

TERMS OF REFERENCE FOR THE SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM REVIEW

1. INTRODUCTION

A decision was taken during the Cabinet Lekgotlas, in July 2003 and 2004, to review the South African Criminal Justice System. This document contains the proposed objectives, terms of reference and other relevant issues relating to such review, which have been drafted in line with comments made at the July 2004 Cabinet Lekgotla and President Thabo Mbeki's comments, in the JCPS meeting of 12 August 2004.

2. OBJECTIVES OF THE REVIEW

The objectives of the Criminal Justice System Review are to-

- Identify areas for improvement in the criminal justice system, including business, as well as representivity transformation and modernisation issues, within the criminal justice system, which require attention;
- Provide a composite set of recommendations which can be considered and implemented by Government to develop a more efficient, effective and appropriate criminal justice system;
- Develop an appropriate model or framework to measure and track the performance of the criminal justice system, including an appropriate cross-cutting data-collection model to reflect more scientifically the criminal justice system in its entirety; and
- Provide policy makers with the information needed to assess the performance of the present South African criminal justice system on a more scientific basis.

3. SCOPE AND TERMS OF REFERENCE OF THE REVIEW

The review should in a very comprehensive, integrated and holistic, but practical manner, consider the impact, effectiveness, efficiency, appropriateness and economy of the criminal justice system, with specific reference to current budgets, procedures, practices and laws governing the criminal justice system, including the impact of the procedures followed, the organisational structure and the governance practices of the criminal justice system and the co-ordination and co-operation between and within role-players of the criminal justice system, and should include the following specific issues –

- A review of the existing laws, practices and procedures applied at all levels of the criminal justice system;
- A review of the existing budget, human and other resources used in the criminal justice processes, including the roles and responsibilities of the various role-players and the relationship between the various role-players;
- A review of current practices or processes relating to the co-ordination and co-operation across the whole of the criminal justice sector, especially between Departments, including the use of information technology and the methodologies relating to data collection;
- A review of current practices and procedures relating to case management, including the role of information technology and the methodologies relating to data collection;
- A review of the application of the practices and laws of evidence and criminal procedure, and its role and impact on the finalisation of criminal cases;
- A review of current bail and sentencing practices and laws; and
- A review of the overcrowding of prisons and the causes thereof, including the impact of bail and sentencing practices and laws, and awaiting trial prisoners, on the overcrowding of prisons,

with the view to –

- Identifying shortcomings and problems in the application of existing practices and procedures in the criminal justice system;
- Identifying shortcomings and problems relating to the budget, human and other resources in the criminal justice system;
- Identifying shortcomings and problems relating to co-ordination and co-operation in the criminal justice system, especially between Departments, including issues around data collection and information systems in the criminal justice system;
- Identifying shortcomings and problems relating to case management in the criminal justice system process, including issues around data collection and information systems in the criminal justice system;
- Identifying shortcomings and problems in the application of the law of evidence and criminal procedure in the criminal justice system process;
- Identifying shortcomings and problems relating to bail and sentencing practices in the criminal justice system process; and
- Identifying shortcomings and problems relating to awaiting trial prisoners and overcrowding of prisons in the criminal justice system,

and to make recommendations on –

- Reforms or changes that should be made in the practices and procedures for the more efficient and cost-effective disposal of criminal cases;
- Reforms or changes that should be made relating to the budget, human and other resources to improve the efficiency and effectiveness of the criminal justice system process;
- Reforms or changes relating to co-ordination and co-operation between the various role-players to improve the efficiency and effectiveness of the criminal justice system, including the establishment of an appropriate cross-cutting data-collection model to reflect more scientifically the criminal justice system in its entirety and the most appropriate, integrated, cross-cutting model of information systems;

- Reforms or changes that should be made relating to case management to improve the efficiency and effectiveness of the criminal justice system; and
- Reforms or changes that should be made relating to the practices and laws of evidence and criminal procedure, bail and sentencing practices and laws, awaiting trial prisoners and overcrowding of prisons to improve the efficiency and effectiveness of the criminal justice system.

4. OUTPUTS OF THE REVIEW

In the course of the review, the following outputs should be delivered:

- A Review Team to co-ordinate the activities of the Research Team, both consisting of representatives from primary and secondary role-players, with the latter including reputable researchers;
- A written report of the review covering the:
 - Approach and activities;
 - Findings and conclusions; and
 - Recommendations;
- A presentation summarising the report;
- A workshop at which the results of the review can be presented to Cabinet;
- A model for monitoring and evaluating the effectiveness, efficiency, appropriateness and economy of the criminal justice system, including a scorecard and a procedure for quarterly and annual review of the criminal justice system, and a cross-cutting data collection model and information systems model; and
- If necessary, a conference to bring together and consult major stakeholders in the criminal justice system, including representatives from government departments, academia and civil society.

5. APPROACH OF THE REVIEW

5.1 Phases

The review should be conducted in the following phases:

- Preparation and the request for funding;
- Model development;
- Review; and
- Report back.

5.2 Structure

The review should use the following structures:

- A Criminal Justice Review team (the Review Team); and
- A Criminal Justice Management and Strategy Research Team (the Research Team).

5.2.1 Criminal Justice Review Team

The Review Team will form the nucleus for the ongoing political guidance of the Review.

Objectives:

- Secure funding for the review;
- Monitor, supervise and direct the research process of the Research Team;
- Report on review progress; and
- Ensure distribution of final results to all stakeholders.

Composition:

One representative of each of the following departments and structures:

- Department of Justice and Constitutional Development;
- South African Police Service;
- Department of Correctional Service;

- Department of Social Service;
- Department of Justice and Constitutional Development;
- National Prosecuting Authority; and
- Treasury.

The Minister for Justice and Constitutional Development is to act as Chairperson of the Review Team.

5.2.2 A Criminal Justice Management and Strategy Research Team

The Research Team will form the nucleus of the research work that needs to be undertaken.

Objectives:

Within the parameters of the above objectives and terms of reference of the Criminal Justice System Review:

- Review the legal frameworks, practices, procedures, budget and resources in the criminal justice system;
 - Review the practices, processes and management of the co-ordination and co-operation across the criminal justice system;
 - Conduct necessary primary and secondary research;
 - Report on review when requested to do so; and
 - Make recommendations for improvement of the efficiency, effectiveness, appropriateness and economy of the criminal justice system,
- to produce all outputs mentioned above.

Composition:

The team must consist of:

A representative from each of the following government departments and structures:

- Department of Justice and Constitutional Development;
- National Prosecuting Authority;
- Judge or magistrate nominated by the Chief Justice after consultation with the Minister for Justice and Constitutional Development;
- South African Police Service;
- Department of Correctional Service;
- Statistics South Africa;
- Legal Aid Board; and

a team of reputable researchers, including from the South African Law Reform Commission.

The Director General of the Department of Justice and Constitutional Development is to act as Chairperson of the Research Team.

A secretariat needs to be established to provide support to the Research and Review Teams. The secretariat is to be located in the Office of the Department of Justice and Constitutional Development.

6. RESOURCE REQUIREMENTS OF THE REVIEW

6.1 Time frames

The final report should be delivered to the President, one year from the date of commencement, with interim reports, when requested.

6.2 Budget

It is anticipated that a budget of at least R10 m will be required, which will be provided by Treasury.