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## correctional services

Department:  
Correctional Services  
REPUBLIC OF SOUTH AFRICA

# **Draft White Paper on Remand Detention Management in South Africa**

**Submitted to the Portfolio Committee of the  
Department of Correctional Services: Towards  
preparation for approval by the relevant Executive  
Heads of the JCPS cluster**

**13 November 2013**

## INTRODUCTION

- The Cabinet decision of 2006 assigned the Department of Correctional Services (DCS) through the Justice Crime Prevention and Security Cluster (JCPS) to lead the project of re-engineering the Management of Awaiting Trial Detainees in South Africa.
- The DCS undertook the following:

- A situational analysis was conducted to understand the challenges faced by the JCPS cluster in the management of Remand Detainees (RDs), previously Awaiting Trial Detainees, and to determine the international trends;

- A discussion document was developed (based on the situational analysis) and led to the development of the White Paper;

- The Correctional Services Act was amended through the Correctional Matters Amendment Act (Act 5 of 2011);

- The DCS regulations were amended to align with the Correctional Matters Amendment Act; and

- The Branch of Remand Detention was established.



## INTRODUCTION

- The need for a White Paper on Remand Detention is clear:
  - Addressing the policy gap identified in Chapter 5 of the White Paper on Corrections as it focuses primarily on sentenced offenders
  - The challenges of remand detention are different to those of housing sentenced offenders and require a different response
  - No broad policy framework existed that could provide a vision and a path to better management of remand detainees in order to comply with the Constitution and other legislation.
- Several consultations took place before the White Paper was placed formally for Cluster and Cabinet consultations:
  - SAPS and DSD (workshop facilitated by DCS)
  - JCPS Cluster Structures (Management of Awaiting Trial Detainee Task Team, Criminal Justice System Review Committee)
  - National Integrated Case-flow (headed by judicial officers)

# INTRODUCTION

- External stakeholders at the 2 day colloquium held by DCS on 19 and 20 Nov 2012: The White Paper was consulted on the second day with the following stakeholders:

✓ National Council of Correctional Services

✓ Office of the Inspecting Judge

✓ The Judiciary

✓ Chairpersons of Parole Boards

✓ Medical Parole Advisory Board

✓ Non Governmental organisations

✓ Organisations representing inmates, ex-inmates

✓ Academic institutions; and

✓ Representative from the Portfolio Committee of DCS (researcher)

- The White Paper was presented for further comment 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.
- All inputs received at all stages of consultation were considered and the document was amended accordingly.



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# **Outline and summary of the draft White Paper**

## **on**

# **Remand Detention**

- **Chapter 1: Introduction:**
  - Includes motivation and background
  - Sets out a summary of challenges, such as definition, services and programmes, facilities, systems and tools, and overcrowding. These detailed further later in the document.

- **Chapter 2: The existing policy: legal and operational framework**
  - International and domestic legal framework

- **Chapter 3: Definition of Terms**

- Awaiting trial detainee versus remand detainee (detention of suspects during trial or before sentencing)
- Different categories to be endorsed on J7: mental observation, extradition, convicted awaiting sentence
- Inmate, RDFs and RD officials (training)
- SCFs, State patients and Involuntary Mental Health Care users
- Further charges (boundaries for RDs and Sentenced)

- RDs with more than one charge: once they are sentenced for any of the charges, they cease to be classified as RDs, and they become sentenced with further charges (transportation for *Just appearance will then fall under DCS and not SAPS*)



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### ▪ Chapter 4: Governance

- Role players from arrest to detention: SAPS, NPA, Courts, DSD, DCS, and Legal Aid South Africa
  - Critical Issues for SAPS and DCS (Early arrival in court, guarding of RDs, management of sick RDs at several points of the CJS, RDs not collected for court appearance, detention of RDs in SAPS for more than 7 days, mental health cases)
- Cluster management
- The role of NGOs

### ▪ Chapter 5: Rights and privileges of remand detainees

- Rights:
  - Presumption of innocence
  - Detention under conditions of human dignity
  - Separation according to categories
  - Medical treatment
  - Legal information

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### Chapter 5: Rights and privileges of remand detainees (cont)

- Obligations:

- Obey lawful instructions of officials
- Undergo health examination
- Subject to disciplinary processes
- Uniform
- Searches and identification

### Chapter 6: Services and Programmes

- Already provided for in the existing legal and policy framework (Constitution, Correctional Services Act, Child Justice Act, Blueprint for SCFs)
- Principles for consideration
  - Fluid population, length of stay not known and not easily predictable
  - Not found guilty (presumption of innocence)
  - Programmes/interventions are not focused on any offending behaviour but rather on skills
  - Court preparation to take precedence
  - Compulsory attendance should be communicated





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- **Chapter 6: Services and Programmes (cont)**
  - International laws and treaties:
    - continuity in education and training
    - social welfare
    - health care
    - communication and correspondence with family and friends
    - recreational and reading resources; and
    - access to legal representation.

▪ **Chapter 7: Orderly, Safe and Secure Remand Detention**

• Principles:

- Maintenance of public safety and creation and maintenance of safe environment
- Security measures (escapes and harm) and safety measures (maintenance of good order to prevent disruptive behaviour and protection of the vulnerable)
- Significant risk (more than 80% without bail)
- Security measures should be strict, fair, equitable and transparent
- Security Measures should be multi-dimensional (personnel, physical, information, technology, operations, management supervision)
- Dynamic security: (development of positive relationship with RDs, constructive work and activity, provision of programmes, good ratio of personnel to inmates)
- Privilege system
- Court appearances (outbreak that requires quarantine)

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### ▪ **Chapter 8: The use of Integrated Systems**

- Current challenges
  - Use of multiple identities (creation of aliases)
  - Slow process of verification of identities
  - Lack of access to systems of other departments
  - Inadequate system of identification of the clients of the CJS
  - Limited information provided to detention institutions (DSD and DCS: Warrant of detention)
  - Regular and repeated administrative processes for admission and releases of RDs (court appearances)
  - Lack of communication of security risk or threat
  - Exchanging of identities by RDs
  - Failure of RDs to present themselves for court appearances
    - ✓ Large centres
    - ✓ Multiple cases

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### ■ Chapter 8: The use of Integrated Systems

- Strategies for addressing challenges
  - Establishment of an integrated and seamless national CJS IT database system
  - Use of a unique identification system (SAPS)
  - Verification of identity immediately after arrest (SAPS and DHA)
  - Use of multiple biometrics (photo, fingerprints and ID)
  - Creation of a single database for RDs within the detention institution
  - Integration of systems within the detention institutions in preparation for sharing of information within the CJS
  - Use of video-remand courts
  - Security classification of RDs and communication of the results to the detention institution (rating system)
  - Operational improvements
    - ✓ Warrant of detention (J7)
    - ✓ Continued interaction and evaluation of systems for improvement



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### ■ Chapter 9: Overcrowding

- Key drivers of overcrowding of RD population: Use of pre-trial detention by courts and the increasing trend in serious crimes (linked to detention without an option of bail)
- Other drivers: The number of admissions and the length of stay
- Factors found to be linked with length of stay (based on the analysis of RDs detained for more than 7 years in DCS facilities)
  - ✓ Multiple co-accused in one case or accused linked to other crimes that are under investigation
  - ✓ Withdrawal of legal representation
  - ✓ Delays in securing a date at the high court
  - ✓ Loss of court records
  - ✓ Changing of legal representatives by the accused
  - ✓ Failure of witnesses to appear in court
  - ✓ Multiple witnesses
  - ✓ Request for remand either by defence, lawyers of the accused and/or the state

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## Chapter 9: Overcrowding (cont)

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- Other factors linked to failure to reduce the population of RDs
  - Increased number of RDs detained without an option of bail
  - Failure to pay bail by the few RDs detained with an option of bail
  - Delays in finalizing court cases despite several court appearances
  - Strategies for management of overcrowding
    - CJS strategies are contained in the policy document titled "Awaiting Trial Detainee Guidelines" which was developed by NPA in consultation with cluster departments
    - ✓ Measures prior to first court appearance (Criminal Procedure Act provisions:
      - police bail, notice with certain conditions, release with warning, holding a person in a place of safety)
      - ✓ Methods at first court appearance (awarding bail with or without conditions, diversion and restorative justice)
      - ✓ Methods of fast-tracking certain RD cases (use of plea bargain, fast-tracking of cases for DNA analysis, mental observation, probation services including assessments and provision of court reports, fast tracking of investigations and Management of children in conflict with law: court appearances every 14 days trial)



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- **Chapter 9: Overcrowding (cont)**
  - Strategies for management of overcrowding (cont)
    - DCS strategies: 8 pronged strategy
    - To add 49G: referral of RDs to court based on the length of detention
  
- **Chapter 10: Oversight and Control**
  - Executive oversight: Section 92(2) of the Constitution
    - Accountability to the Parliament by members of the Cabinet collectively and individually for the exercise of their powers and the performance of their functions
  - Judicial oversight
    - Access to facilities that detain RDs by the Judiciary
    - Interview any RD and request a documentary record
    - Report issues of concern to the relevant Executive Head
  - Judicial Inspectorate: Applicable to DCS (Inspecting Judge)

■ Chapter 10: Oversight and Control (Continue)

• Administrative heads

- Establishments of internal auditing units

• Heads of detention centres

• Secure Care Facilities (SCFs)

- Section 211 of the Children's Act (Act 41,2007):

✓ The Provincial Head should ensure that quality assurance is done

✓ Within 2 years of registration of the centre

✓ Thereafter, every 3 years

- Section 304 of the Children's Act (Act 41, 2007)

✓ Inspection of Child and Youth Care Centres is authorized by the DG of DSD, a provincial head of the DSD or a municipality for verification of registration

• Public Service Commission

• South African Human Rights Commission

• The Independent Police Investigative Directorate (for SAPS)

• Auditor General of South Africa





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### ■ Chapter 10: Oversight and Control

- Duties and Functions of the Heads of Detention Facilities
  - Provision of facilities to enable the officials representing the oversight bodies to carry out their functions effectively and efficiently;
  - Officials are well versed with the roles of the oversight bodies;
  - Officials from oversight bodies are provided with all the necessary documents;
  - Issues that require clarity are attended to and feedback is provided within the stipulated time frames where possible; and
  - Procedures for the handling of disputes in relation to each oversight body are developed and communicated to all officials.

# FORMAL CONSULTATION PROCESS

Approval by the Executive Head of DCS for further consultation	15 April 2013	which will culminate into the approval
National Development Committee of the JCPS cluster	18 April 2013	
Directors-General of the JCPS cluster	6 June 2013	
Cabinet Committee	29 August 2013	
Cabinet	4 September 2013	
Portfolio Committee	13 November 2013	

## Implementation Plan

Chapter	Action Required / Status	Responsibility	Time frame	Challenge/ Comment
Chapter 2: Existing Policy: Legal and operational Framework	Alignment of operational policies, training of officials and monitoring and evaluation of the implementation process	DCS, SAPS & DSD (core)	2014/15 to 2015/16	Not foreseeable
Chapter 3: Definition of Terms	Alignment of operational policies, training of officials and monitoring and evaluation of the implementation process	DCS, SAPS & DSD where necessary	2014/15	Not foreseeable
Chapter 4: Governance	Alignment of operational policies, training of officials and monitoring and evaluation of the implementation process	DCS, SAPS & DSD (core)	2014/15 to 2015/16	Not foreseeable
	Development of Protocols to address cross cutting issues where necessary Most protocols have been developed (included in the CJSR presentation)	JCPS Cluster structures	Unlimited (as the need arises)	
	Development of training manuals/material and training of officials	DCS, SAPS & DSD (core)	2014/15 to 2016/17 and as the need arises	
Chapter 5: Right and privileges	Development of an operational document for training of officials and inclusion in the curriculum for training of officials	DCS, SAPS	2014/15 to 2015/16	

# Implementation Plan

Chapter	Action Required / Status	Responsibility	Time frame	Challenge/ Comment
Chapter 6: Services and Programmes	Alignment of operational policies, training of officials and monitoring and evaluation of the implementation process  Provide capacity for rendering of services and programmes  Develop and implement a capacity strategy in Remand Detention Facilities taking into consideration the position of the government (no increase in personnel capacity for the next 3 years)  Current operational policies on development and care programmes cater for sentenced offenders	DCS, SAPS & DSD (core)  DCS  DCS, SAPS & DSD (core)	2014/15 to 2018/19  2014/15 to 2018/19  2014/15 to 2018/19	Not foreseeable     There will be a delay in providing development programmes to RDs if the capacity constraint in terms of Human Resources is not catered for at the centre level in DCS
Chapter 7: Orderly safe and secure remand detention	Alignment of operational policies, training of officials and monitoring and evaluation of the implementation process	DCS, SAPS & DSD (core)	2014/15 to 2015/16/17	Not foreseeable



## Implementation Plan

Chapter	Action Required / Status	Responsibility	Time frame	Challenge/ Comment
Chapter 8: Use of integrated systems:  <i>The Integrated Justice System (IJS) Programme was established as a vehicle to electronically enable and integrate the end-to-end criminal justice business processes and related inter-departmental information exchanges</i>  <i>The IJS Board coordinates the IJS Programme and reports directly to the JCPS DGs</i>	The establishment of a single person identifier across the Criminal Justice System (CJS)	Integrated Justice System (IJS) Board		Not foreseeable
	Development of a Person Identification Verification Application (PIVA), including integration of or access to SAPS AFIS, DHA HANIS and NATIS databases.	IJS Board		Not foreseeable
	Video Remand Courts: Already operational in some centres and Courts	DCS and DoJCD	Not applicable	Not applicable
	Electronic Monitoring: consideration for extending to RDs is under discussion	DCS	2014/15 to 2018/19	Dependent on the buy-in from the judiciary
	J7: warrant of detention Amended to improve the nature of data created and circulated by DCS within the cluster	DoJCD	Not applicable	Incorrect completion (has been addressed through the development of guidelines)

# Implementation Plan

Chapter	Action Required / Status	Responsibility	Time frame	Challenge/ Comment
Chapter 9: Overcrowding	Alignment of operational policies Implementation of cluster and DCS strategies for management of overcrowding Already in the process of implementation coupled with monitoring and evaluation	DoJCD, NPA, SAPS, DCS	Not applicable	Drivers of the population of RDS are beyond the control of the detention facilities
Chapter 10: Oversight and control	Alignment of operational policies, training of officials and monitoring and evaluation of the implementation process Promote judicial visit to detention facilities which will be accompanied by a submission of a report.	DCS, SAPS & DSD (core) DCS and DoJCD	2014/2015 to 2018/19 2014/15 to 2018/2019	Not foreseeable



## Costing of the White Paper

- A substantial number of proposals in this White Paper are not new and each CJS department has been carrying out these responsibilities under their own budgetary allocations received from the National Treasury annually.
- Improvements in service delivery that require additional funding will be included in the Medium Term Expenditure Framework submissions which are done annually.
- The information technology areas of development which require synergizing of technological processes are already catered for under the Integrated Justice System budget.
- Within the DCS, appropriate allocation to the sub-programme remand detention through the process of disaggregation of funding from other budget programmes will be done and additional funding where necessary will be sought from the National Treasury through the submission of a Bid.

## **What is required from the Portfolio Committee**

- Consideration of the document and further consultations if deemed necessary by the committee
- Escalation of the document to the Ministers of the JCPs for approval.