



**Submission to the Portfolio Committee on Correctional Services**

***Judicial Inspectorate for Correctional Services Annual Report 2012/2013 and  
Department of Correctional Services Annual Report 2012/2013***

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## I. Executive Summary

Sonke Gender Justice ('Sonke') and Just Detention International ('JDI') are committed to assisting the Department of Correctional Services ('DCS') and the Judicial Inspectorate for Correctional Services ('JICS') to meet their mandate of securing the health, safety and human rights of inmates. Our submission to the Portfolio Committee on Correctional Services ('the Portfolio Committee') highlights issues in the DCS and JICS Annual Reports for 2012-2013 that are related to sexual violence, HIV and AIDS. Our key areas of concern include the following:

- **JICS independence:** JICS must be commended for identifying the need for greater independence. However, the proposed move to locate JICS within the Ministry of Correctional Services does not sufficiently address the issue of its independence and autonomy. We recommended that separate legislation be drafted for JICS that highlights its administrative, financial, and structural independence from DCS. JICS should be afforded the powers to make binding recommendations on the institution of disciplinary and criminal investigations of DCS officials who violate the rights of inmates.
- **Deaths in custody:** The classification of 'natural deaths' needs to be reconsidered since certain imprisonment conditions, for example tardy medical response to inmates, contribute to inmates deaths that are currently classified as 'natural deaths'. Figures reported may therefore not be an accurate reflection of 'natural' and 'unnatural' deaths. The increase in suicide amongst inmates must be addressed. Inmate screening, especially for those who are victims of sexual abuse, must be implemented. Deaths in custody, particularly suicide, should be investigated and possible causalities should be reported on. Where possible, medical records should be analysed to evaluate, post-mortem, whether a victim of suicide was also a victim of sexual violence.
- **DCS official-on-inmate assault.** All assaults on inmates by DCS staff should lead to internal DCS disciplinary proceedings and also to criminal investigations by the South African Police Service ('SAPS'). When the need arises, prosecution by the National Prosecuting Authority ('NPA') should be pursued. There is also a need to review the disciplinary penalties for staff found guilty of abuse.
- **HIV testing and treatment:** DCS is to be congratulated for exceeding its targets related to HIV testing and ARV enrolment. However, a system of monitoring and accountability is required to

ensure that inmates who have started treatment do not default due to stock-outs and other impediments. Defaulting on treatment can result in drug resistance, which puts HIV-positive inmates' lives at risk, and contributes to public health challenges.

- **Sexual Violence:** While JICS provides disaggregated statistics on sexual violence, separate from the general assaults category, DCS still does not do this. We call on the DCS to disaggregate its assault statistics. But, we also congratulate the DCS on adopting the Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities, and for committing to instituting pro-active measures to prevent, detect and respond to sexual violence against inmates. We note that DCS is in the midst of preparing an implementation plan for this critical new policy, and we offer our continued support to the DCS in its efforts to address sexual violence. However, we are concerned that only one incident of sexual violence was reported and documented by JICS in its Annual Report. Because of its sensitive nature, sexual violence is underreported in the community and in correctional facilities alike. Thus, in addition to strategies for preventing sexual abuse, JICS must focus on improving knowledge of sexual abuse among its own staff, DCS members, and inmates, and encouraging the reporting of such abuse. One opportunity to do so is for JICS to demand that DCS implement the "Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities."

## II. Introduction

Just Detention International ('JDI')<sup>1</sup> and Sonke Gender Justice ('Sonke')<sup>2</sup> welcome the opportunity to make this submission to the Portfolio Committee on Correctional Services ('the Portfolio Committee') on the 2012/2013 Annual Reports tabled by the Judicial Inspectorate for Correctional Services ('JICS') and the Department of Correctional Services ('DCS') respectively. This submission will be supplemented by an oral submission before the Portfolio Committee on 9 October 2013.

Sexual abuse of inmates is a widespread feature in DCS facilities. Such abuse causes serious physical and psychosocial harm. Sexual violence is also a driver of HIV transmission within correctional centres, also making inmates more susceptible to TB. HIV prevalence estimates from DCS and the Institute for Security Studies are 19.8% and 40% respectively<sup>3</sup>. Nearly half of all inmates surveyed by JICS in 2007

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<sup>1</sup> See [www.justdetention.org](http://www.justdetention.org).

<sup>2</sup> See [www.genderjustice.org.za](http://www.genderjustice.org.za).

<sup>3</sup> Muntingh, L. (2008). "The prevalence of HIV in South Africa's prison system: some, but not all the facts, at last." CSPRI Newsletter 26 May 2008; Schalkwyk, A. "Killer Corrections: AIDS in South African Prisons," Harvard International Review, Spring 2005.

reported that sexual abuse happens “sometimes,” “often”, or “very often”.<sup>4</sup> It is against this background that JDI and Sonke would like to commend both JICS and DCS for their continued efforts to protect the safety of inmates. Based on the reports tabled, however, we also wish to express our concern regarding specific matters that may constitute major barriers to securing the health and human rights of inmates.

### **A. Sonke Gender Justice**

Founded in 2006, Sonke uses a human rights framework to build the capacity of government, civil society organisations and citizens to achieve gender equality, prevent gender-based violence and reduce the spread of HIV and the impact of AIDS. Sonke’s work with DCS seeks to address the interrelated issues of HIV and AIDS and sexual abuse, and includes policy advocacy, capacity building, and training with inmates and staff. Using our One Man Can (‘OMC’) and Brothers for Life curricula,<sup>5</sup> we implement peer education programmes in the Western Cape, Gauteng, Mpumalanga and Free State DCS facilities to improve the health-seeking behaviours of inmates and staff members; and also to provide support, education, and an example of healthy living to their counterparts. We also train inmates and staff members about the unequal gender dynamics that contribute to the spread of HIV, prevent men from accessing health services, and lead them towards violence – both between men and against women and children. Sonke works in partnership with JDI to promote a policy environment that addresses the issues of sexual violence and HIV in DCS centres. Sonke and JDI also developed a training tool for DCS and JICS which seeks to assist these institutions in responding to the needs of survivors of sexual violence in DCS facilities.<sup>6</sup> Cemented with a memorandum of understanding, Sonke provides technical support to JICS on the issues of HIV and sexual violence, and together with JDI helped JICS develop and adopt a specialised complaints system for inmate complaints on sexual abuse. In addition, Sonke, JDI, and Wits Justice Project serve as co-coordinators for the civil society coalition, Detention Justice Forum, which works to increase accountability on issues pertaining to inmate health and rights.

### **B. Just Detention International**

JDI is an international health and human rights organisation that seeks to end sexual abuse in all forms

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<sup>4</sup> Judicial Inspectorate for Correctional Services, *Annual Report 2007/2008*, at 33.

<sup>5</sup> Please see [www.brothersforlife.org](http://www.brothersforlife.org), and <http://www.genderjustice.org.za/onemancan/>.

<sup>6</sup> See [http://genderjustice.org.za/resources/doc\\_download/101253-training-guide-addressing-sexual-violence-and-hiv-in-department-of-correctional-services.html](http://genderjustice.org.za/resources/doc_download/101253-training-guide-addressing-sexual-violence-and-hiv-in-department-of-correctional-services.html).

of detention. JDI's work is focused on creating strong policies aimed at protecting the rights of prisoners, ensuring independent oversight of detention facilities, and shifting negative public attitudes of inmates. JDI has worked in South Africa since 2005, when the organisation was contacted by corrections officials at Pollsmoor Correctional Centre requesting help in stemming rampant sexual violence at their prison. Since then, JDI has provided training to hundreds of corrections officials nationwide – ranging from brief workshops to five-day master trainings – as well as to officials and JICS correctional centre visitors.

JDI collaborated with DCS and the Centre for the Study of Violence and Reconciliation (CSV) in developing the Framework to Address Sexual Abuse of Inmates in DCS Facilities. This is a comprehensive set of policies to prevent and deal with sexual violence in detention. In recent years, JDI has made several presentations to the Portfolio Committee with reference to sexual abuse in DCS facilities and recommended best practices for addressing the problem. JDI also provided input to the Portfolio Committee on the development of the 2011 Correctional Matters Amendment Act provision requiring that inmates be assessed to determine their vulnerability to sexual abuse in detention. JDI, which has an office in Johannesburg, works closely with other civil society stakeholders, including Sonke, in its efforts to improve the health and safety of inmates in DCS facilities.

### **III. JICS Annual Report**

#### **A. JICS' Independence and Mandate**

JICS must be applauded for calling for its own institutional independence from DCS.<sup>7</sup> This is an issue that has been raised by the Portfolio Committee and we congratulate the Portfolio Committee for arranging a meeting with the Independent Police Investigative Directorate and the South African Human Rights Commission ('SAHRC') to address the question of independence.<sup>8</sup> In its Annual Report, JICS proposes that the Correctional Services Act ('CSA') be amended to reflect financing by the National Treasury instead of DCS and that the accountability and appointment of JICS' CEO be made by the Minister of Correctional Services instead of the National Commissioner.<sup>9</sup> These suggestions appear merely to be temporary solutions to a longstanding problem. As such, they are not good enough.

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<sup>7</sup> Judicial Inspectorate for Correctional Services, *Annual Report 2012/2013*, at 17.

<sup>8</sup> Portfolio Committee on Correctional Services "Strengthening the Judicial Inspectorate for Correctional Service (JICS): Interaction with JICS, Department of Correctional Services, Independent Police Investigative Directorate & South African Human Rights Commission", September 2013.

<sup>9</sup> JICS *Annual Report 2012/2013*, at 19.

In ensuring its independence, we recommend the following:

- Separate legislation be drafted for JICS which highlights its administrative, financial and structural independence from the DCS.<sup>10</sup> We support JICS' recommendation that funding be provided directly from the National Treasury. The separate legislation should provide that JICS' CEO is not accountable to the National Commissioner of Correctional Services. But, we are also concerned that making the CEO accountable to the Minister of Correctional Services would continue to compromise JICS' independence.
- JICS should have the power to make binding recommendations on the institution of disciplinary and criminal investigations of DCS officials who violate the rights of inmates. DCS should be required to report back to JICS on these enquiries.
- We agree with JICS' recommendation that it be granted investigative powers akin to IPID.

The Inspecting Judge has the power to investigate corruption; the extent to which this power is beneficial to or utilised by JICS has not been clarified. We recommend that future annual reports make mention of this power and its utilisation.

## **B. Deaths in Custody**

JICS reports that deaths in custody have decreased by 143 from the last financial year. A reported 652 natural deaths and 57 unnatural deaths occurred in correctional centres in the last financial year. These numbers may be misleading. JICS accepts the definition of unnatural death, reflected in the Regulations for Forensic Pathology of the National Health Act as including "any death, including those deaths which would normally be considered to be a death due to natural causes, which in the opinion of a medical practitioner, has been the result of an act of commission or omission which may be criminal in nature".<sup>11</sup> This definition is problematic, as it leads JICS to classify as natural deaths cases where inmates have died due to inaccurate screening for disease as mandated to DCS, inadequate or tardy treatment of inmates by DCS, tardy response by DCS to emergencies raised by inmates, or defaulting of treatment by inmates due to DCS' actions or inactions. Such deaths should be categorised as unnatural deaths, even if they arise from TB, AIDS, or pneumonia. In its 2011/2012 Annual Report, JICS disaggregated deaths by

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<sup>10</sup> E Keehn, et al, "Evaluation of the South African Judicial Inspectorate for Correctional Services: Assessing its independence, effectiveness and community engagement," July 2013.

<sup>11</sup> National Health Act, 61 of 2003 Regulations Regarding the Rendering of Forensic Pathology Services, R 636, Government Gazette 30025, 20 July 2007.

“natural causes” by categorising them according to disease.<sup>12</sup> This was not done in the 2012/2013 Annual Report; JDI and Sonke suggest that it be done in the future.

We note the data on the increase in suicides highlighted in both the DCS and JICS Annual Reports. This should be investigated. Victims of sexual violence are at risk for committing suicide, especially those who have not received treatment and this risk is compounded by the lack of support, medical and/or psychosocial, in the prison environment.<sup>13</sup> We agree with the DCS’ recommendation that they develop a tool to assess inmates at risk of attempting suicide. We encourage DCS and JICS to consider whether an inmate has been a victim of sexual violence in this assessment tool. Where possible, medical records, and not just official complaints, should be analysed to evaluate, post-mortem, whether a victim of suicide was also a victim of sexual violence.

### **C. Sexual Violence**

JDI and Sonke commend JICS for disaggregating sexual violence complaints from the general assault categories. According to the JICS Annual Report, only one complaint of “assault (sexual)” was reported since they started disaggregating these complaints in the last financial year.<sup>14</sup> It is well established in research that sexual offences are highly underreported crimes in South Africa; this applies to prisons as well where it is very difficult to report and access support as a victim. We remind the Portfolio Committee that it is not reasonable to believe that this number is a correct reflection of the numbers of sexual assaults that occurred in correctional centres over the last year. Indeed, in its 2007 Annual Report, JICS reported that almost 50% of inmates confirmed that sexual abuse happens “sometimes”, “often”, or “very often” in correctional centres.<sup>15</sup> In order to gain a true reflection of the prevalence of sexual violence in correctional centres, JICS officials, DCS staff, and inmates must receive training on the Sexual Offences Act.<sup>16</sup> Such training will improve knowledge on sexual violence dynamics and enable timely detection and accurate reporting of such abuse. Of equally great importance is the urgent implementation of the Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities.

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<sup>12</sup> JICS *Annual Report 2011/2012*, at 51.

<sup>13</sup> Wolff N, “Sexual Violence Inside Prisons: Rates of Victimization”, *J Urban Health* v.83(5); Sep 2006.

<sup>14</sup> JICS *Annual Report 2012/2013*, at 49.

<sup>15</sup> JICS *Annual Report 2007/2008*, at 33.

<sup>16</sup> Criminal Matters (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

The JICS Annual Report does not define what is meant by “assault (sexual)” and does not distinguish rape from sexual assault; Sonke and JDI recommend that further reports do so. It is also recommended that acts of sexual violence committed on inmates by other inmates be disaggregated from those committed on inmates by DCS officials, and also that the gender of victims and perpetrators be disaggregated.

Sonke and JDI commend JICS for adopting a specialised complaints form for handling sexual violence complaints, and encourage JICS to ensure independent visitors are capacitated to use this tool to detect and sensitively respond to cases of sexual violence. JICS staff underwent a two day training on responding to sexual violence in correctional centres with Sonke, and Sonke and JDI look forward to supporting the widescale roll-out of this content, including more in-depth capacitation of its trainers.

#### **D. DCS Official-on-Inmate Assault**

Ninety-nine cases of DCS official-on-inmate assaults were reported to JICS and of those 80% were found to be meritorious. JICS reports that officials who were found guilty through internal DCS disciplinary procedures were given written warnings or one month’s suspension with or without remuneration.<sup>17</sup> This response by DCS is a contravention of the law, as assaults are criminal offences in South Africa. It is concerning that these assaults did not bring about the adequate criminal investigation by the SAPS or successful prosecution by the NPA. Beyond ensuring investigation by SAPS and prosecution by NPA, DCS should consider sterner punishments against those proven guilty of assault on inmates, including dismissal.

#### **E. Investigations**

JICS reports that investigations were conducted at 26 correctional centres over the last financial year. Included in the list of correctional centres investigated is Groenpunt Correctional Centre, where an inmate was killed by DCS officials.<sup>18</sup> The JICS Annual Report does not specify the outcomes of these investigations, whether a report was compiled or what action was taken pursuant to that report. In fact, only the report of the SAHRC on the Groenpunt riot is available, wherein the DCS is lamented for failing

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<sup>17</sup> JICS *Annual Report 2012/2013*, at 51.

<sup>18</sup> JICS *Annual Report 2012/2013*, at 44. *See also*

<http://www.sabc.co.za/news/a/15201d004e370d1f8d058fb7074a8d3f/Inmate-dies-at-Groenpunt-prison-in-Free-State-20131701>.



to address inmates' concerns.<sup>19</sup> JDI and Sonke are concerned about JICS' silence on this case, considering the fact that it is the legislative mandate of JICS to report on and address human rights violations in DCS facilities. Though JICS' quarterly reports note some outcomes,<sup>20</sup> the Annual Report presents an opportunity to analyse trends and issues over the course of the year. We recommend that JICS report on updates and outcomes of its investigations in its Annual Report.

#### **IV. DCS Annual Report**

##### **A. Staffing Performance Indicators**

Sonke and JDI applaud the inclusion of a section on performance indicators for DCS in its most recent report. We are also pleased that 95.8% of funded vacant DCS posts in have been filled.<sup>21</sup> It should be noted, however, that the number of funded posts in DCS is based on the approved accommodation of correctional centres and not on the inmate population. As such, based on the levels of overcrowding inside facilities, reduced vacancy rates may not result in sufficiently improved conditions for inmates.

A total of 145 cases against corrupt DCS officials were finalised and in 141 of those cases DCS officials were found guilty; JDI and Sonke applaud DCS for investigating people who commit acts of fraud, corruption, or serious maladministration and for achieving guilty verdicts. It is concerning however, that only 25 of those people were dismissed from DCS service.<sup>22</sup> It is noted that 165 court cases against DCS were finalised and that 122 of those cases were decided in favour of DCS. Sonke and JDI would like to know what the nature of those cases were.

The fact that negotiations are being entered into with organised labour on the shift model and overtime is also commended.<sup>23</sup> However, the DCS is called on to be mindful of the needs of inmates in resolving these issues. Specifically, we hope these systems can be improved to reduce the hours of lock-up, which can be up to 23 hours a day, increase staffing and reduce response times to emergencies experienced during these hours. DCS is also lauded for granting Sonke permission to undertake research on staffing levels and the shift system in DCS facilities, and hope the findings of this project will help inform improvements in DCS' staffing and shift systems.

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<sup>19</sup> See <http://www.sahrc.org.za/home/21/files/Groenpunt%20Report.pdf>.

<sup>20</sup> JICS, *Report to the Select Committee on Security and Constitutional Development*, <http://www.pmg.org.za/files/doc/2013/comreports/130612scsecurityreport6.htm>.

<sup>21</sup> Department of Correctional Services, *Annual Report 2012/2013*, at 43.

<sup>22</sup> *DCS Annual Report 2012/2013*, at 38.

<sup>23</sup> *DCS Annual Report 2012/2013*, at 46.

## **B. Health of Inmates**

We congratulate the The DCS for exceeding its target of testing 45% of inmates for HIV by testing 50%. DCS is also applauded for: (a) placing 65% of eligible inmates on ARVs (and exceeding its 51% target) and (b) placing 96% of inmates with CD4 counts below 350 on ARVs (and exceeding its 93% target).<sup>24</sup> Sonke and JDI look forward to a review of the DCS targets for HIV testing and ARV enrolment to ensure 100% voluntary HIV counselling and testing and ARV uptake for inmates.

While DCS has improved on testing and initiating eligible HIV positive inmates on treatment, it is critical to note that these efforts are rendered futile and even dangerous when inmates are forced to default on their ARV regimen due to systemic failures. Sonke has received complaints from HIV-positive inmates whose access to treatment is interrupted due to issues like shortages in medicines and guards to accompany them to collect their treatment. Systems of monitoring and ensuring accountability in delivering ARVs should be put in place to ensure the consistent delivery of ARVs on the ground.

It is noted that the DCS Annual Report does not contain indicators for TB and statistics on TB/HIV co-infection. We suggested that future Annual Reports make such mention.

We support DCS in its goal of creating a tool on assessing suicide risk, and recommend that such tool take issues of sexual abuse in contributing to suicide risk into consideration.

## **C. Sexual Violence**

DCS has begun to track sexual violence separately from general assault, however it has not reported on this in the Annual Report. We urge these statistics to be published in future Annual Reports.

It is noted that R900 000 of rape liabilities have been cancelled.<sup>25</sup> It is not clear what exactly is meant by the term “liabilities cancelled” and clarification is requested on this point. We also note that DCS reported that 165 court cases against the DCS were finalised and that 122 of those cases were decided in favour of DCS.<sup>26</sup> We request that the types of cases that have been successfully defended be clarified.

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<sup>24</sup> DCS *Annual Report 2012/2013*, at 75.

<sup>25</sup> DCS *Annual Report 2012/2013*, at 172.

<sup>26</sup> DCS *Annual Report 2012/2013*, at 39.

In March 2013, DCS adopted the finalised Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities, developed by DCS in collaboration with JDI and CSV. This is a watershed moment for DCS, and we congratulate the DCS for its commitment to pro-active approaches to addressing sexual abuse. The Policy Framework is an important statement to all inmates and survivors of rape in DCS facilities that the DCS acknowledges that rape is a problem, and is prepared to take action to stop it. It creates a zero tolerance standard on sexual abuse, and requires comprehensive inmate orientation and education on this standard and avenues to report and receive support. It also calls on training of all staff to prevent, detect and respond to cases of sexual abuse, and to improve staffing and surveillance to protect inmates at all times. We note that the senior management of DCS is in the midst of developing an implementation plan for this Policy Framework. We look forward to full and appropriate implementation of this policy, and continue to extend our support to the DCS in its efforts.

The Correctional Matters Amendment Act of 2011 required that newly sentenced inmates be screened for vulnerability to sexual abuse.<sup>27</sup> We note that a screening tool for this has yet to be developed. We urge that this be developed and implemented in line with the new Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities.

#### **D. Assault**

DCS' Annual Report states that 4.5% of inmates were assaulted in correctional centres or remand facilities. This is more than double DCS' own 2.2% target and is thus a matter of grave concern.<sup>28</sup> Sonke and JDI are also concerned that assaults have not been disaggregated by DCS. It is suggested that they be disaggregated by kinds of assaults.

#### **V. Conclusion**

In summary, JDI and Sonke would like to applaud JICS and DCS for making progress towards securing the health and human rights of inmates. In an attempt to ensure ongoing progress, Sonke and JDI recommend the following:

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<sup>27</sup> Section 38(1)(k) of the Correctional Services Act, 111 of 1998 read with section 6 of the Correctional Matters Amendment Act, 5 of 2011.

<sup>28</sup> DCS *Annual Report 2012/2013*, at 52.

- Secure the independence and autonomy of JICS through a separate statute as opposed to amendments to the Correctional Services Act.
- Develop an implementation plan for the Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities.
- SAPS should be involved in all investigations of allegations of staff-on-inmate assaults, and penalties should be incurred in line with those appropriate for criminal offences against DCS staff who are proven guilty of assaulting inmates.
- Develop and implement screening tools for: (a) identifying and assessing victims of sexual violence and (b) identifying inmates at risk of committing suicide. Where possible, medical records should be analysed of suicide victims which can be used to establish if a suicide victim was also a victim of sexual violence
- Anecdotal information suggests that HIV positive inmates who have initiated ARV are defaulting due to interrupted access to medicines, which presents a situation that is potentially life threatening to these inmates. A system of monitoring and accountability should be instituted to ensure delivery of treatment services to HIV- positive inmates.

Sonke and JDI thank the Portfolio Committee for the opportunity to make this submission.

