

ANNEXURE A: DRAFT WHITE PAPER ON REMAND DETENTION MANAGEMENT IN SOUTH AFRICA: CONSULTATIONS PROCESS

1. Introduction

The consultation process will be presented in financial years i.e., in 2012/13 and 2013/14 financial years. The content and the size of the document has been changing throughout the consultation process. Some issues that were too detailed were left out because they have been accommodated elsewhere such as in cluster protocols and operational policies.

2. 2012/13 FINANCIAL YEAR

2.1 Generic Consultation

Date	Parties Consulted	Changes Made / Decisions Made
31 July 2012 (1 day workshop)	<ul style="list-style-type: none"> • South African Police Service • Department of Social Development 	<p>The document had 9 chapters</p> <p>Overall comment made was that the document was pro DCS. It should reflect the responsibilities of the 3 departments (SAPS, DSD and DCS).</p> <p>Overcrowding should be a chapter on its own.</p> <p>Decision: The document was amended accordingly and overcrowding was included as Chapter 9 and the chapter on oversight became the 10th chapter.</p>
29 August 2012	<ul style="list-style-type: none"> • South African Police Service • Department of Social Development 	<p>The document with 10 Chapters was sent to SAPS and DSD.</p> <p><i>SAPS and DSD were requested to consult the document further within their institutions</i></p>
30 September 2012	<ul style="list-style-type: none"> • NATMANCO 	<p>Gave approval for broad consultation including cluster consultation</p>
03 to 24 September 2012	<ul style="list-style-type: none"> • DCS Head office and Regions • Cluster Structures: <ul style="list-style-type: none"> ◦ Management of overcrowding Task Team (MATD) ◦ National Integrated Court and Caseload Task Team (circulated the document to the provincial and local 	<p>Changes made</p> <ul style="list-style-type: none"> • Information on the role of Legal Aid South Africa was added; • Substantive input received from NPA (done through track changes); • Difference between State Patients and RDs placed for mental observation clearly articulated;

Date	Parties Consulted	Changes Made / Decisions Made
	caseflow o Criminal Justice System Review Task Team (CJSR)	DCS concerns on rendering of programmes to RDs was addressed during the face to face consultation session
10 October 2012	• The document was sent to the secretariat of the National Development Committee of the JCPS cluster for circulation to the committee members (with inputs from previously mentioned consulted parties)	

2.2 Consultation at the Colloquium (20 November 2012)

The Department of Correctional Services held a two-day colloquium on 19 and 20 November 2012 under the theme "Towards finding solutions for the South Africa's high rate of incarceration and breaking the cycle of crime". The first day focused on strategies for the management overcrowding in correctional centres and the second day was utilized for consultation of the White Paper. The participants included the following:

- Members of the National Council for Correctional Services;
- Members of the Medical Parole Advisory Board;
- Justice Crime Prevention and Security (JCPS) cluster departments:
 - o Department of Justice and Constitutional Development (DoJCD);
 - o The National Prosecuting Authority (NPA);
 - o The South African Police Service (SAPS); and
 - o Legal Aid South Africa.
- Members from the Departments of Criminology, Academics and Researchers from various Universities;
- Non-governmental organizations:
 - o NICRO,
 - o Lotsha Ministries,
 - o Civil Society Prison Reform Initiative,
 - o Khulisa,
 - o Sonke Gender Justice Project,
 - o Just Detention International,
 - o Wits Justice Project,

- Phoenix Zululand Restorative Justice Programme, and
- SAPHOR;
- Researcher from Portfolio Committees for Correctional Services;
- The judiciary including a representative from magistrate commission;
- Ex-prisoners (a few);
- The DCS representatives:
 - The ministry
 - The deputy ministry
 - National Commissioner
 - Chief Operating Officer (COO)
 - Branch heads
 - Regional Commissioners, and
 - Officials from several branches at head office

The comments and recommendations made at the colloquium are presented in the tabular format in the next page.

The draft White Paper was presented for further comments at the roundtable discussions organised by the Wits Justice Project and the Civil Society Prison Reform Initiative (CSPRI). Organisations were also invited to submit separately their input, which they did. The document was amended accordingly.

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Comments and recommendations made have been summarized in the table below with comments or decisions

Input	Comments/Decision
<p>More detail and explanation is required in terms of whether DCS has enough capacity and resources to be responsible for RDs (transport, staff). More detail was required here. One should also consider mentioning the training that would be involved such as weapons training, skills training of staff and the vacancy rate.</p>	<p>Transportation of RDs to court falls under the responsibility of SAPS. Resource consideration for delivery of programmes to RDs in DCS is under consideration. Training of officials working with RDs is catered for in Chapter 4.</p>
<p>There was a request for more detail on the history of the DCS and RDs for all to understand the context.</p>	<p>The history of DCS is catered for in the White Paper on Corrections, hence there is a reference to the White Paper on Corrections in the draft White Paper on Remand Detention Management.</p>
<p>The group had decided that a vision statement must be added to indicate what will the DCS and remand detention in particular look like when this has been achieved.</p>	<p>The vision statement will be included in the operational policies of the 3 departments responsible for the detention management of RDs.</p>
<p>It was mentioned that 80% of RDs are denied bail. It should therefore be more clarity on the bail regime and how is this comparable with the presumption of innocence. More detail on the context should be provided. A paragraph must be added on stats to indicate how many persons received bail.</p>	<p>Trend analysis on Bail is included in Chapter 9. Bail regime falls more under the Criminal Procedure Act The document titled "awaiting trial detainee guidelines" which was developed by NPA in consultation with other JCPS cluster departments including DCS provides an operational strategy for bail regime. There is a reference to the document in Chapter 9.</p>
<p>Challenges must include the predicted challenges in terms of implementing the White Paper and must consider amongst others: mind shift; internal education and training; the different values and priorities when compared with the approach used for sentenced offenders.</p>	<p>The operational policies that will be developed from 2014/15 onwards will include principles for management of RDs. The training manuals that will be developed will also take into consideration the different approach required to manage RDs.</p>
<p>It was suggested that the nature of the RD must be analysed – the type of offences, reasons for not being granted bail. More research done on this topic and it must be used to improve the system, processes and review of the RD.</p>	<p>The research in this area will be considered.</p>

Input	Comments/Decision
<p>Cost drivers need to be accurate (as much as possible) for this White Paper. The budget implications must be indicated for what can be done in the short and the long term respectively. The concern of implementation was raised and it was mentioned that the process must not be rushed. There must be proper planning and training and we must not assume that we need to be sure that things will be in place for the WP to work on the ground.</p>	<p>Most of the proposals in the White Paper are not new and have been provided for in operational policies and in legislation. The major cost driver for the Department of Correctional Services will be the provision of development programmes to RDs. The cost implications will be done once the approach for programme delivery has been finalized. The cost containment strategies and the position of National Treasury with regard to human resources will be taken into consideration (no increase in human resources in public sector for the next 3 years).</p>
<p>RDs held by SAPS – there is no policy and legislative framework for SAPS to detain RDs. There is not enough clarity on the roles of the SAPS. More clarity is needed here. There are gaps in the policy and laws that cause frustration.</p>	<p>Chapter 4 of the draft White Paper makes reference to the responsibility of SAPS in relation to Remand Detainees and limitation for detention.</p>
<p>There needs more clarity on Office of the Criminal Justice Review (OCJSR) relationship with other structures. There needs to be a definition of the OCJSR.</p>	<p>The OCJSR is included in chapter 4 including the rationale for its establishment (4.4: Cooperative governance).</p>
<p>AVR tool – not much is said in the WP on this. Although chapter 3 discusses this it needs to be defined sufficiently.</p>	<p>The AVR tool is discussed in Chapter 2 [2.3.13: The Criminal Procedure Amendment Act (Act 65, 2008)]</p>
<p>The group requested that the document also talk of the courts that are currently in DCS and they felt that these courts should not be abolished. These courts allow for better planning and cost saving.</p>	<p>There is a reference to courts operating in DCS in Chapter 2 (2.3.13: Magistrate Court Act).</p>
<p>Safety of detainees during transportation was discussed. It was mentioned that DCS does not have the training to transport dangerous criminals and that SAPS tactical unit must be called on to transport these inmates. Further to this the responsibility for transport was discussed and it was said that the responsibility of DCS is whilst the RD is in the DCS facilities and that and it was said that we should look where the budget for the transport of RDs lay and to be cautious to make transport of RDs the responsibility of the DCS. It was said that that the WP does not delineate whose</p>	<p>Transportation of RDs between courts and detention institutions falls under the responsibility of SAPS. The transportation of sick RDs who are detained in DCS or DSD facilities falls under the detention facilities. All the parameters for responsibilities are explained in chapter 4 (4.3 institutional management) since they were the areas of tension between SAPS and the detention facilities especially DCS.</p> <p>The safety and security principles on transportation of RDs have</p>

Input	Comments/Decision
<p>responsibility it is at court/whilst being transported. It was therefore recommended that the WP outlines this.</p>	<p>been included in Chapter 7.</p>
<p>More details were required on the average distances travelled between DCS centres and courts. This could be done province by province and that the averages and not the extremes must be indicated. It was discussed that certain categories of offenders (max security) cannot be kept at a certain centre and needs to be transferred to another centre = what are the implications of this in terms of distance, transport costs and time as well as the quality of roads that must be travelled. In terms of long distances – SAPS keep detainees overnight to save on travelling. The legislation needs to reflect the implications of these arrangements.</p>	<p>A record of kilometres (estimates) travelled by SAPS between courts and DCS facilities is kept.</p> <p>Transportation issues which have an impact on court arrival have been handled through the development of a protocol as per proposal in the White Paper (Chapter 4: 4.5 Cluster Management). The draft protocol allows for releasing of RDs to SAPS a day before the court appearance date. The protocol is on route for approval by the DGs of the JCPS cluster.</p>
<p>More details must be given secure care facilities and who falls under the SCFs. DSD must develop their own capacity to deal with the higher risk child detainee/offenders. They try to force this onto the SAPS and the DCS. They must take on their responsibilities. More engagement needs to take place between DSD and DCS both Nationally and Provincially.</p>	<p>Responsibilities of DSD are included in Chapter 4 under institutional management</p> <p>4.3.3.8 makes reference to the development of capacity in SCF for the management of high risk children.</p>
<p>The WP should contain more detail on the 62f i.e. - supervision of persons released on bail in terms of implementation, capacity etc. The possibility of a partnership between the SAPS (reporting to the nearest police station) and the DCS should be looked at especially in the areas that do not have a Community Corrections office – this will curtail the non-monitoring of some RDs.</p>	<p>Reference to 62(f) has been made in Chapter 4 under DCS and DSD responsibilities. 62(f) makes provision for the accused to be placed under supervision of a probation officer (DSD) or a correctional official (DCS). The practical strategies are contained in the operational policies of Community Corrections in DCS. The proposal for including SAPS will be attended to.</p>
<p>State patient has become a growing problem they are temporarily sent to DCS till the mental hospitals have space. This needs to be adequately addressed in the White Paper in terms of capacity, treatment centres, shortage of psychiatrists etc.</p>	<p>The State Patients are not Remand Detainees. They are categorized as unsentenced inmates (cluster decision). The CJSR is handling the challenges related to the management of State Patients.</p>

Input	Comments/Decision
<p>Paralegals – should be reflected in the WP in terms of access to the RDs and indicate whether the policy should not make provision for the paralegals.</p>	<p>Chapter 9 makes reference to the use of paralegals. Legal Aid South Africa has several paralegals that have been deployed to DCS facilities.</p>
<p>Office of the judicial inspectorate – must be added.</p>	<p>Chapter 10 on oversight includes the Judicial Inspectorate.</p>
<p>The following question was raised: -as to what kind of medical parole applies to RD? Further to this it was suggested that the medical condition of the RD must be brought to the attention of the court as mitigating circumstances. A question was raised on possible medical releases of seriously ill remand detainees.</p>	<p>In Chapter 4, under cluster management (4.5), reference is made to the strategies for handling cross cutting issues through the protocol. The protocol on the referral of RDs who are terminally ill or severely incapacitated to court in terms of 49E of the Correctional Services Act has been mentioned. The protocol has been further unpacked by developing operational processes to be followed within DCS till the RD is referred to court.</p>
<p>The role of the NGOs –need to be given more attention in the WP – the WP must specify this and put in place across the board.</p>	<p>Desktop research was done to determine the role of NGOs and it was discovered that they are utilized for service delivery and not for provision of oversight. included in Chapter 4: (4.6: The role of NGOs).</p>
<p>The following must be added to the WP and their specific roles must be defined: Portfolio committees' role, Public service commission; SAHR commission; Inspecting Judge. 2 pages in the WP are not adequate on oversight and control – need to expand. Stipulate the roles of the above bodies in Chapter 10 even though it is covered by the Constitution.</p>	<p>Chapter 10 on oversight was extended to include various bodies and institutions that are providing oversight to remand detention institutions. The chapter was extended from 2 to 6 pages.</p>
<p>Oversight for DSD? Who or what monitors the SCF's?</p>	<p>Oversight in Secure Care Facilities is included in chapter 10 (10.2.3)</p>
<p>If the inspecting Judge has no mandate over SAPS, How will this be managed? Will the IPID do the monitoring or the Secretariat for police or the Portfolio Committee or the auditor-general?</p>	<p>The services of the IPID have been included in chapter 10 (10.2.6).</p>

Input	Comments/Decision
<p>In 5.2.16 New addition "and be encouraged": Every remand detainee who is a child must have access to and be encouraged educational programmes and must be provided with social work services, religious care, recreational programmes and psychological services.</p>	<p>Included in chapter 5</p>
<p>In 5.2.23: Excessive force may not be used against a remand detainee. The use of force will be restricted to when it is necessary for self-defence; the defence of any other person; preventing a detainee from escaping; or for the protection of property. In any such case only the minimum degree of force must be used and the force must be proportionate to the objective. Terms must be clearly defined and training must be provided (see 7.3.10).</p>	<p>The principles on the minimum use of force are include in Chapter 7 (7.3.10)</p> <p>The principles have been further unpacked in the form of operational policies.</p>
<p>Include in 5.2.21 "proper administrative": No remand detainee may be surrendered to the South African Police Service for the purpose of further investigation, without proper administrative authorisation by the National Commissioner of DCS or a delegated official within the institution that detains RDs in which case the period may not exceed 7 days.</p>	<p>Proper administration was not included; however authorization by the National Commissioner has been unpacked into proper administrative processes that require accountability by both SAPS and DCS. A draft protocol was developed and is en route for approval.</p>
<p>Include a new point: "Every RD must be allowed the opportunity to lay criminal charges against anybody whilst incarcerated".</p>	<p>This was added (5.2.24)</p>
<p>Why are contacts visits not allowed? Presumption of innocence must be defined for this purpose. It might also be an opportunity for developing a privilege system with restrictions by means of a disciplinary system.</p>	<p>Type of visits will be handled in the revised privilege policy and the disciplinary policy which will be developed in 2014/15 financial year.</p>

Input	Comments/Decision
<p>In the following part: The right to be present when being tried: Circumstances that prevents the RD from appearing in court such as hospitalization or sickness and writing examination should be communicated to court. To be linked with the provision of transport and accommodation for longer distances. Who will be responsible for the provisioning of transport and accommodation in cases of longer distances?</p>	<p>Included in Chapter 6 (6.2 alignment with the constitution) Circumstances that prevent the RDs from appearing in court are catered for in practice and courts are informed. The clause will be included in the operational policies</p>
<p>Need to include a chapter on acronyms.</p>	<p>Done (but not a chapter)</p>
<p>The department must have a fixed determination of the actual number of bed spaces allocated for use by RD's and be able to determine the actual overcrowding rate at RDF's.</p>	<p>The facilities chief directorate has initiated the process.</p>
<p>The specific overcrowding standards for each remand centre must be fixed and should not be exceeded, even if it means that legislation should be amended. Additional to the overcrowding discussion, it was argued that DCS has little or no control as to whom they can admit into remand facilities. Should they be able to tone down on admissions, the co-operation of other criminal justice role-players (justice and SAPS) become essential.</p>	<p>The JCPS strategies for management of overcrowding are included in chapter 9 (94.1 to 94.5). The chapter also talks to drivers of the population for remand detainees and these drivers are beyond the control of the detention institutions.</p>
<p>Training was discussed in depth. A specialised curriculum should be developed for training of remand personnel. Special training and re-training must be provided. Of particular interest was the contents of chapter 7, par. 7.3.5. Remand detention can even become a specialised stream, along with incarceration and community corrections.</p>	<p>Training of officials is included in Chapter 4 (4.7) Training of officials on RD related issues and the approach to be utilized are currently under discussion.</p>

Input	Comments/Decision
<p>SAPS community policing forums, NGO's and even victims should be utilised to monitor persons on bail (through instructions to the person on bail to report to these structures). In this fashion the community becomes obliged to participate in the management of alleged offenders while at the same time affords the accused to provide for their families and build resources for their legal defence while relieving the burden to the DCS.</p>	<p>Will be considered in the strategy for management of persons placed under non-custodial system.</p>
<p>A request was made for more integration and co-operation, and the reduction of silo-mentality to criminal justice. It was proposed that the Justice Department investigate the actions of (justice and SAPS) where an accused is remanded for long periods and then charges withdrawn or dismissed.</p>	<p>The Office of the Criminal Justice System which is referred to in Chapter 4 (4.4.6 to 4.4.7) is facilitating the integrated approach.</p>
<p>A plea was made for data integration</p>	<p>Chapter 8 refers to the use of integrated systems. A Criminal Justice System plan is coordinated by the Integrated Justice board under the leadership of DoJCD for driving the integration of systems. The delays are due to departmental developments which must take place first before a full integrated system can be realized.</p>

3. 2013/14 FINANCIAL YEAR

The final draft was approved by the Executive Head of DCS for external consultation in April 2013. The summary of consultations conducted in 2013/14 financial year appears below:

Date	Structure	Comments/Decision
18 April 2013	National Development Committee of the JCPS cluster	Was endorsed for escalation to the Director-Generals of the JCPS cluster
6 June 2013	Directors-General of the JCPS cluster	The major concern was the inclusion of the challenges highlighted in Chapter 4 of the document titled " <i>Final report to the Minister of DCS Nosiviwe Mapisa-Nqakula (MO): Audit on certain categories of inmates within DCS</i> " The challenges were dealt with in the proposals included in the White Paper.
29 August 2013	Cabinet Committee	Approved for cabinet submission
4 September 2013	Cabinet	Approved for Parliamentary submission (Portfolio Committee)

W. DMMWS
DC Demand Support Services
2013/12/03

