



DETENTION JUSTICE FORUM

**SUBMISSION TO THE
DEPARTMENT OF CORRECTIONAL SERVICES
AND THE
PORTFOLIO COMMITTEE FOR JUSTICE AND CORRECTIONAL SERVICES**

**Regarding the
Department of Correctional Services
2019/2020 Annual Performance Plan**

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1. Introduction

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.

We were privileged enough to have representation at the Portfolio Committee meeting held on the 4th of July 2019 where the Department of Correctional Services (DCS) presented their 2019/2020 Annual Performance Plan (APP). We have also had the opportunity to review the APP since the meeting. We commend the Portfolio Committee's strong engagement with DCS and feel that DCS responded to concerns relatively transparently.

As part of our contribution as civil society to the ongoing efforts to improve the conditions of South Africa's correctional facilities and strengthen the rehabilitation of former detainees, we make this submission of comments based on our observations of some of the key issues mentioned in the APP.

2. Overcrowding

The Department remains unable to address the overarching problem of prison overcrowding. According to the APP, the number of inmates stands at 162 875 (as at 31 March 2019) against the bed spaces of 118 572, which translates to a 37% level of overcrowding in general.

In the APP (pg. 6) the Minister states that, "The challenge of overcrowding within the correctional centres continues to undermine the creation and maintenance of a safe and secure environment for inmates and personnel at the coalface of service delivery as well as delivering efficient and effective rehabilitation." We agree, and therefore we were interested to learn what measures would be put in place to reduce overcrowding.

2.1. Proposed strategies

Whilst an overview of the multipronged strategy towards the management of overcrowding highlighted in the APP is noteworthy and some of the strategies are welcomed (pg. 10), it does not articulate in detail how the Department will co-ordinate, manage and facilitate the strategy to ensure its implementation.

For example the APP does not indicate what measures or directives have been put in place to reduce overcrowding by managing 'the numbers of remand detainees through the Integrated Justice System (IJS), the Case Management Task Team and the Inter-sectoral Committee on Child Justice' or how the Department will 'manage numbers of sentenced offenders through conversion of sentences to community corrections supervision, release on parole.' This information needs to be better substantiated and must articulate how these areas will be addressed to reduce overcrowding. More importantly, the Department must also adapt its stated goals and targets so that its commitment and effort towards reducing overcrowding in line with its strategy can be interrogated.

Although overcrowding in South African prisons exists nationally, some centres have less or no overcrowding (pg. 10). It is our submission that the issue of overcrowding can be better addressed if management strategies are improved to ameliorate the situation at a decentralised level. Managers must be strategic in dealing with overcrowding management and come up with innovative ways to address overcrowding in their management levels whilst ensuring and respecting the rights of inmates.

Despite DCS highlighting its multipronged strategy towards the management of overcrowding levels, overcrowding in prisons continues to increase. Thus it is clear that either the strategy is not working or there appears to be a lack of co-ordination or commitment internally within the DCS and between its partners in the criminal justice system. This should be addressed as a matter of urgency.

2.2. Assigned responsibility

Initially we were very pleased by the Minister's recommendation that "the down management of the inmate population requires an integrated approach which takes into consideration external factors that indirectly and directly drive the population levels" (pg. 6). However, the Minister's sentiment is immediately rebutted by his next sentence which states that, "...the contributing factors to overcrowding are beyond the control of the Department. Overcrowding will therefore remain a reality..." (pg. 6).

We acknowledge that prison overcrowding is a multi-faceted and complex issue, yet it is unacceptable for DCS to shirk off all responsibility pertaining to overcrowding management. In fact, there are several ways in which DCS can influence the issue of overcrowding.

Firstly, Heads of Centres possess the discretion to release offenders with sentences less than two (2) years on parole. This power should be reviewed, in order to determine whether or not such parole is being granted and the reasons for granting or denying it. Furthermore, it may be necessary to amend the policy and extend this discretionary power to cover offenders sentenced to less than five (5) years, so as to make parole accessible to more non-serious offenders. Similarly, DCS should be more helpful in preparing inmates and enabling them to be granted parole. On several occasions, we have heard from inmates and ex-offenders of their parole being delayed/denied by the Department.

Secondly, while DCS may not be able to fully control the influx of inmates, it can and should reduce the *impact* that overcrowding has on the health and security of inmates. For example, DCS should commit to more rigorous assessments of inmates upon admission, ensure that there is a sufficient provision of medication in the hospitals, and better train employees to identify and follow-up on issues of health and security. DCS must commit to providing an environment conducive to rehabilitation and reintegration.

Thirdly, according to the White Paper on the Management of Remand Detention in South Africa, "The period of incarceration of a RD [remand detainee] must not exceed two years from the initial date of admission to the remand detention facility, without such matter having been brought to the attention of the court concerned." We would argue that two years is an excessive amount of time for a person to be incarcerated awaiting trial. Therefore we advocate for the review of this policy, and encourage DCS officials to regularly review and report on prolonged periods of pre-trial detention.

2.3. Infrastructure

According to DCS, “The nature of overcrowding has as much to do with the physical design and construction of the buildings as it does with societal culture” (pg. 13). We appreciate that the Department recognises that overcrowding is a product of social issues, however we are concerned that too much emphasis is being placed on the need for additional prisons. For example, the DCS later states that, “The overcrowding challenge that the Department continues to experience, particularly in major metropolitan centres such as Johannesburg, Cape Town and eThekweni can only be resolved by building new facilities...” (pg. 15).

The Department is pursuing three infrastructure projects aimed at creating additional bed spaces, through the upgrading and construction of new facilities that have faced challenges in the past (i.e. Standerton, Estcourt and Tzaneen). The total additional bed spaces will be 927.

Yes, additional bed space will reduce overcrowding in the short-term, but this is by no means a solution over the long term. Rather, the Justice Cluster as a whole should be focusing on crime prevention, reduced use of incarceration, creating alternatives to incarceration such as diversion and non-custodial sentencing options, employing evidence-based rehabilitation and reintegration programmes (to prevent recidivism) – all of which is allocated sufficient budget so as to be a priority.

Furthermore, we remain concerned that an emphasis seems to have been placed on creating additional bed space, as opposed to also focusing on improving facilities as a whole – some of which are in dire state of disrepair, and architecturally unsuited to safe custody.

Finally, we are concerned that the Department anticipates an increase in the medium-term targets for overcrowding over the next couple of years – despite its stated commitment to rehabilitation and the building/maintenance of facilities. The APP shows a target of 40% overcrowding in the 2019/20 financial year, to 41% in 2020/21, to 42% in 2021/22. Surely there should be an anticipated reduction in overcrowding?

3. HIV, TB, STIs

We appreciate that the Department emphasises treatment for HIV and TB. According to the APP, the target of percentage of inmates on ART for 2019/20 is 90%. Whilst the numbers show that the Department will remain committed to providing ART, we also notice that the Department predicts that the number of inmates with HIV will naturally increase yearly (whereas they predict a decrease by almost half of the number of inmates with TB).

Merely providing ART is not sufficient to quell the spread of HIV in prisons. It is a response to the problem, not a prevention mechanism. Therefore, we urge DCS to ensure that inmates (remand and sentenced) are adequately assessed upon admission, tested regularly, and that measures are put in place to prevent sexual violence. We also recommend that vulnerable inmates should be provided with PrEP.

DCS also needs to commit to providing adequate and quality health care services to address sexually transmitted infections (STIs) in its facilities; this is not articulated in the plan.

In addition, DCS has listed as one of its strategic objectives to “provide inmates with comprehensive health and hygiene services during the period of incarceration” (pg. 82), however the hygiene services element of

this objective is neither reflected nor costed in the indicator list. It is paramount that the provision of hygiene services is also prioritised and recognised as something that ensures the dignity, wellness, and safety of inmates.

4. Rehabilitation

We commend the APP's strong emphasis on rehabilitation and the Department's commitment to providing targeted support programmes such as fostering reconciliation between offenders and victims of crime, restoring family relations, and equipping offenders with skills necessary for reintegration into society upon release. However, we have over the years received reports that offenders tend to be pressured into these programmes six (6) months before their first parole hearing, and that reconciliation initiatives are frequently run by staff members who do not have the necessary skills or support to run these frequently very complex processes. We urge the Department to prioritise such programmes upon admission and throughout the period of inmates' incarcerations, and to ensure that all programmes are run by appropriately experienced and skilled service providers—including by optimising and extending partnerships with organisations specialising in the delivery of such services.

Furthermore, we note the Department's statement that "For the successful reintegration of offenders into communities, all parole considerations should include victim participation to provide a platform for dialogue between offenders and victims, and thereby contribute to healing and restoration" (pg. 58). One must question whether this is a fair prerequisite for parole. What if the victim cannot be found or does not want to participate in the process; what support is provided for the victims who do participate, and for the offenders post-VOD? We hope that this emphasis on mediation is not just a tick-box for the parole board, and that its complexities are dealt with appropriately.

We commend the Department for prioritising vocational training and providing inmates with the opportunity to participate in accredited skills programmes. However, we would like to see the link between skills training and recruitment and job placement on the outside.

We support that the Department "recognises the important and indispensable role of faith-based organisations in the rehabilitation process aimed at the reduction of recidivism" (pg. 13). However, we also propose that this should be extended to include partnerships with violence prevention organisations, who would also provide indispensable value in preventing recidivism by challenging gender norms/roles and educating inmates and faith-based workers around violence. Many members of the DJF would be very interested in providing such services to the detainees and spiritual workers.

Finally, while we applaud the Department for its apparent commitment to rehabilitation and reintegration, we need to consider the budget allocations – which are a direct reflection of the Department's priorities. According to the APP, "incarceration" is allocated R14.3 billion (60% of the total budget); "care" is allocated R2.3 billion (9.8% of the budget); "rehabilitation" is allocated R1.8 billion (7.6% of the budget); and "social reintegration" is allocated R968 million (4% of the budget). Therefore, there is still a clear focus on incarceration.

5. Staffing

According to DCS, “due to cost containment measures and repeated reductions in the compensation of employees’ budget... The reduced funded establishment will impact on the quality of core and support correctional services rendered by the Department including rehabilitation interventions” (pg. 18.). To this end, the APP notes that Cabinet has approved a reduction on the budget for compensation of employees from R79.9 million in 2019/2020 to R74.3 million in 2020/2021. The Department expects a decrease in personnel, from 39 266 in 2019/20 to 39 197 in 2021/22. We are very concerned about the budget reduction for the compensation of employees and the reduction in the number of staff, and how this will affect the safety and security of detainees.

6. Revisions to Legislative and Other Mandates

We commend the DCS for indicating their plans to review legislation and other mandates from the last few years in order to keep up with developments in social justice and human rights sectors, but we also note with concern its silence on the Policy to Address the Sexual Abuse of Inmates in DCS Facilities. Adopted in 2013, this policy, which has never received mention in a DCS plan or report, is also due for review. We urge DCS to include this policy in its priorities: it is an essential tool in tackling gender-based violence behind bars (which in turn impacts the levels of gender-based violence in our broader communities).

7. Other

We noted some disturbing targets in the APP, which we are compelled to mention. The number of inmates who escape from correctional centres and remand detention facilities per year has a target of 57; the number of inmates injured as a result of reported assaults in correctional centres and remand detention facilities per year has a target of 7824; and the number of confirmed unnatural deaths in correctional centres and remand detention facilities per year has a target of 53. Surely DCS should aim for zero escapes, assaults and unnatural deaths? At the Portfolio Committee meeting this very question was posed to the Department, whose response was that considering the overcrowding and lack of adequate staff, escapes and assaults were inevitable. We find this explanation unsatisfactory.

Furthermore, it would have been encouraging to see in the APP a commitment and plan to efficiently and thoroughly investigate the causes of death in DCS facilities. Based on DCS’ reports in previous years, a significant proportion of the documented deaths were classified as “unknown” or “undetermined” regarding the cause of the death and the reason given for this was the delay in conducting autopsies¹— clearly an issue that requires urgent attention.

With regards to monitoring and evaluating the progress of plans, we are concerned that there appears to be too much of a quantitative measurement focus and less of a qualitative analysis focus in the Technical Indicator Descriptions section of the plan. For example, DCS appears to be focused on measuring the number of communications activities and the extent of the roll-out of staff training and wellness programmes, but not looking at the impact of those activities and programmes on the conditions in the facilities (i.e. improvement in DCS’ efficiency in the running of the facilities) and in ensuring the wellbeing of inmates and

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

staff. We reiterate our previous calls for DCS to provide more disaggregated data in progress reports regarding inmate injuries as a result of reported assaults, as there appears to be no change in the identification of indicators in the coming quarter. The information that would be gathered in this way is vital for strengthening the safety and wellness needs of inmates.

In addition, we are also deeply concerned by DCS' decision to exclude reported cases of assault where medical practitioners do not find "injuries" on the victim from the data collection criteria as this may automatically exclude some survivors of sexual abuse and torture who may not present physical evidence of their assault.

Lastly, whilst it is commendable that DCS is committed to charging officials accused of corruption, the APP remains unclear as to whether or not there will be as much of a prioritisation of holding accountable the officials found guilty of corruption. There needs to be a similar articulation in the strategic objective indicator of a commitment to taking steps to remedy violations by staff and to holding them accountable.

8. Conclusion

We would like to thank the Portfolio Committee for the opportunity to make this submission, as well as the DCS for compiling a comprehensive and well-intended APP. We hope that our comments and recommendations will be given serious consideration. We look forward to working closely with the Portfolio Committee, DCS, and other relevant stakeholders in ensuring and upholding the rights of inmates.

Please do not hesitate to contact a member of the DJF to discuss this submission further.

Respectfully submitted,

Detention Justice Forum

Endorsed by: Africa Criminal Justice Reform (ACJR), Centre for Applied Legal Studies (CALS), Just Detention International-SA, National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), and Sonke Gender Justice.