

JOINING THE BLUE DOTS

STRENGTHENING DATA COLLECTION ON PRE-TRIAL DETENTION IN SOUTH AFRICA

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EXECUTIVE SUMMARY

In 2015, a study was undertaken to measure South Africa's remand system against the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) of the African Commission on Human and Peoples' Rights (African Commission). Various challenges were identified regarding the collection, analysis and dissemination of data across the criminal justice sector. Amongst these, and of particular concern in the present context, were those relating to pre-trial detention, not only in terms of the processes and practices with respect to its ongoing use, but also in terms of the facilities in which detainees are housed, the manner in which they are treated, and, of specific relevance to this Research Paper, the systems used to measure both the process and the practice. In the South African context, such concerns focus not only on the South African Police Service (SAPS), but also extend to other government agencies that interface with the SAPS in processing pre-trial detainees, chief amongst which are the Department of Correctional Services (DCS), the National Prosecuting Authority (NPA), and the Department of Justice and Constitutional Development (DoJCD).

In March 2016, in response to the call for further analysis and reform, the African Policing Civilian Oversight Forum (APCOF) and the National Development Committee (DevCom) of the Justice, Crime Prevention and Security Cluster (JCPS) developed an Action Plan to respond to the challenges identified, which included steps to strengthen data collection methods, data analysis, and data dissemination across the criminal justice sector. In furthering the conversations arising from this partnership, this Research Paper reviews current data collection methods relating to arrest, police custody and pre-trial detention across the South African criminal justice system (CJS).

Drawing on a critically constructive methodology, this review interrogates the present measurement framework both in relation to its own internal consistency and utility, and comparatively in relation to the Luanda Guidelines. With the relevant law and policy frameworks in mind, it identifies a number of gaps and challenges in the way that information is currently captured and managed, and suggests numerous programmatic proposals for improvement. In particular, such suggestions are focused on the disaggregation of data and how it is shared between departments, as well as on quality assurance mechanisms that should be in place to ensure that information is accurate and up to date. Rather than suggest entirely new systems or expensive reviews, it primarily suggests the broadening of a pre-established measurement framework already utilised by a division of the SAPS.

1. INTRODUCTION

During a discussion held in 2015, APCOF initiated a conversation with DevCom of the JCPS to broadly measure South Africa's remand system against the Luanda Guidelines. Numerous challenges and an extensive list of concerns were identified which, together, touched on nearly every activity, department and process collectively constitutive of the CJS in the country. Of particular concern were the methods and use of, and processes relating to, pre-trial detention, as this is an area of the CJS that is particularly vulnerable to abuse and one in which there are a number of clear examples of failure.

When the baseline study was completed in March 2016, APCOF and DevCom developed an Action Plan to respond to the challenges identified, which included steps to strengthen data collection methods, data analysis, and data dissemination across the criminal justice sector. Specifically, the draft Action Plan calls for the development of:

- A data collection template for the CJS that identifies the categories of information to be collected as well as potential sources of information (i.e. government departments, civil society organisations, academic institutions, etc.);
- An audit of available data against the data collection template, which includes recommendations regarding the types of data that need to be collected in order to address the gaps in the data collection template; and
- A protocol for the collection and sharing of information between different departments, institutions and civil society organisations within the CJS that complies with the Promotion of Access to Information Act 2 of 2000.

The analysis provided herein will therefore be used to support the implementation of the Action Plan and play an instrumental role in the further development of data collection templates, audit and review mechanisms, and protocols with which to guide the sharing of information amongst relevant stakeholders in the CJS.

With this preamble in mind, it should be noted from the outset that this Research Paper is specifically concerned with the manner in which the data and information pertaining to pre-trial detention in South Africa are collected, analysed, and used by organisations that make up the CJS, and *not* with the practice of pre-trial detention itself. This is not to say that the paper is entirely divorced from the context that frames the critique it mounts, but rather that the challenges and abuses that arise from the practice of pre-trial detention serve to inform the need for a review of the data collection methods pertaining to the practice. The many examples of the failure of the system are therefore illustrative of the need for reform, whereas the mechanisms by which such reforms may occur are justified by the requirement that the measurements used to determine the success or failure of pre-trial detention on the whole require the rigorous collection of data that is valid and consistent. In short, it is only through the systematic collection of data in a rigorous manner that it can find translation into information that is of utility in effectively shaping the processes and practices with which pre-trial detention is carried out, and it is only through the effective communication of this information that its impact can be felt by the CJS as a whole. It is to these two focal points – collection and dissemination – that this paper is analytically oriented.

In defining the parameters of this analysis, it should be noted that the term 'pre-trial detention' is understood here to be indicative of any practice, process or activity related to the arrest, detainment and/or confinement of a person accused of having contravened any law *before* a trial and/or court judgment as this pertains to the South African context. Pre-trial detention can in practice be brief, lasting only a few minutes, or can span months or, in limited instances, even years. Pre-trial detention can occur as a result of the seriousness of the crime committed, the actions or behaviours of the detainee, the detainee's failure or inability to meet the financial or others terms of the bail conditions applicable to him or her, or for any other reason that delays, prevents, or causes his or her release to be denied. Comparatively, pre-trial detention is primarily distinguishable from sentencing and incarceration, the latter two of which

are in South Africa a function of a ruling by a court of law and only determinable by a judge of the court. Consequently, an assessment of the collection, use and sharing of data related to pre-trial detention is limited procedurally to those aspects of detention that occur or exist prior to a court judgment determining a party's guilt or innocence. The specific processes, events, and relevant role-players that make up this process – and, importantly, how this process is recorded and measured – will be further described below, as the analysis draws on real-world examples spoken to by a number of the experts that were consulted in preparing this Research Paper.

With the above in mind, then, and to provide the reader with a roadmap for the analysis, this paper is structured according to, and touches on, the following distinct areas of analysis. In the next section, the statement of the problem is further outlined so as to highlight both the scope and focal points touched upon as a whole. To further define and refine the critique, the paper thereafter touches on the methodological lens employed so as to outline the pragmatic methods that were utilised in gathering the data and information which informs it. In order to contextualise and situate the analysis in the broader literature on the practice of pre-trial detention and the measurement thereof, a brief literature review is then provided. This literature review also foregrounds the comparative assessment that follows later with a view to highlighting some of the best practices employed elsewhere which are of particular relevance to the South African context. It is to this specific context that is then spoken, as the following section aims to provide an overview of the operational dimensions of pre-trial detention in the country, and specifically highlights the processes and practices employed in the collection of data pertaining to it. In translating this data into information, the section then embeds these findings in the legislative and procedural architecture that makes up the CJS more broadly. This is followed by a presentation of the findings and a critical analysis of the present concerns, deficits and inconsistencies that operate internally within it in order to highlight the particular points of concern that exist within it. With these in focus, the paper subsequently provides a comparative assessment of these in relation to processes and practices found in other countries and regions, not to mention highlighting their conformity (or lack thereof) with the best practices identified by the Luanda Guidelines. Finally, the paper draws to a conclusion, providing a schematic outline of the changes suggested and substantive recommendations arising from the present analysis.

This structure, it should be noted, aims to meet the requirements and objectives of the Terms of Reference published by APCOF pursuant to the broader goals identified by the baseline. These were defined as being the production of a comprehensive study on current data collection methods relating to arrest, police custody and pre-trial detention across the South African CJS, the identification of gaps and challenges in the way information is currently captured and managed, and the proposal of mechanisms for improvement that should be in place to ensure information is accurate and up to date. It is hoped that the reader finds that these objectives have been met and that the paper is of use in further guiding the processes required for the reform of pre-trial detention in South Africa.

2. STATEMENT OF THE PROBLEM

Flowing from the above-noted contextual factors and project parameters, and to further advance the objectives of the national Action Plan, this Research Paper aims to provide an analysis that is of use to this broader architecture, and is thus framed by these particular requirements. Distilled, however, to its analytical base, there are four simple questions that guide this analysis of the pre-trial data collection process presently utilised by government agencies in South Africa:

1. What data is being collected? As will be touched upon, the gathering of data is by necessity a selective process and one that may be subject to the intent of the collector. Of significant importance, too, is the methodological concern that what data is collected will ultimately shape the results and information abstracted from it. As such, a concern with what data is collected is pivotal to understanding the process and subsequent information.

2. How is this data being collected? The manner in which data is collected can shape not only what data is 'seen', but is also itself a process of filtration, and thus one that may be manipulated either purposefully or as a function of the structural design of the method itself. Much can be missed or seen, in short, and as such is an important aspect of any review of any data processing system.
3. Who is collecting the data? Especially important in terms of the particular subject matter of this Research Paper, it should be remembered that data collection does not occur in a benign or amoral space and by virtue of simply being seen as useful, but is necessarily political. In this instance, the politicisation of the collection is manifest further in a context in which government agencies and personnel are placed in competition for the scarce resource of state funds, occurs in spaces in which competing personal interests are especially apparent, and is one in which those interests may aim to shape data processes so as to mitigate incarceration or to maintain liberty.
4. Why are they collecting it? In order to translate data into information, it must be synthesised and analysed, both of which, as mentioned, are necessarily subject to perspective. What may be considered important and what may be ignored is a function of this, something equally applicable to this paper itself. It is thus a requirement that any collection modality be intensely self-reflexive of its own purpose. As both a requirement and demonstration, then, such a concern with self-reflexivity and an attempt to be actively conscious of presumption and determinate bias is written into this paper as far as is possible. This is done not only with the aim of maintaining methodological rigour, but also so as to act as a demonstration of this instrument in the formulation of the data collection methods pertaining to pre-trial detention.

While seemingly benign in the above form, they do of course invoke a raft of processes, agencies, and purposes and, in practice, aim to measure a particular function of state that is intrinsically violent. Indeed, while a discussion of the methodological rigour of present collection modalities may be undertaken here with the aim of encouraging the reform of pre-trial detention processes, the abstraction should not lose sight of the basis for measurement – the forceful detention of a person or people on the basis of suspicion only, which itself is often a process that can involve various forms of abuse and physical violence, beyond of course the intrinsic fact of detention being operationalised as the physical holding of someone in a place and manner that is against their own will.

3. LITERATURE REVIEW AND ASSESSMENT

3.1 Introduction

South Africa's CJS comprises three main departments, namely the SAPS, the DoJCD, and the DCS. The NPA is also an important role-player in the CJS and is spoken to separately at different points in this Research Paper, even though, in terms of administrative structure, it is positioned as a subdivision in the DoJCD. All three national departments are responsible for providing the public with data relating to arrests, convictions, pre-trial detention and police custody. However, all three departments record varying information which cannot necessarily be linked, and this has made it difficult to determine and evaluate the effectiveness of the CJS.¹ A number of related organisations may indirectly collect such data as well, for instance various non-governmental organisations (NGOs), Legal Aid South Africa, and others.

Criminal justice statistics, much like statistics more generally, require both rigorous collection methods and objective analysis. Needless to say, any and all statistical data is only as accurate as the systems that generate it and as reliable as the people who collect it.² This is the case in Africa, where some countries manually collate their data, while others do not consistently collect statistical data, and, even

when there is available data, it is often limited. In most African countries, criminal justice statistics, and pre-trial detention statistics specifically, are collected and recorded by government, whereas in some countries these are collected by NGOs which, at times, are forced to use their limited information and generalise their findings.³ Essentially, the data is either inaccurate or incomplete.

In South Africa, as mentioned above, criminal justice statistics are collected by different departments at each point of contact with the criminal justice process, from arrest to sentencing. The challenge with this is that each department has its own system of collecting data and each system functions in a specific and standardised way, which sometimes makes it difficult and at times impossible to capture important information. Another challenge is that some of the personnel may not have sufficient training and literacy in data collection and analysis techniques. This, in turn, leaves room for discrepancies and for information on suspected criminals being captured incorrectly. The absence of an integrated system, which allows the sharing of information among departments, and the absence of a monitoring system sometimes result in the premature release of suspected criminals, and, at times, the incorrect imprisonment of others. As a result, criminal justice statistics are incorrectly captured and recorded and the public loses trust in the CJS. Therefore, it is mandatory for CJSs to have operational and effective information management systems that provide accessible and current information on the statuses of defendants and cases.⁴ The availability of data on issues relating to arrests, police custody and pre-trial detention is generally lacklustre and the analysis of the effectiveness of pre-trial detention and the effectiveness of the CJS offers inaccurate results.⁵

3.2 Pre-trial detention in South Africa

At the heart of South Africa's Constitution is the protection of all its citizens' rights and dignity – victims as well as all persons accused of breaking the law whether innocent or guilty.⁵ Enacted from this are the Criminal Procedure Act and the Correctional Services Act which both elaborate on the treatment of all accused persons in police custody. However, despite these advantages, the CJS has failed to adequately uphold the rights of persons held in police custody.⁷ Elements of the CJS relating to collaboration among key role-players, the collection and sharing of data among these role-players, and the conditions and treatment of remand detainees are largely dysfunctional and this has resulted, in some cases, in miscarriages of justice and breaches of human rights.⁸

There are many human rights concerns in many prisons across the world and in South Africa. The overuse of pre-trial detention is one symbol of the failures of South Africa's CJS, which has seen thousands of people being deprived of their freedom and therefore being exposed to a myriad of negative experiences.⁹ This is further supported by Ballard¹⁰ who stated that there was a global average of approximately three million pre-trial detainees in 2011. Pre-trial detainees are vulnerable and exposed to many health problems. Moreover, they suffer from a loss of their jobs and are disconnected from the community and their families. As a result of inadequate and insufficient space, pre-trial detainees are usually put in the same cells as repeat offenders and career criminals and are subject to arbitrary actions of other detainees, corrupt officials and even the police. Pre-trial detainees are also exposed to diseases, extortion and torture. Essentially, instead of being used as a last resort, pre-trial detention is used too frequently and excessively without adequate justification.

The failures of South Africa's CJS should also be attributed to the dissonance that emerges between the formal CJS and the range of dynamic policing contexts in the country. In such instances, the relationship between the public and the police may undermine the latter's efficacy, undermines police legitimacy, and may contribute to police violence.¹¹ It needs to be acknowledged that solutions that work in some parts of the world will not necessarily work in South Africa or on the continent because of the varying socio-economic conditions existing between Africa and the West. As such, it is important for research to be conducted on a more African solution to African problems. Therefore, surveys need to be administered in an effort to investigate the measures that are put in place in other African countries to address the problem, and then either improve existing measures or develop new measures.

As mentioned above, personnel capacity plays a crucial role in the effectiveness of the CJS. Therefore, capacity at the front end of the CJS (the police) is vital in ensuring that cases are well managed throughout the CJS. Essentially, in order to enforce the law, the police need to understand the law. Given that, they need to be made aware that every offence does not have to result in an arrest. Instead, formal cautions for petty offences, like public drinking, should be given.¹² However, it should be noted that the number of arrests made indicates performance within the SAPS. As a result, the higher the number of arrests, the better the CJS as a whole is seen to perform.¹³ This gives a false idea of the effectiveness of the CJS, because unnecessary arrests result in overcrowded remand detention facilities. Furthermore, the period of detention becomes protracted where cases are delayed due to the fact that evidence cannot be presented in court because investigations are still ongoing. Therefore, instead of using the number of arrests as a performance indicator, the SAPS should use an indicator that measures its performance by the number of cases that go to trial. This will facilitate communication among the relevant departments as well as the sharing of information.

In addition, the development of an interdepartmental, cross-cutting digital system to be utilised by all relevant departments (including the SAPS, the judiciary and the courts, the DCS, the DoJCD and the NPA, as well as the Department of Home Affairs) will allow the sharing of data among the different departments and safeguard and protect data pertaining to dockets, transcripts and records. Having this in place will also allow access for those who may want to appeal their sentences.¹⁴

3.3 Findings of select studies on data collection methods relating to arrest, police custody and pre-trial detention in South Africa

3.3.1 Submission by the Civil Society Prison Reform Initiative to the Portfolio Committee on Justice and Correctional Services Strategic Planning (September 2015)

In 2015, the Civil Society Prison Reform Initiative (CSPRI)¹⁵ presented on a study that it had conducted on the challenges underlying the effective functioning of the CJS. The CSPRI's findings in relation to the collection and reporting of data were as follows:

- Annual statistical data presented by the SAPS indicated a high number of non-priority crimes;
- In 2013/2014, out of 1 392 856 arrested and charged crimes, 59% were for serious crimes, and, of those serious crimes, 22% of the arrests were drug-related; and
- Of all the arrests, 22% or even less resulted in convictions.

This indicates that police officers are making unnecessary arrests or are not adequately investigating a vast proportion of cases, and that these cases place a huge burden on the judiciary. There is then a considerable meta-critique in terms of data collection and recording as pertaining to the CJS – irrespective of the rigour or validity of any data collected, if those data themselves record the results of ineffective or illegitimate arrest processes, then, beyond the internal consistency of the data itself and its indicative potential at marking these problems, it cannot serve as an effective instrument for the monitoring of operational efficacy, efficiency, and so on.

3.3.2 Conviction rates reported in eight South African police areas (South African Law Commission)

This study was designed in an effort to assist the South African Law Commission in acquiring data on sentencing practices in South Africa with reference to the data collection system (i.e. the Crime Administration System or CAS) used by the police.¹⁶ The following was highlighted regarding the CAS system:

The CAS system is not the appropriate tool, as it was not developed for research purposes. The reason for this is that the Standing Order pertaining to CAS is extremely complex. Without a clear understanding of the latter, it is difficult to arrive at valid findings regarding the

information captured on the system. A certain degree of error, especially as far as the finalisation of cases on the CAS system is concerned, also exists. The result is that a more negative picture in respect of the successes achieved by the police is depicted than is warranted by the real situation. The issue of data integrity on the CAS system is currently enjoying serious attention by police management, as it may also have a negative impact on operational matters.

In the study, it was found that 88.5% of reported violent crimes on the CAS were recorded as undetected, guilty or not guilty, withdrawn in court, or withdrawn by complainant. These statuses require police who understand and know that the data is used by police management to assess their performance, to actively enter them in the system as the CAS data. It is also very likely that the finalisation of cases is misclassified, for example a conviction is recorded when there is none, and this paints a misleadingly positive picture of police successes.¹⁷ Advocating on behalf of persons that are accused of breaking the law is difficult in a time when the public is already frustrated with the way in which the authorities deal with crime in the country. It is perceived that the worse the conditions are in prison, the more deterred people will be from committing crimes. However, this has proven not to be the case.

It should be understood that when systemic failures deprive people of their rights this spreads into other spheres and affects the entire society. The public's faith and trust in the justice system need to be upheld, and ensuring a decrease in remand detainees, whose trials are held fairly and quickly, will go a long way in lowering crime rates and maintaining safe and healthy communities in South Africa.¹⁸

In order to improve the CJS and ensure its effectiveness, we need to make certain that problems such as overworked and undertrained CJS personnel, as well as inadequate support staff and services for prosecutors, are addressed. In addition, limitations of the CAS database and performance indicators need to be addressed, and an interdepartmental digital system should be developed that will allow for the sharing of relevant data among the key role-players within the CJS, including those who engage with the detainees themselves, such as the legal aid clinics.

4. METHODOLOGY AND METHODS

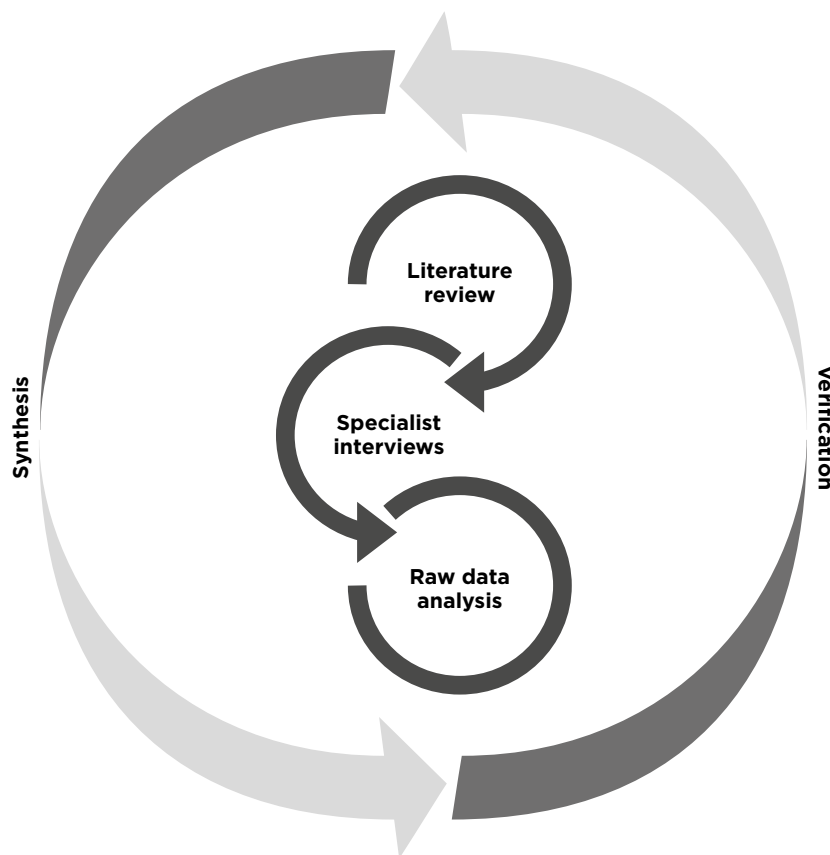
In proceeding from the basis outlined in the statement of the problem, the methodological framework employed by the study which informs this Research Paper had at its core the four simple questions that were posed (see pages 3 and 4). This being said, the methodological framework was significantly more advanced than a literal interpretation of these questions might be understood to be. Indeed, the framework might best be thought of as layered, in which a compound synthesis of these provided the results discussed below. In the first instance, the synthesis employed a mixed-methods framework in which quantitative and qualitative data was considered.

The parameters in which these were analysed were first informed by an extensive desktop review of the relevant literature, of legislative components (including the Luanda Guidelines), and of the prior undertakings developed by the larger project. On this basis, materials as well as examples of the current system of data acquisition, collation and analysis were gathered together and reviewed, although it should be noted that these were not always in place, used, or even known of. In attempting to mitigate the impact of this, beyond of course noting that the lack of data was in itself indicative, the researchers made further enquiries resulting in empirical examples of the principal systems employed by the agencies and which produce records from which measurements pertaining to pre-trial detention are informed. These raw records ultimately informed the analysis more than other sources of information, as they were considered to be the most objectively neutral and the most valid basis for primary analysis, rather than merely drawing on secondary analysis of sources that themselves were subject to interpretation.

In further supplementing, and so as to colour the raw data with the operational experiences of the current systems' utility, use, and pertinence, a number of semi-structured interviews were conducted with individuals drawn from the three primary government agencies noted above (the SAPS, the DCS, and the DoJCD). These interviews were primarily used as a means of understanding how the current measurement systems are employed (if they are employed in the first instance), of ascertaining their relevance, and of determining how the results are used both in and of themselves and as a means of furthering the pre-trial detention system as a whole. A further key concern touched upon in these interviews aimed to understand the extent to which information generated from the data was shared between the agencies, whether this was of any use, and whether this occurred in a reliable and timely manner. It should be noted that, in all instances, informed consent was granted, as well as permission by the participants themselves to record the interviews, irrespective of any mandate to entertain the questions. The interviews were conducted individually, with the recordings immediately transcribed before being destroyed. The transcriptions themselves are to be destroyed on completion and acceptance of this Research Paper.

Subsequently, the information gleaned from the interviews, the results of the literature review (which review is presented in part above), and the raw data sets were collated and collectively analysed in order to determine the results presented here. By way of example, for instance, the pathway by which a detainee moves from arrest to trial and judgment was determined by specifically focusing on this in interviews, by understanding the context in which it is embedded through reviewing the literature, and, most importantly, by verifying the accuracy of the information by reviewing a collection of the time stamps that were generated as individual cases were processed through the current system so as to determine whether they were indeed chronological and from which inferences relating to the duration of the pre-trial detention, the number of court appearances, the outcome of the judgment, and other specificities could be determined. In summary, then, the methodological process might be imagined thus:

Figure 1: Methodology and methods



5. CONTEXTUALISATION OF LEGAL/OPERATIONAL ENVIRONMENT

A brief overview of the legal and normative frameworks governing pre-trial detention in South Africa is presented below. Compliance is of course not always mandatory, with many of the international regulations finding adoption as 'best practices'. While there are numerous international frameworks, in terms of applicability and utility to the South African context, the primary instruments include the following:

5.1 International instruments

5.1.1 Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Optional Protocol sets out provisions for the collaboration of states parties, through the implementation of reporting or individual communications systems, in order to prevent violations. The system as foreseen by the Optional Protocol is based on long-term, sustained cooperation as well as dialogue in order to assist relevant state departments to implement any necessary changes to prevent miscarriages of justice.¹⁹ Essentially, the sharing and collection of data become easy and the data is then collated by an independent body. This provides both accountability and oversight if correctly implemented.

5.1.2 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)

The Istanbul Protocol sets out guidelines for the assessment of collected data related to persons who allege torture and ill-treatment, for investigating these cases, and for reporting findings arising therefrom to investigative bodies and the judiciary.²⁰ It also includes principles for the effective documentation and investigation of such incidences. It should be noted that the manual is not presented as a fixed protocol. Instead, it sets out minimum standards based on the principles and should take into account a state's available resources. Consideration of a state's resources is pivotal to ensuring the adoption of a normative framework operationally.

5.2 Regional instruments

5.2.1 African Union (AU)

5.2.1.1 *Declaration of Principles on Freedom of Expression in Africa*

Article 4 of the Declaration of Principles on Freedom of Expression in Africa notes that the following key protocols and structures should be in place in order to ensure that data is correctly utilised:

1. *Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.*
2. *The right to information shall be guaranteed by law in accordance with the following principles:*
 - *everyone has the right to access information held by public bodies;*
 - *everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;*
 - *any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;*
 - *public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;*
 - *no one shall be subject to any sanction for releasing in good faith information on*

wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and

- *secrecy laws shall be amended as necessary to comply with freedom of information principles.*

3. *Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.*²¹

This is of course more difficult to implement in practice, as the ability to access information may, for example, undermine ongoing investigations. Striking a balance between the right and the strategic requirements of individual rights continues to be the primary responsibility of the courts.

5.2.1.2 *The Luanda Guidelines*

The African Commission adopted the Luanda Guidelines in 2014.²² The Guidelines provide best practice from the arrest of an accused until trial, focusing on the decisions and actions of the police, correctional services, and other stakeholders. The Guidelines contain eight key sections (or 'parts' as they are termed in the Guidelines). Part VIII of the Guidelines speaks, among other things, to the aspect of the collection of data and of access to information and states the following:

Guideline 39. Data collection: *States shall establish processes for the systemic collection of disaggregated data on the use of arrest, police custody and pre-trial detention to identify and address the over-use or adequate conditions of police custody and pre-trial detention.*

Guideline 40. Access to information: *States shall establish, and make known, systems and processes to guarantee the right of access to information for persons in police custody and pre-trial detention, their families, lawyers and other legal service providers, in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.*

5.2.2 Southern African Development Community (SADC)

5.2.2.1 *SADC Standard Minimum Guidelines for the Treatment and Management of Detainees*

The SADC has set out guidelines that apply to the management of pre-trial detention, awaiting-trial detainees, and sentenced detainees following legally recognised trials in every SADC country's national court system.²³ Guideline 42 relates to admission to detention facilities and sets out guidelines for the recording and collection of data at the time of arrest. It states that a bound and sequentially numbered registration book should be kept at every place where a person is detained in order to maintain a record of all persons who are detained there, and that, where possible, the institution concerned should also maintain an electronic record of all detainees. The register should record the following:

- The detainees' personal information (i.e. information relating to every detainee's identity);
- The reason(s) for their arrest and the authority therefor;
- The time and date of each detainee's admission and release;
- The date and time of the arrest;
- The identity of the officers who arrested the detainee and details of the vehicle used in transporting the detainee;
- The time and date of any scheduled court appearances or appearances before other relevant authorities;
- The time and date of any review conducted with regard to the detainee, as well as information about the outcome of the review and when the review took place;

- Correct information on the place where the detainee is being held and information regarding any transfers to another detention institute; and
- All requests for medical treatment, and, where medical treatment is being received, details of its administration as well as of the treatment and medication being administered.

Guidelines 43, 44 and 45 state that all detained persons are to be detained with a valid commitment order and that the details thereof should be entered in the register. In addition, all details entered in the register should be communicated to the detainee, his or her counsel and relatives or any nominated person in the form prescribed by law. There should also be designated officers at all detention institutions to maintain the aforementioned register.²⁴

5.3 South Africa's domestic legal framework

5.3.1 The Constitution of the Republic of South Africa, 1996

Section 35 of the Constitution²⁵ enshrines the rights of all arrested, detained and accused persons: to challenge the lawfulness of their detention in person before a court, and, if the detention is unlawful, to be released; to be informed of the charge with sufficient detail to answer it; to have their trial begin and conclude without unreasonable delay; to be presumed innocent, remain silent and not to testify during proceedings; and to access information and receive information in a language that they understand. It also states that evidence that is obtained illegally or obtained in a way that violates the rights of a person must be excluded if the admission of that evidence would render the trial unfair or otherwise detrimental to the administration of justice.

5.3.2 Draft White Paper on Remand Detention Management in South Africa

The principles of the White Paper draw on international and local laws that drive the management of remand detainees.²⁶ The White Paper communicates the rights of detainees to be informed of their obligations and rights, as well as their right to be separated from sentenced inmates. It also states that remand detention requires integration in the CJS and greater levels of effectiveness, and that institutions should be controlled and subject to oversight. Generally, the White Paper is based on the right that any and every person that is charged with a crime is innocent until proven guilty and should be treated accordingly.²⁷

In Chapter 1, the White Paper highlights the challenges related to CJS matters, which challenges are:

- Lack of joint planning and process optimisation in the CJS pipeline, as well as disjointed coordination of activities across and within relevant CJS departments;
- Time-consuming repeated processes involved in the release and readmission of remand detainees scheduled to appear in court; and
- Lack of a single record that contains accurate information on remand detainees.

Challenges highlighted relating to systems and tools can be summarised as follows:

- Inadequate automation of identification, tracking systems for remand detainees and relevant information;
- The lack of comprehensive information on, and effective management systems for, children who are in conflict with the law; and
- The lack of tools to determine high-risk remand detainees, which leads to low-risk detainees being housed with high-risk detainees and first-time detainees.²⁸

Chapter 4 and Chapter 8 respectively deal with the approaches that are utilised to address the above-mentioned challenges within the CJS and the challenges relating to systems and tools.²⁹ The White Paper in short recognises a number of current concerns and is therefore a step towards addressing these programmatically.

5.3.3 Interim National Protocol for the Management of Children Awaiting Trial

South African law, across the board, makes special provision for children in the country. This includes provisions regarding their detention prior to trial. The objectives in relation to arrest, police custody and pre-trial detention among the relevant departments are as follows:

- The **SAPS** is responsible for ensuring that guardians and parents are informed of their child's arrest. Such information should indicate the time, date and place with regard to the child's appearance in court. In addition, the SAPS must consider releasing the child into his or her parents or guardians' care, where suitable, and issue a written notice to appear in court in bail cases.³⁰
- The **(Provincial) Department of Social Development** must ensure that the following information is shared with the police: the times that probation services are available, and the venues where arrested children need to be brought for assessments.³⁰
- The **DoJCD** must ensure that probation officers have easy access to all arrested children that are scheduled to appear in court, and must designate one court to deal with all matters pertaining to juveniles. The DoJCD also needs to assist in allowing adequate time for assessments to take place.³²

Monitoring of these facilities and processes is achieved through intersectoral meetings which take place on a monthly basis (with a minimum of four meetings a year). Representatives of the following departments/organisations are required: the SAPS, the Departments of Education, Correctional Services, Social Development (probation services and residential care services) and Justice, the Office of the Director of Public Prosecutions (DPP), NGOs providing diversion programmes, as well as the legal aid clinics.³³ There is moreover a significant need for the independent monitoring of detention facilities, as research indicates that numerous violations and forms of violence occur in these spaces, with those involved rarely being held accountable.³⁴

6. FINDINGS AND COMPARATIVE ANALYSIS

As was noted in the previous section of this Research Paper, perhaps the most significant finding of the present study is that there is very little evidence of any mechanisms, procedures or systems specifically aimed at gathering, collating or synthesising data related to pre-trial detention in South Africa. This is of course not to say that there are no records at all, nor is it to say that no record-keeping is undertaken, but rather that data related to pre-trial detention is not collected with this individual concern in mind, but is instead produced as a result of larger record-keeping systems and administrative processes. In order to gather data related to pre-trial detention requires, then, that these broader data collection processes are correctly filtered and collated, a function that is furthermore not embedded in the system itself but can only be performed externally.

Before reviewing in further detail the results of the study, it is important to distinguish and understand the broader systems used by the relevant agencies so that the review of the findings and the critique thereof are contextually embedded in the structures they speak to. As noted, the three primary government agencies involved in, or authorised to undertake, pre-trial detention in South Africa are the SAPS, the DCS, and the DoJCD. As regards these, pre-trial detention is primarily undertaken by, facilitated through, and authorised as a result of the SAPS's mandate. As a result, the SAPS also handles the vast majority of individual cases, has the largest number of detention facilities – which, at the station level, are typically termed 'holding cells' – and has the largest data collection system of the three.

6.1 Data disaggregation

The primary data system utilised by the SAPS, and which acts across the arrest chain and facilitates all facets of this process from identification records to administrative checks, is known as the Crime

Administration System, usually abbreviated as 'CAS'. Summarily defined in an internal standing order of the SAPS, it is understood as follows:

The Crime Administration System (CAS) is the computer system that is used to register, manage, control and keep record of case dockets (SAPS 3M) that are reported to the Service.³⁵

This Research Paper is not the first to note deficits related to the CAS, with the organisation having already reported to Parliament on the modernisation of the system in 2015³⁶ based on an overhaul of the entire system undertaken by Amazon in 2013.³⁷ Since these systemic changes were eventually limited in nature, there remain ongoing calls for the radical updating of the system – such as implementing an 'e-docket' process³⁸ – and a recognition within the SAPS that there are numerous limitations and challenges to the system, including the difficulty related to updating and changing crime codes,³⁹ the well-known means by which it can be abused, and its systemic isolation from other data collection tools and processes. In focusing solely on the procedural aspects of the CAS that are of particular relevance to the facet of pre-trial detention, the following chronology is indicative of the process by which a pre-trial suspect may be detained and held. This is followed by the chronological data recording entries on the CAS. These are presented together for comparison between the real-life processing of individuals and the data collection process abstracted from it.

If an arrest results in a detainee needing to appear in court, the case is then 'handled' by the Department of Justice. Much like the situation within the SAPS, the management of cases within the DoJCD needs to be improved. The long and unnecessary delays affect the effectiveness and efficiency of the CJS and have resulted in numerous human rights violations (e.g. in growing remand detention populations) and a loss of confidence in the CJS.⁴⁰

The DoJCD's mandate is to ensure a strong institutional and legal framework that enhances the rule of law, including the settlement of all disputes by legal means and the prosecution of offenders. The DoJCD heads government programmes that give all citizens the opportunity for the realisation of the Bill of Rights and equal protection and benefit of the law.⁴¹ There are six core branches within the DoJCD, namely:

- Court Services;
- Master of the High Court;
- Chief State Law Advisor;
- State Litigation;
- Legislative Development; and
- The Justice College.

Their responsibilities which are of particular relevance to the present study include:

- Ensuring the provision of integrated court services;
- Constitution development;
- Managing case flow; and
- Adjudicating civil, family and criminal law-related disputes.

Given that, the DoJCD has developed a guide designed to ensure that all role-players in the CJS are aware of their roles within the system and, most importantly, how failure to perform their roles can impact on other role-players, thus creating problems when they do not perform adequately.

Within the criminal justice process, the police are the first point of contact when an individual breaks the law, which process has already been discussed. Thereafter, the individual's case is handed over to the DoJCD and the person appears in court. The operating systems for administering cases and the courts require planned and coordinated structures (departments or offices of the police, court support, prosecution, social services, and the legal fraternity, to name but a few) that complement one another. These structures serve to integrate all the relevant role-players with a view to achieving the respected service expected of the courts.⁴²

Figure 2. Pre-trial detention timeline

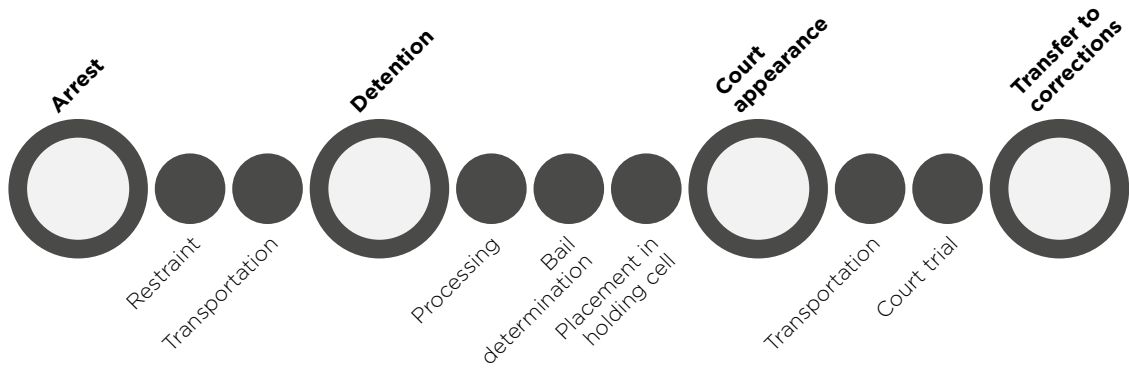
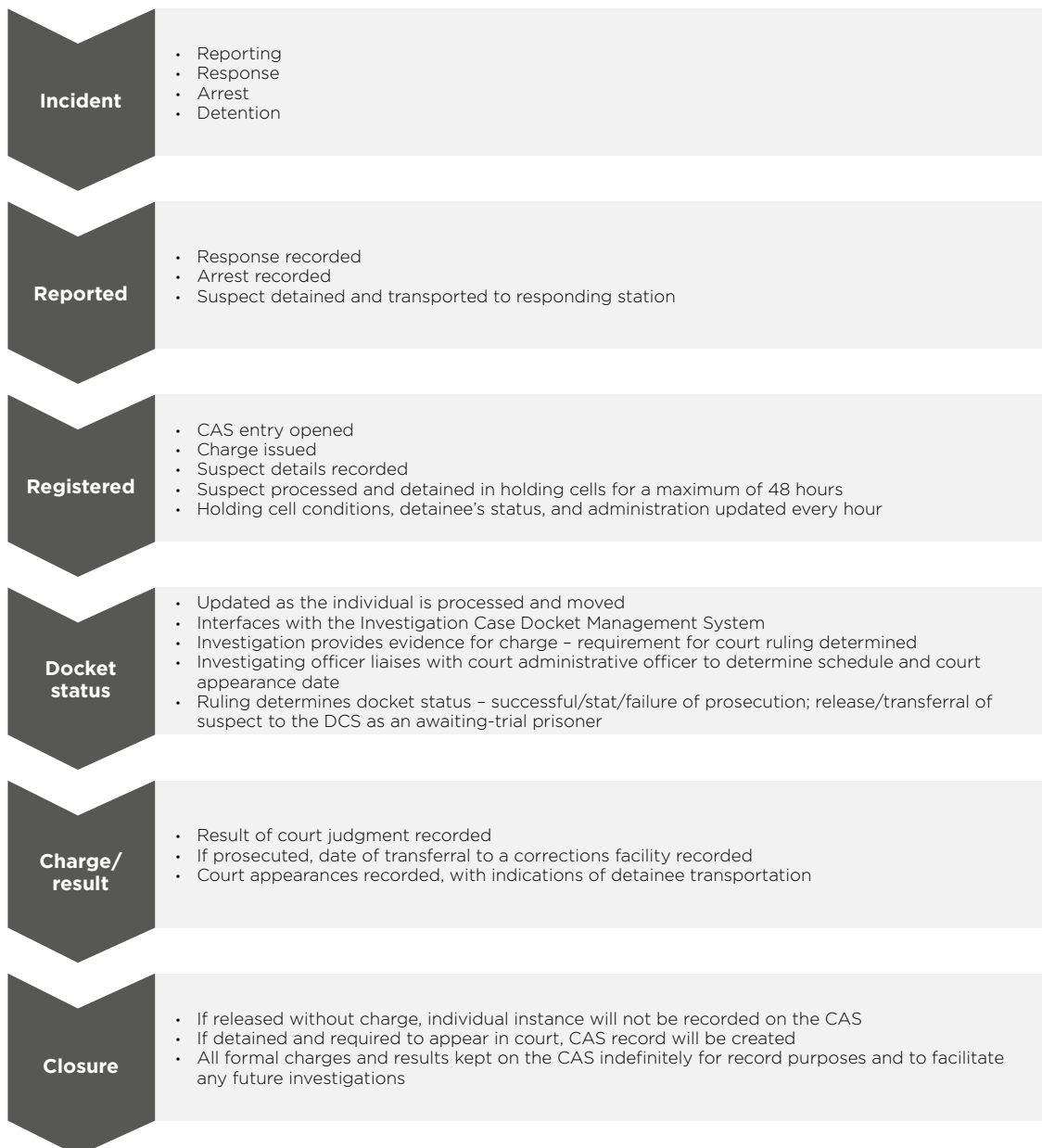


Figure 3. CAS registry entries



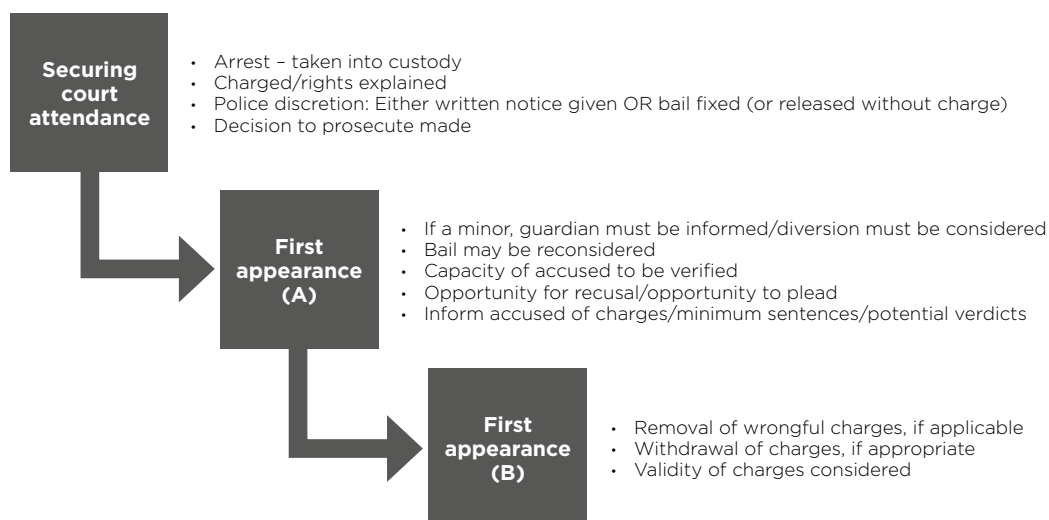
In terms of the DoJCD's system, an effort is made to ensure that there are no delays or case backlogs and that there is effective court roll management. Consequently, cases are prioritised in the following order:

- Postponements;
- First appearances;
- Bail applications;
- Guilty pleas;
- Sentencing;
- Part-heard matters; and
- Older trials.

Figure 4 illustrates the interpretation and implementation of case management. For the purpose of this study, it only illustrates the first 48 hours, as longer terms of detention fall under the mandate of the Department of Correctional Services, the instruments in respect of which we turn to after this. In outlining the processes and recording mechanisms, the illustrations in Figure 4 aim to provide a pragmatic overview of the points of data collection as they would be experienced chronologically by an individual who is detained.

It should be noted that, while the NPA is an administrative subdivision of the DoJCD, it has the significant mandate of instituting and carrying out criminal prosecutions on behalf of the state, including investigations, and also has the power to discontinue such proceedings. The NPA has made numerous attempts to expedite processes and make the CJS more efficient in order to decrease the length of pre-trial detention and to decrease pressure on the DCS to house individuals. As such, it operates as an important administrative link between the SAPS, the DoJCD and the DCS and has significant authority. Considering its mandate and previous successes, it has the potential to become instrumental in reformulating the CJS more broadly and to expedite pre-trial detention processes as well as implement a more advanced data gathering system pertaining to this. This is further touched on in the recommendations below.

Figure 4. DoJCD process flow (first 48 hours)

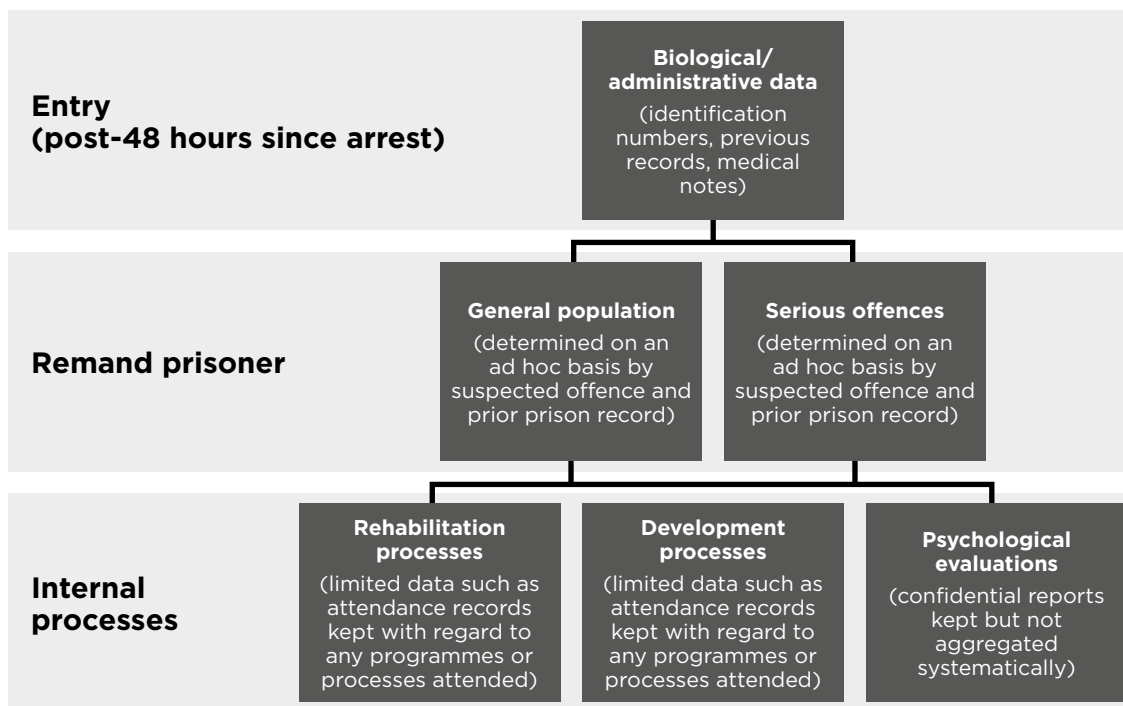


Where individuals are sentenced, they are then sent to a correctional facility where they are rehabilitated for the crimes they have committed. This is the point where the DCS delivers on its social and legal responsibility to rehabilitate offenders. As such, the purpose of the DCS is to fulfil its obligations to the community by enforcing sentences that have been handed down by the courts, by ensuring the human rights of prisoners while in custody, by promoting the human development of prisoners and individuals subject to community corrections, and by ensuring the social development of the said individuals.⁴³ In terms of processes pertaining to data collection, the DCS has extremely

limited technical capacity. Indeed, in the 2016 DCS budget overview presented by the Minister of Justice and Correctional Services, it was noted that the Department’s data collection processes and practices were restricted to basic process controls, with the Auditor General noting that the credibility of the little data that was generated was questionable at best. In conducting the research for this project, this was found to still be the case. Indeed, it is difficult to report on what processes actually exist, both as a function of those interviewed not knowing and as a result of the paucity of data that is published from which the data-collection methods can be retrospectively inferred.

From what information can be gleaned from the published data sets and interviews, the processes are primarily aimed at the collection of temporal and biological data, although one caveat here is that a separate recording system – and one which is restricted in terms of access as a result of its nature – is the psychological evaluations of prisoners. From the interviews, it seems, however, that these records may be significantly more accurate, although there is a lack of a systematic meta-framework for the collation and sharing of disaggregated data pertaining to the records themselves. Perhaps the most significant indicator of the lack of rigorous data-collection processes – and the resulting ineffectiveness of responses to concerns as they arise – can be gleaned from the annual reports published both by the Department itself and the Auditor General. Under the rubric of ‘Offender management’, the 2017 report noted that, while just under R4 million had been budgeted for the said management processes, for the last four years, only approximately 30% of the budget had actually been spent. There are then significant limitations to attempting to report on data collected by the Department, but, so as to provide a consistent overview, Figure 5 aims to provide a chronological outline of the primary sites of data collection.

Figure 5. DCS process (post-48 hours)



6.2 Data dissemination/sharing

Considering both the paucity of valid data and indeed the significant gaps in the three collection processes, the embedded technical concerns with the collection processes by which the limited data is itself collected, and the broader framework of governance in the country, it is not surprising to find that the sharing or dissemination of data between government departments and/or with the public more broadly is limited at best. In terms of the latter, for instance, it is primarily through the release of aggregated/generalised annual reports that data pertaining to internal processes of individual

government departments is made available. Such data is by its nature sweeping in design and is strategically presented so as to prevent more detailed analyses of those topics that are deemed 'sensitive' or are of specific concern to particular agencies. Examples abound, some of which are a useful entry point into a broader discussion on the sharing and dissemination processes found to be employed in and between the SAPS, the DoJCD and the DCS.

Perhaps the most prominent example in relation to the SAPS concerns the very core of the data-collection process as it pertains to pre-trial detention. For each offence as imagined by the legislative framework, there is a corresponding crime code which is used in the CAS system to register individual offences. Such codes are ultimately useful in aggregating data and may be of use in expediting analysis of this data. Such data also ultimately informs the publically released crime statistics, which are a prominent fixture in terms of public debate. In order to aggregate the said data, the SAPS employs counting rules – such as what constitutes a single offence, whether individual offences or events are recorded, and so on. In 2017, these counting rules were carefully reformulated so as to inform a new presentation structure by which to release the crime statistics. Previously, crimes were divided by categories (theft, interpersonal crimes, etc.), and the results reported within these categories. This was changed, however, so that, before these divisions were used, a new and broader division was implemented, namely that between 'criminal incidents reported by the community' and 'criminal incidents reported as a result of police action'. As stated, the counting rules were also changed, although not specifically to reflect any analytic utility. In terms of incidents reported by the community, incidents were no longer to be counted individually (as would be reflected on a charge sheet) but as events (as per the docket, which is usually made up of multiple charges). In terms of incidents reported as a result of police action, individual incidents would be counted rather than each event/docket. As a result, when these counting rules are combined, the resulting calculations are weighted so as to reflect a decrease in community reports and an exponential increase in police-reported incidents. The net effect, of course, is that the data now acts as a justification for the normative proposition that crime is increasing because the communities in which it occurs are less active and that the police have increased their efforts exponentially. This is, of course, not 'not true', but is a reflection of a calculation and not a reflection of actual deployment levels or operational activity.

In terms of the DCS, an interesting oversight in its reporting structures is that while its annual reports detail the total number of prisoners in the system, and at times provide mention of individual totals for select prisons, they never provide either the totals for all prisons or the number of awaiting-trial/sentenced offenders. When totals are provided, the ratio is not, and when the ratio is provided, the totals are not, thus making it extremely difficult to paint an accurate picture of the CJS as it pertains to the DCS or, indeed, more broadly. That these data do not appear together or in a manner that allows for the calculation of either seems to be more than a simple oversight. The paucity of data, it seems, is as much the result of strategic calculation as it is a lack of technical ability.

The DoJCD consistently provides the most comprehensive and detailed releases of data, which is indicative of the collection processes it employs. This being said, however, the information it collects in terms of pre-trial detention is by its nature the least sensitive and has the smallest potential for inference or abstraction to the system more widely – as a function of its position, its mandate is operationalised at the points between initial detainment and sentencing, and thus, while the custodian of justice, the Department is only the briefest custodian of individuals. Indicative of one of the recommendations and indeed as a function of its legal mandate, the measures in which accountability and oversight of the Department are conceptualised are also more extensive and more rigorously applied. This notwithstanding, the Auditor General has noted that compliance levels as a whole – of which data collection forms a part and easy victim in relation to its wider understanding as 'bookkeeping' rather than formulaic exercises – have consistently decreased over the course of the last three years. Indeed, one alarming statistic, although also a product of more honest record-keeping, relates to the Department's expenditure. As noted in the 2017 annual report: 'The department has condoned irregular expenditure to the value of R1 655 thousand and R1 170 thousand was confirmed as not irregular during the 2016/17 financial year.'⁴⁴

From the empirical data analysed for this Research Paper, it is clear that there is at least some limited cross-referencing and sharing of data, if only in terms of line entries related to detainees' previous convictions and records (if any), the dates of arrest and initial entry, the dates of any judgment pertaining to their innocence or guilt, and, should they be found guilty and be sentenced to a term in prison, their release dates. Beyond this, however, confidence determinants decrease quite significantly. As is dealt with more extensively in the recommendations, this is seemingly the result of two competing concerns. On the one hand, as a result of the agencies being placed in competition with one another in terms of state resources, they may be loath to report on any data that does not place them in a favourable light and/or which may be of significance to their performance processes more generally. On the other, in both the SAPS and the DCS interviews, it was clear that the participants placed the importance of security above all else, and, as a result, a culture of secrecy and an insistence on bureaucratic box-ticking (in spite of this being one of the few 'boxes' that was carefully ticked) prevent the easy sharing of information and data between personnel and agencies. This in itself seems to be driven by a fear of releasing information that may be reported on by the media. The result is that little useful information is shared – with even less receiving comparative analytical attention – and, as a result, the utility of the data remains unknown and unused. Indeed, the culture of secrecy and fear of accidental public dissemination are themselves driven by what seems to be a lack of understanding of the data itself – as a result, everything is kept secret rather than that which should be kept secret. As we speak to in the recommendations, significant training and education-based interventions are thus needed not only to teach people the technical aspects related to the effective use of data, but, more simply, also what data is and how to discriminate between sensitive and non-sensitive data. In terms of sharing of information, then, there is little. What sharing does occur is a function of what little integration there is between the departmental systems – the CAS system can, for instance, be updated in relation to judgments or convictions pertaining to individual cases. However, this relies on individual officers doing so. While not in itself arduous, it should be remembered that the CJS is entirely overwhelmed and, as such, pre-trial detainees can wait up to five years to appear in court and receive a verdict, by which time arresting officers have long since been caught up in other cases.

6.3 Validity/quality assurance

With all of the above considerations in mind, the validity of the data collected at present is not verifiable and little confidence can be placed in the results. In terms of pre-existing or presently employed measures to ensure consistency and quality, the primary mechanism in place exists in the form of annual audits that all government departments are subject to. These audits are, however, primarily concerned with financial statements and are facilitated by organisations located in the financial sector. This is not to say that omissions or mistakes will not be noticed, but rather that the review process is primarily concerned with the financial affairs of the department concerned and that quality assurance mechanisms specific to the collection of data relating to pre-trial detention are extremely limited. More generally, there is an oversight role played by the South African Human Rights Commission and through the investigative capacity of the Independent Police Investigative Directorate (IPID). Furthermore, in operational terms, conditions in police holding cells should be inspected at least once a week by a member of the community (in the form of a Community Police Forum member), while the prisons are subject to inspection by a judicial officer such as a judge, as well as the monitoring visits undertaken by the Parliamentary Portfolio Committee on Police and by the Civilian Secretariat for Police. Such mechanisms are, of course, important, but much like the auditing process do not specifically focus on, or prioritise, the data-collection methods employed by the respective agencies. The Auditor General and Statistics South Africa both have a mandate to ensure the rigour, consistency, and validity of data collected by all government agencies as well as to play an oversight role in highlighting concerns or disparities. However, while both have noted that there are significant deficits in the collection of data pertaining to the CJS, neither have specifically focused on pre-trial detention processes nor consistently engaged with the relevant agencies to reform and enhance these systems beyond the review mentioned earlier in 2015, which review did not find consistent adoption and thus remains under-utilised if even known.

6.4 Country comparison and conformance with the Luanda Guidelines

Part VIII of the Luanda Guidelines deals specifically with data collection and issues pertaining to access to information and calls on states parties to establish processes for the systematic collection of disaggregated data on the use of arrest, police custody and remand detention, and to ensure that there are systems and processes in place to guarantee the right of access to information for accused persons, their lawyers, family members and others (see Guidelines 39 and 40 as set out earlier).

South Africa's legislation and constitutional framework that relate to arrest, police custody and pre-trial detention align with the Luanda Guidelines. However, there are challenges concerning the collection of data relating to arrest, police custody and pre-trial detention. Some of the challenges include steps to strengthen data-collection methods, analysis of data, and dissemination of data across the criminal justice sector. These challenges will be discussed using a comparative critique, in which South Africa's method of data collection is compared with that of three African countries, namely Ghana, Malawi and Tanzania.

6.4.1 Data collection and access to information in Ghana

Ghana's Constitution preserves the right of all accused persons to access information relevant to their cases as well as the right to appeal their sentences. The law in Ghana does not guarantee the rights of victims to access information on the appeal, prosecution or investigation of their cases. However, a request can be submitted to the police or the Registrar of the Court in order to obtain information. There is inadequate record-keeping within the CJS and this contributes to lengthy pre-trial detention. To date, there is no information or evidence on the extent to which different departments in the CJS share and analyse data related to pre-trial detention.⁴⁵

6.4.2 Data collection and access to information in Malawi

Much like Ghana, the Constitution in Malawi preserves the right to access information held by the state concerning all people. However, the lack of laws relating to access to information has limited the practical realisation of this right. Record-keeping in prisons is 'generally reliable'. However, there are concerns about record-keeping and data collection in the court and policing environments. Lost files and incomplete records were found to be a common problem for pre-trial detainees in a study conducted in 2011. These factors contribute to the lack of effective monitoring of statutory pre-trial detention time limits and to poor case flow management. The same study surveyed five police stations and found that proper records were maintained. However, this varied among the different stations and there were concerns that dates and time of admission, arrest, transfer and release were not recorded in the Custody Book or Cell Book.⁴⁶

6.4.3 Data collection and access to information in Tanzania

In Tanzania, the Constitution also preserves the right to access information. However, as is the case in Ghana, record-keeping across the pre-trial detention environments is inaccurate and there are numerous discrepancies in official reporting. It was found that the Ministry of Constitutional Affairs and Justice was the most secretive agency, with unreliable and inconsistent information which poses a major problem in accessing information and in understanding the causes of pre-trial detention issues. Just like Malawi, the law does not guarantee the right to access information and the enactment of a Freedom of Information Bill has been delayed. Low levels of community awareness, corruption, and access to infrastructure that could assist individuals and communities to exercise their rights have further exacerbated the problem of accessing information. Government officials have also been accused of refusing to make information available, thus forestalling both individual cases and the efficacy of the CJS.⁴⁷

6.4.4 Data collection and access to information in South Africa

Even though South Africa's Constitution and legislation align to the Luanda Guidelines and other international frameworks regarding the rights of accused persons, the reality of the CJS is a total contrast to the 'model' mandate in respect of the treatment of pre-trial detainees and the collection of data. Much like the above-mentioned countries, South Africa's record-keeping structures, even though they may exist, may be under-utilised and relevant information is not necessarily shared with other key role-players. This has resulted in overcrowded prisons and the poor management of remand detainees – as well as protracted detention periods.⁴⁸

7. SUMMARY AND CONCLUSION

In drawing to a close this analysis and the study, it is clear that there are a number of deficits and areas of concern regarding the collection of data on pre-trial detention in South Africa. Indeed, if this study is to be summarised in a simple thought, it seems that it would be that there are very few, if any, specific and rigorous data-collection processes relating to pre-trial detention in the country. Those points at which data is collected are not primarily designed for data collection and analysis, usually serving only as a means of record-keeping and for verification in the instance of complaints or problems. While even this data could be of incredible value to the government agencies that have primary roles in the pre-trial detention process, as a function of a lack of rigour, a lack of analytical capacity and as a result of a securocrat mindset in which data is hoarded rather than shared, it finds little use beyond these recording processes. Ironically, then, in not using this data more effectively, the selfsame agencies which often voice the need for further developing the efficiency and efficacy of their actions have within their reach information that could play an important role in developing these needs, and, indeed, with a little development, could serve to play a pivotal role in areas far beyond data analysis or even the pre-trial detention process by informing performance management, resource allocation, operational targeting, and so on. This we note in more detail in the recommendations which follow from this brief summary and the concluding remarks.

7.1 Summary

This Research Paper has aimed to provide an overview of the data-collection processes, methods, and systems as they exist in South Africa in respect of the pre-trial detention processes and mechanisms that are a subset of the wider CJS. The paper drew on three primary data sources, namely the broader literature and on research conducted prior to this, interviews that were conducted with individuals who work in the three primary government agencies that are detailed above, and empirical data in the form of the records resulting from the data-collection processes currently in operation. These diverse data required a mixed-method methodology which focused both on the qualitative aspects of the information – primarily in the form of the interviews and the literature – and on the quantitative aspects of the empirical source data – as presented in the records mentioned. These were combined using a self-reflexive conceptual framework which aimed to highlight the deficits in the current systems and processes in a constructively critical manner, which is ultimately tasked with providing generative recommendations as will be detailed below. In terms of the study itself, it was found that the CAS system employed by the SAPS is the most complete record pertaining to pre-trial detention. However, with this being said, it is also the least valid and there are numerous concerns relating to the collection processes, the rigour of the records themselves, the manner in which analyses extrapolate from them in the form of crime statistics, and, indeed, the competencies and understanding of many of those who are entering the data into the system itself. There is then the possibility that the CAS system, at least in terms of general design, could find wider utility as a means of recording pre-trial data. However, to do so would require a substantive review of the design, procedures and collection methods pertaining to it. Ironically, as much was said when it was reviewed by Amazon some years back. In terms of validity, the DoJCD was found to be the most responsive and accountable, at least at present. However, its role in the wider pre-trial detention process is, in comparison, not as central, and,

as such, the opportunities to record data do not present themselves to such an extent. As will be noted below, it is from this agency that lessons pertaining to oversight and accountability could possibly be drawn in making the data collection process more rigorous. Finally, the least effective and least complete data is generated by the DCS, if in fact data is generated at all. This agency would benefit most from the review and deployment of a new system, although it would also serve as a benchmark in terms of ensuring that the processes required to maintain the rigour of data entry are as simple as possible.

7.2 Conclusion

In conclusion, then, and without speaking to the recommendations to follow, it is clear that there is a substantive and urgent need for the thorough review of the data collection processes pertaining to pre-trial detention. Indeed, such a review would require the contemplation of a far wider ambit of concerns which reach to the very core of the government's operational proficiencies and include the education and development of employees, understanding the use and utility of data and information, and the modernisation of collection methods and processes so as to leverage this potential utility. At present, the data collection methods are simplistic and underutilised, are misunderstood or not understood by many of those tasked with data entry, and are frequently seen as only of strategic use in shaping public discourse. The result, beyond the many opportunities missed as a result, is seen in the CJS as it exists for those who find themselves in it – overburdened, ill-capacitated, and long-winded. This ultimately translates into time – time which, for the majority of pre-trial detainees, can stretch into years behind bars waiting for a trial date. We conclude, then, by posing a simple question: How just can the CJS be if it fails to itself reflect justice?

8. RECOMMENDATIONS

The recommendations which follow have been divided into those which pertain to procedural or process-related changes, and those which focus on substantive changes to the wider contextual environment in which pre-trial detention and data collection occur. Considering the differences in magnitude, the former may then be understood as short-term suggestions, while the latter are medium- to long-term. These are finally summarised in Table 1, which draws on the empirical data so as to provide an outline of the most important data collection points required.

8.1 Procedural (short-term) recommendations

1. In terms of speaking to the present system and methods of data collection as they operationally exist at the time of writing, the most immediate remedies by which to strengthen these processes is to ensure adequate training of staff members and other relevant personnel in the inputting of data. This would require both bolstering the training of those entering into the roles and significant 'refresher' courses for those who are already operating in this capacity. Capacity concerns further need to be addressed in, among others, the following units, as their lack of capacity hampers the effectiveness and overall performance of the CJS from crime scene to courts:
 - Forensic Services within the SAPS;
 - Investigation Services within the SAPS;
 - Prosecution Services within the NPA;
 - Legal Representation by Legal Aid South Africa; and
 - Management of Remand Detention Services within the DCS.
2. In both of the above instances, these processes would be greatly aided by the development and publication of updated training manuals and materials that have been written in a non-technical way that is easily understood by the widest cohort. Such

materials would be best designed in a tiered or graded way so that those using them can continue to advance their skills and knowledge by progressing in a linear manner through 'grades' reminiscent of schooling. With such a system, further opportunities for the development of capacity and expertise would exist and, by linking individual progression to performance management, could ensure consistency and, more importantly, in terms of the subject matter, provide the basis for the cross-pollination of methods and data capturing techniques so that the data collection processes are embedded in the wider managerial practices of the agencies.

3. Speaking to this second point, the dissemination and sharing of data would be both expedited and encouraged if all of the agencies were to adopt and/or modify the current recording systems so that they use the same database and entry processes. This would further harmonise their managerial processes and workflow and provide numerous opportunities for staff development and capacity-building exercises, as staff from one agency would be familiar with the same processes used in another. Such cross-pollination of data collection methods may also serve to begin new conversations between agencies that could lead to other projects and points of reference, increase the efficiency of the CJS as a whole, and make for a more satisfactory work environment.
4. To ensure validity and rigour and to meet security requirements, the necessary security clearance levels by which access to restricted data could mirror the developmental grading system mentioned above must be in place, thus further embedding data collection processes in broader agency concerns and ensuring that development has practical rewards, and, pivotally, ensuring that data collection and processing are not seen merely as an administrative exercise but as integral to a professional philosophy. This would also strengthen compliance, create opportunities for data analysis, and so reinforce the importance of data and the need for training to create such opportunities.
5. In addressing concerns regarding the length of detention, the maintenance of a database that tracks pre-trial detainees who are held in custody for more than two years (and adequate training in its use) is required in order to provide accurate data regarding the extent and duration of remand. This would include improving existing systems to allow for the classification of all pre-trial detention detainees (first-time offenders, high-risk offenders, low-risk offenders, those granted bail, etc.). This will allow for certain cases to be prioritised and will alleviate case backlogs, which will eventually lead to reduced pre-trial detention populations and prevent rights violations. Ideally, an integrated approach in collecting data and managing pre-trial detention detainees would also enhance information sharing, communication and cooperation among the key roles players in the CJS. This could be done by developing an integrated performance information dashboard as opposed to having an individual performance dashboard for each department, as all departments (the SAPS, the DoJCD and the DCS) cannot work in isolation within the CJS, and the effectiveness and efficiency of the CJS cannot be determined by the performance of only one of the relevant departments.⁴⁹

8.2 Substantive (medium- to long-term) recommendations

1. In collecting data for this research project, one of the most important suggestions concerned the use of the registration and metric system currently utilised by the Forensic Division of the SAPS as a model for wider record-keeping. This system is useful because it is already known to, approved by, and utilised within one of the primary organisations – thus expediting utility and the efficient wider deployment of it. Furthermore, while the record-keeping facility provides a more rigorous framework in which to record data, and

thus provides the basis for more accurate data analysis, it also has embedded within it the requisite security checks and balances so as to satisfy this demand by the government agencies. Rather than attempt to design, deploy and introduce an entirely new system, which would be both costly and take a lengthy period of time, the most important recommendation to emerge from this Research Paper is that the agencies look inwards to their own processes with the intent of utilising the best of what is at present in service, expand and develop those processes in conjunction with external technical support and expertise, and then utilise the resulting systems more broadly and in conjunction with the other primary agencies in the CJS.

2. Following from this, it is important that reformulations of the data gathering processes and measures have both legitimacy and authority, and not be entirely alien from the current mechanisms in place (both in order to limit the pressure of retraining and so as to ensure further compliance). It is recommended, then, that such a review and process be undertaken by an organ of state that can fulfil both these requirements, such as the NPA. There may then be utility in specifically mandating the NPA with the task, both as a function of its authority and legitimacy in ensuring compliance.

3. In respect of any changes or development processes, and, indeed, in attempting to make meaningful what little data is already available, a significant fact should be taken into account – all revisions and amendments to any of these recording systems should receive absolute priority, and be facilitated and accorded significant importance (including establishing communication channels and pathways for the sharing of information between agencies). This is simply because, for any and all of the time it takes to make the required data collection processes more efficient and effective, many thousands of people remain detained far beyond a mere 48 hours, not because they have been found guilty of a crime, but only because they are suspected of having committed one. The realisation of the above-mentioned data collection processes is thus ultimately a fulfilment of these persons' constitutional right to be treated as innocent until proven guilty in a court of law.

Table 1. Data collection points by utility and importance

| | Biographic data | Arrest data | Longitudinal data | Administrative data | Processing data | Verdict data | Reporting data | Checklist data |
|--------------------------------|---|---------------------------------------|---|---|-----------------------------------|------------------------------------|--------------------------------|--------------------------------------|
| Already included | Age, race, sex, fingerprints | Place, time, station, registration | Only generated by deduction | Arresting officer, station, cluster, CAS no. | Identification no. | Judgment | Not applicable | Not applicable |
| Mandatory (short-term) | Psychological assessment, physical assessment | Injuries sustained | Number of hours/days detained | Number of deferments, number of appearances | Detention-condition records | Sentence length and place | Approval by line manager | Mandatory form-completion components |
| Important (medium-term) | Blood group, medication, substance usage | Behavioural record, method of arrest | Total number of complaints received and arrests | Court no. and name, presiding judge | Recording of entry identification | Presiding judge's comments | Centralised secondary approval | Mandatory oversight process |
| Useful (long-term) | Iris pattern | Distance from residence and workplace | Frequency and mapping of arrests | Processing of complaints, total hours of processing | Automation systems for red flags | Detailed incarceration information | Automation of approval process | Automated oversight process |

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