



DETENTION JUSTICE FORUM

SUBMISSION TO THE PORTFOLIO COMMITTEE FOR CORRECTIONAL SERVICES

**Regarding the
2012/13 Annual Reports of the**

***Department of Correctional Services
and the
Judicial Inspectorate For
Correctional Services***

Coordinating Committee Contacts:

Emily Keehn
Policy & Advocacy Specialist
Sonke Gender Justice Network
Emily@genderjustice.org.za
072 225 6041

Sasha Gear
Programme Director
Just Detention International
sgear@justdetention.org
083 565 7318

Nooshin Erfani-Ghadimi
Project Coordinator
Wits Justice Project
Nooshin.erfani-ghadimi@wits.ac.za
084-283-1445

I. Introduction

The Detention Justice Forum (DJF) is a civil-society membership organisation comprising NGOs and CBOs which seek to ensure that the rights and well-being of detainees are respected and upheld, as enshrined under the South African Constitution, the country's laws, and international human rights principles.

The undersigned members of the DJF welcome this opportunity to comment on the annual reports of the Department of Correctional Services (DCS) and of the Judicial Inspectorate of Correctional Services (JICS) for the 2012-2013 financial year, ending on 31 March 2013.

This submission is presented to the Portfolio Committee for Correctional Services (Portfolio Committee) for its deliberation and information at its hearing on the two reports, being held on 9 October 2013.

II. Independent Oversight:

The JICS is a vital watchdog body that oversees South Africa's correctional system and is mandated to inspect and report on the treatment of inmates. To be an effective independent oversight mechanism for a correctional system that is mired with challenges, JICS needs strong institutional independence as well as support and cooperation from other departments such as the DCS, the National Prosecuting Authority (NPA), and the South African Police Service (SAPS).

In previous submissions to the Portfolio Committee on this subject, made by members of the Detention Justice Forum¹, these issues have been discussed at length. It is useful, however, to provide a short summary of the pertinent recommendations:

- a. JICS's governing legislation should be reviewed to enhance its structural independence from DCS. It must be administratively and financially separate from DCS.
- b. The process to appoint the Inspecting Judge should be reviewed to enable stakeholder consultation, enable more rigorous vetting, and remove the Minister of Correctional Services from the process.
- c. JICS should be given enhanced powers to have clear investigative powers comparable to the South African Human Rights Commission and the Commission for Gender Equality, to have the power to make binding decisions regarding the referral of criminal cases to the SAPS and NPA, and to make recommendations on the instituting of internal disciplinary proceedings.
- d. The items on which JICS makes mandatory reports should be expanded to include other serious issues that are known to be systemic challenges within DCS facilities.
- e. Inmate awareness of, and training of, Independent Correctional Centre Visitors (ICCVs) should be strengthened.
- f. JICS should better leverage its access to DCS centres, be mandated to conduct thematic research on challenges in correctional centres, and make public reports on its investigative findings.
- g. JICS must be adequately resourced to fulfil its mandate.

¹ *Recommendations for Enhancing the Independence and Effectiveness of the Judicial Inspectorate for Correctional Services*, submitted to the Portfolio Committee for its meeting on 31st October, 2012, by Sonke Gender Justice, Detention Justice International and Wits Justice Project.

It is encouraging to see that the JICS 2013 annual report devotes a section (pages 14-19) to discuss these issues and to making four recommendations to address the structural concerns raised. We support the call for JICS to be mandated with clear investigative and enforcement powers - including the ability to mandate internal DCS disciplinary proceedings - and to get funds directly from the Treasury.

However, whereas JICS asks that its CEO be appointed and accountable to the Minister of Correctional Services, we strongly argue that this does not go far enough in ensuring complete separation of the inspecting body from the organization is must oversee.

In addition, the changes recommended by JICS seek to enact reform only through amendments to the Correctional Services Act as opposed to a separate governing statute. The ratification of the Optional Protocol of the Convention Against Torture (OPCAT) would require the establishment of a national preventative mechanism, and an opportunity for JICS to be restructured in a robust manner and with thoughtful consideration, rather than through *ad hoc* and piecemeal amendments.

III. Ratification of OPCAT and the National Preventative Mechanism

There are continued calls from civil society that the authorities commit to ratifying the Optional Protocol to the Convention against Torture (OPCAT), and to establish an adequate national preventive mechanism for effective prevention of torture and abuse.

As discussed above, the process of designing an effective national preventative mechanism will provide South Africa with an opportunity to establish an oversight regime in the country that will reflect and fully conform to the Constitution and international human rights norms and standards. It will allow the country to set a watershed away from its “shameful history of gross human rights abuses, including torture of many of its citizens and inhabitants”².

IV. The Prevention and Combating of Torture of Persons Act, 2013

On 25 July 2013 President Jacob Zuma signed into law the Prevention and Combating of Torture of Persons Act. The Act creates a specific criminal offence of torture and related offences and provides for the prosecution of offenders. Importantly, the Act creates an obligation on the State to promote awareness of the prohibition of torture, including education and awareness programmes directed at public officials.

The DJF calls on both the JICS and the DCS to revise reporting processes, systems and templates to reflect this important new legislation and onus on public authorities. New training and implementation targets must be set for officials of both bodies and reported on in subsequent years. Importantly, reports must include information on the number of complaints of torture received and the subsequent investigations and possible prosecutions which are mandated by the Act.

² Prevention and Combating of Torture of Persons Act 2013

V. Gender-specific information

The DCS Annual Report contains no information about inmates disaggregated by gender. The JICS Annual Report does contain some gender-disaggregated information, although only on the ages and genders of sentenced offenders and remand detainees, and does not provide any further gender-specific information. By not disaggregating data according to gender and providing further information, it is impossible to discern whether the minimum standards and guidelines for the treatment of female inmates are being met and whether female inmates have equal access to programmes and an equivalent standard of care as compared to male inmates. In addition, the absence of any mention of the gender-specific needs of inmates, or any evaluation/measurement of whether and how these needs are being met, is of particular concern.

In addition, it is also crucial to disaggregate data on assault and sexual violence, in order to ensure that comprehensive analysis is possible, based on which prevention strategies can be devised.

VI. Quality of Report: JICS

Overall, the quality of analysis included in the 2013 JICS annual report is of a higher standard than that of previous reports, and outlines more clearly unsatisfactory issues and challenges. However, there is almost no information on outcomes of investigations, and no information given on why the NPA continues to decline to prosecute officials. Likewise there is inadequate analysis on the natural deaths in the past year.

In terms of outcomes, the report refers the reader to the quarterly reports tabled in Parliament but does no overarching analysis of the outcomes in those reports.

VII. Quality of Report: DCS

Similarly, the DCS report provides inadequate information on deaths (both natural and unnatural) of detainees. It is not sufficient to merely attribute an unclear proportion of unnatural deaths to suicide and provide no other breakdown of the other causes of unnatural deaths. Such lack of crucial detail is apparent throughout the report, with significant challenges either dealt with cursorily, or not at all, including issues of sexual violence as well as the management of tuberculosis.

We thank the Portfolio Committee for the opportunity to make this submission.

Respectfully submitted:

1. Wits Justice Project
2. Sonke Gender Justice
3. Just Detention International
4. Footballers for Life
5. Centre for the Study of Violence and Reconciliation
6. Egon A. Oswald Attorneys at Law
7. Centre for Applied Legal Studies