

## **International Criminal Justice Development Network**

**“What is the future for International Development work in the Criminal Justice field?”**

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### **Transforming Malfunctioning Criminal Justice Sectors**

#### **Introduction**

This paper looks at how malfunctioning criminal justice systems can be transformed, particularly in the context of authoritarian regimes. It is also relevant to broader application, particularly where there is a poor human rights track record and a situation where criminal justice services deliver principally for state rather than citizens, and also in state building. In these circumstances, reforming individual services and increasing their capacity is unlikely to produce a sustainable difference if the bedrock of the sector is missed.

The three pillars I focus on here are:

1. Authoritarian regimes and rule of law
2. The importance of transforming whole criminal justice sectors
3. A framework for how systemic transformation of criminal justice can succeed

At various points in the paper I have summarised key points for international development work in highlight boxes.

I have worked extensively on criminal justice issues in Europe, the Middle East and Central Asia. My company, SocialPioneers™, an international social transformation agency working on transformations of government departments and public service systems. One of its specialisms is criminal justice where it has deployed scores of criminal justice experts to major projects, but also, to the same projects, experts in programme management, community engagement, HR, Monitoring and Evaluation, and a multitude of fields essential to achieving systemic change producing cultural shifts that lead to significant performance improvements.

#### **1. Authoritarian regimes and rule of law**

Authoritarian regimes are widespread – in the Middle East, North Africa, Sub-Saharan Africa, ex-Soviet states, various dictatorships and the recent drift towards nationalism and ‘popularism’ in

Europe, South America and elsewhere. If democracy is present in these countries, it doesn't work as it should, which means low accountability and few checks and balances.

There are normally two main traits in authoritarian regimes. Firstly they have highly bureaucratic, centralised command and control hierarchies. Public servants are regularly appointed because of loyalties and tribes, not on merit. There is little in bottom-up innovation, employee engagement or horizontal communications. Control is applied through punishments and there is scant use of rewards outside of the patronage and clientelism processes. A criminal justice system, in these circumstances, can be no more than a crude state power mechanism.

Secondly, there is a lack of accountability and transparency. This is a poor basis for rule of law and an independent judiciary. It is also a breeding ground for corruption and fraud. Public trust in the criminal justice system is therefore normally exceptionally low. Also, international investors and businesses who judge rule of law to be inadequate in terms of commercial law safeguards and untrustworthy in terms of criminal justice implementation will be reluctant to become involved in opportunities, if at all. Distrust in a criminal justice sector affects both the economy and general respect for law.

So, when the criminal justice sector is malfunctioning and in need of an overhaul, can this be achieved within an authoritarian setting? Common causes of failure in achieving transformation are:

- Lack of clear leadership and narrative on the purpose of change from the top
- Over-dependency on top down approach focused on revising laws and regulations
- Absence of real consultation and engagement
- Haphazard and reactive changes rather than strategic
- Failure to alter old cultural behaviours
- Fatigue from relentless change initiatives
- Cynicism from disappointments in the deliver of promised benefits from previous change programmes

Starting with the issue of leadership: The cultural changes that are necessary for a modern and accountable criminal justice system in authoritarian nations are likely to be fiercely resisted by 'the old guard' and those who are prospering in the traditional ways of working. The strength of authoritarianism is in the power of the leadership. That strength needs to be harnessed if transformation is to be ensured. This means that the very top – the Head of State – must be seen to be demanding change happens across the criminal justice system, and this requires there to be persuasive motivations to secure significant change and benefits that are widely understood and

supported. There must be a burning platform which means no change is not an option. Sometimes the incentive is economic – need for international investment to diversify the economy, need to attract global talent and corporations to grow the economy, need to reduce waste of public funds through corruption and clientelism. Sometimes the issues are political – to improve international reputation and influence, to improve public trust and cooperation, to build collaborative international ventures. In each case a healthy, respected, modernised criminal justice sector is vital. But unless the Head of State wants transformation, for whatever motivation, it will not happen in a systemic manner.

#### International Development Work

Transformation of malfunctioning criminal justice sectors in authoritarian states can only succeed with the full backing of the Head of State and a clear statement of purpose. Sometimes this arises when a new Head comes into post with a reform agenda, sometimes when a long standing Head faces new pressures providing compelling reasons why change must now be prioritised.

## 2. The importance of transforming whole criminal justice sectors

Generally, sectors of every kind have a set of independent departments with functions that should all align to form one coherent system to meet one overriding set of objectives and targets. But all too often both the departments and the functions are fragmented, competitive and siloed. They also tend to be inward looking and fail to effectively consider how social and private enterprises should contribute to the system's goals. These characteristics are regularly the case for authoritarian states.

When the criminal justice system is in need of a thorough overhaul for modernisation and reform traditional international development work, mainly focused on modernising and upgrading technical capacity at function levels, is unlikely to make a sustainable difference. Offerings from international agencies usually include provision of professional courses and bespoke training (virtual and on-site), short term technical experts undertaking periodic missions and personal and virtual mentoring, and international study visits. But often the system within which the new capacity is to operate remains unchanged. Criminal Justice professionals continue to be managed, reporting and accountable within the untouched separate organisations despite having new skills and operations to apply. This can be highly problematic if the criminal justice system has areas of dysfunctionality, as many in authoritarian states do.

Changing professional goals and methods, the 'what' content, should be accompanied by changes to the institutional behaviours, the 'how' organisation. Where both 'what' and 'how' are

comprehensively addressed through capacity building at functional level within the criminal justice sector – say modernising methods of policing communities or investigating financial crimes, or improving judiciary understanding about cybercrime or modern slavery and human trafficking, or adopting best international practices in prosecution operations within courts or with police – this is isolated from departmental transformation needs. Even when a substantial part of the criminal justice sector’s professional base undertakes comprehensive vocational training – for police, or judges, or prosecutors, or probation officers etc. – without remodelling the operating environment, the management systems and the interface with other parts of the highly interdependent criminal justice system, the unchanged institutional context can severely undermine the returns on the investment.

My key point is that international development work in the criminal justice field should not be undertaken in a piecemeal manner, especially in the low and medium income countries that have authoritarian governments, or the investments will be unlikely to produce effective and sustainable results. Technical capacity alone will not change conditions for the professionals, commerce nor for the public.

Systems need to respond to how to operate differently rather than just what to do differently. This includes cultural change to meanings, behaviours, goals, relationships and public accountabilities. Often a critical starting point is to clarify responsibilities and mandates across the system as they are ministerial power bases that can be confused, conflicting and dominated by public sector confrontations. Such a review enables clarification about what should be done by whom, including defining the legitimate roles of the private and civil society sectors.

#### International Development Work

Any engagement with a criminal justice department will need to start with clarifying responsibilities and mandates including the legitimate roles and authorities of the professionals

### **3. A framework for how systemic transformation of criminal justice can succeed**

With the Head of State publicly on board and applying pressure on the criminal justice sector’s leaders, and departmental responsibilities and mandates sufficiently defined, a national priority agenda for change outcomes needs to be formed and agreed - for example a comprehensive anti-corruption strategy, independent and competent judiciary, trust from the public, effective

mobilisation against drug criminals and terrorists, availability of alternatives to imprisonment, elimination of torture etc.

#### International Development Work

Provide assistance in the creation and facilitation of a national advisory source to form high level proposals for the Head of State to approve the change agenda for meeting international best practices across criminal justice

It is at this stage that the next hurdle to making change happen occurs. 'How do we do this' rears as the big question. The world is littered with failed transformation projects and programmes including in criminal justice. Leaders conducting change often want to see where it has been successful in an environment and set of circumstances as similar to their own as possible. That will inform 'how' to do this. But such comparisons and 'copycat' plans rarely succeed. Each nation is unique and the process of designing and implementing change must facilitate introduction and embedding of new ways of working in the national criminal justice agencies.

In the authoritarian scenario I have been describing, leaders are used to making laws and regulations and instructions very much top down. The focus on centralised control means that the talents and added value that are available within sector departments, in the private sector, and in civil society can be largely excluded and be seen as a potential threat. The people that leaders appoint to operate their departments and sections are not selected on the basis they are best capable to achieve the objectives and targets, but rather they can be trusted as loyally obedient. Even with the best international criminal justice technical advice, there still needs to be cultural changes to construct and implement changes – a new mindset with public interests at the heart alongside that of the state.

Once the Head of State demands reforms, I have found the following components generate the kind of culture that can become transformational and cascading:

- Proof of concept

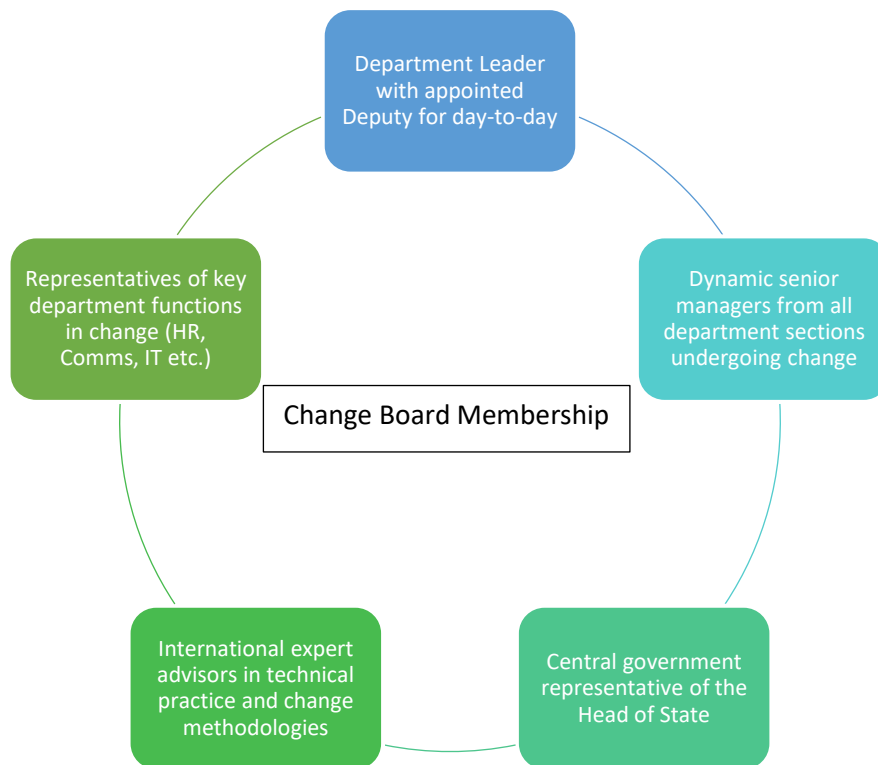
Given the unlikelihood of a convincing case to replicate from another country, there needs to be a pathfinder from within the nation's criminal justice sector. Where to begin depends upon the appetite, courage and charisma of the individual departments' top leaders. Often these characteristics of a pioneering leader will be identified in someone newly appointed rather than those who have been a long time in post and not been seen to take change initiatives.

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Start somewhere, not everywhere: Enable sector leaders to see what transformation means, and what outcomes can quickly emerge by working with a pathfinding departmental leader in the criminal justice sector

- Change Board

Bring together representatives across the organisation, hand picked because of their ambition to achieve change goals, rather than being the usual suspects. Although chaired by the organisation's top leader, this board becomes a forum for the engagement of the best minds who are empowered to innovate and learn to handle major change projects.



As well as criminal justice matters, the Change Board will need to establish projects to address:

- HR – a modern HR system is essential, including recruitment and selection that employs the best people on merit and a workforce plan that manages workloads and employee development in a fair and practical manner. There may also be the need to 'let go' managers and staff who either are anti-change or the wrong people for the new standards of work
- Communications and Employee Engagement – a strategy for bottom up contributions to the thinking and learning as change progresses, horizontal

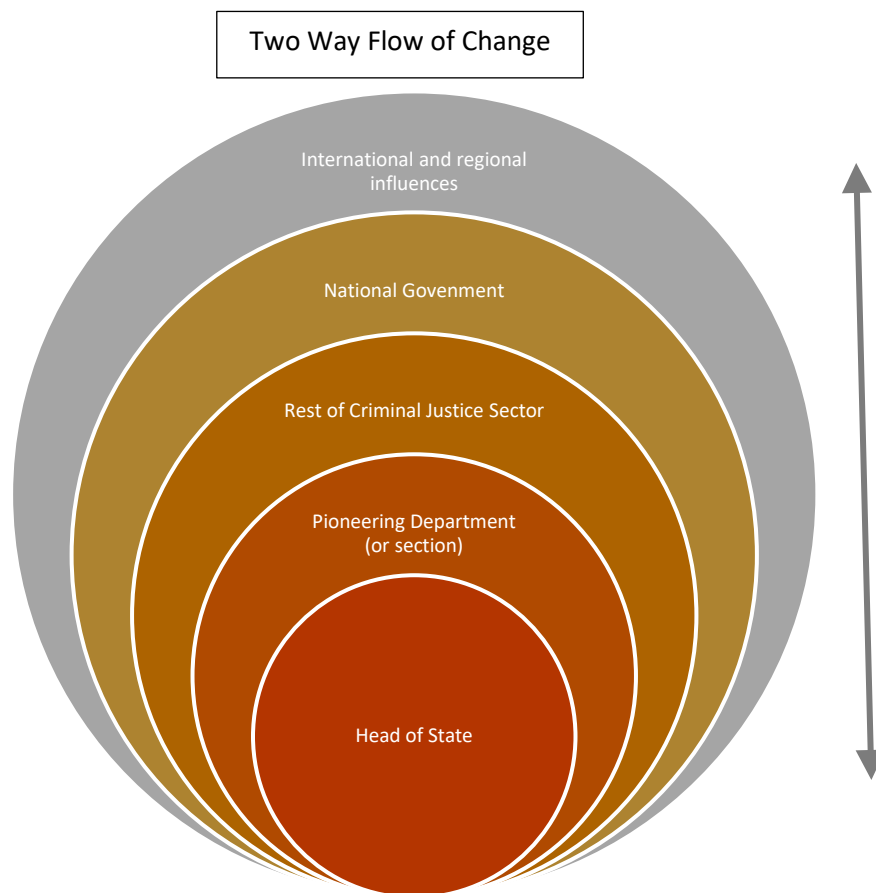
communications across the department, identified and trained change champions throughout the scope and levels of the organisation.

- Stakeholders – proper consultation and involvement for key stakeholders, including the public, to make informed and appropriate decisions on the change programme.
- Project Management – a specialist office with the disciplines and authority to professionally oversee, support, monitor and progress-chase change

These are factors relevant to which ever sector one is supporting through its change journey. Together they produce the right relationships and capabilities for a change programme, but also act as a catalyst for mainstreaming reforms on organisational methodologies and operational culture.

**International Development Work**

Advise, train and mentor towards the establishment of an effective departmental change infrastructure and sets of processes. Provide specialist training and expertise in the criminal justice and generic technical areas identified as needing to develop international best practices



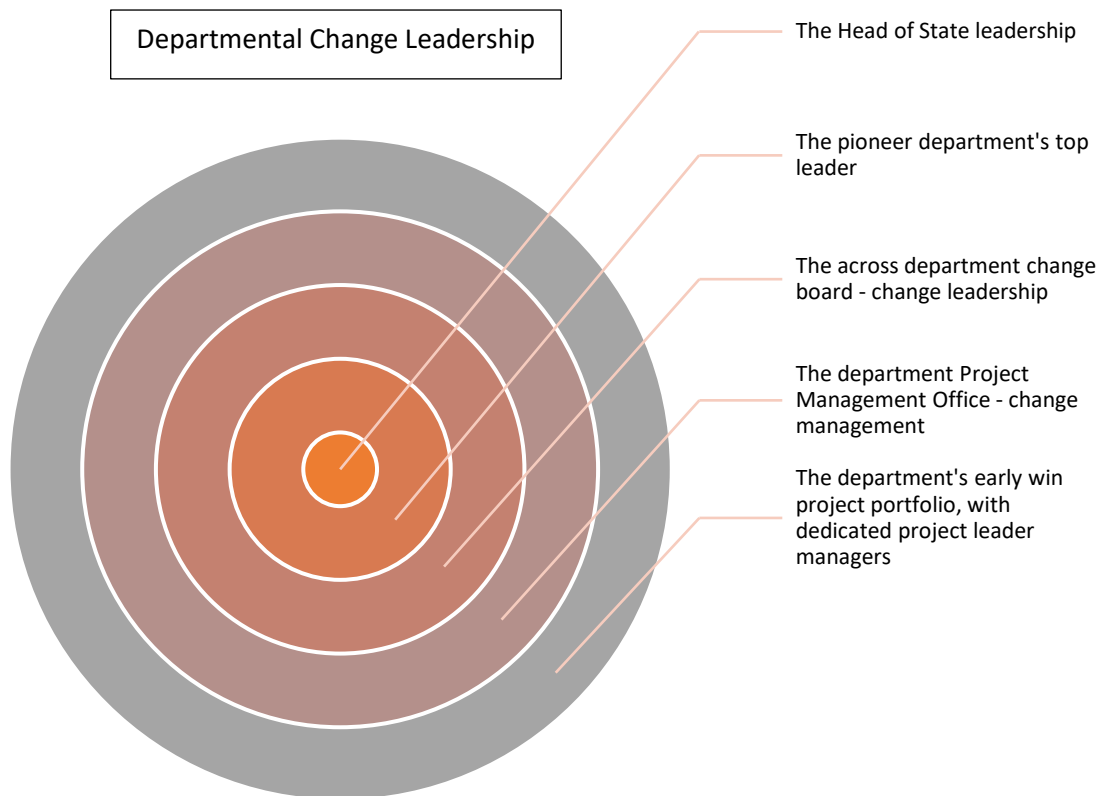
In the above diagram it is illustrated that the Head of State is at the core, and influences and is influenced by the international, national, sector and pioneering.

There are significant and multiple 'sub-cultures' in any criminal justice system. Court administration, High Judicial Councils, neighbourhood policing, crime detection, prosecution, prisons and probation are just a few examples where the responsibilities require specialisms and different professional conducts. What I have outlined is a framework that can be adapted to each criminal justice arena and reform agenda. In all of my work there have been some common change objectives across the sector:

- Meeting the requirements laid down by the Head of State and laws
- Building public trust
- Reducing bureaucracy and waste
- Uplifting the morale of managers and staff
- Improving international standing

These are unlikely to be achieved by technical capacity support in pockets of the criminal justice system. To stand any chance of meeting such aspirations the approach needs to be about the whole system having change leadership and change management capabilities within the nation.

**International Development Work**  
Advise, train and mentor to build change leadership and management capabilities





Given the shadow of the impact of Covid-19 at this time, much discussion is now about what can be done in terms of international development without travel. I have chosen not to address this. But my experience suggests systemic transformations in authoritarian states have to be locally driven yet internationally supported – and this requires a great deal of responsiveness and high mutual trust. Orchestrating this kind of relationship purely through Zoom appears counter intuitive – but a level of virtual support, once relationships are established makes a great deal of sense.

## **International Development Work and DMU**

This paper has focused on malfunctioning criminal justice systems and the particular perspective of national authoritarian regimes. The scale and urgency of transformational work in this context – for human rights and social cohesion – is immense. How much demand there is from associated Heads of State and resources available in nation or from international donors for such systemic international development work determines how significant the market could be for DMU. But if a relevant package of support is to be offered, it needs to extend well beyond education, training and technical capacity building. Whilst this is a challenging proposition, the possibilities are profound for international profile and business as there is currently little competition.

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June 2020