' court. A growing tendency has emerged in terms of which the magistrate concentrate exclusively in the disposal of the criminal cases that are twenty-four months or older. The performance target is that a magistrate should not have cases that are older than 2 years that are pending determination. The question that arises is whether the identification of the target has made the delivery of criminal justice in the magistrates' court more expeditious. Has this resulted in better delivery of criminal justice? Consistent with the findings in literature the impact has unfortunately been negative. Criminal cases are now placed in a queue and each suspect must now await their day in court. The day in court is unfortunately two years after the case is registered. It has now become a rarity for a magistrate to advocate his time and conduct a trial in a case that is one month old. Even deserving cases are no longer getting the urgency they deserve resulting in further delays.

Concentration in the old criminal cases has also backfired in that other areas are losing out. Magistrates lamented that performance of other duties mainly in the civil cases is now logging behind. Very few magistrates now find the time to conduct civil trials as their time is now consumed by the attempt to achieve the performance target in the criminal cases. Instead of delivering justice in a timely manner it appears the performance measurement has become performance deterrence. Is the nation better off with the NPM or not. The response from those individuals who now have to wait until their cases and quality as a backlog become old will be that they have benefited very little from the performance regime in the magistrates courts. The same applies to the civil litigants who now have to wait a little longer before the magistrates afford their cases with time on account of the concentration on criminal case backlog.

Ample evidence was also found suggesting that unintended responses have cropped up as far as delivery of justice to the nation of Botswana is concerned. Indeed obstacles have surfaced that can be attributed to the unintended effects of the public sector reforms with magistrates claiming for credit when at the end of the day the real litigants reap no benefit from the process at the

hands of the court. For example courts are now in the habit of directing cases to be withdrawn from the court roll with the result that the performance indicator suggests that there is productivity when in actual fact the wheels of justice would not have moved at all. Removal of the case from the roll suggests that the case would have been completed yet the gaming syndrome would have dictated that the case is withdrawn pending Registration as a fresh matter at a future date. There is therefore, rich evidence that performance management has given birth to both gaming and dysfunctional behaviour in the magistrates courts.

The second performance target is that courts should start sitting at 0830 hours. The impression is that more time will be created for magistrates to attend to criminal cases but the evidence on the ground is that the time at the disposal of the magistrates will be centred on the criminal case backlog of cases older than 2 years. In order to satisfy the exigencies of the target some magistrates have resorted and gone to the extent of getting into empty courtrooms in order to achieve the target of starting court at 0830 hours. Daily court records are now being kept as evidence that the court starts at 0830 hours daily. Starting court in time regrettably does not mean that the dawn of criminal justice has come to Botswana. The individual who has a clear defence to the criminal charges will unfortunately still have to wait until his day comes after two years. Certainly this cannot be the ideals of the Strategic Plan. The overall result is that consistent with other public sectors there is clear evidence of gaming and dysfunctional behaviour in the magistrates courts of Botswana at present. This has been created because all efforts are now centred on the target given in terms of the reforms to the detriment of other objectives.

This study also established that the AOJ has multiple principles and tasks and its objectives are not measurable. It is difficult to quantify and measure the delivery of criminal justice. For example, the criminal trial is completed within two years of registration does that automatically mean that justice has been delivered in a fair, timely and reasonable manner. No doubt for the innocent man a single day in custody sounds like a lifetime imprisonment and thus unjust. By its very nature monitoring the magistrates is complicated because it requires that the supervisor and the supervisee be in continuous contact and this is humanly impossible. This is complicated because the supervisors are responsible for the supervision of as many as twenty magistrates and that leads to the possibility of tinkering the data to achieve the required accolades. This in itself will lead to a performance anomaly which is a dichotomy between the actual intended target and outcome.

Arguably, the most important lesson from the research is that performance measurement in the magistrates' courts in Botswana has elicited a number of dysfunctional and unintended responses. These gaming responses must be avoided. As it seeks to implement performance

measurement in the magistrate courts the judiciary accordingly faces the challenge of finding the right balance between performance measures and using them appropriately as the courts are characterised by multiple principals with possibly conflicting goals. In the study view the performance measures currently communicate objectives that fail to exactly correspond to the organization's true goal. This misalignment of the targets and responses has resulted in the inefficient resource allocations to deserving activities.

The important lesson is that the AOJ should be aware of the possibility that performance measures end up eliciting dysfunctional and unintended responses because the magistrates acquire in their daily routine a superior understanding of how the measurement systems work, and how performance outcomes can be manipulated. The study noted further that performance outcomes are also affected by external circumstances beyond the control of the individual magistrates. It follows that the basic and peculiar characteristics of the judiciary system must be kept in mind during the evaluation of the reforms. Recent media reports also confirm that there are problems with implementation of performance measurement at the AOJ. For example, a staff member of AOJ pointed in an interview with one leading local paper that performance reviews actually contribute to lower productivity because of biased subjective assessment:

One would be working very hard throughout only to be given low marks by a jealous supervisor. The staff performance reviews are not usually fair on the part of the supervisee. I think it is high time we resort back to the use of appraisals forms to review staff performance (Mosikare, 2007).

The research identified several responses that qualify as dysfunctional because they do not further the true goal of the organization.

The trend appears that the measurement of performance is subjective, simplistic and political. The undesirable result is that the focus has been redirected on measurement with the target being promotion making areas like delegation difficult to manage with magistrates reluctant to do work beyond what will be measured. In this environment teamwork is now getting a stepchild rather than promoting cooperation between colleagues.

From the survey results it shows that the AOJ must be conscious of the following:

1. Multiple principals – senior management should articulate the magistrates' goals and ensure their alignment of performance management objectives in respect of all the stakeholders involved in the delivery of justice.
2. Multiple tasks – senior management should take cognisance of the fact that the performance by a magistrate involves a lot of tasks that are equally important to the delivery of justice.
3. Gaming – The fact that a court does not have criminal cases older than two years does not mean that it is

delivering justice to the society. The disposal of the criminal case backlog might simply mean that other areas like civil justice, family and children interests are being disadvantaged.

4. Dysfunctional behaviour – Being in court by 0830 hours does not mean that justice is being dispensed.

5. Furthermore is 2 years the best yardstick for delivery of justice. The AOJ should relax the measurement criteria and give some latitude and discretion to the people on the ground.

IMPLICATIONS OF THE FINDINGS AND RECOMMENDATIONS

Having noted that performance management has a lot of perverse and unintended outcomes the next issue to consider is then; what is the way forward. Consistent with the findings in literature at times performance measurement has the adverse effect of having the result that in the end too much time is spend collecting data and monitoring activities without enough time spent managing. Certainly performance management should not be allowed to disintegrate into a ritual that is, doing it for the sake of just doing it.

It follows that developing performance management systems that incorporate measurement and evaluation in the public sector continues to be a key challenge within the reform agenda. McAdam et al. (2005) have suggested a modified performance prism that required the following questions to be addressed:

1. Who are our stakeholders?
2. What categories of stakeholders can be identified?
3. What measurement sets can be identified for each stakeholder?
4. How can synergies and dichotomies across groups of stakeholders be addressed?

In the study considered, view the application of the performance criterion suggested by Mc Adam et al. (2005) will go a long way to address the dichotomy of multiple principles and multiple tasks.

This might militate against some of the problems presented by NPM that were noted in the research. It is clear that a review of literature makes it clear that on the one had performance measurement may improve public sector performance.

At the same time performance measurement produces a large number of perverse effects as noted which tend to diminish the noble ideals behind public sector reforms.

Conclusion

Justice is sweetest when it is freshest and that should be the ideal outcome of any reform in the magisterial bench of Botswana. At the end of the day the reforms in question

should not compromise the quality of the justice delivery mechanism. The road map created through the reforms has not been a smooth path with light at the end of the tunnel. Indeed the reforms have raised many questions as they have answered. The challenge remains for scholars to continue answering the emerging questions. The significance of the effective administration of justice to society has been recognized and cannot however, be disputed. One general lesson learned from introducing reforms in the bench in to the magisterial bench is that it is possible but difficult to implement and the result is not always what the reform agents intended. NPM is not a panacea for problems of economy, efficiency, effectiveness and accountability in the public sector, but a reasonable use of the method adjusted to the complex political and administrative context of central agencies might be a way to move forward. Probably the most important lesson emerging from this research is that a well-conceived reform program should not only be concerned with the intended goals it should also take into account the possibility of the unintended outcomes in public sector reforms.

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