



UK-Brazil Cooperation: Improving Efficiency and Performance in Brazil's Judiciary, 2016/17

31ST July 2017



Poder
Judiciário





The International Governance & Risk Institute

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Performance in Brazil's Judiciary, 2016/17**

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Report Audience

This report has been commissioned by the British Embassy in Brasilia and is intended solely for the information of the project contributors, to provide them with strategic recommendations designed to guide and enrich efforts to reform Brazil's judicial system. It should therefore be understood that the report should not be made available for public consumption.

1. Project Overview

This report details the judicial reform proposals developed under the project "UK-Brazil Cooperation: Improving Efficiency and Performance in Brazil's Judiciary, 2016/17", an initiative organised and delivered by GovRisk and funded by the UK Foreign and Commonwealth Office in support of Brazil's National Council of Justice (CNJ).

The project commenced in June 2016 and was delivered over the course of nine months, its primary purpose being to **increase efficiency and performance in the judiciary system management model and foster better justice services in Brazil to implement corruption fighting mechanisms.**

1.1 Project Objectives & Activities

The principle project activities (detailed below) were designed in order to facilitate the achievement of the following objectives:

- **To improve case flow management and reduce backlogs in criminal cases heard by Brazil's judiciary in the Federal Courts and for civil cases in the State Courts;**
- **To identify Best Practices to be replicated in all Federal and State Courts;**
- **To improve the efficiency, quality and management of the judicial process in Brazil;**
- **To identify standards and performance targets to provide improved control and enhanced management information for effective decision making.**

The principal activities in delivering the above objectives were:

I.A review of UK best practices related to caseflow management and delay reduction conducted by GovRisk and the CNJ

II.A high-level technical visit to London from the 1st–5th August 2016. The 5 day visit consisted of a series of meetings and discussions between five senior CNJ officials and UK Judiciary stakeholders, with the aim of identifying UK best practices suitable for application in the Brazilian context.

Delegates:

Fabrcio Bittencourt da Cruz – Secretary-General

Fabyano Alberto Stalschmidt Prestes – Director-General:

Fernanda Paixão Araujo Pinto – Judiciary Research Department (DPJ) Executive Director

Santiago Falluh Varella – DPJ Projects Director

Marcelo Conforto de Alencar Moreira – DPJ Researcher

Slvio Aquino – Projects Manager Business Environment for FCO in Brazil

III.In-country visits to five Brazilian courts. GovRisk and the CNJ conducted a review of the courts’ relevant processes in order to evaluate them against UK best practices and identify key issues affecting caseload management and contributing to delays.

The following six courts were visited:

- State Court of Paraná (Curitiba)
 - 3rd, 12th, 21st and 25th Civil Court Units
 - Judicial Centres of Citizenship and Conflict Resolution
 - Electoral Court of Paraná
 - Civil Units with small claims tracks (Juizados Especiais Adjuntos)
- State Court of Piaui (Teresina)
 - 3rd, 4th, 5th, 6th and 8th Civil Units
 - Internal Affairs
- Federal Regional Court, 4th Region (Porto Alegre)
 - 7th, 11th, 12th, 15th, 22nd and 26th Federal Criminal Units
 - Warrants Central
- State Court of São Paulo
 - São Paulo ‘Registry of the Future’
- Bahia State Judiciary Section
 - 2nd and 17th Federal Criminal Courts of Salvador
- 1st Region Federal Criminal Court Brasilia

During the course of the in-country visit the project team met with the following stakeholders:

- Dr. Pedro Cristóvão Pinto – 1st Instance Secretary of São Paulo State Justice Court (TJSP)

- Dr. Paulo Dimas de Bellis Mascaretti - TJSP President
- Dr. Fernando Figueiredo Bartoletti - Presidency Advising Judge
- Dra. Ana Paula Sampaio de Queiroz Bandeira Lins - Presidency Advising Judge
- Antônio Oswaldo Scarpa - Federal Judge, 17th Criminal Court of Salvador
- Fábio Roque Silva de Araújo - Federal Judge, 2nd Criminal Court of Salvador
- Maria Tereza Aina Sadek – Judiciary Research Department, Executive Director
- CNJ Councillors
- Dr. Júlio Ferreira de Andrade – CNJ’s Secretary-General
- Dr. Hilton José Gomes de Queiroz - Federal Judge, TRF1 President
- Alexandre Buck Medrado Sampaio - Federal Judge, President advisor
- João Otávio de Noronha – Minister, Brazilian General Inspector Judge

In addition, the project team addressed the CNJ in Brasilia and met with Minister Carlos Ayres Britto’s, President of the Innovare Institute Higher Council and a former Chief Justice of the Federal Supreme Court.

IV.Improvement actions for the Business Process Management of contributing courts identified and detailed in a final recommendations report (this report). The recommendations contained in this report have been developed for the participating Brazilian courts on the basis of: a) the initial best practice review b) the UK experience of civil and criminal justice reforms; and c) the experiences of the Council of Europe’s Commission for the Efficiency of Justice (CEPEJ) which brings together the best practices of its 47 member states.

In turn, these proposals have been classified as short, medium or long term according to the probable difficulty associated with their introduction:

Short term - Changes that may be introduced with the minimum of training, absence of infrastructure implications and no legislative requirements;

Medium term –Changes that require training to be undertaken and some organisational changes in court management;

Long term – Legislative changes would be required and national systems would need to be introduced in federal and all state courts in order to achieve consistency of practice and legislation that would improve efficiency.

1.2 Project Team

The Project was led by the London project team and benefitted from the experience of six distinguished international experts:

John Stacey:

John is a Civil Justice Expert who has spent over 40 years in Her Majesty's Court Service developing efficient court practices and implementing new national policies and legislation in civil courts. In 2009 John moved to the Ministry of Justice where he advised ministers on policy development for court reform as well representing the UK in negotiations on Civil Justice Regulations and Directives at the European Council. He became the UK national expert on the Council of Europe's¹ commission 'The European Commission for the Efficiency of Justice' and was elected their President. Since John left the Ministry of Justice in 2012 he has worked with the International Institute for Justice Excellence and the International Association for Court Administration; providing advice, guidance, best practices and support for Countries with the ambition to improve their justice system.

Sean O'Brien:

Sean is an expert in HM's Criminal Justice System, having held a variety of positions within the Court Service between 1980-1998 before becoming Court Manager of Luton Crown Court. Under Sean's management, improvements in user satisfaction led Luton Crown Court to become only the second Court in the Country to achieve a Charter Mark. Sean was seconded to HM Prison Service in 2000 for a year to be the Courts representative in developing the private contract to deliver and collect prisoners to and from the Courts. He was also involved in the follow on contracts six years later. Sean was also part of the team who were responsible for the building of the new Supreme Court in the UK. Following his successes in 2003, Sean moved, as Court Manager, to Kingston-upon-Thames Crown Court where he oversaw the upgrading of the Court to a Terrorism and high security centre; this ultimately led to the Court hosting the trial of the 7th July 2005 terrorism conspirators. This was seen as a success with a high media interest which had to be catered for. Before leaving HMCTS Sean worked as a Business and Change manager, having particular interest in performance matters and staff management. With the improvements made to the listing of cases the London Crown Courts met their Key Performance Indicators (KPI's) for the first time in many years.

Judge Michael Hopmeier²:

His Honour Judge Michael Hopmeier is a full-time Circuit Judge, sitting at Kingston-upon-Thames Crown Court. He specialises in dealing with economic crime and asset recovery cases. He is a Master of the Bench of the Middle Temple and Visiting Professor of Law at City University,

¹ The Council of Europe is based in Strasbourg and represents 49 member states and oversees the European Court of Human Rights. The Council of Europe was founded in 1949 and works with the European Union but is a separate organisation.

² HHJ Michael Hopmeier attended Brazil at the invitation of GovRisk on the 22nd-24th March 2017, to discuss with stake holders the possible adoption of Guidance Rules to be followed by Courts and Judges akin to the recent Better Case Management provisions in England and Wales. His contribution is limited to that subject.

London. He has, over several years, regularly lectured at international conferences and has been training Judges and Prosecutors overseas on behalf of EU, ERA (Academy of European Law), Philja (Philippine Judicial Academy), DfID, UNODC, EJTJ, the Commonwealth Secretariat and other organisations, on aspects of fighting economic crime, including corruption.

Dominic Le Moignan:

Since 2010 Dominic has been a director at The International Governance & Risk Institute (GovRisk) where he has specialized in the creation and production of strategic projects, consultancy, training programmes and international forums. Dominic has project managed and successfully delivered over 30 international projects for a variety of national governments, private clients and donor organisations. These projects have sought to tackle a number of different areas; Judicial Reform, Anti-Corruption, Design of Whistleblower Systems, Procurement, Cyber Crime, Trade Facilitation, Money Laundering and Terrorism Financing.

Professor André Ramos Tavares:

André is the current Professor of; the Doctoral Program in Public Law at the Università di Bari, the Doctorate and Masters Programs in Law at PUC/SP and the Post-Graduate Program at Mackenzie. He is also the founder of the Brazilian Institute of Constitutional Studies, and acted as its first President. Throughout his career, André has received numerous decorations for his work and authored 16 individual works, notably 'Theory of Constitutional Justice' (2005) & 'Manual of the Brazilian Judicial Branch' (2012).

Professor André Pagani de Souza:

André is a professor of civil procedural law and legal practice at the faculty of law of Universidade Presbiteriana Mackenzie where he also coordinates the faculty's Legal Practice Centre. He is a member of the Brazilian Institute of Procedural Law (IBDP) and the Civil Procedural Law Commission of the Brazilian Bar Association's São Paulo section. At the invitation of the Brazilian Bar Association, André sat on the examining boards of the objective evidence of civil procedural law of the XIII Exam of Order and the professional practice exam of the XIV Examination of Unified Order.

The report has been drafted with different sections for each of the subject areas to be discussed. The proposals for change have been classified as short, medium or long term depending on the probable difficulty associated with their introduction:

2. Background

Three years after Brazil's return to democracy in 1985, 1988 saw the introduction of the country's new constitution. Sensitive to the preceding two decades of military rule and motivated to safeguard democracy, the drafting committee's approach to parts of the document pertaining to the judiciary placed a strong emphasis on its independence, broad citizens' rights and rights to justice. Under the resulting judicial structure, each of Brazil's 27 semi-autonomous states in fact possess its own judicial system consisting of an independent court made up of numerous units

and subject to its own method of operation. In addition to these State courts, several Federal courts exist in the country which are in turn divided under five administrative regions.

The current system faces numerous challenges and there are clear opportunities for reform aimed at improving the judiciary's efficiency and increasing the accountability for financial resources provided to the Brazilian courts by tax payers. However, an inadvertent bi-product of the autonomy which characterises the existing court structure is a high level of difficulty enacting system-wide change at the national level. While the National Council of Justice (CNJ) – the body charged with the external control of the country's judicial system – does have some authority over all Courts in Brazil, the aforementioned independence bestowed on the State Courts by the current Constitution limits the CNJ's influence over their working methods, procedures and use of resources. Hence these three elements vary within each State, in turn reducing the accountability of the Courts.

In comparison, in the United Kingdom the provision of resources to the Court Service is only approved by the Treasury (acting on behalf of Parliament) once an agreement has been reached which specifies the level of service and the performance targets that have been achieved. Through these agreed targets the courts and the judiciary become accountable to Parliament (tax payers) for the resources allocated.

It is accepted that the UK model of an agreement between the legislator and the Courts is not appropriate for Brazil. However, a process for providing accountability and transparency in the use of resources should be considered³: The current absence of performance indicators to support the National Goals, accountability and a bureaucratic system of management has contributed to the perception of Brazil's judicial system as fragmented and resulting in many judges working in isolation. The ability to function without accountability is often defended in other countries as preserving the independence of the judiciary. However, it must be accepted that there is an internationally accepted definition of independence⁴ that does not exclude targets and financial accountability.⁵

It is therefore the aim of this project to establish those UK and international Best Practices which, together with locally developed best practices and procedures could be introduced or replicated in Brazil in order to increase the efficiency and accountability of its judiciary, and ultimately reduce delays and case backlogs. Over the course of the in-country visits the project team observed a clear will among the public servants and judges of both the federal and state courts to work towards combatting the frustrations of the current system and the improved efficiency and quality of the courts in order to promote access to justice. This commitment to an improved justice system has facilitated the success of this project and the cooperation between the British Embassy and the CNJ.

³ Indeed, as the body already charged with the reporting on the performance of the Courts, the CNJ is well-placed to provide the necessary level of oversight.

⁴ See Annexe W, for further information

⁵ More information on these issues is included in the annexes.

3. Executive Summary

It was this project's objective to develop proposals aimed at reducing delays and improving the overall efficiency and quality of the Courts in Brazil. The performance of the country's Courts has been the subject of criticism within numerous international reports; however, the challenges facing the judiciary are far from unique to the Brazilian context. As such, the recommendations put forward by the expert team draw on best practices and lessons learned in the UK and across Europe in order to produce proposals with the potential to have a significant impact on the pace of reform. This is especially true when taking into account the level of innovation and will for procedural reform the project team observed during its in-country visit to a number of different Units across Brazil. These proposals are far reaching and are capable of being introduced as standalone projects or are complimentary to existing initiatives.

A summary of these proposals can be found below. For the purposes of this summary, the proposals have been categorised and grouped according to their subject matter focus:

- Structural Organisation
- Developing the workforce
- Performance
- Best Practices

Structural Organisation

The organisation of the Courts and Units in Brazil is similar to many other Countries, in particular Spain. In a 2010 review of its Court systems the Spanish Ministry of Justice concluded the following:

“The atomised structure of judicial bodies in Spain, which follows a 19th century design, has been one of the causes of the delays...”

“Up until now our courts of law have been organised into small judicial offices formed of one judge, one court secretary and seven or eight clerks...They are offices that operate like watertight compartments...”

The new structure being introduced is not dissimilar to what the experts have proposed. Judges will receive specialist support from a team dedicated for that purpose, but ‘common procedural services’ for a number of Units will be undertaken by a different team led by a Chief Secretary. This allows for the economies of scale to be achieved and a higher level of expertise to be developed. With the recruiting difficulties in Brazil for public servants this proposal would allow a more flexible servant grading structure to be designed, ensuring only those with the correct qualifications are matched to the job.

Spain also decided that Judges should devote themselves to their judicial responsibilities and that the administration should be entrusted to the Court Secretary. In Sao Paulo's the ‘court of the future’ this is the model that is being developed. Initial savings have been identified of 30% - 40% but these do include the benefit of digitisation. True savings will only be known after a proper evaluation, but all the indications are that replication of this model will radically improve the

performance of the Courts in Brazil and reduce costs. The full report makes recommendations and provides guidance that will improve the probability of success and maximise the potential benefits.

Developing the Workforce

With the changes being made to the structure of the Court and Units it is equally important to have trained, motivated and experienced teams of employees. This will result in improved efficiency, quality and eventual cost savings. It was evident that the training of personnel is inadequate to meet the future needs of the organisation. A proper training needs analysis needs to be undertaken to ensure that Chief Secretaries/Directors have the management skills to lead their teams and that the staff are equipped to meet the challenges of the changing working environment.

To underpin the development of a skilled workforce is a complimentary performance management scheme. Currently there is no formal appraisal, promotion or performance recognition scheme in place for staff. This has almost certainly resulted in many staff being allowed to underperform or feel unappreciated and demotivated. Experience in other Countries and in industry has shown that the workforce must feel valued and fully engaged. It is difficult to quantify the potential benefits to an organisation, but if introduced properly a scheme will result in the organisation being more efficient due to having a trained, motivated and well led workforce.

Workforce engagement and change management are often overlooked by leaders of large organisations. Everyone, including judges, feel threatened to some degree by change and it is important for the long-term success of any reform that the change process is properly managed. People who are impacted by change should be made to feel that they have ownership and are able to input on what is being proposed. Without this there will be a limited commitment by the workforce, increasing the risk of failure. In the full report are a number of proposals and strategies to avoid this scenario.

Performance Management

The project team were pleased to see examples for forward planning and national objectives. There is also a sophisticated data collection system that identifies the volume of new work passing through the Courts together with what is outstanding. However, the component of this which is missing is the use of performance measures at the local level. A simple tool is described in the report that allows pressure points to be identified quickly and also to identify areas which are under-capacity. These tools look at the 'clearance rate' and the 'disposition time' and are from the GOJUST Guidelines of the Council of Europe.

The report also discusses the use of a more detailed range of targets to look at productivity, working hours and customer engagement. It is important that measures/targets eventually cover as much of the business and working procedures of the Court/Unit as possible. Unless a comprehensive system is devised, there is a risk that the focus of attention will only fall on the targeted areas leading to a deterioration in performance in other areas.

The measurement of the enforcement process has been the subject of concerns raised by academics and researchers from around the World. Officially, the reported levels of enforcement success are currently at 87-90% *outstanding*, however, this is not an accurate representation. The distortion of this figure is largely due to enforcement work being classified as *outstanding* until it is satisfied. As much of the enforcement work is for tax foreclosures the current outstanding figure represents the failure of the state to collect taxes and not the ability of the courts to enforce them.

It is true that the method of managing the enforcement work is inefficient, but because of the level of reported outstanding work there is little incentive for enforcement officers to change their working practices. The report proposes a new way of working for enforcement officers and a management structure that will improve standards and increase productivity.

Best Practices

The report identifies a number of areas where different practices have been proposed. It is possible that in some areas legislation may be required to make them happen, but they are all designed to increase productivity and reduce the backlogs. Greater use of video hearings, particularly to avoid prisoners having to be transferred from prison, will reduce costs and delays. Telephone hearings for preliminary/interlocutory hearings will guarantee that the principal lawyers involved are able to attend by telephone and assist the judge. Having a locally appointed agent to act as the case lawyer is costly and less effective due to their lack of familiarity with the action.

Other proposals relating to Proactive Judicial Case management, ADR, Appeals, Fees and the delivery of judgments are all detailed in the report and have the potential to improve efficiency and, more importantly, access to justice. The report also recommends the introduction of standard operating procedures to achieve consistency, but only after the 'lean' management tool has been used to re-engineer processes, removing redundant steps and introduce quality systems.

4. Court Structure and Organisation

4.1 Judicial Maps

Due to the structure of Brazil's federal and state systems, the provision of judicial services needs to be kept under constant review to ensure that justice is accessible in all parts of the country. This would require the correct balance between state and federal court units as well as an adequate number and positioning of courts/units with special jurisdiction. There are organisations that have recently been developing tools that support the process of creating the ideal judicial map of a country. The current global trend is to undertake such exercises to reduce the number of court centres (Units in Brazil) and ensure they are of the optimum size to achieve efficiencies of scale and meet the needs of the changing community.

It has been a widely-held view that justice should be provided at any costs, but the economic climate in many Countries has changed this belief, now justice has to be affordable. Countries are now looking at how they provide access to justice and justify the use of monies provided by the tax payer. These pressures are encouraging innovative initiatives to improve access to justice, efficiency and quality of the judicial process received by everyone.

These tools require the collection and processing of certain data including:

A) Key factors

- i) Population density
- ii) Size of court
- iii) Flows of proceedings and workload
- iv) Geographical location, infrastructure and transportation

B) Additional factors

- v) Level of Computerisation
- vi) Court facilities (telephone/video) and cultural sophistication (the readiness of communities to accept new working methods and technology)
- vii) Level of business
- viii) ADR/mediation availability
- ix) Availability of legal advice
- x) Recruitment of judges and personnel

Other useful information includes: geospatial data explaining where any existing or planned future courts are to be located, general geospatial data describing the country (preferably with travel infrastructure e.g. roads, rail, air, sea) and the location/size of population settlements.

This scientific approach to planning should ensure that resources are used to the maximum benefit. This would be a long-term project and details of the agencies capable of providing this service could be supplied if required. **(Medium Term)**

4.2 Grouping of units

When the team discussed the plans to group two judicial units in the State Court of Paraná it was made aware of a more advanced project in São Paulo where five units had been grouped. The cost savings and the efficiencies gained were significant. The experts encouraged these projects as the possible grouping of units was first proposed to CNJ representatives during their visit to London at the commencement of the project and were to be included as one of the recommendations.

Table 1, Performance improvement in the ‘Court of the Future’ Sao Paulo (data provided by Sao Paulo State Court)

Process	Performance before reforms	Performance after reforms	Increase in output
Sentences Units 1 & 2	24,483	33,102	35%
Productivity per employee (ordinary judicial action – (Family JPU)	162.3	357.8	120%
Productivity per Judge (ordinary judicial action – (Family JPU)	2957	3619	22%
Productivity per Employee (ordinary judicial action – Civil JUP)	234.9	351.1	49%
Productivity per Judge (sentences – Civil JUP)	4373	5890	34%

The data in table 1 shows a major improvement in productivity, although these figures cannot be verified they are in line with the expected benefits with a unification programme of this kind.

At the end of the pilot projects in São Paulo a proper evaluation needs to be undertaken to demonstrate that the project objectives to reduce costs and improve efficiency and quality have been achieved to a level that would support replication. It is probable that not all units would be suitable for grouping similar to the pilot model. However, units in similar jurisdictions should be capable of being grouped in some form and achieve the benefits of scale. A further project is being planned to unify a number of criminal units, if successful this will demonstrate that replication is possible in other jurisdictions. The unification of Units (Courts) in other Countries is widespread for all types of jurisdiction and benefits have always been achieved. This process of change has to be progressive to find the optimum number of Units that can be effectively combined. It is recommended that a number of pilots are established to test the feasibility of unification.

One of the consequences of the grouping of Units is the increased pressure placed on the judge due to the improved productivity of the Unit’s team. The solution being considered in Sao Paulo is for the Judge’s personal team to be increased by two clerks to allow for a more effective throughput of cases. In an article in the October 2016 edition of the ‘International Journal for Court Administration’⁶ a study was undertaken on the ‘Relationship between Judicial Staff and

⁶ The journal of the International Association for Court Administration

Court Performance: Evidence from Brazilian State Courts’ to establish if there was a direct correlation between the size of the judicial staff and Unit performance⁷.

Although this research did not take into account the provisional results from the ‘Court of the Future’ it did look at the available historical data for all 27 states. The conclusion was that the size of the Judge’s personal teams does have a direct and positive effect on court productivity.

Table 2, Judge’s Personal Support Team

Current Judicial Support Team	Proposed Judicial Support Team
Chambers	Chambers
Judge	Judge
Assistant	Assistant
Clerk	Clerk
Intern	Clerk
Intern	Clerk
	Intern
	Intern
Hearing Room	Hearing Room

In Annexe A, a proposed management structure for combined Units is put forward, but this does not cover the judge’s support teams whose function is to support the judge manage and process the caseload. The teams supporting the unified units will need a more structured management team with an individual in overall control reporting to the Judges or designated judge. The other members of the management team will be in charge of specific areas of the office with the required number of staff. It has been recognised by the State Court of Sao Paulo that the current Chief Secretaries, on the whole, do not have the training or experience of management within this type of structure. Fortunately, the Chief Secretaries taking part in the ‘Court of the Future’ pilot are being provided with the training and support they need.

The concept of grouping is supported by many judges and staff as the potential savings present a compelling argument, however, this enthusiasm is not shared across all the jurisdictions. If the

⁷ Research conducted by Adalmir de Oliveira Gomes, Tomas de Aquino Guimaraes and Luiz Akutsu

pilot projects do produce sustainable savings further projects should be undertaken to test the concept in a variety of jurisdictions with a suitably modified unification plan. Further pilots also need to be run in which different numbers of units are grouped in order to establish their ideal size. The CNJ and the State Court Presidents will need to provide the leadership and direction to ensure that the whole country benefits from this initiative and overcomes the opposition that will arise.

It is recommended that a full evaluation of the existing pilot exercises be undertaken and published by the State Courts and that GovRisk would be willing to assist in that evaluation and to help develop the model for the future, if it would be of benefit to the country. **(Short Term)**

At Annexe A, there is a proposed model for combining five Units together with suggested areas of responsibility for the judges and staff for the new structure.

4.3 Shared Resources

Increased efficiencies could be found by sharing some resources between the State and Federal courts, in order to prevent any duplication of effort through having two court systems working in isolation of each other. In England & Wales all the courts are now managed by the Court Service with the exception of the UK Supreme Court, which serves the entire country. This was not always the case and has only been achieved in recent years when the remaining courts managed and organised by local government organisations became part of the Court Service. The employees then became national civil servants as opposed to being employed by local governments with all support services being centralised under one national management. This centralisation has allowed resources to be shared so that judges, employees, buildings, and all the other infrastructure services large organisations require can be better utilised. A significant benefit of this has been the development of national computer systems, when in the past England & Wales had some national systems but also 42 diverse local systems that could not be similarly networked.

In Brazil, each Court has responsibility for the personnel and the supporting administration in its jurisdiction. This responsibility is supported by the constitution, but the Courts need to work together and collectively develop initiatives and best practices to benefit the whole Country.

The CNJ has the ambition of all states using a common computer platform. For those courts that currently opt out of the common platform they use the National Interoperability Model. If the whole country is to move forward together and share the benefits of local initiatives and IT developments a single computer system operating on a common or open platform is essential and has to be a priority.

It is recommended that a review be undertaken by the CNJ of the various computer systems to identify the key functionality and the correct way forward. Hopefully the CNJ will eventually persuade all Courts to join the ideal single platform. **(Medium Term)**

4.4 Back Office Services

The use of “back office” services should be considered as part of any strategy to rationalise the courts’ work to improve efficiency and reduce costs. Where common routine tasks are undertaken that do not require the intervention of a judge and have no geographical requirement those tasks may be centralised. This should also benefit the more undeveloped regions of the Country supporting access to justice.

Specially trained personnel may be recruited for that task or a variety of tasks. This provides the benefit of streamlining many functions leaving the more complex tasks to be undertaken within the units by the highly-trained staff. These “back office” services may be based on a court, state or national level. To a limited effect this is already happening in Brazil to support the grouping of courts initiatives.

A typical example of a national system would be the on-line commencement of simple claims for the recovery of debts. The “Money Claims Online” (MCOL) system has been an outstanding success in England and Wales. Now the majority of new civil cases are started electronically from a central location and are only transferred to a local court for a hearing or enforcement.

Although these systems are dependent on IT support, which may require major investment, such “back office” services should be an integral part of the CNJ’s attempts to develop a modernisation strategy. **(Medium Term)**

It is recommended that consideration be given by the CNJ and State Courts to develop a ‘back office’ strategy. GovRisk would, if requested, assist in identifying tasks suitable for the ‘back office’ scenario.

4.5 Team Meetings

Team meetings were not being held in any of the courts that were visited. Local teams in individual units did have meetings, but they depended entirely on the voluntary initiative of the Chief Secretary. Conversations with the staff revealed that these team meetings were welcomed as they covered the performance of the unit, common issues and possible improvements.

However, on a wider level the Chief Secretaries of courts did not meet as a collective. Events had been held in the past but did not occur on a regular basis. The project team arranged and conducted two meetings between Chief Secretaries in Porto Alegre and Teresina under the chairmanship of one of the international experts. These meetings discussed new initiatives, performance and the future aspirations of the Chief Secretaries. The Chief Secretaries welcomed the meetings and were very positive about reforms related to improving the performance and management of the courts and discussing common problems. They also wanted the meetings to be held on a regular basis.

In Porto Alegre, the next meeting was agreed upon and an interim chairperson was selected. Internal Affairs hosted this first meeting but had agreed not to participate until its conclusion and

only then comment on the points raised. In Teresina, Internal Affairs were briefed on the meeting held for their Chief Secretaries and were relieved to hear about the positive response. Issues had been discussed relating to what they themselves had wanted to raise but were unsure of how they might do so and/or the reaction that they might receive if they did.

The international experts successfully showed that team meetings are an essential part of office life and have to continue on a regular basis. They also provided a conduit for information to be passed between the Chief Secretaries and court management.

A model for the successful introduction and conduct of team meetings is included in **Annexe B. (Short Term)**

It is recommended that team meetings are held in all Courts and GovRisk is able to assist in providing the training and support to make the meetings a success.

5. Performance and Best Practices

5.1 Group Litigation

In the Federal Courts the experts were informed that large numbers of cases are commenced in the court in respect of some form of welfare benefit, many of these cases are similar or even identical in nature. England & Wales have similar situations, as do many Countries, but have devised procedures to deal with these common cases collectively.

There are many names for these types of proceedings including group litigation, class actions and representative actions. But the important components of these procedures for Brazil are:-

- (i) have a mechanism for judges to report these actions to a higher court;
- (ii) the higher court has the power to stay all the actions except for a representative case or group of actions;
- (iii) an official central record is maintained of these types of cases to allow judges to check if they have pending actions that could be stayed pending the decision of the higher court;
- (iv) the higher court hears the representative action(s) and that decision is then a precedent that decides all stayed actions.

This type of procedure has reduced the caseload of judges making the management of these actions more cost efficient and faster for the litigants. As these are primarily welfare cases speed of resolution is important.

It is recommended that a feasibility study be undertaken by the CNJ to see if this process is practical, beneficial and identify the procedures to be adopted to for its success.

5.2 Appeals

Appeals have been a problematic element of legal systems across the globe, Brazil has been no exception. In Brazil, we have been informed that the majority of appeals have no merit and are either speculative or are delaying tactics⁸, but there is no evidence to support this proposition. These appeals are one of the main causes for delay in any legal system and the delay just adds to the legal costs incurred by respective parties.

This opinion also appears to be supported by a number of leading lawyers and judges and two quotes reported this year illustrate the concern:-

‘The appeals system, joined by the limitations system, create a true impunity machine.’ Deltan Dallagnol⁹

‘An overcharged judiciary and an excessive generosity when it comes to appeals, makes it so that the politically and financially powerful are able to manipulate the system.....’ Sergio Moro¹⁰

‘endless justice is no justice....’ Sergio Moro

Studies have shown¹¹ that the most effective remedy for excessive appeals is to introduce a “permission stage” where only appeals with merit are allowed to proceed to the appellant court *“Permission to appeal will only be granted where the court considers that there is real prospect of success or where there is a compelling reason why the appeal should be heard.”*¹²

The right of appeal could be restricted to the question of law, but with no appeal from the finding of fact. Appeals are also an effective indicator of a possible need for training amongst the judiciary. If data concerning the reasons for the success of appeals were collected, trends may be identified showing a consistent error or misunderstanding by judges that would suggest training or guidance was required. It is recommended that data is collected on successful appeals and analysed to identify possible trends or weaknesses. If necessary, the data could be anonymised to protect the identity of individual judges.

Currently legislation in Brazil does not permit a ‘permission stage’ to be introduced, but measures are available to penalise litigants by increasing costs or the amount of judgment debt by 10%. Although the number of cases that are appealed in Brazil is about 15% this is still a number that the appellate courts have difficulty processing within a reasonable time. A possible solution to consider is to restrict the rights of appeal in ‘small claims’ cases to prevent the opportunity for these going to the Supreme Court. Probably allowing just one appeal to the second instance court would be appropriate.

Draft guidelines for amending the appeal process is attached at **Annexe C**. These guidelines include a draft framework and extracts from the Civil Procedure Rules of England & Wales as an

⁸ The Court of Appeal by Gavin Drewry, Louis Blom-Cooper & Charles published by Hart Publishing

⁹ Deltan Martinazzo Dallagnol is an attorney of the [Federal Public Ministry of Brazil](#). He is known for being the lead prosecutor of [Operation Car Wash](#), an investigation into corruption at Brazilian oil company [Petrobras](#).

¹⁰ Sérgio Fernando Moro, a Federal Court Judge noted for his handling of ‘operation car wash’ and other similar cases.

¹¹ OECD (2013), “What makes civil justice effective?”, OECD Economics Department Policy Notes, No. 18 June 2013.

¹² ‘Further Findings, A continuing evaluation of the Civil Justice Reforms’, Department for Constitutional Affairs August 2002

example of possible new legislation, if this is required. This proposal may also need a change to the constitution and clarification of the Inter American Convention of Human Rights. Although by permitting a review of the refusal to grant permission this has satisfied the European Court of Human Rights that there is no violation. **(Medium or long term depending on legislation)**

It is recommended that a review to be conducted of the appeals procedure by the CNJ and Supreme Court to provide a solution based on proportionality and the reduction of appeals without merit. GovRisk would be willing to support such a review having the benefit of International experience in reducing the volume of cases being dealt with by the appellent courts.

5.3 Telephone/Video Hearings

Attendance at court hearings is both costly and time-consuming for all parties involved. In many preliminary hearings, the physical presence of the party or a lawyer is unnecessary. Judges frequently complain that junior lawyers or lawyers with no personal conduct of the case attend the preliminary hearing. Judges would prefer for the principal lawyer to attend as it makes the hearing more productive. However, this is often not the best use of a lawyer's time (especially if he needs to travel some distance to attend). In England & Wales judges have relied on the successful practice of allowing lawyers to appear by telephone, which has been very popular with both judges and lawyers.

During the expert's court visits they saw examples of video hearings where the witness was in a remote location. This practice was clearly very successful and should be encouraged especially as technology is becoming more affordable. One area where video hearings could be developed concerns defendants in custody (prison video link hearings). The need to transport prisoners to court is costly, time-consuming and could present a security risk. Although it would be normal for the defendant to be physically present during the actual trial this need is probably unnecessary for all other hearings.

In **Annexe D**, there is guidance on how to establish telephone hearings and examples of the benefits of prisoners appearing via video link. **(Short or Medium Term)**

It is recommended that the use of video hearings be extended in all criminal courts to avoid prisoners being transported for interim hearings and that consideration be given by the CNJ and State Courts to the use of telephone hearings for interlocutory applications. Further advice and guidance can be provided by GovRisk.

5.4 The Oral Delivery of Judgments

The practice of delivering full reasoned judgments is commonplace in many countries including Brazil. This practice is time-consuming and in the simpler cases unnecessary as the parties' priority is to hear the decision and the judge's verbal explanation of the decision. We witnessed this once in Curitiba, when the judge explained his decision to the parties with the intention of

making them understand that an appeal of this particular decision was unlikely to succeed. Data needs to be collected to demonstrate that this procedure is proving beneficial.

It is understood that both the Civil and Criminal Procedure codes permit the delivery of oral judgments, normally used for small claims, the procedure may be used in other cases where the clerk records the judgment. But in practice Judges prefer the traditional method of preparing written judgments and this is almost certainly one of the causes of delay. This delay may be avoided if greater use is made of digital recording that could be used in the event of an appeal.

It is recommended that the CNJ and the State Court Presidents will need to provide guidance and training to ensure that the benefits of oral judgments are realised more widely.

5.5 Legal Aid Applications

The provision of legal aid is an essential element of any legal system but it is important that legal aid is restricted to those individuals who do not have the means to fund their own cases. In Brazil, applications for legal aid are evaluated by a judge and only allowed if the party meets the requirements for assistance. It may be desirable for further checks to be carried out before legal aid applications are granted. These checks should be to establish disposable assets and any other resources that might avoid the need for legal aid.

The procedure, as explained to the experts, allows the applicant for legal aid to appeal against the judge's refusal to grant legal aid. However, there is a commonly held view among judges that the appeal applications are always allowed at the appellate court, thus providing no support for the judge's original decision to rule against the application. Although the law and the Supreme Court are clear on this issue, some judges appear reluctant to refuse applications due to this perceived lack of support.

It is unclear how this situation has been allowed to develop, but guidance from the State Court President and/or the Supreme Court would help to clarify the current confusion. If this confusion is widespread across the country then significant resources may be being wasted through grants of inappropriate legal aid applications and may suggest a training need for judges.

It is recommended that national statistics are collected by the CNJ to show how many decisions on legal aid applications at the first instant units are appealed and how many of those are successful. This will either demonstrate that the process is working or it will identify a problem that needs to be resolved.

5.6 Alternative Dispute Resolution (ADR)

ADR is an essential alternative to the formal judicial process, providing cheaper and quicker justice. In all the courts visited ADR schemes were in existence but showed mixed results. In the courts where the scheme was adequately resourced results of resolved disputes were impressive. Much of this success is due to the commitment and enthusiasm of the judges, former Judges (as in Curitiba) and volunteers operating the system.

It does appear that the ADR schemes have all evolved independently of each other; in fact, experiences of managing successful ADR schemes have not been shared. The CNJ has developed a policy to establish conciliation schemes and to train mediators etc. But the support for the schemes in the Courts is inconsistent; the benefits of ADR need to be more widely promoted demonstrating the benefits for the citizen and the court. Although data on ADR schemes is not readily available figures for the annual conciliation week have been produced and over 6 years the average number of agreements produced at hearings is 51.1%. If these results are typical of what is being achieved or is achievable it is a success story that needs to be replicated and promoted across over the Country.

It is recommended that an evaluation of the existing ADR schemes is undertaken by the CNJ and State Courts to identify the most effective model(s) for replication as a matter of priority. **Short Term**

5.7 Court Fees

The court fees payable by the parties in Civil Proceedings are charged at the commencement of proceedings based on a table defined by the Court. The fees are then recoverable from the losing party as part of the judgment. The experts were informed that a review of court fees was to be undertaken.

The model adopted by England & Wales has evolved over many years and is based on the premise of full cost recovery. This means that the costs associated with providing a civil justice system are entirely funded by fees. The fees are charged according to the value of the claim and are to be paid and collected at each respective stage to which the case proceeds i.e. commencement of case, defence and hearing. This procedure is based on the principle that individuals pay for what they use.

However, making civil justice pay for itself should not be done at the expense of access to justice. No individual should be deprived of the opportunity to go to court because they cannot afford to pay the fees. In order to ensure access to justice is maintained, the fees should either be paid as: (a) a part of the legal aid, or (b) as part of a procedure introduced to permit the fees to be waived or reduced subject to a means test or some other procedure based on welfare benefits being received. A similar system is in operation in Brazil.

Fees may also be used as a deterrent against commencing litigation. The experts were informed that commercial organisations were using the courts to collect debts without making any or very little attempt to collect money or negotiate a repayment scheme directly with the debtor. In

England & Wales fees were set at a very low level and the major business users of the civil courts found that the court was cheaper than trying to resolve cases themselves. This generated large number of actions in the courts that were unenforceable. One water supply utility admitted that they would use the court just to check if the customer still resided at the address. This was an abuse of the process and fees were increased to make this course of action uneconomical forcing companies to attempt to resolve problems themselves and only resort to litigation if there was no alternative.

Details of the fees system adopted in England and Wales can be found in **Annexe E**, and at **Annexe F**, is a leaflet used to inform litigants and lawyers about the fees that will be payable and when. **(Medium to Long Term)**

It is recommended that a review of civil court fees is undertaken by the CNJ with the objective of:-

- i. making the fees more proportionate to the type and duration of action, and
- ii. making fees a deterrent for creditors abusing the court process.

5.8 Innovare Prize Best Practices

One of the meetings held during the last visit to Brazilian courts by GovRisk's team took place on 24 March 2016. The meeting occurred at Minister Carlos Ayres Britto's office in Brasilia. Minister Ayres Britto is a former Chief Justice that, after retiring from the Federal Supreme Court, pursued a career in private law practice. He is the president of the Innovare Institute Higher Council.

Innovare Institute is a non-profit association, whose main and permanent objectives are the identification, awarding and dissemination of practices incepted by the Brazilian Judiciary, Public Prosecutor's Office, Public Defender's Office and lawyers. These practices contribute to the Brazilian Judicial System's modernization, access democratization, effectiveness and rationalization. In order to meet its objectives, the Innovare Institute annually awards the Innovare Prize, promotes lectures and free events, publishes books and articles, produces documentaries and conducts research on justice-related issues.

At this meeting, Efficiency and performance improvement of Brazilian Judiciary project was presented to Minister Britto's office staff and by himself. Joining the meeting by video link was Raquel Kichfy, Innovare Institute coordinator. Both of them were very impressed and enthusiastic with the project and the possibilities it raises for truly changing some of the routines and practices in use on Brazilian Judiciary. She promised to send three award-winning practices as a contribution to the project's final report.

The three best practices are consistent with the recommendations made in this report. They promote the idea of adopting an ADR scheme making full use of new technology to avoid the need of bringing a case to court. The 'consumidor.gov.br website' in particular seeks to resolve consumer disputes without the need of court action. The issue of the large number of consumer debts being enforced through the court without any attempt at coming to an agreement was identified as one of the causes of back logs in the courts.

It is also pleasing to see the pragmatic approach being adopted for tax foreclosure cases. By only taking court action in cases where this is justified by the value of the debt to be recovered is a sensible cost effective approach. All these best practices are to be commended and they should be developed across the Country and extended where possible. It is highly probable that these will have a beneficial impact on the outstanding work held by the courts.

The Best Practices from Innovare are at **Annexe G**.

6. Performance Targets

6.1 Definition of Outstanding Cases and Backlogs

One of the objectives of this project was to achieve a reduction in the backlogs of cases within the courts as official figures showed an unacceptable level of outstanding work. However, having discussed this with judges, secretaries, enforcement officers and Internal Affairs it is clear that the definition of outstanding work needs to be clarified.

It appears in Brazil that a case remains outstanding until it is brought to a conclusion in some way. At first glance this would appear to be a totally logical and an accurate measure of performance. However, many cases never come to an official conclusion and are simply discontinued or abandoned in some way because the parties are unwilling or unable to pursue them. These cases distort the number of outstanding “live” cases and create a misleading picture of the workload within the courts. A review needs to be undertaken to develop a process that identifies these “dormant” cases so that they are excluded from the performance figures or, if necessary, shown separately. Also, they should not be shown as outstanding once a final judgment has been given. Enforcement cases¹³ need to be kept entirely separate.

The performance figures for enforcement also present an inaccurate picture as they do not show the enforcement case as being finished until it is satisfied. This includes all unpaid judgments, including those that are never going to be paid. Examples were seen of a more pragmatic approach being adopted in Parana, where the enforcement process was removed from the statistics once it had become unenforceable and was suspended by the court. Each enforcement process received at least three visits and if there was no prospect of success they would be suspended but could be reinstated if new information became available. However, this approach does not conform to national procedure and is not practiced by Federal Courts.

In England and Wales only the outstanding defended actions are counted until final judgment. Enforcement cases are only counted from the date the enforcement process commences and cease to be counted once the enforcement is satisfied or it becomes ‘unenforceable’ for some

¹³ Cases in which previous judgments or decisions are enforced

reason. This means the outstanding process performance figure only includes cases where the court is actually engaged and responsible.

Issuing new guidance on the collection of data should be considered a priority. This should result in a dramatic reduction in the amount of outstanding work. **(Short Term)**

It is recommended that the method of counting outstanding enforcement cases, in particular tax foreclosure, be reviewed by the CNJ so that only cases actively being enforced are reflected in the statistics.

6.2 Productivity

The experts were given the opportunity to visit a number of different units that had varying amounts of outstanding work. It quickly became clear that there was a widespread culture of working exceptionally long hours, which distorts impressions of unit productivity levels. Units are considered to be efficient if they control their outstanding work and have a high clearance rate. However, if these results were only achieved by working long hours and through excessive judicial intervention this appearance of efficiency may be misleading. A more accurate indicator of productivity and efficiency would be to measure the volume of outstanding work and the clearance rate in relation to the number of hours worked by the judges and staff. Through using this methodology, Internal Affairs could quickly identify truly efficient units and units which are under or over resourced.

There are a whole range of performance measures available, but they should be tailored to meet the needs of the units in Brazil. An urgent review needs to be undertaken by the CNJ to agree to more appropriate performance targets and indicators. This should lead to a more appropriate use of resources and help to quickly identify pressure points within the system and areas where there is capacity to do more. **(Medium Term)**

At Annexe H, Sample performance indicators

It is recommended that a new range of performance indicators be devised by the CNJ and State Courts that measures real performance and not just output.

6.3 Value for Money

Judicial systems across the world have increasingly been forced to achieve more with less funding, as well as finding that they have to justify any request for resources. In the UK, the Ministry of Justice has to agree to a range of objectives for the courts to achieve in return for their funding. As this funding was reduced the court managers and the judiciary had to find new ways of working to produce efficiencies while still maintaining access to justice for the citizen with increased output. In Brazil, it will be necessary to achieve a change of culture within the judicial system in order to achieve better value for money. There is already evidence of this

happening (e.g. the combining of units and new IT), however, it must be widespread and encouraged at the national level.

It is natural for staff and judges to be fearful of change. Nevertheless, through training and leadership this can be overcome, resulting in units becoming more innovative and productive.
(Medium Term)

The European Union (EU) produces a “Justice Scorecard” that shows the performance of most of the EU states and is an overall indicator of how the justice systems of Europe are evolving. Although not all member states of the EU cooperate with the Scoreboard and provide data (this is due to the European Commission’s limited competence to enforce cooperation), the report does provide a useful tool for comparing performance in different countries.

As Brazil is a Federal Country with 27 semi-autonomous states, a report along the lines of the ‘European Scoreboard’ would provide essential data and information on the performance and developments in each State. The Justice in Figures report is a very comprehensive report for the high-level goals but these should be supported by more detailed performance indicators and more defined targets. The latest full report of the Scoreboard can be seen at:

<http://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-167-F1-EN-MAIN-PART-1.PDF>

It is recommended that a reporting system be introduced to show the performance of the State Courts as an indicator of performance against target.

6.4 Customer Satisfaction Surveys

Although customer satisfaction surveys are in use, their range of questions and target audience is limited. These surveys are a valuable tool to gauge the opinions of court users. As the judicial system exists to serve the citizen, it is appropriate for them to be consulted whenever possible to ensure that the justice system meets their needs and performs to an acceptable standard. We heard an unfortunate account of a chief justice, in another country, claiming that he did not need satisfaction surveys as he knew exactly what the people wanted without them. The views of this chief justice are fortunately not widely shared in other countries across the world.

The surveys can take a variety of forms, but there is always a risk that the more vocal responses come from aggrieved parties. This risk can be mitigated by using carefully worded questions that require constructive responses. It is also recommended that surveys are not held more than once a year and are organised by Internal Affairs. An adaptable standard questionnaire should be used that has a number of questions that provide information relating to national and state matters, as well as questionnaires relating to individual units and or initiatives. It is important that the results of the surveys are published together with the recommendations and/or actions that have resulted from the exercise.

The ‘Justice Seal in Numbers’ scheme is an excellent example of good practice as it recognises courts ‘that invest in the excellence of production, management, organisation and dissemination

of their administrative and procedural information'. With the different level of awards from 'diamond' to 'bronze' it gives courts the incentive to improve.

At **Annexe I**, there is a model customer satisfaction survey with supporting guidance that may be easily adapted and used by the courts or individual units.

It is recommended that the Federal and State Courts conduct customer surveys. If possible it would be ideal to have a standard format of survey with an option to include local and regional issues.

7. Standard Operating Procedures & Lean

7.1 LEAN¹⁴ (or continuous improvement) and Standard Operating Procedures (SOPS), known as manuals in Brazil.

All organisations around the world like to think they are working in a lean and efficient manner. Due to the United Kingdom's austerity savings, government departments have had to make large savings on their operating costs of over 25%. This has meant reductions in staff numbers. Continuing to produce work with the same efficiency and standard has only been made possible through the LEAN approach of cutting down unnecessary waste and approaches to work. Her Majesty's Courts and Tribunals Service (HMCTS) has been using lean ways of working for over seven years. This was no mean task as the approach had to be introduced to over 17,000 staff in over 500 sites across the whole court service. In order to make this approach successful, HMCTS saw the need to engage staff more effectively and focussed on getting the message across that lasting change only comes with high levels of employee engagement. Staff are now multi-skilled and can carry out a range of duties within their grade. More importantly, they greater job satisfaction and efficiency has been improved with less staff carrying out the roles. This has also resulted in an improved delivery of services to customers.

LEAN involves looking at the entirety of processes related to the customer's experience and asking the question "why are we doing this and do we need to continue doing this?" In the UK, this method was used for the process by which witnesses give evidence. The entire system (made up of Police, Crown Prosecution Service, Witness Service, Prisons and Probation) came together to identify problems and possible solutions. Through working together, it was established that in certain cases using video links would be a better way of taking evidence. By bringing all these agencies together in order to define the problem, the HMCTS was able to find a holistic way of addressing the problems. In this particular instance, using new technology to improve the service for customers has improved efficiencies. Now police officers often give evidence remotely via video link at police stations. This enables them to carry out office based work while waiting to give evidence rather than waiting around at the courthouse.

¹⁴ A management tool developed by the Toyota Motor Company amongst others to rationalise and improve the quality and efficiency of their production lines and has been adopted as a specific Government initiative to combat court inefficiency and obsolete processes.

It became evident that there was no consistency in the way staff carried out a particular process. Each process within the court (Crime, Civil, Tribunals and Probate) was looked at and a SOP was introduced detailing how the particular process should be carried out. In effect, this meant that the way particular processes were carried out would be the same in all offices across the country.

We feel that the LEAN approach to working with Standard Operating Procedures would be of great benefit to the Brazilian court system in relation to reducing running costs. We think that it would be too drastic for the entirety of Brazil to adopt the LEAN approach at this stage, but we believe that a couple of pilot states could be chosen for implementation with a view to expanding the process to all of Brazil once the pilots have been tested and evaluated.

Annexe J, Lean and Standard Operating Procedure Guidance, Annexe K, Sample SOP

7.2 Case Management - Crime and Civil

In almost all the Units visited by the GovRisk team it was clear that the judicial process was reactive and very much in the control of the lawyers. In many Countries, this control by lawyers, causes delays and adds to the costs and thereby deprives citizens of access to justice.

A much used saying attributed to a former British Prime Minister in the 19th century, William Gladstone is still very relevant today ‘justice delayed is justice denied’. But the origins of the need to avoid delays in delivering justice are in the ‘Magna Carta’, signed on the 15th June 1215 where it says “To no one will We sell, to no one will We deny or delay, right or justice”.

UK Civil & Criminal Justice Reforms:

In the United Kingdom Lord Justice Woolf was commissioned to produce recommendations that would create a civil justice system that was affordable and would meet the needs of the litigant. The final report was produced in 1996 titled ‘Access to Justice’¹⁵ in which he made many recommendations including “Ultimate responsibility for the control of litigation must move from the litigants and their legal advisers to the court.” This resulted in civil cases being managed by the judge, who set the timetable with the power to apply sanctions to parties and the lawyers who failed to comply with the case management directions.

In the criminal courts delays in proceedings are extremely costly as they increase the length of time prisoners are held in prison pending their trial. This can be many months or even years which causes a significant drain on public finances. The table below illustrates the size of the problem facing Brazil compared with other Countries.

¹⁵ Access to Justice report by Lord Justice Woolf
<http://webarchive.nationalarchives.gov.uk/20060213223540/http://www.dca.gov.uk/civil/final/contents.htm>

Data Source World Prison Brief 2017	Total Prison Population	Percentage of Population in prison	Percentage of prison population awaiting trial
Brazil	657,680	0.318%	36.9%
Argentina	72,693	0.167%	50.1%
Portugal	13,899	0.135%	15.5%
England & Wales	85,863	0.146%	10.9%

Due to concerns in England and Wales over criminal justice delays, Lord Justice Leveson was commissioned to prepare a similar report to Lord Justice Woolf in 2015 titled ‘Review of Efficiency in Criminal Proceedings’¹⁶. In the report it was recommended that “Without creating a docket system (with every case allocated to a Judge), the court must be prepared robustly to manage its work.” and that “...all parties must be required to comply with the Criminal Procedure Rules and to work to identify the issues so as to ensure that court time is deployed to maximum effectiveness and efficiency.”

Collectively, these reports led to radical and far reaching reforms making the provision of justice more affordable and effective without any loss of quality. While legislation first had to be passed by Parliament to give effect to the recommendations this legislation also created Rules Committees that had the power to draft secondary legislation¹⁷ to be passed by the Government. The Rules Committees are made up of Judges, Lawyers, representatives of advice agencies and members of the public (appointed representatives to provide transparency). They have the ability to respond more rapidly to a changing environment ensuring the rules of procedure used by the court meet the need.

Procedural Rules:

Both civil and criminal rules¹⁸ have an overriding objective that establishes the principle by which all cases are managed:

Criminal Justice: ‘The overriding objective of this procedural code is that criminal cases be dealt with justly’. This was interpreted in the rules as meaning;

- (i) Acquitting the innocent and convicting the guilty

¹⁶ Report ‘Review of Efficiency in Criminal Proceedings’ by Lord Justice Leveson <https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

¹⁷ Secondary legislation (Statutory Instruments) allows the Government to make changes to the law using powers conferred by an Act of Parliament. Most statutory instruments made using this procedure allow for Parliament to have 21 days to object otherwise they are approved (negative resolution).

¹⁸ The rules currently in operation within England and Wales can be found at <https://www.iustice.gov.uk/courts/procedure-rules>

- (ii) Dealing with the prosecution and the defence fairly
- (iii) Recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights
- (iv) Respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case
- (v) Dealing with the case efficiently and expeditiously
- (vi) Ensuring that appropriate information is available to the court when bail and sentence are considered
- (vii) Dealing with the case in ways that take into account the;
 - a. Gravity of the offence alleged
 - b. Complexity of what is in issue
 - c. Severity of the consequences for the defendant and others affected, and
 - d. Needs of other cases

Civil Justice: 'These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost'. This was interpreted in the rules as meaning;

- (i) Ensuring that the parties are on an equal footing
- (ii) Saving expense
- (iii) Dealing with the case in ways which are proportionate to the;
 - a. Amount of money involved
 - b. Importance of the case
 - c. Complexity of the issues
 - d. Financial position of each party
- (iv) ensuring that it is dealt with expeditiously and fairly;
- (v) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
- (vi) enforcing compliance with rules, practice directions and orders.

Better Case Management:

To help judges deal with the changes to the criminal justice system material has been produced, under the title 'Better Case Management', covering all the initiatives taking place and detailed in regular newsletters. In Annexe L, you will find an addition of the newsletter.

One of the main features of the new method of working in both crime and civil is the preliminary stage to the final hearing. In criminal courts a **Plea and Trial Preparation Hearing** is conducted, the parties having completed and filed the Plea and Trial Preparation Form, see Annexe M. The purpose of the form and the hearing is to:

- facilitate discussions regarding the length of trial;
- establish the preparedness of the prosecution and defence;
- agree what witnesses are required and any special arrangements for them;
- agree what orders are required from the judge, and
- agree when the case can be heard.

At the hearing, all parties are aware of what is expected of them, when orders are to be complied with and the date of the forthcoming trial. Since the introduction of tighter case management, delay has been reduced significantly with considerable savings to tax payers' money as there is now only one pre-trial hearing. Therefore, we would recommend that Brazil looks to adopt a similar approach to case management both in criminal and civil procedures.¹⁹ The new Civil Procedure Code in Brazil does establish the 'cooperative processes' which the UK experience would complement.

In the civil courts the parties prepare a Hearing Listing Questionnaire, see Annexe N. If the information in the form is sufficient the judge will dispense with a hearing and give final directions on how the hearing is going to be managed. Otherwise the judge will have 'Case Management Conference' with the lawyers, normally by telephone, and directs the parties as to what is to happen before the hearing takes place.

Whilst it is understood that in Brazil, parties in civil proceedings have faced significant delays and that criminal prosecutions face similar problems, a great deal of work has been carried out to improve the situation. But without fundamental reform to the way cases are consistently judicially managed the efficiencies achieved will be limited.

It is recommended that:

- (i) The examples of good practice case management seen in the State Courts of Curitiba (civil) and Teresina (criminal) be evaluated. If the performance of these Units confirms the effectiveness of their practices consideration should be given to their replication;

¹⁹ The supporting rules in the UK are available at:
<https://www.justice.gov.uk/courts/procedure-rules>

- (ii) A range of pilots in 'Case Management' be established by the CNJ and State Courts to identify the model most suited to Brazil using the GovRisk expertise to advise the pilot courts on the procedures to follow and assist in their evaluation;
- (iii) Judicial training is introduced on "better case management" (BCM) ensuring understanding and adherence to efficient procedures. Additionally, that a communication strategy be developed for BCM in which respected colleagues draft regular updates to all judges to ensure consistency.
- (iv) The civil and criminal codes be amended along the lines of the England and Wales models to allow judges more discretion in the way cases are managed. Together with adopting a proportionality approach, cases will be dealt with according to their complexity and value allowing the simpler cases to be dealt with more quickly;
 - a. The Brazilian Criminal Code and Code of Procedure can only be amended by Parliament. Therefore, it should be noted that implementation of this recommendation will form a long-term goal.
- (v) A more pro-active style of case management is introduced, thereby reducing criminal case delays and thus reducing the number and length of prisoners in pre-trial detention.

Annexe L, Better Case Management Newsletter
Annexe M, Plea and Trial Preparation Hearing form
Annexe N, Hearing Listing Questionnaire

8. The Judiciary

8.1 Management Responsibilities

There have been mixed views around the world relating to the ability of judges to act as court/unit managers. In Brazil, the team saw examples where judges were very capable managers as well as examples where judges struggled with these responsibilities. This is not surprising since very few judges have benefitted from management training. As the skills required by managers have become more demanding in recent years, the need for properly trained and qualified managers has become increasingly apparent. Judges have been reluctant to relinquish these responsibilities and many continue to balance them with their judicial role. The way this conflict has been addressed differs between countries. Some have judges that are now full time administrators and perform no judicial function. In other countries, administratively trained managers run the office and manage performance in consultation with the judge. In the ideal world Judges should be allowed to concentrate on their judicial duties, for which they have been trained, and leave administrative responsibilities to trained managers. This makes the best use of resources as judicial time is one of the most important and valuable resources for the court.

It is recommended that Brazil pursues a model in which judges would retain overall responsibility for their units, but a manager would become responsible for the office and the output of work. Thus, the judge becomes more of a “chief executive” and disassociates himself with the running of the office. Where units are combined this separation of duties is even more important in order to achieve maximum efficiency. It is also crucial that the judicial team decides how they are to work together in order to avoid making conflicting demands on the staff. Therefore, one of the judges should take a lead role in dealing with the unit manager while the judicial team should function as a board of directors and agree on common working practices and priorities. The Court’s Presidents would also benefit from this form of delegation to allow him/her to focus on the needs of the other judges.

Competences are dealt with in greater length further in the report as they primarily relate to the staff and not the judiciary. The diagram below (produced by the National Association for Court Managers) serves to illustrate the range of skills required of a manager and clearly indicate that it is unreasonable to expect a judge with a demanding judicial role to be an expert in all these additional competences.

It is recommended that in all the courts, Federal and State Judges release themselves from routine management responsibilities and have the senior staff trained to assume those tasks²⁰.



8.2 Judicial Teams

There is very little evidence of judicial teams working together or any collegiate supporting mechanisms operating within a court. This is largely a result of the way units within each court are currently constituted. Even where a number of units are accommodated within the same building there is little interaction between judges. Discussions with a number of judges revealed

²⁰ Core Competences for a Court/Unit Manager by the National Association for Court Managers

that there was a feeling of isolation and lack of support, although this was not as prevalent in federal courts. A judge in Curitiba stated that he had no contact with his colleagues and was unaware of external performance or pressures faced by other judges. It was suggested that meeting colleagues would be useful, but that work pressures were such that there was no time for meetings.

Feelings of isolation lead to greater inefficiencies as pressures continue to increase. In the UK (as in many other countries) judicial team meetings are encouraged and held on a regular basis – as often as once a week. During these meetings workloads, pressure points and working practices are discussed. As mentioned earlier, some units have explored more innovative methods of working but they are not being shared with colleagues due to the lack of an appropriate forum for such discussions.

In Brazil, this is a missed opportunity as judicial team meetings support the dissemination of best practice and create a situation of mutual support having a positive motivational impact. These meetings would normally have no cost implications for the court and the investment of time would easily be offset by the benefits in performance achieved through these meetings.

It is recommended that regular judicial team meetings are instigated in every building where there are several units. The topics for discussion should include those mentioned earlier as well as options for assisting with excessive workloads, including the transfer of new cases or judges (with their agreement) to provide temporary assistance. An example of ‘best practice’ was provided where a task force of judges was created to assist another Unit.

It is also recommended that the court president, or one of his team, attend these meetings periodically to hear first-hand about local problems and solutions. Ways of providing support and leadership to motivate judges through encouraging innovation and sharing best practices should also be discussed. These meetings, if conducted properly, will increase performance and reduce the amount of outstanding work. **(Short Term)**

8.3 Judgments database

The absence of a judgments database was a common complaint among judges. Although Brazil is not a “common law” country there is a need for case law and precedents, since e.g. the judgments of the supreme and appellate courts are binding on the lower courts. With the new Civil Procedure Code, that seems to introduce a specific ‘precedent system’ for all instances, a judgments database has become more important. We understand that legislation has been passed requiring such a database of judgments to be created but it is unclear when it will be constructed.

It is recommended that this receives some priority as it will provide the judges with greater guidance and avoid the duplication of effort. This judgments database should be available to the public and especially lawyers. There are many cases, particularly in the Federal Court, which are similar if not the same. Therefore, the database may speed up the processing of these cases or even prevent them from unnecessarily coming to court at all.

Because of the interest that publishers have in court judgments and the obvious need lawyers have for a judgment database, it may be possible to have such a database constructed and maintained by subscription with free access for judges. **(Medium Term)**

It is recommended that a database of judgments be created by the CNJ, and the option of providing a subscription service for lawyers be considered.

9. Personnel

9.1 Career Development

During our visits to the court units we encountered a number of staff who felt that they were not being developed and that staff appraisal was patchy or non-existent. Some staff even felt that they had little or no prospect of career progression.

Working in separate units is not efficient or sustainable in the longer term. In many of the units we visited judges were not supportive of combining units despite the economic situation with which the judicial system and the country are faced. There has been some work on combining units, the results of which are encouraging in Curitiba (where two units had been combined) and São Paulo (where five units have been combined). We heard that the staff in these units were feeling more motivated, productivity had increased and that the work was now being completed with fewer staff members.

In Brazil judges are too busy and overloaded to manage units and to consider staff management. This system is also inefficient as it is the Chief Secretaries (or Directors) who see most of what the administrative staff is doing on a daily basis. Therefore, management of administrative staff should be carried out by Chief Secretaries, who would undertake appraisals, set targets and write the staff reports, while the judge would have countersigning responsibility.

We found that staff had few training and development opportunities. This was particularly evident with the staff who dealt with judicial matters (the judicial staff). It is essential that all staff are not only properly inducted but also developed when working within the organisation. We feel that all staff should have a learning and development opportunity of about a minimum of five days a year. In addition to having courses on how to do the job, there should be opportunities for shadowing the line manager, mentoring and multiskilling. There should also be mandatory training for staff on information assurance, equality and diversity and training on unconscious bias for managers.

9.2 Appraisal and Recognition of Personnel

We spoke to many Employees and Judicial staff and it appears that at best the appraisal of staff is 'patchy'. As mentioned in the executive summary **'the development of a skilled workforce is a complimentary to a performance management scheme'**. Any appraisal scheme should be linked to competences of the role to be carried out.

Why have a performance management scheme or appraisal scheme?

- I. **Make your people feel more valued.** To be satisfied and competent staff need to feel valued and are producing good work. The formal appraisal is a good opportunity to give staff sincere feedback assisting them to work smarter or better.
- II. **Set new goals.** The most productive staff are those that are constantly driven and unrelenting in their pursuit of goals. Setting achievable targets during the appraisal helps to motivate employees, and empowers them to feel more confident when they achieve them.
- III. **Resolve Grievances.** Often Secretaries or Directors might be too engrossed in the day to day issues to get an insight into an employee's frame of mind. The appraisal is a good time to address any concerns you or they may have.
- IV. **Assessing the training needs of the individual and the team.** Different staff within a team will have different strengths. Use the appraisal system to assess your member of staff's weaknesses, identifying areas which may require additional training and support. Letting your team know that you are thinking about their development will help instil the ethos of ambition, in turn driving the business to be more productive.

We feel that appraisals should be *at least* twice a year and maybe more frequent if, for example, the member of staff is new to the role or not performing to a satisfactory standard.

Reward and Recognition.

Not everyone achieves the same during a reporting year. This can seem unfair to those individuals who are working to an exceptional level.

At the end of the year the employee should be assessed against what they have achieved and how they have carried out their duties (the competencies and their level) and given a marking as follows:-

- A. **Outstanding.** This is a marking only achieved if someone has significantly achieved more than is required of them. It is envisaged that maybe only 10-15% of staff will achieve this marking.
- B. **Good.** This is a marking that indicates the member of staff is carrying out the duties expected of them but no more than that. It is a very wide marking and the majority of staff will fall within this marking.
- C. **Must Improve.** In a typical organisation, there will be a number of staff who are not performing and if the performance shortfall is not dealt with it can have a corrosive effect on other staff and the organisation. It is envisaged that *overall* there might be no more

than 5% to 10% overall who are at this level. They should be assisted in reaching the level required, perhaps by additional training or mentoring but if this is not successful after an appropriate time more draconian measures such as termination of employment must be considered.

It is **essential** that appraisal markings are **benchmarked** across the organisation and hopefully if regular Chief Secretary or Directors meetings are adopted then this could be an ideal format to achieve consistency across units. What must not happen is that a particular unit gives all their staff an outstanding marking and another unit gives none.

How do you Reward those staff who are performing at the ‘outstanding level’?

There are many ways to do this but in Her Majesty’s Courts and Tribunal Service a certain amount of pay bill was set aside for this and was set at 0.5% of pay bill. At the end of the year the number of staff who received an outstanding appraisal marking received an annual bonus which came out of this budget.

If an annual bonus is not possible, then there are other rewards that can be given to staff such as one or two days extra annual leave.

A performance management scheme should be in two parts:-

- A. What a particular job involves.
- B. The ‘how’ a job is carried out, which are the competencies.

Annexe O, Performance management review record

A typical appraisal cycle might look like the following:

Stage one Chief Secretary (or Director) meets with member of staff where the following is discussed or occurs:

- a. Performance targets or expectations for the following year, what has been good and what has been not so good.
- b. Competencies required to carry out the job
- c. What training and development opportunities are required
- d. What is required of the job holder and manager
- e. Note of discussion is written down

Stage two at half year

- a. Interim appraisal with manager and job holder to discuss what has been achieved, any performance shortfalls and what training and development opportunities are required for the rest of the year.
- b. Note of discussion is written down

Stage three at year end

- a. Final appraisal to discuss how members of staff have performed over the year against targets and competencies.
- b. Agree an appropriate box marking and bonus payment (if appropriate)
- c. Appraisal discussion must be recorded and signed by job holder, reporting officer and countersigning officer.
- d. NOTE – Appraisals must always be carried out on a one to one basis and the process must not be disturbed by others entering the room while the appraisal discussion is taking place.

9.3 Competences

The UK Civil Service has adopted competencies for many years.

The UK Ministry of Justice uses the following definition:

“A competence represents the skills, knowledge and behaviours required to perform effectively in a given job, role or situation”

Competencies are used to help define what an individual should be doing and how they should go about doing it. Competences are based on how individuals carry out the tasks their job involves.

Competences focus on factors that contribute to the success of individuals and organisations. They provide a set of statements that can be used to show achievements and identify learning needs, or gaps, in human resources. Competences are a vital part of many personnel-management processes, helping organisations perform better in the following important areas.

- Recruitment – by providing fair and unbiased criteria (conditions), choosing who to employ and making sure everyone is assessed against the same framework.
- Performance management – by providing fair and unbiased statements to help managers and their staff to discuss and assess performance.
- Learning and development – by helping the organisation and individuals identify areas in which learning and development needs should be prioritised.
- Career development – by providing clear expectations of what skills, knowledge and behaviours are needed at each level and by showing individuals how they can develop their career by building on their current skills.
- Helping individuals to know what is expected in their role;
- By recognizing the skills, knowledge and behaviours that are vital to every role;
- By providing tools to discuss how individuals within the organisation can improve in their current job, or how to improve their chances of moving to other jobs;
- Being able to identify and adapt their skills and behaviours when moving into a new role.

Managers must:

- Have clear, fair and unbiased statements to use when discussing performance, which also help in setting job objectives for their staff;
- Have a common language to use when giving employees feedback on their performance;
- Be able to identify individual learning or development needs, as well as resources, meaning they can better structure the training and development of their employees; and
- Have a tool to help define career paths, provide support for planning how to fill vacant jobs and help people move to different jobs.
- Be able to identify the organisation’s needs, which helps with targeting resources for staff learning and development;
- Be confident that the organisation will be recruiting, developing and promoting the right people, who have the core skills and qualities needed to meet the organisation’s goals

We would recommend that the courts in Brazil adopt the competency approach. We attach the Ministry of Justice Core Competence framework and an example of competencies required to carry out the role of first line manager.

From talking to the staff in the Units it was clear that, with a few exceptions, there was no performance management and the three parts identified above; career development, appraisal and competences are the three key components to developing a workforce for a modern working environment.

The staff in many cases do not know what is expected of them, what an acceptable standard of performance is and how they can develop their careers. This normally results in a demotivated and less efficient workforce. Providing training and systems to create performance management is just the beginning, a cultural change is required in the Units.

This change will see Units have managers (Chief Secretaries) that are leaders who give their Staff clear direction and engagement with the management and development of the Unit. This will create innovation, improve efficiency and develop a motivated and committed team.

Annexe P, Attachment MOJ Core Competence framework

It is recommended that a competency framework is developed by the CNJ for Federal and State Court employees. GovRisk has the expertise to support the introduction of this framework.

9.4 Recruitment

We understand that administrative staff are recruited from college to work in a particular Unit through public competition and examination. However, the judge's legal assistants are personnel appointments through recommendation or personal knowledge. The appointment of Chief Secretaries (or Directors) is undertaken by the Judge of the unit from candidates who are already staff. The process for this recruitment seems to be by word of mouth and recommendation, therefore, it cannot be deemed to be open and fair. In the United Kingdom, there is a legal requirement for appointments to the Civil Service to be made on merit on the basis of fair and open competition. All these elements have to be met for appointments to be lawful.

Merit means the appointment of the best available person judged against the essential criteria for the role. No one should be appointed to a job unless they are competent to do it and the job must be offered to the person who would do it best.

Fair means there must be no bias in the assessment of candidates. Selection processes must be objective, impartial and applied consistently.

Open means that job opportunities must be advertised publicly. Potential candidates must be given reasonable access to information about the job, its requirements, and the selection process. In open competitions, anyone who wishes to apply is allowed to do so.

We would recommend that the courts in Brazil move to a system of recruitment/promotion that is open and fair, in which positions would be advertised against the competencies required for a

particular position. All candidates could then be called in for an interview subject to satisfying the interviewing panel that they have the necessary competencies to do the job. This would give both qualified internal and external candidates the opportunity to apply.

We understand that a judge in a unit wants the best people working in their units as personal assistants etc. We envisage that they would still be a part of the selection/promotion process by being the chair of the interviewing panel together with two other panel members, one of which would be a representative from Human Resources.

For the recruitment and appointment of 'Public Servants' consideration needs to be given to the procedure for their actual appointment to a position in public service to ensure posts are matched to individuals. In the UK, we have found that a common procedure for recruitment produces candidates with similar qualifications but does not identify the most suited person for a particular position e.g. who is the most analytical, who is better working with people. By matching people to the correct roles we will improve efficiency and job satisfaction.

It is recommended that a formal recruitment and promotion process be created jointly by the CNJ and the State Courts that is transparent, competency based and inclusive. GovRisk would be prepared to provide advice on the creation of such a scheme.

9.5 Annual Staff Opinion Surveys (sometimes known as Employee engagement surveys)

It is important for any organisation to know how their staff feel about working within it. An annual staff opinion survey is one of the most common ways for managers to gauge what their staff and teams think about their jobs and the organisation that employs them. It is essential that the survey is confidential and responses are not attributable to respective members of staff. The UK Civil Service has been running staff opinion surveys for a number of years, which initially started as a pilot to ensure the right questions were being asked.

In order to ensure good response rates staff must feel that senior management listens to their comments and that an action plan is produced detailing appropriate responses as well as actions to be taken. Occasionally it might not be possible to address the concerns raised; however, in this case an explanation must be given. For instance, Civil Servants in the UK have been concerned about pay. This has been acknowledged in action plans, however, the action plan subsequently outlined that pay and conditions of staff are a governmental responsibility and that senior managers can only pass on these concerns.

Annexe Q – Court Service Staff Survey

10. Communication (Unit/Court/National)

In every court that we visited there was a clear lack of effective communication between the Units with the State and Federal authorities, suggesting there is no communication strategy for the federal or state courts. Apart from a few Units the staff were unaware of the strategic plan for the State and were clearly frustrated by not knowing what was being planned or how their Unit was performing. In areas where the Units were kept informed the staff were more motivated and engaged with the future plans. This may not be a problem with the quality and source of the information available but probably with the way it is disseminated.

It is important that the whole organisation and external stakeholders are aware of the policies, objectives, projects and performance of the organisation. In one of the state courts visited, Internal Affairs were clearly fearful of discussing projects with the staff and judges in case they received an adverse reaction. However, the experts had discussed the plans for the court at a Chief Secretaries' meeting and were able to report a positive response as the Secretaries now felt they had ownership of what was being planned and were participating in that plan.

How a communication strategy works can vary depending on the subject matter of the strategy. An example can be found in **Annexe R**, of how to write a modern communications strategy. However, the key features must be that everyone receives a consistent message and fully understands the plans, the timetable for change and the success criteria for what is planned. The key to success in our technological era of information overload is that everyone feels that they are part of the organisation and have ownership of what is planned rather than being excluded. A successful strategy improves morale and efficiency as everyone shares one goal. The message has to be received by everyone and they must have an opportunity to comment, whether it is through emails, bulletins, presentations or social media.

It is recommended that a communication strategy be developed by the CNJ and State Courts using the model attached, however, it must be adapted to meet the particular need and a mechanism established to allow for a full consultation of proposals. Also, attached, at **Annexe S**, are the recommendations made following a review of the communication strategy used by the Ministry of Justice in the UK to illustrate the weaknesses of a strategy.

11. Training – Skills Gap

Although training is available for the judges it was unclear how much training was being offered to the staff. However, due to the absence of a formal appraisal and career development scheme there is no mechanism for assessing training needs. In the units which were visited there were examples of individual staff taking the initiative and identifying their own needs and subsequently attempting to address them. We feel that this should be encouraged.

Discussions with personnel who were working on projects and leading teams revealed an obvious skills gap that would hinder the management of projects and put their success at risk. In meetings with Internal Affairs project team's guidance pertaining to project management was provided by the experts. The project leader was given advice and guidance on the importance of engaging with pilot teams and working with them to develop the pilot project. Feedback received on the project management guidance seems to indicate that the process of combining the two units in Curitiba has become far more efficient as a result of this support.

From what the GovRisk team were told there does not appear to be a structured national training programme for employees and judges.

It is recommended that a training programme be created by the CNJ and State Courts focusing on the skills required to meet the challenges of the future. This programme should be published and made available to everyone with clear instructions on how the training may be requested and delivered.

11.1 Leadership

The eminent scholar Warren Bennis once said "Leadership is the capacity to translate vision into reality"²¹. The secretaries and directors are going to have an increased role in managing the units or groups of units. Training in leadership and management skills will be essential in order for them to be able to form a team, give it clear direction and provide it with ownership of the task at hand.

The list of basic skills necessary to be an effective leader can be endless, however, the key skills for Chief Secretaries and Directors would be:

- Communication
- Delegation
- Team Building
- Motivation
- Organisation
- Managing Change
- Prioritising

It is recommended that management training seminars be arranged by the CNJ and State Courts as a matter of priority for all those involved in leading teams where a change initiative is being managed. If required the GovRisk team are able to provide support to set up in-house management training. At **Annexe T**, there is a suggested training programme consisting of a two-day seminar for managers that covers the basics.

²¹ Warren Gamaliel Bennis (March 8, 1925 – July 31, 2014) was a scholar, widely regarded as a pioneer of the contemporary field of leadership.

11.2 Project and Programme Management

Programme and Project management serves a crucial purpose in ensuring the success of projects. It can involve professional qualifications and there are a number of different models available, the preferred option in the UK is called “Prince2” (projects in controlled environments). If the principals of effective project management are followed it will give senior managers the control and confidence that a project is on target, on budget and will deliver what is required. In line with that, a reporting mechanism would be in place to keep staff and managers informed about progress and will trigger necessary countermeasures if a project deviates from its expected path. The level of project management required for each project is variable. Thus, an informed decision has to be made as to what level of control is required depending on the scope and importance of each respective project.

It is also essential that a project board is established that represents the “business owner” the “end user” and a technical expert. The board should make all the high-level decisions and have overall control of the budget. There must be a clearly defined success criteria established at the very start of projects demonstrating how success will be measured. Often managers avoid success criteria because they are afraid of failure, however, when spending public money this is an irresponsible attitude.

It is recommended that project and programme management training is provided where required and a policy decision is made by the CNJ and State Courts in selecting one of the professional qualifications available.

11.3 Governance

In Teresina, the project team was asked about governance in order to gain a better understanding of how governance could be introduced into a project. This led to an impromptu training session intended to deepen their understanding. However, it also revealed a clear training need that must be addressed.

Governance is defined in the following way: An “Establishment of policies, and continuous monitoring of their proper implementation, by the members of the responsible body of an organisation. It includes the mechanisms required to balance the power of the members (with the associated accountability), and their primary duty of enhancing the prosperity and viability of the organisation and or project.”²²

It is probably unnecessary to provide training on the issue of governance, but it should feature in all other training exercises for managing resources and projects. It was explained to the team in Teresina that governance is a concept to be incorporated into every activity and should become a way of life rather than being viewed as a skill. Good governance allows budget holders to have

²² <http://www.businessdictionary.com/definition/governance.html>

the confidence to know that the public resource is being used correctly and that both responsibility and accountability are being practiced.

It is recommended that 'governance' awareness is incorporated into all training and development activities.

11.4 Interviewing

If the recommendations on recruitment and career development are accepted then there will be a need for some additional training. A competence framework should be established and staff should be appointed and promoted through open competition, selection and promotion. Once this has been achieved interviews should also be introduced.

In the past, a number of countries have made appointments through recommendation or even as a consequence of nepotism. However, this has not ensured that the most suitable person is appointed. In Brazil, there does not appear to be a consistent practice, but it seems that individual judges make most of the appointments themselves by using whatever criteria they think is appropriate. Yet, as skills required for positions are steadily increasing a more reliable method of filling vacancies is required.

Interviewing is a responsibility requiring a great deal of skill, not all managers make good interviewers. Interviewers must be trained in how to word questions so as to obtain evidence of the competences required as well as how to assess the candidate at the end of the interview. An interview panel normally consists of three people, one of which is the chairperson who manages the interview. At the end of the interview all the competences should have been fully tested and the best candidate should ultimately be recommended for appointment. The adoption of this approach would make the teams stronger and ensure that the most suitable people are appointed to senior posts.

It is recommended that selected managers are trained and assessed in interviewing skills by the CNJ and State Courts. The GovRisk team has extensive experience in conducting recruitment and promotion interviews and have the skills to support a pilot project and effect a skills transfer.

12. Enforcement

12.1 Grouping

We observed several different groupings of enforcement officers during the visit, particularly in Porto Alegre and Parana where the enforcement officers have been removed from their individual Units and brought together under a separate administration. These have to be commended as excellent initiatives to improve the workflow and reduce arrears. The initiatives need to be evaluated, refined and introduced more widely across the Brazilian states.

The UK has considerable experience with managing teams of enforcement officers as well as the relevant problems that must be overcome or guarded against. In the next three sections proposals will be made based on that experience. They will improve the management, control and efficiency of the enforcement process.

12.2 Management Structure

In Porto Alegre, we saw an example of over 100 enforcement officers working as a group with the support and management of a single team. While it is very difficult to assess the success of this team without a proper evaluation, the enforcement officers still appear to be working in isolation and not as a team or with the benefit of management. Currently all the enforcement officers are in theory managed by a single supervisor, but that is an impossible task for any one person to do.

We would recommend that there is a supervisor for every 15 - 20 enforcement officers with a senior supervisor or manager above them. The level of supervision required will depend on the type of business and geographical/social area. This needs to be confirmed in the evaluation. The supervisors will be responsible for appraisals, monitoring, performance, deciding priorities, the allocation of work and the geographical areas for each enforcement officer.

It is recommended that a full evaluation of the enforcement teams' pilots be undertaken by the CNJ and State Courts to establish their effectiveness, required level of supervision and suitability for replication.

12.3 Management Controls

Unfortunately, the very nature of the work and conditions the enforcement officers have to contend with puts them at great personal risk and makes them susceptible to corruption. Although there was no suggestion that corruption was a problem in Brazil with enforcement officers it is in many other countries. In **Annexe U**, there is a framework document of management controls that have been designed to provide information on:

- the performance of enforcement officers;
- managing the enforcement process,
- management confidence that procedures are being adhered to.

Management is currently unaware of how truly effective each enforcement officer is, how long they work or where they are. The visits that enforcement officers have made to the properties of defendants are not validated and there is no procedure for complaints made about the conduct of individual enforcement officers. These measures might appear to be an attack on the integrity and professionalism of enforcement officers, however, it is stressed that no allegations have been made. Nonetheless, experience in other countries shows that enforcement officers that are not properly managed have the opportunity to take advantage of their position and some, unfortunately, do.

The International Union of Judicial Officers²³ (enforcement officers) has produced a World Code that has been supported by all national associations that are members. It includes the following articles:

“Article 19: Professional ethics

States must take measures to define the rules of the professional ethics of enforcement agents and judicial officers.

Article 20: Professional discipline

A disciplinary procedure that complies with the rules of fair process before an independent organ that decides in adversarial proceedings must be installed. The disciplinary sanctions must be defined and be proportional to the gravity of the errors committed. The disciplinary decision may be appealed.”

In the UK, the Ministry of Justice published National Standards (2014)²⁴ for all private and public enforcement officers that goes into greater detail on the question of conduct and includes the following sections:

- “20. Enforcement agents must not be deceitful by misrepresenting their powers, qualifications, capacities, experience or abilities, including, but not restricted to;
- Falsely implying or stating that action can or will be taken when legally it cannot be taken by that agent
 - Falsely implying or stating that a particular course of action will ensue before it is possible to know whether such action would be permissible
 - Falsely implying or stating that action has been taken when it has not
 - Falsely implying or stating that a debtor is refusing entry to a property is classed as an offence.
21. Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors, their families, appointed third parties or property.
22. Enforcement agents should always produce relevant identification to the debtor, such as a badge or ID card, together with any written authorisation to act on behalf of the creditor (in appropriate debt types).”

²³ The International Union of Judicial Officers (UIHJ Union Internationale des Huissiers de Justice) represents enforcement agents in over 85 Countries and launched the World Code at the World bank in 2015

²⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353396/taking-control-of-goods-national-standards.pdf

It is recommended that:-

- (i) a series of management controls for enforcement officers be developed by the CNJ and State Courts using the model provided as a starting point;
- (ii) a code of practice be developed for enforcement officers by the CNJ to ensure the protection of the creditor, debtor, court and the individual enforcement officer. The UK Code of Practice is reproduced at **Annexe V**, and may be used as a starting point for protecting enforcement officers in Brazil.

12.4 Targets

The courts need to have effective targets of performance, just as any area of business. The two main areas to be measured for enforcement work are timeliness and success.

European Convention of Human Rights²⁵ states under Article 6 that:

“.....everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The European Court of Human Rights has ruled that the reasonable time requirement applies to the entire proceedings, including enforcement. Excessive delays up to the conclusion of the enforcement process are a violation under the Convention.

As mentioned in Part 4 of this report the definition of outstanding needs to be revisited in order to provide an accurate picture of work that can be described as “live” and outstanding. The target for enforcement would be to complete the activity within a given period. Therefore, any enforcement process that has not been satisfied and is still enforceable would be outstanding and should subsequently be closely monitored by the relevant supervisor.

It is unreasonable to expect every case to be completed within the target period, as there are always exceptions with perfectly valid reasons. A judgement has to be made as to what constitutes a reasonable percentage of cases to be left outstanding after the target period. This percentage figure would then become the target to be achieved. An unenforceable enforcement process occurs where the enforcement officer has taken all reasonable steps to enforce the judgment without success. In these circumstances, no further action can be taken until new information (e.g. new address) is provided. These cases are no longer outstanding, but are reinstated once the new information is received.

The money collected for the creditor as a percentage of the judgment debt is another potential target that would be of great interest to creditors (how good is the enforcement officer at recovering monies for the creditor). This target demonstrates how effective each enforcement officer is at collecting money. However, allowances have to be made for the environment in which the enforcement officer has to operate, as it can impact his/her ability to enforce the

²⁵ The European Convention of Human Rights has been adopted by all 47 Countries of the Council of Europe and came into effect into 1953, violation under the conventions are dealt with by the European Court of Human Rights in Strasbourg, France.

judgment. In some countries incentives are provided to enforcement officers to achieve a certain level of success. While this does improve performance, additional measures have to be introduced to prevent the overzealous enforcement officer exceeding his/her authority.

In Salvador, we saw an on-going project of enforcement officers who decided to build a data base of all the warrants and the results of their searches. With all the data given by the enforcement agents in previous cases, they would be able, for instance, to avoid trying to find someone in a place another colleague had been there before and had not found anyone there.

It is recommended that the current pilots be evaluated and that a new range of performance measures are introduced by the CNJ for enforcement work. **(Short Term)**

13. Miscellaneous

13.1 Police national computer - Defendants Antecedent history

In the UK, it is possible to obtain a defendant's previous criminal history immediately, so that the sentencing judge can pass sentence with up to date information. It is even possible to access antecedent history within other European states, in case defendants have also committed crimes outside of the UK.

We are aware that there is a computer data base in Brazil called "**Sistema Nacional de Informacoes or SINIC**". The system is regulated by Normative Policy n.009 / 1988 of Brazilian Federal Police Department. We also understand that the updating of this data base carried out by the Judges, Clerks, Public Prosecutors and Sheriffs are responsible for updating the data. From our Brazilian experts, there appears to be no target in updating a defendant's antecedent history. We think there should be a measured target or this duty will simply not be given priority.

We came across instances in Brazil where staff were having to write to states asking what is known (antecedent history) about a particular defendant. This suggests that there is lack of knowledge from some staff as to what the data base actually holds or the data base is not updated within a reasonable time and any data on antecedent history obtained from this source is not up to date or accurate.

The UK Police National Computer is updated within 24 hours, which ensures virtual real-time information is recorded. The Police National Computer not only includes previous convictions but also all vehicles registered in the United Kingdom and records whether they may be stolen or subject to any type of crime (e.g. drug offences). Most UK police vehicles are equipped with Automatic Number Plate recognition (ANPR) IT, which enables police operators to identify a vehicle under suspicion if they drive by a police vehicle. This integrated approach makes crime detection far more efficient.

If staff are indeed carrying out what is a manual search for up to date antecedent history because the data base is not updated speedily, this is a waste of resources, time consuming and expensive.

The CNJ are asked to look at this and if necessary consider time targets to update this important data base.

If it is simply a case of employees not being aware of what the data base holds, there is an urgent training need here.

13.2 Accessibility of Judges

On our visits to court units we encountered instances where judges conducted an “open door” policy, in which parties to a case could call in to discuss the case without the opposing party being present. While it is accepted that the judges concerned are trying to be helpful and reduce delay, we do have concerns about this practice.

The integrity of judges is not in question here. However, it is necessary for the standing of the Judiciary that members of the public have confidence in the independence and impartiality of judges. Even a perceived conflict of interest on the part of a judge can be extremely damaging to a judge and the Judiciary as a whole. The fact that a judge acted impartially may be no defence against accusations of potential bias (or worse).

Parties to a case might need to discuss a case with the Unit and we recommend this be done in the following way:

1. The party to a case can ask the Unit to list the case giving notice to the opposing side. The issue would then be heard in a transparent way, which would be recorded.
2. The party to a case can send an email to the Judge (copying in the other side) asking for directions or guidance. The judge would then respond to both sides.
3. We are sure there must be occasions when ex parte applications are made, particularly in criminal matters. We would not seek to interfere with this process.

It is recommended that the CNJ issue guidance on accessibility that should be sent to all Judges and used in the training of new Judges.

14. Conclusions

14.1 Impact of Recommendations

It is generally accepted that inefficiencies in a Country’s judicial system have an adverse effect on investment and employment. In Brazil, for example, it has been estimated that inefficient courts with significant backlogs, reduces investment by 10 percent and employment by 9 percent²⁶. This does not just apply to domestic investment, as foreign companies take into account the efficiency and credibility of a judicial system when making investment decisions. The

²⁶ See Armando Castelar Pinheiro, The Hidden Costs of Judicial Inefficiency: General Concepts and Estimates for Brazil.

UK, fortunately, has such a respected judicial system that the London Commercial Court is regularly named as the 'court of choice' in commercial contracts whether entered into in the UK or abroad. Very often International Contracts will have a provision stating that the Courts of England and Wales have exclusive jurisdiction in the event of any dispute arising.

When looking at the impact of any proposed reforms or structural changes to an organisation a full cost benefit analysis should be undertaken. However, in the absence of any detailed costed research, the evidence can be found by studying the experiences of other Countries or organisations who have gone through the same or similar changes. As most of the proposals are based on the experiences of England and Wales it is reasonable to assume that the results there may be achievable in Brazil.

The one example from Brazil that demonstrates what reforms could achieve is the 'Court of the Future' in Sao Paulo. Here early indications are that the number of sentences being given by the judges has increased by 35% and other productivity indicators are showing similar results. There are also a number of Alternative Dispute Resolution (ADR) projects across Brazil but these have yet to be fully evaluated, but in England and Wales evidence shows that between 50% and 70% of cases referred to some form of ADR are resolved without the need for formal Court intervention. This means there are fewer hearings before a judge allowing the backlogs to be reduced. As ADR is normally a far quicker process this benefits the citizen as they have earlier resolution to their case.

Recommendations have been made for Judges to be more proactive in the way cases are managed, two examples have been given of processes that may be used to make hearings more effective. But the concept of judicial case management can reduce events before the judge prior to the final hearing by up to 80%. The time from commencement of proceedings to the initial judgment can be reduced by at least 20%.

The 'Lean' concept is well established in England and Wales and there are examples that the number of process steps have been reduced by 80%. But if it is assumed that 30% - 40% of process tasks can be made redundant, the administration will become more streamlined with corresponding savings. This does not necessarily have to mean staff savings, but it does allow staff to focus on quality issues.

The proposals to restructure the way employees are managed and the introduction of a career development scheme will not provide any immediate benefits. But, it is ensuring that the Courts have a trained motivated and well led workforce. The staff will have the skills to meet the challenges of the future; be more able to adapt to change and feel that through their meetings, improved communication from the centre and being engaged with change they will have ownership of the future.

Finally, with the initiatives being developed and piloted in Brazil, together with the recommendations being made in this report, access to justice can only be improved. By reducing backlogs and delays justice will be more easily obtained by the citizen and promote great business confidence encouraging investment.

14.2 Next Steps

As a direct result of assistance and advice provided by this project, new initiatives by Courts to reform justice already have a much greater chance of achieving long-lasting positive changes. However, there remains a need for further assistance to ensure that the recommendations of this project are translated into significant, institutionally ingrained improvements in Brazil's judiciary system. For the adoption of the project's recommendations to be successful and cost effective a number of pilot projects will be necessary to begin the changes at the local/state level before being rolled out nationally. Initially, these pilots will require expert support as the experience and knowledge necessary for the realisation of the recommendations have not yet developed locally. It is the belief of the project team that the "next steps" in Brazil's justice reform should be collaboration with experts from HMCS, using UK & international best practice as guidelines, in the design and implementation of pilot projects that will begin to bring about the necessary changes detailed in this report.

One such project should focus on the adoption of Lean methodology in Courts as this will significantly improve efficiency and reduce operating costs. Applying Lean in a judicial context will require Standard Operating Procedures which have been specifically designed to meet the needs of the workforce. In response to austerity measures introduced by the UK government, HMCS recently underwent a national transition to Lean working. As a result, the experience of UK Court Managers would be extremely relevant to CNJ if, as we recommend, they begin to design and implement pilot projects, introducing Lean methodology at the local level.

A further area which could benefit significantly from reform is enforcement. While the recent grouping of enforcement officers into teams constitutes a major step forward, the current lack of management structure and controls has the potential to diminish any benefits brought about by this change. The UK Ministry of Justice's National Standards for Enforcement Officers provides an excellent example of an enforcement management control, which, if applied to the CNJ, could improve productivity and reduce outstanding work. Therefore, we suggest the formation of a local pilot programme, using the UK National Standards as an example, to install an official code of practice to govern the newly established enforcement officer teams.

The development of a career management programme will be an essential but major undertaking, as a result local/state pilot projects will be a necessary starting point. The Court Service in England and Wales has developed a sophisticated, yet simple, career management process that has evolved over many years and been subject to constant improvement. Again, a pilot exercise should be established in which best practice from the career management programme of England & Wales is introduced to Brazil; this will allow for early design and delivery of the training programmes required.

Collectively, these pilots will assist in embedding international and UK best practice into Brazil's justice system at the local level. Once the projects have been completed, evaluated and refined

these pilots will then provide the momentum and an informed platform for further progress in the enactment of enduring national judiciary reform.