

Evaluation of South Africa's Judicial Inspectorate for Correctional Services:

Assessing its independence, effectiveness and community engagement

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List of Abbreviations

CEO	Chief Executive Officer of the Judicial Inspectorate for Correctional Services
Commissioner	National Commissioner of Correctional Services
CSA	Correctional Services Act
DCS	The Department of Correctional Services
HCC	Head of Correctional Centre
HRC	Zambian Human Rights Commission
ICCI	Inspector of Correctional Centres in Ireland
ICCV	Independent Correctional Centre Visitor
ICD	Independent Complaints Directorate
IJ	Inspecting Judge of the Judicial Inspectorate for Correctional Services
IPEW	Her Majesty's Chief Inspector of Prisons for England and Wales
IPID	Independent Police Investigative Directorate
IPS	Her Majesty's Chief Inspector of Prisons for Scotland
JICS	The Judicial Inspectorate for Correctional Services
MPS	South African Municipal Police Services
NHRC	Mauritian National Human Rights Commission
NPM	National Preventive Mechanism
OIJ	Office of the Inspecting Judge
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SAPS	South African Police Services
RC	Regional Coordinator
TB	Tuberculosis
UNHRC	United Nations Human Rights Council
VC	Visitors' Committee

The Judicial Inspectorate of Correctional Services (JICS) is a vital watchdog body that oversees South Africa's correctional system, mandated to inspect and report on the treatment of inmates. The correctional system faces many challenges such as overcrowding, high levels of HIV and Tuberculosis (TB), violence, and short staffing. The mass corruption and administrative struggles of the Department of Correctional Services (DCS) that were documented in the 2006 report by the Jali Commission of Inquiry highlighted that the situation was so dire that the Department was arguably no longer governable. Abuse and rights violations remain in South Africa's prisons even though DCS has improved its performance in some respects, for example, by providing access to anti-retrovirals and condoms. The McCallum case, in which Bradley McCallum and a group of inmates in St. Albans prison were physically and sexually assaulted in a manner amounting to torture, and the riots and deaths in Groenpunt and St. Alban's prisons in early 2013, are examples of serious mismanagement and abuses that continue.

In order for JICS to be an effective oversight body, it requires institutional independence, and cooperation and support from other public entities, particularly from DCS. JICS currently faces challenges in both these areas. This paper analyses these and other challenges, and explores ways in which the independence and success of JICS can be strengthened, drawing lessons from similar watchdog bodies in South Africa and various other countries including the United Kingdom, Canada, Mauritius and Zambia. Certain features of these institutions might serve as examples for how JICS could potentially be restructured to strengthen its ability to carry out its mandate.

Lastly, JICS has also been a critical bridge between an often non-transparent correctional system and community organisations, other stakeholders, and the general public. Considering DCS' positioning of inmate rehabilitation as a community responsibility, there is a distinct role for civil society and community organisations to play in supporting JICS. Hence this paper outlines ways in which stakeholders can lend capacity.

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Introduction

The Judicial Inspectorate for Correctional Services (JICS) is a vital watchdog body that seeks to ensure that inmates' rights – as contained in the Constitution and relevant legislation and policy – are respected, protected, promoted and fulfilled. While the JICS' public reports have shed important light on a largely opaque prisons system, its independence and effectiveness remain serious challenges. The objective of this paper is to analyse ways in which JICS could be strengthened and supported to better achieve its mandate. This paper has the following goals:

- To analyse the current structure of JICS;
- To evaluate the independence and effectiveness of JICS;
- To compare JICS to other correctional services' watchdog bodies in other countries or other similar agencies in South Africa in terms of their functions, independence, powers, and community engagement;
- To make recommendations on how the independence and powers of JICS can be strengthened; and
- To make recommendations on how civil society organisations and stakeholders can support JICS.

3

Background

Though the purpose of the correctional system includes, “[d]etaining all the inmates in safe custody whilst ensuring their human dignity”; and “promoting the social responsibility and human development of all sentenced offenders,” there is much that needs to be done to achieve these goals.¹ DCS was demilitarised in 1996, and with no replacement management structure, there was a collapse in order and discipline, and there was concern that the Department had become ungovernable.²

The Jali Commission of Inquiry was appointed by President Mbeki in 2001 to investigate allegations of corruption, maladministration, nepotism, intimidation and other improper conduct by DCS. Among its many findings, the Commission found that, “unless the status of the Inspecting Judge is enhanced and the powers of the Office increased, the right of prisoners to be detained in conditions consistent with human dignity will not be achieved.” It also noted that, in terms of the Correctional Services Act (CSA), JICS no longer had the power to investigate corruption, and suggested that JICS become a body similar in independence to the Independent Complaints Directorate (ICD).³ Following the Jali Commission, DCS took various steps to address governance and corruption (e.g. reduced audit qualification, increased disciplinary action), however, it is still plagued by many challenges which often result in poor conditions of detention and high levels of rights abuse.

At present, overcrowding is one of the biggest challenges facing the South African correctional system. As of 31 March 2011, there were 18 correctional centres that were critically overcrowded, by 200% or more.⁴ The former Inspecting Judge of Correctional Services, Deon Van Zyl, described the conditions in these centres as, “shockingly inhumane.”⁵

There are also many deaths in correctional centres. Of the 48 'unnatural' deaths in the 2010/2011 financial year, most were suicides.⁶ In the 2011/2012 period, there were 47 'unnatural' deaths, 20 of which were suicides, 12 were homicides, and 16 to which JICS could not attribute a cause.⁷ Correctional Services' Minister, Sibusiso Ndebele, questioned whether all of these suicides could be classified as such as they often occurred in public and communal spaces.⁸ Aggravating this, many post mortem examinations for deaths are long outstanding.⁹ The next highest cause of death was homicide. More than half of the homicides involved at least one DCS official.¹⁰

Between 1 October and 31 December 2011 alone, JICS reported 85 deaths in correctional centres of which the causes were classified simply as 'other' or 'unknown' by DCS officials.¹¹ This raises doubts about the quality of health care services within correctional services. In the 2009/2010 financial year, about 900 deaths were classified as "natural," meaning they were due to illness or old age.¹² Over half of natural deaths occur within the first year of incarceration.¹³ This is due to the fact that many inmates have pre-existing medical conditions that are not properly identified or treated upon entry into the correctional system.¹⁴

Overcrowding and poor living conditions, particularly poor ventilation and a lack of access to outside areas, make inmates more prone to illness.¹⁵ These environmental factors also increase the likelihood of infection with Multidrug-Resistant Tuberculosis (MDR-TB) and the more harmful Extensively Drug-Resistant Tuberculosis (XDR-TB). MDR-TB and XDR-TB are strains of TB that are difficult to treat because of their resistance to the most common TB drugs.¹⁶ They develop when anti-TB drugs are misused or mismanaged, for instance when patients are not properly supported to complete their full course of treatment.¹⁷ DCS' inability to consistently provide TB treatment to inmates may therefore lead to MDR-TB or XDR-TB which when coupled with HIV can lead to a higher mortality rate.

A recent study found that "[l]evels of overcrowding (230%) in communal cells and poor TB case finding result in annual TB transmission risks of 90% per annum."¹⁸ Although that study did not specifically address transmission of MDR-TB and XDR-TB, the authors did state that, "transmission risks with these may be heightened as a result of the prolonged period of infectiousness that often results from failure of diagnosis and subsequent receipt of inappropriate therapy."¹⁹ TB is reported as the most common cause of death among inmates.²⁰ Some of the natural deaths are also attributed to AIDS-related illnesses, including TB.²¹

The Constitutional Court recently considered the issue of DCS' liability for the contraction of TB in *Lee v Minister of Correctional Services*.²² Lee sued the Minister for damages on the basis that the poor prison health management resulted in his becoming infected. The High Court upheld the claim on the basis that the prison authorities had failed to take reasonable steps to prevent Mr Lee from contracting TB. On appeal, the SCA (Supreme Court of Appeal) found that Mr Lee had not proved that the presence of reasonable, precautionary measures would have completely eliminated his risk of contracting TB, and thus that the Minister was not liable. In the Constitutional Court, the majority held that the SCA, in applying the test for factual causation adopted rigid deductive logic which necessitated the conclusion that because Mr Lee did not know the exact source of his infection, his claim had to fail. It held that South African law has always recognised that the test for factual causation should not be applied inflexibly as was done by the SCA. The majority held further that on the approach adopted by the SCA it is unlikely that any inmate will ever be able to overcome the hurdle of causation and further that no effective alternate remedy will be available to a person in the position of the applicant. The majority noted that there is a legal duty on the responsible authorities to provide adequate health care services as part of the constitutional right of all prisoners to conditions of detention that are consistent with human dignity. In upholding Mr Lee's claim, the majority held that there is a probable chain of causation between the negligent omissions by the responsible authorities and Mr Lee's infection with TB.²³ Thus Lee's claim succeeded, and created a leap forward in inmates' ability to obtain redress for contracting TB in prisons, and to hold DCS accountable for failing to improve conditions that are conducive to the spread of TB.

Serious rights abuses such as torture are known to occur in correctional centres.²⁴ The fact that South Africa has not implemented legislation criminalising torture also puts inmates at risk of abuse by correctional officials. "Torture loses its hierarchical importance,"²⁵ when it is not criminalised. In South Africa, acts of torture may be prosecuted as assault, grievous bodily harm, rape, murder, and attempted murder.²⁶

Criminal investigations are slow, and violent crimes committed against inmates frequently result in impunity.²⁷ The level of physical violence in correctional centres is high. In the 2010/2011 financial year, there were 5,138 recorded inmate-on-inmate assaults and 2,276 recorded member-on-inmate assaults; and in the 2011/2012 financial year those numbers were respectively 3,928 and 1,945.²⁸ JICS has reported 48 'unnatural deaths' of inmates in the 2010/2011 financial year and 47 'unnatural deaths' of inmates in the 2011/2012 financial year.²⁹

While DCS officials are implicated in number of unnatural deaths of inmates, no officials have yet been criminally prosecuted for these deaths. As CSPRI has noted, there appears to be a great reluctance on the part of the National Prosecuting Authority (NPA) to prosecute implicated officials, and the NPA has not made public the reasons for its decisions not to prosecute.³⁰

Inmates also face other human rights abuses on a regular basis, including improper uses of penalties of segregations, the use of mechanical restraints, and the unlawful use of force. Though not inherently human rights violations, when these are used frequently and inappropriately, they constitute such.³¹ Mechanical restraints are often used in inhumane ways.³² The unlawful use of force too, is known to be common but cases of it are severely underreported. Other rights violations occur in incarceration, such as inmates having to bribe DCS officials to receive visitors, or inmates not receiving three meals a day.³³

Much of the violence, corruption, drug use, and sexual violence that takes place in correctional centres is attributable to gangs. As other problems such as overcrowding worsen, gangs become more powerful and hamper the protection of inmates' human rights. Though now out of date, the Jali Commission reported that some DCS members had even been recruited into the gangs and take part in illegal gang activities. Through this, gang members can more easily smuggle in cigarettes, weapons, drugs, and sell inmates to other inmates as sexual commodities.³⁴ Young and vulnerable inmates are especially subject to sexual violence, not only by other inmates, but also by DCS members.

Anecdotal evidence underscores the findings of reports produced by JICS that indicate that nearly half of all inmates reported that sexual abuse in correctional centres happens 'sometimes', 'often', or 'very often'.³⁵ Research on sex and sexual violence in detention, by organisations like CSVR and researchers like Sasha Gear, indicates that sexual violence is largely unrecorded, is ritualised and is fundamental to establishing offender identities and hierarchies.³⁶ These identities and hierarchies mirror the most rigid and oppressive iterations of the general population. Through coercion, a portion of the male offender population is positioned as 'women' – to be treated as the property of other offenders who get to maintain their identity as 'men.' Rape robs male survivors of their manhood, and the status given to men in the social hierarchies in detention facilities. The humiliation of being labelled as a 'woman' reflects the lower status that women are accorded in the wider society.³⁷

Sexual violence in correctional centres also has an impact on the larger society and general population once inmates are released from detention. While sexual violence is clearly linked to gang violence and gang culture, sexual violence and rigid gender roles that are enforced inside detention centres contribute to the abuse of women, men, and children, and the spread of HIV outside of detention, when inmates are released. The trauma, and ongoing humiliation and degradation that offenders experience through prison rape, add to the likelihood that they are more likely to contribute to a range of health

problems that impact the general population. This may be from contracting HIV, STIs and TB, and not adhering to treatment, or engaging violence against men, women and children.³⁸

In light of all the challenges faced by South Africa's correctional system, the work of JICS is important for inmates to be able to enjoy the rights and constitutional protections guaranteed to them.

Importantly, JICS helps to serve as a link between the correctional system and community stakeholders and the public at large, particularly because the correctional system typically lacks transparency to the general public. Through JICS' reporting on the conditions in correctional centres, the community can gain better insight into the correctional system and use that increased knowledge as a platform to engage with JICS and DCS to help protect inmates' human rights. As stated in the 2005 White Paper on Corrections, inmate rehabilitation is also a community responsibility and JICS provides a platform for communities to engage both inmates and government in solving unresolved complaints by inmates.³⁹

In order for JICS to effectively protect inmates' human rights, it must receive cooperation and support from other organs of the state, particularly from DCS, but also from the South African Police Service (SAPS), the National Prosecuting Authority, and the courts.⁴⁰ However, the independence of JICS is imperative, and it must be independent of DCS both in practice and in terms of public perception.⁴¹ This paper analyses the challenges that JICS faces and explores ways in which JICS might be strengthened and made more independent. The paper also explores the ways in which civil society organisations can play a role in supporting JICS and assisting it to fulfil its mandate and protect the human rights of inmates in South Africa.

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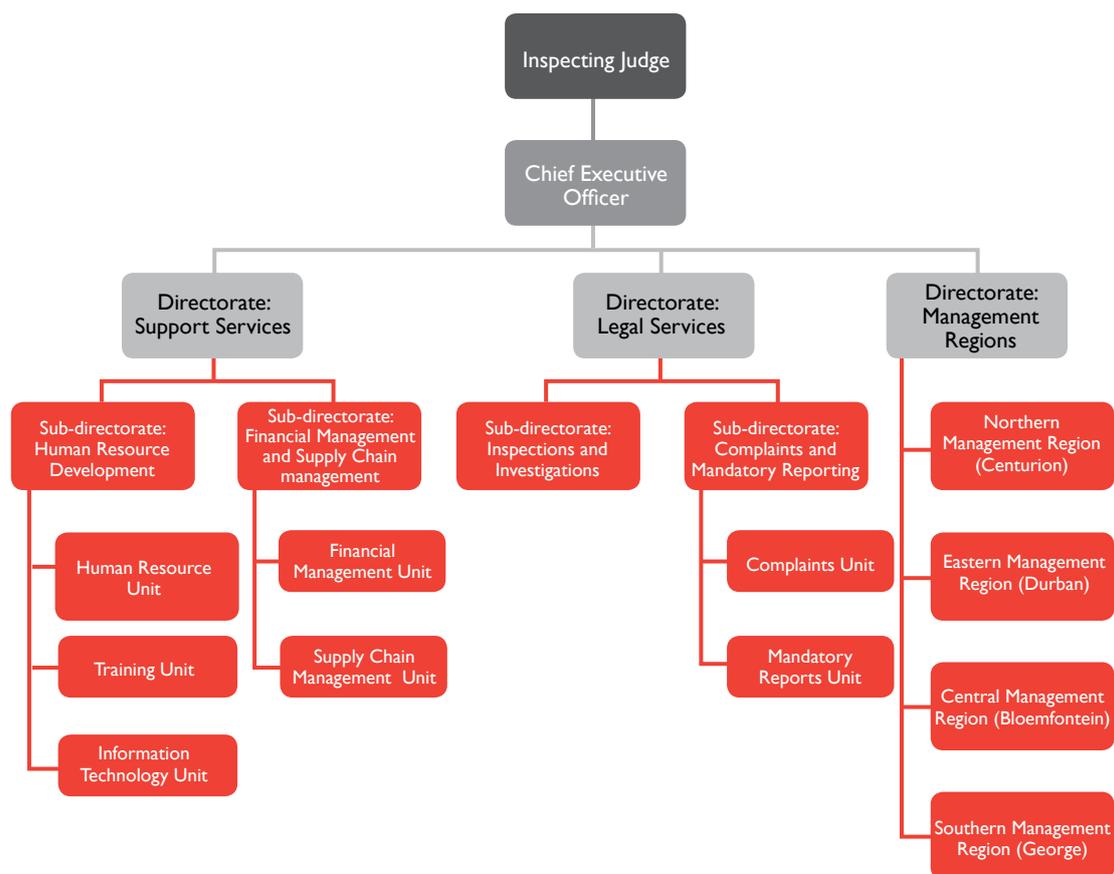
Structure of the Judicial Inspectorate for Correctional Services

a . Vision, Mission, and Strategic Objectives of the Judicial Inspectorate for Correctional Services

The idea of JICS as an independent body to oversee correctional centre conditions in South Africa was first proposed in a white paper issued by DCS in 1994.⁴² After an alternative white paper by the Penal Reform Lobby Group and a legislative proposal by the Transformation Forum on Correctional Services, the Office of the Inspecting Judge was finally established by the Correctional Services Act (CSA). The mission of JICS, *“is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres.”*⁴³ JICS is set out to protect the human rights of inmates in correctional centres and seeks, *“to ensure that all inmates are detained under humane conditions, treated with human dignity and prepared for a dignified reintegration into the community.”*⁴⁴

JICS' mission was outlined as follows in its 2011/2012 Annual Report:

- acquire up-to-date, accurate and reliable information regarding the conditions prevailing in correctional centres and the treatment of inmates in such centres;
- facilitate inspections relating to the treatment of inmates and conditions in correctional centres in order that the Inspecting Judge may report to the Minister of Correctional Services and the Portfolio Committee on Correctional Services on these;
- submit an annual report to the President and the Minister;
- prevent human rights violations through the monitoring of mandatory reporting systems;
- maintain an independent complaints system;
- ensure and maintain the highest standard of corporate governance in accordance with best practices;
- promote and facilitate community involvement in correctional matters through the appointment of Independent Correctional Centre Visitors and external stakeholders and;
- promote transparency regarding the activities of the Judicial Inspectorate.⁴⁵



Organogram from JICS Annual Report 2011/2012

b. Appointment of the Inspecting Judge

The President appoints the Inspecting Judge (IJ).⁴⁶ In practice, the Minister of Correctional Services nominates the IJ to the President.⁴⁷ The IJ may be either a judge on active service in the High Court or a retired judge.⁴⁸ *“To ensure independence, the [IJ] continues to receive the salary, allowances, benefits, and privileges attached to the office of a judge.”*⁴⁹ Where the IJ is a retired judge, their remuneration is determined by the Minister of Justice.⁵⁰

c. Appointment of the Chief Executive Officer

The IJ identifies a chief executive officer (CEO) to be appointed by the National Commissioner for Correctional Services.⁵¹ This post was created by the Correctional Services Amendment Act in 2008.⁵² The National Commissioner participates in the short listing of candidates and in the interviewing process preceding the identification and appointment of the CEO.⁵³ The CEO is responsible for all administrative, financial and clerical functions of JICS, is under the authority of the IJ but is accountable to the National Commissioner for the financial resources received by JICS.⁵⁴ The IJ is also required to refer issues of misconduct and incapacity of the CEO to the National Commissioner.⁵⁵

d. Powers, Functions, and Duties of the Inspecting Judge and CEO

The IJ has the duty to:

- Inspect or arrange for the inspection of correctional centres in order to report on the treatment of inmates (remand and sentenced) in correctional centres and on any corrupt or dishonest practices in correctional centres (though the investigation of corrupt and dishonest practices is no longer part of the objective of JICS).⁵⁶
- Appoint complement inspectors.⁵⁷

The IJ has the power to:

- Only receive and deal with the complaints submitted by the National Council (a multi-sectoral council which advises the Minister on correctional services policy), the Minister; the National Commissioner; a Visitors' Committee (a committee made up of Independent Correctional Centre Visitors (ICCVs) in a particular area). In cases of urgency, the IJ may deal with a complaint from an ICCV and any complaint of the IJ's own volition.⁵⁸
- Make any enquiry and hold hearings in order to conduct an investigation.⁵⁹
- Assign any of his or her functions to the 'inspectors' except where a hearing is to be conducted by the Inspecting Judge.⁶⁰
- "Make rules that are considered necessary or expedient for the effective functioning of the Inspectorate."⁶¹
- Receive reports of the use of segregation or extended segregation, even where the segregation has been used as a penalty.⁶²
- Decide on the use of segregation within 72 of the referral of the segregation by an inmate who has been subjected it.⁶³
- Resolve complaints that must be reported to the IJ. Correctional services and JICS members must make mandatory reports to the IJ in regard to all:
 - unnatural inmate deaths
 - inmate segregation or extended segregation must be reported to the IJ immediately,
 - use of force must be reported to the IJ immediately,
 - the use of any mechanical restraints must be reported to the IJ immediately⁶⁴
- Hear appeals and refers related to the use of mechanical restraints and segregation respectively made by inmates and make a decision thereon within 72 hours.⁶⁵
- Conduct an enquiry or instruct the National Commissioner to conduct an enquiry into the unnatural death of an inmate.⁶⁶
- Submit a report on each inspection to the Minister and the Parliamentary Committees on Correctional Services.⁶⁷
- Submit an annual report to the President and the Minister.⁶⁸

JICS is set up primarily as an inspecting and reporting body rather than as an investigative, disciplinary or decision-making body.⁶⁹ Though JICS can make recommendations, it does not have final and binding decision-making powers regarding the resolution of inmates' complaints.⁷⁰ If DCS refuses to implement JICS' recommendations, there is nothing JICS can do to enforce them.⁷¹

The purpose of hearing inmates' complaints is to—

“ provide an accessible, effective and reliable system in terms of which inmates can voice their complaints and grievances in order to promote a peaceful correctional centre environment by preventing a build-up of unresolved complaints among inmates, report unresolved or urgent complaints to the Inspecting Judge, monitor the manner in which the Head of Correctional Centre deals with complaints of inmates in an effort to resolve such complaints, and identify trends that may exist in human rights abuses taking place at a particular correctional centre.”⁷²

Every inmate has the right to be given the opportunity on a daily basis to make complaints to the Head of Correctional Centre (HCC) or other authorised DCS officials.⁷³

e. Three Directorates of the Office of the Inspecting Judge (OIJ)

The OIJ is divided into three directorates being Management Regions; Legal Services; Support Services.⁷⁴

i. Directorate: Management Regions

The Directorate: Management Regions is made of the following sub-directorate regions: Northern Management Region (Centurion); Eastern Management Region (Durban); Central Management Region (Bloemfontein); and Southern Management Region (George).⁷⁵ Each regional sub-directorate has an Independent Correctional Centre Unit and a Community Liaison.

(a) Visitors' Committees

Functions and Appointment Process of Visitors' Committees

Where appropriate, the IJ may establish a Visitors' Committee (VC) for several correctional centres within a particular area. The VC includes the ICCVs in that region. The Act stipulates that the VC must meet at least once quarterly; in practice, however, the VC meet monthly.⁷⁶ The functions of the VC are to:

- Consider unresolved complaints with a view to their resolution,
- Submit to the IJ those complaints which the VC cannot resolve,
- Organise a schedule of visits to correctional centres,
- Extend and promote the community's interest and involvement in correctional matters by,
 - Submitting proposals on behalf of persons and/or organisations in their local community to attend VC meetings, and
 - Inviting community leaders and other stakeholders to VC meetings, and to
- Submit minutes of meetings to the Inspecting Judge.⁷⁷

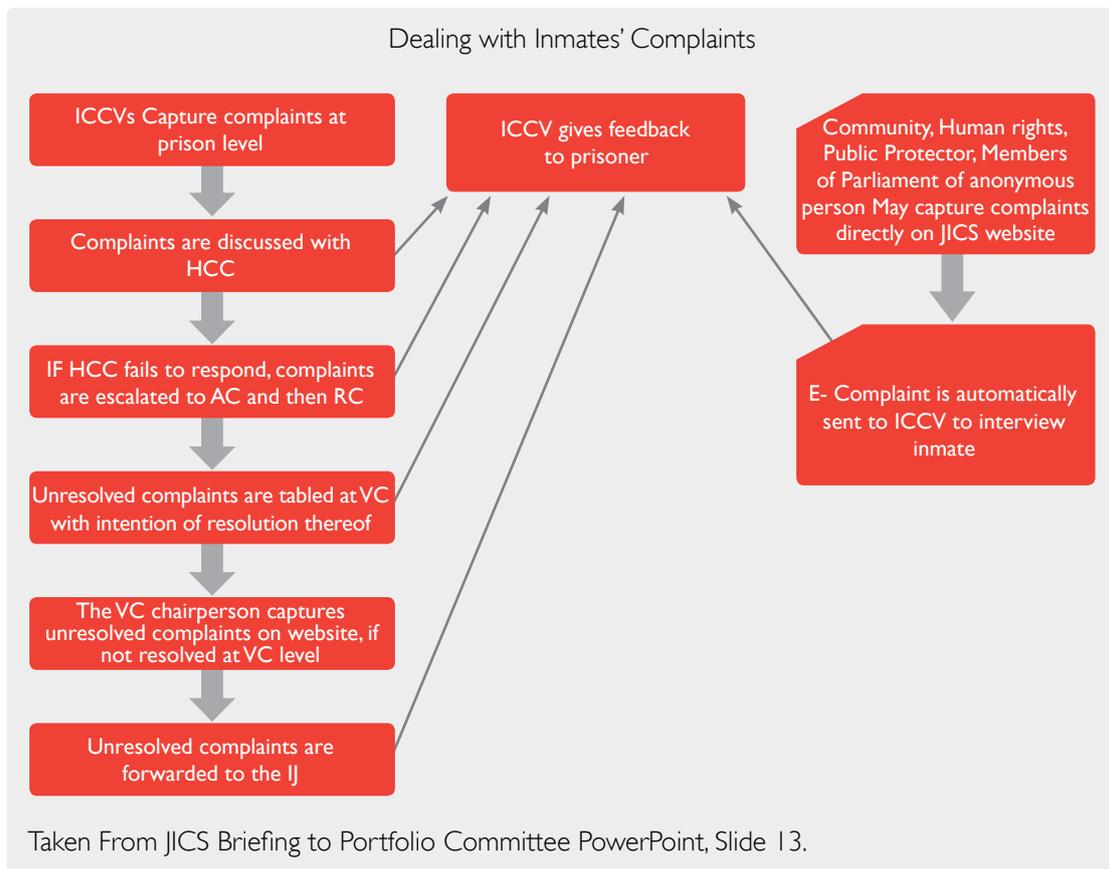
(b) Functions and Appointment Process of Independent Correctional Centre Visitors

The CEO must appoint an Independent Correctional Centre Visitor for any correctional centre or correctional centres after consulting with the IJ, publicly calling for nominations and consulting with community organisations.⁷⁸ An ICCV has the duty to:

- Deal with inmates' complaints,
- Regularly visit correctional centres,
- Interview inmates in private,
- Record inmates' complaints,

- Monitor the manner in which complaints are dealt with,
- Discuss complaints with the HCC or relevant subordinate DCS official with a view to resolving complaints internally,
- Report unresolved complaints to the Visitors' Committee or to the IJ when necessary,
- Submit monthly reports to the IJ, and
- Arrange a written schedule of visits in consultation with the HCC.⁷⁹

ICCVs act as intermediaries between inmates and correctional centre officials. ICCVs' first course of action regarding complaints should be to attempt to resolve the matter internally with DCS officials, particularly the HCC.⁸⁰ JICS also provides copies of all reports to the Area Commissioner and Regional Commissioner. If the HCC fails to respond, the complaints are brought to the attention of the Area Commissioner; and then the Regional Commissioner.⁸¹ If this effort is unsuccessful, then the ICCV must refer the matter to that regional VC or, as a last resort, to the IJ.⁸² ICCVs are not permitted to investigate matters of their own volition that are not directly related to an inmate complaint.⁸³



ICCV candidates are nominated by community-based or other organisations. Candidates must possess a valid form of identification, presumably a South African identification or passport, and have some minimum familiarity with using computers.⁸⁴ Persons with community involvement, particularly related to the "promotion of the social responsibility and human development of [inmates]," are given preference for appointment as ICCVs.⁸⁵ The Act provides that ICCVs are appointed for a period determined by the CEO but in practice typically appointed on a three year contract.⁸⁶ ICCV are supervised by Visitors' Committee Co-ordinators (VCCO).⁸⁷

The ICCV Appointment Process

Step 1	The Inspecting Judge publicly calls for nominations and consults with community organisations as soon as practicable. ⁸⁸
Step 2	Applicants must be nominated by civil society organisations and must fill out an application with the following information: <ul style="list-style-type: none"> • Personal contact details, • Language proficiency, • School and post-school qualifications, • Computer literacy, • Work experience, especially previous work in a correctional centre, • Past criminal offences (noting that this does not bar one from becoming an ICCV),⁸⁹ • Motivation for becoming an ICCV.⁹⁰
Step 3	The above criteria are assigned numeral rankings in a computer database designed by a psychometrist. ⁹¹
Step 4	The four highest scoring candidates are shortlisted. ⁹²
Step 5	The highest scoring candidates are interviewed. ⁹³
Step 6	ICCVs are appointed.

ii. Directorate: Legal Services

The Legal Services Directorate has two sub-directorates. The first, Inspections and Investigations Sub-directorate, deals with general (individual) complaints; and the second, Complaints and Mandatory Reporting Sub-directorate, deals with mandatory complaints and houses the Complaints Unit and the Mandatory Report Unit.⁹⁴ At national level the staff complement of the Complaints Unit consists of a complaints manager, a senior case officer and two administrative officers who administer all complaints received.⁹⁵ A Case Officer or Case Manager makes recommendations to the ICCV and the HCC on how general complaints should be resolved.⁹⁶ This Sub-Directorate also processes the four categories of mandatory complaints: use of mechanical complaints, use of force, unnatural deaths, and segregations.⁹⁷

The Inspections and Investigation Sub-directorate conducts investigations and inspections. “Investigations are normally conducted when more information is needed to deal with complaints, and the ICCV or Visitors’ Committee Coordinator is unable to get the necessary information on site.” Inspections “are conducted when there is evidence of a trend or problem area that needs further examination.” Following every inspection, the sub-directorate submits a report that includes findings and recommendations to the Minister, Commissioner, the relevant provincial commissioner of correctional services, and the HCC, with the view of identifying and addressing individual correctional centre profiles as well as trends and common problems across correctional centres. Inspections focus on “the suitability of accommodation, nutritional services, health and medical services, physical care, hygiene and environmental services, the provision of rehabilitative services, community re-integration initiatives and complaint processing.”⁹⁸ The Inspections and Investigation Sub-directorate also works on community-based projects, such as youth awareness programmes on correctional centre conditions.⁹⁹

iii. Directorate: Support Service

The Support Service Directorate is divided into two sub-directorate which are: Human Resource and Development and Financial Management and Supply Chain Management. The Sub-directorate: Human Resources and Development manages the approved and funded post establishment and contract workers. It also manages the development of all employees, including through training.¹⁰⁰

f. Budget and Reporting

DCS is responsible for all expenses of JICS.¹⁰¹ JICS' allocated budget for the 2011/2012 fiscal year was R19,312,000 and, as of January 2012, the projected expenditure was R23,300,000.¹⁰²

Financial Year	JICS' Expenditure	Percent of DCS Budget
2009/2010	R19.2 Million	<0.2% ¹⁰³
2010/2011	R20.26 Million	0.16% ¹⁰⁴
2011/2012	R19.3 Million	0.1% ¹⁰⁵

In comparison, the South African Human Rights Commission's total expenditure for the financial year 2009/2010 was R72.8 Million and the financial year 2010/2011 was R74.9 Million and increased, in the financial year 2011/2012 to R92.8 Million.¹⁰⁶ This budget is significantly higher; so too is that of IPID. IPID (which at that point was named the Independent Complaints Directorate) had a total expenditure of R106 Million in the financial year 2009/2010,¹⁰⁷ R128 Million in the financial year 2010/2011¹⁰⁸ and R153.5 Million in the financial year 2011/2012.¹⁰⁹

In addition to an annual report to the President and the Minister of Correctional Services, the IJ must submit a report on all inspections to the Minister of Correctional Services. The Minister must then table the annual report in Parliament.¹¹⁰ Since 2012, JICS has also started submitting quarterly reports to the Parliamentary Portfolio Committee on Correctional Services.¹¹¹

g. Visiting Judges, Magistrates and Public Officials

Judges of the Supreme Court of Appeal, Constitutional Court, or High Court and magistrates, as well as members of the Parliamentary Portfolio Committee on Correctional Services (National Assembly) and the Select Committee on Security and Constitutional Development (the National Council of Provinces), and members of the National Council for Correctional Services have the power to visit correctional centres at any time in their respective jurisdictions.¹¹² Judges and magistrates are also permitted to interview any inmate and bring any matter to the attention of the National Commissioner of Correctional Services, the Minister of Correctional Services, and the National Council for Correctional Services or the Inspecting Judge.¹¹³ JICS has, on occasion, reported on these visits. For instance, in the 2001/2002 financial year, JICS reported that Constitutional and High Court Judges paid 33 visits to correctional centres, of which 29 were comprehensive inspections followed by reports.¹¹⁴ Though JICS did not provide the number of visits by these judges in some other years, JICS noted that the number of visits and reports furnished to JICS by these Judges has substantially increased in the 2009/2010 year; although in the previous year JICS deplored the extreme rarity of these visits.¹¹⁵

Evaluation of the Independence, Integrity, and Effectiveness of Judicial Inspectorate for Correctional Services

a. Successes of the Judicial Inspectorate for Correctional Services

Despite the challenges that JICS faces to its independence and effectiveness, it makes a critical contribution toward protecting the human rights of inmates and improving correctional centre conditions. In a 2004 Civil Society Prison Reform Initiative (CSPRI) study, researcher Jacqui Gallinetti praised the work of the ICCVs as having contributed, "to the more efficient handling of inmate complaints and [having] led to a vast improvement of the complaints procedures as operated in South African correctional centres by the DCS. In addition, their work has resulted in greater transparency and accountability, and ultimately reinforces the State's objective of ensuring a human rights culture throughout all levels of government."¹¹⁶

Despite its lack of investigative and binding powers, positive views have been expressed regarding JICS' reporting powers. The power to make recommendations is significant, and "should have a strong persuasive effect and DCS should see them as markers of lawful and good practice."¹¹⁷

Furthermore, JICS engages with other government bodies and civil society organisations to increase its impact. In the case of overcrowding, JICS partnered with the Legal Aid Board and the Cape Law Society to engage attorneys using pro bono hours to assist awaiting-trial inmates in plea-bargaining to resolve cases more quickly. In this partnership, JICS informed awaiting-trial inmates about the plea-bargaining process. JICS is also working on a pilot project to establish a structure through which JICS can call on attorneys willing to donate pro bono hours.¹¹⁸

Additionally, VCs (visitors' committees) have enabled some community engagement and participation. Between October 1 and December 31 of 2011, 72 VC meetings took place. "During December, 16 stakeholder meetings were held nationally for the presentation of the JICS Annual Report 2010/2011. The events in each area were well attended with a significant interest displayed by DCS management and other national stakeholders."¹¹⁹ Some VC held stakeholder hearings aimed at creating public awareness, and at addressing some of the challenges that call on cooperation from organisations such as Legal Aid South Africa.¹²⁰

JICS also publishes data that would otherwise be inaccessible to the public, such as data on sexual violence perpetrated against inmates. Without such data being published, the correctional services system would lack transparency. JICS thus creates a critical bridge between the correctional services system and the rest of society.

JICS is also working to improve the training that ICCVs receive. In 2011, it began to roll-out paralegal training to its ICCVs in addition to the compulsory training they already receive about complaints processes.¹²¹ The objective of this training is to improve the quality and usability of complaints received by ICCVs by increasing their knowledge of the law and legal processes.

In 2011 mention was made of the restructuring of JICS and in 2012 JICS was formally restructured. The support services were separated from the core function of JICS and a new directorate was created to manage the ICCV system in the region. JICS' reach was also improved by the expansion of regional management offices to incorporate additional offices in Durban, Bloemfontein and George.¹²²

b. Independence and Challenges of the Judicial Inspectorate for Correctional Services

i. Defining Independence

To assess JICS' independence, it is necessary to first define independence for the purposes of an oversight body for DCS. Independence is a vital element for the effectiveness of prison oversight.¹²³ To penetrate correctional centres, which are inherently "closed worlds," an oversight body must formally establish and maintain an arms-length relationship between itself and correctional services.

While the OPCAT has yet to be ratified in South Africa, it can be envisioned that once it is, JICS may have a natural role to play as part of the National Preventive Mechanism required by the convention.¹²⁴ The OPCAT provides guidance on how to define the independence of an oversight body such as JICS.¹²⁵ Article 18 of OPCAT calls for "functional independence," which has been interpreted to mean that (a) the opportunities for political interference as regards an institution's legal basis for existence, administration and procedures, and funding are limited, and (b) that an institution is credible and effective in practice. Thus the actual structural (financial and operational) and perceived independence of an institution make up "functional independence".

The United Nations' Principles relating to the Status of National Institutions (Paris Principles), which provide guidance on the role, composition, status and functions of national human rights institutions, state that financial autonomy is a fundamental requirement of independence.¹²⁶ Without financial autonomy, an institution cannot exercise operational autonomy or independence in decision-making. Key to this is an institution's ability to draft its own annual budget, and its ability to decide how to use its resources on an independent basis. This means that decisions must be free from control and the need for authorisation or approval. Independence requires that other institutions or funding sources cannot compromise an oversight body's ability to report freely on its observations and recommendations.¹²⁷

The Constitutional Court came to similar conclusions regarding the definition of independence in relation to a government oversight body in the 2011 decision in *Glenister v. President of the Republic of South Africa and Others*.¹²⁸ This case concerned the Directorate for Priority Crime Investigation (also known as the Hawks), located under the administration of the SAPS as an independent corruption-fighting unit. While the facts of the case are not directly analogous to the relationship between DCS and JICS, the majority's analysis concerning the adequacy of the Hawks' independence are informative.¹²⁹ Further, the purpose of the two institutions is analogous in that they are set up to address corruption, though JICS' mandate is broader. The Court determined that the legislative provisions creating the DPCI failed to afford the institution with an adequate measure of autonomy because it was "insufficiently insulated from political influence in its structure and functioning [as well as] the conditions of service that pertain to its members."¹³⁰ The Court also indicated that the appearance and perception of independence is important to determining whether independence exists or not. Thus, the public perception of independence is one of the benchmarks for independence of an institution.

JICS' Independence

With guidance from the above definitions of independence, it can be argued that JICS lacks functional independence. JICS requires the assistance of DCS in the execution of its mandate but frequently faces a lack of cooperation from DCS members, which is a hindrance to its work. Other external issues such as poor public awareness, negative perceptions by inmates and the public, and the removal of the mandate to investigate corrupt and dishonest practices also limit JICS. The sections below outline the flaws in JICS' structural and perceived independence.

ii. Administrative Independence

JICS' administrative links to DCS may also compromise JICS' independence. In the past, having to appoint staff under section 89(1) of the CSA was a long and frustrating process, and "included delays on the part of the DCS in processing appointments for staff and Special Assistants. This made it difficult to get projects off the ground . . ."¹³¹ The 2008 amendments to the CSA repealed the requirement for JICS staff to be appointed in consultation with the National Commissioner of Correctional Services, which was problematic because it lent itself to the interpretation that the Commissioner can veto the appointment of staff, or at least exert political influence over these processes.¹³² The provisions governing the appointment of the CEO, however, still hinder JICS' independence. Specifically, though the candidates for the position of CEO are identified by the Inspecting Judge, he or she is then appointed by the National Commissioner, accountable financially to the National Commissioner, and the Inspecting Judge must refer any matters relating to misconduct and incapacity of the CEO to the Commissioner.¹³³

iii. Financial Independence

Financial independence is a cornerstone principle for effective oversight mechanisms. Yet JICS receives its budget from DCS,¹³⁴ which compromises its ability to be fully independent. As noted by the Constitutional Court in *New National Party of South Africa*, the arrangement whereby "a department makes funds available from its own budget to a public entity for the performance of certain functions. . . is fundamentally inappropriate when applied to independent institutions."¹³⁵

As JICS has noted, its financial dependence on DCS has "from time to time, caused serious operational challenges to JICS inasmuch as the DCS has at times imposed, or attempted to impose, its internal financial and administrative policies and procedures on JICS. . . this frequently [led] to delays in service delivery."¹³⁶ JICS has reported to the Portfolio Committee on Correctional Services that financial and administrative interlinkages caused delays in paying salaries for JICS staff, including that of the IJ, clearly undermining JICS' operations.¹³⁷

This financial dependence also raises the concern that DCS might reduce JICS' funding, or may give a lower priority to the funding needs of JICS.¹³⁸ Due to these challenges, in March 2011, the CEO of JICS asserted that it should receive a fixed percentage of DCS' budget and that this should be separate from DCS budget, with JICS accountable directly to the National Treasury.¹³⁹

iv. Conflicts of Interest

ICCVs can face conflicts of interest in their daily work.¹⁴⁰ They are dependent on DCS members' cooperation and security and at the same time they need to gain the trust and confidence of inmates. ICCVs' reliance on DCS members for security during visits may also make ICCVs reluctant to antagonise DCS members.¹⁴¹ ICCVs are susceptible to becoming too conciliatory with DCS officials on the one hand, or becoming akin to psychologists or social workers for inmates on the other hand.¹⁴²

There is also a question of whether ICCVs view their career path within the structures of the DCS.¹⁴³ Some ICCVs are hired by DCS upon the completion of their contracts with JICS.¹⁴⁴ If ICCVs are seeking employment with DCS, they may not want to antagonise the management of the centre to which they are assigned, and thus may not pursue all complaints with the vigour they require.¹⁴⁵ Conversely, this could be a positive development since ICCVs who become DCS members might view the rights and well-being of inmates as a serious priority even as a correctional official.

Limiting ICCVs' tenure to three years may contribute to the fact that some ICCVs may view DCS as part of their career path.¹⁴⁶ Indeed, the limitation on tenure of DPIC staff was one of the reasons

why the Constitutional Court found the DPIC to be lacking independence from SAPS in Glenister.¹⁴⁷ It should be noted that JICS has the discretion to deviate from this three-year limit and it frequently does this by executing longer contracts. Most contracts are three years, however, and while this was intended to preserve independence and prevent the institutionalisation of ICCVs to their assigned correctional centres, it may actually diminish independence because ICCVs may seek more long-term employment with DCS as a result.¹⁴⁸

Having a longer tenure for ICCVs may also reduce transaction costs of frequently hiring and training new ICCVs,¹⁴⁹ improve the institutional memory of JICS, and provide the opportunity for greater skill building of ICCVs who hold this position for longer periods of time.¹⁵⁰

In 2007, a study was conducted on the degree of capture (the lack of exclusive protection of inmates' rights) of JICS personnel.¹⁵¹ According to the author, Steven Wood, capture happens in either one of two ways. Firstly by design, where the empowering legislation does not give JICS sufficient legal powers to ensure that prison officials comply with the recommendations, or where JICS is wholly funded by the DCS. Secondly, capture may happen over time, where ICCVs overly identify with prison officials, are manipulated by prison officials, feel that holding prison officials accountable is too much work for themselves, or where they fear that threatened prison officials will become passive or active obstructionists.

Wood's study found that of JICS personnel surveyed, none "exhibited zero or complete co-option; instead everyone fell somewhere between these extremes." The study also indicated that staff had higher levels of capture "if they did not receive full support from JICS' national office, if they had to depend on prison officials to effectively perform their duties and if prison officials provided them with adequate security in prisons." Levels of capture were also high where JICS personnel wished to work for DCS in the future, if they had relatives or friends in DCS, or felt that they could "do little if prison officials ignored them."¹⁵²

c. Challenges Between the Judicial Inspectorate for Correctional Services and the Department of Correctional Services

There are major tensions between JICS and DCS members, as well as a lack of clarity regarding their respective roles. It has been reported that DCS members have sometimes unfairly used ICCVs to take over their own responsibilities.¹⁵³ Some DCS members are suspicious of, hostile towards, and feel threatened by ICCVs.¹⁵⁴ There are reports that DCS members frequently do not cooperate with ICCVs, for example, by denying ICCVs access to the correctional centre or resources such as telephones and computers.¹⁵⁵ Some ICCVs have reported that DCS members do not provide security arrangements for ICCVs during site visits. For example, DCS members have prevented access to inmate cells by not unlocking the doors or leaving ICCVs locked in cells with awaiting trial inmates.¹⁵⁶ Assaults on ICCVs by DCS members have also been recorded.¹⁵⁷

In the past, it was reported that DCS members sometimes hinder the ability of inmates to lodge complaints with ICCVs. For instance, in the Pretoria and other management areas, there was evidence that JICS complaints boxes are installed in "inconvenient spots and within the view of warders. Thus inmates putting letters into the [OIJ's] box are visible to the warders and may be subjected to immediate harassment."¹⁵⁸ Some inmates are also unaware of their right to submit certain complaints to ICCVs because DCS members fail to properly inform them of their rights.¹⁵⁹

d. Challenges Between the Judicial Inspectorate of Correctional Services and Inmate Perceptions

ICCVs also face challenges in adequately communicating with inmates and gaining their trust. One major reason for this is that while ICCVs meet with inmates, DCS members must still be nearby for security reasons (though out of earshot for privacy).¹⁶⁰ Some inmates doubt the existence of confidentiality and feel uncomfortable sharing their complaints with ICCVs. Not only does this hinder the ability of ICCVs to respond to and resolve inmate complaints, it also negatively impacts the credibility of ICCVs among the inmates. The inmates' perceived lack of confidentiality may mirror their perception of JICS' lack of independence from DCS, which hinders the former's ability to perform.

Furthermore, since JICS does not have binding decision-making powers, it is sometimes difficult for JICS to resolve complaints, as it cannot enforce its recommendations. Sometimes the resolution of complaints is lengthy and drawn out. This might contribute to a loss of confidence in JICS, "particularly where the complaint relates to immediate or urgent concerns such as medical treatment, food, or the provision of sufficient blankets in winter."¹⁶¹ The protracted complaints system results in slow feedback, which may cause inmates to believe ICCVs are not doing anything to resolve their complaints.¹⁶² Since JICS lacks binding decision-making powers, some inmates also perceive that ICCVs do not have sufficient authority to help resolve their complaints.

e. Inefficiencies within the Judicial Inspectorate of Correctional Services

The quarterly reports to the Portfolio Committee on Correctional Services improve JICS' reporting and accountability to Parliament and the public, but the analysis in the reports needs strengthening. More can be done to indicate, for example, how many complaints remain unresolved.

One area critically requiring improvement is in filling vacancies for ICCVs. Each correctional centre must have an assigned ICCV, according to section 92(1) of the CSA. As of the end of 2012, JICS had a vacancy of 37 (13%) out of a total of 272 ICCV posts nationally.¹⁶³ Civil society can support JICS in this regard by nominating strong ICCV candidates and assisting with their placements, which are part-time positions working between 20–60 hours per month. The difficulty JICS faces in placing ICCVs is exacerbated by the short contracts that ICCVs receive – usually just three years in duration.¹⁶⁴

The training of ICCVs could also be improved. Some researchers have noted a lack of a critical understanding of the underlying purposes of dealing with complaints and of the "systemic issues pertaining to correctional centre reform for them to be able to intervene and report effectively."¹⁶⁵ Researchers who conducted interviews with ICCVs noted that some ICCVs thought their training was not practical and did not adequately prepare them for the reality of working in correctional centres on a daily basis.¹⁶⁶ Specialised training on the known challenges inmates face, using a human rights framework, could improve ICCVs' preparedness and the quality of their reporting. Recently instituted paralegal training may begin to address this.

Noting the difficulty of having to work in correctional centres daily, having to deal with lengthy security procedures, and having to meet with thousands of inmates, there do not seem to be enough ICCVs to accomplish these heavy tasks. Many ICCVs work many more hours than they are supposed to, even though they may not be remunerated for their extra time.¹⁶⁷

There have also been concerns that JICS' reports do not identify broader problem trends across the whole correctional system as well as they could. Sometimes they lack thorough and critical analysis or do not identify systematic problems in correctional centres. For example, known challenges, such as

TB, HIV, and sexual abuse, are not being adequately explored in JICS' reports. This may partly be due to a lack of understanding by ICCVs on these issues, which could be addressed through specialised training.

The reports also lack clear standards for evaluating and measuring the correctional centres. The classification system JICS currently uses for inmates' complaints has previously been criticised as not practicable.¹⁶⁸ While research from 2004 reported that complaints are often classified as "other," providing little or no indication of the trends that might underlie these complaints, recent changes as reflected in the new quarterly reports indicate that complaints are being better organised into various categories to more effectively identify possible trends.¹⁶⁹ Given the known challenges with health services, disaggregated statistics on the types of complaints inmates lodge pertaining to health care would be critical to help pinpoint areas of improvement for DCS.

f. Public Perceptions of the Judicial Inspectorate of Correctional Services

There seems to be a weak public awareness about JICS and its work. This may be compounded by the fact that until recently, JICS had few regional offices outside the Western Cape, and hence its work was less visible to people in other provinces. JICS recently restructured and now has regional offices in George, Bloemfontein, Durban, Pretoria, and Cape Town. Public awareness could also be improved if reports were more widely distributed or publicised.¹⁷⁰ A lack of public awareness impedes the purpose of JICS, particularly because VCs are open to the public - individuals as well as community organisations can only become involved with JICS if there is increased awareness. That JICS is now reporting to the Portfolio Committee on Correctional Services on a quarterly basis, and that these reports are publicly available, helps address this challenge.

For the most part, JICS does not make statements in the media or issue press releases based on their findings even though it is within its mandate to do so. Highlighting key issues within the media would help spread awareness on challenges inside correctional services. The fact that JICS receives its funds from the DCS, reports to the Minister, and that the CEO is financially accountable to the National Commissioner, may impede its willingness to assert itself publicly and use media advocacy to advance inmates' rights.

g. Limited Scope of Inspection Powers

The work of JICS has also been limited by the fact that the Correctional Services Amendment Act of 2001 removed the OI's function of investigating corruption and dishonest practices. Section 85(2) was amended to remove the investigation of "[any] corrupt or dishonest practices" from the objects of JICS.¹⁷¹ This was done because the then IJ specifically requested to be relieved of this duty as it would compromise the relationship between JICS and DCS, and because the latter already has an Anti-Corruption Unit, among other reasons.¹⁷²

The removal of this function, however, limits JICS' ability to monitor human rights abuses in correctional centres because it is often not possible to separate the treatment of inmates from underlying issues of corruption. For instance, in cases where inmates are forced to pay DCS members for basic necessities such as food, bedding, or access to the clinic. Even though DCS has its own Anti-Corruption Unit, that institution may have even more challenges to its independence than JICS.

While the object of investigating corruption was removed from section 85(2), it was retained in section 90(1) describing the powers, functions, and duties of the IJ. One interpretation of this is that where corruption and dishonesty impact conditions in correctional centres, this is still part of JICS' mandate.¹⁷³ An alternative interpretation is that it was clearly intended that the OI should not have the power to investigate corruption, but theoretically, if the IJ does happen to come across any corruption, he could report on it.¹⁷⁴

h. Potential Restructuring to Increase Independence

JICS recently began consulting the Independent Police Investigative Directorate (IPID) for guidance on improving its independence.¹⁷⁵ The Parliamentary Portfolio Committee for Correctional Services has stated that the feasibility of auditing JICS' financial management and allocating JICS' budget separately from DCS should be explored.¹⁷⁶ JICS and DCS are currently exploring the potential to receive funds directly from Treasury rather than through DCS budget, thus rendering JICS completely administratively independent from DCS.¹⁷⁷ The Portfolio Committee is also beginning to examine this through consultation with JICS, DCS, and civil society, with a hearing dedicated to this topic in November 2012.¹⁷⁸ As an outcome of this meeting, the Portfolio Committee determined that it needed deeper engagement on the issue in the subsequent year.

Moreover, South Africa has signed but not ratified OPCAT. South Africa's ratification of OPCAT in the future would require the creation of a national preventive mechanism, which would have similar rights and powers already afforded to JICS. To avoid duplication of activities, JICS' powers could be extended to take on the role of the national preventive mechanism. This would require operational, financial, and structural changes to JICS to improve its independence and expand its powers accordingly.¹⁷⁹ However, there seems to be a lack of support from DCS for this change. In 2011, the IJ, the former Minister Mapisa-Nqakula, Deputy Minister Ramatlhodi, and Commissioner Moyane "agreed that the JICS functions should not be extended to include the functions of a national preventative mechanism in terms of OPCAT," because the restructuring required of JICS would be too burdensome.¹⁸⁰

Comparison to Other Similar Watchdog Bodies

In order to draw out lessons learned and to identify potential structural changes that may increase JICS' independence and enable it to better meet its mandate, this section will compare JICS to similar watchdog agencies in South Africa, such as the SAHRC and IPID, and comparable correctional centre watchdog bodies in England, Wales, Canada, Mauritius and Zambia. This comparison will focus on the independence, enforcement and disciplinary powers, and community engagement of these various institutions.

a. Oversight Mechanisms with Structural Independence

There are monitoring bodies in South Africa and elsewhere that are administratively independent of the institutions that they are mandated to investigate, and that could offer lessons learned for JICS' reform.

An oversight body that was created to address the structural flaws of its predecessor, the **Independent Police Investigative Directorate** (IPID) offers lessons for strengthening JICS' independence and enforcement powers.

The IPID is the independent watchdog body of the Department of Safety and Security, responsible for overseeing SAPS and the Municipal Police Services (MPS).¹⁸¹ The IPID is mandated by national legislation to monitor and conduct investigations of criminal offences allegedly committed by SAPS and MPS members, and make appropriate recommendations toward their redress.¹⁸²

In terms of its statutorily determined structure, IPID is substantially more independent than JICS, both administratively and financially. Unlike JICS, which receives funding from the institution that it is mandated to monitor, IPID is independent of SAPS administratively, and receives its funding from Parliament directly.¹⁸³

Section 4 of the IPID Act states that IPID, "functions independently from the South African Police Service," and obliges all offices of the state to maintain impartiality. While section 85 of the CSA does state that JICS is an independent office (under the control of the IJ) it does not explicitly state that it is independent of the institution that it is mandated to investigate, nor does the CSA oblige all organs of the state to ensure the impartiality of JICS. Moreover, the IJ, who controls JICS, is appointed by the President, following nomination by the Minister of Correctional Services only.¹⁸⁴ In contrast, the IPID Act compels the Minister of Police to nominate IPID's Executive Director, and tasks the Parliamentary Portfolio Committee on Police to either confirm or reject the nomination.¹⁸⁵

The Executive Director of the IPID must refer criminal cases to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referrals. The Executive Director must, where appropriate, refer the investigation of a complaint to the National or Provincial Commissioner concerned.¹⁸⁶ Conversely, JICS must submit a report on each inspection to the Minister and the Parliamentary Portfolio Committee on Correctional Services. Even more limited are the rights of the ICCVs in relation to complaints by inmates. ICCVs are required by the CSA to consult with the HCC (or the relevant subordinate correctional official) with the view of addressing the complaint internally within the administrative system of the correctional centre in which the complaining inmate is housed.¹⁸⁷

As mentioned and illustrated above, ICCVs may feel conflicted because their term of office within JICS is limited and their career path may lead to employment by DCS. Also, ICCVs are part-time employees of JICS and often not paid for all the hours they work. IPID investigators' salary and allowances, on the other hand, must be on par with SAPS detectives, and IPID investigators may not conduct investigations on matters in which they have a financial or other interest that might preclude them from exercising or performing their functions in an objective manner.¹⁸⁸ According to IPID policy, such interest should be disclosed and the investigators concerned should withdraw from any involvement in the investigation. Measures have been put in place to ensure the impartiality and integrity of investigators. IPID investigators are also insulated from liability that does not arise from grossly negligent acts or omissions.¹⁸⁹ Many of these policies would be directly transferable to JICS, vastly strengthening the role of ICCVs.

Although the CSA does not explicitly state in the JICS establishment clause that JICS has investigative authority, it is implied as a power of the IJ in a clause that reads as follows: "For the purpose of conducting an investigation, the Inspecting Judge may make any enquiry and hold hearings."¹⁹⁰ It appears, therefore, that the IJ's power to investigate is limited to the fora of enquiries and hearings. JICS and the IJ's jurisdiction is limited to complaints lodged and issues witnessed in correctional centres on visitation inspections.¹⁹¹ IPID investigators, in contrast, have the mandate to investigate, deaths in police custody or as a result of police action, complaints on police firearm discharge, rape by police officers or in police custody, complaints of torture or assault against police officers, police corruption, or matters referred to them by the Executive Director, Minister or Secretary of Police.¹⁹²

The IPID Act explicitly states that the Minister may make regulations on the procedures to be undertaken by IPID, in accordance with the Act. The Minister of Police must, however, consult with the Executive Director before he makes the regulations.¹⁹³ On the contrary, the IJ (and JICS) does not have the right to consult with the Minister of Correctional Services when the latter makes regulations.

The Minister of Correctional Services may make regulations unilaterally on the following actions:¹⁹⁴

- visitation to correctional centres,
- death of an inmate,
- the manner in which an inmate may make requests and complaints and how they are dealt with by correctional officials and custody officials,
- an inmate's appeal, review, and pardon procedure,
- the searching of people entering correctional centres CSA, and
- the reporting procedures where force is used.

Similarly the National Commissioner has the right, without consulting with the IJ (or JICS) to issue orders related to the manner in which statistical information and research is obtained and the manner in which certain persons are allowed access to a correctional centre. It should be noted, however, that the Minister of Correctional Services must refer proposed regulations to the Parliamentary Portfolio Committee on Correctional Services.¹⁹⁵

The IPID also has greater enforcement and disciplinary powers than JICS. IPID's Executive Director must refer identified criminal offences to the National Prosecuting Authority. Furthermore, upon IPID's recommendation for disciplinary proceedings of police officers who are found to have committed criminal offences, the relevant Police Commissioner must, "initiate disciplinary proceedings in terms of the recommendations made by [IPID]".¹⁹⁶ Most importantly, it is a criminal offence for members of SAPS or MPS to fail to report criminal offences under IPID's jurisdiction, and to interfere, hinder or obstruct the Executive Director or any member of IPID in the exercise of their duty.¹⁹⁷

In comparison, the IJ (or JICS) is neither obligated to report criminal offences to the NPA nor to recommend disciplinary action against correctional officials, though as an institution, they may do both.¹⁹⁸ DCS is also not obligated to report back on JICS' recommendations. These issues fundamentally reduce the power of JICS to adequately address complaints levied against correctional officials.

The **South African Human Rights Commission** (SAHRC) was established in Chapter Nine of the Constitution and is mandated to: (a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights; and (c) monitor and assess the observance of human rights in the Republic.¹⁹⁹ It has the power to investigate and report on human rights abuses, take steps to address such abuses, research and educate. Like all other Chapter Nine institutions the SAHRC is independent and impartial, and it is not a government agency. One of the unique mechanisms available to the SAHRC in fulfilling its mandate is the authority to mediate, conciliate and negotiate with parties concerned to arrive at resolutions for disputes.²⁰⁰ This power gives the SAHRC the right to ultimately come to a decision with the parties concerned that is binding and enforceable among and between the parties.

In performing its investigative and other functions, the SAHRC has the right to enter and search premises and seize and attach articles relevant to its investigation, if it is in possession of a warrant.²⁰¹

Another important factor, imperative for both perceived and actual independence, is the fact that the SAHRC reports not to a particular ministry but to the President and Parliament.²⁰² Capacitating the SAHRC with implementation muscle is the fact that it is an offence, for example, for a person to give false evidence or to wilfully interrupt a proceeding of the SAHRC.²⁰³

The final (though equally important) factor ensuring the SAHRC's independence is that regulations pertaining to the SAHRC may not be made by the President unilaterally but must be made in consultation with the SAHRC.²⁰⁴ This ensures that regulations made for the SAHRC are not overly prohibitive but actually respond to the needs of the SAHRC. It also ensures that regulations are not used as a means to curtail the powers and efficiency of the SAHRC.

Outside of South Africa, institutions in England and Canada may offer different models for prisons oversight. In England and Wales, **Her Majesty's Chief Inspector of Prisons for England and Wales** (IPEW) is independent of and separate from Her Majesty's Prison Service and reports to the Home Secretary. The IPEW is comparable to JICS in that it is mandated to inspect and report on conditions as well as investigate and make recommendations toward the resolution of inmates' complaints.²⁰⁵ The IPEW is responsible for inspecting and reporting on the conditions of, "those in prison, young offender institutions and immigration detention facilities." Thus, the IPEW has wider powers than JICS, in that it has the right to inspect all detention centres – not just DCS facilities like JICS. The Justice Secretary appoints the Inspector from outside the Prison Services.²⁰⁶ England and Wales also have **Independent Monitoring Boards** that are similar to VCs. However, unlike VCs, they are fully independent of Her Majesty's Prison Service.²⁰⁷ England and Wales' third monitoring body, the **Prison and Probation Ombudsman**, which hears and resolves inmates' complaints, also functions independently of the Prison Service.²⁰⁸ Thus, in England and Wales, the inspecting and complaints functions are separated into two different institutions, unlike JICS, which does both.

The **Canadian Correctional Investigator** is an office similar to JICS. Like the IJ, the Correctional Investigator is appointed for a limited but renewable term of five years.²⁰⁹ Also like the IJ, the appointment of the Correctional Investigator is a political one, as the latter is appointed by the Governor in Council.²¹⁰

However, Canada's Correctional Investigator is independent of the Correctional Service of Canada.²¹¹ In order to ensure the impartiality of the Correctional Investigator, the Corrections and Conditional

Release Act provides that they are not permitted to hold any other government office while they occupy the office of the Correctional Investigator.²¹² In addition, the Corrections and Conditional Release Act (CCR ACT) explicitly states that the Correctional Investigator is deemed to be employed in the federal public administration; the Correctional Investigator's staff and employee are deemed to be public employees, and that they manage and control all matters connected with the office of the Correctional Investigator.²¹³

The Correctional Investigator, like the IJ, is mandated to investigate and attempt to resolve inmates' complaints related to decisions, recommendations, acts or omissions of the Commissioner of Corrections or any person under the Commissioner's control.²¹⁴ Unlike the CSA, which does not clarify JICS' jurisdiction, the CCR Act also affirms the Correctional Investigator's jurisdiction and provides that he or she may approach the federal court for clarification in the event of an uncertainty. Also unlike the CSA, which provides that the Minister of Correctional Services may prescribe procedures related to, inter alia, the entrance of JICS into correctional facilities and to the manner in which complaints are dealt with; the Canadian Correctional Investigator has the discretion to determine how investigations are handled. The Correctional Investigator has the right to: determine whether an investigation is undertaken, how an investigation is undertaken, where a hearing is held, request information and, "at any time [to] enter any premises occupied by or under the control or management of the Commissioner and inspect the premises and carry out therein any investigation or inspection."²¹⁵

Similarly to JICS, the Correctional Investigator must inform the Commissioner if he or she finds that the problem complained of does in fact exist; and where no action is taken by the Commissioner, the Correctional Investigator should inform the Minister of Public Safety and Emergency Preparedness. Also like JICS, the Correctional Investigator is obliged to submit an annual report of its activities to the Minister.²¹⁶

Mauritius and **Zambia** each have their own systems of prisons oversight that appear to be relatively independent. Mauritius, for instance, has a Board of Visitors which includes at least three magistrates, a law officer, and four other persons, three of which cannot hold any public office.²¹⁷ The visitors inspect correctional centres at least once a month and hear inmate complaints, and report abuses and other matters to the Minister.²¹⁸ Mauritius and Zambia also empower judges and magistrates to visit detention facilities and record their observations.²¹⁹ In Zambia, the Minister can appoint visitors who inspect prisons every two months, and have the same duties and powers as visiting justices. The Zambian Human Rights Commission also visits places of detention and makes recommendations to redress problems.²²⁰ Each of the visitors may visit correctional centres of their own accord and make their own recommendations without any obvious influence from the correctional departments. These systems offer regional examples of relatively independent mechanisms since the visitors (except for the Minister and Deputy Minister of Correctional Centres in Zambia), do not appear to have other posts in their respective correctional centre departments.

There are also several other countries in which correctional centre visitors have the power to conduct ad hoc and unannounced visits to correctional centres. This is the case with:

- Her Majesty's Chief Inspector of Prisons for England and Wales,²²¹
- The Independent Monitoring Boards in England and Wales,²²²
- The Office of the Inspector of Correctional Centres in Ireland,²²³
- Her Majesty's Chief Inspector of Prisons for Scotland,²²⁴
- Visiting justices in Zambia,²²⁵
- The Human Rights Commission in Zambia.²²⁶

This gives the visitors greater power to conduct their work more independently of the relevant correctional centre departments. The visitors do not need to rely on prison officials as much for cooperation and accommodation to conduct inspections. Though not explicitly empowered to, JICS does practice unannounced visits. Explicit empowerment may further assist ICCVs who struggle with access to prisons.

b. Oversight Mechanisms with Enforcement and Disciplinary Powers

There are several oversight mechanisms that have greater enforcement and disciplinary powers than JICS. In the **Independent Police Investigative Directorate**, for instance, the Executive Director must refer identified criminal offences to the National Prosecuting Authority.²²⁷ Furthermore, upon IPID's recommendation for disciplinary proceedings of police officers who are found to have committed criminal offences, the relevant Police Commissioner must, "initiate disciplinary proceedings in terms of the recommendations made by the Directorate" and report on the progress of those disciplinary proceedings.²²⁸ Most importantly, it is a criminal offence for members of the SAPS or the MPS to fail to report criminal offences under IPID's jurisdiction, and to interfere, hinder or obstruct the Executive Director or any member of IPID in the exercise of their duty.²²⁹

As with the IPID, the **Canadian Correctional Investigator** imposes similar criminal penalties for any person who obstructs or hinders their work.²³⁰

In comparison, the IJ (or JICS) is neither obligated to report criminal offences to the NPA nor recommend disciplinary action against correctional officials. Conversely, ICCVs are required to reach a solution on an inmate's complaint with the correctional officials concerned.²³¹

These mechanisms offer lessons for how JICS could be strengthened and made more effective. If sanctions were imposed on person(s) who obstruct or hinder its work, particularly DCS members, or if the courts were empowered to enforce its recommendations, JICS might find increased cooperation from DCS members and would have ways to enforce its recommendations.

c. Oversight Mechanisms with Community Engagement

Like JICS, some monitoring bodies in other countries engage extensively with their local communities. These engagements provide important links for the oversight bodies to community services and input from external specialists and stakeholders.

Her **Majesty's Chief Inspector for Prisons and Wales**, for instance, plans on implementing a new joint inspection of multi-agency arrangements for the protection of children, particularly those at risk of harm, and the provision of services to at-risk children. The IPEW is currently engaged in consultations with local civil society and community organisations and stakeholders to receive community input on this new initiative.²³²

The **Prison and Probation Ombudsman for England and Wales** has engaged with community organisations by maintaining regular communication with stakeholders via weekly emails and quarterly newsletters to stakeholders.²³³ In its most recent annual report it included one of its goals as improving stakeholder engagement going forward. The Ombudsman plans to, "develop a cross-office stakeholder relations strategy." Accordingly, it has established a stakeholder meetings database and collected data for a performance scorecard on the effectiveness of stakeholder engagement.²³⁴

d. Patterns among the Oversight Mechanisms

Comparison of Watchdog Bodies in Various Countries	Duty to inspect prison conditions	Duty to report on prison conditions	Duty to investigate complaints	Structural independence from prisons administration	Binding decision-making powers	Enforcement & disciplinary powers	Power to conduct ad hoc prison visits	Community engagement
Judicial Inspectorate for Correctional Services	✓	✓	✓	-	-	-	✓	✓
Independent Police Investigative Directorate	-	-	✓	✓	✓	✓	✓	✓
Her Majesty's Chief Inspector of Prisons for England & Wales	✓	✓	-	✓	-	-	✓	✓
The Independent Monitoring Boards of England and Wales	✓	✓	✓	✓	-	-	✓	-
The Prison and Probation Ombudsman for England & Wales	-	-	✓	✓	-	-	-	✓
The Canadian Correctional Investigator	✓	✓	✓	✓	-	✓	-	-
Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment of the Council of Europe	✓	✓	✓	✓	✓	-	✓	-
South African Human Rights Commission	-	-	✓	✓	✓	✓	-	✓
Zambia Visiting Justices & Official Visitors	✓	-	✓	✓	-	-	✓	-
Zambia Human Rights Commission	✓	✓	✓	✓	-	-	✓	✓
Zambia Prisoners' Aid Societies & Commissioner for Investigations	-	-	✓	-	-	-	-	✓

As discussed in the previous sections, there are several key characteristics regarding various watchdog bodies' functions, independence, powers, and community engagement. The Comparison of Watchdog Bodies in the Various Bodies table highlights patterns amongst the IPID and other correctional centre watchdog bodies in other countries. The commonality between all the bodies, and the reason for their comparison against each other, is the fact that they have inspecting, reporting and investigative powers. Institutions similar in form and function to JICS are structurally independent of their respective detention services. This particular element is fundamental to the effective functioning of the detention oversight body. Thus, JICS should also be structurally independent of DCS.

IPID, the Canadian Correctional Investigator, the Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment of the Council of Europe, and the SAHRC have the right, to varying degrees, to create binding decisions, enforce decisions and discipline correctional officers. This power goes beyond merely reporting on abuses, and grants the oversight body legitimacy in the eyes of the complainant. For this reason, JICS should be empowered in this way.

Most oversight bodies reviewed in this paper also have the power to conduct ad hoc and unannounced prison visits. These may ensure that the conditions in which they see detainees are actually a true reflection of how those detainees normally live in detention. This would certify that the efforts of the oversight body actually improve the conditions of detainees.

The fact that JICS, through the VC, engage with members of the community over conditions of imprisonment, deserves laudation and should continue.

Recommendations for Enhancing the Independence and Successes of the Judicial Inspectorate for Correctional Services

Based on the analysis of JICS' challenges and on the comparisons with other similar institutions both in South Africa and in other countries, there are thematic issues facing JICS. This section will present potential changes that may address those issues.

a. Recommendations to Increase the Judicial Inspectorate for Correctional Services' Independence¹

JICS' governing legislation should be assessed to inform how JICS' structural independence should be obtained: either through an amendment of the CSA or through the creation of a separate governing statute.

As financial independence is a hallmark of an independent oversight body, JICS must have a separate budget from DCS. This budget could be allocated directly from the Treasury as is the case with the IPID and a few other Chapter Nine institutions.

The National Commissioner should not be mandated to appoint the CEO of JICS and misconduct by the CEO should not be reportable to the National Commissioner by the IJ. It should also be clear that the National Commissioner does not have veto power; but rather that appointments should be the sole responsibility of the Office of the Inspecting Judge (OIJ).

In practice, the Minister of Correctional Services nominates the Inspecting Judge, who is then appointed by the President. This is inappropriate for an independent oversight body for DCS. The Minister should not be empowered to nominate the IJ and should thus be removed from the appointment process.

However, as with commissioners for the South African Human Rights Commission and the Commission for Gender Equality, the appointment of the Inspecting Judge should also not be made unilaterally by the President. It must also be decided whether the Judicial Services Commission or the parliamentary committees on correctional services should be involved in the nomination, vetting, and appointment process. In addition, there should be space for civil society stakeholders to participate in the nomination and review process.

b. Strengthening the Judicial Inspectorate for Correctional Services' Mandate

The list of items on which JICS makes mandatory reports should be expanded to include known systemic challenges within DCS facilities – such as inmate rape and TB and HIV-related health challenges that contribute to inmate deaths. At present, the CSA requires JICS to report on inmate deaths, inmate segregation, unauthorised use of force, and the use of mechanical restraints. This list should be expanded to include other known rights abuses, including official-on-inmate assault, torture, and sexual abuse, which is a widely known problem plaguing DCS centres.²³⁵

¹ Recommendations in section a, b, and c were co-developed by Sasha Gear, Nooshin Erfani-Ghadimi and Emily Keehn, as co-authors of *Recommendations for Enhancing the Independence and Effectiveness of the Judicial Inspectorate for Correctional Services*, submitted to the Parliamentary Portfolio Committee on Correctional Services on 31 October 2012. This submission was based on an earlier draft of this paper.

JICS should make mandatory reports on known health challenges that are contributing to the number of 'natural deaths' in DCS facilities. Specifically, HIV, AIDS and TB, which are known to be serious challenges in correctional centres. JICS should conduct mandatory investigations on the delivery of health services for inmates who have died from HIV, AIDS and/or TB.

Whether JICS should be given clear investigative powers, similar to other human rights oversight bodies, or police-investigative powers like IPID that result in a court-ready document to be handed to the NPA, should be explored.

At this time, JICS is weaker than other human rights oversight bodies such as the South African Human Rights Commission and the Commission for Gender Equality, which have the power of subpoena, the power to institute legal proceedings, and a clear mandate to refer cases to the NPA or other commissioners. Cooperation with investigations conducted by these institutions is also required by law. The SAHRC and Commission for Gender Equality make decisions that are binding and enforceable, and the SAHRC even has the right to enter and search premises, and seize and attach articles relevant to their investigations if they possess a warrant. JICS' powers pale in comparison to these institutions, as it can only inspect and report on the treatment of inmates in DCS centres. It can call for hearings, and enter DCS facilities and access records, and indeed JICS' legal unit does conduct in-depth investigations into specific unresolved cases. However, failure by DCS to comply with JICS recommendations does not result in penalties, other than reporting to regional and national head offices and/or to the Portfolio Committee. These investigations are also not systematic or mandated for specific serious issues, such as unnatural deaths, torture, assault, or rape involving DCS staff, and there is no clear mandate to refer cases to SAPS or the NPA when the facts reveal criminal conduct by DCS staff.

Whether JICS should be empowered to make disciplinary recommendations to DCS, and whether DCS should be mandated to act on and report back on these recommendations, should be reviewed. Similar to the IPID, and as a result of conducting its investigations, JICS should be empowered to make disciplinary recommendations that mandate action from DCS. JICS should not be empowered to determine the process or outcome of such disciplinary proceedings, but its recommendations to institute disciplinary proceedings could have binding effect.

As in section 30 of the IPID Act, the CSA could be amended to empower JICS to make recommendations regarding disciplinary matters, and it should require DCS to:

- i) acknowledge receipt of the recommendation and initiate disciplinary proceedings in terms of the recommendations and inform JICS, the National Commissioner, and Minister of such proceedings;
- ii) periodically offer feedback to the Minister on the progress of such proceedings; and
- iii) inform JICS and the Minister immediately upon finalisation of such proceedings.

At present, there are no policies or regulations to guide referral of criminal cases involving DCS staff to the SAPS or NPA. In the last three years, SAPS closed the files in the majority of homicide cases from DCS, while NPA declined to prosecute on the cases referred to them.²³⁶ This requires urgent attention. Taking this current apparent impunity into consideration, it is vital for JICS to be mandated to refer certain cases to the SAPS and NPA for investigation and prosecution. Such referrals should be a result of JICS' own investigations into cases pertaining to torture, assault, rape and sexual assault, and unauthorised use of force against inmates. DCS should be barred from conducting internal investigations until JICS' investigations are complete. It is a conflict of interest for DCS to conduct such investigations as it has a vested interest in their outcome. As an impartial oversight body, JICS must be given the power to conduct its own investigations first.

At present, under section 134 of the CSA, the Minister of Correctional Services may make regulations unilaterally on issues such as visitation to correctional centres, procedures in the aftermath of a death

of an inmate, the manner in which inmates make requests and complaints and how they are dealt with by DCS officials, the search of people entering DCS facilities, and the reporting procedures where force is used. All of these situations have the potential to affect JICS' ability to conduct its own affairs. While this provision is not abused, the CSA should be amended to clarify that the Minister must consult with the IJ when making regulations that affect the work of JICS.

JICS should make public reports on its findings concerning its investigations. JICS is not barred from making media statements or ensuring widespread dissemination and comment on its public documents and reports. Yet, to date, it has not made any such statements, nor publically released its reports, aside from tabling them in Parliament and posting them on its website. As with other watchdog bodies, alerting the public and key stakeholders to its findings must be essential to JICS' mandate. Informing the public about their actions and findings strengthens public confidence in institutions, and helps to create realistic expectations about those institutions. JICS should take full advantage of its independence and ensure the widespread dissemination of its reports and findings, including through press statements.

The role of JICS in preventing human rights violations in DCS facilities should be made clear in its governing legislation. At present, JICS' mandate is to inspect and report on correctional centre conditions and the treatment of inmates. It should be made clear in the CSA that the objective of JICS is to not only report on the ill-treatment of inmates in the aftermath of abuses, but to proactively prevent human rights violations from occurring in the first place.

JICS should be adequately resourced to fulfil its mandate. It is clear that a drastic expansion of JICS' mandate and powers would require considerable additional capacity within JICS, which, in turn, would require a substantial increase to its budget and personnel.

c. Improving the Quality of Reports, Complaints, and Research

The CSA should be amended to mandate JICS to conduct thematic research on key challenges facing DCS facilities. JICS has unprecedented access to DCS facilities and inmates, bringing vital transparency to a historically opaque department. JICS should take advantage of this unique position and conduct thematic research to better access challenges facing DCS facilities. The CSA should be amended to mandate JICS to conduct thematic research on key challenges, and to make such research publicly available.

The CSA should be amended to ensure that all inmates are informed about JICS and about their right to have access to ICCVs.

Training of ICCVs should be strengthened. In order to improve the effectiveness of ICCVs and to ensure that they have sufficient understanding of the purpose of their work, ICCV training should include a substantial component on human rights in correctional centres. Such training should be provided to new ICCVs as well as on a regular basis thereafter.

Issues that hinder inmates from reporting problems to JICS should be examined, and measures should be put in place to protect inmates from retaliation, especially in cases where they make complaints to JICS about DCS members. Inmates must feel free and unhindered from making complaints to JICS. Measures that explicitly protect inmates from retaliation may help improve their ability and freedom to make complaints.

d. Recommendations for Civil Society Organisations on Supporting the Judicial Inspectorate for Correctional Services

There is a key role for civil society organisations to play in supporting JICS to fulfil its mandate. Civil society organisations are in a position to lend expertise and capacity, and provide input on the work of JICS. This section will discuss how civil society and community members can help JICS advance the protection of inmates' human rights.

1. Training and Capacity Building

In order to improve the cooperation between JICS and DCS, and to help protect inmates' human rights, civil society and community organisations could assist JICS to develop new training content for ICCVs and potentially for DCS members. There should be training content on human rights in correctional centres and on the systemic issues related to correctional centre reform. The human rights training should incorporate information about the various rights guaranteed in South Africa's Bill of Rights.

Civil society organisations could also work with JICS to update and specialise existing training content, including the JI's new paralegal training programme. Specialised training could focus on identifying signs of torture or sexual violence, HIV and TB services entitled to inmates, nutrition, and access to other health services.

2. Stakeholder Input

VC monthly meetings are open to the public and thus present a valuable opportunity for civil society organisations to engage with JICS and provide input. JICS should share its VC schedules with stakeholders and invite their input to help resolve specific complaints and offer shadow reporting to the public and Portfolio Committee to help pinpoint areas where JICS requires support.

3. Publicity and Media Outreach

In order to assist JICS with improving the public awareness of its work, ICCVs, civil society organisations could help publicise JICS' annual and quarterly reports. Stakeholders with more freedom and capacity to engage with the media can play a key role in publicising and increasing media attention to key issues and trends published in the reports.

4. Nominating Independent Correctional Centre Visitors

Noting that JICS has not been able to fill all of its ICCV positions, and because of the importance of having committed and compassionate ICCVs, civil society organisations should publicise the posts of the ICCVs to their community members, partner organisations, and volunteers. Civil society organisations are in a unique position to utilise their networks to nominate potential ICCVs and help JICS fill its positions.

5. Analysing Systemic Trends in the Correctional System

Civil society organisations can play a role in helping JICS improve its reporting. Stakeholders could assist JICS with developing and applying a minimum set of criteria or standards by which to measure and evaluate correctional centres consistently. Updates in reporting forms could also bring JICS in line with DCS changes. As mentioned earlier, JICS does not capture and report data on sexual violence, while DCS centres have begun to track these statistics. Through better data collection and reporting, stakeholders can help JICS identify and analyse broader systemic trends in the correctional system.

6. Policy Advocacy and Enhancing the Independence of the Judicial Inspectorate of Correctional Services

Civil society organisations can also play a major role in enhancing the independence and powers of JICS. Through policy advocacy efforts and engagement with the Parliamentary Portfolio Committee on Correctional Services, stakeholders can lobby for amendments to the Correctional Services Act or the drafting of a separate governing statute for JICS to at a minimum:

- Restructure JICS as an independent body with its own funding which is not drawn from the DCS budget;
- Clarify that appointments in the OIJ do not need to be made in consultation with the National Commissioner of Correctional Services;
- Advocate for JICS to have strengthened investigative powers and ensure that it is able to make disciplinary recommendations and refer dockets to the NPA for prosecution, and
- Make it a criminal offence for anyone to hinder or obstruct the work of the OIJ.

7. Enhancing Compliance with the Judicial Inspectorate of Correctional Services' Recommendations

Civil society organisations can also support JICS' power of reporting and enhance compliance with its recommendations by engaging and consulting with DCS on how it plans to implement JICS' recommendations. If and when DCS fails to implement JICS' recommendations, stakeholders should call DCS to account and exert pressure for DCS to comply. Stakeholders should also provide support where possible to assist DCS in implementing recommended changes.

8

Conclusion

The challenges and lessons learned in this paper offer a starting point for discussion on how to reform JICS, though it is clear that further consideration is required. Based on comparative analysis, there are a few key lessons that could assist JICS to be more effective. Firstly, JICS needs functional independence to be an effective oversight mechanism. This requires legislative reform to sever its financial and administrative interlinkages with DCS. JICS' powers to only make recommendations are further weakened by this lack of independence from DCS. The provision of enforcement powers and the ability to make binding disciplinary recommendations may increase JICS' effectiveness. Although there are many areas needing improvement, JICS is a vital oversight mechanism that seeks to embrace community and civil society involvement. Without it, the conditions in South Africa's prisons would be largely unknown to the public, and inmates' human rights abuses would go unchecked. Therefore steps should be taken to support JICS, such as sustained advocacy by civil society to make the reform of JICS a priority for policymakers. Until this reform is achieved, it is important that civil society increase its engagement with JICS under the current regime and share capacity and expertise to improve its protection of inmates' human rights.

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- ⁶ JICS Annual Report 2010/2011, *supra* 4 at 23.
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