



African Policing Civilian Oversight Forum

Comments on JICS Comparative Report on Overcrowding

16 January 2025

1. Introduction

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to present these written comments on JICS comparative report on overcrowding. We are a not-for-profit trust based in Cape Town, working on issues of police accountability and governance across the African continent. For more than 10 years, our work has included a focus on promoting a rights-based approach to the use of arrest and detention in South Africa.

2. Substantive comments on the report

APCOF welcomes the report and its objectives, which includes to contextualise the challenge of overcrowding in South African correctional facilities, and to make targeted recommendations to duty bearers and policy makers. We also welcome observations in the report that overcrowding has multiple causes, which necessitates a holistic and integrated response from a broad range of stakeholders at both national and subnational levels. This will enhance inter-agency cooperation and coordination, a vital prerequisite for effectively addressing the complex causes of overcrowding and its human rights, health and security impacts.

To enhance the recommendations in the JICS report, we suggest including additional information

African Policing Civilian Oversight Forum

Building 23B, Suite 16, Waverley Business Park, Wyecroft Road, Mowbray, Cape Town, 7925

PostNet Suite 63 Private Bag x11, Mowbray, 7705

Tel: +27 21 447 2415

www.apcof.org.za

Trust no. IT1900/2012

PBO 930041858, NPO 119 688- NPO

Trustees: A van Wyk (Chair), G Cronje (Treasurer), S Africa, T Gandidze, P Tlakula, E van der Spuy

and further recommendations on the following issues, which are set out in detail below:

- Implementing long-term strategies for crime reduction and prevention;
- Strengthening the capacity of key criminal justice actors to implement alternatives to arrest and detention, and develop guidelines for managing petty offenders;
- Adoption of sentencing guidelines;
- Bail reform;
- Addressing infrastructure issues; and
- Implementing non-custodial measures for violations of the Immigration Act.

2.1. Implementing long-term strategies for crime reduction and prevention

APCOF emphasises the importance of investing in early warning and crime prevention strategies as part of the strategies for sustainably decongesting correctional facilities. Effective crime prevention interventions are key to reducing the number of people who enter the criminal justice system. Within the United Nations human rights system, crime prevention is recognised as a prerequisite for avoiding overreliance on and inappropriate use of incarceration.¹

In this regard, we note that various international, national and subnational frameworks provide guidance on effective and long-term crime prevention approaches, which emphasise the need for investment in this area.

At the international level, the World Health Organisation's [ecological framework](#) for understanding crime and violence provides guidance on violence prevention. In particular, it proposes a four-level model for understanding and responding to violence, considering the complex interplay between individual, relationship, community and societal factors.² This model has been used by municipalities in their crime and violence prevention programmes.³ The public health approach to crime is another internationally recognised theory of crime prevention.⁴ This

¹ United Nations System Common Position on incarceration, April 2021, page 9, available at: https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf.

² See also L Edwards, A Netshikulwe, and L Freeman, "Policing and non-nationals: Community Police Forums and Xenophobic Violence in South Africa", 2021, page 24, available at: <https://apcof.org/wp-content/uploads/policing-and-non-nationals-community-police-forums-and-xenophobic-violence-in-south-africa.pdf>.

³ Ibid.

⁴ World Health Organisation, "The VPA Approach" available at: <https://www.who.int/groups/violence-prevention-alliance/approach>.

approach focuses on identifying and addressing the underlying factors that cause or exacerbate criminal behaviour.

At the regional level, in June 2018, the SADC Ministerial Committee of the Organ on Politics, Defence and Security Cooperation approved the SADC Regional Guidelines on Crime and Violence Prevention.⁵ These Guidelines, which were developed from international best practices, embody identified success indicators, which include multi-sectoral, integrated and holistic approaches to addressing the conditions that give rise to challenge of crime and violence.⁶

At the national level, various legislative and policy frameworks address crime prevention in the country. These include the [National Development Plan 2030 \(NDP\)](#), adopted by Cabinet in 2012, which aims to eliminate poverty and reduce inequality by 2030.⁷ The NDP contains important guidance on crime prevention strategies, including strengthening the criminal justice system, increasing prisoner rehabilitation, reducing recidivism, and building safety through an integrated approach, among others.⁸ The NDP also emphasises the need for a well-functioning criminal justice system, where the efforts of key actors, such as law enforcement officials, the judiciary, and correctional services, complement one another.⁹

The NDP is supported among others by the Integrated Crime and Violence Prevention Strategy (ICVPS), 2022,¹⁰ which rests on six pillars, sets out a comprehensive, collaborative framework for a whole of government and whole of society approach to crime and violence prevention in the country.¹¹ Pillar 1 recognises effective and efficient criminal justice system as critical to crime prevention efforts, and emphasises strengthening the implementation of effective diversion, rehabilitation and reintegration programmes.¹²

⁵ See “Manual to Facilitate the Operationalisation of the SADC Guidelines On Crime and Violence Prevention: Together for Safety and Security”, 2019.

⁶ Ibid, page 7.

⁷ The National Development Plan 2030, “Our Future: Make it work”, available at:

https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf.

⁸ Ibid, page 387.

⁹ Ibid.

¹⁰ Integrated Crime and Violence Prevention Strategy, 2022, available at:

[https://static.pmg.org.za/220704Final Approved Integrated Crime Violence Prevention Strategy.pdf](https://static.pmg.org.za/220704Final%20Approved%20Integrated%20Crime%20Violence%20Prevention%20Strategy.pdf). Another national policy instrument on violence prevention is the National Strategic Plan on Gender-Based Violence and Femicide 2020 – 2030. It was adopted to: “Provide a multi-sectoral, coherent strategic policy and programming framework to ensure a coordinated national response to the crisis of gender-based violence and femicide by the government of South Africa and the country as a whole”. It is available at: <https://www.justice.gov.za/vg/gbv/nsp-gbv-final-doc-04-05.pdf>.

¹¹ Integrated Crime and Violence Prevention Strategy, 2022, page viii.

¹² Ibid, page 12.

At the subnational level, there are a number of legislative instruments and policy documents that provide guidance to municipalities on their role in crime prevention. These includes the Municipal Systems Act 32 of 2000, which, amongst others, requires municipalities to prioritise developmental approaches to crime prevention.¹³

By positioning crime prevention as an essential element in managing prison overcrowding, the JICS report can promote the implementation of the various crime and violence prevention frameworks applicable to South Africa at international, national, and subnational levels. It can also encourage greater synergy and integration of responses by duty bearers across all levels of government.

Recommendation

APCOF suggests that JICS consider recommending advocating the implementation of existing national crime and violence prevention strategic priorities, including through the allocation and use of resources. These strategic priorities include :¹⁴

- Strengthening the legal and policy framework for persons in conflict with the law, including the Correctional Services Act 111 of 1998;
- Adopting an integrated approach to diversion which addresses care, support and treatment, and which includes aftercare and access to support services;
- Aligning services and programmes to ensure continuum of support services from arrest to release;
- Reviewing funding model for diversion services and addressing deficits in funding models;
- Increasing access to diversion programmes for adult offenders;
- Educating and capacitating court functionaries on use of probation services;
- Improving integration and coordination between service departments and service providers;
- Capacitating probation services;
- Strengthening the policy framework for rehabilitation and reintegration;
- Delivering an integrated approach to rehabilitation and reintegration of offenders;
- Improving the quality of rehabilitation programmes and services;

¹³ Others include the Municipal Structure Act 117 of 1998 and the Integrated Urban Development Framework.

¹⁴ Integrated Crime and Violence Prevention Strategy, 2022, pages 24 – 27. This list of recommendations has been drawn from the document verbatim.

- Developing targeted interventions for different categories of offenders (e.g., youth, women and older persons);
- Developing and implementing an improving resourcing model for NGOs/NPOs to deliver rehabilitation and reintegration services and;
- Developing an integrated information management system to track and monitor inmates during incarceration and post-release.

Championing this approach would complement the wide range of alternatives to imprisonment and penal reform initiatives recommended in the report while also supporting the implementation of long-term, holistic and sustainable solutions to the challenge.

2.2. Strengthening the capacity of key criminal justice actors to implement alternatives to arrest and detention, and develop guidelines for managing petty offenders

As highlighted by the findings and recommendations of the JICS report, overcrowding in correctional facilities has multiple and cumulative causes. Therefore, successful penal reform may require changes in the policies, approaches and practices of key agencies within the broader criminal justice system. APCOF is concerned by the findings of the report that, contrary to legal safeguards, “...some remand detainees within correctional centres who have been in remand detention for more than the required two years, thus exacerbating overcrowding.”¹⁵ The report further notes that this is due to processes that involves the South African Police Services and the National Prosecuting Authority, among other agencies.¹⁶

We welcome the list of recommendations in the report aimed at reducing overreliance on arrest and detention and increasing the use of non-custodial measures by police officers and prosecutors, particularly through increased implementation of existing legal provisions on alternatives to arrest and detention.¹⁷ However, we believe these efforts should be coupled with initiatives to strengthen the capacity of key actors to implement alternative approaches. This proposal is guided by the existence of a various norms and guidelines on alternatives to arrest and

¹⁵ Page 36 of the report.

¹⁶ Ibid.

¹⁷ Ibid, pages 36-38.

prosecution, including those in the National Instructions of the South African Police Services and the National Prosecuting Authority's Prosecution [Policy](#) of 2013.

APCOF also recommends that the report call for guidelines on the management of petty offences, which emphasise decriminalisation and non-custodial alternatives to imprisonment, including imprisonment for failure to pay a fine. Petty offences, which prohibit activities in public spaces related to economic and social survival, are largely governed by municipal by-laws, and are enforced by local law enforcement agencies. Guidelines that align with emerging normative standards on the decriminalisation of petty offences, including the African Commission on Human and Peoples' Rights [Guidelines on the Decriminalisation of Petty Offences in Africa](#), would provide a framework outlining normative guidance and best practices for handling and managing petty offences.

Recommendation

APCOF proposes that JICS considers recommending measures to strengthen the capacity of police officers and prosecutors to implement existing alternatives to arrest and detention. In our view, this could be achieved through both initial and ongoing training, with corresponding performance management targets. In addition, criminal justice agencies should be encouraged to seek advisory and technical support on these aspects of implementation and performance management, including from civil society and research institutions.

APCOF further recommends the JICS to consider advocating for the adoption of national guidelines on petty offences, which would provide a framework for their management by the police and prosecutors, and guide law and policy makers on the decriminalisation of life sustaining activities in public spaces.

2.3. Adoption of sentencing guidelines

APCOF welcomes the report's recommendations on sentencing practices that makes greater use of existing non-custodial sentences, and for Magistrates to be encouraged to play an active role in bail applications.¹⁸ In line with the need for an integrated and holistic approach to addressing overcrowding, we believe there is need for the development of national sentencing guidelines

¹⁸ Page 37 of the report.

which, according to research, are currently lacking.¹⁹ These guidelines would provide a framework for judicial officers on sentencing, promoting greater consistency in sentencing practices across South Africa.

Operational experiences from other comparable jurisdictions which have adopted sentencing guidelines for judicial officers, have led to recommendations for judicial officers to avoid imposing imprisonment in certain situations.²⁰ These includes the requirement to avoid imprisonment for petty offenders, as short custodial sentences rarely meet the rehabilitative goals of sentencing.²¹

Recommendation

APCOF recommends that the JICS consider proposing the development of national sentencing guidelines, which should include a requirement to avoid imprisonment for petty offenders.

2.4. Bail reform

APCOF notes with concern the provisions of section 50(6)(d) of the Criminal Procedure Act 51 of 1977, which permits the postponement of a bail application for up to seven days at a time. We are particularly concerned that existing evidence suggests the section may be routinely used to postpone bail applications, often multiple times in some cases.²² This practice could lead to the detention of individuals who are eventually granted bail, while at the same time increasing system inefficiencies and contributing to avoidable detention.²³ Such detention exacerbates overcrowding and its associated challenges.

We are further concerned that, although courts are empowered to review continued detention after a two year period,²⁴ there is no specific time limit on remand detention. In particular, the legislative requirement for judicial review and scrutiny of further remand detention only after a

¹⁹ Existing academic contributions indicate that, currently, South Africa does not have any codified sentencing principles or guidelines.

²⁰ See the approach followed in Kenya, for instance, in the report by the National Council on the Administration of Justice, "Setencing Policy Guidelines 2023", page 11, available at: <https://ncaj.go.ke/wp-content/uploads/download-manager-files/UPDATED-SENTENCING-POLICY-GUIDELINES-2023.pdf>.

²¹ Ibid, page 11.

²² ACJR, "Liberty not the only loss": The Social-economic impact of remand detention in the Western Cape", 2019, page 60.

²³ Ibid.

²⁴ See section 49G of the Correctional Services Act 111 of 1998.

period of two years of detention is an unnecessarily long period that does not comply with international standards.

In addition, existing evidence reveals that remand detention has significant socio-economic implications, not only for the state but also for families.²⁵ As such, APCOF believes that remand detention should be regarded as an expensive intervention, reserved for situations where it is proportionate, necessary, and has the most utility and impact.²⁶

Recommendation

APCOF suggests that JICS recommend legislative amendments to section 50(6)(d) to limit the postponement of bail applications for further investigations, thereby reducing unnecessary delays. We also recommend that the report calls for mandatory judicial review of remand detention, currently set at two years, to occur within a shorter timeframe.

2.5. Addressing infrastructure issues

APCOF acknowledges that infrastructure issues in South African correctional facilities not only contribute to overcrowding, but also exacerbate related challenges, including the ill-treatment of detainees. While our primary submission to JICS is that overcrowding should be prevented through a combination of crime and violence prevention, along with changes in how law enforcement officials and judicial officers handle the overuse of arrest, custody, bail and custodial sentences, we also advocate for recommendations by JICS which address infrastructure concerns at existing facilities. Our concern regarding infrastructure primarily focuses on the conditions and facilities within existing correctional institutions. We do not support increased capacity through the construction of new correctional institutions, except where these facilities replace outdated ones. This stance is based on our fundamental argument that South Africa should aim to reduce the number of people in the criminal justice system by focusing on the strategies we recommend related to crime and violence prevention, rather than increasing the overall capacity to detain individuals.

Through the recent efforts of JICS, the [National Preventive Mechanism](#), and the [Parliamentary Portfolio Committee on Correctional Services](#), several infrastructure issues in South African

²⁵ ACJR, "Liberty not the only loss": The Social-economic impact of remand detention in the Western Cape", 2019, pages 4 and 60.

²⁶ Conclusion drawn from analysis in ACJR's report, cited above, page 60.

correctional facilities have been identified, highlighting their impact on overcrowding and the treatment of detainees. These issues include the limited space and poor design of aging facilities, which were not built to accommodate the current population. The outdated infrastructure lacks the necessary space and resources to house an increasing number of detainees. The outdated infrastructure lacks the necessary space and resources to house the increasing number of detainees, contributing to overcrowding. Additionally, there are inadequate facilities to meet the needs of the current population, including access to medical care, education and rehabilitation programs, and recreational facilities. We are also concerned by reports of delayed construction and maintenance of facilities, which falls under the mandate of the Department of Public Works and Infrastructure. These delays are attributed to budget constraints, administrative delays, fragmented responsibilities, aging infrastructure, and other systemic challenges.

Recommendations to address the aging and inappropriate infrastructure available to the Department of Correctional Services have been made by its key oversight stakeholders, including recently in Parliament's September 2024 [Review of Parliamentary Oversight on the State of Infrastructure from 2019-2024: A Justice, Security and Social Equality Perspective](#). The report makes recommendations aimed generally at the Department of Correctional Services, and the Department of Public Works and Infrastructure, in addition to recommendations in respect of specific correctional centres. The recommendations acknowledge the challenge of overcrowding, and urge the Department of Correctional Services to work with the Department of Public Works and Infrastructure to inspect and address the condition of aging facilities, including urgent repairs for plumbing and electrical issues, amongst other compliance deficits with the Department of Correctional Services Act, and ensure quicker times for maintenance requests. Specific correctional centres that require urgent infrastructure upgrades as identified in that report include Kutama-Sinthumule, Tzaneen, St Albans, Mdantsane, Tswelopele, Colesburg, Kimberley, Rooigrond, Potchestroom, Barberton, Boksburg, Zonderwater, and Qalakabusha.

Recommendation

APCOF suggests that JICS include recommendations aimed at supporting the implementation of recommendations relating to infrastructure improvement at correctional facilities, including by the Parliament and the National Preventive Mechanisms, reports which have highlighted the challenges relating to infrastructure in correctional facilities, and provided strategies to address these.

2.6. Non-custodial measures for violations of the Immigration Act

In October 2024, approximately [11% of South Africa's incarcerated population](#) was comprised of sentenced and unsentenced foreign nationals. It is not clear whether this figure includes only those foreign nationals who have been sentenced or remanded for offences under criminal law, or those also awaiting deportation for violations under immigration or refugee law. In terms of the latter, in its [submission](#) on the White Paper on Citizenship, Immigration and Refugee Protection (2023), APCOF reflected on the challenges relating to the current system of immigration detention in South Africa, and endorsed research and recommendations that promote alternatives to immigration detention – whether under the mandate of South African Police Service, the Department of Correctional Services, of the Department of Home Affairs - in line with international good practice. This work drew on a report by [Lawyers for Human Rights into the Status of Immigration Detention in South Africa \(December 2023\)](#), which identified areas of urgent reform in the immigration detention system, based on the gap between legal protections and the reality experienced by migrants, to rectify systemic issues, address human rights violations, and to ensure a just and fair immigration process.

The UN's High Commissioner for Refugees has published [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#), which emphasises the need for alternatives to detention, including the implementation of measures such as community supervision arrangements, enhanced case management, release on bail or bond, and periodic reporting conditions, amongst others. These alternatives to detention for asylum seekers, or those awaiting adjudication for violations under South African immigration law, should be explored under revisions to the Department of Home Affairs' White Paper, as well as by individual justice agencies with responsibility for the care and management of migrants and refugees, in line with the country's obligations under international law.

Recommendation

JICS should consider recommending the implementing alternatives to detention of foreign nationals for violations of immigration law as part of the broader strategy to address overcrowding in correctional facilities.