White Paper on Remand Detention Management in South Africa

MARCH 2014

correctional services
Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

Critical Partners in the implementation of the White Paper:

South African Police Service
Department of Social Development
National Prosecuting Authority
Department of Justice and Constitutional Development
Legal Aid South Africa

White Paper on Remand Detention Management in South Africa

MARCH 2014

LIST OF ACRONYMS

ATD	Awaiting-Trial Detainee
BACSA	Business Against Crime South Africa
CJA	Child Justice Act
CJS	Criminal Justice System
CJSR	Criminal Justice System Review
CPA	Criminal Procedure Act
CSA	Correctional Services Act
DCS	Department of Correctional Services
DHA	Department of Home Affairs
DOD	Department of Defence
DoJCD	Department of Justice and Constitutional Development
DPW	Department of Public Works
DSD	Department of Social Development
FOSAD	Forum of South African Directors-General
ICCPR	International Covenant on Civil and Political Rights
ICCV	Independent Correctional Centre Visitor
IJS	Integrated Justice System
IPID	Independent Police Investigative Directorate
ISSCJ	Inter-sectoral Committee for Child Justice
JCPS	Justice Crime Prevention and Security
Legal Aid SA	Legal Aid South Africa
MATD	Management of Awaiting Trial Detention
MEC	Member of the Executive Council of a province
MPS	Municipal Police Services
MTSF	Medium Term Strategic Framework
NCPS	National Crime Prevention Strategy
NGOs	Non-Governmental Organisations
NPA	National Prosecuting Authority
OCJSR	Office of the Criminal Justice System Review
PSC	Public Service Commission
RD	Remand Detainee
RDFs	Remand Detention Facilities
RSA	Republic of South Africa
SAHR	South African Human Rights
SAPS	South African Police Service
SCF	Secure Care Facilities
TAU	Technical Assistance Unit of Treasury
UDHR	Universal Declaration of Human Rights
UN	United Nations

TABLE OF CONTENTS

Foreword to the White Paper on Remand Detention Management in South Africa

By the Minister of Correctional Services, Mr Sibusiso Ndebele, MP

It gives me great pleasure to present the White Paper on Remand Detention Management in South Africa, which is the first policy framework in this regard.

This White Paper addresses the policy gap identified in Chapter 5 of the White Paper on Corrections in South Africa (2005). The White Paper specifies the policy gap that existed in relation to the responsibility for the management of the incarceration of RDs. This White Paper has closed the policy gap by acknowledging the implementation of the Cabinet decision taken in January 2009 in relation to the governance model for the detention management of RDs. To this end, the Department of Correctional Services (DCS) established a Remand Detention Branch, which became operational on 1 April 2012.

This White Paper is a culmination of a long process, which commenced with the situational analysis in 2008 highlighting challenges and proposals on the detention management of RDs pertaining to the DCS, the Department of Social Development (DSD) and the South African Police Service (SAPS). These challenges and proposals are reflected in the document entitled "Discussion Document on Management of Remand Detainees in South Africa".

Upon my appointment as the Minister of Correctional Services in June 2012, this White Paper was one of the key delivery areas for the department as well as for the Justice, Crime Prevention and Security (JCPS) Cluster. I wish to thank my predecessors for giving priority attention to this group of detainees, thereby upholding their constitutional right that any person charged with any crime, is innocent until proven guilty.

Relevant departments, including the DSD and the SAPS, were consulted during the compilation of this White Paper. Several cluster structures including the Management of Awaiting-Trial Detainee Task Team, the National Court and the Case Flow Management Task Team and its provincial structures as well as the Criminal Justice System Review Committee were involved in the consultation process.

On 19 and 20 November 2012 we hosted a two-day colloquium with the theme, "TOWARDS FINDING SOLUTIONS FOR SOUTH AFRICA'S HIGH RATE OF INCARCERATION AND BREAKING THE CYCLE OF CRIME". The first day focused on strategies for the management of overcrowding in correctional centres, and the second day was reserved for consultation on this White Paper.

Stakeholders who participated at the colloquium included JCPS Cluster departments such as the Department of Justice and Constitutional Development, the National Prosecuting Authority, Legal Aid South Africa, the SAPS as well as Tertiary Institutions, Members of the Portfolio Committee on Correctional Services, Chairpersons of Parole Boards, the Office of the Inspecting Judge, Members of the Medical Parole Advisory Board, the Judiciary, the National Council on Correctional Services, Non-Governmental Organisations (NICRO, Lotsha Ministries, Civil Society Prison Reform Initiative, Khulisa, Sonke Gender Justice Project, Phoenix Zululand Restorative Justice Programme, SAPHOR and the Institute For Security Studies), organisations representing inmates, the Wits Justice Project,the Detention Justice Forum and several ex-inmates.

The DCS presented this White Paper to the Portfolio Committee on Correctional Services on 06 February 2014, together with representatives from the Criminal Justice System Review Committee. The Portfolio Committee was satisfied that sufficient consultation had taken place.

With this White Paper we acknowledge the roles and responsibilities of several Cluster Departments in the management of RDs, and place emphasis on the importance of cooperative governance in dealing with cross-cutting policy issues.

The White Paper acknowledges the rights of RDs in general, and the services and programmes that should be provided to them.

I, therefore, wish to invite all JCPS Cluster Departments, stakeholders and families of remand detainees to participate in the implementation of this policy framework.

Mr JS Ndebele, MP
Minister of Correctional Services

Preamble to the White Paper on Remand Detention Management in South Africa

By the Acting National Commissioner of the Department of Correctional Services, Ms Nontsikelelo Jolingana

In 2006, Cabinet mandated the Department of Correctional Services (DCS) through the Justice Crime Prevention and Security (JCPS) Cluster Structures to lead a project to re-engineer the Management of the Awaiting-Trial Detention (MATD) system in South Africa. The scope of the project went beyond addressing congestion of facilities and included ensuring that all provisions of the Constitution, legislation and international protocols applicable to unsentenced inmates were applied.

Within the JCPS Cluster, there was a prevailing notion that no institution had been assigned the responsibility for the management of the detention of remand detainees with the exception of children; hence, most legislation and policies developed in the DCS around remand detainees focused more on case-flow issues and less on detention management issues. Contrary to this, the preamble of the Correctional Services Act, 111 (Act No 111 of 1998) as amended, states clearly that the aim of the said legislation is: "To provide for a correctional system; the establishment, functions and control of the Department of Correctional Services; the custody of all prisoners under conditions of human dignity; the rights and obligations of sentenced prisoners; the rights and obligations of unsentenced prisoners;…"

Though the DCS accommodates almost 95% of remand detainees, most of its operational policies focused on provisions for sentenced offenders. The White Paper on Corrections (2005) acknowledges that the DCS keeps various categories of remand detainees within its facilities as a legacy from the time when the Department of Prisons was administered under the Ministry of Justice and further stipulates that this situation cannot continue. The White Paper expressed the need to address the policy gap and assign responsibility in respect of incarceration of remand detainees.

This White Paper is the principal strategic document aimed at directing the management of detention, including provision of services to RDs who are in the custody of the DCS, the DSD and the SAPS. It is a product which was preceded by policy analysis that resulted in the development of the Discussion Document on Management of Remand Detainees in South Africa (May 2010). Recommendations highlighted in the latter were approved by the Directors General and the Ministers of the Justice Crime Prevention and Security (JCPS) Cluster Departments which are the Department of Justice and Constitutional Development (DoJCD), which includes the National Prosecuting Authority (NPA) and Legal Aid South Africa (Legal Aid SA), the DCS and the South African Police Service (SAPS).

The Management of RDs is a shared responsibility within the JCPS Cluster; therefore the implementation of some policy proposals will require cooperation through the development of JCPS Cluster protocols which will outline the responsibilities of each department or entity in relation to the implementation of the provision.

The major challenge for all the institutions that detain remand detainees is to align their operational policies by translating the vision of this White Paper into clearly defined activities while taking into consideration the broad existing policy framework which governs the management of remand detainees.

As the Acting National Commissioner of the DCS, I would like to thank all the role players who participated in the development of the discussion document, which is the precursor to this White Paper and those who created this White Paper from the conceptualization to the consultation and approval phases.

Ms N Jolingana
Acting National Commissioner of the Department of Correctional Services

EXECUTIVE SUMMARY

This White Paper on Remand Detention seeks to add to the 2005 White Paper on Corrections by dealing with inmates who constitute on average one third of the total population at DCS facilities but who were not adequately catered for in the White Paper on Corrections. An additional number of RDs are accommodated in DSD and SAPS facilities. The responsibility of the DCS for those in remand detention follows a decision by Cabinet in 2009 to deal with the management of awaiting-trial detainees (as remand detainees were previously known) by creating a branch within the DCS for this category of inmates. This required an alignment of existing legislation and policies as remand detainees pose very distinct and unique challenges compared to the population of sentenced offenders.

Discussions within the JCPS Cluster as well as with external stakeholders led to the development of a White Paper as well as an amendment to the Correctional Services Act in the form of the Correctional Matters Amendment Act, 2011 (Act No 5 of 2011)(CMAA). The CMAA included a review of the definition of awaiting-trial inmates, wearing of uniform for remand detainees, management of terminally ill inmates, temporary surrendering of detainees to SAPS custody and a determination of the maximum period of detention for which a person could remain in remand detention. The Act was passed on 25 May 2011, which led to a further alignment of the White Paper with the Act.

This White Paper communicates the principles that drive the Detention Management of Remand Detainees, drawn from local and international laws, and conclude that remand detention is not punitive, occurs as a result of an order of a court of law, is managed with the highest possible ethical and professional standards, and that detainees have to be informed of their rights and obligations and are separated from sentenced inmates. The principles further state that remand detention requires greater levels of effectiveness and integration in the criminal justice system and that institutions should be subject to oversight and control. Overall, the White Paper is based on the constitutional right that a person charged with a crime is innocent until proven guilty and shall be treated as such.

Remand Detention Facilities must therefore allow for the minimal limitation of an individual's rights, while ensuring secure and safe custody. Personnel must be trained in human development, in the rights of persons in the criminal justice system process, and in secure and safe custody.

Summary of challenges

The term awaiting-trial detainee did not sufficiently cover the various unsentenced persons held in detention. The term remand detainee was therefore introduced in line with international trends in order to also include those who have been convicted and are awaiting sentence. Remand detainees in the Correctional Services Act, 111 (Act No 111 of 1998) is inclusive of all categories of unsentenced persons in DCS facilities, i.e. awaiting further action by a court. The definition by its nature excludes sentenced offenders (even when returned from parole break) as well as state patients (where a decision by a court has already been made) and persons awaiting deportation.

Current challenges include disjointed coordination of activities within and across relevant CJS Departments; a lack of joint planning and process optimisation in the CJS pipeline; the lack of a single record that contains accurate information on RDs, and time-consuming repeated processes in the release and re-admission of RDs. Such challenges are discussed in the meetings of the Criminal Justice System Review (CJSR) as well as the National Development Committee of the JCPS Cluster.

Inadequate provision of programmes for remand detainees detained in DCS facilities due to the perceived short-term stay of detainees, must be dealt with and this includes provision of services to deal with mental health issues and uninterrupted medical care throughout the CJS custody chain. The remand detainee's right to prepare for trial must include provision for adequate legal consultation which also currently presents a challenge. The needs of vulnerable remand detainees must be catered for in all detention facilities.

Insufficient remand detention facilities to accommodate remand detainees in the DCS exacerbate overcrowding with the associated increase in security risks. The lack of a risk assessment tool results in all remand detainees being treated as high risk with its associated increased need for additional security staff and limitation on freedom. This is in part due to the information on the J7 warrant being inadequate to assist in determining potential length of stay, potential security risk and appropriate accommodation. Inadequate and poorly maintained facilities make the admission, accommodation and release of remand detainees difficult. The wearing of private clothes by remand detainees also leads to a high risk of escape and poor hygiene as well as health risks. Facilities on the whole were designed during a time where the rights of detainees were severely limited. The designs were also in line with the needs of sentenced inmates whilst not providing for the needs of remand detainees. Insufficient Secure Care Facilities for the detention of children in conflict with the law and inadequate security also contribute to the inappropriate placement of children in the DCS.

The need to address systems and tools is clear as the current inadequate automation of relevant information, identification and tracking systems for remand detainees make it difficult to assess, analyse and plan for the appropriate management of remand detainees.

Each challenge is exacerbated by overcrowding with its consequent understaffing and difficulty in implementing any existing policy or new development.

Different categories of remand detainees

The classification and subsequent appropriate treatment of remand detainees require detailed information such as an endorsed warrant to reflect the following categories of remand detainees: remand detainees detained pending observation at a Mental Health Establishment; remand detainees detained for extradition; and remand detainees who have been convicted and are awaiting sentencing.

Governance and role players

The various role-players in the criminal justice system, such as the South African Police Service (SAPS), the Department of Justice and Constitutional Development (DoJCD), the National Prosecuting Authority (NPA), the Department of Correctional Services (DCS) and the Department of Social Development (DSD) as well as other stakeholders such as Legal Aid South Africa are essential to the effective Management of Remand Detainees and cooperation and information-sharing is essential.

The DCS and the DSD primarily detain remand detainees, whereas the SAPS is responsible for the investigation of cases, the arrest of persons, and also for the transportation of remand detainees to and from court, as well as mental health facilities. Arrival at court on time is crucial to the flow of the Criminal Justice System and the DCS and the SAPS must work together to achieve this.

The rights of remand detainees apply equally to persons in the custody of the SAPS and particular rights accrue to members of vulnerable groups such as children, mothers detained with children, pregnant women, the mentally ill, the sick and the disabled. All these rights are reflected in Chapter 6.

The DSD is mandated to deal with children in conflict with the law, which includes diversion programmes for minor offenders and secure care for children and juveniles. The DCS also has a small percentage of accused placed under non-custodial supervision in line with section 62(f) of the Criminal Procedure Act, 1977 (Act No 51 of 1977) and must develop guidelines for the management of this category of accused.

Cooperative governance

The government adopted a plan to revamp and improve the efficiency of the CJS and the security system to protect the social fabric of society, improve public morale and the legitimacy and credibility of the state; critical in this regard is the involvement of individuals and communities in the fight against crime.

The Criminal Justice Strategy and the National Crime Prevention Strategy (NCPS) of 1996 highlighted the need for an Integrated Justice System (IJS) based on improved interdepartmental co-ordination. The absence of a fully integrated justice system continues to hamper efforts aimed at dealing with Remand Detention Management. The Office of the Criminal Justice System Review (OCJSR) was established to drive the implementation of a seven-point plan, which includes improved management of remand detainees.

Cluster management

The cluster system is the approach utilised by the government to deliver through a formal plan of action on the strategic priorities outlined in the Medium Term Strategic Framework (MTSF).The JCPS Cluster departments that play an active role in the detention management of RDs are the SAPS, the NPA, the DoJCD, the DCS, the DSD, the DHA, the DOH, the judiciary and Legal Aid SA. The JCPS Cluster departments are coordinated within the National Development Committee, which is the sub-structure of the committee of the Directors-General and this White Paper subscribes to and endorses the current approach utilised for managing the provisions that require cooperation from various partners within the CJS.

Several protocols have been developed within the cluster, such as the 63A Bail Protocol (section 63A of the Criminal Procedure Act), the Protocol on Referral of Terminally Ill or Severely Incapacitated Remand Detainees to Court (section 49E of the Correctional Services Act), the Protocol on Maximum Incarceration Periods of Remand Detainees (section 49G of the Correctional Service Act) and the Protocol on the procedure to be followed in the case of mental enquiries in respect of accused persons.

Other areas that require management through the development of protocols will be determined and discussed at the relevant substructures of the National Development Committee. All protocols are endorsed and approved through the formal processes that have been established within the CJS.

The role of NGOs

The services of NGOs may be utilised by the institutions responsible for the detention of remand detainees through formal agreements. These services may include research, the provision of programmes to remand detainees and the development of training material for officials and remand detainees, as well as the training of officials in selected areas to improve service delivery in facilities that detain remand detainees. It remains the responsibility of government and in particular, the Departments which detain remand detainees, to ensure compliance with the rights of remand detainees. The work of NGOs is complementary to these obligations.

Rights and privileges of remand detainees

The critical source documents for the rights for remand detainees in South Africa are the Bill of Rights as enshrined in the Constitution of the Republic of South Afri-

ca, as well as sections of the Correctional Services Act and internationally, the UN Standard Minimum Rules for the Treatment of Prisoners to which South Africa is a signatory. Additionally the rights specified in the DSD blueprint will be applicable to children detained in Secure Care Facilities.

Amenities

Remand detainees are presumed innocent and must, as far as is possible, be given access to amenities which they would have had if they were not been detained. However, it may be necessary to restrict certain amenities for the maintenance of security and good order. Contact with families and friends must be encouraged as it contributes to a smoother reintegration and this should only be restricted in extreme cases. Amenities may only be restricted for a period prescribed by the detention institution following a disciplinary hearing.

Obligations of remand detainees

Every remand detainee is required to respect the authority of and to obey the lawful instructions of the DCS and SAPS officials and the officials delegated to manage the Secure Care Facilities in the DSD. Every remand detainee must undergo a health status examination, which must include testing for contagious and communicable diseases. If a remand detainee commits a disciplinary infringement he/ she will be subjected to a disciplinary process prescribed by the detention institution. Remand detainees must subject themselves to necessary searches to ensure the security of the community and the safety of officials working in the facilities as well as the safe custody of other detainees. Remand detainees must also cooperate with officials during the identification process.

Training and development of officials

A common understanding among the JCPS Cluster departments as to what constitutes appropriate training of all officials involved in the management of remand detainees must be developed and included in the training for new recruits. Such training must follow an integrated approach catering for the needs of all remand detainees including special categories such as children, the mentally challenged, high-risk detainees, pregnant women and girls and terminally ill remand detainees.

Services and programmes

The provision of services and programmes to remand detainees should be linked to the rights specified in the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996) (RSA Constitution), relevant sections of the Child Justice Act, the Correctional Services Act and other applicable international laws and treaties.

In the past many difficulties existed in providing programmes to the fluid remand detainee population. Programmes intended to correct offending behaviour are not appropriate. However programmes do not need to focus on offending behaviour but can be programmes designed to improve various skills of inmates, such as life skills. The provision of such programmes should be a priority for all Remand Detention Facilities.

Alignment with legislation

A table within the White Paper shows the alignment of the White Paper with relevant legislation such as the Constitution. Each Department will ensure that it has the capacity to deliver on the required services and programmes and each institution should have generic services and programmes which will be applicable to the general population of remand detainees and programmes for special categories of remand detainees.

The provision of programmes will be guided by the fact that the remand detainees have a right to be presumed innocent and will not be provided with programmes based on inferred charges unless prescribed by the courts. Consideration should be given to the fact that remand detainees are a very uncertain and fluctuating population whose length of detention is beyond the control of detention institutions and therefore the programmes delivered should be flexible. Appropriate services and programmes offered by other entities should be communicated to the remand detainees and the principles of access to the detention institutions should be communicated to all relevant stakeholders. The compelling of remand detainees to attend programmes needs further discussion, and court attendance, including the preparation process, should take precedence over attendance of programmes.

Orderly safe and secure remand detention

The principles forming the basis for ensuring the good order, safety and security of remand detainees emanate from several prescripts including the RSA Constitution, the United Nations (UN) Standard Minimum Rules for Treatment of Prisoners, the Correctional Services Act and the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or punishment and its optional protocol.

All institutions responsible for the custodial management of remand detainees are obliged to ensure that public safety from detainees is maintained; a safe environment is created and maintained for all detainees and service providers; a culture that respects and observes human rights is prevalent and that remand detainees are available and on time for court appearances. The Constitution guarantees the freedom and security of the person, which includes the right to be free from all forms of violence, from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way. Although the Constitution allows for a limitation of rights, the responsibility of keeping persons in detention, safe, remains an obligation of the authority detaining such persons.

Overarching principles

The concept of security lies not only in the physical detention of persons, such as high fences, but also in less traditional measures, such as keeping remand detainees constructively occupied. Officials should therefore be properly trained in both security and human rights issues.

Managers of detention institutions are responsible to ensure that a balance is maintained between security, order and human rights. Security and control must be performed with due diligence and must exclude abuse of power, brutal methods of control, unlawful and undue punishment.

The use of force as a means of restoring order can only be justified in extreme circumstances, when order has broken down and all other interventions have failed. The use of force and the type of force to be used may only be that authorised by the delegated authority and only in the manner prescribed by law. At all times, the prescribed alternatives to the use of force will be the preferred solution.

Critical security dimensions

Risk classifications of detention facilities and detainees

In principle, all facilities that detain remand detainees are classified as maximum facilities in line with international trends. The lack of classification of remand detainees means they are all managed and treated as a high-risk group. This creates difficulties for the detention institutions because high-risk detainees have restrictions in terms of movement within the facility and require a greater number of officials to supervise them. It is therefore imperative to conduct risk classification for the management of security. The remand detention institutions will work together with the SAPS as the arresting institution to determine the initial risk classification.

When conducting risk classification the impact of incarceration on persons should be taken into consideration. It must be taken into account that this risk is not static and therefore risk assessment should become a feature of on-going case management that allows for reconsideration, including considering the length of incarceration and the nature of the charges faced.

Disciplinary regime

The disciplinary process supports a safe and secure environment within any detention facility. The type of conduct that constitutes a disciplinary offence, the method of seeking information and making complaints, the disciplinary procedures to be followed, the sanctions that may be entertained on conviction, and the manner in which such sanctions may be applied must all be clearly codified and made available and understandable to all inmates on admission and to all correctional officials during basic training.

When an infringement constitutes a criminal offence, it will be dealt with as such and reported to the SAPS. Remand detainees may not be involved in the implementation of any disciplinary measures against fellow inmates. The required court appearance of a remand detainee must supersede the appearance before a disciplinary hearing.

Multiple methods of biometrics must be utilised for proper identification of remand detainees and verification of identity should be done before any release is instituted.

Guarding of remand detainees is always the responsibility of the Department under whose control the remand detainee falls.

RD uniform

The wearing of civilian clothes by remand detainees holds a heightened security risk due to the difficulty of distinguishing between remand detainees and civilians working inside the facility. The state of some private clothes also affects hygiene. Section 48 of the Correctional Services Act therefore makes provision for supplying remand detainees with a uniform which is different from the one prescribed for sentenced offenders and may not be worn to court.

Health of inmates

Remand Detention Institutions must ensure that polices that address the health of detainees take cognisance of communicable diseases and special outbreaks that threaten the safety and security of remand detainees, personnel and other persons that may have contact with the affected remand detainees. Where the health of the remand detainee means he or she is unable to honour his/her court appearance, the court should be informed timeously. Section 49E of the Correctional Services Act makes provision for the head of the detention facility to refer the severely incapacitated or terminally ill remand detainees to court for a more appropriate decision on placement.

Prototype of Remand Detention Facilities

Minimum standards have been developed for remand detention facilities in the DCS and Secure Care Facilities and these standards should guide the development of the new facilities. They take account of the specific needs of Remand Detention Facilities, such as remand detainees attending court on time, payment of bail, the transient nature of its population and the need to consult legal representatives and prepare a defence. Any new facility to house RDs should be designed in an appropriate manner to allow the facility to support the objectives of the detention.

Ongoing safety and security policy development

Information on security incidences must be used to detect areas which need intervention on either operational or policy level and should include but not be restricted to escapes, assaults, hunger strikes, the use of force,

the admission of notorious inmates and deaths. This includes a strategy for gang management. Detention institutions must also develop a strategy for management of sexual assault, sexual abuse or sexual misconduct.

The use of Integrated Systems

The system currently used by the DCS is neither integrated within itself nor integrated within the cluster. This is also true for other Departments within the Cluster. Challenges related to this include the use of multiple identities by remand detainees; redundant information; the slow process of verification of the identity with the Department of Home Affairs (DHA); the lack of access to systems of other Departments; and an inadequate system for the identification of accused within the CJS.

The situation results in regular and repeated administrative processes, lack of communication of security risk or threat, and failure for some categories of remand detainees to present themselves on time or at all for court appearances. Corrective measures require cooperation from all the key role players within the CJS and forms part of the seven point plan for the review of the CJS.

A key strategy within the Cluster is the development of a unique identification system for all the accused who enter the CJS. The identity number given to an accused will be attached to the personal identification information and multiple biometrics. Identification and verification should ultimately take place electronically. Where possible, remand detention institutions will create a single database allowing for tracing and tracking of remand detainees within a department or entity responsible for the detention of remand detainees.

The establishment of video remand courts in all the provinces between the DCS and the DoJCD has assisted in the reduction of administrative processes.

In order to ensure the success of integration and upgrading of existing systems by the CJS departments and collaborative planning to ensure that inter-linkages are created and maintained, appropriate funding must be made available.

Management of escapes

Strategies for dealing with escapes must be developed at each facility and all escapes must be dealt with in accordance to the policies. An escape of a remand detainee who was temporarily surrendered to the SAPS for further investigation and early arrival at the court should be managed according to the processes developed for section 49F of the Correctional Services Act.

Overcrowding

From 1995 to 2011 the population of inmates, including remand detainees in the DCS showed an increase in overcrowding from 16.9% to 34.5%. The annual average of remand detainees had almost doubled over the same period. Since 2000, the remand detainee population has been gradually decreasing with seasonal trends showing an increase during the festive periods. With the introduction of the Child Justice, 2008 (Act No 75 of 2008), the number of children in remand detention decreased from 771 in the 2009/2010 financial year to 195 in the last quarter of 2011/12.

According to international literature, the key drivers of overcrowding are the use of pre-trial detention and the trend of serious crimes. Other drivers that are beyond the control of the detention institutions are the number of admissions and the length of stay in the detention facility. Longer stays are often linked to multiple numbers of 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; the loss of court records; changing of legal representatives by the accused; failure of witnesses to appear in court; multiple witnesses in the case; requests for remand either by defence lawyers of the accused and or the state; failure of the accused to appear in court and requests for the separation of trials.

Strategies for managing overcrowding

The CJS strategies for managing overcrowding of remand detainees are outlined in the "Awaiting-Trial Detainee Guidelines" developed by the NPA in consultation with relevant JCPS Cluster departments such as the SAPS, the DoJCD, the DSD and the DCS. They include measures to be taken prior to the first court appearance, methods of reducing RDs at the first court appearance, methods of fast-tracking certain remand detainee cases and fast- tracking of investigations and trials. The DCS has developed an eight-pronged strategy which is summarised in Chapter 9.

Oversight and control

The United Nations Standard Minimum Rules for the Treatment of Prisoners make provision for regular inspections by qualified and competent authorities. Their task is to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of correctional services. Inspections of detention facilities are an important safeguard against malpractice, physical abuse, ill treatment and breaching of the internationally recognized rights of detainees.

The roles of several oversight bodies are explained in Chapter 10 and these bodies include the Executive in the form of members of the Cabinet and through the Portfolio Committees since they are Parliamentary Structures, the Judiciary, the Judicial Inspectorate of Correctional Services through its Independent Correctional Centre visitors, the Public Service Commission, the Independent Police Investigative Directorate (IPID), the Auditor-General of South Africa (AGSA) and The SA Human Rights Commission.

Oversight in Secure Care Facilities is provided in line with the sections of the Children's Act as well as the

Blueprint for Secure Care Facilities by the Provincial Head of the Department of Social Development. The Act also makes provision for the inspection of the Child and Youth Care Centres by a person authorised by the Director-General of the DSD, a Provincial Head of the DSD or a municipality in certain circumstances.

The Heads of Detention Facilities are expected to co-operate with all the oversight bodies by ensuring access to the facility so that the officials representing the oversight bodies can carry out their functions effectively and efficiently. They should further ensure that officials are well versed with the roles of the oversight bodies; that officials from oversight bodies are provided with all the necessary documents; that issues that require clarity are attended to and feedback is provided within the stipulated time frames where possible and principles for handling disputes in relation to each oversight body are developed and communicated to all officials.

Implementation of the White Paper

The successful implementation of this White Paper requires cooperation between the main role players in the detention management of remand detainees; cluster cooperation in specified areas of service delivery; the establishment of a mind-shift among officials working directly with remand detainees; the review of existing operational policies to align them with the provisions of this White Paper; the development of training material for officials; the development of marketing material for remand detainees; the determination of cost implication by each detention institution and other cluster departments and allocation of the required funding.

CHAPTER 1: INTRODUCTION

1.1 Motivation for the White Paper

1.1.1. The White Paper on Corrections (2005), with rehabilitation at its centre, heralded in a new strategic direction for the Department of Correctional Services (DCS). As it focussed on rehabilitation, a concept that assumes a guilty verdict, it did not substantially deal with the category of inmates in DCS centres who are not sentenced.

1.1.2. Since 1995, Remand Detainees (RDs), formerly referred to as Awaiting-Trial Detainees (ATDs), constituted a third of persons detained in DCS facilities. RDs grew from an annual average of 23,783 in 1995 to 48,910 in 2012. This translates to a growth of more than 100% over the period of 14 years; yet, unlike sentenced inmates, they have not been catered for.

1.1.3. Over a period of time, government has prioritized improving the management of RDs. On the one hand, this priority was pursued within the context of improving the functioning and effectiveness of the Criminal Justice System (CJS), while on the other hand, the intention was to improve the actual management of RDs within the DCS.

1.1.4 Following the outcome of an interdepartmental project led by the DCS, which was aimed at re-engineering the way in which RDs are dealt with, a Cabinet Lekgotla decided in January 2009 that the DCS must establish a Branch that will be responsible for the management of RDs.

1.1.5 This decision necessitated a re-look at the management of RDs and the identification of the need to bring all policies in line with legislation, regulations and guidelines dealing with such inmates.

1.1.6 An elaborate, varied policy and legislative framework already exists that governs the management of RDs. This framework is contained in the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996); the Correctional Services Act, 1998 (Act No 111 of 1998); the Criminal Procedure Act, 1977 (Act No 51 of 1977); the Extradition Act, 1962 (Act No 67 of 1962); the Child Justice Act, 2008 (Act No 75 of 2008); the White Paper on Corrections in South Africa (2005) and various regulations and guidelines that are applicable to departments that have responsibilities pertaining to the management of RDs.

1.1.7 This White Paper deals with the remand detention population as a very distinct entity from the population of sentenced offenders. It recognises the unique challenges associated with persons who are in detention although they have not been found guilty of any crime. It distinguishes this population from a population focused on rehabilitation and acknowledges the duty to detain such a population for purposes of attending court.

1.2 Background / History

1.2.1 The history of detention management of RDs by the DCS is outlined in Chapter 2 of the White Paper on Corrections. Before the reforms that were introduced late in 1990 in the CJS, the detention facilities for sentenced and unsentenced inmates were managed by the Department of Justice under the auspices of the Prison Service. The latter was separated from the Department of Justice and renamed the Department of Correctional Services.

1.2.2 The policy shift resulted in the responsibility for detention management of sentenced and unsentenced inmates being assigned to the DCS. However, in its White Paper on Corrections (2005), the DCS acknowledged that a policy gap existed in relation to the responsibility for the management of the detention of RDs.

1.2.3 In 2006, Cabinet mandated the DCS, through the Justice Crime Prevention and Security (JCPS) cluster structures, to lead a project of re-engineering the Management of the Awaiting-Trial Detention (MATD) system in South Africa. The scope of the project went beyond addressing the congestion of facilities and included ensuring that all provisions of the Constitution, applicable legislation and international protocols applicable to unsentenced inmates are applied.

1.2.4 The Chief Directorate Remand Detention Systems and Security, which consisted of the MATD project team and security directorate, was established in the DCS in 2007 to drive the re-engineering process, including the development and implementation of a synchronised cluster programme of action aimed at meeting short- to long-term strategic needs for the Managing of Awaiting-Trial Detainees.

1.2.5 The DCS project team operated as a secretariat for the JCPS MATD task team, a sub-task team of the National Development Committee of the JCPS Cluster. Cluster institutions represented in the MATD task team included the South African Police Service (SAPS); the Department of Social Development (DSD); Legal Aid South Africa (Legal Aid SA); the Department of Justice and Constitutional Development (DoJCD) including representatives from the Inter-sectoral Committee for Child Justice (ISSCJ) and the National Prosecuting Authority (NPA), as well as the Integrated Justice System Transversal, which is

responsible for the integration of systems within the CJS. Representatives from the Technical Assistance Unit of Treasury (TAU), Business Against Crime South Africa (BACSA) and the Department of Home Affairs (DHA) were invited on an ad hoc basis.

1.2.6 The project team demarcated several focus areas and one of them was the development of policy procedures, protocols and legislation in relation to the management and detention of RDs in Police Stations, Secure Care Facilities (SCFs) and DCS facilities.

1.2.7 Situational analysis and research were done on international trends as deliverables that relate to the above-mentioned focus areas. The objective of the situational analysis was to determine challenges faced by the SAPS, the DSD, and the DCS in the management of RDs in their respective facilities as well as to identify best practices that could be shared within the CJS. The identified challenges and best practices would provide guidance for the development of a White Paper, legislative framework and operational polices for the management of RDs.

1.2.8 The findings were presented in a report which was submitted to the National Development Committee as a working document in November 2008 with proposals that cut across several areas including legislation, protocols and policy procedures; strategies for reducing levels of RDs; information sharing and management; facilities, safety and security; services and programmes; human resource and governance models.

1.2.9 The document was then submitted to a Cabinet Lekgotla via such structures as the Forum of South African Directors-Generals (FOSAD) and the Inter-Ministerial Committee in January 2009. Four models as reflected below were proposed and the Cabinet Lekgotla approved Model 3:

- Model 1: Establishment of a dedicated agency with its focus on ATDs;
- Model 2: A separate integrated component managed by a Public Private Partnership such as the private prisons;
- Model 3: Establishment of a new branch within the DCS; and
- Model 4: Transferring ATDs to the DoJCD, the NPA or the SAPS.

1.2.10 The situational analysis report was extended further into a discussion document, which outlined challenges as well as policy and legislative proposals for handling such challenges. These were grouped under the following areas: CJS matters; policy matters and legislative framework; services and programmes; facilities and security; systems and tools, foreign nationals and oversight and monitoring.

1.2.11 The discussion document was pursued in consultation with previously mentioned institutions of the JCPS Cluster, Non-Governmental Organisations (NGOs), organisations representing inmates and representatives from privately managed SCFs.

1.2.12 The document was presented to the National Development Committee on 25 May 2010 with a recommendation that the challenges and proposals be dealt with through the development of a White Paper, Bill and subsequently legislation. The proposals were adopted and escalated to the DGs meeting and a decision was made to effect an amendment to the Correctional Service Act through the development of the Correctional Matters Amendment Bill.

1.2.13 The objectives of the Bill as presented to the Portfolio Committee of Correctional Services on 10 November 2010 were: to amend the Correctional Services Amendment Act, 2008 (Act No 25 of 2008) so as to repeal the provisions for an incarceration framework and to amend the Correctional Services Act in order to strengthen the parole system in general, to provide for a new medical parole system and to provide for the management and detention of remand detainees.

1.2.14 Proposed amendments in relation to the management and detention of RDs included the following:

- review of the definition of RDs;
- wearing of uniform;
- management of terminally ill inmates;
- electronic systems to manage inmates;
- temporary surrendering of detainees to SAPS custody for further investigations; and
- determination of the maximum period of detention for which a person could remain in remand detention and that extension of this period would be subject to strict conditions.

1.2.15 The development of the White Paper and the Bill continued as parallel processes; however, the Bill was given priority attention. The Bill was signed into law on 25 May 2011.

1.2.16 Correctional Services Regulations (2004) were amended for alignment with the Correctional Matters Amendment Act, 2011 (Act No 5 of 2011).

1.2.17 Following the implementation of the Correctional Matters Amendment Act, the White Paper needed to be aligned to the Act.

1.2.18 This White Paper was reviewed accordingly in consultation with the JCPS Cluster. Other policy frameworks such as the blueprint for SCFs developed by the DSD were also taken into account.

1.3 Premise of the White Paper on remand detention

1.3.1 The White Paper on Remand Detention in South Africa is not intended to replace the White Paper on Corrections, but should be seen as an addition thereto.

1.3.2 The White Paper is intended to communicate the principles that will drive the detention management of RDs. These principles are drawn from various prescripts including the Constitution, other local and international laws and treaties, protocols as well as the Correctional Matters Amendment Act, 2011 (Act No 5 of 2011). The latter includes a revised Chapter titled "Management, Safe Custody and Well-being of Remand Detainees" and replaces the chapter on unsentenced offenders.

1.3.3 There is a constitutional acceptance of international law as a very valuable norm in the South African legal system. Section 39(1)(b) of the Constitution provides that:

"When interpreting the Bill of Rights, a court, tribunal, or forum must consider international law." In addition, Section 232 of the Constitution stipulates that: "Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament."

1.3.4 The principles that underpin detention management of RDs are summarised as follows:

- Remand detention should never be used to penalise or punish any person;
- Remand detention occurs as a result of an order of a court of law;
- Remand detention should be managed in accordance with the highest possible ethical and professional standards;
- Remand detention requires greater levels of effectiveness and integration in the CJS;
- Remand detention institutions should be subject to multi-facets of oversight and control, including by the Judiciary, the Executive and the legislature.
- RDs should be informed of their rights, obligations and any censures attending a breach of the code of conduct; and
- RDs should be separated from sentenced inmates.

1.3.5 This White Paper is based primarily on the constitutional right that a person charged with a crime is innocent until proven guilty and shall be treated as such. The only reason for their detention is to ensure due process in the court of law where they are to be tried. This is in line with international human rights principles.

1.3.6 The principle of presumption of innocence requires that very limited restrictions only may apply. While the right to movement is curtailed by the warrant that empowers their detention, continuity of their basic human rights is obligatory. The only basis on which the rights of RDs can be further curtailed is a perceived threat to society; and/or the likelihood of escape that the legal process has identified.

1.3.7 Without presuming guilt, it is important to acknowledge that there is an opportunity to contribute to the detainees 'human development during the period in which they are awaiting trial. These include life skills and social development, as well as a good understanding of the legal and justice system in South Africa in which they find themselves.

1.3.8 While the Constitution stipulates that periods of remand detention should be as short as possible, in practice many RDs are incarcerated for extended periods of time, and involvement in productive activity that promotes recreation and human development is a crucial service that Government must provide. However, the fact that the length of stay of RDs varies considerably might also negatively affect the administering of such programmes.

1.3.9 Government is thus obliged to provide facilities for RDs that allow for the minimal limitation of an individual's rights, while ensuring secure and safe custody. The facilities should be staffed by personnel who are trained in human development, in the rights of persons in the legal/judicial process, in secure and safe custody and who are responsible for ensuring delivery by government agencies on the rights of RDs.

1.3.10 While this White Paper acknowledges the work that Government has already done in respect of RDs, it is a broad policy framework intended to address the challenges experienced with regard to the management of RDs.

1.3.11 This White Paper further communicates cooperative strategies and processes developed within the CJS for handling cross-cutting issues as well as those developed by individual departments to improve service delivery to RDs.

1.4 Summary of challenges

1.4.1 Definitional challenges

1.4.1.1 The term "Awaiting-Trial Detainee" has been utilised to include several categories of detainees who have not been sentenced. The rationale for shifting to "Remand Detainee" is explained in Chapter 3.

1.4.2 Criminal Justice System (CJS) matters

1.4.2.1 The challenges highlighted with regard to CJS matters include disjointed coordination of activities within and across relevant CJS departments; a lack of joint planning and process optimisation in the CJS pipeline; a lack of a single record that contains accurate information on RDs, and time-consuming repeated processes involved in the release and re-admission of RDs who are scheduled to appear for court hearings.

1.4.2.2 The above-mentioned challenges have been addressed through multiple processes and systems, which are already in place such as the establishment of the Office of the Criminal Justice System Review (OCJSR) and coordination of the planning within the CJS by the National Development Committee of the JCPS Cluster. Chapter 4, which deals with Governance, further addresses the approaches utilised to handle challenges within the CJS.

1.4.3 Policy matters and legislative frameworks

1.4.3.1 The challenges presented under this area have been addressed in several chapters in this White Paper including the chapter on Governance. The challenges are summarised as follows:

- Difficulties at centre level to implement legislation as it applies to remand detention due to the focus on sentenced offenders, including the training of correctional officials;
- The lack of a policy framework for the development of operational policies in SCFs and a consequent lack of uniformity in policies. This has in part been addressed in a blueprint of the DSD developed in 2010; and
- Inadequate provisions for RDs placed temporarily in DCS facilities for transfer to Mental Health establishments for forensic assessments.

1.4.4 Services and programmes

1.4.4.1 The services and programmes required for RDs and the associated challenges have been addressed in Chapter 6 and are summarised as follows:

- Inadequate provision of programmes to RDs detained in DCS facilities due to perceived short-term stays and an inability to plan due to the constant change in the population of RDs;
- A lack of role clarification with regard to the transportation of RDs for forensic assessment and the provision of emergency health services to RDs in court cells;
- A lack of uniformity in the provision of guarding services for hospitalized RDs across provinces and DCS regions;
- Inadequate provision for the management of RDs who are mentally ill and those RDs who are on chronic medication, from arrest to detention in SCFs and the DCS;
- Limited access for legal consultation in detention facilities; and
- Inadequate provisions for children detained with their mothers in SAPS cells.

1.4.5 Facilities and security

1.4.5.1 The challenges in relation to facilities and security are presented below and have been addressed in Chapters 7 (Orderly, Safe and Secure Management) and 8 (Integrated Security):

- Insufficient remand detention facilities to accommodate RDs in the DCS, thus exacerbating the problem of overcrowding in most correctional centres with greater security risks;
- The rate of overcrowding creates security risks in that officials are engaged in long drawn out tasks (provision of meals, sorting for courts, roll-call) while critical tasks (searching and handling complaints and requests) are overlooked;
- A lack of risk assessment tools resulting in all RDs being housed together and treated as high risk;
- A lack of adequate information on the J7 warrant making the DCS unable to determine the potential length of stay, the potential security risk and appropriate accommodation;
- Inadequate and poorly maintained facilities that make the admission, accommodation and release of RDs difficult;
- The fact that RDs wear their own clothing, contributes to a high escape risk as well as health risks and poor hygiene in respect of RD's who are unable to change their clothing on a regular basis;
- Inadequate facilities in the DCS for conversion into Remand Detention Facilities (RDFs) thus leading to the undesired state of a mixed environment where sentenced offenders and RDs are segregated but share the same facility and its services;
- Poorly designed existing facilities in the DCS for effective and efficient process flow of RDs which includes drop off and collection of RDs for court appearances, administration during admission and release, in-

cluding searching of RDs;
- Poorly designed facilities to accommodate visitors of RDs, legal consultations, processing of bail, and provision of programmes in SAPS and DCS facilities;
- A lack of library material for utilization by RDs for their legal defence;
- Inadequate recreational facilities for RDs in DCS facilities;
- Inadequate telephone facilities in SAPS and DCS facilities for utilization by RDs to contact families, legal representatives and significant others;
- Insufficient SCFs for detention of children in conflict with the law resulting in long distances travelled by the SAPS between courts and SCFs and placement of children in DCS facilities;
- Inadequate security in SCFs thus leading to the court opting to detain some categories of children RDs in DCS facilities; and
- A high rate of vandalism in facilities that detain children RDs in the DCS and the DSD.

1.4.6 Systems and tools

1.4.6.1 Challenges in relation to systems and tools have been addressed in Chapter 8 and are summarised as follows:

- Inadequate automation of relevant information, identification and tracking systems for RDs;
- Slow progress in the implementation of Audio Visual Remand (AVR) "video postponement" as a mechanism to reduce the massive wastage associated with RDs being released and re-admitted daily as a result of postponement of cases;
- A lack of tools to determine high-risk RDs, thus leading to high-risk RDs being housed together with low-risk and first time RDs; and
- The lack of comprehensive information and effective management systems in respect of children in conflict with the law.

1.4.7 Foreign nationals

1.4.7.1 Challenges in respect of foreign nationals are summarised below and the verification of the identities of all arrested persons has been catered for in the Chapter on Governance:

- Foreigners suspected of criminal offences are investigated, prosecuted and detained without investigating their residency status or nationality;
- Bail applications as prescribed in the Criminal Procedure Act are done without regard for residence status of foreigners; and
- The detention of foreign nationals awaiting deportation in DCS and DSD facilities, especially in regions far from the Deportation Centre in Krugersdorp, Gauteng.

1.4.8 Overcrowding

1.4.8.1 Overcrowding is not a new phenomenon in South African detention facilities and according to the White Paper on Corrections, it can be traced back to the early 1900's when the prison system was regulated mainly by various Provincial Ordinances. This challenge including its management strategies is covered in Chapter 9.

1.4.9 Oversight / Monitoring

1.4.9.1 There are no specific challenges with regard to monitoring of institutions that detain RDs; however, Chapter 10 of this White Paper will provide an explanation on oversight functions provided in such institutions.

1.4.10 Other Challenges

1.4.10.1 Other challenges addressed in this White Paper include late arrival of RDs in court (Chapter 4) and delimitation in terms of the provision of programmes (Chapter 6).

1.5 Implementation of the White Paper

1.5.1 The successful implementation of this White Paper is dependent on the following:

- cooperation of the key main role players in the detention management of RDs i.e., the DCS, the DSD and the SAPS;
- cluster cooperation in specified areas of service delivery;
- accomplishing a mind-shift on the part of officials working directly with RDs in terms of unique principles that apply only to RDs;
- review of existing operational policies for alignment with the provisions of this White Paper;
- development of training material for officials;
- development of marketing material for RDs;
- determination of cost implications by each detention institution and other cluster departments who have a role to play in the delivery of the provisions of this White Paper; and
- allocation of the required funding.

CHAPTER 2: THE EXISTING POLICY: LEGAL AND OPERATIONAL FRAMEWORK

2.1 Introduction

2.1.1 The legal framework governing the Management of Remand Detainees (RDs) in South Africa is a very important aspect of the management of RDs and the issues that affect them.

2.1.2 These legal regimes are both domestic and international in terms of the norms that they set. They are crosscutting and found in various branches of the law, ranging from criminal law and criminal procedure, constitutional law, immigration law, international law and the constitutive legal instruments of law enforcement agencies such as the police, the prosecuting authority, correctional officers, immigration, and border control. They also include guidelines or standards that are not necessarily promulgated into law but have normative significance in providing direction to stakeholders on how to deal with RDs. Thus, the legal framework within the domain of RD management is summarised in terms of international and domestic legal frameworks.

2.2 International Legal Framework

Internationally, there is acceptance and recognition of specific standards relating to the treatment of detainees and this has resulted in the creation of legal norms that are set out in international declarations, treaties, and guidelines. These instruments have implications for South Africa in the conduct of its domestic affairs because the country is a signatory to the United Nations (UN) and other international bodies. The international legal framework can be summarised as follows:

2.2.1 The Universal Declaration of Human Rights (1948)

2.2.1.1 In 1948, the General Assembly of the UN adopted and proclaimed the Universal Declaration of Human Rights (UDHR). It is the first international legal instrument that articulates the rights that are universal to every individual in the modern concept of rights. Article 9 of the UDHR provides that "no one shall be subjected to arbitrary arrest, detention, or exile." In the same vein, Article 11 stipulates that: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

2.2.2 The International Covenant on Civil and Political Rights (1966)

2.2.2.1 Article 9 of the International Covenant on Civil and Political Rights (ICCPR) makes the following provision for the arrest and detention of persons:

- Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
- Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should the occasion arise, for execution of the judgment.
- Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2.2.2.2 Similarly, Articles 10 and 11 of the ICCPR prescribe the standards for the treatment of accused persons including juveniles. These standards include:

- Treatment with humanity and respect for dignity;
- Segregation from convicted persons and treatment which is appropriate to their status; and
- Separation of juveniles from adults and speedily finalisation of their processes.

2.2.2.3 Finally, Article 14(c) of the ICCPR underscores the right of an accused person "to be tried without undue delay".

2.2.3 The African Charter on Human and Peoples' Rights

2.2.3.1 Articles 4, 5, 6, and 7 of the African Charter enshrine the rights to the integrity and dignity of the person, freedom from torture, inhumane and

degrading treatment, the prohibition of arbitrary arrest and detention as well as the presumption of innocence and the guarantee of fair trial rights.

2.2.4 Other applicable international standards and guidelines

2.2.4.1 The following international standards and guidelines are relevant to the management of RDs in South Africa:

- The United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules), 1955 and 1977;
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985;
- The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles), 1988;
- Resolutions of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990;
- United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 1990;
- The United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990;
- The United Nations Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment and its Optional Protocol; and
- The United Nations Rules for the Treatment of Women Prisoners and the Non-custodial Measures for Women Offenders (Bangkok rules), 2010.

2.2.4.2 Other international standards and guidelines that are specifically Africa-grown under the auspices of the African Commission on Human and Peoples' Rights include:

- The Kampala Declaration on Prison Conditions in Africa;
- The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa; and
- The Arusha Declaration on Good Prison Practice in Africa.

2.2.4.3 It must be observed that the above international standards and guidelines elaborate on the principles contained in the international legal framework that have already been articulated. Many of them are restatements and emphasis of these principles and therefore only serve to buttress the importance of a detention system that respects the rule of law and implements in a practical manner, the principle of the presumption of innocence to the benefit of accused persons or RDs.

2.3 Domestic Legal Framework

2.3.1 The Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)

2.3.1.1 It is appropriate that the first point of reference in determining the legal norms that apply to the management of RDs in South Africa should be the Constitution. This is important for two main reasons: firstly, in a democratic state, the Constitution is the supreme law and all other laws derive their validity from it. Secondly, any practice or procedure that is based on a constitutionally invalid or inconsistent law will also be deemed invalid. The management of RDs must comply and be consistent with the provisions of the Constitution. The Bill of Rights (Chapter 2 of the Constitution) becomes the general point of reference for the rights of all citizens, including RDs.

2.3.1.2 Section 12(1), which deals with the right to "freedom and security of the person", provides that:

> Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhumane or degrading way.

2.3.1.3 Section 35, makes provision for "arrested, detained and accused persons" and Section 35(2) specifies the constitutional rights of detained persons. These rights are reflected below:

> (2) Everyone who is detained, including every sentenced prisoner, has the right:
>
> (a) to be informed promptly of the reason for being detained;
> (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
> (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
> (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
> (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
> (f) to communicate with, and be visited by, that person's spouse or partner; next

of kin; chosen religious counsellor and chosen medical practitioner.

2.3.1.4 Section 35 further sets out that:

(3) Every accused person has a right to a fair trial, which includes the right:
  (a) to be informed of the charge with sufficient details to answer it;
  (b) to have adequate time and facilities to prepare a defence;
  (c) to a public trial before an ordinary court;
  (d) to have their trial begin and conclude without unreasonable delay;
  (e) to be present when being tried;
  (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
  (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
  (i) to adduce and challenge evidence;
  (j) not to be compelled to give self-incriminating evidence;
  (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  (o) of appeal to, or review by, a higher court.

(4) Whenever this section requires information to be given to a person that information must be given in a language that the person understands.

2.3.2 The Criminal Procedure Act, 1977 (Act No 51 of 1977)

2.3.2.1 The Criminal Procedure Act (CPA) is the law that governs the process of criminal law. The CPA focuses mainly on case-flow issues, such as the responsibility of the prosecuting authority; search warrants, arrests, summonses, bail, trials, assistance to accused, mental illness, criminal responsibility, pleas, conduct of proceedings, sentencing ,compensation and restitution.

2.3.2.2 Section 50 covers procedures on how to deal with persons after they have been arrested. The provisions indicate the circumstances under which such persons could be detained subject to the determination by a court of law under whose jurisdiction the arrested person appears. This demonstrates the cardinal principle of the criminal justice process – that an accused person (whether detained or on bail) is presumed innocent until proved guilty.

2.3.2.3 Section 59 refers to the granting of bail before the first appearance in court. Except for the crimes specifically listed in Part II or Part III of Schedule 2, the discretion pertaining to accused persons being released from custody on bail should be exercised by a police official of or above the rank of non-commissioned officer, in consultation with the investigating officer.

2.3.2.4 Section 63A of the CPA grants the Head of a Correctional Centre or Remand Detention Facility (RDF), under certain circumstances and with regard to certain crimes, the discretion to either seek the release of a RD or to request amendment of the conditions of such a person's bail. The head of the correctional centre or RDF may approach the relevant court if he/she is satisfied that the population is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused where an accused has been granted bail but remains in custody. This allows for the overcrowding of correctional centres to be taken into account when dealing with the management of RDs in South Africa.

2.3.2.5 Section 63(1) makes provisions for a court, upon the application of the prosecutor or the accused, to amend the amount of bail or amend or supplement any condition imposed. This allows for accused who are unable to pay bail to approach the court to reduce their bail or amend any conditions to ensure they are not held in custody merely on the basis that they cannot afford the bail.

2.3.3 The South African Police Service Act, 1995 (Act No 68 of 1995)

2.3.3.1 The SAPS Act was established to provide for the establishment, organisation, regulation, and control of the SAPS; and to provide for matters in connection therewith. It does not cover its responsibilities in relation to the management of RDs.

2.3.3.2 The role of the SAPS Act as part of the legal framework in the management of RDs is more institutional than substantive. The relevance of the SAPS Act is how members of the SAPS should perform their duties and functions in the overall CJS as prescribed in the CPA and other relevant legislation, regulations, policy documents or guidelines. It is thus important that the SAPS must see its role as critical to the effective management of RDs, as the agency that has primary contact with suspects that eventually become RDs.

2.3.3.3 The ability of the state to manage RDs effectively will be determined largely by the effectiveness of the interaction between the SAPS and other stakeholders in the CJS such as the DCS and the prosecuting authorities.

2.3.4 The Correctional Services Act, 1998 (Act No 111 of 1998)

2.3.4.1 The Correctional Services Act (CSA) is pivotal in the detention management of RDs. Following the Cabinet Lekgotla decision of 2009 to establish a dedicated branch in the DCS to deal with RDs in South Africa, the introduction and implementation of the Correctional Matters Amendment Act, 2011 (Act No 5 of 2011), brought about some important amendments to the CSA to provide for the management of RDs.

2.3.4.2 The Act was established to provide for, amongst others, a correctional system; the establishment, functions and control of the DCS; the custody of all inmates under conditions of human dignity; the rights and obligations of sentenced offenders; the rights and obligations of remand detainees; a system of community corrections; release from the correctional facility and placement under correctional supervision, on day parole and parole and the National Council for Correctional Services.

2.3.4.3 A number of provisions in the Act are directly relevant, such as Chapter III that deals with the custody of all inmates under conditions of human dignity. It is important to note that the term "inmate" refers to both RDs and sentenced offenders.

2.3.4.4 Chapter III consists of Part A, B, and C and is applicable to all inmates. The various sections in part A deal with, amongst others, accommodation, nutrition, hygiene, clothing and bedding, exercise, health care, contact with the community, religion, programmes and services, access to legal advice, reading material, complaints and requests as well as dealing with children and mothers of young children.

2.3.4.5 Part B deals with matters of discipline including infringements, procedures, and penalties. Part C on security and safe custody, deals with searches, identification, security classification, segregation, mechanical restraints, use of force, non-lethal incapacitating devices and firearms.

2.3.4.6 Chapter V was amended by the Correctional Matters Amendment Act, and makes provision for the management, safe custody, and well-being of remand detainees. The chapter was extended from four to ten sections. The areas that were previously covered in this chapter were general principles such as clothing, food and drink as well as visitors and communication. The amended chapter excludes visitors and communication because these areas are covered in section XIII of the CSA. Chapter V includes the following provisions:

- Services to be provided to pregnant women; the mentally ill, the disabled and aged RDs;
- Referral of terminally ill or severely incapacitated RDs to court;
- Provision of uniform to RDs;
- Surrendering of RDs to the SAPS for further investigation; and
- Referral of RDs to court, based on the length of detention.

2.3.5 The Extradition Act, 1962 (Act No 67 of 1962)

2.3.5.1 The Act creates a special category of persons who may be kept in detention, pending surrender to another country, on the basis of crimes allegedly committed in that foreign country and not in South Africa. The surrender will take place where there is an Extradition Agreement between South Africa and that foreign country, or where the President has determined in writing that the person should be surrendered.

2.3.5.2 An instruction to arrest a person emanates from the Minister of DoJCD following an interaction between the two countries. The Minister is empowered to order any person committed to detention under section 10 of the Extradition Act, to be surrendered to any person authorised by the foreign State to receive him or her. The Minister may also refuse if the nature of the offence for which the person is to be extradited is of a trivial nature, or is based on discriminatory grounds. Any person who has lodged an appeal may apply to be released on bail.

2.3.5.3 The magistrate is empowered with the same powers of further detention, further examination, granting of bail or discharge of the case as the magistrate has in dealing with a domestic case.

2.3.5.4 Where the magistrate finds that the person brought before him/her is liable to be surren-

dered to the foreign State based on a variety of factors, the magistrate may issue an order committing such person to incarceration to await the Minister's decision with regard to his or her surrender. Such decision may be appealed within 15 days.

2.3.5.5 The Extradition Act is particularly relevant to remand detention as the amended CSA specifically defines a person detained in terms of this Act as a remand detainee.

2.3.6 The Immigration Act, 2002 (Act No 13 of 2002)

2.3.6.1 This Act administered by the Department of Home Affairs (DHA) is relevant to RDs to the extent that persons arrested for violation of the Act are detained for purposes of being prosecuted. Foreign nationals who have been declared illegal or undesirable in South Africa are also detained awaiting their deportation.

2.3.6.2 The DCS has frequently kept illegal immigrants (i.e. foreigners who are not charged with a crime but are illegally in the country) in its facilities based on an arrangement that exists between it and the DHA.

2.3.6.3 Section 34 of the Act provides that without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested and may, pending his or her deportation, detain him or her in a manner and at a place determined by the Director General of the DHA provided that the foreigner concerned:

- Shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of the Act;
- May at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a court, which if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;
- Shall be informed upon arrest or immediately thereafter of his or her rights, in a language that he or she understands, when possible, practicable and available;
- May not be held in detention for longer than 30 calendar days without a warrant of a court which may extend such detention for a period not exceeding 90 calendar days; and
- Shall be held in detention in compliance with the minimum prescribed standards set out to protect his or her dignity and relevant human rights.

2.3.6.4 The classification of such persons as RDs is problematic as they are not provided for in the definition of a RD. Persons held pending their deportation (as opposed to an extradition) are not classified as RDs. Unless certain provisions kick in, they are not detained on the basis of a court order either, but rather on the strength of a DHA warrant. While detained in the DCS, they will be classified as unsentenced in order to differentiate between sentenced and unsentenced offenders.

2.3.7 The Relationship between the Criminal Procedure Act, 1977 (Act No 51 of 1977) and the Mental Health Care Act, 2002 (Act No 17 of 2002)

2.3.7.1 The CPA provides for procedures relating to the management of court processes and custody of RDs where mental illness affects the criminal proceedings.

2.3.7.2 Where it appears to the court on a factual or medical basis, that an accused person who is alleged to have committed an offence was, at the time of the commission of the offence, not criminally responsible due to a mental illness or mental defect, the court is obliged to direct that an enquiry be made into the mental condition of the accused person and that a report be submitted to the court.

2.3.7.3 For purposes of the enquiry, the court may commit the accused person to a psychiatric hospital or any other place designated by the court for such periods as it may from time to time determine. The period may not exceed thirty (30) days at a time.

2.3.7.4 According to the Mental Observation Protocol, in a situation where the accused persons are committed to DCS facilities for purposes of observation, it is preferable that such RDs be detained in facilities which have a health facility and are in close proximity to the psychiatric hospital.

2.3.7.5 While waiting for the mental health observation/inquiry, the case may be postponed and the accused person may continue to be detained in DCS facilities or SCFs, if the J7 warrant for detention is endorsed accordingly.

2.3.7.6 The place where the observation is to be conducted and the type of observation required, i.e. single psychiatrist or panel observation, should be clearly indicated on the J138.

2.3.7.7 If a court finds that the accused is not capable of understanding the proceedings for making a proper defence; it may consider such evidence to determine whether the accused committed an offence and whether the offence involved serious violence.

2.3.7.8 If an accused person is found incapable of standing trial by reason of mental illness or men-

tal defect, in terms of section 77(6)(a)(i) of the CPA, the court is obliged to declare him or her a state patient and direct that he or she be detained in a psychiatric hospital or correctional centre in all cases of murder, culpable homicide, rape or compelled rape as per sections 3 or 4 of the Sexual Offences Act, charges involving serious violence, or where the court considers it necessary in the public interest.

2.3.7.9 For other offences, the court can order to have the accused person admitted to and detained in an institution stated in the order and treated as an involuntary mental health care user in line with Chapter 5 of the Mental Health Care Act.

2.3.7.10 If the court finds that the accused person is not capable of understanding the proceedings so as to make a proper defence and did not commit the offence or any other offence, it shall direct that the accused person be admitted and detained in an institution stated in the order and treated as if he or she were an involuntary mental care health user.

2.3.7.11 If the court finds that the accused committed the offence and was not criminally responsible due to mental illness or intellectual disability, the court has a discretion in terms of section 78(6)(i) of the CPA to declare the accused person a state patient and direct that he or she be detained in a psychiatric hospital or correctional centre, or direct that the accused person be admitted to and detained in a mental health facility as an involuntary mental health care user or release the accused person conditionally or unconditionally in all cases of:

- murder;
- culpable homicide;
- rape or compelled rape contemplated in sections 3 or 4 of the Sexual Offences Act;
- charges involving serious violence; or
- where the court considers it necessary in the public interest.

2.3.8 The Child Justice Act, 2008 (Act No 75 of 2008)

2.3.8.1 The Child Justice Act (CJA) was established, amongst others, to provide a criminal justice system for children who are in conflict with the law. It makes provision for the minimum age of criminal capacity of children and further covers processes from arrest to diversion, trial, and sentencing of children.

2.3.8.2 The Act provides for securing attendance at court and the release or detention and placement of children. Section 29 provides detailed procedures that govern the placement of children, alleged to have committed an offence, in child and youth care centres, while Section 30 provides detailed procedures that govern the placement of a child in a correctional centre or RDF. Section 30(1) defines the specific conditions that must prevail if a child is to be incarcerated in a correctional centre or RDF.

2.3.8.3 The Act considerably limits the circumstances under which children can be incarcerated, and requires the presiding officer to consider any recommendations relating to alternative placement of the child. This includes evidence in respect of the best interests of the child; the child's state of health; the child's previous record, the risk of any danger to the child or from the child to others; the appropriate level of security required; the risk of absconding and the probable length of detention. The presiding officer must ensure consideration of any impediment to the preparation of the child's defence or any delay in obtaining legal representation, which may be brought about by the detention of the child.

2.3.8.4 The CJA can be interpreted as case-flow legislation for children in conflict with the law who have been accused of committing offences.

2.3.9 The Probation Services Act, 1991 (Act No 116 of 1991)

2.3.9.1 The Act makes provision for the establishment and implementation of programmes aimed at the combating of crime and for the rendering of assistance to and treatment of certain persons involved in crime. The Act clearly outlines the powers and functions of the probation officers. Although the Act deals mostly with persons already sentenced and placed on probation, it also addresses certain aspects of the RDs, which will be the focus here.

2.3.9.2 In terms of the Act, the probation officers are responsible for the following:

- The investigation of the circumstances of an accused with a view to reporting to the court on his/her treatment and committal to an institution and rendering of assistance to his/her family; and
- The investigation of the circumstances of an accused and the provision of a pre-trial report recommending the desirability or otherwise of prosecution.

2.3.9.3 The probation officer therefore has a role to play in identifying the feasibility of placing a person in a non-custodial setting pending the finalisation of his/her case.

2.3.10 The Blueprint: Norms and standards for Secure Care Facilities

2.3.10.1 The blueprint is a policy framework developed by the DSD for the management of Secure Care

Facilities (SCFs) in South Africa. Its objective is to provide standard and uniform services for children in conflict with the law who are detained in SCFs. It communicates ways in which different sectors of society can work together effectively to uphold the principles of child justice and the restorative justice system. The ultimate aim is to promote the best interests of the children in conflict with the law and to prevent offending and re-offending.

2.3.10.2 The blueprint defines "secure care" as a residential facility and/or programme of intervention, which ensures the appropriate physical, behavioural and emotional containment of young people who are charged with crimes and are awaiting trial or sentenced. Such a facility provides an environment, milieu and programme conducive to the care, safety and healthy development of each young person while at the same time ensuring the protection of communities.

2.3.10.3 The concept "secure care" was coined during the transformation process of the Child and Youth Care System. This term was used to make a distinction between children in need of care and those in conflict with the law. The latter would need a programme that would ensure that they take responsibility for their wrongdoing, that recidivism is prevented, that they are contained, that their movements are restricted and that the safety of the community is ensured. The intention was to ensure a place where these children are contained, as well as for intervention during their containment.

2.3.10.4 The blueprint has three distinct sections:

- Part One: covers such areas as guiding principles and values, requirements for an ideal facility, design principles, and basic building blocks for accommodating all the housing needs of the children including provision of services and programmes.
- Part Two: provides, amongst others, a rationale for the establishment of the blueprint which includes the summary of challenges experienced by the SCFs based on the situational analysis conducted, a mandate for the DSD as the national department responsible for SCFs, a vision, mission, guiding principles, secure care model with options, legislative framework, child justice processes, inter-sectoral collaboration, services for children, specific roles and responsibilities of service providers, outsourcing, monitoring and evaluation.
- Part Three: sets down norms and standards in relation to several areas including applicable policy and legislative framework, infrastructure, security, outsourcing, maintenance, organizational development, occupational health issues, community participation, resources, professional services, management and leadership, information management, services and programmes and children's rights.

2.3.11 The Prevention and Combating of Torture of Persons Act, 2013 (Act No 13 of 2013)

2.3.11.1 The Act was established to give effect to the provisions of the UN Convention against torture and other cruel, inhumane or degrading treatment or punishment; to provide for the offence of torture of persons and other offences associated with torture of persons; to prevent and combat the torture of persons within or across the borders of South Africa; and to provide for matters connected with torture.

2.3.11.2 According to the Act "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted, on a person in order to:

- obtain information or a confession from him or her or any other person;
- punish him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or
- intimidate or coerce him or her or any other person to do, or to refrain from doing, anything; or
- for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, with the consent or acquiescence of a public official or other person acting in an official capacity, but does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.

2.3.11.3 The Act classifies torture as a criminal offence and any person who commits, attempts to commit or incites, instigates, commands or procures any person to commit torture will be regarded as guilty of the torture.

2.3.11.4 The Act further stipulates that any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is liable on conviction to imprisonment, including imprisonment for life.

2.3.11.5 In terms of the Act, the following situations cannot be used as a defence to a charge of committing torture or a ground for reduction of sentence, once that person has been convicted of such offence:

- an accused person is or was a head of state or government, a member of a government or parliament, an elected representative or a government official; or
- an accused was under a legal obligation to obey a manifestly unlawful order of a government or superior.

2.3.11.6 Officials working in detention facilities should take note that the Act makes it clear that that no one shall be punished for disobeying an order to commit torture but will be found guilty of torture if they follow such orders.

2.3.12 The Magistrates Courts Act, 1994 (Act No 32 of 1944)

2.3.12.1 According to section (1)(j) of the Magistrates Act, the Minister of the DoJCD may, appoint places other than the seat of magistracy for the holding of periodical courts; prescribe the local limits within which such courts shall have jurisdiction; and include within those limits any portion of an adjoining district. The DCS within its facilities has a number of such courts, which are referred to as periodic courts. They are situated at Zonderwater, Baviaanspoort, Pretoria Local and St Albans.

2.3.12.2 These courts operate as lower courts and the benefit for the DCS is that they deal with cases of alleged further criminal charges of RDs and sentenced offenders while in detention.

2.3.13 The Criminal Procedure Amendment Act, 2008 (Act No 65 of 2008)

2.3.13.1 The Act makes provision for several matters that fall within the CJS including the postponement of certain criminal proceedings against an accused person in custody awaiting trial through audio-visual link.

2.3.13.2 The audio-visual link means a live television link between the court and the remote points, which are both equipped with facilities to enable appropriate persons at the court point and the remote point to follow the proceedings, see, and hear all the appropriate persons. The remote points have been established only in the DCS and may be extended to SCFs at a later stage.

2.3.13.3 According to the Act, the Audio Video Remand (AVR) is applicable to the following categories:

- RDs over the age of 18 years;
- RDs in custody in a correctional facility in respect of an alleged offence;
- RDs who have already appeared before a court;
- RDs whose cases have been postponed and who are in custody pending their trial; and
- RDs who are required to appear or to be brought before a court in any subsequent proceedings for the purpose of further postponement of the case; or consideration of release on bail in terms of sections 60, 63, 63A, 307, 308A or 321.

2.3.13.4 The AVR is applicable to a situation where the prosecutor does not oppose the granting of bail or where the granting of bail does not require the leading of evidence.

2.3.13.5 The benefits of the AVR include reduction in administrative processes of checking out of RDs to court and re-admitting them upon their return from court; a reduction in transportation required to transfer detainees from court and back and a reduction of administration and logistics required in court holding cells.

2.4 Challenges arising from the legal framework and implications

2.4.1 An examination of the legal framework relating to RDs has revealed a plethora of legislation, guidelines, protocols, and policy documents of different shades and provisions dealing with or attempting to deal with RDs under different names and terms that could easily be confused. The possibility exists that the different agencies may see their roles differently because of the various legislations and other documents.

2.4.2 Every initiative at streamlining and improving a system for the management of RDs must take its cue from Section 35 of the Constitution in arriving at appropriate responses as well as other relevant prescripts including those highlighted in this chapter.

2.4.3 The DSD has developed an elaborate policy framework for SCFs. The DCS as an institution that also keeps children in conflict with the law should work cooperatively with the DSD to ensure that the needs of children are adequately taken care of.

CHAPTER 3: DEFINITION OF TERMS

3.1 Introduction

3.1.1 The Constitution and the Criminal Procedure Act and other laws applicable to awaiting-trial detainee, including international laws and treaties, make reference to the arrested, detained and accused persons; while the Correctional Services Act, excluding the Correctional Matters Amendment Act, 2011, provides several definitions of unsentenced offenders and inmates.

3.1.2 The White Paper on Corrections (2005) refers to the following categories of awaiting-trial detainees who are kept in custody by the DCS:

- Awaiting-trial detainees who have been granted bail that they cannot afford to pay;
- Awaiting-trial detainees who have been denied bail; and
- Awaiting-trial children.

3.1.3 This chapter will provide clarity on the categories of awaiting-trial detainees, the rationale behind shifting from the use of "Awaiting-Trial Detainee" to "Remand Detainee (RD)" and other terms, which are critical to our understanding as they have an impact on the broader classification of the clients of the CJS and the development of policies within the DCS environment.

3.2 Awaiting-Trial Detainee

3.2.1 Prior to the enactment of the Correctional Matters Amendment Act, the term awaiting-trial detainee was used in the DCS to refer to an accused person placed in custody before conviction and/or sentencing. The literal interpretation of the term would include the following categories of accused:

- Accused persons who have been detained after the first court appearance whose trials have not commenced, i.e., those in the pre-trial phase;
- Accused persons in detention whose cases were being heard by the courts, i.e. those who were in the trial phase;
- Accused persons detained by the DCS pending observation at designated Mental Health Establishments;
- All the accused persons who were detained in line with section 9 of the Extradition Act; and
- All the accused persons who were convicted and awaiting sentencing.

3.2.2 The term "awaiting trial" gave a false notion that excluded from its definition very significant sectors of the population not sentenced but being held in DCS facilities, most obviously those convicted who were neither sentenced nor awaiting trial, as their trials had been finalised.

3.2.3 The preferred term "remand" is a legal term, which has two related but distinct usages. Its etymology is from Latin re- and mandare, literally "to order." It evolved to become remandare, or "to send back". "Remand" (court procedure) refers to an action by an appellate court in which it sends back a case to the trial court or lower appellate court for action. Remand may also mean the "detention of suspects before trial or sentencing".

3.2.4 The term "Remand Detainee" (RD) was adopted in the Correctional Matters Amendment Act and is inclusive of categories of unsentenced persons in DCS facilities awaiting further action by a court, i.e. persons awaiting trial, awaiting sentencing and awaiting extradition. The definition by its nature excludes sentenced offenders (even when returned from parole break) as well as state patients and involuntary mental health care users (where a decision by a court has already been made) and persons awaiting deportation. The term RD is used in this context throughout this document.

3.3 Determination of different categories of remand detainees

3.3.1 In line with this new defining of those in DCS, DSD and SAPS detention centres, it is important to adapt the warrant to reflect the different categories of RDs. The warrant of detention (J7) must therefore be endorsed to reflect the following categories of RDs:

- RDs detained pending observation at a Mental Health Establishment including children in SCFs;
- RDs detained in line with section 7 of the Extradition Act; and
- RDs who have been convicted and are awaiting sentencing.

3.3.2 This will assist in determining appropriate interventions from any of the detention facilities housing remand detainees. For example, persons who have been convicted but not sentenced must be considered a higher escape risk than those awaiting conviction. Accommodation should therefore be in accordance with such security assessment.

3.4 Other Terms

3.4.1 Secure Care Facility

3.4.1.1 The term refers to Child and Youth Care Centres established in line with the Children's Act, 2005 (Act No 38 of 2005), which cater for the reception, development and secure care of children awaiting trial or sentence. The placement

of children in such facilities is in line with the provisions of the Child Justice Act.

3.4.2 Remand Detention Facilities (RDFs)

3.4.2.1 The term was adopted to refer to facilities that hold RDs to pave the way to a specialised facility, dealing with issues specific to unsentenced inmates rather than to sentenced inmates. This process is in its infancy and there are no facilities in the DCS built specifically to house unsentenced inmates. Although some centres have been used almost exclusively for RDs, a minority of sentenced inmates tend to remain as cleaners or in the kitchen as RDs cannot be forced to work, nor is it practical to train RDs without knowing how long they are likely to be in detention. Many centres in which RDs are detained are "mixed" facilities. Some facilities detain more than 90% RDs, whilst some mixed facilities house both sentenced and unsentenced inmates, although they are detained in separate units.

3.4.2.2 The term "RDF" was adopted in the Correctional Matters Amendment Act and refers to complete RDFs and sections, units and cells within the mixed facilities that detain RDs. The term has been defined as follows in the Act:

"Remand detention facility" means a place established under this Act as a place for the reception, detention or confinement of a person liable to detention in custody, and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of detention, protection, treatment or otherwise, and all quarters used by correctional officials in connection with any such remand detention facility, and for the purpose of sections 115 and 117 includes every place used as a police cell or lock-up;"

3.4.3 Remand Detention Official

3.4.3.1 The term refers to a DCS official who works at the RDF. The official who works in complete RDFs and sections of mixed facilities where RDs reside will apply mainly legislation and policies applicable to the management of RDs. RD officials need to be specialists in attending to the RD populations. In particular, they must be able to liaise efficiently within the cluster and fully understand legislation available and applicable to them. The official working in a mixed facility is expected to be au fait with the legislative provisions and policies applicable to all categories of detainees. The term has been incorporated in the Correctional Matters Amendment Act and defined as follows:

"Remand detention official" means an employee of the Department appointed under section 3 (4) at a remand detention facility or transferred to a remand detention facility.

3.4.3.2 The DCS must determine the nature of training for such officials and whether a dispensation separate from officials attending sentenced offenders may be appropriate.

3.4.4 Accused placed under non-custodial system

3.4.4.1 The following accused persons are placed under a non-custodial system and should not be classified as RDs:

- those who have paid bail,
- those placed on warning; and
- those placed under the supervision of a probation officer or a correctional official in line with section 62(f) of the Criminal Procedure Act.

3.4.4.2 The accused persons who are placed under the supervision of a probation officer are managed by the DSD under the Probation Services Act. Those placed under the supervision of a correctional official are managed by the DCS under the system of community corrections.

3.4.5 The inmate

3.4.5.1 According to the CSA, the term inmate is inclusive of both sentenced and unsentenced categories of detainees. It has been amended in the Correctional Matters Amendment Act and has been defined as follows:

"Inmate" means any person, whether convicted or not, who is detained in custody in any correctional centre or remand detention facility or who is being transferred in custody or is en route from one correctional centre or remand detention facility to another correctional centre or remand detention facility.

3.4.6 State patient

3.4.6.1 The term state patient refers to an unsentenced detainee who is generated through a formal court process, whereby the accused persons is referred for an inquiry into their mental condition where it appears to the court that the accused person, who is alleged to have committed an offence was, at the time of the commission of the offence, not criminally responsible, due to a mental illness or a mental defect which made him/her incapable of appreciating the wrongfulness of his/her act or omission, or acting in accordance with an appreciation of such wrongfulness.

3.4.6.2 The court may declare the accused a state patient in terms of section 77(6)(a)(i) of the CPA and should be managed according Chapter 6 of the Mental Health Care Act.

3.4.7 Involuntary mental health care user

3.4.7.1 The involuntary mental health care user is an unsentenced detainee who is generated through a process similar to the one explained in 3.4.6; however, for purposes of admission, detention and treatment, the court will declare the accused an involuntary mental health care user in terms of section 77(6) or 78(6) of the CPA.

3.4.7.2 In terms of the Mental Health Care Act, the term "involuntary mental health care user" means a person receiving involuntary care, treatment and rehabilitation services at a health establishment aimed at enhancing the mental health status of the user.

3.4.7.3 This category of detainees should be managed according to Chapter 5 of the Mental Health Care Act.

3.4.8 Sentenced offenders with outstanding cases

3.4.8.1 There are persons who are detained on more than one case. If they are convicted and sentenced to custodial penalty, even if other charges are still pending, they cease to be RDs and should be classified as sentenced offenders with further charges. The responsibility for such persons lies exclusively with the DCS, including responsibility for court appearances.

3.4.8.2 There are sentenced offenders who incur additional charges while serving custodial penalties. If they complete serving the custodial penalty before the finalization of other cases, their classification will change to RD status.

3.4.9 Independent Correctional Centre Visitor (ICCV)

3.4.9.1 The term refers to an official who is appointed by the office of the Inspecting Judge in line with section 92 of the CSA. The details of the functions of the ICCV are included in Chapter 8 (Oversight and Control). The services of the ICCV are applicable to Correctional Centres as well as RDFs. It is therefore critical for the DCS to review the concept because at face value it would mean that the official provides services only in Correctional Centres.

CHAPTER 4: GOVERNANCE

4.1 Introduction

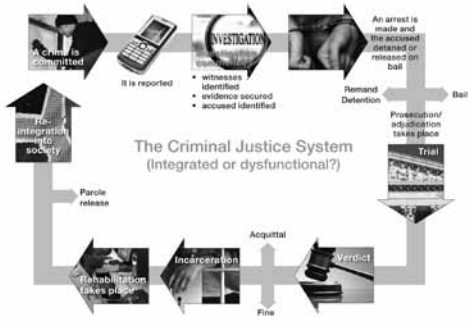
4.1.1 The chapter will cover the role players within the Criminal Justice System (CJS), the institutional mandate for the Management of Remand Detainees (RDs), cooperative governance including the cluster management, the role of Non-Governmental Organisations (NGOs) and training of officials working with RDs.

4.2 Role players from arrest to detention

4.2.1 There are a number of role-players within the South African CJS, who are involved in the management of arrested, accused and detained people. The CJS consists of the following five core departments or institutions: the SAPS, the DoJCD, the NPA, the DCS and the DSD. However, the Justice Crime Prevention and Security (JCPS) Cluster established by cabinet includes the Department of Defence (DOD) and the DHA, in addition to a number of other stakeholders, such as Legal Aid SA.

4.2.2 The SAPS is responsible for investigations and arrests, while the NPA reviews evidence provided by the police and decides whether the available evidence warrants prosecution of the accused. The DoJCD is responsible for court administration. Magistrates and Judges referred to as Presiding Officers, decide whether the accused persons should be detained or released while awaiting their trials. The DCS and the DSD are responsible for carrying out court decisions with regard to the detention of RDs, including those awaiting sentencing. The responsibility of detaining RD children is shared between the DCS and the DSD. The DCS detains the bulk of RDs (approximately 96% of total RD population), while the DSD detains only children RDs in its SCFs who constitute about 3% of the RD population.

4.2.3 Each of the JCPS Cluster departments, excluding the DOD and the DHA, play a significant role in the CJS from the time a suspect is arrested to the time of sentencing (see figure below which outlines the processes involved).



Processes involved in the Criminal Justice System

4.3 Institutional management

4.3.1 Overview

4.3.1.1 The two institutions responsible for the detention management of RDs are the DCS and the DSD; however from time to time, the SAPS house a small population of RDs.

4.3.1.2 The legal document that allows the two institutions to keep RDs is the warrant of detention called the J7. The time limit for the validity of the warrant is the next court date. Should there be no new warrant of detention (J7) issued on the expiry date of the next court appearance, the person is "detained unlawfully"; however, the detention institutions must not release any RD without communicating with the relevant SAPS police station and the court that sent the RD for detention.

4.3.1.3 The release of RDs by the detention institutions must be authorised by the court through the issuing of a warrant of liberation (J1) or payment of bail if the RD was detained pending payment of bail.

4.3.1.4 If the RD has more than one charge and has not been given bail in one of the charges, he/she will not qualify for release.

4.3.2 South African Police Service (SAPS)

4.3.2.1 The management of RDs by the SAPS is limited to their functional need to continue investigations of cases and their historical responsibility to transport accused persons, including RDs detained in the DCS and SCFs, to and from courts to detention facilities or Mental Health establishments.

4.3.2.2 The SAPS is responsible for the transportation of the RDs from the detention facilities (DCS and DSD) to the Mental Health establishment for forensic evaluation prescribed by the court. However, the SAPS officials must produce a J188 form, which prescribes the type of evaluation and the name of the health facility where the evaluation will be done, so that the detention institution can register the release as a temporary release.

4.3.2.3 Arrival time in courts for the RDs collected from the detention facilities is crucial for ensuring their appearance before a Presiding Officer; therefore, it is imperative for the SAPS and the DCS to enter into a formal agreement for the management of RDs that have to be transported over long distances. Distances travelled by the SAPS between detention facilities and courts can extend up to 420 kilometres. A protocol that allows the DCS to hand RDs over to the SAPS a day before the court appearance date, and to bring them back a day after the court appear-

ance, should be developed. The protocol should give consideration to all the factors that impact negatively on early arrival in court.

4.3.2.4 In situations where the RDs have been handed over to the SAPS officials by the DCS and the DSD for court appearances and further investigations, the DCS and the DSD cease to take responsibility for the RDs. The SAPS takes financial responsibility for the provision of the required health, guarding services, safety and security for all RDs in transit as well as for those in court cells. The SAPS is also responsible for providing meals for all RDs detained in the police cells and those in court cells awaiting their court appearance.

4.3.2.5 Prior to the implementation of section 5(2)(b) of the CSA, the SAPS kept a number of RDs in their police cells in terms of a bilateral agreement between the SAPS and the DCS regional offices. The above-mentioned section makes provision for the detention of inmates in a police cell for a period not exceeding seven (7) days if there is no correctional centre or RDF nearby. All the bilateral agreements for detention of RDs in police cells for longer than seven (7) days ceased to operate on 01 March 2012 as this was the official date set for the implementation of section 5(2)(b). The purpose of 5(2)(b) was to ensure that RDs are not kept for longer periods than necessary by the entity responsible for investigating their alleged offences which may lead to torture or inhumane treatment in the pursuit of an investigation.

4.3.2.6 From time to time, the SAPS investigators request the temporary release of RDs into their custody for further investigation; however, in the past the process was not formally regulated. The surrendering of RDs has been formalised by including section 49F in the CSA. The provision clearly stipulates that no RD may be surrendered to the SAPS for the purpose of further investigation, without authorisation by the National Commissioner of the DCS who may authorise the surrender of a RD for a period not exceeding seven days. The responsibility for approval for the temporary release of children detained in SCFs rests with the Head of the SCF.

4.3.2.7 The DCS should make provision for some investigations to be conducted within its facility to reduce the administrative processes of handing over RDs to the SAPS and to the DCS when they are brought back. All SAPS officials who present themselves as investigators should undergo an identity verification process.

4.3.2.8 When the DCS and the DSD has surrendered the RDs to the SAPS for further investigation, the DCS and the DSD still remain accountable to the court with regard to honouring the next court appearance. The DCS, the DSD and the SAPS must develop a protocol, which should incorporate such critical issues as the management of requests and approvals, handing over of RDs to the SAPS, the DCS and the DSD, the management of RDs who do not return to the DCS and the DSD, including cases where this is due to an escape and or death that may take place while the RD is under SAPS custody.

4.3.2.9 When the RDs are temporarily under the custody of the SAPS, it is obligated to adhere to the relevant sections of the Bill of Rights, which apply to accused, arrested and detained persons and other relevant prescripts including making provision for such special categories as children, mothers detained with children, pregnant women, the mentally ill, the sick and the disabled.

4.3.2.10 The RDs enter into the CJS through arrests made by the SAPS and it is imperative that the arresting officials in consultation with the DHA verify their identities in order to adhere to section 17 of the Identification Act, 1977 (Act No 68 of 1977). The verification system utilised by the SAPS should include the use of multiple biometrics. This will help in reducing aliases and the risk of treating repeat offenders as first time clients of the CJS, which will also ultimately contribute to effective measuring of recidivism. Chapter 8 on the use of integrated systems, covers CJS strategies for dealing with the identification of the accused, including RDs.

4.3.3 The Department of Social Development (DSD)

4.3.3.1 The DSD derives its mandate from the following sections of the Constitution of the Republic of South Africa:

- Section 27(1)(c) provides for the right of access to appropriate social assistance for those unable support themselves and their dependants;
- Section 28(1) sets out the rights of children with regard to appropriate care (basic nutrition, shelter, health care services and social services) and detention; and
- Schedule 4 further identifies welfare services, population development and disaster management as functional areas of concurrent national and provincial legislative competence.

4.3.3.2 The mandate for detention management of children who are in conflict with the law was assigned through a provision incorporated in the National Crime Prevention Strategy (NCPS), which was approved by Cabinet in 1996. The

strategy consists of four pillars, including pillar 1: the criminal justice process.

4.3.3.3 The National programmes for Pillar 1 include the Diversion Programme for Minor Offenders and Secure Care for Juveniles.

4.3.3.4 The National Programme on Diversion for Minor Offenders was aimed at diverting petty offenders and juveniles out of the CJS because it was noted that the CJS was enormously costly and often inappropriate for dealing with petty offenders, particularly juveniles, where stigmatisation can pose an intolerable burden on the normal developmental path to responsible adult citizenship.

4.3.3.5 The National Programme in relation to Secure Care for Juveniles argued that youthful offenders suspected of serious offences should not be held in standard detention facilities or police cells. It was conceded that they do, however, need to be held securely, in an environment that limits unnecessary trauma and strengthens the likelihood of eventual reintegration into society. This would require the creation of special secure care facilities for young suspects and offenders.

4.3.3.6 The lead department was the DSD through the inter-ministerial committee on Young People at Risk, which included the DoJCD, the SAPS and the DCS. The team was assisted by other key departments such as Public Works, NGOs and the private sector. The key actions were to speed up the completion or conversion of buildings that provide secure care facilities for juveniles and to implement legislative steps and social programmes to discourage the exploitation of juveniles by criminal syndicates. The Child Justice Act, which is parallel to the Criminal Procedure Act for children refers to Child and Youth Care Centres instead of SCFs and provides a legal mandate for the detention of children in conflict with the law by the DSD.

4.3.3.7 There are two categories of SCFs managed by the DSD namely, those managed under the leadership and guidance of the provinces and those managed through the outsourcing model highlighted in part three of the Blueprint. The latter are managed through an established formal agreement between the province and the service provider.

4.3.3.8 From time to time, SCFs receive children who are not easily manageable and the tendency is to request the court to place them in DCS facilities. Instead of transferring this category of RDs to the DCS, SCFs should ensure that these children are properly assessed and the capacity for their management is developed and shared among various SCFs or alternatively that more secure facilities are created. The more responsibility the DSD is given with regard to this vulnerable group, the more likely it is that children and juveniles will be placed appropriately and the closer the CJS will come to fulfilling the objectives of the National Programme.

4.3.3.9 The DSD has an additional mandate for the management of accused persons placed under the probation officers in terms of section 62(f) of the CPA. The role of the probation officers prior to such assignment is to investigate the circumstances of the accused persons pertaining to reporting to the court and to provide pre-trial and pre-sentence reports with recommendations for consideration by the courts.

4.3.4 The Department of Correctional Services (DCS)

4.3.4.1 The DCS is responsible for the admission and general management of the greater population of RDs. According to the White Paper on Corrections, the DCS was given the responsibility of keeping a range of detainees within its facilities, from the time the Department of Prisons was administered under the Ministry of Justice and was perceived to have a single custodial mandate in relation to the CJS.

4.3.4.2 In the DCS, before the introduction of section 3(2)(d) of the CSA, there was a prevailing notion that RDs were the responsibility of the SAPS and the DoJCD although the legislation governing the DCS, gazetted on 27 November 1998 had the following objective:

"To provide for a correctional system; the establishment, functions and control of the Department of Correctional Services; the custody of all offenders under conditions of human dignity; the rights and obligations of sentenced offenders; the rights and obligations of unsentenced offenders; a system of community corrections; release from correctional centre and placement under correctional supervision, on day parole and parole;…".

4.3.4.3 The Medium Term Strategic Framework of the Government (MTSF, 2009-2014) under the "Strategic priority 6: Intensify the fight against crime and corruption" assisted in dealing with the confusion by incorporating the following focus area:

"41.7 Promote the rehabilitation of detainees to reduce recidivism, addressing the challenge of overcrowding in detention facilities though the creation of a branch dealing with Awaiting Trial Detainees (RDs), ensuring effective security in detention facilities".

4.3.4.4 The DCS has fully accepted the responsibility for detention management of RDs by reviewing its legislation through the Correctional Matters Amendment Act. Section 3 in Chapter 2 of the CSA (the establishment, functions and control of the department) has been extended to include the responsibility for the management of RDs.

4.3.4.5 The mandate for the provision of services and programmes, including respect for the rights of RDs, is derived from the Constitution, the CSA, the CPA, the CJA and other relevant laws and prescripts mentioned in the chapter on the legislative framework.

4.3.4.6 The DCS must ensure that all officials are informed officially of the revised mandate so that they can fully commit to the delivery of services and programmes to RDs. The revised CSA calls for a review of the focus of the DCS to reflect the responsibility for detention management of RDs.

4.3.4.7 The DCS has a small percentage of accused persons placed under the non-custodial system in line with section 62(f) of the CPA. It is imperative for the DCS to develop guidelines for the management of this category of accused.

4.3.4.8 The DCS incorporates within its CSA, Chapter XII and Chapter XV. The former focuses on the powers, functions and duties of correctional officials while the latter outlines the prohibited offences and penalties that will be inferred when the DCS officials are found guilty of committing such offences. These provisions apply to the Management of Remand Detainees in all RDFs.

4.3.4.9 The DCS must ensure that all the RDs under its custody honour their next court dates, which are reflected in the J7. Any failure to attend the court must be reported to the court for the issuing of an updated J7. Situations that hamper court appearances include illness, admission to the hospital, quarantine due to containment of the spread of communicable diseases, writing of examinations, and failure of some RDs to present themselves for court appearance. The latter is common in larger centres that accommodate more than one thousand RDs.

4.3.5 Legal Aid South Africa (Legal Aid SA)

4.3.5.1 Section 28 of the Constitution guarantees legal assistance to children with regard to criminal and civil proceedings, while section 35 applies to those accused and detained. Section 35 (3) (g) of the Constitution (the Bill of Rights) makes provision for every accused person to have the right to a fair trial which includes the right to have a legal practitioner assigned at the state's expense.

4.3.5.2 The Legal Aid Act, 1969 (Act No 25 of 1969) makes provision for legal aid to indigent persons and for legal representation. Legal Aid SA delivers services mainly through Justice Centres and satellite offices. Other modes include Judicare and cooperation partners such as NGOs.

4.3.5.3 There are 120 Justice Centres nationally, which include in-house legal practitioners and public defenders. Judicare consists of private legal practitioners acting on instruction of Legal Aid SA. There are co-operation partners such as NGOs providing legal services with funds provided by Legal Aid SA.

4.3.5.4 Legal Aid SA provides legal assistance to the poor and indigent, therefore, applicants need to complete a means test in order to qualify for legal aid. Legal Aid in criminal matters is granted to any person arrested, regardless of citizenship. It is also provided for all applications for leave to appeal provided the means test is passed (one appeal or petition). Legal Aid for further appeals or petitions is granted on a merit basis.

4.3.5.5 Legal representatives are expected to carry their proof of identification when visiting facilities that detain RDs for security purposes and to prevent abuse of RDs by bogus service providers.

4.4 Cooperative governance

4.4.1 The government adopted a plan to revamp and improve the efficiency of the CJS and security system so that public morale, the maintenance of the social fabric of society and the legitimacy and credibility of the state is improved; critical in this regard is the involvement of individuals and communities in the fight against crime.

4.4.2 In order to deal with, among others, the high levels of RDs within the CJS, the Criminal Justice Strategy and the NCPS of 1996 highlighted the need for an Integrated Justice System (IJS) based on improved interdepartmental co-ordination. However, more than a decade later, achieving a fully IJS has remained elusive. The recently launched Criminal Justice Review once again highlighted the same problems with respect to the management of RDs.

4.4.3 While acknowledging that there has been a lot of work done in order to improve the functioning of the CJS in general (e.g. legislative interventions, improving resource allocation, improvements in infrastructure, etc.), the absence of a fully IJS continues to hamper efforts aimed at dealing with the RDs.

4.4.4 In February 2008, the President's State-of-the-Nation address incorporated the agreement made by Cabinet on a set of changes required

for the establishment of a new modernized, efficient and transformed CJS. This would entail the setting up of a new coordinating and management structure for the CJS at every level, bringing together all role players, such as the judiciary and magistracy, the police, prosecutors, correctional services and Legal Aid SA.

4.4.5 The Cabinet further approved a seven-point plan for adoption and implemented in an integrated and holistic manner in order to achieve a new dynamic and coordinated CJS. The plan incorporates the following:

- The adoption of a single vision and mission leading to a single set of objectives, priorities and performance measurement targets for the CJS by the JCPS Cluster;
- The establishment through legislation or by protocol of a new and realigned single CJS coordinating and management structure;
- Making substantial changes to the present court processes in criminal matters through practical, short- and medium-term proposals to improve the performance of the courts, especially (and initially) the Regional Courts;
- The implementation of key priorities identified for the component parts of the CJS, which are part of or impact upon the new court process, especially pertaining to improving capacity;
- The establishment of an integrated and seamless national CJS IT database/system containing all information relevant to the CJS and the review and harmonization of the template for gathering information relating to the CJS;
- The modernisation of all aspects of the systems and equipment of the CJS, including the fast-tracking of the implementation of the present projects; and
- Involvement of the population at large in the fight against crime by introducing changes to the CPF regime, including expanding the role to deal with all matters in the CJS, for example policing and parole boards as well as provision of financial and administrative infrastructure to give it "teeth".

4.4.6 The Office of the Criminal Justice System Review (OCJSR) was established through protocol to drive the implementation of the seven-point plan, which must include improved management of RDs who are clients of the system from arrest to conviction and sentencing. The office forms part of the cluster management system that operates within the broader framework of the government and within the JCPS Cluster.

4.4.7 The objectives of the Criminal Justice System Review (CJSR) include, the identification of areas for improvement in the CJS; provision of a composite set of recommendations, which can be considered and implemented by government to develop a more efficient, effective and appropriate CJS; the development of an appropriate model or framework to measure and track the performance of the CJS; and providing policy makers with the information needed to assess the performance of the present South African CJS on a more scientific basis.

4.5 Cluster management

4.5.1 The cluster system is the approach utilised by the government to deliver, through a formal plan of action, on the strategic priorities outlined in the MTSF. The MTSF is meant to guide planning and resource allocation across all spheres of government. National and provincial departments have to develop their five-year strategic plans and budget requirements, taking into account the medium-term imperatives of the government.

4.5.2 The MTSF for 2009-14 focuses on 12 outcomes, including outcome 3: "All people in South Africa are and feel safe". The fight against crime and corruption is firmly embedded in this outcome.

4.5.3 The delivery partners for outcome 3 include several entities and those that play an active role in the detention management of RDs are:

- The South African Police Service (SAPS),
- The National Prosecuting Authority (NPA),
- The Department of Justice and Constitutional Development (DoJCD),
- The Department of Correctional Services (DCS),
- The Department of Social Development (DSD),
- The Department of Home Affairs (DHA),
- The Department of Health (DOH),
- The Judiciary, and
- Legal Aid SA.

4.5.4 Outcome 3 has several outputs and the critical one for this White Paper is output 2: "An effective Criminal Justice System". The JCPS departments have a responsibility to include relevant indicators and key activities in their departmental strategic plans and annual performance plan.

4.5.5 The coordinating department for output 2 is the DoJCD. The latter coordinates through the National Development Committee, which consists of several sub-structures or task teams including the Case Flow Management Task Team, the Criminal Justice System Review Team, the Integrated Justice System Research Coordina-

tion Committee, the Management of Awaiting-Trial Detainees Task Team, the Restorative Justice Task Team, the Victim Empowerment Programme, the Human Trafficking Task Team, the Civilian Secretariat for Police, the Criminal Assets Recovery Unit, the Budget Review Task Team, the Road Traffic Management Corporation and the Road Safety Task Team. Each sub-structure is led by a JCPS Cluster department and is chaired by a senior manager at the level of a Chief Director of the lead department.

4.5.6 The National Development Committee consists of the secretariat, chairpersons of the various sub-structures and the executive managers from the major role player departments such as the DoJCD, the SAPS and the DCS.

4.5.7 The National Development Committee is led by the chairperson from the DoJCD who assigns the responsibility for driving the implementation of each indicator and key activities to its sub-task teams.

4.5.8 The sub-structures handle operational and policy challenges that affect the functioning of the CJS through the development of protocols. The protocols that have an impact on the flow of the cases, including RDs, are endorsed by the CJSR committee before submission to the National Development Committee.

4.5.9 The chairperson of the National Development Committee reports all developments to the Directors-General (DGs) Committee of the JCPS cluster for approval.

4.5.10 Although approval for protocols at this level is essential, for these to be effective each Department must "translate" these into operational procedures communicated in a comprehensible manner to all those implementing such protocols. In the DCS, this means that each head of an RDF must be familiar with the protocols affecting RDs.

4.5.11 This White Paper subscribes to and endorses the current approach utilised for managing the provisions that require cooperation from various partners within the CJS.

4.5.12 Several protocols have been developed within the cluster, they are:

- The Bail Protocol (section 63A of the Criminal Procedure Act);
- The Protocol on the Referral of the Terminally Ill or Severely Incapacitated Remand Detainees to court (section 49E of the Correctional Services Act);
- The Protocol on Maximum Incarceration Periods of Remand Detainees (section 49G of the Correctional Service Act);
- The Protocol on Procedure to be followed in the case of mental enquiries in respect of accused persons (conducting forensic psychiatric observations in respect of accused persons);
- The Consultation Protocol (provision of legal services by Legal Aid SA to RDs in the DCS); and
- The Protocol on Temporary Release of RDs to SAPS for further investigations and early arrival in court.

4.5.13 Other areas that require management through the development of protocols are:

- The management of RDs placed in detention institutions pending observation: some wait in a detention facility for more than two years for a bed in a mental health establishment; and
- The management of the State Patients who are detained in remand detention facilities and SCFs. This category is detained indefinitely and there is no established process for their management within the remand detention facilities. The processes highlighted in the Mental Health Care Act only apply to those detained or transferred from remand detention institutions to Mental Health Establishments managed by the Department of Health.

4.5.14 Additional areas that require management through the development of protocols will be determined and discussed at the relevant sub-structures of the National Development Committee. All the protocols will be endorsed and approved through the formal processes that have been established within the CJS.

4.5.15 Provisions of the protocol that require alignment with particular legislation or several pieces of legislation will be handled during the review of the applicable legislation.

4.6 The role of Non-Governmental Organisations (NGOs)

4.6.1 The services of NGOs will be utilised by the institutions responsible for the detaining of RDs through formal agreements. These services may include research, provision of programmes to RDs, and development of training material for officials and RDs as well as training of officials in selected areas to improve service delivery in facilities that detain RDs.

4.6.2 It remains the responsibility of government and in particular Departments that detain RDs to ensure compliance with the rights of RDs. Howev-

er, the work of NGOs is complementary to these obligations.

4.6.3 It must be acknowledged that simply by wearing a uniform, officials of the Departments such as the DCS elicit a different response from inmates and therefore they may not be the most effective implementers of programmes and services in all situations.

4.6.4 This is particularly so in cases where officials are responsible for security and discipline. The role of NGOs is therefore crucial in providing the services and programmes necessary within a Remand Detention Facility.

4.7 Training and development of officials

4.7.1 A training programme will be developed for creating a common understanding among the JCPS cluster departments on what constitutes appropriate training of remand detention officials as defined in the CSA; however all departments responsible for the detention of RDs will extend the training further in order to cater for the provisions applicable to their institutions.

4.7.2 The DCS should review its current model of training for new recruits and develop an integrated approach that will cater for the needs of RDs including special categories such as children, the mentally challenged, high-risk RDs, pregnant women and girls and terminally ill RDs.

4.7.3 Officials working in RDFs or with RDs need specialised knowledge not necessarily required in correctional centres dealing with sentenced offenders. It is imperative that the DCS looks at the type of training required for RD officials and that such training is implemented at all levels.

CHAPTER 5: RIGHTS AND PRIVILEGES OF REMAND DETAINEES

5.1 Origins of rights

5.1.1 The rights of detainees can be found in various international as well as domestic instruments, standards, treaties and laws.

5.1.2 The critical source documents for the rights of RDs in South Africa are the Bill of Rights as enshrined in the Constitution of the Republic of South Africa, the UN Standard Minimum Rules for the Treatment of Prisoners to which South Africa is a signatory, as well as sections of the CSA.

5.1.3 In addition to the rights mentioned in this chapter, the rights specified in the DSD blueprint, will be applicable to children detained in SCFs.

5.1.4 The institutions detaining RDs respect the rights applicable to vulnerable groups such as the disabled, women, the mentally ill, and the aged.

5.1.5 The rights of and obligations to children contained in international and regional instruments, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child will apply to all children in conflict with the law who are detained in police cells, DCS facilities and SCFs.

5.1.6 On occasion, amenities are mentioned in the same context as rights. However, generally, the rights listed below may not be limited; whereas the amenities or privileges may be limited should sufficient reasons exist for the limitation thereof.

5.2 Specific rights for Remand Detainees

The following specific rights apply to RDs in South Africa:

5.2.1 RDs shall be presumed innocent and will be treated as such.

5.2.2 RDs must be held in cells, which meet the requirements prescribed by regulation or any other policy developed by the detention institution in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions which support the maintenance of human dignity.

5.2.3 The following categories must be kept separately, especially in respect of sleeping accommodation:

- RDs must be kept separately from sentenced offenders;
- Males must be separate from females; and
- Children must be kept separately from adults and in accommodation appropriate to their age.

5.2.4 On admission, RDs must be informed of their rights to choose and consult with a legal practitioner; or to have a legal practitioner assigned by the State, at state expense.

5.2.5 On admission, RDs must be provided with written information on or must be informed of the rules governing their treatment, the disciplinary requirements, the authorised channels of communication for complaints and requests and all such other matters as are necessary to enable them to understand their rights and obligations.

5.2.6 RDs must be provided with a well-balanced diet to promote good health.

5.2.7 Clean drinking water must be available to all RDs.

5.2.8 RDs must be provided with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.

5.2.9 Every RD has the right to at least one hour of exercise per day.

5.2.10 Every RD has the right to adequate medical treatment and may, subject to certain conditions, be visited, examined and treated by a medical practitioner of his or her choice. However, if he/she opts to utilise the medical practitioner of his/her own choice, he/she will be personally liable for the costs of any such consultation, examination, service or treatment.

5.2.11 No RD may be compelled to undergo medical intervention or treatment without informed consent unless failure to submit to such medical intervention or treatment will pose a threat to his/her health or the health of other persons.

5.2.12 All RDs must be provided with the necessary means to notify their next of kin of their detention.

5.2.13 A RD who is a foreign national must be allowed to communicate with the appropriate diplomatic or consular representative or, where there is no such representative, with a diplomatic representative of the state or international organisation whose task it is to protect the interests of such detainee.

5.2.14 All RDs must be allowed freedom of conscience, religion, thought, belief and opinion.

5.2.15 RDs must be provided with the opportunities and facilities to prepare for their defence.

5.2.16 Every RD who is a child must have access to and be encouraged to attend educational programmes and must be provided with social work services, religious care, recreational programmes and psychological services.

5.2.17 Every RD must, on admission and on a daily basis, be given the opportunity to submit complaints or requests to the head of the facility or any other delegated official and to have those complaints and requests attended to.

5.2.18 No RD must be tortured or treated with cruelty and degradation.

5.2.19 No RD will appear for any court proceeding dressed in a prescribed uniform. If a detainee does not have adequate or proper clothing, he or she must be provided with appropriate clothing at state expense to enable him or her to appear in court.

5.2.20 Pregnant women and girls will receive a special diet to promote good health.

5.2.21 No RD may be surrendered to the SAPS for the purpose of further investigation, without authorisation by the National Commissioner of the DCS or a delegated official within the institution that detains RDs in which case the period may not exceed 7 days.

5.2.22 The period of incarceration of a RD must not exceed two years from the initial date of admission to the remand detention facility, without such matter having been brought to the attention of the court concerned.

5.2.23 Excessive force may not be used against a RD. The use of force will be restricted to when it is necessary for self-defence; the defence of any other person; preventing a detainee from escaping; or for the protection of property. In such cases, only the minimum degree of force must be used and the force must be proportionate to the objective.

5.2.24 Every RD must be given an opportunity to lay criminal charges against anybody who has committed an act, which constitutes a criminal offence against the RD whilst incarcerated.

5.3 Amenities

5.3.1 An important principle, which determines the possible restriction of amenities, is that it places a responsibility and obligation on the detainee to comply with the requirements set by the detention institution. “Amenities” as defined in the CSA, refers to recreational and other activities including privileges which are granted to inmates in addition to what they are entitled to in terms of rights, and includes but is not restricted to, exercise; contact with the community; reading material; recreation; and incentive schemes.

5.3.2 RDs may be subjected only to those restrictions necessary for the maintenance of security and good order in the detention facility.

5.3.3 Subject to restrictions which may be prescribed by regulations or any other policy developed by the detention institution, RDs may be allowed to have food and drink sent or brought to them in a detention facility.

5.3.4 Contact with families and friends must be encouraged and if this amenity is restricted, restriction should be as minimal as possible.

5.3.5 RDs must be allowed access to available reading material of their choice unless it creates a security risk.

5.3.6 Following a disciplinary hearing, amenities may only be restricted for a period prescribed by the detention institution.

5.3.7 The right of every RD to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of officials and the safe custody of all RDs in the facility.

5.4 Obligations of remand detainees

5.4.1 Every RD is required to respect the authority of and to obey the lawful instructions of the National Commissioner of the DCS and his/her counterparts in the SAPS and the DSD, as well as officials working with RDs at the coalface of service delivery.

5.4.2 All RDs must take note of the information provided to them on admission and must confirm that they understand what was conveyed to them.

5.4.3 As soon as possible after admission, every RD must bath or shower, and undergo a health status examination, which must include testing for contagious and communicable diseases.

5.4.4 Every RD must keep his or her person, clothing, bedding and cell clean and tidy.

5.4.5 Every RD who is a child is subject to compulsory education and must attend educational programmes.

5.4.6 If a RD commits a disciplinary infringement, he/she will be subjected to a disciplinary process prescribed by the detention institution.

5.4.7 RDs must subject themselves to necessary searches as part of the measures taken to ensure the security of the community, the safety of officials working in detention facilities and the safe custody of other detainees.

5.4.8 RDs must participate in measures for proper identification.

5.4.9 Every RD must wear a prescribed uniform as determined by the detention facility for the maintenance of security and good order.

CHAPTER 6: SERVICES AND PROGRAMMES

6.1 Introduction

6.1.1 The provision of services and programmes to RDs should be linked to the rights specified in section 35 of Constitution (i.e. the rights of the arrested, the detained and the accused), relevant sections of the CJA, CSA and other applicable international laws and treaties.

6.1.2 These rights apply from the time of arrest to instituting a charge, prosecution, conviction and sentencing. Since this White Paper focuses on the detention management of RDs, it will limit itself to those rights that are relevant to the provision of services and programmes to the accused who are placed in detention in DCS, DSD and SAPS facilities.

6.1.3 In the past, the provision of programmes to RDs has been somewhat haphazard. Many difficulties exist in providing programmes to such a fluid population. In addition, many discussions were held around appropriate programmes to administer to a population which has not been found guilty. Programmes intended to correct offending behaviour are therefore not appropriate. However programmes do not need to focus on offending behaviour but can be programmes designed to improve various skills of inmates, such as life skills. The provision of such programmes should be a priority for all remand detention institutions within the realms of possibility.

6.1.4 The CSA has several provisions that cater for services and programmes for the general population of inmates, including special categories. The CSA has been extended through the Correctional Matters Amendment Act by making provision for the general population of RDs, including special categories.

6.1.5 In terms of international laws and treaties and Chapter 5 of the White Paper on Corrections (paragraph 5.6.11), the following services should be provided to RDs:

- continuity in education and training in line with Government policy;
- safety of person;
- access to social welfare services in line with Government policy;
- access to state-provided health care in line with Government policy;
- access to visits;
- communication and correspondence with family and friends;
- access to recreational and reading resources; and
- access to legal representation.

6.1.6 The blueprint on SCFs makes provision for services and programmes that should be provided to children in conflict with the law.

6.2 Alignment with the Constitution

6.2.1 The following table reflects the services and programmes to be provided for RDs in relation to certain rights as set out in section 35 of the Constitution.

Provision	Services and Programmes
The right to choose and to consult with a legal practitioner including the right to be represented by the legal practitioner; (Section 35(2)b)	Legal representative to be given access to facilities that detain RDs Facilities that detain RDs should have adequate consulting rooms
The right to have adequate time and facilities to prepare a defence; (Section35(3)b)	Library facilities to be established and stocked with relevant material which can be utilised by RDs to prepare for their cases RDs to be given access to the library
The right to conditions of detention that are consistent with human dignity including at least exercise and the provision of adequate accommodation, nutrition, reading material and medical treatment at state expense; (Section 35(2)e)	Proper maintenance of the facilities Facilities to be created and resources or tools made available for RDs to do exercise The day programme for RDs should include time for exercise Provision of accommodation, nutrition and reading material Provision of health care services
The right to communicate with and be visited by a spouse or partner, next of kin, chosen religious counsellor and chosen medical practitioner; (Section 35(2)f)	Facilities for visits to be created Visiting schedule to be developed and made available to visitors and RDs Facilities to be created to cater for consultation between the RDs and their chosen medical doctor or religious counsellors In cases where the medical practitioner provides a service to the RD at a cost, the position of the detention facility with regard to payment should be clearly communicated to the RDs
The right to have their trial begin and conclude without unreasonable delay; (Section 35(3)d)	Access to remand detention facilities by probation officers to conduct assessments for pre-trial and pre-sentence reports Establish an effective and efficient transportation service from the detention facility to court Make provision for longer distances that have to be travelled to courts Referral of RDs to court for consideration based on the length of detention
	To be linked with access of legal representatives to detention facilities for consultation and the provision of facilities to prepare for defence

Provision	Services and Programmes
The right to be present when being tried (Section 35(3)e)	Circumstances that prevent the RD from appearing in court such as hospitalisation or sickness and writing examination should be communicated to the court The provision of transport and accommodation for longer distances

6.3 Alignment with the Correctional Services Act

6.3.1 The table below reflects the principles espoused in selected provisions of the CSA including relevant sections of the Correctional Matters Amendment Act:

Provision	Principle	Applicability
Provision of Health services (Section 12)	Adequate health services based on Primary health care	Inmates including RDs
	A correctional medical practitioner, a specialist or health care institution or person or institution identified by a correctional medical practitione	
	Use of own medical practitioner at own cost	
	No compulsory medical treatment or intervention except when the health of the inmate is at risk	
	Surgery will require consent from the inmate or significant other except in exceptional cases *NB: The provision of health services should be done in close cooperation with the National Department of Health and its provincial offices.*	
Contact with community (Section 13)	Maintenance of contact Opportunities for visits by spouses or partners, next of kin, chosen religious counsellors, chosen medical practitioners or any significant other	Inmates including RDs
	Communication with the appropriate diplomatic or consular representative or international organisation tasked to protect the interests of the inmate	Inmates who are foreign nationals
	Notification of the next of kin or any other relative	Inmates including RDs
	Notification of appropriate state authorities with statutory responsibility for the education and welfare of children, parents, legal guardians or relatives (notification is compulsory)	All inmates who are categorised as Children (14 to 17)
	Issuing of particulars to the next of kin or spouse on place of detention (permission to be sought from the inmate)	All inmates except children
Religion, belief and opinion (Section 14)	Allowance for freedom of conscience, religion, thought, belief and opinion	Inmates including RDs
	Voluntary and free attendance of religious services and meetings at the detention facility	
	Keeping of religious literature	
	Provision of places of worship	
Death at the detention centre (Section 15)	Deaths due to unknown reasons should be managed according to Inquest legislation	Inmates including RDs
	Reporting of deaths to the office of the Inspecting Judge	
	Notification of the next of kin or relative	
Corrections, development and care programmes and services (Section 16)	Provision of programmes and services which have not been catered for in the Act	Inmates including RDs
	Linking up with agencies that provide programmes and services that the DCS cannot provide	
	Catering for the disabled	
Access to Legal Advice (Section 17)	Right to consult on any legal matter with the practitioner of own choice at own expense	Inmates including RDs
	Provision of opportunities and facilities to prepare for defence	RDs
Reading Material (Section 18)	Access to reading material The material can be sourced from the DCS library or from the external environment Consideration of security risk	Inmates including RDs
Children (Section 19)	Compulsory education Access to educational programmes Provision of social work services, religious care services, recreational programmes and psychological services	All inmates who are categorised as Children (14 to 17)
Mothers of young children (Section 20)	Keeping of own children until they reach 2 years of age The best interests of the child are to be taken into consideration	All inmates who are detained with their children
	Facilitation of the placement of the child in consultation with the DSD	
	Provision of the facilities, food, clothing and other requirements for the healthy development of the child	
	Establishment of mother and child unit	
Food and drink (Section 47)	The bringing of food and drinks into RDFs to be regulated	RDs
Clothing (Section 48)	Wearing of a prescribed uniform which is distinct from the one worn by sentenced offenders No wearing of prescribed uniform for court attendances Provision of court clothes in situations where the RD has inadequate or inappropriate clothing	RDs

Provision	Principle	Applicability
Safekeeping of information and records (Section 49)	Information and records to be kept in RDFs in line with the National Archives and Record Service of South Africa Act, 1996 (Act No 43 of 1996)	All RDFs
Pregnant women (Section 49A)	Confirmation of pregnancy on admission through referral to registered medical practitioner Availability of the unit to cater for their needs Provision of an adequate diet	All RDFs
Disabled remand detainees (Section 49B)	Provision for separate accommodation in single or communal cells Provision of additional health care services based on the principles of primary health care Provision of additional psychological services if recommended by a medical practitioner	All RDFs
Aged remand detainees (Section 49C)	Detention of RDs above the age of 65 years in single or communal cells Accommodation of a variation ordered by the medical practitioner on prescribed diet and interval between meals	All RDFs
Mentally ill remand detainees (Section 49D)	Detention of persons suspected to be mentally ill or persons displaying signs of mental illness in single cells or correctional health facility for observation in line with s77(1) of the Criminal Procedure Act Provision of adequate health care and prescribed care and treatment for mentally ill RDs Provision of social and psychological services	All RDFs
Protocol on procedure to be followed in the case of mental enquiries in respect of accused persons (informed by Chapter 13 of the Criminal Procedure Act and Chapter 5 and 6 of the Mental Health Care Act)	**RDs in custody pending observation** Detention in separate cells from the general population Preferably RDs should be detained in centres with a health facility and should be in close proximity to the psychiatric hospital Endorsement of the J7 (by court) to reflect detention pending observation The J7 to be accompanied by the J138 warrant which specifies the type of observation and the place where the observation is to be conducted Responsibility for transportation between the court, the DCS facility, the hospital and the mental health facility has been assigned to the SAPS The superintendent of the mental health establishment that conducts the panel observation must be provided with the details of the treatment, special investigations and prescribed medication administered to the RD	All RDFs
	RDs appearing to be mentally ill and not placed for mental observation The head of the detention facility to ensure that the required levels of care, treatment and rehabilitation are provided	
	Notification of the relevant prosecutor or the investigating officer	All RDFs
	One major challenge faced by the detention institutions with regard to RDs committed pending observation is that there is no statutory requirement placed on the Department of Health with regard to the availability of services and therefore some RDs wait for more than two years for a bed.	
Terminally ill or severely incapacitated remand detainees (Section 49E)	• Provision for referral to court on written advice of the medical practitioner treating that person • Acknowledgement of the inability to provide the required level of care • Arrangements for the supervision, care and treatment within the community • Obtaining consent for the RD concerned or relative or significant other • Legal representative to be informed	All RDFs
Release of remand detainees under the supervision of the SAPS (Section 49F)	• Surrendering of the RD to the SAPS for further investigations must be authorised by the National Commissioner • The SAPS not to keep the RD for longer than seven days	All RDFs
Maximum incarceration (Section 49G)	• Provision for referral of RDs to court before completion of two years from the date of admission and annually thereafter • Determination for further detention or release under conditions appropriate to the case will be done by the court (presiding officer) • Reporting all the RDs detained for a successive six-month period to the Director of Public Prosecution at six-monthly intervals	All RDFs
Section 41 principles were excluded because the section focuses on the provision of programmes to sentenced offenders only.		

6.4 Alignment with the Child Justice Act

6.4.1 The table below reflects the summary of the provisions of the CJA, which are applicable to all institutions responsible for the detention of children RDs:

Provision	Principle	Applicability
Guiding principles (Section 3)	• Children should be addressed in a manner appropriate to their age and intellectual development • Parents, appropriate adults and guardians should be able to assist children in proceedings and, wherever possible, participate in decisions affecting them. • A child lacking in family support or educational or employment opportunities must have equal access to available services	All detention facilities for children The SAPS, the DSD and the DCS

Protection of children detained in police custody (Section 28)	• Children must be detained separately from adults, and boys must be housed separately from girls;
	• The conditions of detention must take their particular vulnerability into account in order to reduce the risk of harm to children, including the risk of harm caused by other children;
	• Children must be permitted visits by parents, appropriate adults, guardians, legal representatives, registered social workers, probation officers, assistant probation officers, health workers, religious counsellors and any other person who, in terms of any law, is entitled to visit; and
	• Children should be provided with immediate and appropriate health care in the event of any illness, injury or severe psychological trauma;
	• The Station Commander must ensure that the child receives immediate and appropriate medical treatment in the following circumstances:
	  • When there is evidence of physical injury or severe psychological trauma;
	  • When there is evidence of physical injury or severe psychological trauma;
		Arrested children detained in SAPS police cells

	• When there is an allegation that a sexual offence has been committed against the child; or there are other circumstances that warrant medical treatment.	
Placement in DCS facility (Section 30)	• The child must be 14 years or older; • The child must be accused of having committed Schedule 3 offences • The detention is deemed necessary in the interests of the administration of justice or the safety or protection of the public or the child or another child in detention as determined by a court; and • There is a likelihood that the child, if convicted, could be sentenced to imprisonment • Before a decision is made to detain or further detain a child in a DCS facility, the presiding officer must consider any recommendations relating to placement in the probation officer's assessment report and various applicable factors • The court appearance will take place every 14 days.	• Children RDs held in the DCS
• Error regarding placement (Section 31)	• Adhere to the J7 instruction if you pick up an error in the placement of a child in a youth care centre, a police cell or lock-up or in a DCS facility • Refer the child to the relevant Presiding Officer for correcting of errors before the next court date	All detention facilities that keep children RDs (SAPS, DSD and DCS

6.5 Implications for the institutions that detain RDs

6.5.1 The above-mentioned principles, together with applicable international prescripts, will guide the development of the overarching policies for the provision of services and programmes for RDs. Each department will ensure that it has the capacity to deliver in respect of the required services and programmes.

6.5.2 Each institution should have generic services and programmes, which will be applicable to the general population of RDs and those for special categories of RDs such as children, pregnant detainees, and mothers detained with children, aged detainees, the mentally ill, foreign nationals and those in detention pending observation.

6.5.3 The policies on services provided to RDs should include the management of detention issues such as requests to attend family funerals, the management of deaths of RDs and the celebration of special days. Any provision of a service that will lead to the temporary release of the RD from the detention institution should be discussed with the investigating officer and the court to determine the security risk. The investigating officer and the clerk of court should be

informed accordingly if the RD escapes and the established procedures for the management of escapes should be adhered to.

6.5.4 The provision of services and programmes will be guided by the following factors in all facilities that detain RDs:

- The RDs have a right to be presumed innocent and as such will not be provided with programmes based on inferred charges unless such programmes are prescribed by the courts;
- The RDs are a very unstable population whose length of detention is beyond the control of detention institutions, therefore the programmes delivered should be flexible enough to accommodate the constant change of faces;
- Wherever possible RDs should be detained in accordance with their risk profile as well as potential length of stay (e.g. regional court cases take longer on average than magistrate court cases and multiple accused tend to lengthen the process) in order to provide programmes;
- Preparation for court must take precedence over the attendance of programmes;
- The RDs should be encouraged to attend programmes which are aimed at self-development;
- Where the provision of programmes is compulsory, the RD should be informed accordingly;
- Services that are provided by other (JCPS) cluster institutions which have a direct impact on the case(s) of RDs should be communicated to RDs in various ways such as through pamphlets, posters and orientation manuals; and
- The principles of access to the detention institutions for provision of services to RDs and limitation thereof should be communicated to the JCPS cluster institutions, the public and other relevant stakeholders including NGOs who participate in the delivery of services and programmes to RDs.
- The programmes provided to RDs should be quality assured.

CHAPTER 7: ORDERLY, SAFE AND SECURE REMAND DETENTION

7.1 Introduction

7.1.1 The principles presented in this chapter form the basis for ensuring the good order, safety and security of RDs, officials and service providers. They emanate from several prescripts including the following:

- The Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);
- The UN Standard Minimum Rules for Treatment of Prisoners;
- The Correctional Services Act, 1998 (Act No 111 of 1998);
- The White Paper on Corrections (2005);
- The Firearms Control Act, 2000 (Act No 60 of 2000);
- The United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (10 December, 1984);
- The United Nations Optional Protocol to the Convention Against Torture (OPCAT); and
- The Prevention and Combating of Torture of Persons Bill.

7.1.2 All institutions responsible for custodial management of RDs are obliged to ensure that public safety is maintained from detainees who pose a threat, a safe environment is created and maintained for all detainees and service providers, a culture that respects and observes human rights is prevalent and that remand detainees are available and on time for court appearances.

7.1.3 Security measures refer to the actions taken to prevent RDs from escaping or causing harm to others and safety measures refer to the actions taken to maintain good order and control in detention facilities to prevent disruptive behaviour and to protect vulnerable inmates. Safety measures should be supported by a fair and just disciplinary system.

7.1.4 The DSD has included security measures for SCFs in the blueprint, which is the policy framework for the management of SCFs in South Africa.

7.1.5 The DCS has existing operational policies, which are informed by the CSA and other applicable prescripts; however, these policies should be extended to provide for all needs of remand detainees. Although the Act has clearly articulated the disciplinary processes for inmates, the operational policies on discipline only cater for sentenced offenders.

7.2 Legislative responsibility

7.2.1 The Constitution guarantees the freedom and security of the person, which includes the right to be free from all forms of violence, from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhumane or degrading way. Although the Constitution allows for a limitation of rights, it remains the obligation of the authority detaining such persons to ensure their safety.

7.3 Overarching principles

7.3.1 According to the White Paper on Corrections (2005), the DCS has committed itself to a culture devoid of militaristic practice, which is seen as inappropriate for a rehabilitation-centred Correctional System. As such, the DCS has assumed civilian structures with a strong social sector dimension, with a focus on tight security, personnel discipline, and a civilian rank recognition.

7.3.2 Remand Detention Management in the DCS forms part of these commitments and operates as an integral part of the organisation. Although there is no focus on correcting offending behaviour in Remand Detention, the requirements for safety, security and human dignity within an orderly environment remains equally important.

7.3.3 The principle of presumption of innocence should be maintained at all times when dealing with RDs, therefore they may be subjected only to those restrictions necessary for the maintenance of security and good order.

7.3.4 The remand detention population consists largely of persons who have allegedly committed serious crimes and who have not been granted bail. They are therefore regarded as possibly posing a significant risk to the community and for that reason they have been refused bail or remanded in custody. Those with bail constitute a smaller part of the remand detention population, which ranges from 15-20% of the RD population.

7.3.5 The concept of security lies not only in the physical detention of persons, such as high fences, but also in less traditional measures, such as keeping RDs constructively occupied. Officials should therefore be properly trained in both security and human rights issues.

7.3.6 Detention institutions should apply security measures that are strict yet fair, equitable and transparent.

7.3.7 Security measures should be multidimensional and as such should cover personnel, physical, information, technology and operational issues as well as management supervision.

7.3.8 The principle of dynamic security should be implemented where possible. It includes the development of a positive relationship with RDs, diverting of the energy of detainees into constructive work and activity and the provision of programmes based on the individual needs of RDs. The success of the dynamic security is dependent of the establishment of an adequate ratio of staff to detainees.

7.3.9 Good conduct and cooperation can also be encouraged through the implementation of a privilege system appropriate for different classification categories of detainees.

7.3.10 Behaviours that are common in most detention institutions all over the world such as attempted escape, hostage taking and possession of dangerous weapons should be well catered for through the development of clear policies that address primary, secondary and tertiary prevention measures and personnel should be adequately trained to respond to such behaviours.

7.3.11 Security measures should include training of officials in principles of security, management of groupings or gangs, fights, sexual abuse, classification of facilities, use of force and mechanical restraints, risk classification, disciplinary processes, wearing of uniform and implementation of applicable case management principles including the development and management of a structured day programme.

7.3.12 Managers of detention institutions are responsible for ensuring that a balance is maintained between security, order and human rights. Security and control must be performed with due diligence and must exclude abuse of power, brutal methods of control, unlawful and undue punishment.

7.3.13 Managers of detention institutions should refrain from using torture as a strategy for promoting security and order. The meaning of torture should be communicated to the officials working with RDs, including the implications of the commission of acts of torture.

7.3.14 The use of force as a means of restoring order can only be justified in extreme circumstances when order has broken down and all other interventions have failed. The use of force and the type of force to be used may only be that authorised by the delegated authority. At all times, the prescribed alternatives to the use of force will be the preferred solution.

7.3.15 Whenever the use of force is unavoidable the following measures must be adhered to:

- restraint in the use of force should be exercised and the action should be in proportion to the seriousness of the situation and the objective to be achieved;
- damage and injury should be minimised;
- human life should be respected and preserved;
- medical intervention should be provided to those injured;
- debriefing should be provided to those affected;
- relatives or the next of kin of the injured or affected RDs should be notified at the earliest possible time; and
- the management of detention institutions should be informed at local, provincial and head office levels.

7.3.16 In situations where injury or death was caused by the use of force, the incidence should be reported through the established channels within prescribed timeframes.

7.3.17 Instruments of restraint, such as handcuffs, chains, leg-irons and straitjackets, must only be used as prescribed and when duly authorised and may not be used as punishment. Their use should be carefully regulated. Mechanical restraint may never be ordered as a form of punishment or a disciplinary measure.

7.3.18 RDs may not be brought before court whilst in mechanical restraints, unless authorised by the court.

7.3.19 Infringements classified as criminal offences must be reported to the SAPS and may be managed through the disciplinary system of the detention institution. SAPS should follow the processes established for 49F if they want to conduct investigations that require temporary release of RDs into their custody.

7.4 Critical security dimensions

7.4.1 Risk classification of detention facilities and detainees

7.4.1.1 In principle, all facilities that detain RDs are classified as maximum facilities and this is in line with international trends given the current lack of information on the RDs. These facilities have a relatively large turnover of detainees and at the same time, they receive minimal information from courts about them. The difficulty of predicting human nature is compounded further by this lack of information.

7.4.1.2 RDs should not be treated as a homogenous group therefore the risk classification system utilised should be able to assist the managers in

creating separate accommodation for different categories of RDs.

7.4.1.3 RDs are a very unstable population that move in and out of the detention facilities for court appearances and in essence only a small percentage stay longer than two years. In the DCS, from 2008 to the end of 2012, approximately 53 to 57% of RDs stayed for a period of three months and below while less than 6% were detained for longer than two years.

7.4.1.4 The lack of their classification has led to a situation where they are all managed and treated as a high-risk group. This creates difficulties for the detention institutions because high-risk detainees have restrictions in terms of their movements within the facility and require a greater number of officials to supervise them. It also exposes low-risk detainees to high-risk detainees. It is therefore imperative to conduct risk classification for managing known threats by ensuring that first-time RDs are separated from the repeat categories.

7.4.1.5 RDs with a history of escape and convicted RDs with further charges should be treated as a high-risk category. The remand detention institutions should work cooperatively with the SAPS as the arresting institution to determine the initial risk classification.

7.4.1.6 When conducting risk classification the impact of incarceration on a human being should be taken into consideration. This risk is not static and can change. Risk assessment should become a feature of on-going case management that allows for reconsideration depending on, inter alia, the following:

- the length of incarceration;
- the nature of the charges faced, including which court will be hearing the matter;
- the number of co-accused in the case;
- the personal circumstances of the inmate;
- the vulnerability of the individual to other inmates;
- the need for protection from other inmates and/or himself or herself;
- the number and type of previous incarcerations;
- the potential threat to the community;
- the potential as an escape risk;
- the potential threat to and by fellow inmates and staff;
- the medical and mental condition of the inmate; and
- whether bail was set and the amount at which bail was set.

7.4.2 Disciplinary regime

7.4.2.1 The disciplinary process supports a safe and secure environment within a remand detention institution. In establishing such order, a clear distinction should be drawn in the disciplinary procedures between transgressions that are institutional infringements, and those that are of a criminal nature. The processes that will be followed to deal with the two categories of transgressions must be clearly delineated.

7.4.2.2 The type of conduct that constitutes a disciplinary offence, the method of seeking information and making complaints, the disciplinary procedures to be followed, the sanctions that may be entertained on conviction, and the manner in which such sanctions may be applied, must all be clearly codified and made available and understandable to all inmates on admission and to all correctional officials during basic training.

7.4.2.3 The disciplinary regime must make it clear that discipline and order must be maintained with firmness but in no greater measure than is necessary for security purposes and good order in the Correctional Centre/ Remand Detention Facility and within a human rights context.

7.4.2.4 It must be clear that when an infringement constitutes a criminal offence it will be dealt with as such. It will therefore be reported to the SAPS for investigation and possible formal prosecution. If a person is convicted of an offence on such an infringement, it will not rule out the taking of disciplinary action against such an individual.

7.4.2.5 RDs may not be involved in the implementation of any disciplinary measures against fellow inmates.

7.4.2.6 The required court appearance of a RD must take precedence over the appearance before a disciplinary hearing.

7.4.3 Identification

7.4.3.1 Multiple methods of biometrics must be utilised for proper identification of RDs and verification of identity should be done before any release is instituted. The challenges related to the identification of RDs are discussed in Chapter 8.

7.4.4 Guarding of remand detainees

7.4.4.1 Once the RDs are handed over to the SAPS for either court appearance or further investigation or for forensic assessment at the designated Mental Health Establishment, the detention institutions cease to take responsibility for the RDs and guarding services will therefore become the responsibility of the SAPS.

7.4.4.2 Once the SAPS hands the RDs over to the detention institutions, any movement that requires provision of guarding services will be handled by the detention institution.

7.4.5 Wearing of uniform

7.4.5.1 The wearing of civilian clothes by RDs holds a heightened security risk due to the difficulty of distinguishing between RDs and visitors or civilians working inside the facility and thus increases the likelihood of escapes.

7.4.5.2 In addition, some RDs are admitted with dirty clothes, which make it difficult to uphold hygiene in the facility, especially considering the length of stay of some detainees. The impossibility of determining the actual length of stay makes planning more difficult.

7.4.5.3 Section 48 of the Correctional Matters Amendment Act makes provision for supplying RDs with a uniform which is different from the one prescribed for sentenced offenders.

7.4.5.4 No RD is to appear at any court dressed in a prescribed uniform. If a RD does not have adequate or proper clothing to appear in court, he or she must be provided with appropriate clothing at state expense to enable him or her to appear in court.

7.4.5.5 The principle of providing uniforms to RDs will be applicable to the DCS and the SCFs.

7.4.6 The health of inmates

7.4.6.1 Remand detention institutions must ensure that polices that address the health of detainees take cognisance of communicable diseases and special outbreaks that threaten the safety and security of remand detainees, personnel and other persons who may have contact with the affected RDs.

7.4.6.2 Where the health of the RD is such that he or she is unable to honour his/her court appearance, the court should be informed timeously. Section 49E of the CSA makes provision for the head of the detention facility to refer the severely incapacitated or terminally ill RDs to court for determination of whether the RD can be placed outside of the facility whilst awaiting trial.

7.4.7 Prototype for Remand Detention Facilities (RDFs)

7.4.7.1 Minimum standards have been developed for remand detention facilities in the DCS and the SCFs and these standards should guide the development of the new facilities. In particular, a prototype should take account of the specific needs of RDFs as opposed to facilities for sentenced offenders. In other words, it must take into account the purpose of RDs attending court on time and the transient nature of its population. Any new facility to house RDs should be designed in an appropriate and efficient manner to allow the facility to support the objectives of the detention.

7.4.8 Information related to safety and security

7.4.8.1 Procedures must be developed for dealing with information on incidences, which negatively affect the safety and security of RDs and RDFs. The information must be used to detect areas that need intervention on either operational or policy level and should include, but not be restricted to, escapes; assaults; hunger strikes; use of force where injuries are sustained; admission of notorious inmates and deaths.

7.4.9 Management of escapes

7.4.9.1 All facilities detaining RDs should have primary, secondary and tertiary strategies for the prevention of escapes.

7.4.9.2 Any disappearance from the SCFs should be regarded as an escape and as such, it should be managed according to established policies including reporting the matter to the investigating officer and the court.

7.4.9.3 The escape of a RD who was temporarily surrendered to the SAPS for further investigation should be managed according to the processes developed for section 49F of the CSA.

7.4.10 Gang management

7.4.10.1 The prevalence of gangs is high among the institutions that detain inmates; therefore, facilities that detain RDs should have a strategy for the management of gangs, which is aligned with the cluster strategy.

7.4.11 Management of abuse

7.4.11.1 Detention institutions should develop a strategy for the management of allegations of sexual assault, sexual abuse or sexual misconduct reported by the detainees and personnel working with detainees. The strategy should include primary, secondary and tertiary prevention measures.

7.4.12 Transportation of Remand Detainees

7.4.12.1 Detention institutions will adhere to safety and security principles when transporting RDs from to detention centres to service delivery points.

7.4.12.2 SAPS will adhere to safety and security principles when collecting, transporting and dropping off of RDs in courts, detention facilities and any other service delivery point.

CHAPTER 8: THE USE OF INTEGRATED SYSTEMS

8.1 Introduction

8.1.1 This chapter will focus on technological systems and operational processes that will be utilised to handle certain challenges in relation to the management of RDs.

8.2 Challenges

8.2.1 These challenges include the following:

- The use of multiple identities by RDs who are clients of the CJS: This leads to the creation of aliases within the CJS system and redundant information;
- The slow process of verification of identities with the Department of Home Affairs (DHA);
- A lack of access to systems of other Departments, e.g. access by the SAPS to details of inmates in the DCS;
- Inadequate systems for the identification of accused persons within the CJS which results in each institution utilising its own identification from arrest to detention. The situation is compounded by the fact that remand detention institutions are provided with limited information, presented in the Warrant of Detention (J7). This leads to difficulties in tracing and tracking RDs in general and managing the court appearances of RDs with multiple charges who are required to appear in different courts within and across provinces;
- Regular and repeated administrative processes for the admission and release of RDs from detention institutions for court appearances and other temporary releases;
- A lack of communication of the security risk or threat in relation to certain categories of RDs to remand detention institutions thus leading to improper housing and the risk of escape; and
- The failure to arrive or late coming of some categories of RDs for court appearances, especially relating to large RDFs.

8.3 Strategies for handling challenges

Corrective measures require cooperation from all the key role players within the CJS. The following pillars of the seven-point plan approved by Cabinet were created to address the previously mentioned challenges:

- Establishment of an integrated and seamless national CJS IT database/system containing all information relevant to the CJS and the review and harmonization of the template for gathering information relating to the CJS; and
- Modernisation of all aspects of the systems and equipment of the CJS through the strategy developed and coordinated by the IJS board.

8.3.1 Use of multiple identities by the accused

8.3.1.1 This challenge will be addressed through the development of a unique identification system for all accused who enter the CJS. The identity number given to an accused will be attached to the personal identification information and multiple biometrics.

8.3.1.2 This unique identification together with biometrics and identification information will be shared among the key departments within the CJS including the institution that detains the RDs. In order to achieve this ideal, all the CJS departments have a responsibility to prioritise the upgrading of the existing systems utilised for capturing the information on all accused, including the remand detainees. The development should cater for secure sharing of information.

8.3.1.3 The remand detention institutions and courts should have electronic systems for verification of the identities of RDs and identities are to be verified with every release undertaken by the remand detention institutions. These electronic systems should be such that they can be integrated with other systems.

8.3.1.4 The remand detention institutions will create a single database and this will allow for tracing and tracking of RDs within a department or entity responsible for the detention of remand detainees. This approach will assist in the management of RDs with multiple cases who are required to appear in different courts within and across provinces.

8.3.1.5 The issue of exchanging identities is further addressed by the creation of offences in section 128A of the CSA, whereby a RD who intimidates or conspires with another remand detainee to exchange identities or to defeat the ends of justice, is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding 10 years or to such incarceration without the option of a fine or to both a fine and such incarceration. A protocol will be developed through the established systems within the CJS to ensure that the provision is realised.

8.3.2 Verification of identity of the accused

8.3.2.1 The SAPS will continue with the verification of the identities of the accused including RDs in consultation with the DHA. An integrated system will speed up the verification process.

8.3.3 Regular and repeated administrative processes

8.3.3.1 Each time a RD leaves a correctional facility whether for a court appearance, hospital treatment or for any other reason, that RD is signed out of the system and signed back in, upon his or her return. This leads to much repetition of processes.

8.3.3.2 This practice will be eliminated through the integration of systems within the CJS. The structure responsible for ensuring that this ideal is realised is the Integrated Justice System (IJS) Board, which is a substructure of the National Development Committee of the JCPS cluster.

8.3.3.3 The establishment of video remand courts in all the provinces between the DCS and the DoJCD has assisted in the reduction of administrative processes of checking out of RDs to court and re-admitting them upon their return. These courts will however only be used under certain circumstances where their use will not negatively influence the fairness of the court process.

8.3.4 Limitations on sharing of information on security risks

8.3.4.1 The process of developing a risk classification system has commenced through the development of the necessary protocol and a risk classification tool. In order to ensure that the principle of presuming RDs to be innocent is maintained, the rating system will be utilised and facilities that detain RDs will only share the results with such institutions as the SAPS, the NPA and the Courts.

8.3.5 Failure of RDs to present themselves for court appearances

8.3.5.1 RDs who are supposed to go to court on a specific day do not respond when they are called. They only "appear" after the transport to court has left. These challenges will be addressed through the use of multiple biometrics including verification. The possibility of introducing an inmate tracking system within a facility will be examined in order to address the challenge of locating RDs in a facility.

8.3.6 Operational improvements

8.3.6.1 The warrant of detention (J7) has been modified so that remand detention institutions are able to categorize remand detainees. Continued interaction between the affected cluster departments will ensure continued evaluation of systems and focus on improvements to these systems.

8.4 Implication for integration

8.4.1 The integration of systems within the CJS will enhance information sharing and data capturing which is a critical process for ensuring that the creation of electronic data is minimised within and between Departments.

8.4.2 The information obtained from the docket will be classified in order to determine which information can be passed to the remand detention institutions.

8.4.3 In order to ensure the success of the integration and upgrading of existing systems by the CJS departments and collaborative planning to ensure that inter-linkages are created and maintained, appropriate funding must be made available.

CHAPTER 9: OVERCROWDING

9.1 Introduction

9.1.1 According to the 9th edition of the World Prison Population List more than 10.1 million people are held in prisons as pre-trial detainees/remand detainees or as sentenced prisoners against the world population of approximately 6.9 billion (mid-2010, United Nations). This translates to a prison population rate of 146 per 100,000.

9.1.2 The countries with the highest prison population rates include, amongst others, the United States of America, Rwanda, Russia, the Seychelles, Dominica, Bermuda, and Grenada. It should be noted that the prison population is growing on all five continents (Africa, America, Asia, Europe and Oceania). According to the latest updates (up to May 2011) the prison population has risen in 71% of the countries in Africa, 82% in America, 80% in Asia, 74% in Europe and 80% in Oceania.

9.1.3 In the entire world, South Africa is among the top 10 countries (ranked 9th) with the highest prison population totals and on the African continent, the country has the highest number of prisoners. When the prison population of each country is analysed against the national population of 100,000 people, the country with the highest prison population in the world is the United States of America followed by China, the Russian Federation and Brazil. South Africa is ranked 38th in the world.

9.1.4 The top five countries with the highest number of prisoners in Africa are (in descending order) the Seychelles, Rwanda, Swaziland, South Africa and Botswana.

9.1.5 Overcrowding is not a new phenomenon in South African detention facilities. According to the White Paper on Corrections, it can be traced back to the early 1900's when the prison system was regulated mainly by various Provincial Ordinances. The inflated population at the time was related to transgressions of the pass laws. In 1984, according to the Judicial Inquiry into the structure and functioning of the courts, the driver of overcrowding was the incarceration of inmates as a result of influx control measures and in 1985, the key driver was the mass detention of political prisoners as a result of the State of Emergency.

9.1.6 This chapter will focus on the overview of the population of RDs in the DCS, drivers of overcrowding for RDs and CJS and strategies utilised to manage overcrowding of RDs. The DSD, as a department detaining persons in specific circumstances, does not have a history of overcrowding.

9.2 Overview of the population in the Department of Correctional Services

9.2.1 In the DCS, the population of inmates, including RDs, grew from an annual average of 111,090 in 1995 to 152,981 in 2012 and the bed spaces increased from 95,002 to 118,968. This translates to an increase in overcrowding from 16.9% to 28.65%. The occupancy percentage grew by almost 50% from 1995 to 2003 (116.94% to 165.09%). The highest peak in the population was observed in 2004 when the number of inmates was 186,467.

9.2.2 The annual average of RDs had almost doubled from 1995 to 2012 i.e., from 23,783 to 48, 910. The highest annual average was observed in 2000 (57,811); since then the population has been gradually decreasing with seasonal trends showing an increase during festive periods.

9.2.3 Children RDs (14 to 17 years) rose from 0.3% (80) in 1995 to 4.2% (1192) in 2007. The highest number of children was observed in 2002 (2269). Since 2007, the number of children has been gradually decreasing. With the introduction of the CJA, the number of Children dropped to 156 at the end of December 2012. This translated to a reduction of 86.9% from 2007 to 2012.

9.3 Drivers of the remand detainee population

9.3.1 According to international literature, the key drivers of overcrowding are the use of pre-trial detention and the increasing trend in serious crimes. The increase in serious crimes is closely related to an increase in the use of pre-trial detention by courts without the option of bail.

9.3.2 The number of admissions and the length of stay are regarded as other drivers which are beyond the control of institutions responsible for the detention of RDs. Factors found to be linked to RDs staying in detention longer are as follows, (based on the analysis conducted in 2009 on RDs who spent more than 7 years in detention):

- 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;
- Requests for remand either by defence, lawyers of the accused and/or the state;

- Failure of the accused to appear in court; and
- Requests for separation of trials.

9.3.3 In addition to the previously mentioned key drivers, there are other factors that are thought to play a role in the failure to reduce the number of RDs. These factors include an increased number of RDs who are detained without the option of bail; (from 2009 to 2012 almost 75% to 80% of RDs were detained without the option of bail), failure to pay bail by those few RDs who have been awarded bail and delays in finalising court cases despite several court appearances.

9.3.4 From 2009 to 2012, of the category that had bail, the DCS detained between 7% and 11% of RDs with bail of less than a R1000 and almost 2% of RDs had bail of above R5000.

9.3.5 Within the RD population detained in the DCS, RDs detained for longer than two years have gradually grown from 3.7% in 2009 to just less than 6% in 2012.

9.4 Strategies for management of overcrowding

9.4.1 The CJS strategies for managing overcrowding of RDs are outlined extensively in the undated policy document titled "Awaiting-Trial Detainee Guidelines" which was developed by the NPA in consultation with the relevant JCPS cluster departments such as the SAPS, the DoJCD, the DSD and the DCS.

9.4.2 The strategies outlined in the documents include measures prior to first court appearance, methods at first appearance, methods to fast-track certain RD cases and the management of juveniles.

9.4.3 Measures prior to first court appearance include arrest and release in terms of several sections of the CPA, i.e. sections 59, 59A, 72 and 56. Section 59 refers to "police bail" in relation to a certain category of offences where the police can set bail before an accused is due to appear in court for the first time. The accused may be issued with a notice with certain conditions as a method of securing attendance in the magistrate's court or could be released with a warning or held in a place of safety.

9.4.4 Methods of reducing RDs at first court appearance include awarding of bail with or without conditions, diversion and restorative justice.

9.4.5 Methods of fast-tracking certain RD cases include amongst others, the use of plea-bargaining which may be formal or informal, securing of criminal records within 10 days, fast-tracking of cases for DNA analysis, mental observation, probation services including assessments and methods of fast-tracking the investigation and trial.

9.4.6 The DCS has developed the following eight-pronged strategy for the management of overcrowding in its facilities:

(a) Managing levels of RDs through the IJS Case Management Task Team and Inter-Sectoral Committee on Child Justice;

(b) Managing levels of sentenced inmates through improving effective and appropriate use of conversion of sentence to community correctional supervision, release on parole, and transfers between correctional centres to attempt to establish an even spread of overcrowding;

(c) Ensuring progress with the DCS capital works programme to upgrade our facilities and to build new correctional centres that are both cost-effective and rehabilitation oriented;

(d) Encouraging debate in South Africa about the reasons for incarceration as a sentence, and encouraging an approach to appropriate sentencing that is focused on facilitating rehabilitation;

(e) Enhancing community correctional supervision so that it can be better utilised as an appropriate sentence for less serious crimes;

(f) Improving correction and development programmes within the DCS to ensure enhanced facilitation of rehabilitation that targets offending behaviour in a manner which the Department has not previously undertaken;

(g) Encouraging the improvement of first and second levels of correction in family and social institutions and social and economic sector government departments respectively to decrease the rate of entry into the criminal justice system; and

(h) Encouraging community involvement in the social reintegration of offenders back into their community in order to assist in reducing levels of repeat offending.

9.4.7 Measures included under the strategy "Management of the levels of RDs through the IJS Case Management Task Team" include the implementation of the bail protocol, i.e. section 63A of the CPA, the promotion of section 63(1) which allows the RD or the prosecutor to approach the court for a review of bail, the promotion of plea

bargaining and the submission of the list of RDs detained for more than two years to case-flow structures chaired by the Judiciary.

9.4.8 Section 49G of the CSA will be included under this strategy. The section makes provision for the DCS to refer the RDs to court before completing a period of two years for consideration of their detention and thereafter annually if the RD remains in detention after the initial referral. The court will utilise options highlighted in section 63A of the CPA when considering the application from the DCS.

9.4.9 The use and the role of other stakeholders such as community paralegals, academics and civil society in the reduction of RDs will be explored.

9.5 Implications for the Department of Correctional Services

9.5.1 It is clear that the DCS does not have control over the population of RDs. However, the DCS can contribute to the containment of the population of RDs within its facilities through implementing measures that are within its control. However, the ultimate decision with regard to the detention or release of the RD lies with the court.

CHAPTER 10: OVERSIGHT AND CONTROL

10.1 Introduction

10.1.1 The United Nations Standard Minimum Rules for the Treatment of Prisoners (13 May 1977), makes provision for the regular inspection of penal institutions and services by qualified and competent authorities. Their task is to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

10.1.2 Inspections of detention facilities are an important safeguard against malpractice, physical abuse, ill-treatment and breaching of rights of detainees as recognised by international standards.

10.1.3 Independent inspections should be considered in the interest of both the executive and administrative heads as a means of monitoring the quality of living conditions and protection against unfair accusations or reports. They also provide heads of detention facilities with information on aspects of practice, of which they may not have been aware.

10.1.4 This chapter will focus on various types of oversights, which are already provided for in the management of detainees in order to adhere to the above-mentioned UN principle as well as additional proposals.

10.2 Executive Oversight and Control

The institutions detaining RDs will be subject to oversight and control of the Executive in accordance with the provisions of section 92(2) of the Constitution, which provides that 'members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. Subsection (3)(b) further makes provisions that members of the Cabinet must 'provide Parliament with full and regular reports concerning matters under their control'. Executive oversight includes portfolio committees since they are parliamentary structures.

10.2.1 Oversight by the Judiciary and Legislature

10.2.1.1 Judges of the Constitutional Court, Supreme Court of Appeal or High Court and a magistrate within his or her area of jurisdiction will be given access to facilities that detain RDs. They must be allowed access to any part of the detention facility and any documentary record and may interview any RD and bring any matter to the attention of the National Commissioner of the DCS and the SAPS and Ministers of the DCS, the SAPS and the DSD.

10.2.1.2 In the DCS, the inspection of the RDFs will be done by the Judicial Inspectorate in line with Chapter 9 of the CSA. The Independent Correctional Centre visitors who fall under the office of the inspecting judge will handle the complaints of RDs through regular visits, conducting interviews, recording of complaints in the official diary and monitoring the matter in which the complaints have been dealt with.

10.2.2 Oversight by the Administrative Head

10.2.2.1 All the administrative heads of institutions that are responsible for the detention of RDs will ensure that internal service evaluations are conducted annually.

10.2.3 Oversight in Secure Care Facilities (SCF)

10.2.3.1 Oversight in SCFs is provided in line with sections 211 and 304 of the Children's Act, 2007 (Act No 41 of 2007) as well as the Blueprint for SCFs.

10.2.3.2 Section 211 makes provision for the Provincial Head of the Department of Social Development to ensure that the Child and Youth Care Centres undergo a quality assurance process, which must be undertaken within two years of registration of the centre and thereafter periodically every three years. The Provincial Head may order the quality assurance to be done at any time if there are reasons to believe that the centre has failed to comply with relevant prescripts.

10.2.3.3 Section 304 makes provision for the inspection of the Child and Youth Care Centres by a person authorised by the Director-General of the DSD, a Provincial Head of the DSD or a municipality when there is a suspicion that the centre is an unregistered facility. The process includes general inspection of the facility and its management, observation or interviews with children or causing children to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist.

10.2.3.4 The aim of the inspection is to determine whether the facility operates according to prescribed norms and standards including structural safety, health and any other requirement prescribed by the law and the provisions of the Children's Act.

10.2.3.5 After each inspection, the report is sent to the body that authorised the inspection. If there is non-compliance with the relevant prescripts including norms and standards, the Provincial Head of the DSD may decide to cancel the registration of the centre.

10.2.3.6 According to the Blueprint on SCFs, every centre must be subjected to a quality assurance programme. The centre must undergo a developmental quality assurance process within 4 years of registration.

10.2.3.7 The departmental quality assurance is confidential. A team consisting of members from the government and non-government sector should conduct an external and independent quality assurance of the centre. The quality assurance process must be repeated periodically at intervals of 2-3 years.

10.2.3.8 The quality assurance involves an assessment of whether rights are appropriately protected and whether the organisation is complying with the relevant prescripts including relevant international instruments. The quality assurance team should report serious violations which are discovered to the appropriate authorities in writing within 48 hours of the on-site assessment. The report must be presented to the management and personnel according to the timelines specified in the Blueprint.

10.2.3.9 Evaluation of the SCFs will be extended to the national office of the DSD to determine compliance with the prescripts, including the Blueprint. The intervals for conducting such evaluation will be determined by the Administrative Head of the DSD in consultation with the relevant MECs.

10.2.4 Public Service Commission (PSC)

10.2.4.1 The commission derives its mandate from sections 195 and 196 of the Constitution. It is tasked and empowered to, amongst others, investigate, monitor, and evaluate the organisation and administration of the Public Service.

10.2.4.2 Its mandate entails the evaluation of government programmes. The commission has an obligation to promote measures that will ensure effective and efficient performance within the Public Service and to promote the values and principles of public administration as set out in the Constitution, throughout the Public Service.

10.2.4.3 As the scope of the commission is very broad, the administrative heads and the MECs of institutions responsible for the detention management of RDs will define the scope for each oversight visit that the commission plans to undertake.

10.2.5 The South African Human Rights Commission (SAHRC)

10.2.5.1 The SAHRC is the national institution established to support constitutional democracy. It is committed to promote respect for, observance of and protection of human rights for everyone, without fear or favour.

10.2.5.2 Its mandate according to section 184 of the Constitution includes the following:

- The promotion of respect for human rights and a culture of human rights;
- The promotion of the protection, development and attainment of human rights; and
- Monitoring and assessing the observance of human rights in the Republic.

10.2.5.3 The commission investigates and reports on the observance of human rights; takes steps and secures appropriate redress where human rights have been violated; carries out research; and provides education on human rights.

10.2.5.4 The commission may request the administrative heads of the detention institution or relevant MECs to provide the commission with information on the measures that they have taken towards the realisation of the rights as contained in the Bill of Rights related to housing, health care, food, water, social security, education and the environment.

10.2.6 The Independent Police Investigative Directorate (IPID)

10.2.6.1 The directorate was established in terms of the Independent Police Investigative Directorate Act, 2011 (Act No 1 of 2011) to ensure independent oversight over the South African Police Service (SAPS) and the Municipal Police Service (MPS), and to conduct independent and impartial investigations of identified criminal offences allegedly committed by members of the SAPS and the MPS, and make appropriate recommendations.

10.2.6.2 The directorate consists of National and Provincial offices. The national office under the leadership of the Executive Director is responsible for giving guidelines with regard to the investigation and management of cases by officials within the respective provincial offices; the administration of the national and provincial offices and training of staff at national and provincial level.

10.2.6.3 The Executive Director must refer criminal offences revealed as a result of an investigation to the NPA for criminal prosecution and notify the Minister of the SAPS of such referral.

10.2.6.4 The NPA must notify the Executive Director of its intention to prosecute, where after the latter must notify the Minister of the SAPS.

10.2.6.5 The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner of the SAPS and, where appropriate, the relevant Provincial Commissioner.

10.2.6.6 Other responsibilities of the Executive Director include the following:

- ordering the investigation of any offence allegedly committed by any member of the SAPS or MPS and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned;
- referral of criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation; and
- reporting, upon request, by the Minister of the SAPS or Parliament, on the activities of the Directorate to the Minister or Parliament.

10.2.6.7 Each provincial office of the IPID is headed by the provincial head who is responsible for, amongst others, the following:

- ensuring adherence to the guidelines issued by the national office relating to the investigation and management of cases within the respective provincial offices;
- facilitation of the investigation of cases and to perform any other function incidental to such investigations;
- referral of matters investigated by the provincial office under the IPID Act to the National or relevant provincial prosecuting authority for criminal prosecution;
- referral of disciplinary matters to the Provincial Commissioner;
- reporting to the Executive Director on recommendations and finalization of cases; and
- reporting to the relevant MEC on matters referred to the Provincial Head by that MEC.

10.2.6.8 The facilities that detain RDs should keep contact details of the national and provincial offices of the IPID so that they can provide the RDs with this information when the RDs intend to use the services of the IPID.

10.2.6.9 The administrative heads of detention institutions and the MECs responsible for the management the SCFs should refer any reported allegation of assault or abuse or misconduct by the detainees when they are under the custody of SAPS to the relevant provincial IPID office or National Office in the case of the DCS.

10.2.7 Auditor-General of South Africa

10.2.7.1 The Auditor-General of South Africa (AGSA) was established in terms of section 181(1)(e) of the Constitution as a state institution supporting constitutional democracy. The constitutional functions of the AGSA are set out in section 188 of the Constitution and section 4 of the Public Audit Act, 2004 (Act No 25 of 2004).

10.2.7.2 The AGSA must audit and report on the accounts, financial statements and financial management of institutions responsible for the management of RDs as they are regarded as state departments and funded by the government.

10.2.8 Duties and Functions of Heads of Detention Facilities

10.2.8.1 The Heads are expected to cooperate with all the oversight bodies by ensuring that:

- A facility is available 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.