



# **LUANDA GUIDELINES: AN AFRICAN RESPONSE TO THE CHALLENGES OF PRE-TRIAL JUSTICE**

African Policing Civilian Oversight Forum

## **Consultation Report**

Pretoria

14 October 2015

### **I. INTRODUCTION:**

On 14 October 2015, the African Policing Civilian Oversight Forum (APCOF) hosted a national consultation on the African Commission's Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa (Luanda Guidelines). The purpose of the consultation was to provide information about the Luanda Guidelines and to share the findings of a draft baseline study currently underway in South Africa and to give stakeholders the opportunity to meaningfully engage with the preliminary results and to identify gaps, challenges and sources of additional information for the ongoing development of the study. The following organisations and government departments attended the workshop: South African Police Services (SAPS), Department of Correctional Services (DCS), Department of Justice and Constitutional Development (DOJCD), Legal Aid South Africa, South African Human Rights Commission (SAHRC), Judicial Inspectorate of Correctional Services (JICS), Civil Society Prison Reform Initiative (CSPRI), Centre for the Study of Violence and Reconciliation (CSVR), University of Wits African Centre for Migration and Society (WACMS), Social Justice Coalition (SJC), APCOF, University of Wits School of Governance, University of Wits Justice Programme, Western Cape Department of Community Safety (WCDOCS), Southern Africa Litigation Centre (SALC), Integrated Justice System Development Committee (DevCom), and the Civilian Secretariat of Police (CSP).

### **II. PRESENTATION:**

After a brief welcome and introduction by Sean Tait, Executive Director of APCOF, Louise Edwards, Programme Manager for APCOF's pretrial justice programme, presented an overview

of pre-trial justice conditions in countries across Africa to contextualize the need for the Luanda Guidelines to respond to ongoing challenges in the region, and South Africa specifically. The Luanda Guidelines, developed by the African Commission in consultation with APCOF, provide an authoritative interpretation of Article 62 of the African Charter on People and Human Rights, and aim to promote a rights-based approach to arrest, police custody and pre-trial detention. Before presenting the preliminary findings of South Africa's draft baseline study, Louise provided an overview of the Guideline's provisions relating to arrest, police custody, decisions around pre-trial detention, registers, deaths in custody, conditions of detention, vulnerable groups, accountability and remedies, and implementation by State parties. As a party to the African Charter, South Africa will be measured against the standards set by the Luanda Guidelines in its bi-annual reports to the African Commission; accordingly, the country has needs to evaluate the current performance of its criminal justice system.

The second half of Louise's presentation focused on the implementation project currently underway in South Africa, the purpose of which is to: raise awareness of the Luanda Guidelines; publish a baseline study measuring South Africa's performance against the Guidelines; and make recommendations to strengthen the criminal justice system and to promote a rights-based approach to pre-trial justice. To initiate discussions with participants, Louise presented the indicators for measuring the success of the Luanda Guidelines, as developed by partners in South America, to gauge whether these would be relevant indicators for the South African context. These indicators include: (1) risk to liberty; (2) duration of pre-trial detention; (3) frequency and exceptionality of the use of pretrial detention; (4) defendants' compliance with the conditions of pretrial release; and (5) legitimacy of the criminal justice system. Louise concluded her presentation by presenting figures to demonstrate South Africa's current performance and then opened up the discussion to participants to gauge whether these indicators were appropriate for the South African context and to identify any gaps, omissions or other issues with the information presented.

### III. PLENARY DISCUSSION

After Louise concluded her presentation, Sean Tait facilitated a plenary discussion on the indicators to gauge whether stakeholders thought they were relevant for the South African study and whether there were any additional sources of information to consider. The revised indicators are attached as **Annex 1** to this report.

Before the plenary discussion concluded, some key issues were raised to keep in mind throughout the remainder of the study, including the following:

- Integrity of the data used in the study will be critical;
- Statistical data should be triaged against qualitative sources of data;
- Definitions of terms, (i.e. arrest, detention, custody, etc.) need to be clear and aligned with South African legal definitions;
- Findings and analysis should be done on a provincial level as well as a national level to ensure that provincial profiles are not lost in the national picture; and
- Be mindful of the difference between challenges and opportunities.

#### **IV. WAY FORWARD**

After the conclusion of the plenary discussion, Sean Tait thanked the participants for their contribution and stated that a copy of the consultation report would be circulated to everyone who attended the workshop. In addition, Sean also informed participants of two upcoming events: first, the Police Colloquium, and second, the Dialogue on Policing and Human Rights, which are both scheduled to take place at the end of November, and present opportunities for further engagement on these issues.

#### **V. CLOSURE**

Advocate Peter Durand from the DOJCD closed the consultation by expressing gratitude to APCOF for hosting the presentation and to participants for engaging in discussions that were productive and positive. These issues are not new, Advocate Durand said, and implementation challenges have existed for a while, but processes are currently underway and improvements are being made across the criminal justice sector. He concluded the session by stating that the consultation had been an important part of promoting a collaborative approach to improving the performance of the criminal justice system.

**ANNEX 1**  
**PROPOSED CATEGORIES AND INDICATORS FOR MEASURING REMAND DETENTION IN SOUTH AFRICA**

<b>Category 1: Risk to Freedom of Movement</b>		
KEY ISSUE: determination of arbitrariness/ validity of violation of right to freedom of movement (stop and search) and/or arbitrary arrest		
<b>Indicator</b>	<b>Disaggregation</b>	<b>Data Sources</b>
(1) Number of people stopped and searched	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, police station</li> <li>• Type of offence</li> </ul>	SAPS National Inspectorate, visible policing. SAPS Dockets SAPS Charge Sheets SAPS Annual Reports to Parliament
(2) Number of people arrested	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, police station</li> <li>• Type of offence</li> </ul>	SAPS National Inspectorate, visible policing. SAPS Dockets SAPS Charge Sheets SAPS Annual Reports to Parliament  SAPS legal services: Civil claims against National Inspectorate: Disciplinary proceedings Parliamentary reports
(3) Number of people charged	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, police station</li> <li>• Type of offence</li> </ul>	SAPS Dockets Charge Sheets Annual Reports Reports to Parliament
(4) Number of people detained in police custody	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, police station</li> <li>• Type of offence</li> </ul>	SAPS Dockets Charge Sheets Annual Reports Reports to Parliament
(5) Number of people in remand	Number of people held in custody on	DCS

detention	remand orders  Number of matters heard in terms of 63 <sup>1</sup> of the Criminal Procedure Act  Number of releases in terms of s 63A <sup>2</sup> of the Criminal Procedure Act  Number of people held in remand detention who are eligible for bail  Number of people in community corrections in terms of s 62(f) <sup>3</sup> of the Criminal Procedure Act.  <ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, DCS facility?</li> <li>• Type of offence</li> </ul>	DOJCD Office of the Chief Justice NPA Annual Reports Reports to Parliament Record of court proceedings in terms of s 62 <sup>4</sup> of the Criminal Procedure Act
<b>Category 2: Duration of Remand Detention</b>		
(1)Duration of remand detention	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, police station</li> <li>• Type of offence</li> </ul>	DOJCD - Court recrods DCS JICS Annual Reports Reports to Parliaments
(2) Number and proportion of defendants in remand detention in excess of norms and standards/ legal requirements <del>7 months</del>	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, DCS facility?</li> <li>• Type of offence</li> <li>• Court (district, regional etc)</li> </ul> Number held for following durations: <ul style="list-style-type: none"> <li>• 0 – 3 months</li> <li>• 3 – 6 months</li> <li>• 6 – 12 months</li> <li>• 12 – 18 months</li> <li>• 18 – 24 months</li> <li>• More than 24 months</li> </ul> Number of remand cases reviewed in	DOJCD DCS Office of the Chief Justice NPA JICS Annual Reports Reports to Parliament

<sup>1</sup> 'Section 63 – Amendment of bail conditions.'

<sup>2</sup> 'Section 63A – Release or amendment of bail conditions of accused on account of prison conditions'.

<sup>3</sup> 'Any court before which a charge is pending in respect of which bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail - ... (f) which provides that the accused shall be placed under the supervision of a probation officer or a correctional officer'.

<sup>4</sup> 'Section 64 – Proceedings with regard to bail and conditions to be recorded in full'.

	terms of section 49G of the Correctional Services Act	
<b>Category 3: Defendants' compliance with conditions of release</b> <b>Key Issue: alternatives to remand detention - frequency of use and effectiveness</b>		
(1) Number and proportion of defendants complying with bail/conditions of release from remand detention	<p>Number and proportion of defendants who have failed to comply with conditions imposed in terms of s 62 of the Criminal Procedure Act</p> <p>Number and proportion of defendants who fail to appear in court</p>	<p>DOJCD DCS Office of the Chief Justice NPA</p> <p>Annual Reports Reports to Parliament Record of court proceedings in terms of s 62<sup>5</sup> of the Criminal Procedure Act</p>
<b>Category 4: Effectiveness and Efficiency of the Criminal Justice System</b> <b>Key Issue: determination of effectiveness and efficiency of the criminal justice system in terms of procedural and substantive fairness - ie. was detention justified in the first place -did it result in a conviction?</b>		
(1) Number of nolle prosequi reasons  (need to get detail on prosecution policy on this)	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province,</li> <li>• Level of court</li> <li>• Type of offence</li> </ul>	NPA SAPS dockets
(2) Number and proportion of remand detainees acquitted, and reasons for acquittal	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province,</li> <li>• Level of court</li> <li>• Type of offence</li> </ul>	Office of the Chief Justice NPA DOJCD Annual Reports Reports to Parliament SAPS dockets
(3) Number and proportion of remand detainees matters withdrawn and reasons for withdrawal	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province,</li> <li>• Level of court</li> <li>• Type of offence</li> </ul>	Office of the Chief Justice NPA DOJCD Annual Reports Reports to Parliament SAPS dockets
(4) Number and proportion of remand detainees who received a non-custodial sentence	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province,</li> <li>• Level of court</li> <li>• Type of offence</li> </ul>	Office of the Chief Justice NPA DCS DOJCD Annual Reports Reports to Parliament

<sup>5</sup> 'Section 64 – Proceedings with regard to bail and conditions to be recorded in full'.

<p>(5) Number and proportion of remand detainees who received a custodial sentence shorter than the duration of remand detention</p>	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province,</li> <li>• Level of court</li> <li>• Type of offence</li> </ul>	<p>Office of the Chief Justice NPA Annual Reports Reports to Parliament</p>
<p>(6) Number and proportion of remand detainees who are released as a result of cases being struck off the court roll, and reasons for the case being struck off</p>	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, police station</li> <li>• Level of court</li> <li>• Type of offence</li> </ul> <p>Number of matters struck off the court roll and reasons for the strike off</p>	<p>Office of the Chief Justice NPA Annual Reports Reports to Parliament</p>

**Category 5: Conditions of Detention**  
**Key Issue: determine the conditions of detention in remand facilities both in terms of the physical conditions of custody and the extent to which detainees are afforded their procedural rights (e.g. access to legal services, health services, risk assessments, etc).**

<p>(1) Conditions of detention for remand detainees meet the requirements in terms of Chapter II of the Correctional Services Act</p>	<p>Procedures and safeguards set out in relation to admissions to prison in terms of s 2 of the Correctional Services Act are met</p> <p>Accommodation requirements in terms of s 3 of the Correctional Services Act are met</p> <p>Nutrition requirements in terms of s 4 of the Correctional Services act are met</p> <p>Clothing and bedding requirements in terms of s 5 of the Correctional Services Act are met</p> <p>Exercise requirements in terms of s 6 of the Correctional Services Act are met</p> <p>Health care requirements in terms of s 7 of the Correctional Services Act are met</p> <p>Contact with the community in terms of s 8 of the Correctional Services Act is met</p>	<p>Department of Correctional Services JICS DoJ&amp;CD</p>
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	<p>Procedures set out for death in prison in terms of s 9 of the Correctional Services Act are met</p> <p>Development and Support Services are provided in terms of s 10 of the Correctional Services Act</p> <p>Recreation is provided for in terms of s 11 of the Correctional Services Act</p> <p>Access to legal services in terms of s 11 of the Correctional Services Act are met</p> <p>Reading material in terms of s 13 of the Correctional Services Act is provided</p> <p>Discipline is dealt with in conformity with s 14 of the Correctional Services Act</p> <p>The requirements of safe custody in terms of s 15 of the Correctional Services Act are met</p> <p>Searches are conducted in accordance with s 16 of the Correctional Services Act</p> <p>Identification requirements in terms of s 17 of the Correctional Services Act are complied with</p> <p>The use of mechanical restraints, non-lethal incapacitating weapons, firearms and other weapons is in accordance with ss. 18 – 21 of the Correctional Services Act</p>	
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**Category 6: Community confidence in the effectiveness and efficiency of the criminal justice system**  
**Key Issue:**

<p>(1) Community confidence in the effectiveness and efficiency of the criminal justice system</p> <p>Experience of CJS - Inmates perceptions of criminal justice system?</p>	<ul style="list-style-type: none"> <li>• Demographic data: Age, gender, race and nationality</li> <li>• Geographical: National, province, local level(police station, magisterial district/police station)</li> </ul>	<p>DoJ&amp;CD  IPID  JICS  Public perception surveys  Office of the Chief Justice  DCS  NPA  LASA</p>
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	<p>A reduction in the number of reported contact crimes</p> <p>An increased proportion of citizens feel safe walking alone, during the day or at night, as measured in official surveys</p> <p>An increase in the proportion of households that are satisfied with police services in their area, and with the way courts deal with the perpetrators of crime</p> <p>Improvements in citizens' perceptions of levels of crime and progress in reducing crime, as measured in official surveys</p> <p>An improvement in South Africa's ranking on the Transparency International Corruption Perception Index.</p>	<p>SAHRC Public Protector Annual Reports Reports to Parliament Research reports</p>
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