

PROGRESS REPORT ON THE LEGISLATIVE REVIEW PROCESS

PRESENTATION for the Annual Strategic Planning Session: 7-9 December 2021

24 November 2021



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

1. Purpose

- ✓ To present a progress report on the legislative review process embarked upon by the Legislative Review Task Team for the Annual Strategic Planning Session

2. Background

- ✓ A National Task Team was appointed to review the Correctional Services Act, 111 of 1998 and its Regulations
- ✓ The process includes research into applicable provisions of the Constitution, relevant legislation, international law and instruments and case law, to name but a few.
- ✓ The target date to finalise this process is March 2023, however it is acknowledged that the review process is a continuous process.

2. Background

- ✓ The Team is supported by regional task teams, who consolidates inputs into the review process within the respective regions and provide such inputs to the National Team
- ✓ It is a parallel process in which various chapters and sections are reviewed simultaneously, having regard to recent judgments, amendments to relevant legislation and issues of national interest and importance (such as GBV, parole, etc.)
- ✓ A phased-approach is used

3. Current Status

Phase 1:

Phaahla Bill

- ✓ The Correctional Services Amendment Act, Act No. 7 of 2021 (to address the implementation of the *Phaahla*-judgment) has been assented to by the President and published on 1 June 2021 for general information. It will come into operation on a date determined by the President by proclamation in the *Gazette*. Enquiries have been made with the Presidency for the proclamation thereof. We await such proclamation.

3. Current Status

Phase 2:

JICS Draft Bill:

- ✓ Three sections in the CSA relating to JICS have been found constitutionally invalid by the Constitutional Court in the *Sonke Gender Justice*-matter and it ordered that it must be amended by Parliament by December 2022.

- ✓ All parties have agreed in principle that the impugned sections in the CSA shall not be amended in the CSA *per se*, but rather that most provisions regarding JICS shall be repealed in the CSA and shall be contained, with the necessary amendments and adjustments, in a JICS Bill.

3. Current Status

JICS Draft Bill (continued):

- ✓ JICS has already provided a draft Bill to DCS for its inputs. DCS has studied the contents of the Bill in light of the CSA, the *Sonke*-judgment and the approved Business Case for JICS for it to become a separate Government Entity.

- ✓ The draft Bill has been deliberated internally, various enquiries and comments were provided to JICS, to which they have responded. Further inputs have been requested from Apex Management in DCS and the due date is 26 November 2021. Consolidated inputs will then be discussed with JICS's legal team for further refinement of the Bill.

3. Current Status

JICS Draft Bill (continued):

- ✓ The Team has also identified provisions in the CSA which it proposes should be repealed, as well as some provisions which will remain in the CSA concerning DCS's obligations towards JICS. These preliminary proposals have already been submitted to JICS for their consideration. Further meetings with JICS shall be scheduled to finalise the Bill.

- ✓ It has been agreed that representatives from JICS and DCS shall present the final draft Bill to their respective principals by 15 January 2022, where after it will be presented to the Minister before 31 January 2022.

3. Current Status

Phase 2:

Parole:

- ✓ A position paper on parole, together with a draft Bill was crafted around 2017 and was circulated to relevant role players for their comments at the time. The NCCS recommended in 2018 that it is not necessary for the creation of new legislation, but that the existing provisions in the CSA can be adequately amended and remedied where needed. A final mandate is sought whether it should remain in the CSA or whether it should become a separate piece of legislation. The Team is of the view that it should remain in the CSA.

3. Current Status

Phase 2:

Parole:

- ✓ Apart from the relevant parole provisions in the CSA already addressed in the Phaahla-Bill, the remainder of the parole provisions are still being reviewed and researched.

3. Current Status

Phase 3:

Remainder of the CSA and its Regulations:

- ✓ Inputs from branches and regions have been requested on various occasions regarding the entire CSA and its Regulations, and those inputs received have been consolidated.
- ✓ The Team is finalizing a Discussion Document on the entire review process, highlighting those provisions which need to be reviewed and ultimately amended.
- ✓ The Discussion Document, together with the consolidated inputs will be circulated internally for comment and inputs.

3. Current Status

Phase 3:

Remainder of the CSA and its Regulations (continued):

- ✓ It is envisaged that the Team together with various other role players will workshop the internal responses received until a final position paper is generated for its presentation to Apex Management and the Executive. This will include dealing with the Act and the Regulations in components or chapters with one-on-one consultations with relevant branches and custodians of relevant policies.
- ✓ After it is adopted, a draft Amendment Bill will be drafted and consulted, both internally and externally with relevant stake holders.

3. Current Status

Phase 3:

Potential amendments to other Legislation:

- ✓ A further process which is currently underway, is to identify certain provisions in other legislation such as the CPA and the SAPS Act and to ensure synergy with the proposed amended CSA.

- ✓ DCS shall then engage the relevant Departments with regards to its proposals.

Thank You



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