DISCUSSION PAPER 173

STRENGTHENING GOVERNANCE AND ACCOUNTING MECHANISM IN THE CRIMINAL JUSTICE SYSTEM

PROJECT 151: THE REVIEW OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 (A SUB-PROJECT OF THE REVIEW OF THE CRIMINAL JUSTICE SYSTEM)

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INTRODUCTION

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act 19 of 1973.

The members of the Commission are:

Justice Chris Jafta (Chairperson)
Professor Wesahl Domingo (Deputy Chairperson)
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PREFACE

This discussion paper is published to elicit responses from various stakeholders, interest groups and members of the public and to serve as a basis for the reform of the country's criminal procedural law. Following an evaluation of the responses and any final deliberations on this and other discussion papers on the various themes of the criminal justice system (CJS), the South African Law Reform Commission (SALRC) will issue a report on the various thematic areas of research. The report will form the basis of legislative reforms that will overhaul the current Criminal Procedure Act 51 of 1977 (CPA).

The paper is published in full to provide bodies, stakeholders and persons and bodies wishing to comment or to make suggestions for the reform of the CPA and related legislation on the CJS with background information to enable them to make submissions on the proposed legislative reforms.

The SALRC assumes that the commentators and respondents agree to the SALRC quoting from or referring to comments and attributing comments to respondents unless representations are marked "Confidential". Respondents should be aware that the SALRC may, in any event, be required, under the Promotion of Access to Information Act 2 of 2000, to release information contained in the submissions it has received.

Respondents are requested to submit written comments or representations on the Discussion Paper to the SALRC by no later than 31 March 2026. Comments can be sent by email at the following email address:

ABBREVIATIONS AND ACRONYMS

CPA	Criminal Procedure Act 51 of 1977
CPR	Criminal Procedure Reform
CSIR	Council for Scientific and Industrial Research
CJ	Chief Justice
DCJ	Deputy Chief Justice
DCS	Department of Correctional Services
DHA	Department of Home Affairs
DoH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crimes Investigations
DPME	Department of Planning, Monitoring and Evaluation
EFT	Electronic Funds Transfer
4IR	Fourth Industrial Revolution
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
IDAC	Independent Directorate Against Corruption
IT	Information Technology
JP	Judge President
IJS	Integrated Justice System Programme
JAS	Judicial Accountability Session
JCPS	Justice, Crime Prevention and Security cluster
JICS	Judicial Inspectorate of Correctional Services
JSC	Judicial Service Commission
MCA	Magistrates Court Act 32 of 1944
MTSF	Medium Term Strategic Framework
MTDP	Medium Term Development Plan
NA	National Assembly
NCOP	National Council of Provinces
NDP	National Development Plan
NDPP	National Director of Public Prosecutions
NEEC	National Enhancement Efficiency Committee
NCPS	National Crime Prevention Strategy
NPA	National Prosecuting Authority
OCJ	Office of the Chief Justice
PEEC	Provincial Efficiency Enhancement Committee
PFMA	Public Finance Management Act

SDG	Sustainable Development Goals
SALRC	South African Law Reform Commission
SAPS	South African Police Service
SCA	Supreme Court of Appeal
Stats SA	Statistics South Africa
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America

EXECUTIVE SUMMARY

1 This paper focuses on aspects of accountability and oversight of the various components of the criminal justice system (CJS). It acknowledges that aspects of governance and accountability occur largely within the laws and policies governing each component of the CJS. This is with the exception of peace officers and the private security officers whose roles in the CJS are discussed specifically under Chapter 2 of this paper. In relation to peace officers, their appointment and role derive from section 334 of the Criminal Procedure Act of 1977[1] (CPA). Whilst, on the other hand, the private security officers who are part of the formal private security sector are regulated under the Private Security Industry Regulation Act, 2001[2] (PSIRA).

2 It is beyond the scope of this paper to address aspects relating to the governance of each component of the CJS. The focus of this paper is on the accountability and oversight of every such component of the CJS, in view of their direct impact and influence on the efficacy of the system as a whole. Any weakness or absence of accountability of any of the components of the CJS affects the functioning of the entire system. This has become evident in the recent developments within the National Prosecuting Authority (NPA) and the South African Police Service (SAPS) respectively, following the appointment of the following commissions of inquiry: the Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System Arising from Specific Allegations Made Public on 6 July 2025[3] (Madlanga Commission); and the Commission of inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases (Khampepe Commission)[4] These commissions of inquiry are likely to bring fundamental reform to the accountability arrangements within the SAPS and the NPA, respectively, which are key components of the CJS.

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1 Criminal Procedure Act, 1977 (Act 51 of 1977).

2 Private Security Industry Regulation Act, 2001 (Act 56 of 2001).

3 Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System Arising from Specific Allegations Made Public on 6 July 2025 was proclaimed by the President under Proclamation R269 of 2025 Published in Government Gazette 53048 on 23 July 2025. The Commission is still underway.

4 Judicial Commission of inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases has was under Proclamation No 264 of 2025 published in the Government Gazette on 29 May 2025 (Government Notice number 52749).

3 All components of the CJS are accountable to the Constitution of the Republic of South Africa, 1996[5] (the Constitution) as well as to the principles underlying it, including the principle of legality, the rule of law and the separation of powers doctrines. Accountability, together with the supremacy of the Constitution and the rule of law, is part of the founding values of South Africa's new constitutional order. Specifically, accountability, responsiveness and openness are part of the founding provisions of a system of democratic government in section 1(*d*) of the Constitution. It is for this reason that the paper commences with the unpacking of the significance of accountability of the CJS and moves on to explain how the various components of the CJS are accountable under the rule of law and separation of powers doctrines.

4 This discussion paper lays emphasis on the significance of Parliamentary oversight and the role of the Judiciary within the ambit of the CPA. These are discussed in chapter four of this paper. The latter chapter is preceded by a discussion of the National Development Plan 2030 (NDP), which is the government's blueprint for the transformation of the CJS, among other government priorities. The NDP incorporates the Seven Point Plan, which was adopted by Cabinet in 2008. The following are seven change drivers incorporated in the seven point plan: (a) the pursuit of a single vision and mission for the CJS with congruent objectives, plans, priorities and performance measurement targets; (b) Establishment of coordination and management structures within the CJS which flow in a seamless manner from the Cabinet to the courts in order to improve end-to-end coordination through national and provincial Justice, Crime Prevention and Security (JCPS) structures; (c) implementation of practical short and medium term interventions to improve the performance of all courts; (d) implementation of intervention measures to improve the parts of the CJS; (e) establishment of an integrated and seamless national CJS information system; (f) implementation of a programme of modernisation of the CJS; and (g) building effective partnerships with communities in the fight against crime.

5 Th seven point plan aims to address various challenges experienced with the CJS, which include: the lengthy court processes, which lead to inordinate delays in the finalisation of cases and case backlogs; over-crowding in correctional facilities; limited rehabilitation; and recidivism. As it will become evident under Chapter 3, the NDP advocates an integrated approach towards addressing these challenges. In his address to the Conference on the ICJS and the Review of the CPA in 2024,[6] Minister Ronald Lamola, then Minister of Justice and

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5 Constitution of the Republic of South Africa, 1996.

6 Conference on Integrated Criminal Justice System and the Review of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) Strengthening the Criminal Justice System to keep our People Safe and Secured: https://www.justice//Intergrated conference on Integrated Criminal Justice System

Correctional Services, alluded to the need for a critical reflection on the JCPS Seven-Point Plan and the progress made regarding its implementation.

6 This paper addresses the following aspects within the CJS that will inevitably lead to the reform of the CPA in one way or another:

(a) Defining the components of the CJS and their related accountability and oversight arrangements.
(b) Reflecting on the roles, accountability and oversight of peace officers and private security officers within the CJS.
(c) Coordination between and among the components of the CJS using the NDP as a basis for the ICJS.
(d) Strengthening Parliamentary and Judicial oversight of the CJS.
(e) Modernisation of the CJS including the establishment of the criminal justice information management system for effective monitoring and oversight.

7 The discussion paper is structured into six chapters: Chapter 1 gives the general background to the CPR Investigation and its all-encompassing terms of reference. It also reflects on the problem statement that the paper seeks to address. Chapter:2 examines the gaps in the current legislative framework. It defines the components of the CJS in South Africa in the context of South Africa's constitutional democracy. It further explains how the reform of the CJS is influenced by the landmark judgment of *S v Makwanyane and Another*[7] which, among others, imported the value of *ubuntu* into the country's criminal justice. Chapter:3 examines the significance of the National Development Plan (NDP) in the pursuit of coordination and integrated CJS. It reflects particularly on the Seven Point plan as an overarching policy imperative underpinning the criminal justice reform. Chapter:4 examines the roles of Parliament and the Judiciary within the CJS in the quest to build an accountable CJS. Chapter 5 focuses on modernisation and digitisation of the CJS. It emphasises the importance of a collaborative and integrated approach to modernisation across the branches of state. Chapter 6, which concludes the discussion paper, provides preliminary proposals emanating from the research, including drafts for inclusions into the draft Bill.

8 The paper makes the following preliminary recommendations that are specifically relevant to the reform of the CPA:

(a) Incorporation of the coordination and integration measures in the Child Justice Act.

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[7] *State v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995)

(b) Establishment of criminal justice information repository.

(c) A legislative provision be included in the criminal procedural law for the use of the audio-visual link in bail applications, pre-trial conferences and appeals and reviews.

(d) Further reforms to the Section 342A Investigation with a view to strengthening. judicial case management.

CHAPTER 1: BACKGROUND TO THE CRIMINAL PROCEDURE REFORM

A Background and introductory remarks

1.1 Since the advent of democracy in 1994, several initiatives, including legislative reforms have been developed to transform the criminal justice system (CJS). Key among these initiatives are the National Crime Prevention Strategy (NCPS) adopted in 1996, as a vehicle to transform and align the CJS to the new democratic Constitution; the Seven Point Plan incorporating seven fundamental transformative measures that would fundamentally transform the CJS; and the NDP, which outlines a roadmap for the transformation of the state and society.

1.2 In 2017 Cabinet approved a broad framework for the development of an Integrated Criminal Justice Strategy (ICJS) to promote a transformed, efficient, effective and modernised integrated CJS. This strategy sets out several strategic goals of which legislative reforms are Strategic Goal 1. The Implementation Plan for the ICJS recommended the overhaul of the CPA.

1.3 On 26 August 2020, the then Minister of Justice and Correctional Services, Mr Ronald Lamola (MP), addressed a letter to the Chairperson of the SALRC in which he requested the Commission to include, on an urgent basis, the review of the CJS in its Investigation Programme. Accompanying the letter of the Minister was the terms of reference (TOR) that would guide the investigation. The review of the CJS was eventually included in the SALRC's Investigation Programme under Project 151.

1.4 In view of the urgency to reform the CPA, the SALRC adopted a two-pronged approach in undertaking the investigation: Firstly, it resolved that the reform of the CPA be dealt with in terms of an accelerated process under the Criminal Procedure Reform project (CPR Project); Secondly, that the review of the broader Criminal Justice Review project (CJR Project) be undertaken through the Commission's normal procedure for carrying out any investigation in its Investigation Programme. The Commission further resolved that the CPR Project and the CJR Project would form sub-projects under Project 151.

1.5 As part of the accelerated CPR Project, the SALRC and the Department of Justice and Constitutional Development (DoJ&CD) jointly hosted consultative stakeholder workshops on 23 June 2023 and 21 – 22 September 2023. The purpose of the workshops was to gather insights from stakeholders within the CJS on the challenges and problems they are experiencing in the CJS and identify areas within the CPA that require legislative reform. The workshops provided an important platform for debate among the departments and institutions in the criminal justice value chain. The outcome of the workshops assisted the SALRC and the DoJ&CD in developing a framework for the scope of the review of the CJS and conceptualising the issues to be addressed. These issues were grouped under broad thematic areas of research under the following categories: Pre-trial, Trial, Post-trial and Cross-cutting thematic areas. Various thematic areas of research were grouped under these broad thematic areas.

1.6 In February 2024, the DoJ&CD convened a national Conference on the Integrated Criminal Justice System and the Review of the Criminal Procedure Act 2024[8] (ICJS Conference). Participants at the conference were drawn from various constituencies within the criminal justice fraternity and included policy makers, the Judiciary, academics, the SALRC, and representatives of civil society. The conference alluded to the various challenges experienced across the various stages of the CJS. The object of the Conference was to:

(a) Take stock of and reflect critically on the Justice, Crime Prevention and Security (JCPS) 7-Point Plan progress in its implementation adopted by the State in 2008 as well as the Report on the Expert Panel into the July 2021 Civil Unrest.

(b) Provide a platform for initial public consultation to critically engage with preliminary findings and proposals on the Review of the Criminal Procedure Act investigation, which forms part of a broader Review of the Criminal Justice System in South Africa investigation.

(c) Provide a platform for robust debates and discussions informed by academic, civil society, and government perspectives on issues pertaining to the JCPS 7-Point Plan and preliminary findings and proposals on the Review of the Criminal Procedure Act investigation.

(d) Propose recommendations to address the identified gaps and challenges in achieving an efficient, modern, fair, and transformed ICJS.[9]

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8 Conference on Integrated Criminal Justice System and the Review of the Criminal Procedure Act 2024.

9 ICJS Conference, p 6.

1.7 The ICJS Conference discussed various topics under the broad thematic areas that warrant urgent reform. These were included in the Thematic Areas Document that guides the CPR Investigation.

1.8 This discussion paper focuses on the thematic area that concerns the overall accountability and oversight measures in respect of the components of the CJS. The need to develop measures for effective accountability, coordination and oversight of the criminal justice system (CJS) has been at the forefront of policy interventions undertaken to transform the system since the advent of democracy in 1994. This underscores the significance of accountability and oversight in the quest to build an effective and responsive CJS.

1.9 As it will become evident throughout this paper, the Seven Point Plan has laid emphasis on integrated coordination and governance of the CJS. The first and second change drivers of the plan are directly concerned with the need for effective coordination of the CJS.

1.10 The challenges of integration and coordination of the CJS are not peculiar to South Africa but are also experienced in several criminal justice systems of various jurisdictions around the world. A working paper prepared for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice notes that many criminal justice systems around the world are overburdened with heavy caseloads and suffer from insufficient financial and human resources. This leads to various malfunctions of the systems, including high levels of impunity, delays in the administration of justice, overuse of pre-trial detention and for lengthy periods, insufficient resort to the whole range of available sentencing options and alternative options, overcrowded prisons that cannot fulfil their rehabilitative function and high rates of reoffending. More significantly, they experience compartmentalisation and a lack of integration of the different components of the criminal justice chain, as well as a lack of coordination and collaboration with other sectors essential to ensuring integrated responses to crime and violence. The working paper acknowledges that integrated and coordinated approaches are essential to address these challenges.[10]

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10 Working paper prepared by the Secretariat for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, United Nations, A/CONF.234/5.

1.11 The challenges described in the preceding paragraph attest to the complexity of the criminal justice systems globally. The systems involve the participation of several actors with self-regulatory laws and governing structures with different accountability mechanisms.

1.12 The South African situation is also worsened by the spiralling wave of crime, including contact crimes such as murder, gender-based violence and sexual offences. The courts are simmering under heavy court rolls due to delays in the commencement and finalisation of criminal cases; overcrowding of correctional centres continues unabated; and the persistent culture of lawlessness and corruption continues to undermine the Rule of Law. From the statistics recorded in the Strategic Plan 2025 – 2030 of the Department of Justice and Constitutional Development (DoJ&CD), in the period covering 2014-2024, the country recorded the highest crime index in Africa, making it the fifth most dangerous country globally. The Transparency International Corruption Perception Index scored South Africa 41 on a scale of 0 to 100, where 0 is highly corrupt and 100 is clean. The country was ranked 83rd out of 180 countries.[11]

1.13 The South African law of criminal procedure, which is codified under the CPA, in its current form, is not suited to address the above post-apartheid challenges facing the CJS. Whilst the Act has been amended several times to bring some of its provisions in line with the democratic Constitution, it remains steeped in colonial legacies. Most of the reforms effected on the CPA emanated from the judgments of the courts, particularly the Constitutional Court, following the landmark judgment of *Makwanyane*. Other amendments emanated from previous investigations undertaken by the SALRC, particularly the investigation to simplify the criminal procedure undertaken under the Commission's project on the Simplification of the Criminal Procedure (Project 73).[12]

1.14 Several other countries, including those in the African Continent, have undertaken reforms of their Criminal Procedure Codes to rid their criminal justice systems of the colonial baggage. South Africa has lagged behind other jurisdictions in this respect. Countries such as Kenya, Nigeria, Malawi, and Ghana have all undertaken reforms to their criminal justice systems in recent years. These reforms encompass various aspects, such as updating outdated laws, introducing new mechanisms like plea bargaining and parole, and aligning their Codes to

[11] DOJCD Strategic Plan 2025 - 2030.

[12] Simplification of Criminal Procedure Project 73 South African Law Reform Commission (1994).

international human rights standards. Some of these countries provide useful lessons for the CPR Project.

1.15 Despite its archaic nature, the CPA is the main law that the different components of the CJS apply throughout the different stages of the criminal justice value chain. It regulates processes from arrest, investigation, prosecution, adjudication, sentencing and rehabilitation. As Nortje[13] correctly observes, it is the Act that lecturers teach young legal scholars at universities, that police must enforce, that prosecutors rely on to prosecute and that Judges must interpret daily. He asserts that "the CPA simply cannot remain colonial in nature."

B Terms of reference of the Criminal Procedure Reform project

1.16 The TOR that accompanied the Minister's request for the Commission to review the CJS were subsequently amplified through a note (Minister's note) which accompanied the Minister's second letter addressed to the Commission dated 26 August 2021. The note lists the following as policy imperatives that must inform the contemplated new legislation on criminal procedure, namely, that it must:

(a) infuse human rights as entrenched in the Bill of Rights;
(b) enhance access to justice, which must be ensured at all stages of reformation of the criminal justice system;
(c) address the needs of society today, including Africanisation of the law, should be reflected;
(d) promote and protect the rights of victims of crime in order to create a victim-centric criminal justice system;
(e) ensure that the governance and accountability mechanism within the criminal justice system are strengthened; and
(f) ensures a modernised and technologically advanced criminal justice system which includes the development of integrated performance management tools across various criminal justice line function departments and a crime management information centre.[14]

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[13] Nortje W., "Decolonising the South African Criminal Procedure: Towards a Critical Approach to the Use of *uBuntu* in Sentencing"

[14] Minister's Note supplementing the TOR of the review of the criminal justice system.

1.17 The above are cardinal points that define the parameters and scope of the CPR Investigation. The Commission observed that each of the above six points would result in interventions that are implementable in the immediate term, as well as those that will be undertaken in the medium-to-long term. It is anticipated that through preliminary consultation with components and functionaries of the CJS, it will become evident which of the reforms under each of the cardinal points are capable of immediate implementation and which will require medium-to-long term investigation.

1.18 The Minister's Note referred to above is explicit that the CPR Project must entail the overhaul of the CPA in its entirety and all laws applicable to the law of criminal procedure. This is deduced from paragraph 2.1.3 of the Note, which states the following:

> The "Overhaul of the Criminal Procedure Act" seeks to re-write the Criminal Justice system **(**CJS) foundational law, which is the Criminal Procedure Act,1977(Act 51 of 1977) in order to infuse democratic values and ethos in the criminal justice value chain and to ensure that the criminal justice system is victim centric.
>
> Secondly, it is aimed at improving the overall regulatory criminal justice value chain from crime reporting to detection, investigation, arrest, prosecution, adjudication, legal representation, sentencing, and rehabilitation.[15]

C Problem statement

1.19 Fragmentation and the silo approach across the CJS is borne out of the separate culture and how insular each part of the criminal justice system has become. Each entity within the system focuses more on its specific "piece" of the process, with less attention to the need to have a shared vision for how the parts of the system can work together and contribute overall to the upholding of the fundamental principles of fairness, due process, impartiality, and equality. In terms of this silo approach, there is compartmentalisation of components, with each part of the system setting its own goals, policies, priorities, and determining its own budget and accounting separately through its political head and Parliament. This compartmentalisation often leads to competition for limited resources—for example, the prevalence of crime leads to increased budget

15 Ibid.

for the police, thus leading to more arrests, whilst there are not enough judges to try cases or correctional centres to house remand detainees.

1.21 The challenges of the CJS were accurately explained by Minister Ronald Lamola in his maiden budget speech as Minister of Justice and Correctional Services in 2019, when he likened the functioning of the system to the relay race. He explained the system as follows:

> The functioning of the criminal justice value chain is analogous with a relay race and the handing over of the baton by one athlete to another represents the different stages in the criminal justice system. The court's outcome resembles the finishing line and the spectators as end users of the system, among them, the victims of various crimes. We, as different relay athletes in the criminal justice race, have often dropped the baton at various stages in the value chain and in the process developed the habit of blaming other athletes. The success of our justice system depends on an unbroken relay through the faithful stewardship of all involved.[16]

1.22 What enables some of the jurisdictions to establish a culture of shared responsibility and accountability is the development of an integrated criminal justice information database across major stakeholders within the system. Through the database, components can track individuals or cases across the county's criminal justice agencies to monitor performance, evaluate the system for answering specific research questions, produce system reports and inform policy planning.[17]

D The Commission's approach to the CPR project

1.23 The CPR Project commenced in earnest under the previous Commission, whose term ended in October 2024. In terms of the approach which was adopted by the previous Commission, research is undertaken through various project teams or sub-committees established in respect of the broad thematic areas of reform outlined below:

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16 Proceedings of the National Assembly, Tuesday 16 July 2019, Hansard Report: https://Parliament>Docs>hansard.pdf (accessed 21 November 2025)

17 See "From Silo to System: What Makes a Criminal Justice System Operate Like a System?" Prepared for MacArthur Foundation by the Justice Management Institute (2015), https://safetyandjusticechallenge.org/wp-content/uploads/2021/06/From-Silo-to-System-30-APR-2015_FINAL.pdf, p.11.

(a) The pre-trial phase which focuses on the reform of the procedures and processes that take place prior to the trial or hearing stage. This phase largely involves the reporting of crime, detection, police investigation and pre-trial detention. Under the current legislative framework, courts are involved to a limited extent at the pre-trial phase,

(b) The trial phase, which focuses on the conduct of the trial from commencement (pleading stage) until the verdict and sentence stages.

(c) The post-trial phase which involves incarceration including pardon, parole and rehabilitation processes which are the responsibility of the Department of Correctional Services (DCS), as well as expungement of criminal records.

(d) Overarching or cross-cutting thematic areas of reform with specific focus on, among others: the participation of victims of crime in the criminal justice value chain; legal representation, language use and court interpretation services; monitoring and oversight of the CJS; and the modernisation of the CJS and digital transformation. Cross-cutting thematic areas also include the reform of the general provisions of the criminal procedural law underpinned by democratic principles and rights jurisprudence.

1.24 In terms of the accelerated approach undertaken by the Commission, discussion papers on the various thematic areas were to be developed by the researchers assigned to the project. The developed papers would then be processed through a CPR Advisory Committee appointed in terms of section 7A of the South African Law Reform Commission Act[18] (SALRC Act). The Advisory Committee, which is chaired by retired Judge President of the Mpumalanga Division of the High Court, Judge MF Legodi, would then submit its recommendations regarding the reform of the CPA to the Commission for its consideration.

1.25 The Commission, in order to augment the research capacity required for this magnitude investigation, resolved to request Commissioners and members of the CPR Advisory Committee to contribute to the development of discussion papers under thematic areas in which they possess the requisite experience and expertise. This marked a departure from the usual practice of the Commission, whereby the development of papers and reports of the Commission is the sole responsibility of the researchers of the Commission, subject to guidance and oversight of the Commission.

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18 South African Law Reform Commission Act 19 of 1973

1.26 The Advisory Committee's mandate was extended to include quality assurance in respect of the discussion papers developed by members of the Commission and the Advisory Committee. These papers were to be measured against the standards set out in the Commission's Style Guide[19] before they are submitted to the Commission for consideration.

19 The Style Guide of the South African Law Reform Commission, 2018.

CHAPTER 2: ADDRESSING ACCOUNTABILITY AND OVERSIGHT GAPS WITHIN THE CRIMINAL JUSTICE SYSTEM

A Understanding the concepts of accountability and oversight in the context of the criminal justice system

2.1 Understanding the concepts of governance, accountability and oversight within the context of the CJS is critical to unlocking challenges existing among various actors and components of the CJS. Each of the concepts may have a different connotation depending on the context used in any given circumstances. The objective is therefore to explain how each is understood in the context of the CJS. Reference will be made to other comparable institutions or systems where similar concepts are used.

2.2 In its broadest sense, governance refers to how the performance, achievements and actions of an organisation (including its senior management) are controlled and overseen by its core stakeholders; accountability refers to how an organisation, in this case the CJS, is held to account by its various stakeholders and the public for both its actions and the wider effect of these actions on the stakeholders and the citizenry. Oversight is a generic term which is often used when referencing how the activities of an organisation are overseen. It refers to the practical activities that are undertaken in order to give assurance to the relevant governing bodies of an organisation that relevant standards and objectives are being met, including those relating to the efficient and effective use of resources, and to provide information to stakeholders who are concerned with holding the organisation to account for its actions.[20]

2.3 The UNODC Handbook on police accountability, oversight and integrity" defines accountability in relation to the police as:

20 ICC Governance, Accountability, and Oversight Frameworks - an (informal) IOM Information Paper: https://www.legal-tools.org/doc/d4d7fd/pdf/

> … a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so. Such a system is meant to uphold police integrity and deter misconduct and to restore or enhance public confidence in policing.[21]

2.4 The above Handbook further describes “accountability” as a “conglomerate of processes” in which different actors share responsibility. In line with this description, it further explains that the police are accountable to the line of command structures within the police service and also to external authorities, usually, at a minimum, the Minister; the Judiciary (whose verdicts and other orders the police have to comply with) and the legislature (which drafts laws and approves the police budget); and there is often a national human rights institution that plays a role in police oversight such as independent and civilian oversight bodies.[22]

2.5 The Handbook for Members of the Legislature[23] (Induction Handbook) defines oversight in the context of the South African Parliament, as follows:

> ‘oversight ' is the proactive interaction initiated by a legislature with the executive and administrative organs that encourages compliance with the constitutional obligation on the executive and administration to ensure delivery on agreed-to objectives for the achievement of government priorities. The concept of oversight contains many aspects which include political, administrative, financial, ethical, legal and strategic elements.[24]

2.6 The Induction Handbook describes the functions of oversight as:

(a) to detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies while protecting the rights and liberties of citizens;

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21 UNODC’s “Handbook on police accountability, oversight and integrity” United Nations 20 July 2011.

22 Ibid., at p.12.

23 Induction Handbook for Members of Parliament and Provincial Legislatures on Oversight and Accountability, A publication of the South African Legislative Sector, p 24.

24 See an Induction Handbook Induction Handbook for Members of Parliament and Provincial Legislatures on Oversight and Accountability, A publication of the South African Legislative Sector. This document serves as Module 4: Oversight and Accountability, which is part of the Comprehensive Induction Programme Handbook for Members of Legislatures (i.e. Parliament and Provincial Legislatures).

(b) to hold the government to account in respect of how the taxpayers' money is used by detecting waste within the machinery of government and public agencies, and improve the efficiency, economy and effectiveness of government operations.

(c) to ensure that policies announced by the government and authorised by Parliament and Provincial Legislatures are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programmes.

(d) to improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.[25]

B Accountability as a foundational constitutional imperative

2.7 The Constitution, under its first chapter on Founding Provisions, enshrines the founding values of South Africa's constitutional democracy. Among these, the following underpin the post-apartheid judicial system: the supremacy of the Constitution; the rule of law, human dignity, equality and freedom; and accountability.[26] These founding values enjoy a higher constitutional protection than any other provision in the Constitution, namely, that they can only be amended through a special majority (requiring a supporting vote of seventy-five percent of the members of the NA and a vote supported by at least six provinces).[27]

2.8 An accountable CJS is indispensable for a constitutional democracy similar to South Africa's. Steytler[28] aptly posits that the CJS, as one of the key forms of governance, if not the most conspicuous, should both reflect and give shape to a democratic transformation of the South African Society.

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25 Ibid.

26 Section 1 of the Constitution.

27 Ibid., Section 74(1).

28 Steytler N., democratizing the Criminal Justice in South Africa" Social Justice Vol.18 Nos 1-2.

2.9 The significance of a democratic CJS is also echoed by Calland and Masuku[29] who opine that the CJS has become indispensable in modern governance in constitutional democracies for two reasons: there is evidence that entrenched forms of crime and corruption have a disempowering effect on the government to fulfil its constitutional duties; and there is a recognition that stable government is a precondition for economic growth. To this end, they further contend, correctly so, that since the South African government's macroeconomic policy relies upon foreign direct investment to drive its overall growth strategy, the increase in crime threatens the prospects for such foreign investments.

2.10 Accountability permeates several provisions of the Constitution and applies to the Legislature, the Executive, the Judiciary and organs of state. It has also been subject to interpretation by the courts in several judgments, including those of the Constitutional Court.

2.11 Okpaluba[30] posits that an inquiry into how the courts have grappled with the interpretation and application of the principle of accountability has several constitutional as well as jurisprudential ramifications. He lists among these the following:

(a) That there is a relationship between judicial review and accountability. This is because a court, in the exercise of its function of interpreting and applying the Constitution, is obliged to give guidance as to what accountability means or represents in any particular context.

(b) That if accountability is tantamount to liability as one of its offshoots, then how the courts have deployed that expression in making the state, the public authority or their agents compensate the injured citizen for their transgressions, which have caused the individual harm should be interrogated.

(c) That there is an intersection between public accountability, corruption and maladministration. Public accountability reassures the citizenry of the government's protection of their rights and personal security; it is, therefore, the antithesis of corruption. Public accountability requires that persons in a position of authority take responsibility for their conduct, even if the action or decision taken turns out to be wrong or unlawful.

29 Calland R., Masuku T., "Tough on crime and strong on human rights: The challenge for us all"

30 Okpaluba C., "The Constitutional Principle of Accountability: A Study of Contemporary South African Case Law" Southern African Public Law (2018) Volume 33 Number 1: https:// //upjournals.co.za/index.php/SAPL ISSN 2522-6800 (Online).

(d) That the foundational values of accountability, responsiveness and openness apply to the Judiciary in the performance of their judicial functions as much as to the other branches of government. This also brings the intersection between the common-law principle of judicial immunity from liability for judicial errors committed in rendering a judgment, coupled with the principle that the state is not vicariously liable in damages for judicial errors.[31]

2.12 Accountability must also be viewed in the context of the state's obligation to fulfil the rights in the Bill of Rights. The Constitution enjoins the state to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights.[32] The three-dimensional obligations entail the following:

(a) The obligation to respect entails a negative action on the part of the state, namely, it requires the state to refrain from interfering with, or violating, any constitutional rights. An example is an obligation imposed on the executive and legislature to respect judicial independence and the Rule of Law, and to refrain from interfering with the functioning of the courts.

(b) The requirement to 'protect' obliges the state to take active steps to ensure the fulfilment of every constitutional right. The initiation of Bills by the executive forms part of a positive initiative to transform the legal system from its apartheid baggage.

(c) The requirement to 'promote and fulfil' obliges the state to provide conditions or a conducive environment for the meaningful enjoyment of the rights in the Bill of Rights. The construction of courts in previously marginalised areas is a positive measure of providing a conducive and enabling environment for increased access to justice for the poor.

2.13 The Induction Handbook lists all sections of the Constitution that refer to accountability and oversight. The important sections in relation to the oversight role of the National Assembly are sections 55 and 92(2) of the Constitution, which provide as follows:

> *55. National Assembly must provide for mechanisms -*
> *(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and*
> *(b) to maintain oversight of -*
> *(i) the exercise of national executive authority, including the implementation of legislation; and*

31 Ibid., at pp 3-4.

32 Section 7(2) provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights.

(ii) any organ of state.

92(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performances of their functions;

2.14 The document on "Parliament Oversight and Accountability Model Asserting Parliament's Oversight Role in Enhancing Democracy"[33] gives the following broad definition of Parliamentary oversight:

> … the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution. In addition, and most importantly, it entails overseeing the effective management of government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens. In terms of the provisions of the Constitution and the Joint Rules, Parliament has power to conduct oversight of all organs of state, including those at provincial and local government level."

2.15 The Public Financial Management Act of 1999[34] (PFMA) is important to the oversight function of Parliament and Provincial Legislatures as it regulates how government departments should account to the legislative authorities monthly, quarterly and annually. The Act clarifies the distinction between the accountability responsibilities of the head of a Department (the accounting officer) and the political head (the Executive Authority).

2.16 Sections 38 to 43 of the PFMA stipulate the responsibilities of Accounting Officers, which entail the responsibility of ensuring effective and efficient and transparent finance management of their institutions. They are enjoined by the Act to set up relevant systems, such as internal audit and procurement for this purpose.

2.17 An Executive Authority, on the other hand, refers to the Cabinet member who is responsible for policy direction of the department concerned and reports to Parliament for the department's performance.

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33 Oversight and Accountability Model. 2013. Asserting Parliament's Oversight Role in Enhancing Democracy. Republic of South Africa: Pretoria. Online publication: www.parliament.gov.za. (accessed 23 November 2025).

34 Public Financial Management Act 1 of 1999.

2.18 It is also important to note that the mandate of each component of the CJS derives, not only from the CPA but from other Acts, including Acts exclusively applicable to the component concerned. Also important is that some of the governance and oversight related functions are not spelt out in legislative instruments. Some are based on common law, whilst others have evolved from conventions, customs and practice. For example, the role of the prosecutor as *dominus litis* is part of the long-established principle that is recognised under the South African common law. Courts generally accept that the prosecutor is *dominus litis* (i.e. in control of the prosecution or "master of the suit"), and thus "[t]he presiding officer must always resist the temptation to descend into the arena to a point where he/she coaches or advises the public prosecutor on how to conduct his/her case."[35]

2.19 It is also of significance to note that the concepts of accountability and oversight did not find expression in the country's pre-1994 constitutions. These concepts were introduced under the post-apartheid constitutional era.

C The evolution of the roles of law enforcement and criminal justice institutions under the Constitution

2.20 Prior to 1994, the South African justice the system was deeply embedded within the erstwhile apartheid policies that served the interest of the white minority and excluded the black majority. The system, including the police, courts, and correctional services, was primarily focused on maintaining the apartheid state and suppressing opposition, rather than upholding the Rule of Law, justice or protecting civil liberties of all citizens. Its past abhorrent violent nature was defined by denial of access to court in a massive scale which were authorised under the now defunct Terrorism Act[36] and a host of other apartheid legislation. This latter Act, among others, authorised detention without trial for the duration that was prescribed by the Minister of Justice. Under these laws, government escaped accountability including for the government-orchestrated deaths in detentions.

[35] S v Moshoeu 2007 1 SACR 38 (T) 41e. Also see S v Matthys 1999 1 SACR 117 (C) 119 cited by Broughton DWM "The South African Prosecutor in the Face of Adverse Pre-Trial Publicity" PER / PELJ 2020(23) - DOI http://dx.doi.org/10.17159/1727- 3781/2020/v23i0a7423, at p.3-4.

[36] Terrorism Act 83 of 1967.

2.21 Indigenous Law or Customary Law which was a system of law that applied to Africans was hardly recognised within the mainstream CJS. This branch of the law was used as part of separate development and was subservient to the laws of the Republic. Van Niekerk[37] explains the pre-colonial constitutional and administrative indigenous legal system thus: it was centred around the ruling family, represented by a chief or a king whose position was hereditary; it recognised the ruler as the highest legislative and executive authority as well as the supreme judicial official with no separation of powers; the ruler was responsible for the maintenance of public order and safety and was responsible for the protection of private persons and property; the tracing and prosecution of criminals; and execution of judgment was ensured by the ruler who could authorise banishment orders. In its purest form, the indigenous legal system was characterised by a shared communal life, a sense of common bondage, group solidarity and collectivism. All these values defined a distinctly African concept of justice moulded on shared values underpinned by culture and custom.

2.22 With the advent of colonisation, the application of customary law was confined to the homelands and self-governing states. The concept of trained and professional judges acting in accordance with formalised rules was foreign to African jurisprudence. Disputes were resolved, first by the family groups and were escalated to the chief where they remain unresolved. The chief's word was law, but the chief invariably acted as spokesperson for the councillors, who in turn sought to uphold and reinforce the established norms of the tribe. As Sachs wrote:[38]

> The good chief was reckoned not by the terror he could inspire or the magnanimity he could display, but by his skill in articulating the sense of justice (just-ness) of a relatively homogeneous community, which involved his applying universally accepted rules and precedents to particular disputes in a manifestly appropriate way. His authority derived not from his control of armed force or from his place in a learned bureaucracy, but from his position as leader and representative of the community. His coercive power was dependent not on any praetorian guard or professional police force but on the general body of tribesmen who made up his army.

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[37] Van Niekerk GJ. *The interaction of indigenous law and western law in South Africa: A historical perspective* (LLD-thesis University of South Africa, 1996) 46-47.

[38] Sachs, 99.

2.23 The CJS has undergone a radical transformation from its racially discriminatory and oppressive violent architecture under colonial and apartheid regimes to a rights-based system under the democratic constitutions. Firstly, the Constitution of the Republic of South Africa, 1993[39] (Interim Constitution) laid a foundation for the people of South Africa to transcend the conflict and divisions of the past into a future founded on the Rule of Law. In its postamble the Interim Constitution is described as a historic bridge –

> … between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

2.24 In *Makwanyane* Mahomed J (as he then was) gave an impeccable contrast of the past and the present when he stated:

> Chapter 3 of the Constitution extends the contrast, in every relevant area of endeavor (subject only to the obvious limitations of section 33). The past was redolent with statutes which assaulted the human dignity of persons on the grounds of race and colour alone; section 10 constitutionally protects that dignity. The past accepted, permitted, perpetuated and institutionalized pervasive and manifestly unfair discrimination against women and persons of colour; the preamble, section 8 and the postamble seek to articulate an ethos which not only rejects its rationale but unmistakenly recognizes the clear justification for the reversal of the accumulated legacy of such discrimination. The past permitted detention without trial; section 11(1) prohibits it. The past permitted degrading treatment of persons; section 11(2) renders it unconstitutional. The past arbitrarily repressed the freedoms of expression, assembly, association and movement; sections 15, 16, 17 and 18 accord to these freedoms the status of "fundamental rights"… Such a jurisprudential past created what the postamble to the Constitution recognizes as a society "characterized by strife, conflict, untold suffering and injustice". What the Constitution expressly aspires to do is to provide a transition from these grossly unacceptable features of the past to a conspicuously contrasting "future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex."[40]

2.25 In the past three decades of South Africa's constitutional democracy, significant progress has been made in transforming the CJS. The architecture of the system has been revamped to give effect to the ethos underpinned by the rule of law and access to justice.

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[39] Constitution of the Republic of South Africa 200 of 1993.

[40] *Makwanyane*, para 261.

2.26 Among the constitutional reforms brought into the CJS by the Constitution are: the complete overhaul of the South African Police Service (SAPS); the restructuring of the prosecuting authority and the transformation of the judicial system and the courts. These reforms are underpinned by the Bill of Rights entrenched in the Constitution and the rights-based jurisprudence of the courts, particularly the Constitutional Court.

2.27 Under the Constitution the South Africa's CJS comprises the following seven main components: the DoJ&CD, South African Police Service (SAPS); State Security Agency (SSA); the National Prosecuting Authority (NPA), the DCS; the Department of Home Affairs (DHA); and the courts (Judiciary). Also, as part of the core components are the following: the Border Management Agency (BMA); the Directorate of Priority Crimes Investigations (DPCI); the Judicial Inspectorate of Correctional Service (JICS); Legal Aid South Africa (Legal Aid SA); and the Special Investigating Unit (SIU). These sub-components are constituted by separate Acts which define their respective mandates, roles and functions, separate from those of the departments they are attached to. Their constituting Acts also establish governance structures, and, in respect of some, there are in-built oversight mechanisms within which they operate.

2.28 There are also non-core criminal justice components of the CJS which are the National Treasury, the Department of Social Development (DSD) and the Department of Health (DoH).

2.29 The following components of the CJS, namely, National Prosecution Authority (NPA), the South African Police Service (SAPS), National Intelligence and the South African Defence Force have their role and governance arrangements entrenched in the Constitution as well as in their respective constituting Acts.

2.30 Section 179 of the Constitution establishes a single national prosecuting authority in the Republic headed by the National Director of Public Prosecution (NDPP) appointed by the President. The Constitution further requires an enactment of national legislation to further regulate the functioning of the national prosecuting authority (NPA). This national legislation is in the form of the National Prosecuting Act of 1998[41] (NPA Act). This Act regulates the functioning, governance and accountability arrangements of the NPA.

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[41] The National Prosecuting Act No.32 of 1998.

2.31 The Constitution and the NPA Act entrust the NPA with the power to institute criminal proceedings on behalf of the state.[42] Unlike in many other countries in which there is an obligation to prosecute once a case has been made, in South Africa the NPA has enormous discretionary power to decide whether or not prosecute.

2.32 The NPA exercises its powers and functions in terms of the Constitution and the NPA Act. Its role comes to the fore immediately it has been placed in possession of the case docket relating to the commission of an offence. The docket would be handled by the police and the prosecution, particularly to facilitate what had become established as a prosecution-led investigation, until the case is trial ready.

2.33 Section 205 of the Constitution provides for the establishment of the police service, which is to be structured to function at national, provincial and, where appropriate, local spheres of government. Section 205(1) provides for the enactment of national legislation to further regulate the powers and functions of the police service to enable it to discharge its responsibilities effectively. Section 205(3) states the objects of the police service as:

> … to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.[43]

2.34 The South African Police Service Act of 1995[44] ("SAPS Act") is the national legislation contemplated in section 205(1) of the Constitution. Section 24(1) of the SAPS Act empowers the Minister to make regulations (subordinate legislation) in respect of a variety of matters, including, but not limited to: (a) the exercising of policing powers and the performance by members of their duties and functions; and (b) the general management, control and maintenance of the service. In general, these regulations are aimed at ensuring the proper functioning of the police service and regulating the conduct and discipline of its members.

2.35 Section 210 of the Constitution provides for the enactment of national legislation to regulate the objects, powers and functions of the intelligence services, including any intelligence

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42 Section 179(2) of the Constitution.

43 Section 205(3) of the Constitution.

44 South African Police Service Act No.68 of 1995.

division of the defence force or police service. In terms of this section the said Act must provide for -

(a) the co-ordination of all intelligence services; and

(a) civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.

2.36 The Intelligence Services Act of 2002[45] was enacted pursuant to section 210 of the Constitution. This Act regulates the establishment, administration, organisation and control of the State Security Agency. The mandate of the SSA, in turn, is to provide the government with intelligence on domestic and foreign threats or potential threats to national stability, the constitutional order, and the safety and wellbeing of citizens. The threats include terrorism, sabotage and subversion. This allows the government to implement policies to deal with potential threats and to better understand existing threats and thus improve its policies.

2.37 The South African National Defence Act of 2002[46] (SANDF Act) establishes the South African Defence Force (SANDF) whose primary function is to defend and protect the Republic. It becomes involved in the CJS in circumstances prescribed under section 19 of the Constitution. In terms of this section, the President, as head of the national executive, may authorise the employment of the defence force in cooperation with the police service. The employment of the defence force by the President must follow the prescribed procedure which includes the requirement that the President must promptly inform Parliament of the decision.

2.38 The Defence Act stipulates that when employed as indicated above, a member of the SANDF has the same powers and duties as those ordinarily exercised by a member of the police service, with the exception of investigating crimes. The Act further stipulates that members of the Defence force must receive appropriate training prior to being employed in cooperation with the police and must be appropriately equipped.

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45 Intelligence Services Act No.65 of 2002.

46 South African National Defence Act No.42 of 2002

2.39 The DCS's role comes in the aftermath of an arrest and sentencing of accused persons through the detention of remand detainees and the detention of sentenced offenders and state patients. The Department derives its mandate from the Constitution and Correctional Service Act of 1998[47] and the CPA. The Correctional Service Act provides, among others, for a correctional system; the establishment, function and control of the Department; the custody of all offenders under conditions of human dignity; the rights and obligations of sentenced offenders; the rights and obligations of unsentenced offenders; a system of community corrections; release from correctional centres and placement under correctional supervision.

2.40 The DHA plays a critical role in the CJS. Its integration into the JCPS in February 2016 was in recognition of its significant role in ensuring the integrity of the identity of all people in South Africa; in the identification of perpetrators within the CJS; and its role in relation to immigration and border management.

2.41 There are several law enforcement agencies and entities that, although they are linked to the core departments within the security cluster, function independently from the departments concerned. These include the Directorate for Priority Crimes Investigation (DPCI), the Border Management Agency (BMA), the Independent Police Investigating Directorate (IPID) and the Special Investigating Unit (SIU). These entities are established and function under separate statutory enactments. These Acts further illustrate the complexity of the coordination and integration among the core JCPS departments and law enforcement entities attached to some of these departments.

2.42 The DPCI is established under the SAPS Act. Section 17B provides for the need to establish a Directorate within the SAPS in order to prevent, combat and investigate National Priority Offences, in particular, serious organised crime, serious commercial crime and serious corruption.

2.43 The BMA is established and functions under Border Management Authority, 2020[48]. In terms of section 4(1) of the Act, the BMA is established as a national public entity, as contemplated in Part A of Schedule 3 of the Public Finance Management Act, outside of the public

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47 Correctional Service No.111 of 1998

48 Border Management Authority Act 2 of 2020.

service, and is an armed service established in terms of section 199(3) of the Constitution. Additionally, section 4(2) of the Act declares that the border law enforcement functions within the border law enforcement area and at ports of entry must be performed exclusively by the officers of the Authority. These functions include facilitating and managing the legitimate movement of persons within the border law enforcement area and at ports of entry; facilitating and managing the legitimate movement of goods within the border law enforcement area and at ports of entry; and cooperating and coordinating its border law enforcement functions with other organs of state, border communities or any other persons.

2.44 The IPID is established under the Independent Police Investigating Directorate Act, 2011[49] as mandated by the Constitution, to investigate alleged misconduct and criminal offences by members of the SAPS and Municipal Police Services. Its independence is structurally and operationally entrenched in the IPID Act, ensuring it can function without fear, favour, or prejudice, though it remains accountable to Parliament.

2.45 The SIU functions in terms of the Special Investigating Units and Special Tribunals Act, 1996[50] which assigns it the power to investigate serious maladministration in connection with the affairs of any state institution; improper or unlawful conduct by employees of any state institution; unlawful appropriation or expenditure of public money or property; unlawful, irregular, or unapproved acquisitive act, transaction, measure, or practice having a bearing on State property; Intentional, or negligent loss of public money or damage to public property; Corruption in connection with the affairs of any State institution; and unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

2.46 If any investigation by the SIU reveals any criminal conduct on the part of any person, the SIU may refer the matter to the NPA or other law enforcement agencies, including the SAPS and then work closely with the entity concerned to ensure perpetrators are prosecuted in the appropriate forum.

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[49] Independent Police Investigating Directorate Act, 2011.

[50] Special Investigating Units and Special Tribunals Act 74 of 1996.

2.47 There have been concerns around the independence of the above-mentioned law enforcement agencies, most of which surfaced during the Commission on State Capture. These are dealt with under Chapter Six of this paper. This is in view of their significance in the quest to strengthen the governance and oversight of the CJS.

2.48 The coordination of the core and non-core departments, as well as law enforcement entities within the CJS, occurs through the JCPS cluster.

2.49 The Constitution assigns to the Cabinet member responsible for the administration of justice the responsibility of promoting legislation on any other matter relating to the administration of justice that is not provided for in the Constitution. This authority is stated in section 170 of the Constitution. The authority to promote the enactment of the new criminal procedural law derives from this constitutional mandate.

2.50 The role, powers and functions of the Judiciary in relation to the CJS are discussed in the context of Judicial Case Management under Chapter 5 of this paper. This is in view of the independence of the Judiciary and its role within the constitutional dispensation founded on the separation of powers.

2.51 Under the new democratic Constitution, Customary Law has become part of the South African law. Section 211 of the Constitution mandates courts to apply customary law where it is applicable, subject to the Constitution itself and any relevant legislation. The application of the value of ubuntu and the African jurisprudence on the CJS must be viewed in this context. In *Makwayane* Madala J acknowledged the importance of further research into the nature of traditional African jurisprudence and its application to South Africa and the rest of Africa. [51]

2.52 As already alluded to elsewhere in this paper, the complexity of the governance of the CJS emanates from the fact that the mandate of each component of the CJS derives not only from the CPA, but from other Acts, including Acts constituting the component concerned. Also important is that some of the governance and oversight-related functions are not all spelt out in legislative instruments.

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51 *Makwanyane* para 252.

E Transforming the roles of Peace Officers and Private Security Officers within the Criminal Justice System

2.53 The CPA, in its current form, assigns specific functions to peace officers and Justices of the Peace. Whilst the roles of peace officers are provided for under the CPA, those of Justices of the Peace are provided for under the Justices of the Peace and Commissioners of Oaths Act of 1963.[52] In terms of section 3 of the latter Act, the Minister or any officer of the Department of Justice and Constitutional Development (DoJ&CD) with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may, subject to the provisions of subsection (2), appoint for any magisterial district so many justices of the peace as the Minister or the delegated officer may deem fit.

2.54 The powers and functions of the Justice of the Peace and Commissioners of Oath Act are spelt out in section 3 of the Act, which include, to:

(a) perform powers and duties as stated in any law in force in such district (for example, the CPA);

(b) carry out such instructions for the preservation of the peace and good order in such magisterial district as he may receive from the magistrate of that magisterial district;

(c) render all assistance possible in suppressing disorder or disturbance in such magisterial district; and shall further have such other powers and perform such other duties as the Minister may lawfully confer or impose upon him.

2.55 The responsibility for the designation of peace officers lies with the Minister in terms of section 334 of the CPA. They are appointed by various organs of state and declared as peace officers under the aforesaid provision of the CPA. The accountability over the appointed peace officers lies with the entities that appoint the peace officers concerned. This is evident in the following provisions of section 334 of the CPA:

> … the employer of any person who becomes a Peace Officer under the provisions of this section would be liable for damage arising out of any act or omission by such person in the discharge of any power conferred upon him under this section, the State shall not be liable for such damage unless the State is the employer of that person, in which event the

52 Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

> department of State, including a provincial administration in whose service such person is, shall be so liable.

2.56 Despite the significant role played by peace officers under the CPA, there are no regulatory provisions under the CPA that regulate their conduct. The declaration as peace officers is mainly premised on the legislative framework provided for under section 334 of the CPA. The section guides the appointment and functions of those to be designated as peace officers by the Minister. This section empowers the declared persons to exercise certain powers in terms of the Act, to be indicated in the declaration Notice, as and when they execute their primary functions. Missing from the CPA is the ethical conduct to which peace officers must adhere to.

2.57 The CPA nor any legislation applicable in the CJS recognise the role of the private security sector within the criminal justice value chain. The sector is currently regulated under the PSIRA, which, as the title of the Act states, deals with private security. This Act, among others, deals with licensing, certification and minimum standard setting. The absence of a regulatory framework for the private security sector regarding its role in the CJS poses legal challenges, particularly regarding its use of lethal weapons in performing its functions, including in effecting arrests. There are no accountability mechanisms similar to those applicable to the state security agencies.

2.58 The unregulated role of the private security industry became conspicuous during the civil uprising in KwaZulu-Natal (discussed under paragraph E below). The Report of the South African Human Rights Commission[53] flowing from the inquiry it conducted on the civil unrest, made the following findings with regard to the private security sector:

> The evidence indicates that PSCs operated with an unregulated and unchecked policing power, including irregularly acting as Public Order Policing units without appropriate crowd management training (which training PSiRA admits to not providing despite the clear need therefore). In crisis situations like the July Unrest, PSCs appeared to have usurped the roles of the South African Police Service due to the capacity limitations within SAPS. This eroded public confidence in SAPS. These PSC's became de facto law enforcers who lacked the required training and expertise.[54]

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[53] National Investigative Hearing into the July 2021 Unrest in Gauteng and KwaZulu-Natal by the South African Human Rights Commission (29 January 2024); https://www.sahrc.org.za/.pdf

[54] Ibid., para 312.

> While the Commission commends PSiRA for taking action against PSCs found to have violated the law during the Unrest (as communicated by PSiRA in its letter of 23 May 2023), it finds that it failed to fulfil its duty to regulate the private security sector which resulted in the widespread violation of human rights during the Unrest.[55]

2.59 The inquiry by the South African Human Rights Commission alluded to above exposed discernible gaps that must be addressed through the CPA reform.

2.60 According to Berg and Vavariro,[56] the root of the problem presented by this lack of oversight is manifold:

> The private security industry has been and is increasingly engaging in duties primarily thought of as being the exclusive mandate of the state. There is a blurring of private and public policing practices as well as a blurring of the policing of private and public spaces. Mass private property, for instance, constitutes private space and is privately policed, however, it is for public use (shopping malls for instance). This frontline interaction with the public as well as the increasing involvement of private security on traditional public spaces (such as within City Improvement Districts around the country) constitutes a challenge to current regulatory systems.

2.61 Berg and Vavariro conclude their article by alluding to the need to answer key questions around accountability, in terms of what should the industry be accountable for, to whom and why? These questions need to engage, as mentioned, with the diversity of activities and services provided, since not all sectors of the industry will require the same degree of oversight and regulation. In developing a new regulatory framework for the industry, the following may assist in strengthening the accountability and oversight of individual private security employees and the industry at large:

- There is clearly a need for multiple levels and sites of control and accountability. Although top-down, hierarchical systems of regulation are important, these should be supplemented with other forms of regulation which are complementary and which address gaps apparent in the current system of regulation.
- In light of this, there should be a system of dealing with both individual cases of abuse or misconduct as well as a means to assess and address any systemic issues within the industry, or parts of the industry, which hamper effective functioning and accountability.
- There is a need to coordinate regulatory bodies (both within and outside of the state) so as to engage with broader oversight issues in light of the increased pluralisation of policing

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55 Ibid., para 313.

56 Berg J., and Vavariro G "Regulating Private Security in South Africa Context, challenges and recommendations" Policy Paper, African Policing Civilian Oversight Forum November (APCOF) Policy Brief No. 3 November 2011.

and the unique regulatory challenges that arise from these developments. Similarly, the current partnerships between the SAPS and the private security industry need to be considered in the light of the potential regulatory challenges that arise.

- There is clearly a gap in knowledge about the nature, activities and abuses of/within the industry. The private security industry should be legally obliged to submit all cases of death as a result of security guard action, rape or torture to an independent facility. This facility should receive, document and monitor complaints by clients and the public regarding private security functions. Investigations, whether undertaken by the SAPS or internally, should be subject to audit.
- Similarly, regular screening and vetting of security personnel is required. The screening of personnel should not be a once-off occurrence but should take place regularly to ensure that employees that are active in the industry are not involved in criminal activities. In addition to this, inactive security personnel should be deregistered, and proper records kept, to ensure that criminality does not merely move from service provider to service provider.
- The extent to which the powers and limitations of private security employees are articulated in training and codes of conduct needs to be regularly reviewed and updated to meet developments and advances. Areas that need particular attention are electronic monitoring, bodily searches, investigations and the handling of confidential information which may offend the confronted individuals.
- The systems of firearm control and training in the industry need to be strengthened. The destruction of firearms owned by security companies that have been deregistered has to be strictly regulated and monitored to ensure that firearms do not make their way into the criminal economy.
- The current funding of the systems of oversight needs to be reviewed. The collection of funds collected from the industry may be tasked to an independent department or entity so as to ensure the objective regulation of the industry, not driven by monetary incentives.[57]

2.62 The role and accountability of peace officers and private security officers remain contentious issues that may be further clarified through public consultation sessions that are planned for the CPR Project. Views of experts and policy makers on these topics will further clarify the concerns regarding the role and accountability of peace officers and private security officers within the CJS and the extent to which such may be incorporated with the reformed CPA.

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[57] Ibid, p 22.

D The significance of the recommendations emanating from Commissions of Inquiry and Investigative bodies

1 The Marikana Commission on Inquiry

2.63 Several reports have pointed to the concerns and challenges facing the CJS. These reports emanate from investigative reports undertaken at the instance of the government or from independent bodies. The paragraphs below reflect some of the critical observations and recommendations emanating from these reports. The Marikana Commission of Inquiry

2.64 The Commission of Inquiry to investigate matters of 'public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana in the North West Province (the Marikana Commission)[58] exposed the deep-seated state violence that defined the police force of the apartheid regime. The violence fits Weber's definition of state-sponsored violence by a bureaucracy that aims to enforce its will on the people.[59] Maart calls the tragedy "a theatre of cruelty."[60] Mpofu-Welsh[61] aptly stated that:

> No event exposes South Africa's fault lines like Marikana: from racial inequality to police brutality and from governmental breakdowns to corporate impunity. Marikana is a metaphor for South Africa's injustices.

2.65 The Marikana Commission's recommendation calling for the government to move steadfastly with the demilitarisation of the police service came as no surprise.[62] In making the call,

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58 The Report of the Commission of Inquiry to investigate matters of 'public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana in the North West Province was published in General Notice 669 of 2015, Government *Gazette* 38978 of 10 July 2015.

59 See "Meaning of rationalisation in the context of Weber's theories" under Chapter 2, para.2 2 4.

60 Maart R. "Philosophy born of massacres. Marikana, the theatre of cruelty: The killing of the 'kaffir'" (2014) *Acta Academica* 46(4), 1-28: https://journals.ufs.ac.za/index.php/aa/article/view/1470/1447.

61 Article by Sizwe Mpofu-Welsh published in the Mail and Guardian of 22 August 2022, titled "Marikana stains the tapestry of South Africa's democracy".

62 The Recommendations of the Marikana Commission are stated under Chapter 25 of its Report, from p.543.

the Commission reiterated that the NDP already pronounced upon. The Commission contended that:

> The National Planning Commission, in its report, which has been accepted as Government policy, has made a number of important recommendations regarding the need to demilitarise the SAPS and to professionalise the police. These recommendations must be implemented as a matter of priority.[63]

2.66 More relevant to this paper is the recommendation of the Commission regarding public accountability of the top management of the police service, which is the Commission stated as follows:

> G Accountability
>
> 1) Where a police operation and its consequences have been controversial requiring further investigation, the Minister and the National Commissioner should take care when making public statements or addressing members of the SAPS not to say anything which might have the effect of `closing the ranks' or discouraging members who are aware of inappropriate actions from disclosing what they know.
> 2) The standing orders should more clearly require a full audit trail and adequate recording of police operations.
> 3) The SAPS and its members should accept that they have a duty of public accountability and truth -telling, because they exercise force on behalf of all South Africans.
> 4) The staffing and resourcing of IPID should be reviewed to ensure that it is able to carry out its functions effectively.[64]

2 Panel of experts on policing and crowd management

2.67 The Panel of Experts on policing and crowd management was appointed by Cabinet in accordance with the recommendation of the Marikana Commission of Inquiry. Its final report, "Panel of Experts Report on Policing and Crowd Management" was published in 2021.[65] The report of the Panel of Experts was published 10 years after the publication of the Diagnostic Report of the NPC in 2011. In this report, the NPC reiterated the significance of the demilitarization of the police service when it noted as follows:

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63 Marikana Commission Report, p551 (para C).

64 Marikana Report, p 554.

65 Panel of Experts Report on Policing and Crowd Management, https

> The decision to demilitarise the police force, moving away from its history of brutality, was a key goal of transformation after 1994. The remilitarisation of the police in recent years has not garnered greater respect for the police or higher conviction rates. If anything, it has contributed to violence. The police should be demilitarised and managed towards a professional civilian service.[66]

2.68 The Report of Panel of Experts, under the heading "Accountability" notes the following:

> Lack of accountability permeated the entire Marikana episode. The Provincial Commissioner had secret meetings with Lonmin at which she discouraged them from negotiating with the strikers, thereby undermining the efforts of the SAPS members involved in trying to resolve the situation through negotiation. Similarly, the 30 circumstances in which the high-level decision was taken to disarm the strikers remain shrouded in secrecy. After the launch of the operation the SAPS also did not retain any formal video recordings of the events or any recordings of its own radio communications. After the shootings SAPS members tampered with the evidence at Scene 2. Thereafter, the manner in which the SAPS participated in the Marikana Commission was characterised by an obstructive approach that included providing evidence that was not truthful and withholding information from the Commission.[67]

2.69 Most of the 134 recommendations of the Panel of Experts relate to the police specifically, save for the following, which are concerned with coordination and oversight beyond the SAPS:

> Recommendation 35**:** Parliament should consider the 'Model Bill for Use of Force by Police and other Law Enforcement Agencies in South Africa' as a suitable starting point for introducing an integrated law on the use of force by police and others in South Africa.[68]

> Recommendation 52: There should be a whole of government and cross-society initiative, convened by the most relevant ministry such as COGTA to support and strengthen the culture of peaceful protest and to strengthen local-level mechanisms for problem solving and the management of conflict. This should include:
>
> 374.1. A focus on the role of the responsible officers to ensure that high standards are applied by them in their administration of the RGA and in facilitating pro-active conflict resolution (see Panel Recommendations 50 and 51);
>
> 374.2. Establishing a new mechanism, or strengthening existing mechanisms, to ensure that protesting groups have access to a system for mediation and conflict resolution.
>
> 374.3. Ensuring that the various government departments adopt common strategies and share joint programming (including budgets), in realising the vision of the NDP

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66 Diagnostic Report, p 54.

67 Panel of Experts Report,

68 Ibid., p 136.

> 2030 as well as being aligned to the White Paper on Safety and Security in order to support and strengthen the culture of peaceful protest. The SAPS would have an important role in this regard given the existing avenues of engagement available within the SAPS for the prevention and resolution of community-based conflict. Other role-players might include the South African Local Government Association (SALGA), the South African Cities Network, the Department of Education, municipalities, the South African Human Rights Commission (SAHRC), universities, civil society and media groups, and others.[69]

3 Report of High-level panel on July 2021 civil unrests

2.70 During the ninth anniversary of the Marikana tragedy, another dark befell the CJS as civil unrest erupted in KwaZulu-Natal and Gauteng provinces. The unrest led to loss of life, inflicted a trail of destruction to property and looting of businesses on a massive scale. The High-Level Panel (July 2021 HLP) appointed by President Ramaphosa to investigate government response to the unrest lamented the culture lawlessness which engulfs the South African society when it stated:

> There are other manifestations of a culture of lawlessness in South Africa: the destruction of infrastructure (e.g. the theft of steel, copper on the railways) which was brought into the public spotlight, and has been happening to a greater or lesser extent over a long period now; the pilfering of fuel from the strategic supply lines; invasion of disused mines by illicit artisanal miners (*zama zamas*); the periodic blockading of national roads by disgruntled truck drivers; the illegal occupation of buildings by bullying municipal officials or in some cases collusion with them by 'business forums;' undermining procurement procedures – these are all indications of how the authority of the state has been eroded without any visible plan to respond.[70]

2.71 The lack of effective coordination across security service components was raised sharply in the July 2021 HLP Report. The terms of reference of the panel stated the following, among others:

> 1. To inquire into and make findings on whether the government's response to the violence and associated security threat was appropriate, timely and coordinated. If not, why not. Specifically, to inquire into the appropriateness of:
>   1 .1. Systems in place to forewarn the government of the possibility of like occurrences and how to respond to such.
>   1 .2. The legal framework in place for the coordination of government's response to such occurrences.[71]

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69 Panel of Experts, p.193.

70 Report of the expert panel into the July 2021 Civil Unrest (29 November 2021), https://www.thepresidency.gov.za/content/report-expert-panel-july-2021-civil-unrest:. para 6.17.

71 HLP Report,

2.72 The July 2021 HLP Report, in its critique of the legislative terrain, made the following observation:

> 5.49. There is a myriad of legislation which regulates the security services. However, there is little clarity in respect of co-ordination, especially in the context of the gathering and supply of intelligence, and the operation of law enforcement on the strength of the intelligence. This is borne out by the existence of several structures, such as the NATJOINTS, PROVJOINTS, NICOC, JCPS Clusters, and yet despite these, the flow of information appears hampered, and there is a lack of clarity about actions by the SAPS in response to the intelligence, both at National and Provincial level.

2.73 The July 2021 HLP Report also alluded to the inadequacy of legislation governing the security forces, particularly concerning the gathering of information among the role players, when it recorded the following:

> 5.50. There also do not seem to be clear steps or protocols that the various players in the intelligence spaces (whether it be under the NSI Act, the ISA Act, the SAPS Act or the Defence) ought to follow in order to get information to decision makers. There is room for clarity in the law, or in the regulatory framework in this regard.

2.74 The July 2021 HLP Report, in its critique of the legislative terrain, made the following observation:

> 5.49. There is a myriad of legislation which regulates the security services. However, there is little clarity in respect of co-ordination, especially in the context of the gathering and supply of intelligence, and the operation of law enforcement on the strength of the intelligence. This is borne out by the existence of several structures, such as the NATJOINTS, PROVJOINTS, NICOC, JCPS Clusters, and yet despite these, the flow of information appears hampered, and there is a lack of clarity about actions by the SAPS in response to the intelligence, both at National and Provincial level.

4 The report of the State Capture Commission

2.75 The Commission of Inquiry into allegations of state capture, corruption and fraud in public service including organs of state (Commission on State Capture)[72] highlighted the weaknesses of the security and law enforcement agencies of South Africa. In its recommendations, the Commission on State Capture revealed several aspects of the CJS that need reform. The Commission's report notes that state capture was facilitated by "a deliberate effort to subvert and weaken law enforcement and intelligence agencies to shield and sustain illicit activities, avoid accountability and to disempower opponents."[73]

2.76 A significant recommendation that impacts the governance and oversight within the CJS is that which concerns the establishment of a permanent AntiState Capture and Corruption Commission. Its mandate would be to investigate, publicly expose acts of state capture and corruption and make findings and recommendations to the President. The Commission further recommended that "the Anti-State Capture and Corruption Commission keep an eye on how Parliament performs its oversight function and whether, in respect of any particular matters, it is performing or it has performed its oversight function effectively and has held the Executive, including the President, accountable."[74]

2.77 Another significant development concerning efforts to address the scourge of corruption is the amendment brought to the NPA Act by the National Prosecuting Authority Amendment Act, 2024.[75] This Amendment Act, which came into effect on 19 August 2024, establishes an Investigating Directorate Against Corruption (IDAC) with the mandate to carry-out any function incidental to investigations, including:(a) relating to serious, high-profile or complex corruption, commercial or financial crime cases—

(i) arising from the recommendations of commissions of inquiry;

(ii) referred to the Investigating Director by the National Director in terms of section 28(1)(b); or

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72 The Judicial Commission of Inquiry into allegations of State capture, corruption and fraud in the public service including organs of state was established under Proclamation No 3 of 2018 published in Government *Gazette*41403 of 25 January 2018.

73 State Capture Commission Report, Part 6, Vol 2, p 297

74 State Capture Commission Report, Part 1 Vol 1 pp 845-851.

75 National Prosecuting Authority Amendment Act 10 OF 2024.

(iii) referred to the Investigating Director in terms of section 27, subject to section 26(2).

E Drawing lessons from the Child Justice Investigation

2.78 The Commission's discussion paper, published in 1999 under the Juvenile Justice Investigation[76] which culminated in the enactment of the Child Justice Act of 2008[77] (CJA), considered the significance of institutional reforms to ensure effective monitoring of the implementation of the CJA. The paper notes the following with regard to the monitoring of the implementation of the proposed legislation:

- *"Monitoring*

  12.11 There was widespread support for the creation of a monitoring system in child justice legislation, to ensure the continued development of diversion and alternative sentencing options, to provide support for role players such as probation officers, to collate information for public dissemination about the workings of the legislation, and to ensure the protection of children's rights whilst they are subject to the child justice system. There was overwhelming support in the responses to the questionnaires for a system which is rooted at the district level, and the project committee proposes to provide in the legislation for a child justice committee to be formed in relation to each magisterial district, with a range of functions and duties which will be detailed in the legislation. As inter-sectoral and interdisciplinary committees of this nature have already been established in many magisterial jurisdictions, and have been required where assessment pilot projects have been established, the proposal to provide for these committees in the statute is building on an existing model…

2.79 The CJA came into operation on 1 April 2010. It regulates, comprehensively, the entire spectrum of criminal procedure for children (people under eighteen years) from the pre-trial stage through to appeal. The CJA works in parallel with the CPA.

2.80 More relevant to the topic of this paper, CJA establishes, at the level of government departments, an inter-sectoral committee chaired by the Director-General of the DoJ&CD (Section 94). The Committee consists of the following other functionaries: the National Director of Public

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76 Discussion Paper No.79 published under the South African Law Reform Commission, Juvenile Justice, Project 106

77 Child Justice Act 78 of 2008.

Prosecutions; the National Commissioner of the South African Police Service; the National Commissioner of Correctional Services; the Director-General: Social Development; the Director-General: Education; and the Director-General: Health. The Intersectoral Committee must- (a) meet at least twice every year on a date and at the time and place determined by the chairperson; and (b) report in writing to the Cabinet member responsible for the administration of justice within one month of every meeting.

2.81 In terms of section 94 of the CJA, the responsibilities, functions and duties of the Intersectoral Committee, include:

> "(c) *ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act;*
>
> *(d) monitoring the implementation of the national policy framework and this Act; and*
>
> *(e) the establishment of an integrated information management system to enable effective monitoring, analysis of trends and interventions, to map the flow of children through the child justice system and to provide quantitative and qualitative data relating, among others, to-*
>
> *(i) arrest or methods of securing attendance at criminal proceedings;*
> *(ii) assessment;*
> *(iii) preliminary inquiries;*
> *iv) diversion;*
> *(v) children awaiting trial;*
> *(vi) bail and placement;*
> *(vii) trials;*
> *(viii) sentencing;*
> *(ix) appeals and reviews;*
> *(x) sexual offences committed by children;*
> *(xi) children who lack criminal capacity as provided for in section 7 (1); and*
> *(xii) any other relevant factor.*[78]

2.82 The coordination and monitoring at the level of departments is assigned to the Director-General of the DoJ&CD, who is enjoined by the Act to submit reports and statistics to the Minister. In turn, the Minister is accountable to Parliament through the reports received from the Intersectoral Committee.

2.83 The monitoring and oversight mechanisms in the CJA are lived experiences and may be transplanted into the adult criminal proceedings with necessary adaptations.

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78 Section 94 of the CJA.

Possible questions that may yield effective legislative reforms. The questions should not be viewed as exhaustive but merely point to some of the aspects that may be considered critical
What reform should be brought 334 of the CPA to address lack of oversight of peace officers? *Should the private security sector be assigned any role within the CJS?* *Should Parliament schedule joint sitting of the of Portfolio Committee of Police, Correctional Services and Justice and Constitutional Development to consider a combined report of the JCPS Department* *How regular should such a sitting of joint portfolios of justice and Constitutional Development, SAPS and Correctional Services sit? Will it assist if Parliament review its rules to facilitate such sitting?* What legislative reforms may be considered to provide for the collation, analysis and dissemination of criminal justice information within the ambit of the integrated criminal justice information management system?

CHAPTER 3: THE NATIONAL DEVELOPMENT PLAN AS GOVERNMENT'S BLUEPRINT FOR COORDINATION AND INTEGRATION

A The significance of the National Development Plan to building an accountable criminal justice system

3.1 The NDP is the blueprint for the advancement of a developmental state geared towards building an inclusive economy in order to eliminate *poverty and reduce inequality* by 2030. As a general concept, a developmental state connotes the pursuit of developmental outcomes through reliance on its administrative power, political influence, resources, and capacities to achieve economic development. It is viewed as a state that possesses the vision, leadership, and capacity to bring about a positive transformation of the economy. A developmental state is therefore a state that intervenes directly in the country's economic development for sustainable growth.

3.2 The NDP aims to foster a seamless and accountable CJS with effective coordination and governance mechanisms at the national, provincial, and local levels of government. This involves ensuring alignment and coordination between these spheres, promoting cooperative governance, and strengthening intergovernmental relations to achieve national unity and effective service delivery. In this way, the NDP seeks to advance cooperative governance enshrined in Chapter Three of the Constitution.

3.3 To meet its ultimate developmental goals, the NDP requires collaboration between all sections of society and effective leadership by the government. To achieve the aspiration of a capable and developmental state, the country needs to enhance Parliament's oversight role, stabilise the political administrative interface, professionalise the public service, upgrade skills and improve coordination. It also needs a more pragmatic and proactive approach to managing intergovernmental relations.

3.4 From the perspective of coordination and integration within the CJS, the NDP envisages that by 2030,

> departments within the CJS are working together as an optimally functioning ecosystem to maintain a South Africa where all people in South Africans are and feel safe. As part of this ecosystem the criminal justice system data and information flow freely, securely and timeously to both the CJS professionals as well as the systems and programmes that need to use it at any given point in time. There is an improved accuracy of actions taken and the speed of processing cases. An end-to-end digital ecosystem provides full information and has in that way, enabled continuous improvement, enhanced transparency and consequently accountability. Lost dockets and multi-year court processes have become archaic legends of a previous era.[79]

3.5 As it will become evident later, the inter-governmental vision articulated above permeates the seven change drivers of the Seven Point Plan.

3.6 Chapter 12 (Building Safer Communities) of the NDP focuses on measures that are aimed at transforming the CJS, which are geared towards building a safe and crime-free South African society by 2030. This commitment is underpinned by the following statement:

> In 2030, people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the street and children play safely outside.[80]

3.7 Furthermore, Chapter 12 of the NDP attests to the significance of the CJS in providing an environment that is conducive to economic development and advancement. This was echoed by the 2019 – 2024 Medium Term Strategic Framework (2019 MTSF), which stated as follows:

> A safe and secure country encourages economic growth and transformation and is therefore an important contributor to addressing the triple challenge of poverty, inequality and unemployment. The NDP 2030 envisions a South Africa where people feel safe and enjoy a community life free of crime. Achieving this requires a well-functioning criminal justice system, in which the police, the judiciary and correctional services work together to ensure that suspects are caught, prosecuted, convicted if guilty, and securely incarcerated and rehabilitated.[81]

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79 Chapter 12 of the NDP.

80 NDP, p

81 2019 – 2024 Medium-Term Strategic Framework,

3.8 There is therefore a clear correlation between *economic advancement and the rule of law. It is generally accepted that the* economy thrives where there is respect for the rule of law.

B The evaluation of the implementation of the Seven Point Plan

3.9 The incorporation of the Seven Point Plan into the NDP in 2012 affirmed the plan as the overarching national policy framework that underpins the reform of the CJS. The Seven Point Plan comprises the following policy directives or change drivers couched in the form of active steps. For a period nearing two decades, the Seven Point Plan have become the central reference point for the transformation of the CJS. The seven change drivers are:

(a) adopt a single vision and mission, leading to a single set of objectives, priorities and performance-measurement targets for the criminal justice system;

(b) establish, through legislation or by protocol, a new and realigned single coordinating and management structure for the courts;

(c) make substantial changes to the present court process in criminal matters through practical, short and medium-term proposals to improve the performance of the courts;

(d) improve the capacity of the component parts of the criminal justice system, which are part of, or affect, the new court process;

(e) establish an integrated and seamless information and technology database or system to facilitate the collection and collation of information and its analysis;

(f) modernise, in an integrated and holistic way, all aspects of systems and equipment; and

(g) community participation in the fight against crime, through community policing forums.

3.10 The reform of the CJS in its entirety must therefore commence with the evaluation of the extent to which the above seven change drivers have been ingrained in the quest to democratise the modern criminal justice dispensation. Minister Lamola emphasised this point in his opening remarks at the Conference on the ICJS and the Review of the CPA, when he averred:

> We must critically reflect on the JCPS Seven-Point Plan and the progress on its implementation and we must engage with the preliminary findings and proposals on the

> Review of the Criminal Procedure Act investigations with an understanding of the broader criminal justice system review that is taking place.[82]

3.11 Of the seven change drivers, the first and second lie at the heart of the government's commitment to create a cohesive and integrated CJS. Firstly, it is through the adoption of a single vision and mission accompanied by a single set of objectives, priorities and performance-measurement targets for the CJS that the different components will form a seamless and cohesive value chain. Secondly, a single coordinating and management structure for the courts is necessary for addressing challenges and blockages that are experienced across all the connecting points of the CJS. It is vital that these structures for management of cases through the system are empowered by legislation or protocols that are underpinned by Judicial Case Management principles.

3.12 The presentation the DoJ&CD made to the Portfolio Committee on Justice and Constitutional Development on 3 June 2015 articulated that the second change driver is concerned with the restructuring and alignment of the courts with the configuration of the state into national, provincial and local spheres of government. The Constitution Seventeenth Amendment[83] and the Superior Courts Act of 2013[84] consolidated the rationalisation of the superior courts in accordance with the provincial demographics of the country. The discourse leading to the enactment of the Superior Courts Act took seventeen years to fruition. In *Thembani Wholesalers (Pty) Ltd v September and Another*[85], the presiding Judge was critical of the long time it took for the rationalisation of the Superior Courts to materialise when he lamented:

> Notwithstanding the aforegoing constitutional injunction, the envisaged rationalization of the existing court structure was procrastinated. The enabling legislation, the Act, was only assented to seventeen (17) years later and came into operation in August 2013. In the intervening years, the status quo remained, and the existing courts, the Eastern Cape Division, the Supreme Court of Transkei and Supreme Court of Ciskei respectively, albeit

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82 Minister Lamola's Opening and Welcome Address: Strengthening the Integrated Criminal Justice System and Reviewing the Criminal Procedure Act, 1977 to keep our people safe and secure Conference: Birchwood 27 February 2024.

83 Constitution Seventeenth Amendment 2012.

84 Superior Courts Act No.10 of 2013.

85 *Thembani Wholesalers (Pty) Ltd v September and Another* 2014 (5) SA 51 (ECG); [2014] 3 All SA 683 (WCC) (26 June 2014), para 5.

with various modifications and guises, continued operating independently of each other, exercising original territorial jurisdiction over their defined geographical areas.

3.13 Pursuant to the enactment of the Superior Court Act, a Division of the High Court has been established in each of the nine provinces of the Republic, each with its own territorial jurisdiction, which is aligned to provincial boundaries to enhance access to justice.

3.14 The rationalisation of the lower courts has been a slow process, which started in 2014. To date, only the rationalisation of magisterial districts has been finalised, following the reform process that commenced in 2014. The Cabinet statement announcing the finalisation of the rationalisation of magisterial districts issued in November 2021 highlighted the following (in paragraph 10 of the statement):

> 10.1. Cabinet welcomed the finalisation of the rationalisation of the remaining four provinces' (Eastern Cape; Free States; KwaZulu-Natal and Western Cape) magisterial districts. The process, which gives effect to the Constitution of the Republic of South Africa of 1996, commenced in 2014 with magisterial districts of Gauteng and North West being rationalised. Limpopo and Mpumalanga were finalised in 2016 and Northern Cape in 2018.
>
> 10.2. Prior to 1994, the country's magisterial districts were determined along racial lines, perpetuating inferior judicial services to black people living in the defunct homelands, self-governing states and townships.
>
> 10.3. The proposed reconfigured courts' jurisdiction boundaries ensure equal access to the justice system by all South Africans. The process to finally come up with these boundaries was an all-inclusive process that included the magistracy, South African Police Service; National Prosecuting Authority; Legal Aid Board, Municipal Demarcation Board and all relevant stakeholders in the respective provinces.[86]

3.15 The rationalisation of the lower court structures to suit the rationalised magisterial districts awaits the finalisation of a new legislative framework that will take the form of the Superior Courts Act. In the absence of a new legislative framework, the structure of the lower courts continues to be determined in terms of the Magistrates Court Act 32 of 1944, which, like the CPA, is a relic of the colonial and apartheid era. The Lower Courts Bill (LCB), which was intended to repeal the Magistrates Courts Act was published for comments in May 2022 and has not been finalised.[87]

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86 Cabinet statement issued on 25 November 2021, https://www.gov.za/speeches/statement-cabinet-meeting-wednesday-24-november-2021-25-nov-2021-0000.

87 The Lower Courts Bill was published on by the Doj&cd on 3 May 2022 for comments. See https://pmg.org.za/call-for-comment/1156/

C How Government implements the National Development Plan

3.16 Government's integrated planning, monitoring and evaluation function is centred in the office of the Presidency and is managed through the Department of Planning Monitoring and Evaluation (DPME). The DPME coordinated the development of the MTSF of which the first was the 2014 – 2019 MTSF. It served as a five-year plan for administration towards the achievement of the priorities of the NDP. The intention was to develop five-year plans towards the achievement of the 2030 vision, aligned to the electoral cycles. Therefore, the MTSF was designed to identify critical actions that would put the country on a positive trajectory towards the achievement of the 2030 vision. It sets out indicators and targets to be achieved within the planning period.[88]

3.17 As the Policy Framework for Integrated Planning documents notes, the 2019-2024 MTSF was based on a participatory approach, wherein all stakeholders (government, private sector, labour and civil society) were engaged. The broadening of the engagements and consultation in the development of the MTSF represented a more integrated planning system based on lessons learned from the development process. This approach was intended to promote partnerships and common understanding, clarify roles and responsibilities of all stakeholders involved in the implementation of national programmes, reduce conflicts or duplication, promote cooperation amongst different sectors or institutions, and improve service delivery. Also key in the 2019-2024 MTSF was prioritisation, including the reduction in the number of targets compared to the 2014-2019 MTSF.[89]

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[88] The Policy Framework for Integrated Planning was developed by the Department of Planning, Monitoring and Evaluation in 2022: https://www.dpme.gov.za.pdf, p 14.

[89] Ibid., p 33.

3.18 The MTSF 2019-2024[90] included, as part of its indicators, the reform of the CPA as part of the overall improvement of the CJS. The Indicator pointed to the need for the tabling of the Criminal Procedure Amendment Bill in Parliament by 2022, which is aimed at the creation of a transparent, credible and well-capacitated criminal justice system; an effective and modernised criminal justice system. The MTSF placed the responsibility for reaching the delivery target on the DoJ&CD.[91] By the end of the 2019 MTSF's cycle the target had not been met. This influenced the Minister's decision to refer the Review of the Criminal Justice Project to the SALRC.

3.19 The seventh administration brought changes to the MTSF through the development of the novel Medium Term Development Plan (MTDP).[92] The fundamental difference between the MTSF and the novel MTDP is that the latter represents the plan of an inclusive Government of National Unity (GNU), whilst the former articulated the plan of the governing party. The similarity is that both plans aim to implement the NDP. Additionally, the MTDP also aims to strategically guide the work of the 7th Administration to achieve the goals set out in the Statement of Intent of the GNU.[93] The MTDP reaffirms the NDP as South Africa's long-term country plan towards 2030 which is aligned with its international commitments on the continent and globally.[94]

3.20 the MTDP identifies the following three Strategic Priorities that will be implemented across the state: Strategic Priority 1: Drive inclusive growth and job creation; Strategic Priority 2: Reduce poverty and tackle the high cost of living; and Strategic Priority 3: Build a capable, ethical, and developmental state.[95]

3.21 Specific to the CJS, the MTDP envisions a "reformed, integrated, and modernised CJS as a key outcome under its third Strategic Priority: "Build a Capable, Ethical and Developmental State". This priority also includes improving feelings of safety for women and children, combating priority crimes like corruption, and securing cyberspace.

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90 Medium Term Strategic Framework 2019 – 2024, https://www.dpme.gov.za//MTSF_2019_2024/2019-2024.

91 2019 MTSF, p 226.

92 Medium Term Development Plan 2024-2029: https://www.gov.za//gcis_document/202503 //mediumtermdevelopmentplan2024-2029. pdf, p 28.

93 Ibid., p 23.

94 Ibid., p.35.

95 Ibid.

3.22 Importantly, the MTDP alludes to the need to address the risks and weaknesses of the past implementation strategies of the previous administrations through the MTSF occasioned by: (a) the absence of a coherent plan to implement the reforms; and (b) the absence of a structure that would champion the implementation of the desired transformation. To mitigate the risks that derailed the implementation in the past administration, the MTDP explicitly states that:

> To mitigate this risk, it is essential to develop a comprehensive implementation plan that outlines specific timelines and assigns responsibilities. Establishing a central coordinating body to monitor progress and address challenges is crucial, as is ensuring ongoing communication and collaboration among CJS departments.[96]

3.23 The MTDP further states as follows with regard to the oversight of the prosecuting authority:

> Another risk pertains to the improvement of prosecution efforts, particularly the potential for political interference that could undermine the independence of the NPA. To address this risk, strong legislative safeguards must be implemented to protect the NPA's independence. Establishing clear criteria and a transparent process for appointing senior NPA officials is essential.[97]

D General acceptance of the National Development Plan beyond the Government

3.24 Although the NDP was adopted as a government policy framework document, it enjoys support beyond the government machinery. It is embraced by the Judiciary, business sector, and the community. Its acceptance stems from the legitimate and transparent approach adopted by the National Planning Commission (NPC) in its formulation. The NPC Diagnostic Report, released in June 2011, set out South Africa's achievements and shortcomings since 1994.[98] It

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96 MTDP, p 100.

97 Ibid.

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identified a failure to implement policies and an absence of broad partnerships as the main reasons for slow progress. It set out 9 primary challenges.

3.25 Malan[99] posits that the establishment of the National Planning Commission is crucial to co-operative government as it could play a big role in national strategic planning by assessing, at the macro-level, the country's position in relation to its policy coherence and coordination as well as objectives and priorities.

3.26 The NPC emphasised the need for the creation of a capable and developmental state to address the challenges facing the country in the following words:

> To achieve the aspiration of a capable and developmental state, the country needs to enhance Parliament's oversight role, stabilise the political administrative interface, professionalise the public service, upgrade skills and improve coordination. It also needs a more pragmatic and proactive approach to managing the intergovernmental system to ensure a better fit between responsibility and capacity. Equally, the state needs to be prepared to experiment, to learn from experience and to adopt diverse approaches to reach common objectives. To professionalise the public service, upgrade skills and improve coordination. It also needs a more pragmatic and proactive approach to managing the intergovernmental system to ensure a better fit between responsibility and capacity. Equally, the state needs to be prepared to experiment, to learn from experience and to adopt diverse approaches to reach common objectives.[100]

3.27 The High-Level Panel appointed by Parliament on assessment of key legislation and acceleration of fundamental change (HLP Report) undertook extensive public consultation to assess the impact of legislation enacted in respect of the various rights in the Bill of Rights.[101] The assessment focused on three thematic areas, namely: (a) poverty, unemployment, and the equitable distribution of wealth, (b) land reform: restitution, redistribution and security of tenure; and (c) social cohesion and nation-building.

3.28 The HLP Report noted that one of the biggest challenges that the government faces is with regard to the implementation of policies to give effect to legislation. Implementation has

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[99] Malan L P., "Intergovernmental relations in South Africa A revised policy approach to co-operative government" African Journal of Public Affairs (December 2012) Volume 5, Number 3, p

[100] Diagnostic Report, pp 54, 55.

[101] Report of High-Level Panel on assessment of key legislation and acceleration of fundamental change,

emerged as a cross-cutting theme across the various topics considered by the Panel.[102] It is recommended that Parliament should establish a mechanism for monitoring and facilitating the implementation of legislation, policies and programmes aimed at the progressive realisation of socio-economic rights.[103]

3.29 In relation to the NDP, the HLP Report noted that the plan is a 20-year project to fundamentally turn the fortunes of o the country around by 2030, across all key sectors, with a targeted focus on the triple challenges of poverty, unemployment and equality. Further, it is informed by a long-term perspective approach to development and, as such, its implementation over time will require more than the normal five-year term of a government administration and must, by implication, involve all political parties and the entire South African society. It stated this objective in the following sense:

> All political parties have, in one way or another, expressed support for the NDP; and, for its part, Parliament has held a debate and a number of activities to engage with the plan. All these notwithstanding, the NDP remains largely the programme of the Executive which enjoys the reasonable endorsement of the Legislative Sector. It is, however, the considered view of the Panel – a view that is informed by case studies elsewhere in the world – that Parliament needs to do more to own the NDP and ensure its ownership by the broader society.[104]

3.30 The HLP further recommended that Parliament consider passing legislation on the NDP to elevate its status into law in order to streamline and deepen its implementation. Such legislation to define the architecture for the implementation of the NDP across the country through the three tiers of the state and to enforce compliance by state organs with NDP targets in their planning and budgeting. That HLP contended that such legislation would also help Parliament in its oversight work, in holding the Executive accountable. The NDP will be on a stronger footing when it is anchored in national consensus, with significant backing from key constituencies.[105]

3.31 The Judiciary, in its strongest support of the NDP, published its own 2030 Vision statement, titled “2030 Vision for the Judiciary (A Contribution to the National Development

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[102] HLP Report, p.511.

[103] HLP Report, recommendation 4.1 p.319.

[104] HLP Report, p 532

[105] Ibid., recommendation 6.7, p.565.

Plan)"[106] (2030 Vision of the Judiciary). In its Vision statement former CJ committed the Judiciary to the developmental aspirations in the NDP.[107] It acknowledges the significance of the Seven Point Plan as a great idea and "as the way to go"; it laments the lack of consultation with the Judiciary in developing the plan. Further, the lack of consultation is a clear indication that the Judiciary was never intended to have any meaningful role to play in its implementation.[108]

3.32 In its Vision statement, the Judiciary expressed strong sentiments that the exclusion of the Judiciary, which is at the 'centre of all justice-related matters', would not yield any positive results. It called for joint leadership of the Judiciary and the Executive to drive these initiatives. That failure to do so provides an explanation for the underperformance of the courts over the years.[109]

E Aligning the criminal justice reforms to the maturity date of the National Development Plan

3.33 The year 2030 marks the maturity date for the realisation of the goals of the NDP and the Strategic Development Goals (SDGs). The commitment to building safer communities resonates with the realisation of South Africa's commitment to the global SDGs. These goals were adopted by 193 countries of the UN in 2015, three years after the adoption of the NDP in 2012. There are 17 SDGs in total, with 169 targets and 232 indicators. SDG 16 relates to access to justice. Amongst the anticipated deliverables of the SDG 16 is the need for law reform to, among others: combat discrimination in access to goods and services; ensure access to information; and provide access to justice, including both formal and informal means of dispute resolution.

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106 "2030 Vision for the Judiciary (A Contribution to the National Development Plan)" by Mogoeng wa Mogoeng, Chief Justice of South Africa, 2011.

107 2030 Vision of the Judiciary.

108 Ibid, at p.10.

109 "2030 Vision for the Judiciary., p 9.

3.34 The Sustainable Development Goals: Country Report 2019[110] (Country Report on SDGs) underscores the significance of the NDP towards ensuring the realisation of South Africa's commitments at a global level under the SDGs.

3.35 The country is in the final five years of implementation of the fast-approaching 2030 maturity date. The enactment of the new law of criminal procedure and other laws highlighted in the paper will be a notable milestone towards the realisation of the goals set by the NDP and the SDGs.

F 10 Year Review of the National Development Plan

3.36 In 2022, the NPC published its report on the 10 Year Review of the National Development Plan 1012 – 2022. (10 Year Review). The review gives an assessment of the ten years since the country's adoption of the NDP.

3.37 The 10 Year Review established that the country had underperformed on key targets in the NDP overall. Among contributing factors was the deterioration of the policy environment, challenges of leadership across society, lack of coherence in executing the NDP, and poor implementation, alongside a turbulent regional and global environment. It found that the implementation of the NDP, as set out in the vision and priorities, was not achieved during the interim phase. The following are specific findings of the Review that are relevant to the CJS, particularly in relation to governance and oversight:

(a) Crime, including gender-based violence, is persistently high and the types of violence are shocking in their brutality.

(b) Political leadership did not focus on the NDP after its adoption and was not strong, which consequently meant that the Plan was not effectively championed.[111]

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110 Sustainable Development Goals (SDGs): Country Report 2019 – South Africa published by Stats SA in 2019 https:// www.statssa.gov.za/MDG/SDGs//Country Report 2019 South Africa.pdf: (accessed 24 July 2025).

111 10 Year Review, p 17

3.38 Recommendations in the 10 Year Review relevant to the CJS include the following: (a) government, and society, must prioritise murder reduction while upholding human rights with sufficient resources being allocated to this goal; (b) professionalise the police and address the SAPS' lack of efficient recruitment methods; (c) partner with private security companies to tackle high crime areas characterised by gangsterism and illegal substances; (d) study and apply international best practices for the protection of whistle-blowers. (e) promote the implementation of the GBVF strategy holistically in all spheres of government and create safer spaces for victims; (f) strengthen legislation on human trafficking, organised crimes, counterfeit goods coming through ports, money laundering, and (g) amend immigration laws.[112]

G **The role of the Justice Crime Prevention and Security cluster in forging coordination and integration**

3.39 The government has established a cluster system with an aim to foster an integrated approach to governance and for improving government's planning, decision-making and service delivery. The main objective of the clusters is to ensure proper alignment and coordination of all government programmes at national and provincial levels. The Clusters of Directors-General and Clusters of Ministers are policy and decision-making forums established by the Presidency in line with Section 85 of the Constitution to ensure coordination and integration of government priorities and programmes. These forums discuss and process Cabinet memoranda, draft bills, policies, documents and strategic decisions for consideration and approval by Cabinet.

3.40 During the Sixth Administration, the Presidency updated the names of Clusters as follows: Governance, State Capacity and Institutional Development Cluster (GSCID); Justice, Crime Prevention and Security Cluster (JCPS); International Cooperation, Trade and Security Cluster (ICTS); Social Protection, Community and Human Development (SPCHD); and the Economic Sectors, Investment, Employment and Infrastructure Development (ESIEID). The Justice, Crime Prevention and Security (JCPS) Cluster, which is key to law-enforcement efforts, is in a process of restructuring.

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[112] 10 Year Review, p 50

3.41 Reporting to the Director-Generals' JCPS cluster are a number of subcommittees, which include the (a) National Joint Operational & Intelligence Structure (NATJOINTS); (b) the National Development Committee (DEVCOMM); (c) the National Intelligence Co-ordinating Committee (NICOC); (d) the Integrated Justice System (IJS) Programme; (e) the Border Control Co-Ordinating Committee (BCOCC); and the Anti-Corruption Task Team (ACTT). The NATJOINTS is the operational arm of the DG's JCPS Cluster, whilst Devcomm is responsible for the policy coordination function.

3.42 The JCPS cluster is responsible for coordination and integrated planning among the security cluster Ministries and departments. It is therefore responsible for the coordination of the CJS interventions.

3.43 The DPME has the overall mandate to coordinate government planning, monitoring, and evaluation functions to improve service delivery outcomes. It conducts periodical assessments of various departments and Ministries in their implementation of their constitutional and legislative mandates and publishes reports on the outcome of the assessments. The published reports are a useful point of reference in ascertaining the progress made by the government, through various departments, towards the realisation of the goals of the NDP and the rights in the Bill of Rights.

3.44 It is in the context of the broad integrated governance framework that the JCPS plays a pivotal role in strengthening the coordination and streamlining of cluster department activities relating to the CJS.

3.45 The Office of the Chief Justice (OCJ), despite being part of the government machinery, is not part of the JCPS cluster nor part of the integrated planning and monitoring function under the DPME. This forms part of the ongoing separate policy discourse relating to the OCJ, particularly its location within an independent Judicial branch of the state. President Ramaphosa, during the occasion to celebrate the 30th Anniversary of the Constitutional Court, alluded to the ongoing discourse when he remarked that:

> At our meeting with the Judiciary recently, we committed to taking steps to advance the independence of the judiciary and the future of our courts' administration. A joint committee will develop an action plan to be finalised 6 weeks from now. We will ensure

> the Judiciary is rightly constituted as an equal branch of government with the Legislature and the Executive.[113]

3.46 Despite the strong policy frameworks that seek to foster effective coordination among the JCPS departments and law enforcement agencies, fragmentation and silo-approach to implementing the criminal justice transformation programmes persist. Consensus-seeking among the different Ministries and departments that constitute the JCPS cluster is necessary before the amendments can get thumps-up. This is notwithstanding any rationality that the DoJ&CD may put forward as the basis for the envisaged reforms. Mphahlele-Ntsasa and Janse van Rensburg[114] argue this point eloquently when they aver as follows:

> … JCPS Cluster; instead, it operates as a complex adaptive system that evolved through interactions with other subsystems and its operating environment [35–38]. The criminal justice system consists mainly of three subsystems namely police services, courts, and correctional services [38, 39]. Different sets of legislation and conflicting mandates govern individual subsystems, making them complex. For example, high conviction rates and lengthy prison sentences pursued by prosecutors tend to overstress the correctional facilities. Different subsystems complicate the system further due to their varying levels of independence. For example, prosecutorial and judicial independence enshrined in the South African Constitution can present practical coordination challenges. Moreover, the system and its subsystems interact and receive environmental feedback. The environment comprises a broad range of stakeholders, including community members, non-governmental institutions, and other governmental institutions.

H The role of Inter-Ministerial Committees in forging integration and coordination

3.47 The President of the Republic, and in certain instances the Cabinet, appoints Inter-Ministerial Committees for specific purposes that require the attention and dedication of a team of Ministers. The mandate of an Inter-Ministerial Committee (IMC) is limited to the matter that it is

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113 Remarks by President Cyril Ramaphosa at the 30-year anniversary celebrations of the Constitutional Court, Constitutional Court, Braamfontein, https://www.gov.za/news/speeches/president-cyril-ramaphosa

114 L Mphahlele-Ntsasa., M Jansen van Rensburg., "Fostering effective governance through intragovernmental networks: a case of a justice, crime prevention and security cluster network" Discover Global Society (2024) 2:23 | https://doi.org/10.1007/s44282-024-00048-6, p15.

established to execute. IMCs are effective coordination mechanisms that contribute towards enhancing integration and breaking down silos.

3.48 The following Inter-Ministerial Committees have been established within the CJS, namely: the Inter-Ministerial Committee (IMC) on the Prevention and Combating of Corruption and the IMC on Gender-Based Violence and Femicide. The National Anti-Corruption Strategy assigns specific functions to the IMC on the Prevention and Combating of Corruption, including to expedite consequence management for the COVID-19 procurement corruption allegations (IMC on COVID-19 related corruption). The latter IMC was established by the Cabinet to expedite consequence management in relation to COVID-19 procurement corruption allegations. It is chaired by the Minister of Justice and Correctional Services. The work of the IMC feeds into the National Anti-Corruption Strategy approved by the Presidency in 2021.[115]

3.49 The IMC on Gender-Based Violence and Femicide (GBVF) was also established in 2020. The IMC is constituted by the Minister in the Presidency for Women, Youth and Persons with Disabilities, who is the convener, together with the Ministers of Police, Finance, Justice and Constitutional Development, Social Development, Public Service and Administration.

Pointed Questions that may contribute to the effective legislative reforms
The Judiciary Vision 2030's endorsement of the Seven Point Plan by the Judiciary in 2011 and its commitment to be part of a joint coordinating structure for effective functioning of the CJS signified buy-in from the Judiciary on the reform processes under the plan. However, with the lapse of time since 20211, the commitment may have waned. How can the joint engagement on the seven-point plan be resuscitated to get buy-in from the Judiciary? *How can the government, the Judiciary and Parliament leverage on the NDP for the successful implementation of its noble ideals on the CJS?*

115 National Anti-Corruption Strategy 2020 – 2030, https://www.gov.za/ /gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf, pp 11 and 23.

CHAPTER FOUR: ENHANCING THE ROLE OF PARLIAMENT AND THE JUDICIARY IN BUILDING AN ACCOUNTABLE CRIMINAL JUSTICE SYSTEM

A Parliament's oversight over the Criminal Justice System within the ambit of separation of powers

4.1 The Parliamentary oversight function is one of the cornerstones of democracy. It holds the Executive accountable for its actions and ensures that it implements policies in accordance with the laws and budget passed by Parliament. The Oversight and Accountability Model makes provision for various oversight mechanisms, including exercising oversight through committees, oversight visits, the passing of budget votes, questions for executive replies, members' statements, notices of motion, debates on matters of public importance and constituency work.

4.2 One of the significant features provided for in the model is the establishment of a Joint Parliamentary Oversight and Governance Assurance Committee to pursue all assurances, undertakings and commitments given by Ministers on the floor of the Houses and the extent to which these assurances have been fulfilled.

4.3 In terms of the Constitution, the authority to develop and implement national policy and to initiate legislation vests in the national executive. This authority is explicit in section 85 of the Constitution, which states as follows:

> (1) The executive authority of the Republic is vested in the President.
> (2) The President exercises the executive authority, together with the other members of the Cabinet, by—
> (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
> (b) developing and implementing national policy;
> (c) co-ordinating the functions of state departments and administrations;
> (d) preparing and initiating legislation; and

(e) performing any other executive function provided for in the Constitution or in national legislation.

4.4 Therefore, the legislature may, through its oversight role over the national executive, play a direct role in making, shaping, reshaping, modifying, and transforming the government policy proposals. Whilst the executive has a constitutional mandate to initiate national policy, no policy can be adopted and implemented without the approval of the legislature. This is by virtue of its oversight role over the exercise of national executive authority, including the implementation of legislation.[116] In this context, the legislature has the authority to amend the policy proposals presented by the executive after considering whether they are in line with government priorities.

4.5 The NCOP has oversight of the executive within its role as the representative of the provinces. This is done through participation in the national legislative process and by providing a national forum for consideration of issues affecting provinces.[117]

4.6 In *Economic Freedom Fighters and The Speaker of the National Assembly and Others*[118] which concerned the remedial action of the Public Protector, the Constitutional Court, through Mogoeng CJ, emphasised the oversight role of Parliament over the executive in the following terms:

> Similarly, the National Assembly, and by extension Parliament, is the embodiment of the centuries-old dreams and legitimate aspirations of all our people. It is the voice of all South Africans, especially the poor, the voiceless and the least-remembered. It is the watchdog of State resources, the enforcer of fiscal discipline and cost-effectiveness for the common good of all our people. It also bears the responsibility to play an oversight role over the Executive and State organs and ensure that constitutional and statutory

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[116] The oversight role of the National Assembly over the national executive derives from section 55(2) of the Constitution.

[117] Section 66 of the Constitution provides for the participation by members of national executive in the NCOP. Subsections (1) and (2) state as follows:

> (1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.
> (2) The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.

[118] *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), para 22.

obligations are properly executed. For this reason, it fulfils a pre-eminently unique role of holding the Executive accountable for the fulfilment of the promises made to the populace through the State of the Nation Address, budget speeches, policies, legislation and the Constitution, duly undergirded by the affirmation or oath of office constitutionally administered to the Executive before assumption of office.

4.7 In the above judgment, the Constitutional Court held that the failure by the NA to hold the President (former President Jacob Zuma) accountable by ensuring that he complied with the remedial action taken against him by the Public Protector was inconsistent with its obligations to scrutinise and oversee executive action and to maintain oversight of the exercise of executive powers by the President.[119]

4.8 Parliament exercises its oversight role over the CJS through its Parliamentary committees. There are different committees that oversee the work of the different security departments and law enforcement agencies. Important among these committees, in the case of the NA, are Portfolio Committees appointed in respect of various national government departments. The role of Portfolio Committees is to: consider Bills; deal with departmental budget votes; oversee the work of the department they are responsible for; and enquire and make recommendations about any aspect of the department, including its structure, functioning and policy.

4.9 In respect of the NCOP, a number of Select Committees are appointed to oversee the work of the various national government departments and to deal with Bills. Because only 54 of the 90 NCOP Members are permanent delegates compared to the 400 of the NA, each Select Committees oversees the work of more than one national government department.

4.10 Although the Joint Rules of Parliament[120] provides for a system of joint committees of the NA and NCOP, it does not appear that there is an effective use of the system as a means to addressing the challenges facing the CJS as dealt with by different departments in a coherent manner. The process of establishing such a joint committee that would comprise committees responsible for all departments in the security cluster appears to be cumbersome and must be sanctioned by the approval of the National Assembly.[121]

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[119] Ibid, para 104.

[120] Chapter III, Rule 15 of the Joint Rules of Parliament.

[121] See Rules 142 to 145 of the Joint Rules (NA & NCOP). Joint Rules 7th Edition- July 2024.

4.11 The attempt to convene a meeting of joint committees of the security cluster departments to receive a presentation from all Ministers in the JCPS cluster to report on the July 2021 civil unrest that erupted in the KwaZulu-Natal and Gauteng provinces appears to have been frustrated by the tedious processes prescribed by the Joint Rules.[122] The preliminary desk-top research could not retrieve any reports of the joint committees of the security cluster, which the JCPS cluster Ministers and departments had to address collectively.

B The role of the Judiciary in the Criminal Justice System

4.12 The well-known and often cited prognosis by Alexander Hamilton described the Judiciary as "the least dangerous branch" for it held neither purse nor sword. Alexandra Hamilton paraphrased the dogma as follows:

> Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.[123]

4.13 Judge Venkataraman Viswanathan[124] of the Supreme Court of India postulates that, yet, paradoxically, the Judiciary is the most enduring guardian of liberty.

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[122] Report of the Parliamentary Monitoring Group on the meeting for the Establishment of joint committee to probe July 2021 Violence: with Ministers (Police & Defence) + Deputy Ministers (Police & Justice),30 July 2021.

[123] Hamilton, Alexander. "The Federalist Papers: Federalist No. 78." The Library of Congress, The Federalist Papers. May 28, 1788. http://thomas.loc.gov/home/histdox/fed_78.html.(accessed March 25, 2008).

[124] Speech by Judge Venkataraman Viswanathan "Advancing Judicial Independence and Accountability: Preserving the Rule of Law and Reinforcing Judicial Security in an Evolving Global Landscape" at the J20 Summit of Heads of Constitutional Courts and Supreme Courts 03 September 2025 Sandton Convention Centre.

4.14 The Constitution firmly entrenches judicial independence. Section 165 vests judicial authority on the courts. The significant subsections of section 165 are the following:

> (2) The courts are independent and subject only to the Constitution and to the law, which they must apply impartially and without fear, favour, or prejudice.
> (3) No person or organ of state may interfere with the functioning of the courts.
> (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

4.15 Judicial independence implies both the independence of the Judiciary to adjudicate over disputes and criminal cases freely and to render independent decisions. It also extends to institutional independence.

4.16 What is important, though, is that there is no model of unlimited judicial independence. The independence is limited by the idea of constitutionalism. This implies that judicial independence must be exercised within the confines of the limits of the Constitution.[125]

C Affirmation of the judicial norms and standards in

4.17 Section 165(6) of the Constitution, which was brought about by the Constitution Seventeenth Amendment, has affirmed the role of the Chief Justice to:

> exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

4.18 The Superior Courts Act[126] provides a legislative framework for the Chief Justice in carrying out the constitutional task of developing the norms and standards for the performance of judicial functions. The framework is provided under section 8 of the Superior Courts Act. The

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125 Ghai J C, *Judicial Accountability in the new Constitutional Order (2016)* ICJ Kenya, at p10.

126 Superior Courts Act 10 of 2013.

section provides the processes and requirements for the determination of norms and standards which include the following:

(a) the issuing of protocols or directives or giving guidance by the Chief Justice to judicial officers in respect of norms and standards for the performance of the judicial functions and regarding any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts.

(b) the delegation of powers and functions vesting on the Chief Justice and any Head of Court to any other judicial officer of the court in question.

(c) the management of the judicial functions of each court is assigned by the Act to the responsibility of the head of that court.

(d) the Judge President of a Division exercises responsibility for the co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of that Division.

4.19 In February 2014, Mogoeng CJ, acting in terms of Section 165(6) of the Constitution, published the norms and standards for the performance of judicial functions of all courts.[127] These were with the view to ensuring effective, efficient and expeditious adjudication and resolution of cases brought before the courts.

4.20 The following are among the standards that are expressed in the published norms and standards: (a) courts to strive to sit for a minimum of 4.5 hours per day;[128] (b) in respect of criminal trials, judicial officers in the magistrate's courts are required to ensure that an accused pleads to the charge within three months after court appearance, (c) further that the case be finalised within 6 months after having entered a plea,[129] and (d) each court to have a case management forum to oversee the implementation of these norms at the level of the court.[130]

4.22 As a monitoring mechanism the 'Norms and Standards' sets up a Judicial Case Flow Management structures in the form of District Efficiency Enhancement Committee (DEEC), Regional Court Efficiency Enhancement Committee (REEC) and Provincial Efficiency

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127 Norms and standards for the performance of judicial functions by the courts General Notice No.147 published in GG 37390 of 28 February 2014.

128 Para 5.2.1(iv) of the norms and standards.

129 Ibid., para 5.2.5(ii)(b).

130 Ibid., para 5.2.4(iii).

Enhancement Committee (PEEC). These committees monitor court performance at different hierarchy of the courts and report to the National Efficiency Enhancement Committee at the national level chaired by the Chief Justice. The Provincial Efficiency Enhancement Committee (PEEC) in each province is chaired by the JP tasked with the monitoring of judicial performance.[131]

D Judicial Case Management

4.23 The Judicial Case Management is a mechanism through which judicial officers strive to give effect to the norms and standards developed in the manner discussed in the preceding paragraph.

4.24 Judicial Case Management in the CJS refers to the process where judges and magistrates actively manage and oversee the progress of cases from initiation to resolution, aiming to ensure a fair, efficient, and timely trial. This involves proactive intervention by the court to streamline proceedings, manage resources, and ultimately, deliver justice. It's considered a crucial element in the overall effectiveness of the CJS.

4.25 The core principle of Judicial Case Management is that the judge, rather than the litigants or their lawyers, controls the pace of litigation. A judge who is an effective case manager takes charge of the case early, sets an efficient but reasonable schedule tailored to the needs of the case, maintains control by holding parties to the schedule, punctually resolves issues that could delay the case, and renders a prompt decision.

4.26 The Judicial Case Management system in South Africa has evolved long before the section 165(6) constitutional amendment. It transitioned from an initial pilot project initiated in 2005[132] into a fully implemented system with established rules and ongoing refinements. This involves a shift from a primarily passive role for the Judiciary to a more active, interventionist approach in managing the progress of cases.

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131 Ibid., para 5.2.4(ii).

132 The Practical Guide to Court and Case Flow Management for South African lower courts was published in October 2005 in order to ‘address issues pertinent to improving and maintaining the effective and efficient operation of criminal courts.

4.27 Judicial Case Management in criminal proceedings is a recent development. In jurisdictions with an adversarial CJS, similar to South Africa, litigants or parties present evidence and arguments on the legal issues to be decided. The judge serves as an impartial decision maker, ruling on evidence and arguments prepared and presented by the parties.

4.28 In respect of civil litigation, Rule 37 of the Rules Regulating the Conduct of the Proceedings of the Provincial and Local Divisions of the High Court of South Africa ("Uniform Rules") affords the parties "an opportunity to endeavor to find ways of curtailing the duration of the trial by redefining the issues to be tried" and "to facilitate settlements between the parties, narrow the issues and to curb costs" There is no similar mechanism in respect of criminal trials. There is an ongoing investigation, as part of the CPR Investigation, to provide a legislative framework to provide for Pre-trial conferences in criminal trials to provide a similar mechanism to that of Rule 37.

4.29 Because so many people and departments are involved, the problem of delays requires a cohesive and coordinated response across all components and actors within the CJS, guided and informed by the norms and standards developed by the Judiciary.

4.30 Although Judicial Case Management is judiciary-led, other stakeholders within the CJS have a role to play in the process and all benefit from early judicial management of criminal cases, including: the identification and adjudication of the principal factual and legal issues in dispute; streamlining processes, facilitating resolution discussions and achieving the earliest and most effective resolution.[133]

E An Investigation into the unreasonable delay of criminal proceedings (Sec 342A Investigation)

4.31 Section 342A was inserted in the CPA in 1997 following an investigation by the Commission into delays in the finalisation of criminal cases (as part of Project 73: Simplification

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133 See Preamble of the Model Guidelines

of criminal procedure). The background to and motivation for the insertion of the section were based on an analysis of the causes of delays in the disposal of criminal cases.

4.32 Section 342A empowers presiding officers in criminal proceedings to conduct an investigation into the causes of unreasonable delays in any pending criminal matter.

4.33 At the heart of the Investigation which is conducted through an Inquiry is the authority of the presiding officer to summon relevant officials to give an account for the delay. The section empowers the presiding officer to give a variety of orders, including an order—

(a) refusing further postponement of the proceedings;

(b) granting a postponement subject to any such conditions as the court may determine;

(c) where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the Attorney-General;

(d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed;

(e) that—

(i) the State shall pay the accused concerned the wasted costs incurred by the accused as a result of an unreasonable delay caused by an officer employed by the State;

(ii) the accused or his or her legal adviser, as the case may be, shall pay the State the wasted costs incurred by the State as a result of an unreasonable delay caused by the accused or his or her legal adviser, as the case may be; or that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.

4.34 Courts have, in several decisions, interpreted the meaning and scope of the investigation contemplated by section 342A. In *Ramabele v S Msimango v S*[134] *(Ramabele),* the court explained the purpose of the investigation as -

> The vehicle for giving practical application to the section 35(3)(d) right to have a trial begin and conclude without reasonable delay". Therefore, when considering section 342A, one must be mindful of section 35(3)(d) of the Constitution which entrenches an accused's constitutional right to an expeditious trial. This section provides: "Every accused person has a right to a fair trial, which includes the right- … (d) to have their trial begin and conclude without unreasonable delay"[135]

4.35 The court in *Ramabele* went on to explain the nature of the enquiry as follows:

> Even though section 342(3) does not specifically state that a 'formal' enquiry be held, it does call at the very least for an enquiry, on the basis of which a finding must be made. Such enquiry must have regard to the full conspectus of the factors in section 3(2). In absence of an enquiry, a court may find it difficult to assess whether a delay is unreasonable or how much systemic delay to tolerate. That can only be determined when there has been an enquiry albeit informal, in which the conspectuses of the factors listed has been considered. This I say mindful of the fact that the bulk of the criminal cases are heard before the magistrate's court, and to insist on a formal enquiry is likely to be burdensome to the already overstretched court rolls. The finding should be the followed by a remedy the court considers appropriate, depending on whether the accused person had already pleaded or evidence led. It seems to me that, once the provisions of s 342 are invoked, the following three stages must be followed: (1) investigation of the cause of the delay in the finalisation of the case, taking into account the listed factors; (2) making of a finding whether the delay is unreasonable or unreasonable; (3) depending on the stage of the proceedings, the application of the remedies provided.[136]

4.36 The whole section came into operation except for the provisions of subsections (3)(e) and (5), which deal with orders as to costs. Its non-implementation emanated from the myriad of implementation challenges. At a consultative workshop arranged by the Court Services' branch with representatives of the Directors of Public Prosecutions (DPPs), the State Attorney, Regional Court Presidents and Chief Magistrates, the following concerns were raised:

(a) Magistrates pointed out that many legal representatives of the accused will see the new measures as a golden opportunity to recover their costs, at least in part, from the State. Given the already overloaded court rolls and problems such as staff shortages and inexperience in the ranks of the State prosecutors and advocates, which inevitably lead to

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134 *Ramabele v S Msimango v S* (CCT 232/17; CCT207/18) [2020 ZACC 22; 2020 (11) BCLR 1312 (CC); 2020 (2) SACR 604 (CC) (16 September 2020)

135 Ramabele, para 41.

136 Ramabele, para 56.

delays, there can be little doubt that any trial lawyer will not hesitate to attempt to move the court to issue a costs order against the State.

(b) Should the State be ordered to pay the accused's wasted costs, the awarded costs would be subject to taxation. The decision of the taxing master is, in itself, reviewable and will make even further demands on the offices of the State Attorney, who will exercise a control function in this regard.

(c) With regard to subsection 342A(3) (e) (ii) in terms whereof the accused may be ordered to pay the State its wasted costs, the following specific challenges were pointed out:

(i) The first and main problem concerns the basis on which the State's wasted costs is to be determined. Subsection *(5)* (a) reads: 'costs shall be taxed according to the scale the court deems fit.' 'Scale' in this context obviously refers to party and party scale or attorney and client scale. However, State prosecutors or advocates and other officers who represent the State are salaried employees. The State Attorney specifically raised this issue, in view of the fact that there is no basis for the determination of wasted costs on the part of the State. It will, for instance, not be possible to submit bills of costs, in accordance with fixed tariff structures, for purposes of taxation.

(ii) Apart from the aforementioned concerns and the fact that an administrative procedure will have to be established where compliance with a costs order against an accused can be ensured, there are at least two other issues of a practical nature, which cast serious doubt on the viability of costs orders against an accused:

(aa) The vast majority of legally represented accused rely on legal aid provided by the State. The effect of an order for costs against an accused will then be that the State (which provides the legal aid) will be ordered to pay the State its wasted costs.

(bb) The chances of actually recovering costs from an average accused, who is not legally represented, are slim. It is foreseen that the amount of time spent by the State Attorney and legal administration officers in tracing the accused (many of whom may be serving prison sentences and may be referred to as the proverbial "persons of straw") and actually recovering relatively small amounts, will not be justifiable in terms of the strain placed on human resources, nor can it be economically justified.

4.37 It appears necessary that the above challenges regarding the implementation of the provisions of the CPA that were meant to address delays in criminal trials be revisited, particularly to obtain the views of the broader CJS stakeholders. This should be with a view to effecting reforms that would address these challenges.

F The introduction of mandatory Pre-trial Conference to anticipate and prevent delays

4.38 Whilst the Investigation for delays in criminal trials has been viewed as an important reform of the CJS that fits well into the Judicial Case Management responsibility of presiding officers, its effectiveness is downplayed by the fact that it would arise after such a delay has been occasioned by either of the litigants in a criminal trial.

4.39 Pre-trial conference would be a conducive procedural device intended to clarify and limit the issues in dispute in a trial. Its chief objective is to simplify, abbreviate and expedite or dispense with the trial.

4.40 A separate discussion paper on obviating delays in criminal proceedings addresses the legislative reforms necessary for the institutionalisation of Pre-trial Conferences in criminal matters.

G The new Judicial Accountability model and its impact on the criminal justice system

4.41 Following its establishment in 2010, the OCJ became a vehicle through which the executive accounts to the legislature on the performance of the courts. In 2016, the OCJ was accorded its separate budget vote from that of the DoJ&CD, thereby enabling a separate debate on the vote pertaining to the superior courts. Through this framework, the OCJ became subject

to the audit processes by the Auditor-General and submitted an annual report to Parliament each year as required by the PFMA.

4.42 An important development occurred in the 2017/2018 financial year, when the Judiciary, through Mogoeng CJ, invented a new judicial accountability model through which the Judiciary published its separate Annual Report. The Annual Report is launched during an occasion that has come to be known as the Judiciary Accountability Session (JAS) and on a day that has been duped as the "Judiciary Day." On this day, the CJ gives "the state of the judiciary address" (SOJA). After the address, an opportunity is given to the invited stakeholders and the media, in separate sessions, to pose questions to the CJ and Heads of Court, to which responses would be given on the spot.

4.43 Until the JAS innovation, the Judiciary was only accountable through its judgments that were subject to internal appeal and review mechanisms. The judicial ethical code of conduct and the norms and standards provide the mechanisms through which the Judiciary accounts to the people of South Africa.

H **Comparative analysis**

4.44 From a comparative perspective, the concept of the "state of the judiciary report" is akin to the part of the judicial accountability model of Kenya. The Chief Justice of Kenya and the Judicial Service Commission are enjoined by the Judicial Service Act to prepare an annual report of the judiciary. The Act specifies information that must be contained in the annual report, which includes the state of the judiciary, access to justice and court performance outcomes.[137] The annual report must, among others, contain information relating to disposal of cases; information on issues of access to justice; information relating to performance of the judiciary and attendant challenges; and such other statistical information as the Commission and the Judiciary may consider important relating to their functions and judicial activities.[138] It is a further requirement that the Commission and the Judiciary must cause the annual report to be published in the

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[137] Section 38 of the Judicial Service Act 1 of 2011.

[138] Section 38 of the Judicial Service Act 1 of 2011.

Gazette and copies of the report be sent to the clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption.[139] This is an essential part that entrenches public participation. Without this element, judicial accountability would be incomplete. Purporting to account public through the media may be perceived as inadequate, or at most, seen as a public relations exercise.

4.45 There is therefore a dire need for a judicial accountability mechanism that suits South Africa's constitutional democracy. Part of the promise to develop a uniquely South African model of separation of powers articulated by the Constitutional Court in *De Lange*[140] must include the design of an appropriate judicial accountability through a statutory enactment.

4.46 The Judicial Service Act provides for the establishment of an overarching body that seeks to provide inter-branch collaboration on matters relating to the administration of justice.[141] This body, the *Inter-Agency Collaboration in the Justice Sector: The Role of the National Council on the Administration of Justice (NCAJ,* seeks to foster collaboration with other agencies that do similar or work of its kind. Such collaborative engagements serve to enrich the work of institutions, reduce duplication of effort and resources, and ensure more efficiency. It is established under section 34 of the Judicial Service Act and is chaired by the Chief Justice. Other members of this body include the Cabinet Secretary responsible for matters relating to the judiciary, the Attorney General, the Director of Public Prosecutions, a representative of the National Police Service, the Commissioner of Prisons, among others, who are drawn from both state and non-state actors.

Pointed Questions that may contribute to the effective legislative reforms

139 Section 38(4) of the Judicial Service Act, 2011.

140 See footnote 529 above.

141 Section 34 of the Judicial Service Act, No. 1 of 2011

Is there any justification to retain the provisions relating to cost order in Section 342 Investigation given the concerns raised with regard these saved provisions?

In the absence of cost orders, what other enforcement mechanisms could effectively yield the desired outcomes?

Section 342 Investigation seeks to address delays at the trial phase of the criminal justice value chain and exclude delays at the stages of police investigations and in bringing charges against accused persons. How can delays prior to enrolment of cases be addressed?

What model of collaboration will suit the separation of powers and independence of the judiciary entrenched in the Constitution?

CHAPTER FIVE: MODERNISATION AND DATA TRANSFORMATION AS ESSENTIAL TOOLS FOR THE EFFECTIVE CRIMINAL JUSTICE SYSTEM

A The Integrated Justice System as a vehicle for modernisation

5.1 The IJS as a government programme (and not a system)[142] was borne out of the need to establish an integrated approach to the modernisation of the CJS, informed by the fourth and fifth change drivers of the Seven Point Plan. These two change drivers state as follows:

(e) establish an integrated and seamless information and technology database or system to facilitate the collection and collation of information and its analysis;

(f) modernise, in an integrated and holistic way, all aspects of systems and equipment;

5.2 The IJS exists as one of the seven sub-committees of the JCPS cluster whose task is to develop and advance the modernisation of the digital systems through technological innovation across the various criminal justice components. The programme aims to transform the CJS into a modern, efficient, effective and integrated system by:

(a) Electronically enabling and integrating the end-to-end criminal justice business processes (i.e. from the report of a crime to the release of a convicted person), through technology solutions; and

(b) Managing the related inter-departmental information exchanges across the CJS.

5.3 The JCPS cluster Ministers and departments have accepted and embraced the IJS as its modernisation vehicle for the CJS. This is evident from the following paragraph in the 20 Year Review:

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142 The IJS is the true sense, a programme or entity whose function is to lead the modernization of the CJS from a technological perspective.

> The JCPS Cluster departments embraced the Integrated Justice System (IJS) Programme and the re-engineering of business processes throughout the criminal justice process, i.e. from arrest to prosecution, imprisonment, parole and rehabilitation. It was aimed at developing an integrated management system for the entire criminal justice system, thus increasing the probability of successful investigation, prosecution and punishment for priority crimes to reduce the time period that elapsed between the reporting of a crime and sentencing. It links all processes from departments involved in the justice system. The IJS Programme was established as a vehicle to electronically enable and integrate the end-to-end criminal justice processes and related interdepartmental information exchanges and to assist in improving the efficiency of the criminal justice system.[143]

5.4 The IJS integrates IT-related operations of core constituent components of the CJS within the JCPS cluster, namely, the South African Police Service (SAPS), the National Prosecuting Authority (NPA), the Department of Correctional Services (DCS), the Department of Justice and Constitutional Development (DoJ&CD), Department of Home Affairs (DHA), and the Department of Social Development (DSD). It underpins the government's commitment to re-engineer and modernise the criminal processes from end-to-end, using a dynamic, solution-driven digital platform to enable collaborative and integrative efforts of all constituent components of the CJS.

5.5 The IJS is underpinned by a shared vision to build an effective and efficient CJS across all its constituent components to guarantee high-standard police investigation, successful prosecution and fair trial that yield fair and just outcomes to perpetrators and victims of crime.

B **The modernisation conceptual framework**

5.6 Modernisation and digital transformation permeate the reform of the CJS. Digitisation and digitalisation are two concepts that are used interchangeably, but they mean two different processes: Digitisation can be considered as the foundation of both digitalisation and digital transformation. The digitisation entails a migration from a paper-based system into on-line application. Digital transformation begins with data that is encoded into the system (digitisation), which is then used by the computer to enable or improve a process through digitalisation. With the use of digital technologies and their integration in the entire organisation workflow, digital transformation occurs.

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143 Twenty Year Review

5.7 Digital transformation therefore, refers to the integration of technology into all areas of a business, essentially changing how it operates. In the context of the CJS it is the modernisation of the system through re-engineering processes and procedures as applied and implemented across the various stages of the criminal justice value chain.

C Adapting the Criminal Justice System to the Fourth Industrial Revolution

5.8 There is no doubt that innovation in technology brought by the fourth industrial revolution (4IR) will result in advanced and improved methods of crime reporting, detection, investigation and adjudication to meet the objectives and vision in the previous paragraph. Hi-tech equipment provides effective measures for law enforcement bodies in crime investigation, improved management of the scene of crime, monitoring, surveillance, locating, early detection, storing of data and identification and management of criminals. Global connectivity via the Internet provides lawmakers and other actors within the CJS with prompt and convenient access to enormous data on advanced and useful criminal law-making practices and procedures. As a result, the formulation of plans, tactics, decision-making and cooperation across the various stages of the criminal justice value chain has been substantively improved.

5.9 In the same vein, technological advancements brought about by the 4IR are being exploited by criminal syndicates, thus making it difficult for sophisticated crimes such as drug trafficking, money laundering and cyber-crimes to be detected, prevented and stopped. With hi-tech devices and unlimited connectivity via the Internet, criminals may cause harm to and infringe upon the rights, especially the right to privacy of information, of large numbers of people around the world without leaving material traces, making it difficult for law enforcement bodies to investigate their criminal acts.

5.10 It therefore becomes critical that the criminal procedural law be continually adapted to counter and reduce crimes committed through the use of cutting-edge technologies. Criminal justice professionals need to be retrained and reoriented to counter and respond to advanced and modern criminality.

5.11 The technological innovation must also consider and manage the benefits and risks associated with the use of Artificial Intelligence (AI) within the CJS. It is in this context that the JCPS cluster must, in the pursuit of innovation and technological advancement, collaborate and partner with the Council for Scientific and Industrial Research (CSIR). CSIR's track record in pioneering research and development initiatives spans diverse fields, from cutting-edge technologies to data analytics and cybersecurity. By partnering with CSIR, the CJS (through IJS) will seek to gain access to a wealth of knowledge and innovation that can revolutionise key aspects of the CJS. CSIR's research capabilities can be harnessed to address complex challenges within the IJS, fostering innovation and driving progress.

5.12 Particularly, the CSIR's proficiency in developing secure communication channels, safeguarding sensitive information, and countering emerging cyber threats aligns perfectly with the CJS modernisation. By partnering with CSIR, the CJS can fortify its security infrastructure and ensure that data remains protected.

5.13 Furthermore, the CSIR can play a pivotal role in crafting interoperable solutions, enabling data and systems from different justice entities to communicate effortlessly. These foster enhanced collaboration and coordination, promoting a more efficient and responsive CJS.

D **COVID 19 as an impetus to modernisation**

5.14 Globally, the outbreak of the COVID 19 pandemic has exposed the extent to which the justice systems are lagging behind with regard to the CJS modernisation and related technological reforms. This is despite the measures undertaken by various global jurisdictions to acknowledge and embrace the effects of the 4IR.

5.15 In the South African context, Directions issued under the COVID 19 regulatory framework were promulgated to overcome the gaps in the CPA. Measures implemented under the Directions included the use of audio-visual remand (AVR) system and other forms of electronic means to remand criminal cases. In contrast to the civil trials, no criminal trials could be tried as these are not permitted under the Constitution. It is a constitutional imperative, under the right to a fair trial in section 35(3) of the Constitution, that the accused must be tried in his presence in a public hearing.

5.16 As it will be shown later, there are nonetheless other criminal proceedings that are capable of being disposed of through audio-visual links; these include bail applications and appeals.

E Developing an Integrated Justice Information Management System

5.17 A conspicuous weakness in modernisation and digitisation of the CJS is the absence of an integrated criminal justice information management system. As a result, every component of the CJS keeps, maintains and analyses its own data and only transfers to the transversal hub what each component considers necessary to share.

5.18 The current challenges in relation to data management include:

- Data is not standardised – IJS has provided a platform for data standardisation and can provide a single repository of data, with data quality adherence.
- Gaps in data – certain departments' data still needs to be included (DOH, DBE), IJS should fund data and analytics capacity within criminal justice and develop a model.
- Technology has enabled systems to capture various forms of data, such as videos and photos, but the departmental systems are already overloaded.

5.19 The study conducted by Ngoepe and Makubela[144] revealed that weak record management resulted in the withdrawal of several cases in the courts. In some instances, records were reconstructed, resulting in the travesty of justice. As a result, justice for victims would be delayed and ultimately denied while the perpetrators are freed.

5.20 Former Chief Justice Mogoeng, in 2011, in the Judiciary Vision 2030 for the Judiciary, alluded to the significance of a statistical information management system as a way to improve court performance when he stated as follows:

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144 Ngoepe M. & Makubela S., "Justice delayed is justice denied": Records management and the travesty of justice in South Africa" 2015 930 *Records Management Journal* 288–305. https://doi.org/10.1108/RMJ-06-2015-0023: (accessed 22 November 2022).

> The capacity to harvest statistics, the insistence on a final recordal of the reasons for all postponements and norms and standards on case finalisation will help to arrest delays. It should take at most two to three months to finalise a case in the Magistrates Court and not more than six months in the High Court.[145]

5.21 Other areas that require attention in relation to data management include: (a) tracking and tracing of unique persons (accused, victim, witness, etc.) through the case life cycle; (b) absence of correct and seamless capturing of cases within the CJS, from crime reporting, arrest, release on bail or others means, prosecution adjudication and incarceration.

5.22 The establishment of an integrated criminal justice information system, which had been part of the Seven Point Plan since 2008, is long overdue. This paper makes a firm proposal for the inclusion of the enabling provisions for its establishment under the contemplated CPA.

F Bench-marking with comparable jurisdictions

5.23 From a comparative perspective, the criminal justice information management systems of the United States (US) and Nigeria provide useful lessons for South Africa. Both jurisdictions have established legislative frameworks to collect, collate and manage criminal information within the respective systems. The US enacted the Justice System Improvement Act"[146] whilst Nigeria passed the Administration of Criminal Justice Act[147] for this purpose.

5.24 The US's Justice System Improvement Act establishes, within the Department of Justice and under the general authority of the Attorney General, a Bureau of Justice Statistics (hereinafter referred to as the "Bureau)."[148] The Bureau, which is chaired by a Director appointed by the President, is authorised, among others, to:

> collect and analyse statistical information, concerning the operations of the criminal justice system at the Federal, State and local levels;[149]

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145 Mogoeng 2030 Vision for the Judiciary, 14.

146 The Justice System Improvement Act of 1979 42 USC 3701.

147 Administration of Criminal Justice Act 2015.

148 Section 302 of the Justice System Improvement Act.

149 Section 302(c)(4) of the Justice System Improvement Act.

compile, collate, analyse, publish, and disseminate uniform national statistics concerning all aspects of criminal justice and related aspects of civil justice, crime, including crimes against the elderly, juvenile delinquency, criminal offenders, juvenile delinquents, and civil disputes in the various States;[150]

maintain liaison with the judicial branches of the Federal and State Governments in matters relating to justice statistics, and cooperate with the judicial branch in assuring as much uniformity as feasible in statistical systems of the executive and judicial branches;[151]

5.25 Under the Nigerian dispensation, the Administration of Criminal Justice Act establishes an Administration of Criminal Justice Monitoring Committee, which has the responsibility to collate, analyse and publish information in relation to the administration of the criminal justice sector in Nigeria.[152]

5.26 The modernisation of the criminal justice information system may also draw from a wealth of international principles and guidelines of the United Nations (UN). In this regard, the Manual for the Development of a System of Criminal Justice Statistics[153] developed by the UN (Manual of Criminal Justice Statistics) is of critical importance. The Manual was developed pursuant to UN resolution of the Economic and Social Council (ECOSOC) (resolution 1997/27 of 21 July 1997) and is titled: *"Strengthening the United Nations Crime Prevention and Criminal Justice Programme with regard to the development of crime statistics and the operations of criminal justice system."* The manual sets out an updated general framework for the development of a national system of criminal justice statistics. The initial draft of the manual was prepared by the Canadian Centre for Justice Statistics, Statistics Canada. It was reviewed at an expert group meeting convened in Buenos Aires from 23 to 25 April 2001 by participants across the world prior to its publication.[154]

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150 Section 302(c)(7) of the Justice System Improvement Act.

151 Section 302(c)(9) of the Justice System Improvement Act.

152 Section 470(2)(f) of the Criminal Justice Act.

153 Manual for the Development of A System of Criminal Justice Statistics, United Nations (2003): https://unstats.un.org/unsd/publication/seriesf/seriesf-89e.pdf.

154 Manual of Criminal Justice Statistics, 4.

5.27 Importantly, the Manual on Criminal Justice Statistics acknowledges that the development of a national system of criminal justice statistics is a complex process. It requires the participation and cooperation of many components of the system, including the police, prosecutors, courts, and corrections. This necessitates an integrated system of criminal justice statistics which entails the development and use of common concepts and classifications, both within and across components of the criminal justice system and, as much as possible, between criminal justice and outside agencies. Uniform classifications allow the linking of data from different components of the criminal justice system and between the criminal justice system and other agencies.[155]

5.28 Drawing from the developments surrounding the Manual of Criminal Justice Statistics and comparative jurisdictions alluded to above, IJS presents an attractive opportunity for designation as a central repository of the criminal justice information. It has already established liaison among the JCPS departments in relation to criminal justice information. It has been allocated an earmarked budget by National Treasury to carry out the modernisation programme of the JCPS cluster. What is necessary is to accord it statutory responsibility for the collection, collation, consolidation, analysis and publication of integrated criminal justice data. In carrying out such a function, it will be required to act in liaison with the Statistician-General, who, as head of Statistics South Africa (Stats SA), is an official functionary for keeping state information.

G Criminal procedures and processes for immediate digitisation

5.29 The following criminal processes and proceedings require consideration for immediate digitisation:

1 Expansion of audio-visual remand system

5.30 The CPA provisions providing for the use of electronic equipment in criminal proceedings (the audio-visual remand equipment) emanated from the investigation by the SALRC under

155 Manual of Criminal Justice Statistics, para’s 125 and 126.

Project 113 in respect of which the final report was submitted to the Minister in July 2003. The Final Report[156] was not objectionable to the extension of the use of audio-visual equipment to criminal appeals (and reviews) as the Constitution does require that these be held in the presence of the accused or in public. The Final Report limited the use of audio-visual equipment to the remand of cases where accused persons were in detention.

5.31 Video conferenced bail hearings have become increasingly common in the United States (US). Knoetze[157] cites the US matter of *LaRose v Superintendent, Hillsborough County Correction Administration* 702 A.2d 326, 329 (N.H.1997) where the court held that video conferenced bail hearings were constitutionally permissible. The court considered the plain meaning of the words used in matters of statutory interpretation. What encompasses being 'taken before the court', in light of current audio-visual interactive technology, is ambiguous. The court noted that the legislature intended to ensure the timely arraignment of a person being held in custody, not to guarantee face-to-face contact with the court. Consequently, it was held that the teleconference procedure was not a violation of constitutional mandates.

5.32 It would appear that the possibility of virtual trials (or smart courts) could require a constitutional amendment. Therefore, such innovation is not realisable in the short-to-medium term. The question of the demeanour of the accused is an important element of the criminal trial, which negates the possibility of virtual trials. It is an investigation that requires extensive research, including comparative research.

2 Use of audio-visual for court interpretation

5.33 There has been consideration that the legislative reforms be introduced to allow the use of audio-visual equipment in rendering court interpretation.

5.34 The implementation of such a recommendation would not present constitutional challenges. On the contrary, it will facilitate economic use of court resources and eliminate the huge costs already expended in the procurement of foreign language interpretation services.

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156 Report of the South African Law Reform Commission of Use of Electronic Equipment in Court Proceedings (Postponement of Criminal Cases via Audiovisual Link) (Project 113, (July 2003), p60.

157 Knoetze I "The witness is on screen – video technology assisting the court process" De Rebus June 2015: https://journals.co.za/doi/pdf/10.10520/EJC170330

3 Electronic payments of bail, fines

5.35 The reduction and ultimate elimination of cash collected through the payment of bail, admission of guilt, and court fines are one of the critical projects being undertaken through IJS. These cash payments are received, handled and processed at Magistrate Courts' cash halls, correctional centres and police stations.

5.36 A legislative framework is necessary to enable the payment through Electronic Funds Transfer (EFT). The Legislation needs to be adapted to include a 48-hour turnaround period for electronic bail payments to enable and allow the generation and approval of the warrant of liberation upon proof of payment of any such fixed bail or court fine that may have been imposed.

4 Virtual pre-trial proceedings

5.37 Pre-trial proceedings are ideal virtual hearings as the accused persons' presence would not be required. It will be necessary for the legislation to provide for such virtual pre-trial conferences.

5.38 The question of whether electronic evidence is admissible is not unique to the South African legal framework. Criminal courts all over the world are dealing with this problem daily. In South Africa, the common law and statutory law govern the admissibility of electronic evidence. It is said that the South African law relating to electronic evidence is, however, hampered by the lack of procedures governing the collection, storage and presentation of electronic evidence. Some relief was brought by the enactment of the Electronic Communications and Transactions Act,[158] which came into operation on 30 August 2002. The shortcoming with this Act is that it is argued that electronically produced data will not be subjected to a special set of admissibility requirements, and the ordinary rules of evidence will apply.[159] In other words, the Act does not provide new guidelines for the treatment of electronic evidence.

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158 Electronic Communications and Transactions Act 25 of 2002.

159 (Schmidt and Rademeyer, 2006, pp.11-4).

5 Automatic expungement of criminal records

5.39 The DoJ&CD receives a high number of applications for Expungements. There are also several complaints and enquiries received via email, walk-in and inquiries received telephonically from the public regarding progress on their applications. Currently, the Department receives applications and captures them in the system using the NOC Tool; however, there are some challenges experienced with the system from time to time, which include slowness of the system, not being able to move the applications to the next level. The DoJ&CD ICT, in conjunction with the IJS, is looking into implementing a system that will assist with the registration of the applications for Expungements, tracking of the applications, and generation of reports.

5.40 The objective of developing the IT-solution for expungement of records is to mitigate all the current business challenges through:

(a) Introducing an interim solution/ system which will be more reliable with its uptime and have fewer errors.
(b) Eliminating missing entries and duplicated entries
(c) Improving Document Management
(d) Providing reliable reporting and status information

5.41 The use of technology will be required in the case of automatic expungement of criminal records, which is under consideration.

6 Televising of criminal trials

5.42 There is currently no legislation that regulates the televising of criminal trials in South Africa. The decision to permit the live broadcasting of trials is that of the presiding officer in any given case following an application by the media house concerned.

5.43 In the *South African broadcasting Corporation Ltd v National Director of Public Prosecutions and Others,*[160] the Constitutional Court, without deciding the issue of live broadcast of trial proceedings, noted that "[o]rdinarily, it would not be in the interests of justice for trial

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160 *South African broadcasting Corporation Ltd v National Director of Public Prosecutions and Others* 2007 (2) BCLR 167 (CC).

proceedings to be subjected to live broadcasts". The Court approvingly cited an earlier High Court decision which held that, given the overriding Importance of the right of privacy of each witness, the court will not consent to a live broadcast, unless both the State and defence witnesses consent to the televising of their evidence.

5.44 The above digitisation proposals will ease the burden and costs of management and oversight across the CJS.

7 Providing a legislative framework for the criminal justice information system under the CPA

5.45 In its original formulation, the CPA did not provide for the collection or collation of any statistical information relating to matters dealt with under the CJS. The Act did not regard statistical information as a critical aspect for purposes of monitoring and evaluation of the functioning of the CJS in all its stages.

5.46 It was following the amendments under section 342A that the compilation of statistical information became a necessity. Section 342A was inserted in the CPA in 1997 following the investigation by the Commission into delays in the finalisation of criminal cases.[161] The background to and motivation for the insertion of the section were based on an analysis of the causes of delays in the disposal of criminal cases.

5.47 In terms of section 342A(7)*(a)* The National Director of Public Prosecutions must, within 14 days after the end of January and of July of each year, submit a report to the Cabinet member responsible for the administration of justice, containing the particulars indicated in the Table of Awaiting Trial Accused in respect of each accused whose trial has not yet commenced, and has been in custody for periods stated in the section. In terms of subsection 7(b), the Minister is enjoined to table such a report in Parliament.

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161 SALRC Project 73 (Simplification of criminal procedure).

H Participation of the Judiciary in the IJS

5.48 In its 2030 Vision statement, the Judiciary made its intention clear of its desire to establish a separate modernisation programme and established its own Heads of Court IT Committee, duly assisted by the IT Directorate of the OCJ for this purpose. The Committee has identified the need for the Judiciary to have a server that is separate from that of the DoJ&CD to eliminate possibilities of inadvertent and premature access to draft judgments and alleviate the burden of the already overladen Justice server.[162]

5.49 The Judiciary also prioritises electronic filing and electronic record keeping on- and off-site as a means to facilitate the efficient management of cases and their speedy finalisation. This ensures that the disappearance of records of proceedings becomes a thing of the past.

5.50 Judicial officers make greater use of technology where appropriate, particularly in judicial case management. Being equipped with technologies and practices allows them to manage pre-trial conferences or follow-up, access to Jutastat for case law and reference material, facilitates greater access to justice, particularly in remote areas, such as during circuit courts sittings.

5.51 There is already greater use of virtual hearings by way of technology in civil trials than it is the case in criminal cases.

5.52 Also, in the Vision 2030 statement, the Judiciary has expressed the desire to establish its own statistical capability. The Vision document recognises the need for the Judiciary to:

> … build in-house statistics generation capacity and performance measurement and quality assurance instruments so that, unlike now, we do not wait for the Minister's report after about 12 months, to know about the problems we have when it would at times already be too late to address the issues properly.[163]

5.53 The response of the Judiciary to the NDP highlights the need for consultative engagement as a means of getting buy-in for the legislative reforms that are necessary to advance the transformation of the judicial system. This will necessitate the development of protocols that will

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[162] Judiciary Vision 2030, p.33.

[163] 2030 Vision for the Judiciary, p.7

facilitate such engagements parallel to the on-going discourse on the broader aspects of court administration reform.

CHAPTER SIX: PROPOSALS FOR LEGISLATIVE REFORMS

A Incorporating the coordination and integration measures in the Child Justice Act

6.1 It is further important to General provisions of the envisaged legislation on criminal procedure could adopt the integrated governance and oversight model of the Child Justice Act. This will entail the insertion of new provisions which were not part of the CPA, which are vital for establishing an effective and efficient CJS. Among these is the establishment of an appropriate mechanism for monitoring of the performance of the CJS across its various stages.

6.2 The discussion paper recommends the establishment of a similar governance model established under the Child Justice Act[164] (CJA). The CJA creates an Intersectoral Committee on the Child Justice (ICCJ), which is responsible for statutory functions listed under the Act.

B Establishment of criminal justice information management system

6.3 It is recommended that legislative provisions be provided within the new contemplated CPA for the establishment of the integrated criminal justice information management system. The provision takes the form of a similar provision in the CJA.

6.4 Consideration of the provisions under the Nigerian ACJA relating to the proposed provisions should be considered for benchmarking purposes.

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[164] Child Justice Act 75 of 2008.

C Reviewing the Section 342A Investigation

6.5 The following recommendations are advanced for the non-implementation of the provisions in section 342A(3)(e) and (5):

(a) That section 342A be amended by repealing section 342A (3)(e) and (5) of the CPA. This recommendation if accepted, will have an immediate effect.

(b) To provide for an amendment to subsection 342A(3)(f) as follows:

> "(f) that the matter be referred to, in the case of a Government Department, to the Director-General of that Department, in the case of any other authority to the Head of such an authority, for an administrative investigation and possible disciplinary action against any person responsible for the delay".

D Legislative framework for urgent modernisation of the following criminal justice procedures and processes

6.6 Enabling legislative processes to be considered for the following criminal procedures and processes: be considered for, and proceedings require consideration for immediate digitisation:

6.6.1 To provide for audio-visual proceedings for Pre-Trial Conferences, bail applications and criminal appeals.

6.6.6 To enable payment of bail, court fines and any other court fee through EFT.

6.6.7 Use of audio-visual for court interpretation

6.6.8 To provide for expungement of criminal records through digital platforms.

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