



DETENTION JUSTICE FORUM

SUBMISSION TO THE PORTFOLIO COMMITTEE FOR CORRECTIONAL SERVICES

Regarding the

2017/18 Annual Reports of the

Department of Correctional Services

and the

Judicial Inspectorate for Correctional Services

The Detention Justice Forum ('DJF') is a civil society coalition of non-governmental organisations and individuals working to ensure that the rights and well-being of those who are detained are respected and upheld, as enshrined under the South African Constitution, laws, and regional and international human rights norms and standards. Our membership includes community organisations, lawyers, social workers, former inmates, and academics with varied foci and degrees of engagement in the detention and human-rights sectors — spanning direct service provision and (former and current) detainee support and empowerment, advocacy and policy development.

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Introduction

Following a review of 2017/18 Annual Reports of the Department of Correctional Services ('DCS') and the Judicial Inspectorate for Correctional Services ('JICS'), as part of our contribution as civil society to ongoing efforts to improve conditions in South Africa's correctional and remand facilities, we make this submission of our observations of some of the key issues mentioned in the reports. We note and commend JICS' attention to the critical issues of overcrowding, mental health, suicide, and sexual abuse, and DCS' attention to rehabilitation, reintegration, and restorative justice.

I. Assault and Sexual Abuse Cases in DCS Facilities

A. Investigation of Assault by Officials

Despite the fact that JICS reports regular annual increases of complaints of assault by officials against inmates, the disciplinary response by the Department seems woefully inadequate. JICS and DCS should therefore be asked what measures are in place to improve the quality of investigation against DCS officials accused of assault.

B. Recording and Investigating Sexual Abuse Cases Reported in the Reporting Period

We applaud JICS for its continued commitment to addressing the sexual abuse of inmates in DCS facilities via its inspections and recording of cases reported. Similarly, we acknowledge DCS actions of response and support indicated in the JICS report regarding the 25 cases recorded therein. It is encouraging to learn that DCS staff, as well as Independent Correctional Centre Visitors ('ICCVs') are doing some of the work necessary to addressing and preventing the scourge of prisoner rape. The DCS report, however, still does not reflect reports of sexual abuse in its facilities and, instead, continues to clump all assault reports under one umbrella with no indication of who is assaulting whom and what kinds of assault are taking place. As in numerous past submissions, we strongly urge the department to provide disaggregated data on the reports of assault, rape and torture for the sake of transparency, accountability, and bringing visibility to these critical issues — practices necessary to solution and strategy development and effective implementation of policies and mandates, including the Policy to Address the Sexual Abuse of Inmates in DCS Facilities, approved in 2013, but still lacking adequate implementation.

While we commend JICS' work to document cases of sexual abuse in DCS facilities, we noticed less qualitative detail and analysis in this year's report compared to the previous year. We believe qualitative data to be as important as the quantitative data captured on the issue. Such information would allow for greater analysis of the problem.

C. Sexual Abuse Cases

The JICS report's quantitative capturing of the cases reported during this period does indeed give a sense of the occurrences of sexual abuse in DCS facilities, however, it is unclear in the JICS report, in cases that required follow-up or further investigation by DCS, whether or not that follow-up took place, or if there was to be further investigation post-publication of the

report. Information on the progress, status or outcome of reported cases, is essential to assisting in assessment of whether cases are being adequately addressed. The absence of this information and, potentially, of follow up of cases is likely linked to a need for greater sensitisation on sexual abuse for staff of both DCS and JICS.

II. Health

A. Mental Illness

We note with great concern the increase in suicide rates by mentally ill inmates in DCS facilities during the reporting period. Again, more qualitative data from both the DCS and JICS would help in understanding the situation. This is particularly important given the huge increase in the number of unnatural deaths, as well as the indication in the DCS report that almost half of the unnatural deaths recorded in this period were due to unknown causes as a result of delayed autopsies with no reason or explanation given for the delays.¹ Furthermore, the huge difference in the number of unnatural deaths recorded by JICS (81) and DCS (61) is cause for grave concern.

We also note with concern, the problems highlighted by JICS concerning DCS officials lack of training on basic identification of mentally ill persons and how to deal with them (with the exception of the medical staff) and the skills of personnel undertaking assessments which are not always at a level that enables DCS to accurately identify mental disabilities.² DCS should be asked what measures are being taken to address the needs of these persons. It goes without saying that ensuring that proper assessments are conducted when inmates enter prison facilities would guarantee that inmates receive proper health care services and treatment plans in accordance with their mental illness or disability. Training of officials working with inmates on basic identification and how to deal with mentally ill persons or persons with mental disorders is also important because inmates may not initially display or enter the prison facility with a diagnosis for a mental illness or disability but may manifest this afterwards.

Incarcerated persons, even those who do not have a mental disorder, experience significant stress as a result of significant limitations on their privacy, the separation from family and social support, as well as boredom; and overcrowding can exacerbate these problems.³ These challenges often overwhelm the limited coping skills of inmates who have mental disorders, resulting in functional deterioration, more severe symptoms and more disruptive behaviour.⁴ Symptomatic inmates can impair the safe and efficient operation of a correctional facility, as have been reported in some instances by JICS.⁵ Effective treatments for such inmates are

¹ DCS Annual Report 2017/18, at p. 58.

² JICS Annual Report 2017/18, at p. 31 and 33.

³ Martin M., Colman I., Simpson A., McKenzie K. (2013). Mental health screening tools in correctional institutions: a systematic review. *BMC Psychiatry*, 13, 275.

⁴ Martin M., Colman I., Simpson A., McKenzie K. (2013). Mental health screening tools in correctional institutions: a systematic review. *BMC Psychiatry*, 13, 275.

⁵ JICS Annual Report 2017/18, at p.33.

important and can alleviate the stress they experience; and correctional officials must play a fundamental role in identifying and understanding how to deal with such offenders.

In addition, we call on the DCS to investigate the links between sexual abuse of prisoners, inhuman conditions of detention, torture and suicides in DCS facilities. Anecdotal accounts point to experiences of sexual abuse and torture leading to inmate suicides. Mentally ill inmates are also among the most vulnerable groups to sexual abuse in prisons.⁶ Therefore, a coordination of efforts to address both issues is important.

We strongly endorse JICS's recommendation regarding the need for training of DCS officials on how best to screen, assist, and support mentally ill inmates, especially under the current circumstances whereby there are reportedly 1200 mentally ill inmates in correctional facilities who should actually be in mental health institutions. And this is not taking into account that incarceration and the violence people experience in remand and correctional facilities can be traumatising for inmates in general. Crucially, we need to find alternative rehabilitation and re-entry models for mentally ill people, that will help them succeed in their treatment.

B. HIV and TB

DCS is to be congratulated for exceeding its targets related to the TB cure rate, the number of inmates enrolled into ART, as well as its implementation of the Universal Test and Treat (UTT) directive. However, as we have stated in previous submissions, DCS needs to provide more information than it is currently providing on the issue. The information provided in DCS' reports needs to go beyond just listing of percentages and making cursory mentions of strategies and inter-departmental partnerships. DCS should also be reporting on other related elements of the HIV and TB programmes, such as adherence and access to treatment, as well as some of the challenges and solutions proposed therein. There is no indication in the report of whether or not there are systems of monitoring and accountability in place to prevent impediments to sustainable and consistent adherence, such as stock-outs and poor tracking and monitoring of adherence by inmates post release.

We have also noticed a decided lack of information with regards to HIV and TB in JICS' annual report. We acknowledge that the report states that "further themes requiring investigation include corruption; HIV, tuberculosis and other health issues...", yet HIV and TB are priority concerns which demand consistent attention, and should be mentioned in all inspection reports. We also encourage JICS to conduct and publish thematic research on key systemic issues relating to HIV and TB, including underlying causes for high levels of transmission (for instance, sexual violence, drug use, overcrowding).

III. Budget and Resources

We note in both reports that budgetary constraints in the Department continue to jeopardise the wellbeing of inmates. As it stands, JICS is only allocated a budget sufficient to carry out inspections in 33% (81/243) of the correctional centres annually. This limits the effectiveness of the oversight body in ways that are detrimental to adequately addressing the issues that

⁶ Just Detention International Fact Sheet for Sexual Abuse Service Providers: Available at <https://justdetention.org/wp-content/uploads/2015/10/FS-Mental-Illness-and-Sexual-Abuse-Behind-Bars.pdf>

inmates face. Similarly, while the DCS report indicates a budget for the Work Skills Plan, it is evident that it is not sufficient for the effective provision of services such as skills training and programme intervention provided by external partners such as CSOs. We have found that often times, there appears to be no budget allocated or available in facilities to facilitate these programmes in line with the terms of agreement regarding resourcing responsibilities of the parties i.e. DCS and the relevant partner.

It is particularly concerning that while there are signs in the JICS report of a growing effort to address sexual abuse in DCS facilities, the implementation of the DCS's Policy to Address the Sexual Abuse of Inmates in DCS Facilities remains un-costed and inadequately prioritised by the Department.

Equally concerning is the fact that despite the recording of R1 897 186 000 in irregular expenditure during the reporting period and the Auditor-General South Africa's (AGSA) indictment, the DCS report indicates that no disciplinary steps have been taken against officials who had either incurred or permitted the irregular expenditure. In light of this, DCS should explain what anti-corruption measures have been put in place and how these are being evaluated.

Finally, we register our concern with the seemingly stark contrast between DCS' stated commitment to reintegration and rehabilitation on the one hand, and its budgetary allocations on the other. During the reporting period, R13,9 billion was spent on 'incarceration', whilst only R1,6 billion was spent on 'rehabilitation' and R907 million on 'social reintegration'.⁷ Furthermore, DCS *underspent* on 'rehabilitation' by R19 million. This is seriously concerning.

IV. Prison Oversight

As with previous submissions made by the DJF, we continue to call for extensive amendments to be made to the existing empowering legislation (i.e. the CSA) in order to make JICS a more effective oversight body. The JICS annual report reflects some of the limitations and challenges brought on by JICS' lack of autonomy under the legislation. That there is now a general consensus between the President, the Minister of Correctional Services, the National Commissioner of Correctional Services, and the Inspecting Judge — all respondents in the lawsuit filed by Sonke Gender Justice — that JICS should be afforded greater institutional independence, as stated in the annual report, is a sign of progress and we welcome it. We however bemoan that the process is taking this long and that, as projected by the same report, it may take longer still. Ensuring JICS' independence, increased access, functions, and powers is a matter of urgency.

In our bid to assist in the process of ensuring that JICS becomes an effective guardian of the rights of inmates and detainees, we share here some of our own recommendations (taken

⁷ DCS 2017/18 Annual Report, at p. 18.

from a separate report we have written on global best practices) of how best this can be achieved:⁸

- JICS' mandate, powers and functions must be set out clearly in the empowering legislation and the extent of these powers must be defined in accompanying regulations. JICS should, at the very least, have the power to inspect, monitor, investigate, report and make binding recommendations. Other powers that it might be given could include the power to regulate and to institute legal proceedings when necessary to vindicate the human rights of inmates and detainees;
- DCS should have an enforceable legal obligation to respond to reports and recommendations made by the oversight body with an action plan within a fixed period of time. JICS should have the power to conduct a follow-up inspection to determine whether the action plan is being implemented;
- Organs of state such as the DCS, SAPS, and the NPA should have a positive legal obligation to assist, and negative obligation to not impede, JICS so as to allow it to operate independently and function effectively;
- JICS should have the power to access all places of detention, including police holding cells and deportation centres;
- An existing independent civil society organisation with relevant content expertise should be given a statutory mandate to inspect, monitor, and report on prisons. It should also receive funding from Treasury and be protected by legislation in order to do so. This would provide greater transparency and accountability in correctional centres and of JICS, as well as have the added benefit of improving public confidence in prison oversight;
- JICS should receive its budget directly from Parliament, not from DCS, which it is tasked to oversee. It should report on its expenditure directly to Parliament and the Treasury;
- The appointment and dismissal of the Inspecting Judge and JICS' CEO should not be under the control of DCS or the Minister of Justice and Correctional Services. If the Minister is to have this power, any appointment or dismissal must be confirmed by Parliament;
- The term of the Inspecting Judge and the CEO should be fixed and non-renewable. Grounds for dismissal should be set out in the legislation or regulations;
- JICS should either file its reports with Parliament, or the Minister or Commissioner should be legally obligated to table the report within a fixed period after having received it;
- JICS should be able to determine its own operations independently of DCS. It should have its own separate infrastructure and systems in place, and should not be dependent on DCS for office space, access to telephones, computers, printers or the internet, or the creation of posts, among other things;

⁸ Nevin, A. & Wasserman, Z. (2019) 'Best practices research report: a comparative analysis of prison oversight bodies' Detention Justice Forum. Available at: <http://detentionjusticeforum.org.za/wp-content/uploads/2019/03/Comparative-Prison-Oversight-Report.pdf>

- JICS employees, including ICCVs, should be required to be ‘fit and proper persons’. They should have, along with a Matric certificate, some relevant experience — preferably in the areas of prison governance and human rights. Furthermore, they should be provided with regular training on relevant issues, such as the substantive content of the CSA and prisoner interaction skills;
- JICS should be required to have social workers, human rights lawyers, doctors, parole officers, education and health specialists, drug treatment specialists, former correctional staff and former incarcerated persons on staff to ensure a holistic understanding of the issues faced by incarcerated persons, correctional staff and not least, the JICS employees themselves. The CSA currently provides for specialist assistants (section 89(4)), however this provision has not been utilised;
- JICS must be meaningfully accessible to inmates if it is to be effective. Inmates need to be informed about the function of JICS, its independence and the circumstances in which it may investigate;
- Inmates should be able to make complaints on their own behalf, or on behalf of other offenders. Family members and friends should also be able to make complaints on behalf of inmates;
- There should be an obligation on JICS to inform the public as well as inmates of the results of investigations;
- There should be a number of ways of contacting JICS, such as private interviews with ICCVs and investigators, a toll-free telephone number, electronic and snail mail;
- Inmates must be encouraged to forward complaints to JICS, there needs to be a way to keep information confidential, and protect complainant-inmates from retaliation;
- There should be a prisons ombudsperson distinct from JICS that accepts and arbitrates complaints about correctional centres, DCS and JICS, to ensure greater public confidence in JICS; and
- A multi-faceted system should be developed to strengthen prison oversight (ideally if OPCAT is adopted), that includes JICS, the South African Human Rights Commission, judges and magistrates, as well as civil society organizations (such as the Detention Justice Forum).
- In addition, priority oversight consideration needs to also be given to children in detention. Further there should be a separate Children’s Ombudsman to exercise oversight over Child and Youth Care centres, that works closely with the JICS.

Finally, we commend JICS for the recognition in its annual report of the importance of judicial prison visits, as a means of increasing prison oversight and supplementing the enormous workload of JICS’ inspectors. We support the Inspecting Judge’s statement that “JICS appreciates and strongly encourages inspections and visits by judges and magistrates. We would like the benefit of their reports and appreciate co-ordination to ensure an even spread of attention”. We hope that we can work together with both JICS and judges to take forward the One Judge One Jail Campaign, which encourages judges to visit prisons more regularly.

V. Overcrowding

Overcrowding continues to be an issue of great concern in need of expedient remedying. As noted in the DCS report, overcrowding is also worsened by issues such as understaffing and failing shift-patterns, which in turn lead to an overburdened staff who often end up taking on extra responsibilities — leaving them burnt-out and overwhelmed. The report has attributed the staffing challenges to the partial moratorium against the department regarding the filling of vacancies. Prioritisation of the filling of vacant posts with adequately and appropriately skilled staff is urgent. In addition, and potentially related to short staffing, DJF members receive reports of delays in administration of parole processes causing extended incarceration of people who are due for release.

Furthermore, we would like to call attention to the findings in the audit of the DCS report by the AGSA regarding the Department's reporting on the issue of overcrowding. The report states that the AGSA was "unable to obtain appropriate audit evidence for the reported achievement of the target of 38%". Allegedly, DCS management was unable to provide all the required information to substantiate the reported approved accommodation. This is troubling as it not only means that there is no way of actually verifying the figure claimed by the Department in the report, but also that it makes it difficult to see where there is need for adjustment and improvement. The AGSA report also indicates that misstatements flagged by the auditor in the annual report on Programmes Two and Five (incarceration and social integration) appear, unchanged, in the final report submitted and published by the Department. This calls into question the authenticity and integrity of the report.

The JICS report does, however, share some positive news on the collaboration between magistrates and DCS officials in KZN as an active attempt to address the issue of overcrowding in the province. Although not taken from either of the reports being commented on here, but instead from an article in the media,⁹ similar positive engagement on the overcrowding issue by the Judiciary has been seen in Cape Town, where Western Cape High Court Acting Judge, Daniel Thulare, called for leniency in the sentencing for petty crimes. We welcome such progressive positions. It is an example of the openness on the part of relevant stakeholders that is necessary for effective coordination across departments in the criminal justice cluster. We hope that others will follow suit. As stated in the JICS report, "the issue urgently requires coordinated, innovative, and ongoing attention". As it stands, however, not all stakeholders in the criminal justice departments are willing to put more of an effort into such collaborative efforts. This is particularly evidenced by the Secretary General in the Office of the Chief Justice, Ms. Sejosengwe's inadequate response to the Portfolio Committee during the review of the OCJ's Annual report on the 16th of October 2018, when asked to comment on the issue of overcrowding in prisons, whereby she chose to abdicate her office's responsibility in this regard by turfing the problem solely on the DCS. This is very discouraging and as the DJF, we urgently call for all sectors in the criminal justice cluster to come together and have

⁹ Jason Felix "Judge calls for leniency when sentencing offenders for petty crimes" Cape Argus, 7 December 2018. Available at: <https://www.iol.co.za/capeargus/news/judge-calls-for-leniency-when-sentencing-offenders-for-petty-crimes-18421630>

meaningful strategic discussions that will result in a workable action plan that includes solutions such as:

- implementing alternative sentencing options, such as correctional or community supervision, parole, and probation;
- promoting diversion programmes for adults and minors;
- reforming current bail practices, in an effort to reduce the high remand population;
- dealing with the issue of inappropriate housing of mentally ill patients in correctional facilities; and
- as a matter of urgency, challenging minimum sentencing legislation, as an aggravator of rehabilitation efforts and overcrowding in prisons.

VI. Disaggregated Data

The level of disaggregated data available from DCS and JICS has reduced in recent years. Prior to about 2012, data was available disaggregated by, for example, the number of persons held in remand who are unable to afford the bail set. DCS and JICS are encouraged to provide additional levels of disaggregated data, including for example, specific information on the type of offences for which people are held in remand.

VII. ICT

DCS does not address in its report the extent to which it is aware of, and is actively exploring the use of technology to improve safety and conditions in prisons. In the UK for example, mobile phone detection technology is being deployed to identify and track cell phone use in correctional facilities. DCS should start exploring such tools in order to ensure the safety of inmates and its staff.

CONCLUSION

We would like to thank the Portfolio Committee for the opportunity to make this submission, as well as the DCS and JICS for compiling the reports. We hope that our comments and recommendations will be given serious consideration. We look forward all opportunities to work closely with relevant stakeholders in ensuring and upholding the rights of inmates.

Respectfully submitted:

1. African Criminal Justice Reform
2. African Policing Civilian Oversight Forum
3. Centre for Applied Legal Studies
4. Just Detention International - SA
5. NICRO
6. Sonke Gender Justice
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