



Africa Criminal Justice Reform  
Organisation pour la Réforme de la Justice Pénale en Afrique  
Organização para a Reforma da Justiça Criminal em África



# **Submission 1 of 2 on the Draft SAPS Amendment Bill**

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## Contents

1.	INTRODUCTION .....	2
2.	COORDINATION ACROSS THE CRIMINAL JUSTICE SYSTEM VALUE CHAIN .....	3
3.	THE PRIORITIES FOR REFORM.....	4
4.	CONCLUSION .....	5

# 1. Introduction

1. The past 25 years have shown that despite numerous efforts and initiatives, a coordinated, effective and efficient criminal justice system enjoying public trust, and thus legitimacy, has been an elusive goal. Even where encouraging results were achieved (e.g. in police) it was not always clear why, or effective structures were soon dismantled after achieving success.
2. When assessing the draft bill, it is important to ask what can be fixed by amending the legislation (because the problem is a legal one) and what needs to be fixed through managerial and operational improvements? Principal legislation, such as the SAPS Act, should provide clear direction and standard setting in law, and should be cautious not to become standard operating procedures. The memorandum to the Bill does not identify the problems in the SAPS which the Bill is seeking to address, and nor does it motivate why legislation is the best method of addressing these problems.
3. The draft bill proposes a wide range of amendments, with some being of a technical and mundane nature and others of a strategic and substantive nature. It may firstly be useful to separate the technical amendments from the substantive ones, with the intention to focus on the latter. The Bill should separate out the technical amendments arising from court cases and from references to the Interim Constitution, from the substantive and strategy-informed amendments. It should be clearly indicated which amendments are in relation to case law. Such technical amendments should proceed separately from other substantive amendments. The Bill further makes amendments to legislation other than the SAPS Act. Such amendments should also be separated out.
4. Following from this, it is difficult to assess the amendments in the absence of a larger strategic context and vision. If SAPS (and the indeed the broader criminal justice system) had a clear and credible strategic vision based on evidence of what works, the proposed amendments could be assessed against this. This is, however, not the case with SAPS (and consequently the proposed amendments) and the same applies to the other major actors in the criminal justice system, being the Department of Justice (DoJ), National Prosecuting Authority (NPA) and Department of Correctional Services (DCS).
5. Preferably, an entirely new SAPS Act should be drafted, replacing the existing act that has already been amended nine times. Moreover, it should be properly consulted on and coordinated with the other criminal justice departments. The ongoing amendments makes even government departments beholden to paid legislation services in order to have a complete, up-to-date version of the Act at hand. The current references to the Interim

Constitution, with provisions still in place via transitional provisions, and the 1996 Constitution, and changes to these effected by the Bill, are profound, yet this is obfuscated by the way the legislation is drafted. Few, if any, will understand the full import of the amendments. Many provisions impose obligations on provincial and local governments. There is no indication that this has been discussed in the Budget Council, or costed, or that the Financial and Fiscal Commission (FFC) has been approached in this regard.

6. Against this background, the submission deals with two issues:
  - Coordination across the criminal justice system
  - Priorities for reform in SAPS

## 2. Coordination across the criminal justice system value chain

7. In the below a motivation is submitted that the need is for comprehensive and coordinated reform across the criminal justice system. Tinkering with the SAPS Act will not solve the core challenges facing the police, and ultimately the pervasive crime and safety challenges we face. Crime and safety challenges span the portfolios of several government departments and these should not be seen independent from each other, but rather linked-up. The existing policy frameworks do not address this inter-linked nature. One suggestion for a way forward is a white paper on criminal justice, good governance and public safety covering the entire value chain from prevention and early intervention through to the reintegration of offenders.
8. As it stands now, the main players in the criminal justice system place the emphasis of their performance measurement in different, if not divergent, activities. While SAPS emphasise arrests, the NPA focuses on the conviction rate and DCS on the number of escapes. Fundamentally the departments are assessed for their performance independent of the other, or of cross-cutting variables. Moreover, some indicators are afforded a disproportionate weight despite their lack of validity and reliability, such as the number of reported crimes. It is therefore not surprising that there is a massive attrition of cases from arrest through to sentencing and particularly imprisonment.
9. It is submitted that higher-level cross-cutting indicators should guide policy development (e.g. in the form of a white paper as one option), and emphasise perceptions of safety and levels of trust in the criminal justice system as central performance measures. The key departments all have a role to play in this and they should thus be collectively measured on this.

### 3. The priorities for reform

10. In our analysis of democratic policing, five input variables were identified as areas of control under the police. In short, this is what the police can change in order to ultimately influence trust in the police and the legitimacy of the police. To achieve this there needs to be coherence and purpose. It is thus submitted that legislation to address core problems in the police should be assessed against the extent to which it prioritises reform on the following input variables:

- *Knowledge*: Police officers are equipped with and have the skills necessary for their particular function (e.g. murder detective, sector head). Police practice is based on knowledge of what works. Organisational learning and capacity development are thus central to this dimension. Police managers engage with international, organisational, and local knowledge and data to target, test and track police practice, identify successes and challenges and use lessons to improve policing.
- *Ethics and accountability*: The police behave in an ethical manner in adherence to the applicable laws and their code of conduct. Transgressors are held accountable. Internal accountability mechanisms (e.g. disciplinary processes) are effective and complemented by strong external checks and balances. All hold individual officials accountable for disciplinary misconduct and criminal activity (including corruption), with the ultimate aim to modify unlawful behaviour and institutional practices that fuel such behaviour. Ethical and accountable police bring trust and legitimacy from the policed. The different spheres of government collaborate in the spirit of cooperative governance.
- *Rights-based*: Policing takes place within the limits of the law, adheres to human rights and related protections, and promotes the values of transparency, fairness, equality and justice. The rights of all citizens, including suspects, are enshrined in the Constitution.
- *Effective and efficient*: Police do all that they can to produce and maintain order, safety, and trust, so that the public attribute their ability to live without fear to the quality of police services they receive. Police effectiveness is about what and how much police have accomplished in the eyes of the public. Efficiency refers to the cost-effective and timeous utilisation of resources.
- *Police as citizens*: The rights of police officers are protected under the Constitution and in practice. They are treated fairly and in compliance with the human rights applicable to all in their daily operations, in hiring and promotion practices, in accountability structures, and in their interactions with the general population.

## 4. Conclusion

11. The Bill covers so many different substantive areas that it is doubtful if it can properly be consulted upon in its current form. Despite the point that comprehensive reform is required, it is recommended (if a process of amendment is pursued) that each substantive area of concern be addressed separately and consulted on with focussed consultation.
12. Further, some clear problems are just not appropriately addressed by the Bill at all. For example, training and promotions have long been a problem in SAPS, but the Bill continues to leave this entirely up to the National Commissioner.
13. It is our submission that the Bill in its current form is unworkable and will require many months in Committee to be properly considered by Parliament. If such time is not spent, a potentially harmful law is likely to emerge.

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