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SUBMISSION BY THE INSTITUTE FOR SECURITY STUDIES TO THE PORTFOLIO COMMITTEE ON CORRECTIONAL SERVICES ON THECORRECTIONAL MATTERS AMENDMENT BILL (B41-2010)

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1. Introduction

The Crime and Justice Programme of the ISS would like to thank the Portfolio Committee on Correctional Services for the opportunity to provide input on the Correctional Matters Amendment Bill (B41- 10) (hereafter referred to as 'the Bill').

The Institute for Security Studies (ISS) is an African non-governmental policy research institute. Our work is aimed at contributing to a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy and collaborative security. The Crime and Justice Programme of the ISS works to inform and influence policy and public discourse on crime, its prevention and criminal justice by conducting research, analysing policy, disseminating information and providing expertise as a contribution towards a safer and secure society. More information about the ISS can be found on our website: www.issafrica.org.

We would like to bring to the attention of the Committee that the ISS has made two submissions at this time: The one submission, is made by Noel Scott on behalf of the Arms Management Programme and the Omega Foundation. This second submission, by Chandre Gould and Tizina Ramagaga presents the views of the Crime and Justice Programme and is directed at specific aspects of the Bill. The fact that the submissions deal with substantively different issues is reflective of the different focus areas of programmes within the ISS.

In this submission we address the following matters:

- The financial implications of the proposed new branch of the Department of Correctional Services (DCS) for remand detainees
- Proposed changes to clauses pertaining to the DCS's responsibilities in relation to the welfare and rights of particular categories of remand detainees
- Means of accessing information about inmates
- The period and conditions of detention of remand detainees in police cells
- Proposed changes to the restrictions on medical parole for inmates whose illness or disability is self-induced

2. Financial implications of the Remand Detention branch of the DCS

We would like to draw the attention of the Committee to the fact that the Bill makes legal provision for the physical, and other, separation of remand detainees from sentenced inmates. Although this is clearly set out in the proposed legislation, it is not yet clear how the DCS intends to operationalise the separation. The Department does acknowledge that the "establishment of a new branch on Management of Remand Detainees… will have financial implications", and attention is drawn in particular to the financial implications of providing specific identifying clothing for remand detainees, and improving access to facilities for disabled remand detainees. However, the Bill also, at least theoretically, makes provision for the physical separation of remand detainees from sentenced inmates, through the definition of remand detention facilities (paragraph 29 of the Bill). This is reinforced by the definition of 'remand detention official' who is defined in paragraph 7 of the Bill as "an employee of the Department appointed under section 3(4) at a remand detention facility or transferred to a remand detention facility."

Over the past two years (2009 and 2010) the Crime and Justice Programme has made submissions to the Portfolio Committee on Correctional Services about the budget of the Department[1] In both these submissions we have drawn the attention of the Committee to the misalignment of the budget with the White Paper on Correctional Services, in particular we have drawn attention the fact that Departmental expenditure has been strongly skewed towards Administration, Facilities and Security to the detriment of Care, Rehabilitation and Reintegration.

We would like to urge the Committee to request the Department to provide a full costing of the Bill and a clear long term vision for the operationalisation of the new approach to remand detainees. The purpose is to satisfy any concern that the new approach to remand detention may further increase expenditure on staff salaries and facilities, to the possible detriment of rehabilitation and reintegration services. In particular, clarity should be provided as to whether it is the intention of the Department to establish new facilities or infrastructure to house remand detainees.

We will now deal with proposals relating to specific sections of the Amendment Bill.

3. Correctional Matters Amendment Bill

3.1 Amendment of Section 17 of Act 111 of 1998 (page 3, line 44 of the Bill)

It is noted that in Clause 5 of the Bill the following amendment is made:

"Section 17 of principle Act is hereby amended by the substitution for subsection (4) of the following subsection: [*persons awaiting trial or sentence*] Remand detainees or unsentenced offenders….

As the definition of a remand detainee includes 'persons who are not serving a prior sentence', it is proposed that the words 'unsentenced offenders' be deleted since they are redundant.

3.2 Substitution of Chapter V of Act 111 of 1998

Page 5, line 45 of Correctional Matters Amendment Bill 41-10 refers.

Subsection 46(3) of the Bill stipulates that sections 6 to 24 of the Correctional Services Act apply to remand detainees. These sections pertain to *admission, accommodation, nutrition, hygiene, clothing and bedding, exercise, health care, contact with community, religion, belief and opinion, death in prison, development and support services, access to legal advice, reading material,*

[1] Submission by the Institute for Security Studies to the Parliamentary Portfolio Committee on Correctional Services, Budget Vote18, 2009/2010, Vote 18, 11 June 2009; Submission by the Institute For Security Studies to the Parliamentary Portfolio Committee on Correctional Services on the Correctional Service Budget Vote 20 2010/2011, 10 March 2010.

children, mothers of young children, complaints and requests and general disciplinary infringements of procedures and penalties. The Bill qualifies the requirements for the Department to realise the provisions through the addition of the words '*as may be required by the context*.'

Since the provision of the services relate to the realisation of fundamental rights, if changes as a consequence of context are to be applied, the changes must be specified and constrained to ensure that the context, as interpreted by the DCS does not affect the Constitutional rights of remand detainees.

It is our submission that the words "with such changes as may be required by the context" be deleted from the Bill.

3.3 Safe keeping of information and records

Page 6, Section 49(1), (line 1) of the Bill refers.

This section of the Bill relates to the provision of information relating to the incarceration of a remand detainee. The amendment to the Act requires that any person who wishes to obtain information about a remand detainee needs to use the Promotion of Access to Information Act of 2000 (Act No. 2 of 2000) in order to do so.

While the Promotion of Access to Information Act provides a means by which information held by the state can be accessed by citizens, it is our submission that the Bill should not require those seeking information about remand detainees to utilise the Act. It is our submission that this is an unnecessary and impractical way with which to deal with any requirement for information. Consequently, it may have the practical effect of making it difficult, time consuming and expensive for information to be accessed.

We are informed by work conducted by the Open Democracy Advice Centre (ODAC) and as reported in the *South African Crime Quarterly*[2]. ODAC reported that 'the rate of mute refusal (ignored requests) in South Africa has been around 52 to 60 percent over the five year period between 2003 and 2008."[3] In other words a significant proportion of requests for information through the Promotion of Access to Information Act are not responded to. In addition, it is unfortunately the case that the Department of Correctional Services has a poor track record in providing information in response to PAIA requests. Dimba quotes the judgement in the case of the *Treatment Action Campaign vs the Minister of Correctional Services and the Judicial Inspectorate of Prisons* (18379/2008 of 30 January 2008) in which the Judge stated that 'the papers in this case

[2] Mukelani Dimba, "The power of information: Implementing the right to information laws", *South African Crime Quarterly,* No 30, Pretoria: Institute for Security Studies, December 2009, 21-26.

[3] Ibid., 22.

demonstrate a complete disregard by the Minister and his department of the provisions of the Constitution and PAIA which require that records be made available."[4]

We ask the Committee to consider the example of a parent wishing to obtain information about a son or daughter that may be in remand detention. Ideally information about the fact of the detention, and location of the son or daughter should be made available as quickly and easily as possible, and with the least cost incurred by the state and the individual seeking the information. Should the parent be required to use the PAIA to access this information the process may be lengthy, time-consuming and costly, indeed it may be more costly than many parents can afford, particularly if lodging the application requires the parent to travel long distances from rural to urban areas.

We accept that the permission for the information to be released should first be obtained in writing from the individual in question, however we believe that the provisions of s13(6)(d) of the Act, which provides for the National Commissioner of Correctional Services to swiftly provide information about an inmate to spouses, partners or next of kin should also pertain to remand detainees.

We thus submit that in our view reference to PAIA should be deleted from the Bill.

3.4 Pregnant Women

Clause 9 of the Bill, page 6, line 9 refers. This clause refers to the conditions of detention of pregnant women.

Section 49 A(5), is amended *inter alia* through the qualification of the provisions by the addition of the words: "with such changes as may be required by the context'. As per our submission in relation to s46(3), we believe that this clause provides an unacceptable opportunity for the rights of pregnant remand detainees to be circumscribed. We thus recommend deletion of those words from the Bill.

3.4 Disabled remand detainees

Clause 9, page 6, Section 49 B (2), line 27 of the Bill refers.

The Bill states that "the Department *may* provide, within its available resources, additional health care services based on the principles of primary health care'.

Our concern with the wording of this clause is the same as mentioned above in relation to pregnant women – the wording allows for services not to be provided by the DCS to disabled remand detainees. It is our view that the clause should be reworded in the following way:

"(2) The Department will provide additional health care services …."

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[4] Ibid., 23.

3.5 Mentally ill remand detainees

Clause 9, page 6, Section 49 D (2), line 45 of the Bill refers.

It is our submission that, for the same reasons as mentioned above, this clause should read:

"The Department will provide adequate health care services for the prescribed care and treatment of the mentally ill detainee."

3.6 Release under supervision of the South African Police Service

Clause 49F, page 7, line 34 refers.

The amendment provides for the surrender of a remand detainee to the SAPS, and to the custody of the remand detainee in police cells. With regard to this amendment we would like to draw the attention of the committee to the submission by the Civil Society Prison Reform Initiative, and for the Committee to note that we share the concerns and views expressed by the CSPRI in this regard.

3.7 Requirement for the Parole Board to inform complainants or relatives to make representations at parole hearings

Clause 13, page 11, line 1 of the Bill refers.

Amendment of Section 75 of Act 111 of 1998, s75B(4) removes responsibility from the Commission to inform a Parole Board about a complainant or relative who is entitled to make representations to the Board.

The Committee is urged to consider the fact that parole boards have limited resources and receive little support.[3] This being the case it is our view that it is unlikely that the boards will have the capacity to identify and inform complainants or family members when information about the location and identify of these individuals is not provided. It is our view that this is an important element of victim empowerment, and that the Department should consider a practical solution to the problem of identifying and notifying complainants and family members about parole hearings.

We submit that the Department should establish a dedicated telephone line, or hotline to answer queries by victims and family members who need information about the timing and location of parole hearings in which they are entitled to make representation. While this is not an entirely satisfactory solution as it would place a burden on family members or victims to be proactive, it would go some way towards ensuring access to relevant information for those who do wish to make representations to parole board hearings.

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[3] Briefing by the Selected Parole Board Chairpersons on challenges in the Functioning of Parole Boards, Parliamentary Monitoring Group, 8 September 2009.

3.8 Medical Parole

Clause 14, page 12, line 26 of the Bill refers.

This clause refers to the Amendment of Section 79 of Act 111 of 1998. We wish to draw the attention of the Committee to s79(4). This section states that a sentenced offender may not be placed on medical parole if their medical condition was self-induced.

It is our view that whether the medical condition was self-induced or not bears no relevance to whether the inmate should qualify for medical parole or not. Since the provision of medical parole is informed by the need to ensure that inmates suffering from severe illness or disability should be able 'to die dignified or consolatory deaths', there seems to be no reason to restrict this right even if the inmate is deemed to be responsible for their condition. In addition, we believe that the determination of whether an inmate is suffering from a self-induced condition is unlikely to be a simple matter. For example, if an inmate is in the final states of AIDS, and if the inmate contracted HIV through having consensual unprotected sex, it could be argued that the condition was self-induced. Yet, refusing the inmate medical parole seems nonsensical and a violation of the right to dignity. In addition, refusing such a person medical parole means that the responsibility for caring for the inmate falls to the DCS, at the cost of the taxpayer, a situation that can surely not be justified.

We proposed deletion of s79(4).

CONCLUSION

This submission deals with a number of specific clauses in the Bill and makes recommendations for changes. These recommendations are informed by the need to secure the rights of inmates and remand detainees., their families and the rights of victims of crime. The recommendations are also informed by practical concerns.

It is our considered view that it would be deeply problematic for the Bill to be passed by parliament before a thorough costing of the operationalisation of the new system for remand detainees has been undertaken, or before the DCS has made available to the Committee and the public a long term plan for how the new system will be implemented.

We thank the committee for the opportunity to make a submission on this Bill and we wish the committee well with your deliberations.