



Roundtable Discussion on the White Paper on Corrections in South Africa

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Welcome and introduction

CSPRI Project Coordinator, Lukas Muntingh, welcomed all participants to the meeting. He explained that this roundtable discussion would focus on the White Paper on Corrections which was released by the Department of Correctional Services (DCS) in 2005. The discussion aimed to look at the achievements and challenges experienced in the conceptualisation and implementation of the White Paper over the past five years with a view to identifying recommendations for the DCS on how the intentions of the White Paper could be taken forward. Ms. Louise Ehlers of the Open Society Foundation (South Africa) chaired the roundtable discussion.

Presentation

Mr. Muntingh gave a presentation on the White Paper in which he outlined the White Paper's history and subsequent developments, including the recent amendments to the Correctional Services Act to reflect the nomenclature of the White Paper.

Mr. Muntingh said that the White Paper presented an ambitious 20-year vision for the prison system which placed rehabilitation at the core of its business. The White Paper has been successful in introducing several new concepts, including the concept of 'corrections as a societal responsibility' and creating a new terminology and language for the DCS and its staff. Though the White Paper does deal with appropriate

and cost effective facilities, Mr. Muntingh said that these have not been properly debated, nor has a clear plan been devised in the five years since the White Paper's adoption.

The presentation assessed what progress had been made on the implementation of the White Paper. On the positive side, Mr. Muntingh noted that there has been a change in language and thinking towards corrections and the value of this should not be underestimated. However, he noted that there have been limited results in terms of outputs and impact. Despite the rhetoric of rehabilitation, the number of inmates participating in work, education and training opportunities has decreased in recent years. Only 3% of the DCS budget is allocated to the social reintegration programme. The amendments to the Act furthermore require the DCS to prepare sentence plans for inmates sentenced to 24 months or longer, which effectively excludes nearly 60% of sentenced releases. There is also limited post-release support, and human rights have been neglected in the White Paper. There has been an extensive focus on policy and procedure development. While it may be important and necessary to develop policies to guide the work of officials, it has meant that the Department has been very inwardly focused. This is reflected in its strategic plans in terms of which most of the targets resort under the Administration programme, which deal with the management of DCS.

To determine whether the White Paper is good policy, Mr. Muntingh proposed that it should be assessed against nine criteria for good policy making. These are:

- *Forward-looking*: Policy-making should clearly define the outcomes that the policies are designed to achieve. Where appropriate, it should take a long-term view based on statistical trends and informed predictions of social, political, economic and cultural trends. This view should extend at least five years into the future.
- *Outward-looking*: The policy-making process should take account of influencing factors in the national, regional and international situation; draw on experience in other countries; and consider how policy will be communicated with the public.
- *Innovative, flexible and creative*: The policy-making process should be flexible and innovative, encouraging new and creative ideas, questioning established ways, or making the established ways work better. The process should be open to comments and suggestions by others. Risks must be identified and actively managed
- *Evidence-based*: The advice and decisions of policy-makers should be based upon the best available evidence. Stakeholders from a wide range of experience and institutions should be involved both at an early stage and throughout the policy's development. Relevant evidence, including that from specialists, must be available to policy-makers in an accessible and meaningful form
- *Inclusive*: The policy-making process must take into account the impact on and/or meet the needs of all people directly or indirectly affected by the policy; and should involve key stakeholders directly.
- *Joined up*: The process must maintain a holistic perspective, looking beyond institutional boundaries to the government's strategic objectives. It must seek to establish

the ethical, moral and legal base for policy. Consideration should be given to the appropriate management and organisational structures needed to deliver crosscutting objectives.

- *Review*: Established policy must be constantly reviewed to ensure it is really dealing with problems it was designed to solve, taking account of associated effects elsewhere.
- *Evaluation*: A systematic evaluation of the effectiveness of policy must be built into the policy-making process.
- *Learning lessons*: The process of developing policy must take into account experience of what works and what does not.¹

The presentation concluded with three key questions that were asked about the future of the White paper:

- *Are the ideals of the White Paper actually achievable?* In this context, Mr. Muntingh said that one needs to look at the possible scenario for the next five years, including the budget, staff, skills levels, law enforcement policy and implementation, crime patterns and sentencing, and how these would impact on corrections. It was suggested that a 20-year time frame for the implementation of the ambitious goals of the White Paper may in fact be too short a period to achieve these. A possible solution may be to break it down into more manageable chunks with specific time frames for each.
- *Should the White Paper be discarded in favour of meeting the minimum standards of humane detention?* Mr. Muntingh suggested that the DCS should concentrate on implementing the Correctional Services Act as the White Paper presented ambitious goals which possibly

¹ Bullock, H., Mountford, J. & Stanley, R. (2001). *Better Policy Making*. London: Centre for Management and Policy Studies.

acted as a 'distraction' from the requirements of the Act. Moreover, the Correctional Services Act and the Constitution place the emphasis on the rights of prisoners and that 'rehabilitation' is not a right enumerated in any of these.

- *Should the White Paper be reviewed and re-drafted?* After five years and with limited results in respect of rehabilitation, Mr. Muntingh suggested that it may indeed be time to go back to the drawing board and redraft a policy document that is more suited to the context of imprisonment in South Africa.

Discussions

Following the short presentation, the floor was opened for discussion.

One participant observed that the White Paper felt like a fairy tale of promises, particularly when viewed against some of the problems in correctional services revealed to the public and the Portfolio Committee on Correctional Services. Though its purpose was for internal mobilisation, it was felt that it has failed in this aim. Other participants felt that the White Paper was a 'lovely idea' but had not been properly planned. It was based on a premise that people could be rehabilitated, but the DCS had failed to conduct research internationally to discover how rehabilitation could be improved or the limitations to this idea, and this has not been incorporated into the White Paper.

Some participants questioned whether the philosophy and impact of the White Paper is likely to be affected by recent trends in the criminal justice sector taking a tougher stance on law enforcement and treatment of offenders. There are growing conceptual schisms between different government departments in this respect. In particular, a question was asked about whether apparent re-militarisation of the police would have any effect on the correctional services, which de-

militarised in 1996. A participant noted that in the shift from a militaristic paradigm to a rehabilitative one in the DCS, the focus on human rights was lost in favour of an increasing emphasis on security. The security approach that was adopted resulted in the purchasing of expensive security infrastructure, while neglecting the human dimension of security. The participant noted that security of inmates is a necessary precondition for rehabilitation, but correctional officials need to be better trained to provide dynamic and interactive security.

A participant responded that one of the reasons for the decline in the number of prisoners participating in technical workshops was due to concerns for the security of the DCS members. The DCS is unable to maintain adequate security with fewer members on duty in the technical workshops

The perceived ongoing effect of the previous military paradigm on correctional services was challenged by one participant, noting that the transition occurred more than 10-years ago and many of the current officials were never exposed to the military culture and are not influenced by it. Rather than fearing a culture of too much discipline in the correctional services, this participant felt that the Department needed some more discipline amongst its members. It was suggested that one needs to understand management of corrections in terms of a framework of rules.

It was also pointed out by a participant that the so-called 'old guard' of correctional officers understand their job requirements in terms of the legislation, regulations and B-Orders, whereas the newer corps understood their mandate in terms of the White Paper. The problem was that the White Paper does not provide detailed guidance to officials on how to execute their job functions or on what they should do on a daily basis, or in particular situations. The current status of the B-Orders was unclear to participants, with some of the understanding that they are in the process of being re-drafted and are not being currently implemented, while others understood that they were

still being applied, especially those aspects relating to security.

One participant reported that despite the rhetoric towards openness and working with the community, the experience of the media was that it is now more difficult to get access to prison and to information from the Department of Correctional Services. This is possibly fed by a fear of negative publicity, which the Department does attract due to the poor conditions and treatment experienced by many inmates. However, another participant added that it is not only the media that has experienced increasing difficulties in gaining access to prisons and prison-related information. Any application for information about policies or practices is met with resistance and a request to follow a lengthy and bureaucratic application to conduct research. While this may be necessary to protect the rights and interests of prisoners, and to streamline the Department's interaction with the community, a more open policy towards sharing information could help the Department to improve its relationship with society, and society's role with regard to corrections. The Inspecting Judge for Correctional Services reported that the Judicial Inspectorate had not experienced any 'closing down' of access to prisons and information and that the authorities had been quite open towards them.

On the issue of bureaucracy, participants noted that the years preceding the Jali Commission had been characterised by decentralisation of management and greater managerial discretion. This had the unfortunate consequence of creating an environment facilitative of corruption and nepotism, ultimately giving rise to the Jali Commission. One effect of rapid transformation experienced in DCS was that people were appointed to senior positions without the necessary skills and experience. The DCS responded to this problem by centralising decision-making. It remains the situation that decision-making power is concentrated in the top echelons of the DCS. There are many advantages in a centralised administrative

structure, but it is more difficult for civil society to interact with this system. It was postulated that under the government of President Zuma the opportunity might exist to redefine the rules of engagement between civil society and the Department.

One of these areas that need to be challenged is that of funding, as no civil society organisation currently receives funding to render programmes to inmates in prisons. It was also noted that prisoners and ex-prisoners are important stakeholders in the debate, but that they have been marginalised and need to be brought into the discussion.

A participant referred to the Transformation Forum for Correctional Services which existed for a period of about twelve months in 1995/6. This body was comprised of representatives from civil society, prisoners, the correctional services, Parliament and other role players. Even though the Forum only existed for a brief period, it represented an important opportunity for a number of voices to contribute to a discussion on the transformation of correctional services. The need for such a forum for robust debate still exists.

Participants noted the disjuncture between the statement in the White Paper that all prisoners are entitled to rehabilitation and the reality that the focus on rehabilitation is increasingly only in relation to those prisoners serving sentences of longer than 24 months. The vast majority of people moving through the system on a regular basis are those who are serving short term sentences. These are the people who are re-entering society without the benefit of having had a sentence plan, and often not having participated in any programmes. This group constitute nearly 60% of sentenced releases. There needs to be a shift in emphasis to address the needs of these prisoners. This problem also relates to the situation where long term maximum security prisoners in the private prisons experience the full range of development, treatment and skills programmes, yet are unlikely to be released into society soon. Although

the private prisons were envisaged to serve as laboratories of good practice and to set a learning example for the DCS, there appears to have been little exchange between these prisons and the DCS, and very little implementation of any lessons from the private sector.

The greatest challenge, according to one participant, lies in sentencing reform to reduce the number of offenders sentenced to short prison terms and who are effectively excluded from services. The rapid escalation in the number of prisoners serving life sentences also needs to be addressed, as they now exceed 9200 in total.

Way forward

Participants gave some thought to what are the advantages of the White Paper, and how it could continue to be of benefit. One participant expressed the view that fairy tales are important as they set goals that one must try and aspire to. However, one needs to introduce a reality check to understand where Correctional Services and society are with its implementation, and then set a more realistic set of goals and targets.

It was felt by participants that a strategic document or business plan for the White Paper needs to be developed, and that civil society should play an important role in this process. Such a document would take into account the realities of prison overcrowding and a projection of future incarceration numbers and the proposed prison building programme. The document would need to take into account problems with management of staff. In the view of one participant, there are not enough properly trained managers, and not enough of an understanding of human resources. Of critical importance would be the alignment of the budget to the White Paper; something that has not been achieved since 2005 when the White Paper was adopted.

It would furthermore be important to communicate to the DCS what civil society believes to be the key priorities over the next five years. In this regard a 10-point plan was proposed as a means to identify and articulate these priorities. In this regard the emphasis should be placed on the outcomes of the correctional system and not on the internal objectives of the Department.

In developing a plan for civil society to engage the DCS on the White Paper, it was felt that it was important to ensure buy-in from the Department so that recommendations are taken seriously, or even adopted, by the Department. The group discussed the advantages of working in partnership with the Minister or Deputy Minister of Correctional Services, the Portfolio Committee of Correctional Services, and the Judicial Inspectorate for Correctional Services. It was also suggested that civil society could also work through the National Council on Correctional Services. A new Council is currently in the process of appointment.

It was felt that this idea should be raised with the DCS, though the plan should not be dependent on them for its implementation. It would be important to maintain a good relationship with the Department through this process and not to alienate them through excessive criticism.

Suggestions were made to establish an *ad hoc* 'civil society think tank' to re-look at the White Paper and to make concrete, time bound and realistic recommendations on its implementation. There was some discussion on the scope of the project. There was agreement that the project needs to be focused and should prioritise key issues. It was felt that there were already a vast number of policies in correctional services, so the 'project' should not focus on developing new policies but rather on practical implementation of policies and the Correctional Services Act.

Another participant suggested that although there are numerous policies, these don't necessarily all logically relate to each other, and there is seldom communication between the implementers of different forms of policy. Recommendations for the way forward would need to take this into account.

It was proposed that the Department should, over the next five years, focus on ensuring minimum standards of humane detention. The focus should be on reducing the White Paper to its core elements so that correctional officials can understand what they are meant to do on a daily basis. There was some debate on this with participants arguing that rehabilitation, though not a human right is an essential component of corrections, and that it would be difficult to maintain basic standards without engaging prisoners actively in developmental programmes. Prisoners engaged in such programmes are easier to manage and thus contribute to better functioning prisons. In addition, since these prisoners do return to society on release, every effort must be made while they are in prison to change their behaviour. However, the difficulty of attempting to rehabilitate prisoners in overcrowded prisons was noted.

A participant suggested that information is needed on the extent and status of policy implementation. This will enable the think tank to be able to cut through the rhetoric to reality. It should be able to put itself in the position of the National Commissioner of Correctional Services and focus on matters that require urgent attention. On the other hand, it was felt that the think tank should not be tempted to take on the role of running the Department, but should rather come up with suggested solutions. These solutions should be practical, time bound and understandable. One suggestion was to work on potential solutions in the 36 Centres of Excellence.

It was suggested that the think tank should attend to three focus areas:

- At the operational level at correctional centres;
- On what the leadership of the DCS must do to demonstrate implementation; and
- On what oversight structures should do.

Due to time constraints it was not possible to fully explore the issues raised but it was agreed that the roundtable was an important exercise and that civil society should continue the discussion on the proposal to develop a focused set of recommendations (a possible ten-point plan) for the implementation of the White Paper.

Closure

In closing, Lukas Muntingh thanked all the participants for attending the roundtable discussion. He said that these discussions should have been held years ago, but that now, five years into the White Paper, it was important to re-look at its objectives and implementation. He noted that civil society has something important and useful to say on the White Paper, and this must be taken forward.

Participants

Mr Lukas Muntingh – Civil Society Prison Reform Initiative

Mr. Gideon Morris – Judicial Inspectorate for Correctional Services

Judge Deon van Zyl – Inspecting Judge

Ms Sasha Gear – Centre for the Study of Violence and Reconciliation

Ms Louise Ehlers – Open Society Foundation South Africa

Ms Carien du Plessis – Independent Newspapers

Dr Jamil Mujuzi – Open Society Foundation South Africa

Ms Amanda Dissel – Independent Consultant

Prof Fatima Abrahams – University of the Western Cape

Dr Chandré Gould – Institute for Security Studies

Mr. F. Ateleke – Open Democracy Advice Centre
Mr. G. Jansen Van Vuuren – Nicro
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The aim of CSPRI is to improve the human rights of prisoners through research-based advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity building. For more information and access to CSPRI publications please see:

<http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative/>