



Submission to the Parliamentary Portfolio Committee on Correctional Services

**On the 2012/13 Annual Reports of the
Department of Correctional Services
and the
*Judicial Inspectorate For
Correctional Services***



1. Background

The Wits Justice Project (WJP) is a project based at the Journalism Department of the University of the Witwatersrand and aims to impact significantly on the lives of people by striving for changes in the criminal justice system.

Through the four arms of the project – journalism, advocacy, law and education – WJP strives to bring substantial changes to the law and its practice and the wider criminal justice system as a whole. It uses transparent activism to promote the foundational values enshrined in the South African Constitution and international Human Rights law.

2. Introduction to this Submission

The WJP is grateful for the opportunity to make this submission to the Parliamentary Portfolio Committee on Correctional Services, on the 2012/2013 annual reports of both the Department of Correctional Services (DCS) and of the Judicial Inspectorate for Correctional Services (JICS). This submission focuses on issues common to both reports and will provide an overarching analysis of the criminal justice system as a whole.

We would like to bring to the attention of the Portfolio Committee the short time frame between the release of the reports and the deadline for submissions. In order to provide substantive input to the Committee's deliberations, more time should be given to study the often lengthy and technical documents. This is especially so since the reports are not immediately available digitally.

3. Health Care of Detainees

A major omission in the DCS report is its plans and strategies for the management of tuberculosis (TB) in places of detention. It makes no reference to the Department's own *Guidelines for the Management of Tuberculosis, Human Immunodeficiency Virus and Sexually-Transmitted Infections in Correctional Centres, 2013* (the Guidelines) which was jointly released on World TB Day, 24 March 2013, with the Department of Health.

Nor is there any mention of the landmark Constitutional Court judgment which seems to have fast-tracked the release of the Guidelines. The judgment in *Lee v Minister of Correctional Services*¹ requires that the DCS urgently implement an effective and comprehensive HIV and TB prevention, diagnosis, treatment, care and support programme in prisons.

The Court reasoned:

“It is indeed so that prisoners are amongst the most vulnerable in our society to the failure of the state to meet its constitutional and statutory obligations ... To suggest otherwise, in circumstances where a legal duty exists to protect Lee and others similarly placed, will fail to give effect to their

¹ Lee v Minister of Correctional Services (CCT 20/12) [2012] available at: <http://www.constitutionalcourt.org.za/Archimages/20248.PDF>

rights to human dignity, bodily integrity and the right to be detained in conditions that are consistent with human dignity under the Constitution, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, and medical treatment.”²

Whilst the creation of the Guidelines may be a part of this implementation, it is not nearly all that is required. The most important thing for the DCS to do is implement its current law and policy in line with *the National Strategic Plan on HIV, Sexually Transmitted Infections (STIs) and Tuberculosis (TB) 2012–2016*. Furthermore, the guidelines must be enabled by an implementation plan and a budget.

On page 75 of the DCS report, statistics are provided of inmates tested for HIV (in itself a worryingly low figure of 50%) but no mention is made of how many are tested for TB. Elsewhere in the report (page 24, page 73) the main indicator of health management seems to be that of mental illness treatment. Although this is a very important indicator, it is not sufficient to provide an understanding of health care in detention facilities in its entirety.

In this regard, the JICS report is far more instructive: on page 42 it details the findings from its inspection of 93 centres and the number of centres where inmates have access to medical professionals is as follows:

Medical practitioner	75
Psychologist	37
Dentist	49

Such a poor level of access to health care for inmates leads the JICS to conclude that “medical practitioners are employed on contractual basis who occasionally visit the centre”, “psychologist and dentists are rare commodities” and “the ratios between inmate population and nurses... are imbalanced”.

Furthermore, the JICS report references a 2011/2012 survey it conducted on health care, in which it found that “38% of inmates were apparently not examined within 24 hours of admission, 29% were not informed of their right to health care and 54% did not receive immediate treatment, constituting a breach of the Department’s policy. It is the view of the Inspectorate that the Department has not taken the finding and recommendations of said report into account”.

We urge DCS to institute an immediate and thorough review of health care services within its centres and to ensure it fully implements its own guidelines and standing orders. This is especially critical for the highly infectious scourge of TB in our country.

² (Para 65, internal quotes omitted)

4. Reduction of the numbers in remand detention

A statistic reported by both DCS (page 13) and JICS (page 38) is that 15-20% of remand detainees were detained with bail amounts fixed but not paid i.e. unaffordable bail amounts. According to the bail regime in South Africa³, this indicates that although an individual has been found to be eligible for bail, his or her individual economic circumstances have not been fully interrogated by the court. The second part of the bail enquiry pertains to the affordability of bail, which must be set at an amount the defendant can afford.

Such a large number – of people who are being kept behind bars as a result of economic constraints – must be targeted for immediate reduction by the entire Justice, Crime Prevention and Security (JCPS) cluster. This should include engagement between the judiciary, the National Prosecution Authority, Legal Aid South Africa and the South African Police Services, as well as civil society and legal experts.

A further task for the JCPS cluster, in an effort to reduce the number of detainees, is to reduce unnecessary or premature arrests by the police (JICS report, page 38). Police investigations and dockets must be complete and have a reasonable chance of success before being placed on the court roll. Our system must ensure that we do not continue to warehouse people whilst we finalize investigation. This is an unacceptable breach of the right to freedom and dignity.

In regard to the length of time spent in remand detention, the full and regular implementation of section 49G of the Correctional Matters Amendment Act, is one which we are avidly following, in the hope that numbers of people in remand for longer than 2 years will soon become a rare anomaly.

5. Abuse of Force

JICS reports (on page 51) on 99 investigations into official-on-inmate assault it conducted. It found that in 80% of the cases “there is merit in the allegations of inmates”. The response of DCS to such complaints, as described by JICS, is far from acceptable: “From the Department’s response in investigating these complaints, officials who are found guilty internally merely receive final written warnings and, in the worst case scenario, a month’s suspension with or without remuneration. The Department ought to adopt a zero-tolerance attitude to this type of misconduct”.

In addition, on page 43 of its report, JICS outlines the outcome of an investigation into “serious violations of human rights allegations” at 21 centres. It states that it continues to face the challenge of finalizing investigations timeously. One reason given for such a delay is the “excessive lapse of time” in the supply of medico-legal post-mortem reports by provincial departments of health (page 33). Furthermore, the response to JICS by DCS to requests for reports of their investigations is “dilatatory” (page 45).

³ *Bail and Remand Detention, Entry points into evaluating Gauteng's court stakeholders*, Robyn Leslie, 2012, Wits Justice Project: <http://www.scribd.com/doc/114425652/Bail-and-Remand-Entry-points-into-evaluating-Gauteng-s-court-stakeholders>

A culture of impunity is inevitable when such severe wrong-doing is seen to have negligible consequences. Moreover, with the newly-signed *Prevention and Combating of Torture of Persons Act*, DCS has an even stronger onus on it to act decisively on every case of abuse of force within its facilities.

6. Statistics cited in both DCS and JICS reports

As we noted in our submission on last year's two annual reports, there are continued discrepancies in the statistics provided in both reports, for the same period and in the same month (31 March 2013). A summary is provided below:

	DCS Report	JICS Report
Total Population	150,608	153,049
Sentenced	104,878	104,670
Unsentenced (remand)	45,730	48,379

Such discrepancies indicate that the methods used to gather such statistics continue to be unreliable and reflect a disregard of the need for reliable and current information and data.

7. Conclusion

Once again, we thank the Portfolio Committee for affording us the opportunity to provide input into its important deliberations. The work of the Committee is crucial in maintaining the balance and oversight enshrined in the Constitution, and we are proud to be able to take part in the process.

Respectfully Submitted,



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