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CORRECTIONAL MATTERS AMENDMENT BILL (41 of 2010)

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INTRODUCTION

On 2 March 2011 the Portfolio Committee on Correctional Services adopted the Correctional Matters Amendment Bill 41 of 2010 (CMAB). The CMAB still needs to be adopted by the National Assembly at the time of writing. It is also the sixth piece of amending legislation to the Correctional Services Act since its adoption by Parliament in 1998, includes some necessary and welcome changes to the law. Some of its provisions, however, are operational and administrative in nature, thus resembling and perhaps better suited to subordinate legislation. Moreover, it should be noted that several areas identified for the development of regulations in the 1998 Correctional Services Act remain without such regulations.[2]

It is not possible within the scope of this newsletter to describe and analyse the CMAB in full. Thus, some of the more noteworthy amendments will be explored. These are:

? The additional objective to the purposes of the correctional system (section 2(d)), namely, the management of remand detainees.
? The repeal of Chapter 5 (Unsentenced Offenders) of the Act which is replaced with a consolidated and more detailed description on remand detention.
? Amendments regarding the calculation of the length and form of sentences which now stipulate a shorter non-parole period for offenders serving sentences of less than 24 months and the repeal of the much maligned four-fifths non-parole period in respect of mandatory minimum sentences. With this, the proposed "incarceration framework" is thankfully abandoned.
? Medical parole is now regulated in greater detail and the scope for inclusion expanded so as to include offenders who have become "physically incapacitated."

REMAND DETENTION

Overview of the new Chapter 5

The new Chapter 5- "Management, Safe Custody and well-being of Remand Detainees" deals with a range of issues, outlined briefly below. Several of the amendments were covered by the Act prior to the CMAB, but have now been consolidated into a distinct chapter and are not, as such, a substantive departure from the Correctional Services Act prior to the amendment. Other amendments are, however, of a more substantive nature and will also be discussed in more detail below. In line with the change in nomenclature which commenced with the Correctional Services Amendment Act (25 of 2008), 'awaiting trial prisoners' are now referred to as 'remand detainees'.

Management, safe custody and well being: Restrictions may be placed on remand detainees insofar as these are necessary for the maintenance of good order. A restriction of amenities may be used in connection with disciplinary processes and must be prescribed by regulation. Notably, this provision was in the Correctional Services Act but the regulations to operationalise it have not yet been developed.

Food and drink: Remand detainees may receive food and permitted beverages from sources outside the correctional facility, a provision which has remain unchanged. There are, to date, no regulations governing this although their development was required by the 1998 Correctional Services Act.

Clothing: Section 10(2) of the Act which, prior to the CMAB, permitted remand detainees to wear civilian

clothing in a correctional centre has been repealed and they may no longer receive clothing and bedding from sources outside the correctional facility. Clothing must now be provided by the Department of Correctional Services (DCS). Section 48 (as amended) also requires the DCS to provide remand detainees with uniforms different to those of sentenced offenders. Remand detainees are, however, not permitted to appear in this uniform when in court. Thus, if they do not have suitable clothing for court this must also be provided by the DCS. During the deliberations on the Bill the cost implications of this were raised by the Portfolio Committee on Correctional Services and by various civil society organizations. In response, the DCS stated that the cost of uniforms would be one cost implication in the broader scheme of the "establishment of a remand detention budget programme" which had been addressed and approved at cluster level.

Safekeeping of records and information: Section 49 requires that records are to be kept on remand detainees and stored in accordance with the Archives Act (43 of 1996). It is not clear what the motivation for this amendment is, although there were unconfirmed reports in 2010 of records being destroyed at a Western Cape correctional centre.

Pregnant women: A remand detainee that claims to be pregnant must, in terms of section 49A, immediately be referred to a nurse. The DCS must, within its available resources, provide a unit for pregnant women and they must be provided with an adequate diet. This is a new provision and curiously, there is no corresponding provision for sentenced pregnant women in the Act. The Act deals exclusively with sentenced female offenders who have already given birth.[3]

Disabled remand detainees: Section 49B states that disabled remand detainees may be detained in single or communal cells and that DCS must provide 'additional health care services, based on the principles of primary healthcare, in order to allow the remand detainee to lead a healthy life.'The DCS must also provide additional psychological services if prescribed by a medial practitioner. A shortcoming in this provision is that disabled people may require services of a non-medical nature, such as Braille services, sign-language, wheel-chair ramps, remedial attention etc. As is the case with pregnant remand detainees, there are no similar provisions in respect disabled sentenced offenders.

Aged remand detainees: Section 49C sets out similar provisions for aged remand detainees to those for disabled remand detainees. Accordingly, similar problems are foreseeable. A variation in diet as well as different mealtimes may, however, be prescribed by a medical practitioner and would thus fall under 'medical' services. It does not appear as if aged sentenced offenders enjoy similar protections. In the light of the fact that more than 10 000 offenders are serving life imprisonment[4], this may indeed need to be addressed in the not too distant future.

Mentally ill remand detainees: Section 49D states that the National Commissioner may detain people suspected of being mentally ill with reference to section 77(1) of the Criminal Procedure Act[5], or those showing symptoms of mental health problems in single or communal cells. The Act now requires the DCS to provide, within its available resources, adequate health care services for the prescribed care and treatment of mentally ill remand detainees. Mental health is a severely marginalised issue in the prison system in general, a problem reflected in the high number of suicides as reported by the Judicial Inspectorate for Correctional Services.[6]

Terminally ill and severely incapacitated remand detainees: Section 49E sets out procedures in relation to the referral of a terminally ill or severely incapacitated remand detainee and places a duty on the Head of Centre to make an application to court for such a remand detainee to be released. The procedure requires input from the Director of Public Prosecutions in respect of opposing or not opposing the application. The amendment provides clarity on the situation of such remand detainees and, importantly, shifts the responsibility of attending to such detainees to the Head of Centre where it previously would have formed part of a bail application under the Criminal Procedure Act.

Release to SAPS: A remand detainee may, in respect of section 49F, be released under the supervision of SAPS for the purpose of further investigation for a period of seven days. This is discussed in more detail below.

Maximum incarceration period: Section 49G stipulates that the period of incarceration of a remand detainee cannot exceed two years "from the initial date of admission?without such matter having been brought to the attention of the court." Given the excessive periods of detention that South Africa's remand detainees are frequently forced to suffer, a provision such as this is welcomed. Unfortunately, provisions such as these tend to be over-inclusive. For example, if a case is brought to the attention of a court three months or less prior to the expiry of the two-year period, it would not be covered by the provisions in the amendment. The Head of Centre is now also required to report to the National Prosecuting Authority at six-monthly

intervals on cases involving remand detainees who have been held for successive six month periods. If such detention continues, the Head of Centre must take such cases to court on an annual basis. The reporting procedure, while a step in the right direction, remains weak: the amendment sets out the procedure to bring an accused before a court, it does not, however, explain what the court must do. The court may indeed end up postponing a case for a further six months without interrogating the reasons for the delay, as provided for in section 342A of the Criminal Procedure Act.

Remand detention in police cells

Prior to the amendment, the Correctional Services Act provided that in a district where there is no correctional centre, a remand detainee could be detained at a police station for the purposes of remand detention, for a period of up to one month, which could then be extended by the National Commissioner of Correctional Services. This particular authority was delegated to the Head of a Correctional Centre.[7] According to the Department of Correctional Services' response during deliberations on the Bill, it appears that in certain parts of the country[8] a shortage of correctional centre accommodation requires that police stations be used as remand detention facilities. Police station cells are, however, generally unsuitable for longer term detention, especially for periods exceeding one month. Detention at such a facility raises serious concerns about the detainee's rights and protections afforded under the Correctional Services Act:

Once removed from the jurisdiction of Correctional Services, an inmate, whether sentenced or awaiting trial, no longer enjoys the detailed legislative protection of the Correctional Services Act. Arguably, the only remaining applicable domestic standard is section 35(2)(e) of the Constitution which requires that conditions of detention be consistent with "human dignity." There is a risk, therefore, that a detainee in SAPS custody will experience conditions below this standard without any apparent legal recourse other than Independent Complaints Directorate.[9]

The amended Section 5(2)(b) now limits the period of time that a remand detainee may be held on remand at a police station to seven days without the possibility of extension by the National Commissioner.

Escaping from police custody

A peculiarity of the law and sub-ordinate legislation regulating detention at a police station links escape, or aiding escape from such a facility, to release on parole. A remand detention facilityis established under the Correctional Services Act and does not include police stations, except where the person concerned has escaped from such a facility, or a person is guilty of aiding and abetting escape from such a facility.[10] A remand detainee in police custody is liable to be charged with the common law crimes of escaping from lawful custody and/or conspiracy to escape, should he or she escape or attempt to do so. The effect of including sections 115 and 117 of the Act into the definition of "remand detention facility" creates a mechanism through which an offender may be punished twice. This "double punishment" is achieved through the requirement in the B-Orders that an offender who has been convicted of escape must serve four-fifths of the sentence imposed for that escape, as well as any other sentences that the offender is serving.[11] It is constitutionally impermissible to charge or punish a person twice for the isolated commission of a certain crime and, moreover, link that crime to other punishments imposed in a manner that increases the severity of the punishment imposed.

Prepare defence

Section 17(4), as amended, requires that remand detainees must be provided with the means to prepare their defence. The change was one of terminology as this was an existing requirement in the Act but referred to "persons awaiting trial or sentence". However, despite requests from civil society that this requirement is spelt out in the Act, the legislature did not regard this as necessary. The issue at hand is what "the means to prepare their defence" constitute at operational level. At the very least, it was submitted, remand detainees should have access to the Criminal Procedure Act, Correctional Services Act and international human rights instruments regulating their detention.[12] A further proposal was that this should be spelt out in Regulations within one year of the amendments coming into force. But no such requirements were adopted and these, together with many aspects of the correctional system, remain without the required regulations.

CALCULATION OF THE LENGTH AND FORM OF SENTENCES

Parole

Section 54 now authorises the Minister of Correctional Services to approve day parole. Previously, only the National Commissioner and the Correctional Supervision and Parole Board (CSPB) had this authority. The intention of the amendment is not entirely clear but may relate to day parole for inmates serving life imprisonment who can only be released on parole upon authorisation of the Minister of Correctional

Services.[13]

Most of the changes to section 73 concern terminology. The CMAB requires use of the word "incarceration" instead of "imprisonment", and "sentenced offenders" instead of "prisoners". The more substantive changes to the section occur in relation to the length and form of sentences. These are discussed below.

The Correctional Services Amendment Act (25 of 2008) introduced the "incarceration framework" which was to be developed by the National Council for Correctional Services. It intended to regulate the minimum non-parole periods to be served. Despite strong criticism from civil society at the time, the incarceration framework was included in the 2008 amendment.[14] The CMAB now repeals all references to the incarceration framework. The memorandum accompanying the Bill presents three reasons for this:

1) The development of a third parole system in South Africa is highly undesirable and unworkable;
2) uncertainty as to the legal standing of the process set out for the adoption of the incarceration framework; and
3) no version of an incarceration framework could practically achieve the desired outcomes as stipulated in section 73A(2) of the Correctional Services Amendment Act, 2008 (Act No. 25 of 2008).[15]

Section 73(3) states that if the release of an offender on expiry of sentence will result in his death, impairment or will be a source of infection to others, the National Commissioner must inform the Department of Health a month in advance of the release or immediately to enable the Department of Health to deal with the case in accordance with the applicable legislation. In respect of contagious diseases, this provision is, in effect, a duplication of the existing section 45(4) which mandates a medical practitioner to establish the health status of an offender about to be released. The original section 73(2) had a similar provision, although slightly more limited in that it did not place a duty on the National Commissioner to report the matter to the Department of Health. It also provided that an injured offender may be detained past the sentence expiry date for his injuries to heal.

Section 73(6)(a)(aA) states that an offender serving a sentence of less than 24 months where the court did not specify a non-parole period must serve at least one quarter of the sentence. The profile of the sentenced population shows that this category (those serving sentences of less than 24 months) forms a small percentage of the total average sentenced population in custody at any one time. However, they constitute the bulk (70%) of admissions and releases.[16] The more critical issue relates to whether the real purpose of imprisonment is served when the offender is excluded from having a sentence plan[17] and it is therefore highly unlikely that this category would benefit from any services rendered by the DCS that may assist them to lead a social responsible and crime free life in future. While the minimum non-parole period for this sentence category will now be reduced by half, it still means that the offender will be exposed to the negative effects of imprisonment (e.g. gangs and sexual victimisation) for a sufficiently long enough period. An additional concern is the often overlooked socio-economic impact of imprisonment, a relevant problem even when it comes to imprisonment for a period of less than six months.[18] Even though reduced by the amendment, imprisonment nevertheless serves little purpose but to punish through the deprivation of liberty with little to offer by way of care and rehabilitation. Surely, this category of offender is more suited to a non-custodial sentencing option.

In respect of alleviating prison congestion, the effect of the amendment will be an initial increase in releases after which it will stabilise to a similar profile. In fact, the amendment will have a negligible effect on the size of the prison population because the number of offenders serving sentences of less than 24 months constitutes such a small percentage of the total daily population. Moreover, it is plausible that the amendment will place additional pressure on community corrections because released offenders will require supervision for a longer period. However, the DCS budget did not make provision for an increase in expenditure in this regard and for the preceding three years the Social Reintegration programme, under which Community Corrections resort, received 3.4% of the total budget.[19]

All offenders, including dangerous criminals[20], may now be considered for release on parole or day parole upon reaching the age of 65 years provided that they have already served 15 years. Previously this provision only applied to those sentenced to life imprisonment. However, dangerous criminals must be referred back to court in accordance with section 75(1)(b) of the Correctional Services Act.

MEDICAL PAROLE
Section 79 of the Act, previously a one-paragraph provision, has now been expanded to eight sub-sections (covering more than a page) which detail the procedures to be followed in applying for medical parole, how such applications should be assessed, and, if granted, managed. Much of this would have been better

suited to regulations.

Section 75 of the Act which regulates parole in general, links conditions of parole to medical parole in respect of all sentenced offenders with specific reference to dangerous criminals and offenders serving life imprisonment. By implication, it is now clear that medical parole is considered a form of parole and that the conditions applicable to other parolees will also be applicable to offenders released on medical parole. A person placed on medical parole, however, may be subject to periodical medical examinations by a medical practitioner employed by the DCS. Curiously, however, the amended section 79 stipulates that the improvement of a medical parolee's health cannot justify the revocation of medical parole. It is therefore unclear what purpose is served by this requirement. Unfortunately, section 79(1)(a) does not prescribe the precise phase of the "terminal disease or condition" an inmate must have reached before he or she can be considered a candidate for parole. Coupled with the requirement of section 79(1)(b) ("the risk of re-offending is low"), discussed below, there is a very real potential that an inmate must be literally physically incapable of re-offending, and thus "bedridden and debilitated" before he or she is considered eligible for medical parole. As was found in the *Stanfield*[21] decision, this is not commensurate with the right to dignity or the right to be detained in "conditions consistent with human dignity". And importantly, section 2(b) of the Correctional Services Act describes one the purposes of the correctional system as "detaining all inmates in safe custody *whilst ensuring their human dignity*."

Another notable addition to the legislation is the requirement that the risk of re-offending be low. Guidance in respect of assessing the "risk of re-offending" referred to in section 79(1)(b) is provided in section 79(5) and the following factors are to be considered: whether the presiding officer was aware of the medial condition or impairment at the time of sentencing; remarks made by the presiding officer; the type of offence and the balance of the sentence remaining; the previous criminal record of the offender; and any factor listed in s 42(2)(d). In effect, section 42(2)(d) supplements these factors with the following: the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such offender, and, in the case of persons declared to be habitual criminals, the likelihood of re-offending. It is worth mentioning at this stage that there is very little South African based sociological and psychological research documenting the predictive factors associated with re-offenders.[22] International research in well-resourced countries has found that even sophisticated risk-for-reoffending assessment tools have a 48% false positive rate.[23] In short, they are wrong half the time. The Department has not presented any evidence indicating how it will achieve a more accurate risk for re-offending assessment. In the absence of an accurate and reliable risk assessment tool, the offender will be subject to the subjectivity of the Department's officials and the parole board. This renders the enquiry in the proposed section 79(1)(b) unhelpful in assessing whether a potential medical parolee continues to pose a danger to society.

Prior to the amendment, medical parole was the preserve of those suffering from a terminal condition or illness. The scope of section 79 has now been expanded so as to include those who have been rendered "physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care". The amendment refers, however, only to physical incapacity and not mental illness or mental incapacity. This is perhaps a shortcoming in the amending legislation given the extent to which mental illness can severely limit one's ability to take care of himself or herself.

A further requirement in section 79 is that there are "appropriate arrangements for the inmate's supervision, care and treatment within the community". Moreover, the amended section 79(2) now places the onus firmly on the inmate (either himself, his doctor or family member) to initiate the application for medical parole process and sets out the requirements of the application process clearly in section 79(2)(c). Prior to the amendment there was no direction in this regard. Furthermore, section 75(4) now mandates the Minister to establish an independent medical advisory board which will be required to provide an independent medical report to the Minister, National Commissioner, or CSPB as the case may be in addition to the medical report required under section 79(2).

The amendment also gives recognition to victims in the case of applications for medical parole, a position which was previously confirmed in the *Clive Derby-Lewis* case in the North Gauteng High Court.[24] When an application for medical parole is made, the complainants and relatives of the victim(s) may also make representation in accordance with section 75(4) of the Act and as provided for under the Criminal Procedure Act and the directives issued in 2006.

The cancellation of medical parole must be done in accordance with section 75(2-3); the general provision dealing with the cancellation of parole and correctional supervision. Notably, the CSPB must consider the matter within 14 days and the cancellation may be implemented prior to the parole being cancelled. The effect of this may be that a parolee be detained for 14 days while waiting for the CSPB to make a decision.

Given the long delay in the development of regulations to the Correctional Services Act, as noted in the

above, the legislature included a provision that regulations on medical parole must be submitted to Parliament for comment within six months after the promulgation of the CMAB.[25]

In overview, it then appears that medical parole release is more difficult than an ordinary release because it combines the health status of the offender, the risk of re-offending and penal concerns. This is in direct conflict with the decision of the Cape High Court in *Stanfield v Min of Correctional Services*.[26] While some may argue that in the Stanfield decision the medical parole provisions of the 1959 Correctional Services Act (8 of 1959) were applicable and that the decision therefore does not apply to the current Act (111 of 1998), this is incorrect. The central issue in *Stanfield* was the right to dignity[27], and this is a non-derogable right.[28] The right to dignity transcends both laws and may only be limited in accordance with section 36 of the Constitution.

The amendment, with the particular wording describing an "offender [who] is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care" seems to create the specific conditions against which the Court in Stanfield warned against:

[124] The third respondent's failure to respect the applicant's inherent right to human dignity came to the fore, firstly, in his assessment of the applicant's physical condition for purposes of section 69 of the [1959] Act. By restricting his understanding of such condition to the applicant's external or outward appearance, which is clearly only temporary and will undoubtedly undergo a radical change in the near future, the third respondent chose to ignore, or downplay, the fact that he is suffering from an inoperable and incurable disease that will inevitably cause his death within a few months. **To insist that he remain incarcerated until he has become visibly debilitated and bedridden can by no stretch of the imagination be regarded as humane treatment in accordance with his inherent dignity.** (emphasis added) On the contrary, the overriding impression gained from the third respondent's attitude in this regard is that the applicant must lose his dignity before it is recognised and respected.[29]

Even if the amendment is accepted for the purposes of placing on medical parole prisoners who have become severely disabled, the requirement that the risk of re-offending must be low[30], also challenge precisely the direction given in the Stanfield decision:

[126] The third respondent's suggestion, in the additional reasons raised by him for his decision, that the applicant may still, at the present time, be able to commit a crime or crimes, constitutes, in my view, a third instance of his failure to respect the applicant's inherent right to dignity. It is extremely unlikely that the applicant's thoughts, urges and desires are directed at anything but being reunited with his family during the last few months of his life. He has given the assurance that he will not be involved in crime and has accepted the conditions of his parole as required by the respondents and this court (para 2 above). **To insist that he remains imprisoned until it is physically impossible for him to commit any crime is, in my view, inhuman, degrading and thoroughly undignified.** (emphasis added)[31]

CONCLUSION

The four substantive issues in the CMAB dealt with in this newsletter have brought some improvements, but has also raised issues of concern. The first is the situation of remand detainees and the plans of the DCS to establish remand detention as a distinct function with its own directorate. What this will look like in practice is unclear and the Department has not been forthcoming with more detailed information and, more importantly, the cost implications. Key cost drivers in this regard may be additional staff with its own chain of command as well as additional infrastructure. The new Chapter 5 in the Act, with its detailed provisions in respect of the care of remand detainees (e.g. aged, disabled and pregnant remand detainees), have now raised questions about similar provisions for sentenced offenders.

Medical parole has been an extremely contentious issue in recent years in the light of the Schabir Shaik saga. Whether the amendments will address the problem areas identified will have to be seen. It is of more concern that the responsibility to initiate an application for medical parole now rests more firmly with the applicant than with the DCS. It is indeed the late stage at which the application process commenced that was the primary reason why only a very small percentage of offenders were indeed released on medical parole up to now. The amendment did, however, also add to the problems around medical parole. Medical parole is a mechanism to protect the dignity of the offender and other concerns, such as risk of re-offending and penal interests, are subservient to this. The Department, CSPBs and the Minister will need to interpret these provisions with great circumspection if litigation is to be avoided.

End notes

[1] Lukas Muntingh is Project Coordinator of CSPRI and Clare Ballard is a researcher at CSPRI.

[2] See for example the disciplinary procedures for remand detainees.

[3] Section 20

[4] As at the end of 2010 there were 10 232 prisoners serving life imprisonment. (Department of Correctional Services website http://www.dcs.gov.za/WebStatistics/ Accessed 6 May 2011.)

[5] Section 77(1) of the Criminal Procedure Act deals with accused persons' capacity to understand proceedings and that an assessment in this regard may be required.

[6] Office of the Inspecting Judge (2010) Annual Report of the Judicial Inspectorate for Correctional Services 2009/10, Cape Town, pp. 59-76.

[7] Regulations Gazette 30/7/2011 No. R915, p. 89.

[8] An example in the Free State Northern Cape area will be Grootvlei Max Remand Detention Facility which services courts like Petrusburg, Brandford, Ficksburg, and Smithfield which are long distances away, and in these instances, if the next court date is close then there is a probability that remand detainees may be kept at the local holding cells of SAPS. SAPS in these jurisdictions have to travel long distances in order to hand over remand detainees to Grootvlei Remand Detention Facility. [Summary of Submissions Received and Departmental Responses Thereto: Correctional Matters Amendment Bill, 41 of 2010.

[9] Submission by the Civil Society Prison Reform Initiative on the Correctional Matters Amendment Bill - second submission (2011) para 10.

[10] Sections 115 and 117 of the Correctional Services Act

[11] B-Order 1 Chapter 26 para 29.2.1 (b) The minimum period of detention for possible placement automatically shifts to four fifths (4/5) eighty percent (80%) of the total effective sentence(s) in other words, the initial sentence(s) imposed plus any additional sentence(s) imposed for the escape or sentences for crime(s) committed whilst at large;

[12] Submission by the Civil Society Prison Reform Initiative on The Correctional Matters Amendment Bill - B41 of 2010, PMG report on the meeting of the Portfolio Committee on Correctional Services, 25 January 2011, At http://www.pmg.org.za/report/20110125-correctional-matters-amendment-bill-research-analysis-provisions-cont Accessed 21 May 2011.

[13] Section 78

[14] See submissions by the Law Faculty of the University of the Western Cape and by the Civil Society Prison Reform Initiative, PMG report on the meeting of the Portfolio Committee on Correctional Services, 4 September 2009, At http://www.pmg.org.za/minutes/20070903-correctional-services-amendment-bill-public-hearings Accessed 21 May 2011.

[15] Memorandum on the Objects of the Correctional Matters Amendment Bill

[16] Figures made available to authors by the Judicial Inspectorate for Correctional Services.

[17] Section 38(2) of the Correctional Services Act requires that only offenders serving a sentence of more than 24 months require a sentence plan.

[18] Open Society Justice Initiative (2011) The Socio-economic Impact of Pretrial Detention, New York: Open Society Justice Initiative, http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/socioeconomic-impact-detention-20110201/socioeconomic-impact-pretrial-detention-02012011.pdf Accessed 6 May 2011.

[19] Submission by Civil Society Prison Reform Initiative to the Portfolio Committee on Correctional Services on the Department of Correctional Services Budget Vote 2011/2, PMG report on the meeting of the Portfolio Committee on Correctional Services of 16 March 2011, At http://www.pmg.org.za/report/20110315-department-correctiona-services-201112-strategic-plan-budget , Date accessed 21 May 2011.

[20] Criminal Procedure Act section 286A

[21] *Stanfield v Minister of Correctional Services and Others* () [2003] ZAWCHC 46; [2003] 4 All SA 282 (C) (12 September 2003)

[22] See Muntingh L and Gould C (2010) Towards an understanding of repeat violent offending (2010). ISS Paper 213, Pretoria: Institute for Security Studies.

[23] Auerhahn, K. 'Conceptual and methodological issues in the prediction of dangerous behaviour' *Criminology and Public Policy* 5(4) (2006), 774.

[24] *Derby-Lewis v Minister of Correctional Services and Others* (54507/08) [2009] ZAGPPHC 7; 2009 (6) SA 205 (GNP); 2009 (2) SACR 522 (GNP) (17 March 2009).

[25] Section 79(8)

[26] *Stanfield v Minister of Correctional Services & others* [2003] JOL 11651 (C)

[27] Section 10 of the Constitution.

[28] Section 37 of the Constitution (Table on non-derogable rights)

[29] *Stanfield v Min of Correctional Services*

[30] Section 79(1)(b)

[31] *Stanfield v Min of Correctional Services*

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