



For attention: Mr Nelson Matibe; Dr Jacob Buti Skosana; Ms Aifheli Dzebu

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Dear Dr Skosana and Ms Dzebu

The Helen Suzman Foundation is an NGO that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the Discussion Paper 173 Strengthening governance and accounting mechanisms in the criminal justice system.

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Naseema Fakir', with a horizontal line extending to the right.

Naseema Fakir
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1. Introduction

- 1.1. The Helen Suzman Foundation (HSF) welcomes the opportunity to provide comments on Discussion Paper 173. The Discussion Paper intends to address governance strengthening mechanisms and accounting mechanisms in the criminal justice system, however HSF submits that it does not fulfil this purpose.
- 1.2. This is of great concern as the criminal justice system is central to the protection of the rule of law in South Africa, and ensuring robust oversight, accountability, and governance mechanisms is critical for public confidence and the effective administration of justice.
- 1.3. HSF notes that the title of the discussion paper references "strengthening governance," yet the paper itself explicitly states that "it is beyond the scope of this paper to address aspects relating to the governance component of the CJS." This inconsistency is misleading and undermines the purpose of the paper.
- 1.4. While the paper is extensive in length, HSF notes that the discussion paper:
 - 1.4.1. Largely restates the status quo, without engaging in substantive analysis of the systemic problems facing the criminal justice system; and
 - 1.4.2. Does not offer concrete legislative reform proposals, rather focusing on administrative amendments.

2. Engagement with Existing Reform Processes and Commissions of Inquiry

- 2.1. HSF welcomed the references in Chapter 2 to the recommendations of at least four commissions of inquiry that have reported on matters within the criminal justice system. Over the past twenty years, South Africa has initiated numerous commissions of inquiry and high-level panels that produced detailed reports with clear findings and recommendations.
- 2.2. Unfortunately, most of these recommendations remain unimplemented. The SALRC is uniquely placed to take up this work and propose practical law reform measures to give effect to these recommendations.
- 2.3. However, Part D of Chapter 2, does not fulfil this role in examining the significance of recommendations from Commissions of Inquiry and

Investigative Bodies. The paper addresses the Marikana Commission of Inquiry, the Panel of Experts on Policing and Crowd Management, the High-Level Panel on the July 2021 civil unrests, and the State Capture Commission. It is unclear why these commissions were selected and others omitted, such as the Jali Commission,¹ the Ginwala Commission of Inquiry,² and the South African Human Rights Commission report into the July 2021 unrest, all of which contain recommendations relevant to criminal justice reform.

- 2.4. The discussion of the chosen reports is superficial, with only a few paragraphs devoted to each and almost no engagement with the detailed recommendations relevant to oversight and accountability. Where recommendations such as the demilitarisation of the police are mentioned, there is no analysis or discussion of potential legislative reform.
- 2.5. The paper fails to provide proposals for legal reform based on the substantive findings of these commissions. For example, the State Capture Commission's report was followed by detailed undertakings by the President in October 2022, yet these undertakings, many of which involve legislative reform, are not addressed.
- 2.6. Section E of Chapter 2, titled "Transforming the roles of Peace Officers and Private Security Officers in the Criminal Justice System," is placed before Part D and is not indexed in the paper. While it notes the absence of regulatory provisions under the Criminal Procedure Act, 1977 for peace officers, the discussion fails to analyse the practical problems caused by this gap.
- 2.7. Similarly, the discussion of private security officers lacks in-depth analysis and does not offer proposals for reform.
- 2.8. Chapter 2 concludes with a discussion of lessons drawn from the Child Justice investigation of 1999, which recommended a district-level intersectoral committee to coordinate role players. The paper references the Intersectoral Committee established under section 94 of the Child Justice Act, which operates at a national level, without analysing its effectiveness in practice.
- 2.9. The discussion then recommends transplanting this mechanism into the Criminal Procedure Act. HSF submits that it is not possible to support or oppose the creation of a similar structure without a detailed analysis of the

¹ Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services.

² Report of the enquiry into the fitness of Adv VP Pikoli to hold the Office of the NDPP.

benefits and potential drawbacks, as well as the anticipated impact on the broader criminal justice system.

2.10. HSF recommends that:

- 2.10.1. HSF recommends that subsection E be properly placed within the report, and, if retained, should include a discussion of the problems caused in practice and accompanying legislative proposals;
- 2.10.2. Provide a detailed analysis of the advantages and disadvantages of transplanting a district level intersectoral committee on Child Justice;
- 2.10.3. The SALRC seize the opportunity to draft legislative provisions to advance undertaking by the President to implement the recommendations from the State Capture Commission and other Commissions of Inquiry; and
- 2.10.4. Include detailed discussions and analysis of potential reforms where recommendations are provided

3. The National Development Plan and Government Reform Commitments

- 3.1. Chapter 3 largely restates the objectives of the National Development Plan (NDP) 2030, adopted in 2011, without critically assessing government failures in implementation or proposing legal reforms to strengthen the criminal justice system.
- 3.2. While the chapter references the ten-year review conducted by the National Planning Commission, it does not emphasize the Commission's criticisms of government performance. The 2023 NPC report notes that the NDP has been shifted from being the central focus of government, undermining prioritization and implementation. The inclusion of this chapter, without linking it to actionable reform proposals, raises questions about its purpose.
- 3.3. Paragraph 3.23 extracts a statement from the Medium-Term Development Plan regarding the independence of the National Prosecuting Authority (NPA) but provides no analysis or proposed reforms. In 2022, the President responded to the Zondo Commission's findings with undertakings to introduce legislative amendments to enhance the transparency of appointments and clarify aspects of the NPA's administrative independence. As of July 2025, no progress has been made in introducing these legislative amendments. HSF

submits that the SALRC is well positioned to propose reforms in this area, particularly given the NPA's prominence in the Khampepe Commission's hearings.

3.4. HSF recommends that

3.4.1. A thorough analysis is provided regarding the independence of the NPA based on empirical data; and

3.4.2. Actionable proposals are provided, especially in regard to the independence of the NPA in light of findings from the Zondo Commission.

4. Limited Focus on Meaningful Criminal Justice Reform

4.1. Chapter 4 largely restates the status quo without analysis or concrete proposals. The discussion of section 342A of the Criminal Procedure Act highlights unpromulgated subsections, yet the recommendation to repeal them is merely administrative and does not address systemic issues in the criminal justice system.

4.2. This focus on minor administrative matters illustrates a broader tendency in the paper to prioritize procedural “clean-up” over substantive reforms that address the CJS's structural challenges.

4.3. HSF submits that the lack of comprehensive analysis cannot contribute to recommendations that seek meaningful reform in the criminal justice system and that this analysis must be undertaken before the final report is published.

5. Concerns Regarding the Discussion on Judicial Accountability and Proposals for Reform

5.1. HSF is very concerned with the sentiments expressed from a reading of section “G The new Judicial Accountability model and its impact on the criminal justice system” with the following section “H Comparative analysis”.³ Section G seems to be a simple unpacking of the establishment of the Office of the Chief Justice and the allocation of a separate budget vote for the Judiciary and the issuing of its own annual report.

³ At page 65.

5.2. However, if one continues to read it with section H where the Kenya system is unpacked in relation to the type of information contained in its Annual Report and how it is tabled in Parliament for adoption, then the following sentiment expressed in the Discussion Paper in relation to what can only be a reference to the engagement with the media on Judiciary Day in South Africa, seems to question the Judiciary's attempts at attaining full institutional independence:⁴

"Without this element (referring to tabling in Parliament for debate and adoption of the annual report), 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."

5.3. The discussion paper then goes on to state without any detailed discussion or analysis:⁵

"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 must include the design of an appropriate judicial accountability through a statutory enactment."

5.4. In the absence of a proper discussion of the issue at hand and the fact that the reader is left wondering as to the relevance of the inclusion of this topic in relation to the criminal justice system, HSF questions the inclusion of these two sections especially if the sentiment that seems to be expressed here questions the model of institutional independence that the Judiciary is actively seeking at present.

5.5. Further, it is impossible to understand what is meant with a "need for a judicial accountability mechanism" without any detailed discussion especially in the light of the constitutional guarantee of judicial independence – which has not been mentioned.

5.6. HSF submits that at its current iteration, subsections G and H appear to have been included in this paper without consideration of its far reaching implications.

⁴ At page 67.

⁵ As above.

5.7. Attempting to propose legislative reforms, Chapter 6 is only two pages long and contains primarily administrative or practical proposals. The lack of substantive proposals results in this chapter tackling reform issues that are not meaningful and do not affect the central issues emanating from current legislative lacunas or shortcomings.

5.8. HSF therefore recommends that SALRC:

5.8.1. Reorient the discussion paper to focus on actionable reform proposals, rather than merely restating reports or policies;

5.8.2. Incorporate analysis of past commissions' recommendations, including implementation gaps, and draft legislative provisions to address them;

5.8.3. Critically assess existing mechanisms, such as intersectoral committees or NPA independence measures, to provide evidence-based reform proposals;

5.8.4. Remove sections that question judicial independence without proper context, as these are constitutionally sensitive and outside the scope of the paper's focus, such as in Sections G and H of Chapter 4;

5.8.5. Prioritise substantive law reform over administrative cleanup, focusing on structural and operational challenges in the criminal justice system, such as Chapter 6.

6. Conclusion

6.1. HSF recognises the importance of Discussion Paper 173 in providing a foundation for criminal justice reform. However, in its current form, the paper falls abundantly short of providing the analytical depth and practical reform proposals necessary to meaningfully address the systemic challenges facing the criminal justice system.

6.2. We recommend that SALRC undertake a comprehensive revision, focusing on:

6.2.1. Translating findings and recommendations of commissions and presidential undertakings into draft legislative provisions;

6.2.2. Providing detailed analysis of systemic problems in practice;

6.2.3. Offering concrete, actionable proposals for reform, particularly in oversight and accountability mechanisms and based on analytical outcomes;

6.3. By doing so, the SALRC can ensure that this discussion paper moves beyond administrative commentary to effect real reform in South Africa's criminal justice system.