PRESENTATION TO THE PORTFOLIO COMMITTEES ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND SAFETY AND SECURITY

The Review of the South African Criminal Justice System

5 August 2008

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INTRODUCTION

In his February 2008 State-of-the-Nation Address concerning the South African Criminal Justice System (CJS) the President said:

"Cabinet has agreed on a set of changes that are required to establish a new, modernized, efficient and transformed criminal justice system. Among other things, this will entail setting up a new coordinating and management structure for the system at every level, from national to local, bringing together the judiciary and magistracy, the police, prosecutors, correctional services and the Legal Aid Board, as well as other interventions, including the empowerment of the Community Police Forums".

- This statement by the President followed the approval by Cabinet, on 7 November 2007, of a package of seven fundamental and far-reaching transformative changes ("the CJS Seven-Point-Plan") that MUST ALL be adopted and implemented in an integrated and holistic manner to achieve a new dynamic and coordinated Criminal Justice System. In giving the recommendations its stamp of approval, the Cabinet embarked upon a fundamental and radical journey from what is best described as a fragmented, unfocussed and dysfunctional CJS that is mainly driven (or not) by the strength of personalities in leadership positions, to a CJS that is focussed, coordinated and well-managed at every level.

- The 7-Point Plan, which follows an in-depth investigation by the four core Departments or Agencies (SAPS, DOJ, DCS and NPA as well as several other involved stakeholders) into the present CJS that is plagued with blockages and weaknesses rendering it inefficient and ineffective, could represent a major sustainable step towards combating crime and reversing the unacceptable crime trends in South Africa.

Background to the Review of the Criminal Justice System (RCJS)

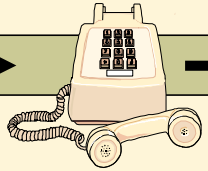
- **The RCJS entails two processes, one looking at long term solutions that require in-depth desktop research (which is an intersectoral JCPS approach led by the DOJCD), and the second where the focus is on short, medium and long term initiatives, mainly of a structural or practical nature, such as identifying the necessary capacity required to enable government to fight crime by removing blockages in the investigation and court processes. In this regard President Thabo Mbeki appointed the Deputy Minister, Adv. Johnny de Lange, MP, towards the end of May 2008, to coordinate the second initiative.**
- **In terms of time lines, the two processes were initiated as follows:**
  - **22 June 2005: Cabinet approved the first RCJS research initiative, including its Scope and Terms of Reference, which is an ongoing JCPS project run from DOJCD**
  - **26 August 2006: The second RCJS initiative came about following the joint Government / BBWG Anti-Crime initiative that was launched by the President and the Anti-Crime Leadership Forum and which led to 4 Working Groups:**
    - **Reviewing of the Criminal Justice System (the initiative now led by Deputy Minister De Lange)**
    - **Reducing Violent Organised Crime**
    - **Mobilising Society**
    - **Performance Enhancement**

Background cont.

- **The Working Group dealing with Reviewing the Criminal Justice System, put forward recommendations following work by a multi-disciplinary team (supported by business):**
  - **The recommendations were based upon analysis of the system as a whole, following extensive and focused consultations, especially at a grassroots level that included on-site visits**
  - **It was endorsed by the Anti-Crime Leadership Forum on 2 August 2007**
  - **Reported to and endorsed by the President and Business Sector Leadership on 23 August 2007**
  - **Endorsed by the IMSC on 21 August and 9 October 2007 and JCPS Cabinet Committee on 1 November 2007**
  - **Approved by Cabinet on 7 November 2007**
  - **Adv Johnny de Lange appointed as coordinator by the President, towards end of May 2008, to implement Cabinet endorsement of the 7 Point Plan;**
  - **Terms of Reference of the CJSR was approved on 5 June 2008; and**
  - **The Office for Criminal Justice System Reform (OCJSR) has during June 2008 commenced with implementation of the 7 Point Plan.**

A crime is committed

The crime is reported



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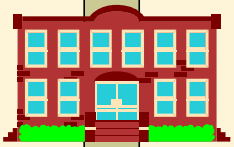
Investigation commences
- Witnesses identified
- Evidence secured
- Accused identified

An arrest is made and the accused detained or released on bail



Prosecution / adjudication takes place

Verdict

Acquittal

Fine

Incarceration

Integration into society

The Criminal Justice System (Integrated or Dysfunctional?)

Overall Objectives of the Review of the CJS

- Improved legitimacy and public confidence in the CJS;
- Weaknesses and blockages in CJS removed through short, medium and long term interventions;
- Sustained efficiency and effectiveness through improved Coordination and Management of the system as a whole;
- Appropriate, effective and integrated information technology and communication systems and a national reliable CJS database that serves the CJS as a whole and provides relevant and timely information to all the stakeholders; and
- Optimal community involvement by involving CPF/CSF regimes in CJS matters such as parole boards, community sentencing monitors and volunteer programmes.

Review Of The CJS – Desired Outcomes

1. Identification of key weaknesses and blockages

2. Acceptance by all stakeholders of multi-faceted plans of action

3. Endorsement and buy-in by all participating entities

4. Sustained efficiency and effectiveness of CJS, by:

   - Improved Coordination and Management of the system as a whole
   - Quality and professional services in an integrated, coordinated, effective and efficient CJS
   - Swift, equitable and fair justice in criminal matters
   - An effective deterrent to crime on a sustainable basis, establishing and maintaining public confidence.

5. Resulting in a modernised CJS with a single vision and mission leading to joint objectives, priorities and performance measurement across the cluster and elimination of present misaligned priorities and targets.

CJS Headline Targets

Objective	Target	Indicators
Swift Justice	Cycle Time	• Detection rates • Pre-court investigation cycle time • Pre-conviction detention cycle time • Case preparation time • Length of time on court rolls • % Trial ready cases
Effective Justice	Finalisation and Conviction Rate	• Cases finalised (measured against the number of cases that entered the system) • Outcome of cases
Efficient Justice	Time, Cost, Input / Output Rate	• Court hours per day • Cases disposed of
Accessible Justice	Proximity and quality of services	• Satisfaction level

APPROACH FOLLOWED IN REVIEWING THE CJS

- **Analysis of "As Is" Functionality**
  - **The challenges are universal and similar:** The following remark by a prominent Judge of the USA, sometime ago, regarding the USA CJS, highlights the complexity and difficulty of the task at hand: **"The Criminal Justice System is a system of 200 years of tradition … unimpeded by progress".**
  - **Recent efforts point to "systems thinking"**
  - **Joint and separate accountability**

- **Different approach followed**
  - **Obstacles and problems and resultant inefficiencies were taken as a given (well known and often articulated)**
  - **Grassroots engagement to identify not only problems but also solutions**
  - **A compendium of statistics were analysed, highlighting fundamental yet practical issues between and within all stages of the system, including**
    - **Processes**
    - **Capacity (human and other resources and tools)**
    - **Information and data**
    - **Tools and Infrastructure**
  - **Through the grassroots engagements and the statistical analysis the problems, blockages and obstacles in the functioning of our current criminal justice system became apparent.**

STATISTICS: INVESTIGATION STAGE: A NARRATIVE OF A DYSFUNCTIONAL CJS TOLD THROUGH A COMBINED ANALYSIS OF PERFORMANCE AND CAPACITY (1)

Measurement of performance was done through looking at actual performance of the CJS as underpinned by resource capacity. (Although such an assessment is useful, it is hamstrung and in some respects deficient, because we do not have a single database tracking each crime from commission to the final outcome). Looking at it in this way, during three clear phases, i.e. investigation, adjudication and incarceration, one finds the following:

INVESTIGATION STAGE:

Performance

•The statistics indicate a **large proportion of all reported crime as being undetected.** Furthermore, once possible perpetrators are detected a substantial number of cases are closed as unfounded or not establishing prima facie cases or complainants withdrawing charges.

•Following this the **number of charges then referred to court and being finalised for (relative to the crimes reported) is consequently low**.

Capacity

•The performance is in large measure due to capacity shortcomings, reflected by:

- The insufficient number of crime scene experts (1691 in 06/07) and forensic experts (923 in 06/07) in the country (limited resources further negatively affect their performance) (DOH capacity - 58 forensic analysts in 06/07 for the whole country)

-The relatively small capacity to investigate the crimes reported. (Only 15 % of total SAPS are detectives in 06/07 coupled with insufficient resources) (Role of Crime Intelligence, until recently, has been unfocussed and wholly inadequate)

-Inadequate or incorrect policy choices or resource allocations.

Conclusion

•Cases will continue not to be detected or to be withdrawn in large numbers **before** (and even **after**) reaching the courts, inter alia, if policies and resource allocation are not radically changed to single-mindedly focus on creating the necessary capacity to detect criminals and to gather credible evidence to ensure convictions in courts. In other words, if adequate capacity to gather evidence at the crime scene and to investigate crimes, especially serious crimes, is not created, the outcomes/performance of our CJS will largely remain dysfunctional.

STATISTICS: ADJUDICATION STAGE: A NARRATIVE OF A DYSFUNCTIONAL CJS TOLD THROUGH A COMBINED ANALYSIS OF PERFORMANCE AND CAPACITY (2)

Similarly analyzed, the position at the COURT STAGE is as follows:

Performance

- The low number of charges being referred to court (relative to the number of crimes reported), is further compounded by the many charges/cases being withdrawn/struck off the roll **after** being introduced in court
- **The number of finalised cases** (i.e. those guilty + not guilty + admission of guilt + diversion + ADR + plea bargain) **is low measured against the number of cases enrolled** (which comprise cases carried over from previous years + new cases MINUS cases removed from the roll (withdrawn + struck off the roll + warrants + transfers)
- Number of property crime finalised by the courts is very low, whilst contact crime is higher but not by much
- 35% backlogs (cases longer than 9 months on the roll) in regional courts
- ±48000 ATD's are kept in our detention facilities
- Low court hours (less than 3h30 pd per RC)/ Low number of finalised cases per court (7pm per RC in 06/07 – now (07/08) decreased to 6pm per RC)

Capacity

- Number of courts HC/RC/DC (judges and magistrates)
- Numbers of Prosecutors (move towards 2 per court, but 24% in 06/07 now (07/08)17% vacancies) vs unequal number of LAB legal staff (less than one per court)

Conclusion

- The bottom line is that an unacceptably low number of reported crime translates into cases actually reaching our courts and of those cases that are referred to court, a large number are removed from the court roll and only a small number of cases are placed before a judicial officer and finalised through the courts in any given year. So if efficiency and capacity do not improve the number of cases appearing before a judicial officer will continue decreasing, the number of cases finalised will decrease, court hours will further shrink, cycle times will even become longer, and ultimately the Backlogs will increase even further.

STATISTICS: INCARCERATION STAGE: A NARRATIVE OF A DYSFUNCTIONAL CJS TOLD THROUGH A COMBINED ANALYSIS OF PERFORMANCE AND CAPACITY (3)

In terms of what happens as a result of court activity, the INCARCERATION STAGE indicates the following:

Performance

•The total number of prisoners in custody (awaiting trial prisoners + sentenced prisoners) is more than the capacity available (ATD's fluctuating between 52000 and 48000 pm)

•Correctional supervision + parole/ probation supervision options are limited in view of limited staff and resources to enforce it

•Rehabilitation is severally impaired

Capacity

•Too few Correctional Centres

•Insufficient out-of-prison capacity, like Community Corrections officials and offices, especially social workers

Conclusion

• Prisons are overcrowded with little opportunity for rehabilitation and unfavorable conditions for awaiting trail detainees.

Present Weaknesses

The Review, especially the performance/capacity analysis, provides overwhelming evidence of:

- **A dysfunctional CJS system that spans across multiple departments and agencies involving vast numbers of personnel, processes and information that has to function harmoniously, resulting in high levels of**
  - **Fragmentation;**
  - **Dysfunctionality;**
  - **Many blockages and obstacles;**
  - **High levels of unaccountability; and**
  - **Overall system weaknesses.**
- **This dysfunctional CJS (and the JCPS cluster) is reflected in complex and multi-facetted weaknesses, including:**
  - **Different and disparate legislative and policy frameworks and mandates;**
  - **Crucial gaps in overarching policies and legislation (often unattended due to the absence of clearly defined lines of accountability);**
  - **The absence of an integrated national (criminal justice) system (as opposed to) separately mandated departments and agencies;**
  - **Not geared to focus on problem resolution and referral and no "home" for CJS problems;**
  - **No congruent objectives, measurements and performance indicators; and**
  - **Some instances of inadequate or incorrect prioritization or resource allocation.**

Present Weaknesses …… 2

- The "system" as a whole is fully dependent on each of its component parts and their correct functioning, but dysfunctional behaviour is often accommodated and accepted as the norm and not corrected
- There are no mechanisms in the system to encourage continuous improvement
- Cross-cutting Management Information Systems and the timeous provision of relevant information and systems infrastructure at all "points of presence" is lagging international standards
- Absence of formal coordination structures throughout the system, lacking hands-on involvement and collective management, and amplifying fragmentation, for example:
  - Departments are individually coordinated and managed, with differing degrees of success, efficiency and competency
  - THE CJS AS A SINGLE ENTITY/SYSTEM IS NOT APPROPRIATELY (OR AT ALL) MANAGED OR COORDINATED.

- Conclusion by the Review Team: "A fundamental and radical departure from what presently exists is required to transform the present CJS, which is fragmented, unfocussed, mainly driven by (or not) the strength of the personalities of individuals in leadership positions and meandering-on on it's own merry pace; into a CJS which is focussed, co-ordinated and well-managed, at every level".

The Establishment of a New, Modernised, Efficient and Transformed CJS

The approach towards the establishment of a new modernised, efficient and transformed CJS, is as follows:

- **An initial focus on blockages and issues that will substantially and in a sustainable manner improve investigation and adjudication, including improved case flow management and reduced case cycle times;**
- **Immediate and intermediate changes, with concomitant positive results, that can serve as a forerunner of a well-coordinated and managed CJS:**
  - **Identification and elimination of challenges and obstructions relating to laws, procedures, processes and structures;**
  - **Focussed problem identification, speedy implementation of solutions and the ability of all role players to perform effectively;**
  - **Practical proposals leading to performance improvements (speed) and effectiveness of all component parts of the CJS;**
  - **Identification and elimination of dependencies and inhibitors by component parts and from an overall CJS perspective, especially in relation to capacity constraints;**
  - **A focus on the Regional courts, where the majority of serious and violent crime is being heard, will receive special focus and attention;**

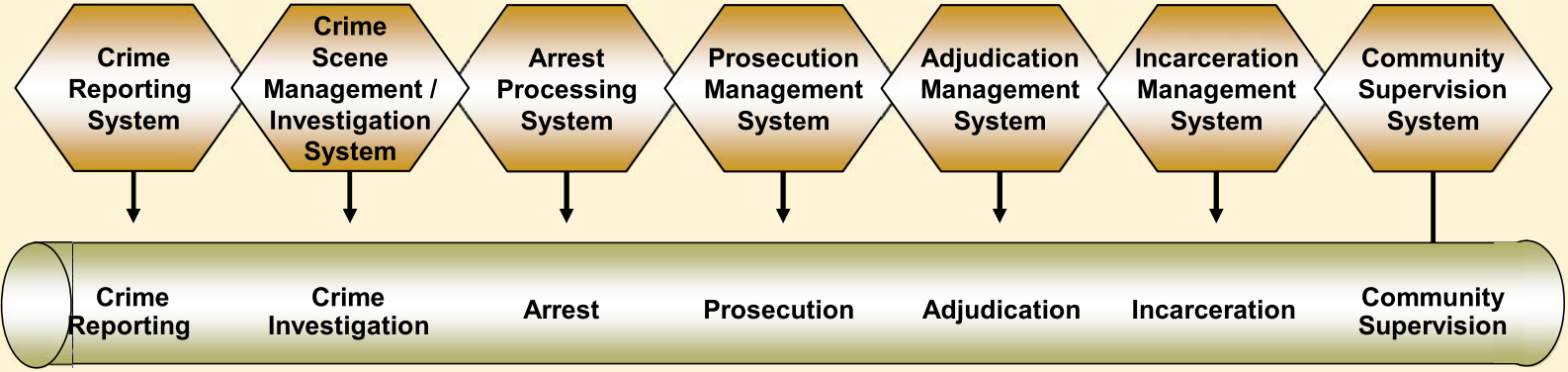
Establishing a New, Modernised, Efficient and Transformed CJS

- **This approach will be underpinned and driven by a PACKAGE of seven fundamental and far-reaching transformative changes to the present CJS, which have all been adopted by Cabinet and now requires full implementation in an integrated and holistic manner to achieve a new CJS which dynamically coordinates and manages the CJS at each level:**
  - **Change One: Adopt a single Vision and Mission leading to a single set of objectives, priorities and performance measurement targets for the CJS by the JCPS cluster.**
  - **Change Two: Establish through legislation or by protocol a new and realigned single CJS coordinating and management structure flowing seamlessly from Cabinet to each court, and the appointment of a person from the Executive as Head of the CJS structure with coordination and management functions and NOT executive powers.**
  - **Change Three: Making substantial changes to the present court process in criminal matters through practical, short and medium term proposals to improve the performance of the courts, especially initially the RC's.**
  - **Change Four: Implement key priorities identified for the component parts of the CJS, which are part of or impact upon the new court process, especially as it pertains to improving capacity.**
  - **Change Five: Establish an integrated and seamless National CJS IT database / system containing all information relevant to the CJS and review and harmonize the template for gathering information relating to the CJS.**
  - **Change Six: Modernise, in an integrated and holistic manner, all aspects of the systems and equipment of the CJS, including the fast tracking of the implementation of present projects and modernisation initiatives.**
  - **Change 7: Involve the population at large in the fight against crime by introducing changes to the CPF regime, including expanding the role to deal with all matters in CJS, for example, policing, parole boards; provide financial and administrative infrastructure to give it "teeth".**

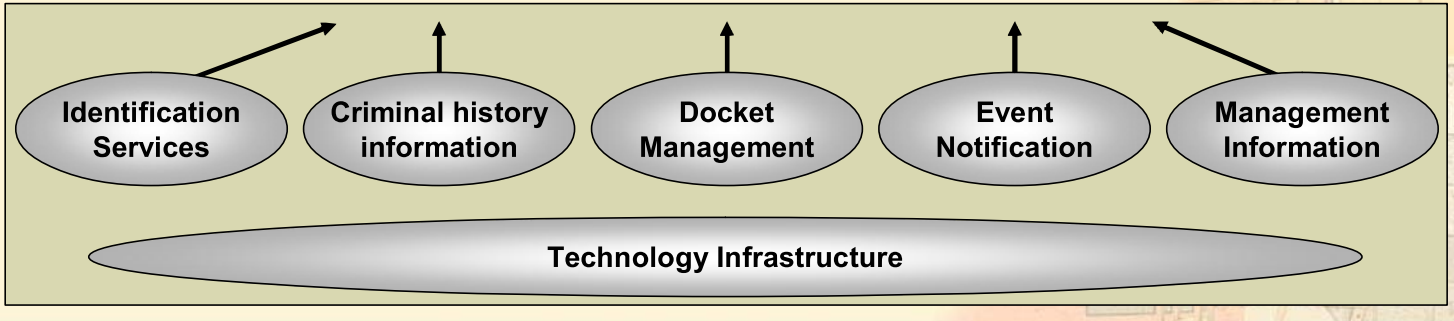
Schematic view of the Seven point CJS Transformation Plan

A package of seven fundamental and far-reaching transformative changes that MUST all be implemented in an integrated and holistic manner to achieve a new dynamic and coordinated CJS

Schematic of the Transformed CJS System



Criminal Justice System (Enterprise) Data an Information Requirements



7 Point Plan Unpacked:

If the 7 point plan is unpacked, it indicates the following requirements to be dealt with:

Recommendation ONE – A single CJS Vision and Mission (Recommendation One and Two to be captured in CJS Protocol (later perhaps legislation)

- **Adopt a single vision and mission for the CJS leading to a single set of objectives, priorities and performance measurement targets for the CJS by the JCPS cluster.**

- **Adapt and realign the operations of CJS departments / agencies to eliminate the present misaligned and often conflicting, contradictory and sometimes mutually destructive objectives, priorities and targets.**

Recommendation TWO: Establish, by protocol or legislatively, a new coordinating and management structure for the CJS, at every level

- The formal CJS structures mostly exist nationally; the provincial or local structures are mostly established informally, not always with all or the same role-players and only in some areas; structures, whether formal or informal, are not focused at all or enough on escalating problematic issues upwards for decisions at a political or senior official's level; furthermore coordination is not hands-on enough at all levels and collective co-ordination and management is virtually non-existent or fragmented and informal, especially at the coalface of operations. **To rectify this pivotal weakness the following recommendations relating to new or realigned structures for the CJS, which establishes a single CJS coordinating and management structure that flows in a seamless manner from Cabinet to each court, should be considered, by:**
  - **establishing, legislatively (or by protocol), a new coordinating and management structure for the CJS, at every level**, including national (Cabinet JCPS cluster), provincial and local (district court) levels, to comprise relevant stakeholders at each level, especially DOJ, including the Judiciary and Magistracy, SAPS, NPA, DCS and Legal Aid Board;
  - **President appointing a person from the Executive (Minister or Deputy Minister)**, as HEAD of CJS structure, with only coordinating and management functions (and not executive powers), to head (and act as **political champion)** of this new CJS structure, being accountable to the JCPS Cabinet Committee