

This document should be used as a guide to report to Parliamentary Caucuses. The text has not yet been approved by all parties in the Committees. It will be approved through informal exchanges this week and put for adoption at the Committee Meeting of 30 September.

SAFETY AND SECURITY AND JUSTICE PARLIAMENTARY COMMITTEES

PRINCIPLES AND MODELS OF AN EFFECTIVE ORGANISED CRIME-FIGHTING UNIT

21 September 2008

PART A: GENERAL PRINCIPLES OF AN EFFECTIVE ORGANISED CRIME-FIGHTING UNIT

1. CONTEXT

- 1.1 All parties in the parliamentary Committees agree that that at the very least, the DSO needs to be improved. Some of those hold this view believe that it would be enough to implement the recommendations of the Khampepe Commission Report.
- 1.2 All parties recognize the serious threat that organised crime in our country constitutes and the need for an effective efficient, powerful organised crime-fighting unit (OCU).
- 1.3 All parties agree to the general principles of such a unit set out below.

2. GENERAL PRINCIPLES OF AN EFFECTIVE CRIME-FIGHTING UNIT

- 2.1 **MULTI-DISCIPLINARY APPROACH:** For a variety of reasons, including the complex and sophisticated nature of organised crime, there is clearly a need for a multi-disciplinary approach. At least, the OCU should include participants from the SAPS, NPA, SARS, Home Affairs, FIC and the intelligence agencies. The differences are over in what form and structure this should happen.
- 2.2 **ROLE OF PROSECUTORS:** The prosecutor should be involved with the investigators from the outset of an investigation. The differences are over how this should happen.
- 2.3 **NEED FOR CRIME INTELLIGENCE:** Crime intelligence is crucial to pursuing organised crime cases. Crime intelligence should not be conflated with broader intelligence not directly related to crime. The differences are over whether this intelligence capacity should be granted to the OCU or it should be empowered to get the intelligence from the SAPS and other intelligence agencies.
- 2.4 **DEFINITION OF ORGANISED CRIME:** There is a need to both define organised crime more specifically and provide a measure of flexibility for the Head of the OCU and Minister to add to the mandate through regulations/policy frameworks to be approved by

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parliament. The OCU should deal with serious organised crimes, serious economic crimes, serious cases of corruption, and high priority crime.

- 2.5 **POWERS AND FUNCTIONS:** Besides cases referred to the OCU by other agencies, the Head of the OCU should be able to initiate cases within a policy framework determined by the Minister and the OCU and approved by parliament. The powers and functions of the OCU must be spelt out very clearly.
- 2.6 **MINISTER APPOINTS HEAD:** The Minister should appoint the OCU Head, with parliament playing an appropriate role.
- 2.7 **VETTING OF EMPLOYEES:** Employees of the OCU should be appropriately vetted by the appropriate agencies, and there should be regular internal "integrity" monitoring of the staff. Corruption within the OCU structures must be tackled effectively.
- 2.8 **NEED FOR EXECUTIVE MONITORING STRUCTURES:** There has to be an effective Inter-Ministerial Committee that monitors the OCU and supports it to play its role within its legal mandate. There also needs to be a high-powered Inter-Departmental Committee to ensure necessary day-to-day co-ordination across departments.
- 2.9 **NO POLITICAL INTERFERENCE:** The OCU should be free from political interference.
- 2.10 **NEED FOR COMPLAINTS MECHANISM:** There needs to be structure to deal with complaints from the public and any other source about the behaviour of the OCU or individuals working for it.
- 2.11 **FIGHT AGAINST POLICE CORRUPTION SHOULD NOT BE UNDERMINED:** Whatever the specific powers and functions allocated to the OCU, the fight against police corruption should be strengthened.
- 2.12 **NEED FOR MORE EFFECTIVE PARLIAMENTARY OVERSIGHT OF OCU:** There is a vital need to ensure more effective parliamentary oversight of the OCU. The OCU Annual Report must be considered in an open sitting of the Portfolio Committee, but the OCU should also report to the Committee at least 3 other times a year, with these other briefings being either in open or closed sittings, as decided by the Committee after consultation with the OCU on the sensitivity of the issues to be considered at the briefings. Parliament should also play an appropriate role in, among other issues, the appointment of the OCU Head, additions to the mandate on organised crime and the policy framework for cases to be pursued.
- 2.13 **ADEQUATE BUDGET AND RESOURCES:** The OCU must be allocated the necessary budget and other resources to ensure that it can effectively combat OC.
- 2.14 **TWO-PHASED APPROACH:** There should be a two-phased approach to developing an effective OCU model. The model decided on now should be reviewed 3 years from the date of its implementation to see how it is working and to consider improvements to it, if

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necessary. The aim would obviously not be to overhaul the entire OCU, but to consider improvements on the model decided on now; in other words, the model decided on now must serve as a "building-block" for possible further improvements 3 years from the date of its implementation. Such a review would be necessary also to consider how the OCU fits into the new integrated criminal justice system that is being shaped.

PART B: DIFFERENT MODELS BASED ON ABOVE PRINCIPLES

3. INTRODUCTION

3.1 While there is broad agreement on the above general principles, there are differences among the parties on what OCU model would best give effect to these principles. During the Sub-Committee's deliberations 5 models were identified:

- Model 1: Improved DSO
- Model 2: Separate OCU answerable to the Minister of Safety and Security
- Model 3: Proposed Directorate of Priority Crime Investigation (DPCI) in SAPS Amendment Bill
- Model 4: Improved DPCI
- Model 5: New Ministerial model

3.2 These models are dealt with in more detail below.

3.3 There are many features that models 1, 2 and 4 share, and, for the sake of convenience these are dealt with first, while models 3 and 5 are dealt with later..

3.4 With regard to models 1, 2 and 4, their common features are set out in section 4 below, while the features that are distinct to each of these models are set out in the sections 5, 6, and 7 respectively.

4. MODELS 1, 2 AND 4: COMMON FEATURES

4.1. MANDATE: The Unit's mandate will encompass:

- Serious organised crime.
- Serious economic crime.
- Serious corruption.
- Other priority crimes, as determined from time to time through appropriate mechanisms.

4.2. MULTIDISCIPLINARY APPROACH: The Unit's approach will be multidisciplinary, including participants from the SAPS, NPA, SARS, Home Affairs, FIC, and NIA and other intelligence agencies.

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- 4.3. **ROLE OF PROSECUTORS:** Prosecutors will work with investigators from the outset of an investigation. However, while in Model 1 prosecutors will be part of the OCU, in models 2 and 4, they will be co-located to the Unit.
- 4.4. **STRENGTHENED MINISTERIAL COORDINATING COMMITTEE (MCC):**
- The MCC will consist of the relevant Ministers, including Justice, Safety and Security, Intelligence, Finance (for SA Revenue Service, Financial Services Board, Financial Intelligence Centre) and Home Affairs.
 - The relevant Minister will Chair the MCC, depending on the Unit's location – with Model 1, it is the Minister of Justice who will chair, as the Unit will be located within the NPA; in the case of Models 2 and 4, it will be the Minister of Safety and Security who will chair, as the Unit is located either within the Ministry of Safety and Security or within SAPS itself.
 - It will perform the functions set out for it in section 31 of the National Prosecuting Authority Act.
 - The MCC will meet at least 4 times a year and report to Parliament 4 times a year.
- 4.5. **OPERATIONAL COORDINATING COMMITTEE (OCC):**
- There will be an Inter-Departmental Operational Coordinating Committee (OCC) with an operational mandate that includes drafting the Unit's strategic plan for approval by the MCC; overseeing the Unit's day-to-day-operations; facilitating secondments; coordinating joint operations; coordinating crime intelligence; and facilitating the sharing of information.
 - The OCC will consist of the Director Generals of the relevant departments or senior managers delegated by them with the authority to make decisions on their behalf. The delegation should be on a permanent basis to ensure continuity. In the case of model 1, the Justice Department representative will chair the OCC, and in the case of models 2 and 4, it will be the Safety and Security Representative.
- 4.6. **VETTING:** The management and all members of the OCU and contractors will be effectively vetted at regular intervals by the appropriate agencies.
- 4.7. **ENHANCED INTEGRITY MEASURES:** The OCU will have additional internal integrity requirements, including measures such as asset declarations, random lie detector tests, and integrity testing.
- 4.8. **PARLIAMENTARY OVERSIGHT:** Parliament will play a strong oversight role, receiving reports from the OCU at least four times a year. Its meetings with the OCU may be closed depending on the nature of the matters being discussed.
- 4.9. **INDEPENDENT COMPLAINTS DIRECTORATE (ICD):** The ICD's mandate must be broadened and its capacity strengthened.

5. MODEL 1: IMPROVED DSO - DISTINCTIVE FEATURES

- 5.1. LOCATION AND BUDGET: The OCU will remain located within the National Prosecuting Authority, while its budget allocation remains within the Vote of the Department of Justice and Constitutional Development as a sub-programme in the NPA.
- 5.2. POLITICAL RESPONSIBILITY: The recommendation of the Khampepe Commission that the Minister of Justice be accountable for prosecutors in the OCU while the Minister of Safety and Security be accountable for the OCU's special investigators is not workable. The Minister of Justice and Constitutional Development will take political responsibility for the OCU and Chair the MCC. The Minister of Safety and Security will be the Deputy Chair of the MCC and receive regular reports on the investigators in the OCU.
- 5.3. MULTI-DISCIPLINARY APPROACH, WITH PROSECUTORS PART OF OCU AND OTHERS SECONDED: Prosecutors will be part of the OCU, just as with the current DSO, but the other participants (from SARS etc) will be seconded to the Unit.
- 5.4. INTELLIGENCE FUNCTION: The Unit will have a crime intelligence function and this must be provided for in the National Strategic Intelligence Act, 1994. In the exercise of its crime intelligence mandate, the Unit should be accountable to the Joint Standing Committee on Intelligence and the Inspector General of Intelligence, in terms of the Intelligence Services Oversight Act, 1994.
- 5.5. LEVEL AND APPOINTMENT OF HEAD: The Head of the DSO will be a Deputy National Director of Public Prosecutors appointed by President after consultation with Minister of Justice and the National Director of Public Prosecutions (NDPP).
- 5.6. NAME OF UNIT?: It may be necessary to have a name other than the DSO for the OCU to signal the improvements to the current DSO that this model represents.

6. MODEL 2: SEPARATE UNIT ANSWERABLE TO MINISTER OF SAFETY AND SECURITY - DISTINCTIVE FEATURES

- 6.1. LOCATION AND BUDGET: The Unit will be located within Ministry of Safety and Security, not SAPS, and its budget allocation will be within the Vote for Safety and Security, as a sub-programme in the Ministry.
- 6.2. POLITICAL RESPONSIBILITY: Ministerial responsibility for the Unit will lie with the Minister of Safety and Security.
- 6.3. MULTI-DISCIPLINARY APPROACH, WITH PROSECUTORS CO-LOCATED AND OTHERS SECONDED: The NPA will establish a Special Prosecutorial Directorate to work with investigators from the OCU on organised crime cases. These specialist prosecutors will be co-located – meaning they will be answerable to the NPA, even if they work with investigators and others in the OCU. The other participants (from SARS etc) will be seconded to the OCU – meaning they will be operationally answerable to the OCU, even

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though they are ultimately accountable to the institution that seconded them. There will be legal and policy frameworks to ensure that the secondments are effectively implemented. Departments and other organisations will be required to build their capacity for secondments. Secondments will be compulsory in terms of legislation and policy frameworks.

- 6.4. INTELLIGENCE FUNCTION: The OCU will not have a separate crime intelligence function, but will draw on intelligence experts from the SAPS Crime Intelligence Unit and other intelligence agencies seconded to the OCU.
- 6.5. LEVEL AND APPOINTMENT OF HEAD: The Head of the Unit is to be appointed by the Minister, while Parliament (or the Board referred to in 6.6) plays a role to ensure that the appointment is transparent and credible.
- 6.6. ROLE OF A BOARD:
 - The Board will include government and non-government stakeholders. To some extent, the precise composition of the Board will be influenced by whether it undertakes a governance or integrity assurance role or possibly both. Should the Board be given an integrity assurance role, its composition would be largely made up of members from outside of government.
 - The Board will be headed by a person from outside government, possibly a retired judge.
 - Two possible roles for the Board are suggested:
 - The first is that of the normal role of a Board in a non-profit state entity (Schedule 3 of the PFMA), which includes some governance functions, as well as certain measures to prevent external interference in the Unit's investigations.
 - The second envisages that the Board will play an integrity assurance role and that non-government board members will be key in this regard. This would include:
 - Dealing credibly with complaints against members of the Unit or complaints that the Unit has abused its powers or is being used for ulterior purposes.
 - Setting up mechanisms to ensure that sensitive cases have been well and properly investigated.
 - The Board will also play a role in ensuring more effective coordination.

7. MODEL 4: IMPROVED DPCI - DISTINCTIVE FEATURES

- 7.1. LOCATION AND BUDGET: The Unit is located as a division in SAPS and receives its budget allocation as a sub-programme of the SAPS.
- 7.2. POLITICAL RESPONSIBILITY: Ministerial responsibility for the Unit will lie with the Minister of Safety and Security.

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- 7.3. MULTI_DISCIPLINARY APPROACH, WITH PROSECUTORS CO-LOCATED AND OTHERS SECONDED: The NPA will establish a Special Prosecutorial Directorate to work with investigators from the OCU on organised crime cases. These specialist prosecutors will be co-located – meaning they will be answerable to the NPA, even if they work with investigators and others in the OCU. Consideration needs to be given to the prosecutors who work with the investigators (investigating prosecutors) not taking the same cases to court; instead this should be done by other prosecutors (prosecuting prosecutors). The other participants (from SARS etc) will be seconded to the OCU – meaning they will be operationally answerable to the OCU, even though they are ultimately accountable to the institution that seconded them. There will be legal and policy frameworks to ensure that the secondments are effectively implemented. Departments and other organisations will be required to build their capacity for secondments. Secondments will be compulsory in terms of legislation and policy frameworks.
 - 7.4. INTELLIGENCE FUNCTION: The OCU will not have a separate crime intelligence function, but will draw on intelligence experts from the SAPS Crime Intelligence Unit and other intelligence agencies seconded to the OCU.
 - 7.5. LEVEL AND APPOINTMENT OF HEAD: The Head is appointed at the level of a Deputy National Commissioner of SAPS by the Minister after consultation with the National Commissioner, subject to Parliament playing an appropriate role.
 - 7.6. SPECIAL POWERS IN TERMS OF SECTION 28 AND 29 OF THE NATIONAL PROSECUTING AUTHORITY ACT: These powers are to be aligned with section 22 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, and section 22 of the Combating of Corrupt Activities Act, 2004, to ensure that police officials of the OCU can approach a Deputy Public Protector to exercise the powers in section 28 and 29 of the National Prosecuting Authority Act.
 - 7.7. CASE SOURCING AND SELECTION: The Unit will be able to initiate its own cases, in addition to cases that have been referred to it by the National Commissioner or by other state institutions. An agreed policy framework will provide it with the necessary guidelines for selecting cases and will be determined by the Minister, the National Commissioner, the Head of the Unit, with Parliament playing an appropriate role. In addition, a screening committee will select cases in a manner that ensures that the Unit remains within its mandate and strategic priorities
 - 7.8. TRANSITIONAL PROVISIONS: The legislation must contain comprehensive transitional provisions, in particular with regard to the finalisation of pending investigations and cases, staff issues, budget and assets.
8. **MODEL 3: PROPOSED DPCI IN SAPS AMENDMENT BILL – DISTINCTIVE FEATURES**

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- 8.1. LOCATION AND BUDGET: The DPCI is located as a division in the SAPS with its budget forming part of the SAPS budget.
- 8.2. POLITICAL RESPONSIBILITY: Ministerial responsibility for the DPCI lies with the Minister of Safety and Security.
- 8.3. MANDATE: The DPCI's mandate encompasses crimes set out in section 16 of the SAPS Act, which include:
 - Organised crime.
 - Crimes requiring special techniques.
 - Crimes where foreign countries request investigation.
 - Crimes where a Provincial Commissioner requests national investigation.
 - Crimes committed across provincial borders.
- 8.4. MULTI-DISCIPLINARY APPROACH TO BE ENCOURAGED THROUGH AD HOC SECONDMENTS THROUGH POLICY, NOT LEGISLATION: There will be ad hoc secondments as required. This will be dealt with through policy, not legislation. The DPCI is to consist of:
 - Selected members of the DSO.
 - Selected members of the organised crime and commercial components of SAPS.
 - Other SAPS members and
 - Seconded personnel?.
- 8.5. INTELLIGENCE FUNCTION: The OCU will not have a separate crime intelligence function, but will work closely with the SAPS Crime Intelligence Unit and other intelligence agencies.
- 8.6. LEVEL AND APPOINTMENT OF HEAD: The SAPS National Commissioner will appoint the Head of the DPCI, who will be a Divisional Commissioner of SAPS.
- 8.7. FORUM: The Minister of Safety and Security will establish a Forum made up of representatives of government departments and others.
- 8.8. CASE SOURCING AND SELECTION: The DPCI will only deal with cases that have been referred to it by the National Commissioner.
- 8.9. VETTING: All members of the DPCI will be vetted in terms of the Strategic Intelligence Act.
- 8.10. TRANSITIONAL PROVISIONS: There will be provisions for the transfer of budget, personnel, assets and that existing investigations and prosecutions must not be affected.

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9. MODEL 5: NEW MINISTERIAL MODEL - DISTINCTIVE FEATURES

- 9.1. LOCATION AND BUDGET: This will be a new Department, located under a separate Ministry for Priority Crime Investigations, headed by a Minister for Priority Crime Investigations, with a separate Budget vote.
- 9.2. POLITICAL RESPONSIBILITY: Ministerial responsibility for the new Department will lie with the proposed new Minister for Priority Crimes Investigations.
- 9.3. MANDATE: The new Department's mandate will be to focus on priority crime, consistent with the proposed new integrated criminal justice system.
- 9.4. MULTI-DISCIPLINARY APPROACH, WITH SECONDMENTS AND OUTSOURCING AS NECESSARY: There will be prosecution-driven investigations, with prosecutors seconded to the Unit as needed. There will also be outsourcing to approved agencies as needed.
- 9.5. CRIMINAL JUSTICE MINISTRY COMMITTEE: The Ministerial Committee will consist of the Minister of Priority Crime Investigations, Safety and Security, Intelligence, Correctional Services and Justice and Constitutional Development, and will have a coordinating role.
- 9.6. OPERATIONAL COORDINATING COMMITTEE: There will be an inter-departmental Operational Coordinating Committee (OCC), with an operational mandate that includes drafting the unit's strategic plan for approval by the Criminal Justice Ministry Committee; overseeing the unit's day-to-day-operations; facilitating secondments; coordinating joint operations; coordinating crime intelligence; and facilitating the sharing of information. The OCC will consist of the Director Generals of the relevant departments or senior managers delegated by them with the authority to make decisions on their behalf. The delegation should also be on a permanent basis to ensure continuity.
- 9.7. PARLIAMENTARY OVERSIGHT: Parliamentary oversight will be exercised by a new Joint Standing Committee for Priority Crime Investigation, similar to the JSC on Intelligence.

PART C: WAY FORWARD

10. The proposed deadlines for proceeding with the DSO Bills are:

- Caucus Mandates Week of 21 September
- Committee decisions on Sub-Committee Reports
and models Tuesday, 30 September
- Visit to DSO Wednesday, 1 October

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- Visit to SAPS OCU Thursday, 2 October
- Clause-by-clause consideration of Bills Tuesday, 7 to Wed, 15 Oct
- Voting in the Committee on the Bills Thursday, 16 October
- Voting in the National Assembly Tuesday, 21 October
- Deliberations on Bills in NCOP Committee From late Oct to mid Nov
- Provincial Public Hearings on Proposed New Integrated Criminal Justice System Mon, 24 November to Fri, 5 Dec