



DETENTION JUSTICE FORUM

SOUTH AFRICA

**A Report Submitted for the Office of the High Commissioner for Human Rights
In the Universal Periodic Review of South Africa**

September 2016

The Detention Justice Forum ('DJF') is a coalition of civil society organisations¹ working to ensure that the rights and well-being of all detainees are respected and upheld, as enshrined under the South African Constitution, laws, and international human rights norms and standards. Our membership includes non-governmental organisations, community organisations, lawyers, and academics with varied individual focuses and degrees of engagement in the penal and broader detention and human-rights sectors. Member organisations' foci span from direct service provision and (former and current) detainee support and empowerment, to advocacy and policy development.

While the DJF seeks to preserve a civil society space, we regularly seek government engagement and collaboration in furthering our shared goals around detainees' rights, this includes the engagement of independent oversight bodies established by Chapter 9 of the Constitution and statutory watchdog bodies, such as the South African Judicial Inspectorate for Correctional Services. We also seek to involve and foreground former and current detainee organisations and individuals, both in our work and in developing our strategies.

The DJF has non-consultative status on the Economic and Social Council.

Contacts:

Ariane Nevin²
DJF Coordinator
National Prisons Specialist
Sonke Gender Justice
ariane@genderjustice.org.za

Venessa Padayachee
DJF Coordinator
National Advocacy and Lobbying Manager
NICRO
venessa@nicro.co.za

¹ This report is endorsed by: Sonke Gender Justice, Just Detention International – South Africa, NICRO, Civil Society Prison Reform Initiative, Centre for Applied Legal Studies, Footballers4Life, Zon'izizwe Odds Development, Beyond the Bars, Scalabrini, SECTION27 and Egon Oswald Attorneys at Law.

² This submission was prepared on behalf of DJF by Ariane Nevin of Sonke Gender Justice with contributions from Prof. Lukas Muntingh and Gwenaelle Dereymaker from CSPRI, Sasha Gear from JDI-SA, Venessa Padayachee from NICRO, Corey Johnson from Scalabrini and Egon Oswald from Egon Oswald Attorneys at Law.



DETENTION JUSTICE FORUM

I. Issues affecting South African prisons since Universal Periodic Review in 2012

A. *Overcrowding and inhumane conditions in detention facilities are a violation of detainees' human rights*

1. Overcrowding persists in detention facilities, particularly in remand detention facilities such as Pollsmoor Remand Detention Facility ('Pollsmoor RDF') in the Western Cape, which is operating at between 250-300% of its capacity. Overcrowding at Pollsmoor RDF is so extreme that detainees are forced to share beds and to sleep on the floor, with as many as 90 detainees sharing a cell, shower and toilet built for 20 people. This particular facility has been functioning at over 200% of its capacity for more than a decade in violation of the Department of Correctional Services own standards.
2. Prisons and other detention facilities in South Africa remain extremely overcrowded, and inhumane conditions persist.³ Measures are being implemented to meet the fundamental needs of prisoners, including their health care. However, there is no information readily available on the prevalence of HIV and TB in prisons, making it difficult to gauge whether or not the Department of Correctional Services is meeting its constitutional obligations.⁴
3. The National Task Team on TB and HIV in prisons, a partnership between the state and civil society service providers, is in the process of implementing TB prevention and control measures.⁵ However, without improvements to the material conditions in prisons, these measures will have a limited effect. Slow and inconsistent testing of inmates, mixing existing inmates with new inmates prior to TB screening, poor light, ventilation and sanitation, overcrowding, and the consequent impossibility of separation healthy and unhealthy inmates compromise the health and human rights of detainees who are presumptively innocent and who may remain in these conditions for as long as two years awaiting trial.
4. A comprehensive legal framework laying out the minimum standards for safe and healthy prison conditions exists.⁶ However, it is not being uniformly implemented at all correctional

³ Justice Edwin Cameron, *Report: Pollsmoor Correctional Centre – Remand Centre and Women's Centre* (27 July 2015 and 13 August 2015) available at <http://www.constitutionalcourt.org.za/site/PrisonVisits/Cameron/Pollsmoor-Prison-Report-23-April-2015-Justice-Edwin-Cameron-FINAL-for-web.pdf> [accessed on 21 September 2015].

⁴ Lindela, a temporary detention centre for migrants being deported, has similarly shocking conditions, but unlike prisons, it is not subject to oversight by the JICS. An investigation by the South African Human Rights Commission revealed a lack of provision for tuberculosis testing and isolation of infected persons, lack of psychological care, unavailability of condoms, and an absence of voluntary counselling and testing. There was also unavailability of tetanus vaccines, and overcrowding. See: <http://www.iol.co.za/news/politics/lindela-detainees-rights-violated-sahrc-1753186>

⁵ TB and HIV prevention and control baseline assessments are being conducted. The roll out of testing equipment such as the GeneXpert and SMS printers for results are being rolled out through the Task Team. Chest X-rays are planned to be done upon admission to centres and annually thereafter.

⁶ Correctional Services Act 111 of 1998; Regulations to Correctional Services Act GNR323 25 April 2012, GG No. 35277.



DETENTION JUSTICE FORUM

facilities. DJF acknowledges that the Department of Correctional Services is the recipient at the end of a long criminal justice channel, starting with the South African Police Service ('SAPS'), and including the National Prosecuting Authority ('NPA'), the courts and judiciary, and community corrections. The South African government needs to launch a multi-sectoral initiative, involving all stakeholders in the criminal justice system, to decrease overcrowding and to bring an end to the inhumane conditions that persist in many South African places of detention. More rigorous consideration needs to be given by the courts to alternatives to incarceration such as diversion and community-based non-custodial sentencing.

B. Sexual abuse in prisons remains unaddressed in many South African detention facilities

5. Sexual violence remains a scourge in South African prisons. It directly infringes on the right to personal safety and freedom from violence for far too many inmates, and fuels gender-based violence and ill-health both in and outside prisons. It is exacerbated by severe overcrowding, understaffing, and inadequate staff shift patterns that cause inmates to be locked up for longer hours, and limit their access to development and rehabilitative programmes, health-care, and psychosocial support services. These conditions serve to increase inmates' vulnerability to sexual abuse.
6. The Policy to Address Sexual Abuse of Inmates in DCS Facilities ('the Policy') was approved in 2013. The Policy is a tool to assist DCS prevent, detect, respond to and monitor sexual violence in South Africa's prisons but as yet, has not been properly resourced and implemented nationally. The DJF is concerned that to date, DCS does not appear to have prioritized inmates' right to be free from sexual violence. The South Africa government must plan for and execute implementation of the Policy.
7. The U.N. Committee Against Torture ('CAT') has, in the past condemned rape, of detained persons by, or with the knowledge of, state officials as a form of 'torture'⁷ as it amounts to 'the intentional infliction of severe physical or mental pain or suffering for the purposes of punishment, intimidation or coercion, securing a confession, or for any reason based on discrimination of any kind, when inflicted by or at the instigation of, or with the consent or acquiescence of, a public official'.⁸
8. South Africa is obligated, as a State Party to the Convention against Torture ('UNCAT') to remove all obstacles to the prevention of torture and ill treatment, including rape, of detainees, and to take positive steps to ensure that such abuse is effectively prevented and not repeated.

⁷ *C.T. and K.M v. Sweden*, Communication No. 279/2005, 17 November 2006, UN Doc. CAT/C/37/D/279/2005 (2007); *V.L. v. Switzerland*, Communication No. 262/2005, 20 November 2006, UN Doc. CAT/C/37/D/262/2005 (2007).

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984, U.N.T.S 1465 (hereinafter 'CAT')



DETENTION JUSTICE FORUM

Should the measures taken prove to be ineffective in the eradication of torture, South Africa must revise these measures, or implement new, more effective measures.⁹ South Africa therefore has an obligation to review and evaluate its practices and policies regularly, and where necessary, to adjust them. However, it has failed to do so thus far, contrary to its obligations under the UNCAT.¹⁰

9. While South Africa's development and approval of the Policy to Address Sexual Abuse of Inmates in DCS Facilities, is commendable, a continued failure by the South African government to commit the resources needed to end sexual abuse in prisons amounts to a violation of South Africa's obligations under UNCAT. This obligation includes the protection of members most vulnerable to torture and ill treatment by fully investigating and prosecuting such acts of violence.¹¹

C. South Africa's prison oversight body is not independent and does not have the clear mandate it requires to be effective in the protection of prisoners' human rights.

10. South Africa's prison oversight mechanism, the Judicial Inspectorate for Correctional Services ('JICS'), suffers from two fundamental defects, namely the inadequate legal definition of its functions and powers, and a lack of legal, operational and financial autonomy. These defects prevent JICS from fulfilling its primary objective of protecting the human rights of incarcerated persons in South Africa, and must be addressed if JICS is to become an effective prison oversight body.
11. Unlike other South African oversight bodies, such as the Independent Police Investigative Directorate, the JICS' investigative powers are not properly defined. It lacks a comprehensive framework for prison inspections and reporting, and its investigative powers are mentioned only once, in passing, in the CSA. The JICS also does not have the power to inspect detention facilities beyond correctional centres, such as police holding cells and deportation centres. While it is not the DJF's argument that the JICS ought necessarily to be responsible for the regular monitoring of these facilities, it is necessary that these facilities are subject to oversight to protect the rights of their detainees. There is also no corresponding duty on the Department

⁹ UN Committee Against Torture (UN-CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, at para 4 available at: <http://www.refworld.org/docid/47ac78ce2.html>.

¹⁰ Note also Communication 1818/2008 to the United Nations Human Rights Committee regarding the torture of 230 inmates at St Albans Maximum Security Correctional Centre in Port Elizabeth. The Human Rights Committee made a number of recommendations Pursuant to which The South African Government made specific undertakings, many of which were never actioned at all. The National Prosecuting Authority also failed to prosecute a single complaint of torture in this case. This is in violation of South Africa's obligations to prevent, investigate and prosecute cases of torture and is conducive to creating a culture of impunity.

¹¹*Ibid* at para 21.



DETENTION JUSTICE FORUM

of Correctional Services to assist or comply with inspections or investigations, or to account for findings by the JICS.

12. Moreover, contrary to the requirements¹² for independence in South African and international law, the JICS is financially and operationally dependent on the Department of Correctional Services, which it is tasked to hold accountable. This leaves the JICS vulnerable to political influence and institutional capture.
13. South Africa has signed, but not yet ratified the Optional Protocol to the Convention Against Torture ('OPCAT'), despite recommendations arising from the last Universal Periodic Review that it ratify OPCAT. Doing so would obligate the South African government to rectify, through legislative reform, the defects inherent in the structure of the JICS within two years of ratification in order to bring the JICS in line with the requirements of the OPCAT for national preventive mechanisms ('NPM'), specifically with regard to functional and operational independence.

IV. Suggested Recommendations

- South Africa should commit the requisite resources to ensure the full and proper implementation of its Policy to Address Sexual Abuse of Inmates in DCS Facilities, and address abuse in police holding cells and Lindela, South Africa's Deportation Centre.
- South Africa should take immediate measures to address the underlying drivers of overcrowding in prisons and detention centres, including the decriminalisation of petty offences, access to bail, regular review of remand detention, and a greater emphasis on alternatives to custodial sentencing.
- South Africa should enact and implement its minimum standards and guidelines for safe and healthy prisons.
- South Africa should take immediate steps to ratify and domesticate the OPCAT.

End.

¹² *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC) at para 117; *New National Party v Government of the Republic of South Africa and Others* (CCT9/99) [1999] ZACC 5, 13 April 1999 at 89; *African Union Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa* at section 40 ('Robben Island Guidelines'); *United Nations Standard Minimum Rules for the Treatment of Prisoners*, Rule 83-85