



**Submission to the Portfolio Committee on
Correctional Services
*Judicial Inspectorate for Correctional Services
Annual Report 2013/2014***

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Table of Contents

I. Executive Summary	3
II. Introduction.....	4
III. Background: Sonke Gender Justice.....	4
IV. JICS Annual Report 2013-2014.....	6
A. JICS' Independence and Mandate.....	6
B. Sexual Violence	11
V. Conclusion	14
VI. Appendices	14

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I. Executive Summary

Sonke Gender Justice ('Sonke') is committed to assisting the Judicial Inspectorate for Correctional Services ('JICS') to meet its mandate of securing the health, safety and human rights of inmates. Our submission to the Portfolio Committee on Justice and Correctional Services ('the Portfolio Committee') highlights issues in JICS Annual Report for 2013-2014 that are related to JICS independence. We have highlighted a number of similar issues in submissions previously, and attach them to this submission as appendices (see Appendix A).

In this submission, we wish to focus on the following two key issues:

- a) **JICS independence:** Urgent measures are needed to ensure JICS independence and autonomy. Our research on Independent Correctional Centre Visitors ('ICCVs') shows how JICS is dependent on the Department of Correctional Services ('DCS') for the day-to-day execution of its mandate. We recommend 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.
- b) **Sexual Violence:** We commend JICS for disaggregating its statistics on assault to include information on sexual assault. We are, however, concerned that only 10 incidents of sexual violence were reported in the period under review. This does



not reflect the high levels of sexual violence that occur in correctional facilities but which are not reported. 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 encourage 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.” (see Appendix B)

II. Introduction

Sonke¹ welcomes the opportunity to make this submission to the Portfolio Committee on the 2013/2014 Annual Report tabled by JICS. This written submission will be supplemented by oral submissions before the Portfolio Committee on 14 October 2014.

III. Background: 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 and impact of HIV/AIDS. Sonke’s work with DCS seeks to address the interrelated issues of HIV/AIDS and sexual abuse, and includes policy advocacy, capacity building, and training with inmates and staff. Using our One Man Can and Brothers for Life curricula,² we implement peer education programmes in DCS

¹ See www.genderjustice.org.za.

² Please see www.brothersforlife.org, and <http://www.genderjustice.org.za/onemancan/>.



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 Just Detention International (South Africa) – or '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.³ 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 (DJF), which works to increase accountability on issues pertaining to inmate health and rights.

³ Sonke Gender Justice 'Addressing HIV and sexual violence in Department of correctional facilities - a Guide for working with members of the Department of Correctional Facilities" on behalf of the Detention Justice Forum Available: <http://www.genderjustice.org.za/101253-training-guide-addressing-sexual-violence-and-hiv-in-department-of-correctional-services-1/file.html>



IV. JICS Annual Report 2013-2014

A. JICS' Independence and Mandate

In the current annual report, JICS again calls for its own institutional independence from DCS. It should be noted that this is an echo of the call in its 2012/2013 Annual report⁴, while it also has been raised in a variety of other forums.⁵ In the period under review, JICS highlights in particular concerns over its own 'situational analysis', its dependence on the financial and administrative support of DCS and its limited budget allocation.

Our research⁶ on the functioning of the ICCVs may be of relevance here:

In 2013, Sonke initiated research into the functioning of the JICS ICCV and Visitors Committees ('VCs') on behalf of the Detention Justice Forum. Two monitoring forms were developed to assist in the analysis of both regular VC meetings and stakeholder meetings

⁴ Judicial Inspectorate for Correctional Services, *Annual Report 2012/2013*, at 17.

⁵ 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.

⁶ Berber Hettinga, Emily Keehn and Nomonde Nyembe, "*It's frustrating to us as ICCVs' - The Role and Functioning of the Visitors' Committees of the Judicial Inspectorate for Correctional Services*", 2014, Sonke Gender Justice on behalf of the Detention Justice Forum.



between 1 June and 5 September 2013. Four monitors selected seven VCs in all four management regions of JICS to attend VC meetings and interview ICCVs⁷.

One of the key findings of the research is that the work of ICCVs is severely hampered by their administrative and functional dependence on DCS. ICCVs generally do not have their own office space, while some reported having to interview inmates in a hallway, not having access to a private interview space. Private spaces are critical for maintaining inmate confidentiality, and in these conditions, it is not surprising that the most sensitive complaints, such as those pertaining to sexual abuse, are rarely reported to ICCVs.

ICCVs mostly do not have their own computers or phones and need to rely on DCS officials, including Heads of Correctional Centres (HoCCs), to give them access to DCS facilities. While most ICCVs reported that they were usually able to access these, others noted that this was problematic, created a delay in their work and hampered their independence. This creates a significant conflict of interest for ICCVs. In addition, it is difficult for ICCVs to process complaints against the very people they rely upon to complete their work. A key finding was also that HoCCs often do not attend VC meetings in person, suggesting that VC meetings are not considered a priority by many HoCCs, and that the DCS officials who do attend, often lack decision-making capacity, as they are not officially representing HoCCs.

Recommendations that flow from this research are the following:

⁷ The VCs selected for monitoring were: Leeuwkop and Boksburg (Northern Management Region), - Pollsmoor and Drakenstein (Southern Management Region), Pietermaritzburg and Durban Westville (Eastern Management Region) Klerksdorp (Central Management Region).



a) JICS should be supported by JICS Head Office ('HO'), Regional Managers ('RM's) and Visitor Committee Coordinators ('VCCOs')

VCCOs play an important role in the functioning of VCs. Particularly in locations where RMs do not attend VC meetings frequently, RMs should ensure VCCOs provide the necessary support to ICCVs in their work. Support is required to help ICCVs, some of whom are inexperienced and lack sufficient training, to be able to process difficult complaints from inmates, e.g. official-on-inmate assault complaints that receive particular push-back from DCS.

b) Cooperation between DCS and JICS Head Offices

Head Offices of DCS and JICS should work to increase the understanding by DCS officials of the mandate and role of JICS in order to stimulate cooperation with ICCVs, VCs and JICS as a whole. Positive and constructive input by DCS officials in VC meetings, particularly with resolving specific complaints of inmates, has an immediate impact on the effectiveness of their work and, with that, of the effort to improve conditions of detention and the general treatment of inmates.

c) All HoCCs should participate actively in VC meetings on a regular basis

When HoCCs are unable to attend, adequately senior representatives with a decision making mandate should be temporarily appointed to participate in their HoCC's absence.

d) Ensuring follow-up



When commitments made by DCS officials to ICCVs are not implemented, Regional Commissioners and/or DCS Head Office should support JICS in their efforts to ensure follow-up. This is particularly pertinent with complaints pertaining to inmate assaults and deaths, in which the threat of reprisal constitutes a security risk for the ICCV pursuing the complaint.

e) Increase civil society and other stakeholder involvement

VC meetings are open to the public and thus present a valuable opportunity for civil society organisations to engage with JICS, provide input, and share knowledge, resources and capacity. JICS should share its VC schedules with stakeholders and invite their input to help resolve specific inmate complaints.

f) Investment in ICCV Training

Induction training provided for all ICCVs should be improved and expanded, including increased attention to human rights issues, as well as dealing with difficult or sensitive situations.

g) Address ICCV practical dependence on DCS

The work of ICCVs is often impeded by practical obstacles, including limited access to phones, computers and internet. This results from lack of administrative independence from DCS and the limited resources of JICS. The independence and effectiveness of ICCVs would increase if they had their own offices equipped with the necessary tools and materials.

This research project shows that the VCs play a significant role in the general functioning of JICS and the work of ICCVs. Their impact, however, is substantially stymied by their lack of independence and inadequate cooperation by DCS, the South African Police Service and the judiciary. Serious consideration needs to be given to strengthening JICS so that it can effectively ensure safe custody of inmates in line with national and international standards.

In addition to the above recommendations and in order to support JICS's call for independence, we recommend the following measures as set out in previous submissions:

- **Separate legislation be drafted for JICS** which highlights its administrative, financial and structural independence from the DCS.⁸ 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 Justice and Correctional Services would similarly 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 support the Acting Chief Executive Officer's recommendation in the current

⁸ E Keehn, et al, "Evaluation of the South African Judicial Inspectorate for Correctional Services: Assessing its independence, effectiveness and community engagement," July 2013.



Annual Report that **JICS be granted investigative powers akin to Independent Police Investigative Directorate**⁹.

B. Sexual Violence

Sexual abuse of inmates is a widespread feature in DCS facilities. Such abuse causes serious physical and psycho-social harm. Sexual violence is also a driver of HIV transmission within correctional centres, which in turn makes inmates more susceptible to TB. HIV prevalence estimates from DCS and the Institute for Security Studies are 19.8% and 40% respectively¹⁰ - far above the national average. Nearly half of all inmates surveyed by JICS in 2007 reported that sexual abuse happens “sometimes,” “often”, or “very often”.¹¹

Sonke commend JICS for disaggregating sexual violence complaints from the general assault category. However, according to the JICS Annual Report, only 10 complaints of “assault (sexual)” were reported in the period under review.¹² 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

⁹ Annual report 2013-2014, p.13.

¹⁰ 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.

¹¹ Judicial Inspectorate for Correctional Services, *Annual Report 2007/2008*, at 33.

¹² JICS *Annual Report 2013/2014*, at 51.



correct reflection of the numbers of sexual assaults that occurred in correctional centres over the last year and note that it may simply indicate that inmates have little confidence that their complaints will be taken seriously or that they felt unable to lodge their complaints in a supportive environment.

In order to gain a better reflection of the prevalence of sexual violence in correctional centres, JICS officials, DCS staff, and inmates must receive training on the Sexual Offences Act.¹³ Such training will improve knowledge on sexual violence dynamics and enable timely detection and accurate reporting of such abuse.

The JICS Annual Report does not define what is meant by “assault (sexual)” and does not distinguish rape and compelled rape from sexual assault and compelled sexual assault. Nor does it indicate whether sexual harassment is considered in this category of offence. Sonke 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 commend JICS for adopting a specialised complaints form for handling sexual violence complaints, and encourage JICS to ensure ICCV's are capacitated to use this tool to detect and sensitively respond to cases of sexual violence.

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 the Centre for

¹³ Criminal Matters (Sexual Offences and Related Matters) Amendment Act 32 of 2007.



the Study of Violence and Reconciliation ('the Policy Framework'). This is a watershed moment for DCS. 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 calls for the 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. While a timeline and implementation plan for the Policy Framework has been developed, it is our understanding from meetings with senior DCS staff that very little or no progress has been made in the implementation of this Policy Framework. We look forward to full and appropriate implementation and monitoring of this Policy Framework, 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.¹⁴ 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 Policy Framework, and would like to offer our support in this process.

¹⁴ 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.



V. Conclusion

Sonke would like to applaud JICS for making progress towards securing the health and human rights of inmates. In an attempt to ensure ongoing progress, Sonke recommends urgent action on the following as two key areas:

- Secure the independence and autonomy of JICS; and
- Implement the Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities with urgency.

We would like to offer our on-going support in pursuing these goals.

VI. Appendices

Appendix A



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***

8 October 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')¹ and Sonke Gender Justice ('Sonke')² 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% respectively³. Nearly half of all inmates surveyed by JICS in 2007

¹ See www.justdetention.org.

² See www.genderjustice.org.za.

³ 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”.⁴ 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,⁵ 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.⁶ 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

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

⁵ Please see www.brothersforlife.org, and <http://www.genderjustice.org.za/onemancan/>.

⁶ See 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 (CSVR) 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.⁷ 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.⁸ 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.⁹ These suggestions appear merely to be temporary solutions to a longstanding problem. As such, they are not good enough.

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

⁸ 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.

⁹ 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.¹⁰ 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".¹¹ 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

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

¹¹ 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.¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶ 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.

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

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

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

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

¹⁶ 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.¹⁷ 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.¹⁸ 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

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

¹⁸ 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.¹⁹ 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,²⁰ 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.²¹ 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.²² 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.²³ 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.

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

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

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

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

²³ *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).²⁴ 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.²⁵ 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.²⁶ We request that the types of cases that have been successfully defended be clarified.

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

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

²⁶ 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.²⁷ 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.²⁸ 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:

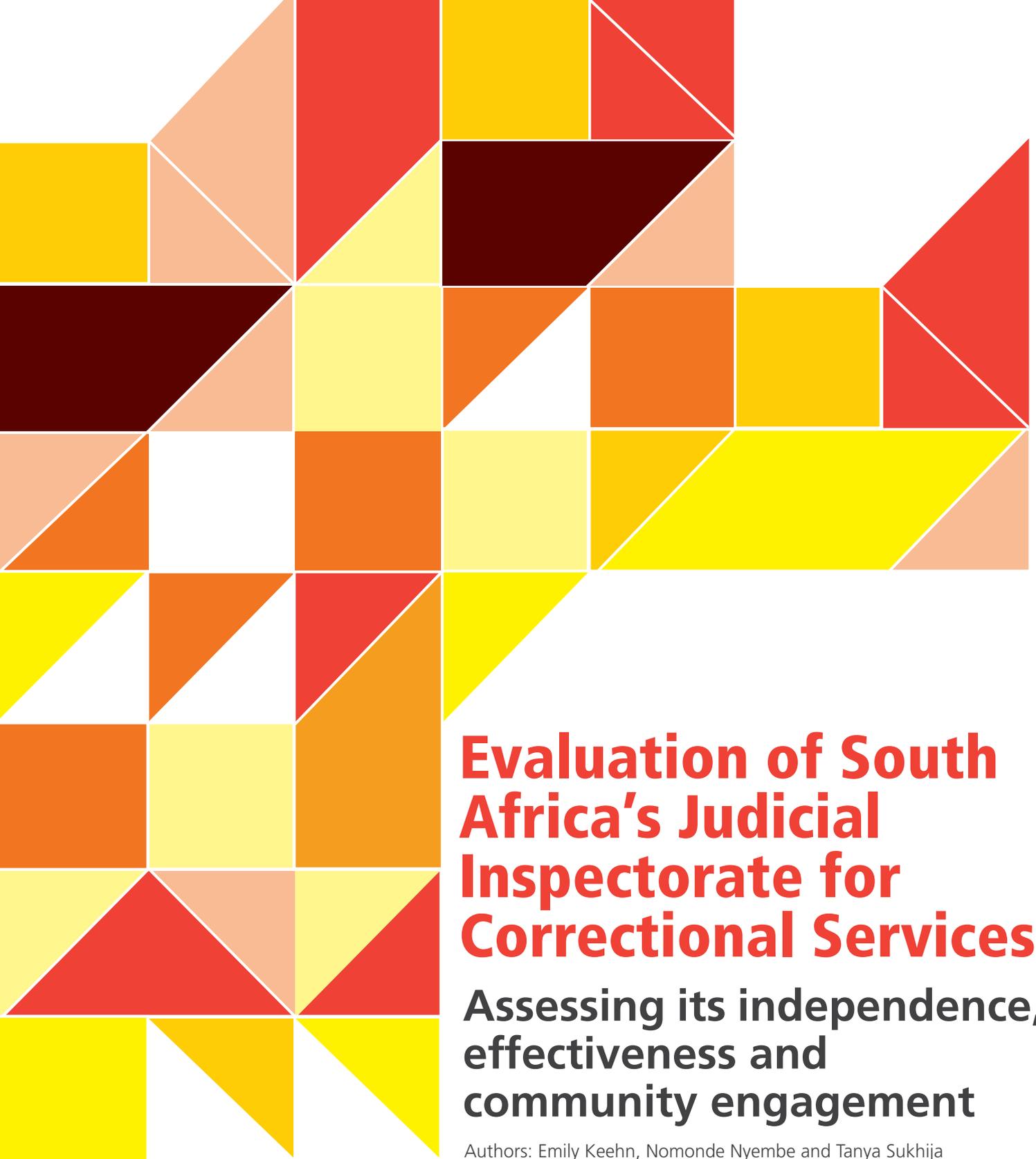
²⁷ Section 38(1)(k) of the Correctional Services Act, 111 of 1998 read with section 6 of the Correctional Matters Amendment Act, 5 of 2011.

²⁸ 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.





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

Assessing its independence, effectiveness and community engagement

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Contents

List of Abbreviations	6
1. Executive Summary	7
2. Introduction	8
3. Background	8
4. Structure of the Judicial Inspectorate for Correctional Services	12
a. Vision, Mission, and Strategic Objectives of the Judicial Inspectorate for Correctional Services	12
b. Appointment of the Inspecting Judge	13
c. Appointment of the Chief Executive Officer	13
d. Powers, Functions, and Duties of the Inspecting Judge and CEO	14
e. Three Directorates of the Office of the Inspecting Judge (OIJ)	15
i. Directorate: Management Regions	15
(a) Visitors' Committees	15
(b) Functions and Appointment Process of Independent Correctional Centre Visitors	15
ii. Directorate: Legal Services	17
iii. Directorate: Support Service	18
f. Budget and Reporting	18
g. Visiting Judges, Magistrates and Public Officials	18
5. Evaluation of the Independence, Integrity, and Effectiveness of Judicial Inspectorate for Correctional Services	19
a. Successes of the Judicial Inspectorate for Correctional Services	19
b. Independence and Challenges of the Judicial Inspectorate for Correctional Services	20
i. Defining Independence	20
ii. Administrative Independence	21
iii. Financial Independence	21
iv. Conflicts of Interest	21

c. Challenges Between the Judicial Inspectorate for Correctional Services and the Department of Correctional Services	22
d. Challenges Between the Judicial Inspectorate of Correctional Services and Inmate Perceptions	23
e. Inefficiencies within the Judicial Inspectorate of Correctional Services	23
f. Public Perceptions of the Judicial Inspectorate of Correctional Services	24
g. Limited Scope of Inspection Powers	24
h. Potential Restructuring to Increase Independence	25
6. Comparison to Other Similar Watchdog Bodies	26
a. Oversight Mechanisms with Structural Independence	26
b. Oversight Mechanisms with Enforcement and Disciplinary Powers	30
c. Oversight Mechanisms with Community Engagement	30
d. Patterns among the Oversight Mechanisms	31
7. Recommendations for Enhancing the Independence and Successes of the Judicial inspectorate for correctional services	33
a. Recommendations to Increase the Judicial Inspectorate for Correctional Services' Independence	33
b. Strengthening the Judicial Inspectorate for Correctional Services' Mandate	33
c. Improving the Quality of Reports, Complaints, and Research	35
d. Recommendations for Civil Society Organisations on Supporting the Judicial Inspectorate for Correctional Services	36
8. Conclusion	38
9. End notes	39

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.

2

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.

4

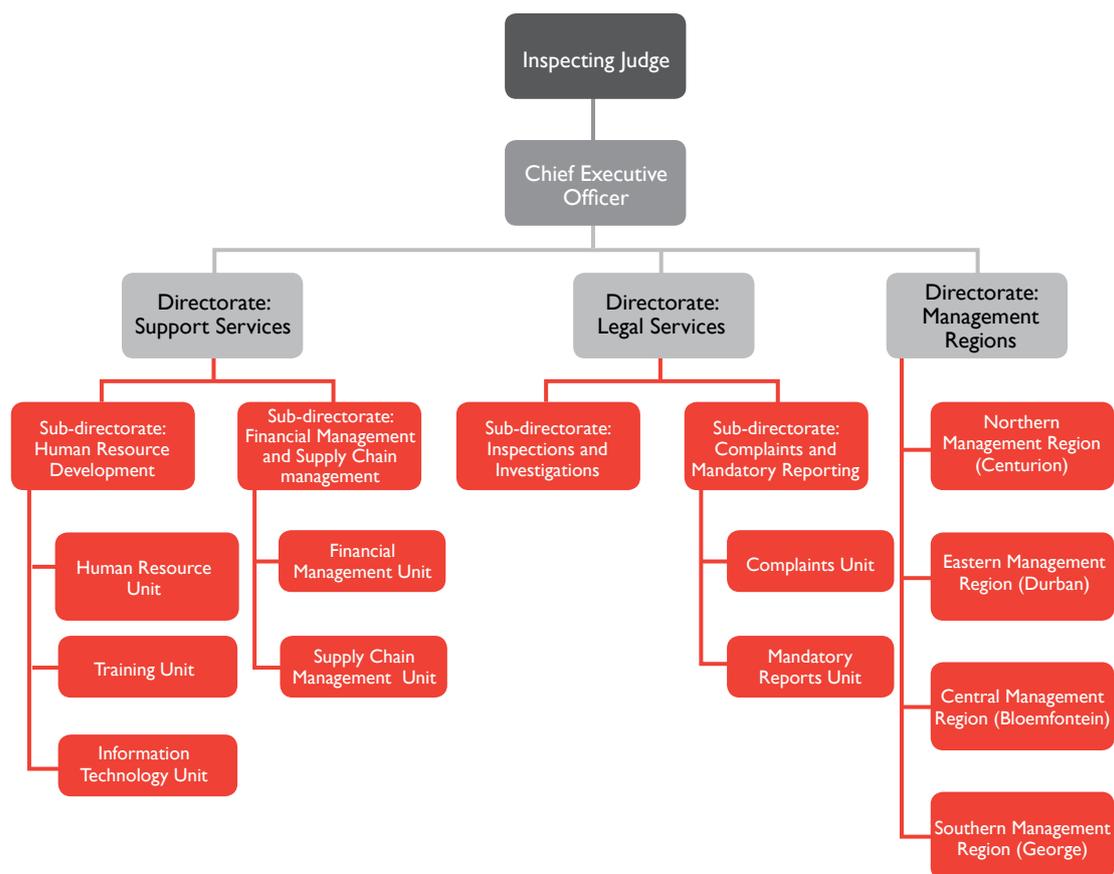
Structure of the Judicial Inspectorate for Correctional Services

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

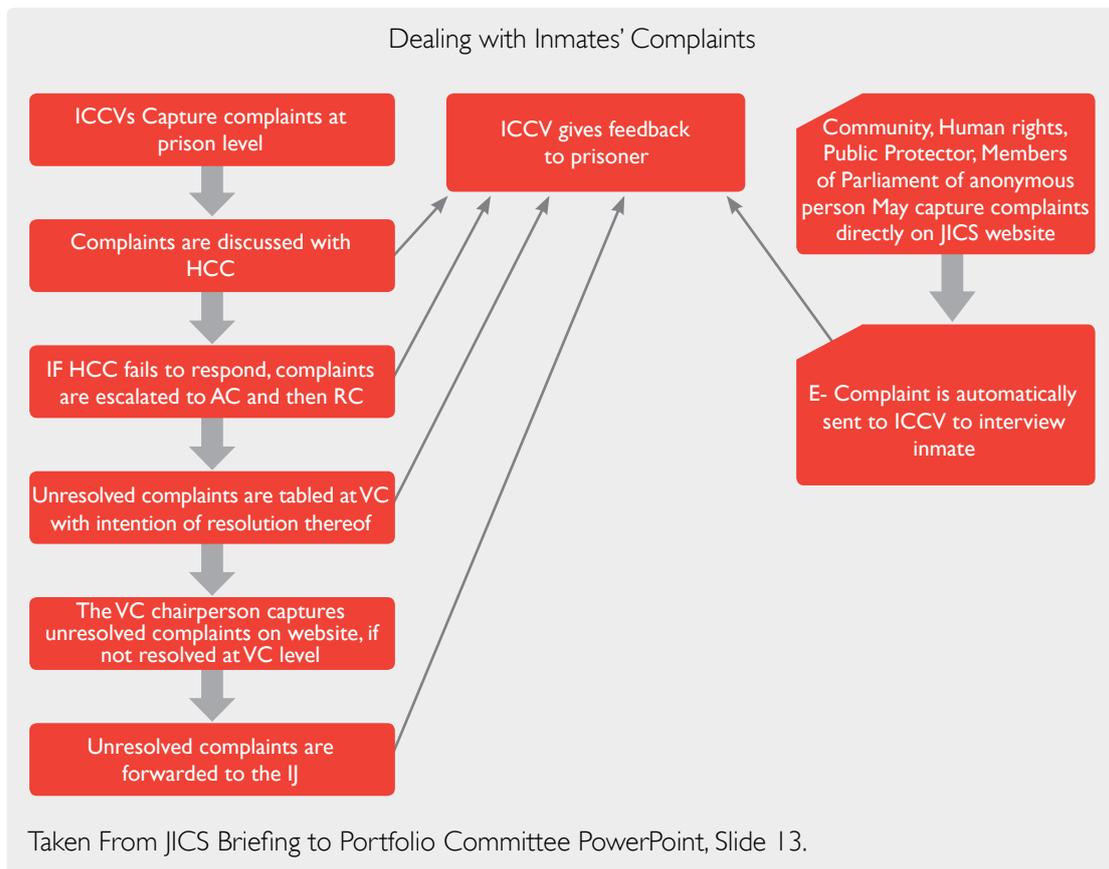
(b) Functions and Appointment Process of Independent Correctional Centre Visitors

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.

- ¹ Correctional Services Act No. 111 of 1998; section 2 (hereinafter "CSA") as amended by Correctional Services Amendment Act No. 25 of 2008 and the Correctional Matters Amendment Act No. 5 of 2011.
- ² Dissel A., *The Passing out Parade: Demilitarisation of the Correctional Services*, *Acta Criminologica*, Vol. 10, No. 1, at 1. Available at <http://www.csvr.org.za/index.php/component/content/article/1361-the-passing-out-parade-demilitarisation-of-the-correctional-services.html>. Last accessed May 2013.
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- ²⁰⁰ Human Rights Commission Act No. 54 of 1994, section 8 (hereinafter "HRC Act").
- ²⁰¹ *Ibid*, section 10.
- ²⁰² *Ibid*, section 15.
- ²⁰³ *Ibid*, section 18.
- ²⁰⁴ *Ibid*, section 19.
- ²⁰⁵ Jagwanth, *supra* 42, at 46-47.
- ²⁰⁶ United Kingdom Ministry of Justice, *About Her Majesty's Inspectorate of Prisons*. Available at <http://www.justice.gov.uk/about/hmi-prisons>. Last accessed 12 July 2012.
- ²⁰⁷ Jagwanth, *supra* 42, at 47.
- ²⁰⁸ Prisons and Probation Ombudsman for England and Wales, *Terms of Reference*, available at <http://www.ppo.gov.uk/terms-of-reference.html> (last accessed 12 July 2012); Prisons and Probation Ombudsman for England and Wales, *Annual Report 2010/2011*, at 52 (hereinafter "UK Ombudsman Annual Report 2010/2011"), available at http://www.ppo.gov.uk/docs/ppo-annual-report_2010-11_web.pdf (last accessed 18 July 2012).
- ²⁰⁹ Corrections and Conditional Release Act, S.C. 1992 c. 20, section 160 (hereinafter "CCR Act").
- ²¹⁰ *Ibid*, section 158.
- ²¹¹ Office of the Correctional Investigator, Canada, *Frequently Asked Questions*. Available at <http://www.oci-bec.gc.ca/faq-eng.aspx>. Last accessed 13 July 2012.
- ²¹² CCR Act, *supra* 209, section 162.
- ²¹³ *Ibid*, sections 163(3), 165(1), and 164.
- ²¹⁴ Jagwanth, *supra* 42, at 48 read with the CCR Act, *supra* 206, section 167.
- ²¹⁵ CCR Act, *supra* 206, sections 168, 170, 197, 170(2)(a) and (c), 170(b), 171, 172 and 174 respectively.
- ²¹⁶ *Ibid*, sections 177 and 178; section 180; section 192.
- ²¹⁷ Hettinga et al., Berber Hettinga, Aquinaldo Mandlate and Lukas Muntingh, *Survey of Detention Oversight Mechanisms Provided for in the Laws of SADC Countries*, Civil Society Prison Reform Initiative, at 12 (hereinafter "Hettinga et al."), available at <http://www.cspri.org.za/publications/research-reports/Survey%20of%20Detention%20Oversight%20Mechanisms%20Provided%20for%20in%20the%20Laws%20of%20SADC%20Countries.pdf> (last visited 18 July 2012); Mauritius Reform Institutions Act 1988, section 53 (hereinafter "Mauritius Act"), available at <http://www.gov.mu/portal/goc/prisons/file/priregu.pdf> (last visited 18 July 2012).
- ²¹⁸ Hettinga, at 12.
- ²¹⁹ *Ibid*; Mauritius Act, *supra* 217, at section 60.
- ²²⁰ Zambia Prisons Act, sections 123, 124(1), (2), 125, 128; Tanzanian Prisons Act No. 34 of 1967, section 100(1)-(5).
- ²²¹ Jagwanth, *supra* 42, at 47.
- ²²² Gallinetti, *supra* 71, at 57.
- ²²³ Office of the Inspector of Prisons in Ireland, *Prison Inspections*, available at http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Prison_Inspections (last accessed May 2013).
- ²²⁴ Police (Scotland) Act, 1967, Chapter 77, section 8.
- ²²⁵ Zambia Prisons Act, section 126.
- ²²⁶ Human Rights Commission, *Zambia report*, Electoral Institute for the Sustainability of Democracy in Africa, December 2009. Available at <http://www.eisa.org.za/WEP/zamagency1.htm>. Last accessed 18 July 2012.
- ²²⁷ IPID Act, *supra* 208, section 7(4).
- ²²⁸ *Ibid*, section 30; IPID Annual Report 2010/2011, at 14.
- ²²⁹ IPID Act, *supra* 208, section 33.
- ²³⁰ CCR Act, *supra* 236, section 191(a)-(c).
- ²³¹ CSA, *supra* 1, section 93(1)(d).
- ²³² Her Majesty's Inspectorate of Prisons for England and Wales, *Proposals for the Joint Inspection of Multi-agency Arrangements for the Protection of Children*, 2012. Available at <https://consult.justice.gov.uk/digital-communications/hmiprison-macp2012>. Last accessed 18 July 2012.
- ²³³ UK Ombudsman Annual Report 2010/2011, *supra* 235, at 13.
- ²³⁴ *Ibid*, at 15.
- ²³⁵ Jali Report, *supra* 3.
- ²³⁶ Civil Society Prison Reform Initiative, *Submission on the Judicial Inspectorate for Correctional Services Annual Report 2011-2012*, available at <http://cspri.org.za/publications/submissions-and-presentations/CSPRI%20SUBMISSION%20ON%20JICS%20AR%202011-12.pdf> (last accessed 29 January 2013).

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Appendix B



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES

***TOGETHER BUILDING A CARING CORRECTIONAL SYSTEM THAT TRULY
BELONGS TO ALL***

JANUARY 2011

DEPARTMENT OF CORRECTIONAL SERVICES
POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN
DCS FACILITIES

Table of Contents

	Page
1. Executive Summary	3
2. Background and Problem Statement	4
2.1 Sexual Abuse of Inmates in DCS Facilities	4
2.2 Sexual Violence – A Sensitive Subject	6
2.3 Confusion between Consensual and Forced Sex	7
2.4 Creating a Conducive Environment for Reporting Sexual Abuse	7
2.5 Health Issues Related to Sexual Abuse in DCS Facilities	7
3. Overview of Key Terms	8
3.1 Sexual Abuse in Detention	8
3.1.1 The Sexual Offences Act	9
3.1.2 Consent	9
3.2 Categories of Prohibited Conduct	10
3.2.1 Inmate-on-Inmate Sexual Abuse	10
3.2.2 Staff-on-Inmate Sexual Abuse	11
4. Mandates	13
5. Policy Statement	14
6. Policy Objectives	14

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7. Policy Principles	15
7.1 Prevention	15
7.2 Detection	21
7.3 Response to Victims	22
7.4 Response to Perpetrators	24
7.5 Monitoring	26
8. Policy Implementation Plan	28
9. Policy Monitoring	28
10. Policy Evaluation	29
11. Policy Review	29
12. Legal Implications	29
13. Financial Implications	30
14. Policy Approval	30

POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS

1. EXECUTIVE SUMMARY

Various forms of sexual abuse are common in detention facilities around the world. Research studies, reports by independent bodies such as the Jali Commission of Inquiry and the Judicial Inspectorate of Correctional Services (JICS), and documented reports by victimised inmates make clear that South Africa's detention facilities are no exception. The Department of Correctional Services (DCS) is working in partnership with key stakeholders to address the problem.

It is well known that sexual violence takes place in our correctional facilities, but it is often seen as part of normal prison life. Historically, DCS has remained silent or succumbed to a sense of powerlessness in the face of such an uncomfortable issue. DCS has also failed to share information about sexual abuse in our facilities and to ensure that all DCS staff receives the necessary training and guidance on how to prevent and respond to sexual violence. Sexual abuse in correctional facilities can no longer be tolerated or overlooked; now is the time for change.

This policy introduces and addresses the problem of sexual violence in detention and establishes a Policy to address Sexual Abuse of Inmates in DCS, which specifically outlines how to **prevent, detect, respond to** and **monitor** sexual violence against inmates. The success of this policy will require coordination within the DCS and the full cooperation and commitment of all our staff. Through its implementation, we intend to bring an end to the trauma and brutalisation that occurs in DCS centres throughout the country.

2. BACKGROUND AND PROBLEM STATEMENT

2.1 Sexual Abuse of Inmates in DCS Facilities

This policy specifically addresses the sexual abuse of inmates - sexual conduct that takes place as a result of force, coercion or intimidation. Given the power differential between correctional officials and inmates, however, any correctional official's sexual contact with an inmate is inherently abusive and is covered by this policy, regardless of whether force, coercion or intimidation is involved.

Sexual violence is frequently perceived as an inevitable aspect of prison life. This perception is inaccurate. The sexual abuse of inmates is largely the product of poor correctional management and a lack of effective monitoring, policies and procedures, and is preventable.

Sexual abuse in detention is fuelled by the prevailing inmate and institutional cultures found in correctional centres. Inmate culture is a set of behaviours and understandings that are supported by inmates who exercise power over more vulnerable inmates. Prison gangs have a profound influence on the prevailing inmate culture, which affects all inmates (not only those who are members of or are forced to join the gangs), as well as staff members and members of the community (such as family and friends).

Institutional culture refers to both the resignation and helplessness correctional officials feel in the face of such a widespread problem as inmate rape, along with the "us versus them" mentality that often develops between correctional officials and inmates in a correctional setting. In the context of this institutional culture, correctional officials often fail to take sexual abuse of inmates seriously, and may even blame or ignore victims of such abuse. When this occurs, inmates are less likely to come forward to report sexual violence, and abuse thrives.

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As part of the prevailing inmate culture, sexual abuse is widely, and often systematically, perpetrated. It is not perpetrated only, or even primarily, by inmates who have been convicted of sexual offences, as many believe to be the case, but also by inmates incarcerated for other crimes.

Sexual abuse of inmates may be perpetrated by correctional officials, volunteers and contractors as well as other inmates. It is sometimes also facilitated by corrupt correctional officials who set inmates up for abuse by other inmates whether in exchange for a bribe or to “punish” the victimised inmate(s).

Sexual violence in DCS facilities is closely linked to sexual and gender-based violence taking place between (and among) men and women in society more generally. It is not a separate phenomenon. This abuse thrives on destructive and discriminatory ideas about what it means to be a “man” or a “woman.”

In male correctional facilities, sexual abuse often occurs in the context of forced relationships (sometimes called prison “marriages”). Men who wield power over other inmates are considered “men” or “husbands.” More vulnerable inmates (such as those who are first-time offenders, nonviolent, gay, transgender or of small build), are derogatively referred to as “women” or “wyfies” and they are often treated as slaves, and forced to be sexually available to their “husbands.” As such, they become victims of ongoing sexual violence. Some staff and inmates may perceive these “marriages” as consensual but such relationships are in fact a form of sexual abuse.

The sexual abuse of inmates contributes to further violence, both behind bars and when inmates return to society. Correctional facilities with high levels of sexual violence tend to have high levels of violence overall; thus, addressing sexual abuse will increase safety for inmates and correctional officials.

Sexual abuse is a critical public health issue because most inmates eventually are released and return to their communities, bringing with them the emotional and physical impact of the trauma they experienced while incarcerated.

2.2 Sexual Violence - A Sensitive Subject

Many people find it uncomfortable to talk about sex in general, and are often even more uncomfortable about the idea of two people of the same gender having sexual contact, such as when two inmates are sexually involved. Sex is a sensitive topic about which many of us have inadequate information, resulting in misperceptions, particularly with respect to sexual abuse. Discomfort and misinformation among correctional officials and inmates serve to keep the issue of sexual abuse in correctional facilities in the dark, while making it even more difficult for inmates to come forward and speak about their experiences. DCS needs to help break this silence.

A significant misperception is the belief that men cannot be raped, and that they can protect themselves and others from sexual abuse. Many people also believe that a male rape victim is not a “real man.” These beliefs, while common in our correctional centres, are wrong. The Sexual Offences and Related Matters Amendment Act of 2007 (Sexual Offences Act) now recognizes that anyone, regardless of gender, can be raped.

Homophobic attitudes are strong in our correctional facilities, despite South Africa’s very progressive Constitution, which prohibits discrimination on the basis of sexual orientation. This homophobia may also give rise to sexual abuse, discourage victims from reporting abuse, and further result in the ill-treatment of gay, bisexual, and transgender persons both by inmates and correctional officials. Discomfort can also confuse us and stop us from dealing with sexual violence in our correctional facilities.

2.3 Confusion between Consensual and Forced Sex

Consensual sex between inmates does take place in correctional centres, and should be distinguished from sexual abuse. The erroneous use of terms such as “homosexuality” and “sodomy” perpetuates confusion, keeping sexual abuse hidden and intensifying prejudice. Thus, while the term “sodomy” is often used in the correctional context to refer to rape, it means “anal sex.” Forced anal sex, of course, constitutes rape. Likewise, the term “homosexuality” refers to a sexual orientation - it is not a crime or a form of violence.

This policy does not cover consensual sex between inmates.

2.4 Creating a Conducive Environment for Reporting Sexual Abuse

Sexual abuse of inmates is underreported for various reasons:

- The stigma attached to sexual violence victims are often unjustly blamed, judged and labelled, rather than provided help to deal with a crime perpetrated against them.
- The belief on the part of victims that reporting rape will be futile because no action will be taken and they will likely experience retaliation.
- Victims’ well-founded fear of further victimisation by the perpetrators of the rape(s), as well as by other inmates and correctional officials.

Implementation of this policy will help encourage reporting, so that the sexual abuse of inmates can be effectively prevented and responded to appropriately.

2.5 Health Issues Related to Sexual Abuse in DCS Facilities

Misinformation and a lack of awareness about sexual health can lead to abuse and discrimination, while also contributing to risky sexual behaviour more generally. Building sexual health knowledge amongst correctional officials and

inmates is therefore necessary for preventing and responding to sexual abuse, and to promoting sexual health. In addition:

- Inmates must have access to the means to protect themselves from contracting sexually transmitted infections (STI's). Therefore, DCS correctional centres must maintain adequate supplies of condoms in the dispensers as well as water-based lubricants.
- Victims of rape in correctional centres need immediate medical care to address any physical injuries they may have sustained, as well as care to prevent HIV and other STI's. Such care must include testing for HIV, access to prophylactic medications and counseling. Other health needs arising from sexual abuse must also be addressed, including the possibility of pregnancy for female inmates.
- Inmates who are sexually victimised also need immediate crisis response and psycho-social support, as well as mental healthcare. Such assistance will help inmates deal with the trauma that they have experienced and make decisions about how to proceed with formal complaints.
- The care provided for victims of sexual abuse in detention must be on par with that provided in the community, and include appropriate follow-up evaluations and assessments, so that treatment can be provided for as long as needed. Breakdowns in the current health care delivery system often prevent access to treatment, and the DCS must address this problem.

3. OVERVIEW OF KEY TERMS

3.1 Sexual Abuse in Detention

Sexual abuse encompasses sexual conduct that takes place in the absence of consent, including all forms of sexual exploitation and harassment. Sexual

contact between inmates and officials is always prohibited, regardless of whether the inmate appears to consent, as explained below.

3.1.1 The Sexual Offences Act

Much of the conduct prohibited by this policy also constitutes a crime under the Sexual Offences Act. The Act provides criminal penalties for rape, sexual assault, and the sexual grooming of children under 18 years old, among other offences. Until recently however, sexual violence against men was treated as a lesser crime than that against women. When men were forced to have sex against their will, perpetrators were charged with indecent assault, a much less serious crime than rape. In 2007, the Act was changed to include a gender-neutral definition of rape, recognizing for the first time, that men (as well as women) can be raped.¹

3.1.2 Consent

The line between consent and coercion can seem blurred in detention contexts (even to a survivor of sexual abuse), and it will sometimes be difficult to tell whether an interaction is based on coercion or mutual agreement. More vulnerable inmates are often threatened or intimidated into submitting to sexual acts with more powerful inmates, including gang members. Frequently, sex that both inmates and officials say is happening by agreement is not; it would not be happening if both parties had equal powers of choice. In fact, the victim may not have the power even to admit that the sex is not consensual. Fortunately, the Sexual Offences Act recognizes that there is a range of circumstances in which an individual is unable to meaningfully consent to sexual contact. For example, the Act provides that individuals cannot consent to sex with someone in a

¹Specifically, the Sexual Offences Act provides that: “Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant (B), without the consent of B is guilty of the offence of rape.”

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position of authority or power over them, such as, in the detention context, a correctional official or a gang leader. Additional instances in which consent is not possible include where:

- S/he has been intimidated or physically forced;
- S/he has been threatened that harm will come to him/her or to his/her property;
- S/he has been lied to in order to make her/him submit to sex (*i.e.*, made to believe that the perpetrator is someone else or that the sexual act is not actually a sexual act);
- S/he cannot fully understand or appreciate what s/he is agreeing to because s/he is:
 - asleep or unconscious
 - drunk, drugged or has impaired judgement because of medication s/he's taking
- S/he is a child under 12 years of age; or
- S/he is a mentally disabled person.

3.2 Categories of Prohibited Conduct

Categories of prohibited conduct include the following:

3.2.1 Inmate-on-Inmate Sexual Abuse

Inmate-on-inmate sexual abuse encompasses all non-consensual sexual contact between inmates, specifically, sexually abusive penetration, sexually abusive contacts, and sexual harassment.

3.2.1.1 Sexually abusive penetration: Any sexual penetration by an inmate of another inmate without the latter's consent. This encompasses compelling one inmate to rape another. The sexual acts included are:

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- Contact between the penis and the vagina or the anus;
- Contact between the mouth and the penis, vagina, anus; forced contact between the mouth and an object representing genitals is also prohibited.
- Penetration of the anal or genital opening of another person by a hand, finger or other object.

3.2.1.2 Sexually abusive touching: Any non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by an inmate of another inmate without the latter's consent. This includes contact between the mouth of one person and the body of another person, such as forced kissing. It is also prohibited for an inmate to force another to fondle him or her, or a third person.

3.2.1.1 Sexual harassment: repeated and unwelcome sexual advances, requests for sexual favours, verbal comments, gestures or actions of a derogatory or offensive sexual nature by an inmate directed toward another. Other prohibited acts include: displaying pornographic photographs, rubbing against a person in an indecent way, causing another person to witness sexual acts or making someone believe that s/he will be sexually violated.

3.2.2 Staff-on-Inmate Sexual Abuse

Because of the power differential between correctional officials and inmates, **all** correctional officials (including contractors and volunteers) are prohibited from having **any** sexual contact with inmates. Such contact is prohibited even where the inmate appears to give consent. Solicitations by correctional officials of inmates to engage in sexual contact with them, another official or inmate, or any

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other person constitutes attempted sexual abuse. Sexual abuse by staff encompasses all of the categories of sexually abusive conduct outlined above (but without regard to consent), specifically:

3.2.2.1 Staff-on-inmate sexually abusive penetration: Penetration by a staff member of an inmate. The sexual acts included are:

- Contact between the penis and the vagina or the anus;
- Contact between the mouth and the penis, vagina or anus; forced contact between the mouth and an object representing genitals is also prohibited.
- Penetration of the anal or genital opening of another person by a hand, finger or other object.

3.2.2.2. Staff-on-inmate sexually abusive contact: Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks by a staff member of an inmate that is unrelated to official duties.

The following acts are also prohibited:

- *Staff-on-inmate indecent exposure*: The display by a correctional official of his or her uncovered genitalia, buttocks or breasts in the presence of an inmate.
- *Staff-on-inmate voyeurism*: An invasion of an inmate's privacy for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons, such as peering at an inmate who is using the toilet in his or her cell, or requiring an inmate to expose his or her buttocks, genitalia or breasts.

4. POLICY MANDATES

The following MANDATES are included in this policy but the list is not limited to them:

- Charter for Victims of Crime
- Children's Act (38 of 2005)
- Child Justice Act (75 of 2008)
- Correctional Services Act (111 of 1998)
- Correctional Services Amendment Act (25 of 2008)
- Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007)
- Criminal Procedure Act (51 of 1977)
- Domestic Violence Act (116 of 1998)
- Guidelines on HIV and AIDS Post-Exposure-Prophylaxis for inmates
- Marriage Act (25 of 1961)
- Mental Health Care Act (17 of 2002).
- Minimum Standards on Services for Victims of Crime
- National Crime Prevention Strategy (1996)
- Policy on Correctional Administration
- Policy on Correctional Programmes
- Risk Profile Management Policy.
- Sexual Offences Act (23 of 1957)
- Sexual Offences and Related Matters Amendment Act (32 of 2007)
- Strategic Plan of DCS 2009/2010 - 2012/2013
- The Constitution of the Republic of South Africa (108 Of 1996)
- Victim Empowerment Policy
- Victim Empowerment Policy
- White Paper on Corrections (2005)
- Other related policies

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5. POLICY STATEMENT

The DCS has a responsibility to ensure that the offenders in its custody are safe, and that they live in an environment that respects their human dignity and their right to be free from sexual abuse. This duty is encompassed in the South African Constitution,² the Correctional Services Act,³ the Sexual Offences Act, the White Paper on Corrections in South Africa,⁴ and other applicable laws, as well as international human rights instruments, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It is only under these conditions that the DCS can hope to achieve offenders' rehabilitation and integrated development.

The DCS is an organization that aims to rehabilitate inmates within an environment that is respectful of their person and their rights; the occurrence of sexual abuse is therefore inconsistent with the values and ideals that the department strives to uphold.

6. POLICY OBJECTIVES

The objectives of this Policy are to address the problem of sexual violence against inmates and to provide a framework for **preventing, detecting, responding to** and **monitoring** inmate-on-inmate sexual abuse and staff-on-inmate sexual abuse.

²The Constitution sets out the basic rights of all people, including those who are incarcerated, to be treated with dignity, equality, privacy, and the right to life. Freedom and security of the person is also protected, while torture or cruel, inhuman and degrading treatment or punishment is prohibited.

³Per the Correctional Services Act (as amended in 2008), the purpose of the correctional system is to "contribute to maintaining and protecting a just, peaceful and safe society by...detaining all inmates in safe custody whilst ensuring their human dignity; and, promoting the social responsibility and human development of all sentenced offenders."

⁴The White Paper (2005) calls for a detention system that is based on respect for human rights, underpinned by the values of security of the person and humane treatment.

7. POLICY PRINCIPLES

7.1 Prevention

7.1.1 Zero Tolerance Policy

- The DCS shall uphold a zero tolerance standard on all forms of sexual abuse in all correctional centres, remand detention facilities and community corrections settings.
- Each correctional facility must fully publicize, implement, and adhere to the DCS' zero tolerance policy on sexual abuse.
- All visitors and volunteers must read and sign an acknowledgement of the zero tolerance policy. Visitors and volunteers who are unable to read must have the policy read to them by correctional officials.
- All inmates must read and sign an acknowledgement of the zero tolerance policy on admission to a Correctional Centre. All inmates who are unable to read must have the policy read to them by a correctional official.
- Posters that publicize the zero tolerance policy and provide information on how to report sexual abuse must be visible throughout all facilities, including in visitation areas.

7.1.2 Employee Screening

Applications for centre based officials must be screened for previous convictions to identify abusive tendencies (especially domestic violence or sexual abuse).

No centre shall hire any person who is known to have engaged in sexually abusive conduct in any institutional setting or has engaged in sexual activity in the community facilitated by force, the threat of force, or coercion.

7.1.3 Staff Training

- The DCS will provide training to all employees, preparing them to prevent, detect, respond to, and monitor sexual abuse.
- To supplement Correctional Academy training on sexual violence awareness, each facility must ensure that all employees receive refresher training in this area at least once a year throughout their employment.
- Each facility must implement and utilize the most recent versions of training modules on addressing sexual abuse as they are updated and expanded to reflect new information or strategies and must educate staff as new procedures pertinent to addressing sexual abuse are adopted.
- At a minimum, employees must receive training on the following topics:
 - ✓ Inmates' right to be free from sexual abuse;
 - ✓ Dynamics of sexual abuse in detention;
 - ✓ Common reactions of sexual abuse victims;
 - ✓ Common signs indicating that sexual abuse of inmates may be occurring;
 - ✓ Mechanisms available to inmates and correctional officials for reporting sexual abuse of inmates;
 - ✓ Handling disclosures of sexual abuse and respecting confidentiality;
 - ✓ The right of inmates and employees to be free from retaliation for reporting sexual abuse;
 - ✓ Securing the crime scene and protection of potential witnesses
 - ✓ The basics of HIV/AIDS and its transmission; and
 - ✓ The application of the Sexual Offences Act in detention settings, including:
 - the gender-neutral statutory offence of rape;

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- newly established offences such as attempted conspiracy and incitement to commit a sexual offence, and compelling another individual to commit or witness a sexual offence;
- the duty to report sexual offences committed against children or mentally disabled persons;
- the right to receive counseling and post-exposure prophylaxis in cases of possible exposure to HIV as a result of a sexual offence; and
- the potential for criminal liability for failure to report abuse or for being complicit in sexual abuse.

7.1.4 Staffing and Inmate Supervision

Correctional officials must provide the supervision necessary to protect inmates from sexual abuse at all times. Correctional officials responsible for reviewing incidents of sexual abuse must examine areas in the facility where sexual abuse has occurred to assess the adequacy of staffing levels and surveillance in those areas during different shifts.

7.1.5 Inmate Orientation and Education

During intake, all inmates must be informed of the zero tolerance policy on sexual abuse and how to report incidents, threats and suspicions of sexual abuse. As soon as it is feasible following the intake process, all inmates shall attend an orientation session on sexual violence awareness. Arrangements must be made to ensure that the information can be understood by all inmates, including those who do not speak the primary language(s) of that region. Information provided to youth/children must utilize age-appropriate language. All information - including written information - must be explained to inmates who are illiterate, or of low literacy, in the language of their choice, as far as possible.

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The sexual violence awareness orientation will cover the following topics:

- ✓ Inmates' right to be free from sexual abuse;
- ✓ A definition of relevant terms, and examples of prohibited conduct — using clear, frank language — including the indicators of inappropriate behaviour by correctional official ;
- ✓ The various ways in which inmates may report abuse;
- ✓ The availability of health and psycho-social care following sexual abuse;
- ✓ The criminal liability correctional officials may face for failing to report abuse or for being involved or complicit in such abuse;
- ✓ Conduct prohibited under the Sexual Offences Act; and
- ✓ Sexual health and safer sex practices, including awareness of HIV and other STI's.

7.1.6 Inmate Classification and Screening

This section is intended to supplement the classification processes that are already in use to categorize inmates based on the severity of their criminal charges.

In order to prevent sexual abuse, classification determinations for all inmates must further reflect their risk for sexual victimization and their likelihood of being sexually abusive.

All inmates, including those in remand detention, must be assessed during intake, during the initial classification process, and at all subsequent classification reviews. Classification reviews shall be conducted on an ongoing basis, particularly in cases of repeated safety concerns or in the aftermath of an assault. This information will be used to inform housing and bed assignments (such as whether a vulnerable inmate should be considered for a single cell placement), and where applicable, to education, work, and program assignments.

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In assessing an inmate's risk for victimization, correctional officials must take into account whether an inmate previously has been sexually victimized, and whether s/he has been convicted of a sex offence. In addition, correctional officials must consider whether the inmate is:

- ✓ mentally ill, or has an intellectual impairment;
- ✓ physically disabled;
- ✓ elderly;
- ✓ younger than fellow inmates;
- ✓ of slight build or frail;
- ✓ gay or bi-sexual, or likely to be perceived as such;
- ✓ gender non-conforming (e.g. transgender or inter-sex identity), or likely to be perceived as such;
- ✓ non-violent;
- ✓ a first-time inmate;
- ✓ relatively poor and unlikely to get visitors (e.g. orphans, street children, persons ostracized from families or communities); and/or
- ✓ convicted of a sexual offence against a child.

In addition, an inmate's own perception of vulnerability must be taken into account, including detainee objections to being housed with a specific inmate due to safety concerns. Information derived from all available sources, including the inmate's court record or case file, and information gathered during the inmate's medical screening, should also be considered.

Appropriate protection measures for offenders at higher risk of sexual abuse may include, where necessary, placement in separate housing units identified for that purpose. To the extent possible, risk of sexual victimization should not limit access to programmes, education and work opportunities. Moreover, inmates shall not be placed in separate housing units solely on the basis of their sexual

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orientation or gender identity. Separate housing units may be appropriate for the following categories of detainees:

- ✓ Detained children (under the age of 14) and youth aged between 14-17, who shall at all times be held separately from inmates 18 and older;
- ✓ Inmates with severe mental health problems including state patients;
- ✓ Mentally handicapped inmates;
- ✓ Inmates who are gay, bi-sexual, transgender or gender nonconforming,⁵ or likely to be perceived as such;
- ✓ First-time inmates, including those arriving at the correctional facility directly from court, and before orientation and initial assessment have been concluded; and
- ✓ Inmates whom correctional officials have reason to believe will be targets of sexual abuse or violence.

Correctional officials must demonstrate sensitivity and discretion when asking screening questions, especially those related to sexual orientation, gender identity and prior experiences of sexual abuse. The goals and objectives of the classification process must be explained to inmates in advance, and no inmate shall be required to answer any question with which they are uncomfortable. Classification assessments must be completed in private and treated as confidential.

7.1.7 Protection for Inmates

Custodial officials must pro-actively interact with inmates and monitor inmate activity, including taking the initiative to communicate with inmates on a daily basis. Additional measures required to increase inmate safety include:

⁵Should it be necessary to conduct an examination of a transgender or gender non-conforming inmate to determine genital status, the examination must be conducted in private, by health care officials, and only when an individual's genital status is unknown.

- ✓ Inmates must be protected during transport to and from DCS facilities, including through the separation of violent from non-violent inmates, remand detainees from sentenced inmates, youth from adults, and women from men. When appropriate, handcuffs and other appropriate devices shall be used to prevent violence during transport;
- ✓ Every inmate must have his/her own bed or mat; and
- ✓ Inmates who are transgender or otherwise vulnerable because of their actual or perceived gender identity must be allowed to use shower or ablution facilities at a separate time from other inmates.

7.2 Detection

Each centre must make publicly available information on how to report sexual abuse. Additionally:

- ✓ Inmates must be allowed to make complaints of sexual abuse to the Head of the Correctional Centre or a correctional official authorized to represent the Head of the Correctional Centre, or to any other employee. The inmate must also be allowed to report sexual abuse confidentially to the Judicial Inspectorate of Correctional Services' (JICS') Independent Visitor designated for the correctional centre, and to make confidential telephone calls to the DCS National Call Centre. The reporting process for each of these mechanisms must be easily accessible, without cost, private and secure.
- ✓ All reports and suspicions of sexual abuse, verbal or in writing, and whether made by a victimized inmate or a third party, must be taken seriously and addressed immediately. Where possible, correctional officials must utilize video monitoring systems and other appropriate technology to supplement DCS' sexual abuse prevention, detection, response, and monitoring efforts.

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- ✓ In keeping with their responsibility to protect the inmates in their care, correctional officials shall intervene when an inmate appears to be the target of sexual harassment or intimidation.
- ✓ All correctional facilities must report all sexual assault allegations and the outcomes of the investigations to the national and regional DCS offices in accordance with approved procedures for the reporting of incidents.
- ✓ All incidents of sexual assault must be captured and tracked separately from other types of assaults and incident reports in a DCS database developed for this purpose.

7.3 Response to Victims

Every correctional official shall be responsible for reporting immediately and discreetly to the unit manager and the Head of Centre any information that indicates that an inmate is being, or has been sexually abused. In responding to a report that an inmate has been sexually victimized, correctional officials must adhere to the following procedures:

- ✓ Immediately and discreetly take the victim to a safe, private place, separate from the perpetrator. If an inmate is placed in segregation for his or her own protection, such segregation must be non-disciplinary;
- ✓ Take all allegations seriously and interact with the victim in a sensitive and respectful manner, remembering that the victim will likely be physically and/or emotionally traumatized. Keep in mind that rape and other forms of sexual abuse do not always cause obvious physical injury.
- ✓ Respond in a nondiscriminatory way to inmates who are gay, bi-sexual, or transgender who report that they have experienced sexual abuse;
- ✓ Ensure that there are no suggestions that an inmate should fight to avoid sexual violence or that an inmate's experiences of sexual abuse are too insignificant to be addressed by correctional officials;

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- ✓ Report the incident to the unit manager and the Head of the Correctional Centre. Where the victim is a child, a report must also be made available to the JICS and a representative of the correctional centre's social work staff;
 - Maintain discretion and the victim's confidentiality throughout the process.
 - Allow the victim to decide whether s/he would like to lay charges;
- ✓ Inform the victim as to what will happen at each stage in the process of making the report, going to the hospital (if applicable), and initiating the investigation; and,
- ✓ Put into writing the report of sexual abuse.

7.3.1. Medical Care and Forensic Exam

Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence (commonly considered 96 hours), the following procedures must also be followed:

- ✓ Advise the victim not to shower, remove clothing without medical supervision, use the toilet facilities, consume any liquids or food, smoke or brush teeth (even if they do not want to lay charges immediately or have not decided).
- ✓ Escort the victim to the on-site medical facility and contact the DCS social worker or a local rape crisis center or in order to secure trauma counseling for the victim.
- ✓ Where appropriate, the victim must be taken to the local hospital to receive medical care, a forensic examination, testing for HIV and other sexually transmitted infections (STI's), post-exposure prophylaxis treatment, related counseling, and timely follow-up. (The decision whether to conduct a forensic medical exam should be made only by a medical practitioner or nurse, and not by a correctional officer or member of the

South African Police Services (SAPS). These services must be carried out at no cost to the victim, and only with the victim's informed consent.

- ✓ If the victim does not want to lay a charge, s/he still must be provided with any medical treatment needed. It must be emphasized that no time should be lost and that testing and post-exposure prophylaxis must be started as soon as possible in appropriate cases.

7.4 Response to Perpetrators

When an instance of sexual abuse comes to light, correctional officials must take the appropriate steps to ensure that a perpetrator of sexual abuse does not pose harm to other inmates, and that he or she receives appropriate treatment and interventions:

- ✓ Perpetrators of sexual abuse against other inmates should be subject to appropriate interventions, which might include re-assessment, counseling, treatment, educational programmes and/or disciplinary sanctions. Correctional officials should elect the sanction appropriate based upon the nature of the violation committed, the disciplinary history of the perpetrator and the perpetrator's cognitive and mental health status.
- ✓ Perpetrators of sexual abuse in correctional facilities must be housed in a separate unit/cell/centre where they do not pose a risk to the victim(s), witnesses or other inmates. The case management committee must evaluate the perpetrator's future housing status.
- ✓ Inmates sanctioned for sexually abusive conduct must be afforded the right to appeal the sanctions.

7.4.1 Investigation of Reported Sexual Abuse

Each correctional centre must receive and investigate all reports - including third party reports - of sexual abuse. Investigations of sexual abuse must include the following procedures, to the extent applicable:

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- ✓ Officials must secure the crime scene(s) and potential witnesses;
- ✓ The internal investigation officer (who conducts the administrative investigation) shall cooperate with local police (who conduct the criminal investigation) as well as medical and other personnel as part of a coordinated response team.
- ✓ If the conditions specified in Section 30 of the Sexual Offences Act are met, forensic evidence must be collected from the perpetrator (in accordance with the Act, Section 28(1) (b)).
- ✓ The prosecutor's office will be contacted in order that the assigned prosecutor may consult with the victim.
- ✓ At the end of the investigation, the correctional centre shall notify in writing the individual who reported the abuse and the victimized inmate (where different) of the outcome of the investigation.

7.4.2 Sanctions for Correctional Officials Who Perpetrate and/or are Complicit in Sexual Abuse

Correctional officials who perpetrate or are otherwise complicit in the sexual abuse of inmates must be held accountable for their actions, to ensure that they do not retaliate against inmates they have victimized, or have further opportunities to abuse inmates. The following procedures must be followed with respect to sanctions for officials involved in sexual abuse:

- ✓ Any correctional official alleged to have had sexual contact with an inmate or to have colluded in the sexual abuse of inmates, must be placed on leave or transferred to a position in which s/he will have no contact with inmates for the duration of the investigation.
- ✓ Correctional officials found to have violated DCS sexual abuse policies will be subject to disciplinary sanctions up to and including termination.

- ✓ All terminations for sexual abuse of inmates must be reported to South African Police Services (SAPS,) the local National Prosecuting Authority office, and any relevant licensing bodies.
- ✓ Correctional officials who fail to report the sexual abuse of an inmate shall be referred for prosecution under the Sexual Offences Act.
- ✓ Administrative (departmental) investigations into alleged sexual abuse of inmates must be reviewed by the JICS.

7.5 Monitoring

Each facility will establish a database that tracks instances of sexual abuse and a range of key related factors, including the following data about both victims and perpetrators:

7.5.1 Victim Information

- ✓ Sex and gender identity;
- ✓ Race/ethnicity;
- ✓ Age;
- ✓ Height and weight;
- ✓ Current offence;
- ✓ Length of sentence;
- ✓ Gang affiliation (outside and/or inside the facility);
- ✓ Custody level;
- ✓ Classification;
- ✓ Prior relationship with the alleged perpetrator;
- ✓ Previous experience of sexual abuse

7.5.2 Perpetrator Information

7.5.2.1 *Inmate perpetrator*

- ✓ Sex and gender identity;
- ✓ Race/ethnicity;

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- ✓ Age;
- ✓ Height and weight;
- ✓ Current offence;
- ✓ Length of sentence;
- ✓ Gang affiliation (outside and/or inside the facility);
- ✓ Classification;
- ✓ Prior relationship with the alleged perpetrator;
- ✓ Previous experience of sexual abuse

7.5.2.2 *Staff Perpetrator*

- ✓ Sex and gender identity;
- ✓ Race/ethnicity;
- ✓ Age;
- ✓ Position held within the DCS;
- ✓ Previous positions held within the DCS;
- ✓ Length of service;
- ✓ Relationship with the victim;
- ✓ Prior history of allegations and/or substantiated incidents of sexual abuse or harassment in current and prior employment; and
- ✓ Prior history of failure to comply with the DCS' sexual abuse policies.

In addition, the database should track the date, time and location of the incident; any injuries sustained by the victim; and the outcome of the investigation. Instances of sexual abuse must be tracked separately from other incidents.

All reports of sexual abuse shall be tracked in this way, including those that are withdrawn and reports found to be unsubstantiated due to insufficient evidence.

The information developed from this tracking process will be used to assess and improve the effectiveness of sexual abuse prevention, detection, response, and monitoring policies, practices, and training.

8. POLICY IMPLEMENTATION PLAN

The Accounting Official, through delegated authority, shall ensure and take responsibility for the overall implementation of this policy.

Regional Commissioners shall be responsible for the coordination, implementation and monitoring of this policy and framework in their Management Areas to ensure:

- Compliance with principles and objectives of the policy;
- Capacity and resources for the implementation of the policy; and,
- Establishment of supporting structures.

Each correctional centre must designate a multi-disciplinary team of officials (including a representative from the local Area Commissioner's office) responsible for implementing and monitoring compliance with this policy, as well as reporting to the regional and national DCS offices with respect to all matters related to sexual abuse in detention. Further, this team is chiefly responsible for creating institutional "readiness" for change by regularly briefing correctional officials and other measures.

Each line manager shall be responsible for the effective implementation of this policy and accompanying framework that provides guidelines for the implementation of the policy.

An Implementation Plan is attached as Annexure A.

9. POLICY MONITORING

The Chief Deputy Commissioner ("CDC") of Development and Care, CDC Corrections and CDC Corporate Services will develop strategies and mechanisms for monitoring implementation and coordination of this policy.

Regional offices shall be responsible for monitoring and evaluation of the policy at the Management Area level.

10. POLICY EVALUATION

The policy shall be evaluated annually to assess its efficiency and effectiveness.

The evaluation of the effectiveness of the policy shall be done in accordance with the inspection and audit reports generated in policy monitoring processes and/or whenever changes to legislation governing the policy occur.

The CDC Development and Care, CDC Corrections and CDC Corporate Services may develop further mechanisms to evaluate the effectiveness of the policy in line with internal and external policy developments.

11. POLICY REVIEW

This policy shall be reviewed regularly to determine the extent of its application, to identify gaps, to assess the impact and to ensure compliance with other policy frameworks including domestic legislation and international law, and other human rights provisions.

12. LEGAL IMPLICATIONS

This policy shall be a legal document assisting in the detection, prevention, response to, and monitoring of sexual abuse of inmates within correctional centres. It shall also be a binding document to all correctional officials including all external service providers in the DCS.

13. FINANCIAL IMPLICATIONS

The financial implications of this policy will arise out of the need for human resources, capacity development, security, equipment, facilities, and programmes in order to implement, monitor, and evaluate the policy.

14. POLICY APPROVAL

The Policy to Address Sexual Abuse of Inmates in the Department of Correctional Services was approved by:

JS NDEBELE (MP)

MINISTER OF CORRECTIONAL SERVICES

DATE:

FRAMEWORK TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES

1. EXECUTIVE SUMMARY

This framework is a collaborative effort between the Branch Development and Care and Corrections and must be read in conjunction with the Policy to Manage Sexual Abuse of Inmates in DCS which rests on 4 pillars namely:

- Prevention
- Detection
- Response (including treatment), and
- Monitoring.

It outlines the current and envisaged processes with regard to the management and/or treatment of various types of sexually related offences in all Correctional Centres / Community Corrections namely:

- Management of inmates committing sexual offences within a Correctional Centre / Community Corrections (Annexure A)
- Management of inmates who become victims and/or are traumatized after witnessing sexual abuse while in a Correctional Centre / Community Corrections (Annexure B)
- Management of Remand Detainees to prevent sexual abuse while in a DCS facility (Annexure C)

The framework intends to provide a broad outline, with the specific details within the framework left to the responsibility of various Branches at the National Office as their responsibilities overlap with the aims of the framework. Processes and delegation for this framework in the Regions are part of normal processes and/or delegation processes. The framework is not intended to create separate processes and procedures. The specific aims of the framework will ensure:

- Implementation of the Policy in all Correctional Centres / Community Corrections
- Effective, efficient and transparent utilization of financial and other resources
- That all correctional officials and the community are informed, guided and empowered
- Regular evaluation and monitoring

2. DEFINITION OF TERMS

Sexual offenders: Refer to inmates/ parolees / probationers or any other person sentenced to a term in a Correctional Centre / Community Corrections setting due to having committed a sexual crime.

Perpetrators of sex offences within a Correctional Centre or Community Corrections setting: Refers to inmates who commit a sexual crime (s) while incarcerated with a Correctional Facility or Community Corrections. This includes all sexual abuse that takes place during the inmate's incarceration, including that which occurs away from the facility, such as during transport or at a court holding facility.

Victims of sexual abuse while in a Correctional Centre / Community Corrections setting: Refers to inmates who are victims of sexual abuse while being incarcerated in a Correctional Centre or Community Corrections setting

Inmates who are traumatised by witnessing sexual abuse in a Correctional Centre or Community Corrections Setting: refers to inmates who witness sexual abuse while incarcerated and suffer from adverse effects because of having witnessed such crime.

Remand Detainees: refers to suspects in a criminal or other matter who are held within a Correctional Centre while awaiting their trial to commence.

Correctional Officials: refers to all DCS officials.

Correctional Centre: any DCS Correctional or Remand Detention Centre, including Community Corrections settings.

3. IDENTIFIED PRIORITY NEEDS FROM DCS

- Awareness raising campaigns (including ongoing workshops, staff trainings and inmate orientations and distribution of pertinent information in written and verbal form) for inmates and correctional officials
- Training of correctional officials in working with inmates who have been sexually abused during their incarceration
- Development of treatment / support programmes for victims and perpetrators of sexual abuse
- Training of correctional officials in the management and treatment of sexual offenders who commit sex offences while incarcerated

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- Development of a assessment tool to identify inmates who are likely to be sexually abusive toward other inmates and inmates vulnerable to sexual abuse
- Development of treatment programmes for sexual offenders
- Implementation of the Offender Sexual Assault Protocol
- Development of a National and Regional Register for Sexual Offenders
- Development / procurement of promotional material (e.g. posters, pamphlets, etc.)
- Support from internal and external stakeholders
- Financial assistance
- Availability of Care-for -the-Carers programmes (programmes for secondary victims e.g. social workers, nurses, correctional officials, etc.)
- Separate facilities / units to separate victims from offenders (perpetrators of sexual abuse) within our Correctional Centres (while ensuring that inmates who have been victimized are not placed in punitive segregation where they suffer unnecessary loss of privileges, entitlements or programmes)
- Create new and enhance existing partnerships with external stakeholders (nationally and internationally)
- Conducting relevant research

4. MANDATES

The following Mandates are important but is not limited to them only:

- The Constitution of the Republic of South Africa (108 of 1996)
- White Paper on Corrections (2005)
- Correctional Services Act (111 of 1998)
- Correctional Services Amendment Act (13 of 2007)
- Sexual Offences and Related Matters Amendment Act (32 of 2007)
- Criminal Procedure Act (51 of 1977)
- Domestic Violence Act (116 of 1998)
- Children's Act (38 of 2005)
- Child Justice Act (75 of 2008)
- Marriage Act (25 of 1961)
- Mental Health Care Act (17 of 2002).
- Minimum Standards on Services for Victims of Crime
- National Crime Prevention Strategy (1996)
- Charter for Victims of Crime
- Strategic Plan of DCS 2009/2010-2012/2013
- Risk Profile Management Policy.
- Policy on Correctional Administration

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- Victim Empowerment Policy
- Policy on Correctional Programmes
- Offender Rehabilitation Path (ORP)
- Guidelines on HIV and AIDS Post-Exposure-Prophylaxis for inmates
- Other related policies

Annexure A

MANAGEMENT OF INMATES COMMITTING SEXUAL OFFENCES WITHIN A CORRECTIONAL CENTRE / COMMUNITY CORRECTIONS

AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
MANDATES	- Legislation	<ul style="list-style-type: none"> - Research and obtain applicable legislation. - Translate legislation into policies. - Develop policy, procedures or guidelines - Monitoring implementation and compliance. - Review existing policies/ policy procedures / guidelines - Consult with the Regions - Disseminating Policies/ procedures/ guidelines to the Regions - Facilitate training of officials 	<ul style="list-style-type: none"> - Dissemination of legislation and policies to operational level. - Ensure implementation. - Ensure training of officials within the Region - Monitoring of implementation and compliance - Monthly feedback to national level - Facilitate training of officials. 	<ul style="list-style-type: none"> - Implementation of legislation and policies. - Monitoring and compliance. - Evaluation of the training to officials - Monthly feedback to regional level. - Updating of Register of Sexual Offences by the Head of Centre

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
DISCIPLINARY ACTIONS	<ul style="list-style-type: none"> • Reporting incident to Head Correctional Centre / Head Community Corrections • Reporting incident to SAPS • Application of internal processes and disciplinary procedures • In instances where it is a parolee or probationer refer to Correctional Supervision and Parole Board (CSPB) for a decision • Ensure that information is available nationally and between correctional centres so that when a perpetrator is transferred, the receiving correctional centre is made aware of it. 	-	-	<ul style="list-style-type: none"> - Investigate all reported sexual abuse cases - Institute disciplinary action against offenders who commit sexual offences while serving a sentence - Report sexual offences or allegations by DCS members and inmates to the relevant authorities (SAPS)
CORRECTIONAL SENTENCE PLAN - Placement	<ul style="list-style-type: none"> - CSPRF (Correctional Sentence Plan Revision Framework) - Re-assessment and re-classification of offender 	<ul style="list-style-type: none"> - Ensure implementation and monitoring of CSPRF 	<ul style="list-style-type: none"> - Disseminate the CSPRF to the Management Area - Monitor the implementation of CSPRF - Monthly Report to the National Office 	<ul style="list-style-type: none"> - Implementation of the CSPRF - Re-assessment and re-classification of the offender - Monthly report to Regional Office

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
TREATMENT / ACTIVITIES / PROGRAMMES	- Availability of Correctional / Development and Care Programmes	- Research, develop, source sexual related Correctional / Development and Care Programmes - Establish and maintain National Data base on Sexual Offenders - Involvement of external service providers to render programmes / services - Analyze monitoring and implementation of programmes by internal and external service providers - Provide report relevant CDC	- Research, develop, source sexual related Correctional / Development and Care programmes - Establish and maintain Regional data base on Sexual Offenders within a Correctional Centre / Community Corrections - Involvement of external service providers to render programmes/services - Monitor the implementation of programmes by internal and external service providers within the Region - Monthly report to National Office	- Implement Sexual related Correctional / Development and Care Programmes in all centres - Establish and maintain data base on Sexual Offenders within a Correctional Centre / Community Corrections - Involvement of external service providers to render programmes/services
PREPARATION FOR RELEASE	- CSPRF (Correctional Sentence Plan Revision Framework)	- Develop variety of Pre-release programmes for different needs - Distribute Pre-placement Assessment Tool to Regions	- Disseminate Pre-release programmes and Pre-placement Assessment Tool to Management Areas - Coordinate Pre-release Programmes - Establish and maintain data base of Sexual Offenders within a Correctional Centre / Community Corrections - Monitor the implementation of the Pre-release programmes - Provide monthly report to national office	- Implement Pre-release programmes and Pre- placement assessment tool - Update data base of Sexual Offenders within a Correctional Centre / Community Corrections - Monthly report to regional office

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
MONITORING AND EVALUATION OF THE IMPACT OF THE INTERVENTION	- Continuous Monitoring and Evaluation	<ul style="list-style-type: none"> - Develop monitoring tool - Develop and enhance M&E tools for interventions - Disseminate tools to regions - Analyze monitoring and evaluation reports from Regions - Data analysis and reporting 	<ul style="list-style-type: none"> - Disseminate tools to Management Areas - Monitor and evaluate the implementation of interventions - Provide monthly reports to National office 	<ul style="list-style-type: none"> - Record performance - Provide monthly reports to regional office - Review and adjust sentence plan, according to identified development needs, for further intervention.

Annexure B

MANAGEMENT OF INMATES WHO BECOME VICTIMS AND/OR ARE TRAUMATIZED AFTER WITNESSING SEXUAL ABUSE WHILE IN A CORRECTIONAL CENTRE / COMMUNITY CORRECTIONS

AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
MANDATES	- Legislation	<ul style="list-style-type: none"> - Research and obtain applicable legislation (especially on Victim Offender Mediation) - Translate legislation into policies. - Monitoring of implementation and compliance. - Review of existing policies / policy procedures / guidelines - Consult with the Regions - Disseminating Policies/ procedures/ guidelines to the Regions - Facilitate training of officials 	<ul style="list-style-type: none"> - Dissemination of legislation and policies to operational level. - Ensure training of correctional officials within the Regions (especially on Victim Offender Mediation) - Ensure implementation. - Monitoring of implementation and adherence. - Feedback to national level. 	<ul style="list-style-type: none"> - Implementation of legislation and policies in all centres. - Monitoring and adherence. - Monthly feedback to regional level - Training / orientation of officials on legal mandate.

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
SOCIAL CONTEXT	<ul style="list-style-type: none"> - Awareness raising 	<ul style="list-style-type: none"> - Coordinating Awareness Raising campaigns (Human Rights and Victims Rights) - Develop / procure promotional material - Distribute promotional material - Monitor the process - Feedback reports 	<ul style="list-style-type: none"> - Distribute the promotional and awareness raising materials to the Management Areas - Ensure that campaigns are done - Monitoring and Evaluation - Monthly feedback reports 	<ul style="list-style-type: none"> - Implementation plan - Distribution of pamphlets, promotional materials and posters - Hold Awareness campaigns for both officials and inmates - Monthly feedback report to Regions - Liaise with external service providers - Keep and update database of number of offenders/victims involved
REPORTING OF INCIDENTS	<ul style="list-style-type: none"> - Report to Case Officer - Immediate referral to medical official for intervention / or referral to doctor - Ensure confidentiality - Provision of support (social worker, psychologist, religious care worker, external service provider) - Reporting to Head of Correctional Centre and SAPS 	<ul style="list-style-type: none"> - Investigate possible implementation of the developed Sexual Offender Protocol 	<ul style="list-style-type: none"> - 	<ul style="list-style-type: none"> - Report to case officer - Immediate referral to medical official for intervention - Ensure confidentiality - Provision of support - Reporting to Head of Correctional Centre and SAPS - Referral to social worker and psychologist

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
<p>CORRECTIONAL SENTENCE PLAN</p> <ul style="list-style-type: none"> - Placement of victims of sexual abuse in a Correctional Facility (and keep reason for it confidential and accessible only to those who are involved in classification of inmates, and investigation of serious incidents, including sexual abuse) 	<ul style="list-style-type: none"> - Refining of CSPRF (Correctional Sentence Plan Revision Framework) 	<ul style="list-style-type: none"> - Disseminate CSPRF to the Regions - Ensure implementation of Unit Management Policy - Maintain database on victims and assaults on them 	<ul style="list-style-type: none"> - Disseminate CSPRF to the Management Area - Monitor implementation of Unit Management Policy - Keep database on victims and assaults - Report to the National Office 	<ul style="list-style-type: none"> - Implementation of CSPRF and Unit Management - Keep and update database on victims and assaults on them - Provide monthly feedback to region
<p>TREATMENT / ACTIVITIES / PROGRAMMES</p>	<p>Availability of Correctional and Development and Care Programmes and Services (e.g. Health Care)</p>	<ul style="list-style-type: none"> - Disseminate Correctional and Development and Care Programmes to the Regions 	<ul style="list-style-type: none"> - Disseminate Correctional and Development and Care Programmes to the Management Areas - Monitor participation and progress - Report to the National Office - Establish partnerships with external service providers for specialized health services e.g. HCT, PEP, laboratory services, etc. 	<ul style="list-style-type: none"> - Implement Correctional and Development and Care Programmes - Monthly report to the Regional Office regarding participation - Ensure access to Comprehensive Health Care Services

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
MONITORING AND EVALUATION OF THE IMPACT OF THE INTERVENTION	Continuous monitoring and evaluation	<ul style="list-style-type: none"> - Develop and enhance M&E tools for interventions - Disseminate tools to regions - Analyze monitoring and evaluation reports - Data analysis and reporting - Provide feedback report to relevant CDC 	<ul style="list-style-type: none"> - Ensure implementation of the programme - Monitor and evaluate the implementation of interventions - Provide monthly reports to National office 	<ul style="list-style-type: none"> - Implement the programme - Record performance - Provide monthly reports to regional office - Adjust sentence plan with development needs identified during monitoring and evaluation of the impact of intervention and/or further referral

Annexure C

MANAGEMENT OF REMAND DETAINEES TO PREVENT SEXUAL ABUSE WHILE IN A DCS FACILITY

AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
MANDATES	- Legislation.	<ul style="list-style-type: none"> - Research and obtain applicable legislation (especially on ATD's) - Translate legislation into policies. - Monitoring of implementation and adherence. - Review of existing policies / policy procedures / guidelines - Consult with the Regions - Disseminating policies / procedures/ guidelines to the Regions - Facilitate training of officials 	<ul style="list-style-type: none"> - Dissemination of applicable legislation and policies to operational level. - Ensure training of correctional officials within the Regions (especially on ATD's) - Ensure implementation. - Monitoring of implementation and adherence. - Monthly feedback to national level. 	<ul style="list-style-type: none"> - Implementation of applicable legislation and policies. - Monitoring and adherence. - Monthly feedback to regional level.
SOCIAL CONTEXT	- Awareness raising (sexually transmitted diseases, sexual offences, etc.)	<ul style="list-style-type: none"> - Coordinating Awareness campaigns - Facilitate training of officials - Develop / procure promotional material - Distribute promotional material - Monitor the process - Feedback reports to relevant CDC 	<ul style="list-style-type: none"> - Distribute the materials to the Management Areas - Provide health education - Ensure that campaigns are done - Training the officials - Monitoring and Evaluation - Feedback reports to National Office 	<ul style="list-style-type: none"> - Implementation plan - Distribution of pamphlets - Awareness campaigns - Feedback report to Regions (Targets in terms of number, - Training the officials

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AREAS		ORGANIZATIONAL LEVELS		
		NATIONAL (CDC Development and Care and CDC Corrections)	REGIONAL (Regional Commissioner)	MANAGEMENT AREA (Area Commissioner)
Broad	Specific			
TREATMENT / ACTIVITIES / PROGRAMMES	<ul style="list-style-type: none"> - Availability of certain development programmes (Education, Recreation, etc.) and crises intervention by social workers, psychologists and spiritual care workers - Availability of external services and/or programmes - Provision of health care services (medical treatment) 	-	-	<ul style="list-style-type: none"> - Orientation on sexual abuse by case assessment officer - Assessment by the Social Worker - Refer the offender to DSD Social Worker - Assessment by professional nurse - Provide awareness raising sessions



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Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA



ROUTE LIST FOR DOCUMENTATION

Reference:	14/1	Date:	2013-05-03
Enquiries:	Mrs RST Sello	Extension:	012 307 2855 / 2592

SUBJECT:	REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES
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FUNCTIONARY ROUTED TO		DATE RECEIVED	POSTAL REGISTER NR	DATE FORWARDED
CAPACITY	SIGNATURE			
DC PERSONAL WELL-BEING	<i>[Signature]</i>	2013/05/03		
CDC INCARCERATION AND CORRECTIONS	<i>[Signature]</i>	2013/05/06	0451	2013/05/06.
CHIEF OPERATING OFFICER	<i>[Signature]</i>	2013/05/10	20/805	13/05/2013
Acting CDC STRATEGIC MANAGEMENT	<i>[Signature]</i>	10:17 2013-05-13		13/05/2013
ADMIN CONTROL OFFICE	JMATA	14.05.2013	666MH	14/05/2013
NATIONAL COMMISSIONER				
MINISTER				2013-06-13

RETURN

FUNCTIONARY ROUTED TO		DATE RECEIVED	POSTAL REGISTER NR	DATE FORWARDED
CAPACITY	SIGNATURE			
ADMIN CONTROL OFFICE				
DC POLICY COORDINATION AND RESEARCH				



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

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INTERNAL MEMO

DATE:	2013-05-03	FILE NR:	1/14/P
TO:	MINISTER	FROM:	DC: PERSONAL WELL-BEING

SUBJECT:	REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES
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1. PURPOSE

The purpose of the memorandum is to provide the Minister with the Policy, the Framework and the Implementation Plan to Manage Sexual Abuse of Inmates in DCS Facilities. (Annexure A, B, C)

2. BACKGROUND

2.1 The National Commissioner held a Round Table Discussion and a Seminar on Offender Rape in 2008 to facilitate discussions with internal and external stakeholders on offender rape as:

- 2.1.1 Rape in a prison setting is a complex issue and an international phenomenon
- 2.1.2 Offender rape is an unacceptable part of offender culture
- 2.1.3 Victims of offender rape are severely traumatized
- 2.1.4 Legal implications for DCS of the new Criminal Law (Sexual Offences and Related Matters) Amendment Act no 32, 2007.

2.2. Relevant information regarding Offender Rape in Correctional Facilities was raised:

- 2.2.1 Offender-rape occurs in many correctional centers all over the world
- 2.2.2 In general there is an under-reporting of rape by men
- 2.2.3 The Correctional Centre context does not encourage the reporting of rape often leading to mismanagement occurring (e.g. Karp case as indicated at Jali Commission)

CONFIDENTIAL

SUBJECT:	REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES
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- 2.2.4 These rapes have a profound effect and impact on the victim (physical, social and psychological effects and accompanying symptoms are worsened when a rape takes place within a correctional centre setting)
- 2.2.5 Although the DCS condemns sexual violence in all correctional centers, sexual assault / rape is often experienced by offenders as part of the "accepted" offender culture within a correctional centre

- 2.3 Challenges faced by DCS:
 - 2.3.1 Overcrowding
 - 2.3.2 Under-reporting due to fear and victimization
 - 2.3.3 Existing prison culture (and gangs)
 - 2.3.4 HIV/AIDS and STD's
 - 2.3.5 No specific units for vulnerable offenders are available (limited single cells)
 - 2.3.6 Lack of awareness raising programmes for correctional officials (on how to manage and treat offender rape)
 - 2.3.7 Lack of awareness amongst correctional officials on the implications of the new Amendment Act that holds specific challenges for DCS (e.g. litigation)
 - 2.3.8 Lack of data base and statistics on different categories of sexual offences including statistics on offender rape
 - 2.3.9 Lack of human resources (e.g. scarce skills) to provide support and/or treatment programmes for victims and perpetrators

- 2.4 Following the Seminar the Director Psychological Services organized and coordinated a 1 day work session to develop a draft Framework for the Management and Treatment of Sexual Offenders in Pretoria on 3 December 2008. Delegates from the Branches Development and Care, Corrections, Corporate Services as well as Regional Heads from all the Regions were invited to this session. A draft Framework was developed and a Progress report was submitted to the CDC Development and Care.

- 2.5 In 2009 the Dir Psychological Services established formal contact with Ms Cynthia Totten (**Just Detention International**, Los Angeles, California, USA) and Ms Sasha Gear (**Centre for the Study of Violence and Reconciliation**).

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SUBJECT:	REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES
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- 2.6 Both these 2 external stakeholders have extensive knowledge and experience in working with sexual offenders and their organizations aim to end all forms of sexual violence in detention/correctional contexts. Since the first formal meeting regular contact with them has been established.
- 3 On 11 April 2010 a follow up meeting was again scheduled with them and the Director Security Management Services from Corrections was also present during the meeting. During this meeting it was determined that:
- 3.4.1 Just Detention International and the Centre of Violence and Reconciliation want to focus their attention on the Management and Treatment of Offender Rape/Sexual Violence in Correctional Facilities
- 3.4.2 Both the Organizations were willing to assist DCS to develop a DCS draft Policy on Offender Rape/Sexual Violence
- 3.4.3 Could possibly obtain and provide DCS with funding to train personnel (especially correctional officials) to address sexual abuse of inmates
- 3.5 A small task team from the then Branch Development and Care, Corrections, and CSVR then met on the 21st April 2010 and developed a draft Policy and Framework to Address Sexual Abuse of Inmates in DCS Facilities.
- 3.6 The draft Policy and Framework was then widely consulted with various internal role players from the relevant Branches at National Office, with all 6 Regions as well as external role-players (Inter-departmental Management Team) and Just Detention International. All the inputs received were consolidated into the final documents that were sent on route for approval by the then CDC: Corrections and Acting CDC: Corporate Services on the 03rd January 2011 and was finally received back on the 07th September 2011. The final document was sent again on route to Legal Services for their inputs and was received back on 21 November 2012 for final amendments, and to put it on route again for all the CDC's comments since the establishment of the new structure with seven (7) CDC's. The memo was put on route on the 27 March 2013 and was received back on the 30 April 2013. All inputs and comments are effected.

SUBJECT:	REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES
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3. DISCUSSION

The Policy, Framework and costed Implementation Plan are now in its final format and the Minister is requested to approve the documents. As soon as the documents are approved, then the Procedures will be developed and submitted to the National Commissioner for approval.

4. IMPLEMENTATION PLAN

Attached is a costed Implementation Plan (Annexure C) that indicates the actions that need to be taken, responsibilities on National, Regional and Operational level, possible timeframes, milestones and estimated costs.

5. ORGANIZATIONAL AND PERSONAL IMPLEMENTATIONS

The implementation of the Policy to Address Sexual Abuse of Inmates has been long awaited ever since the Jali Commission findings. The Portfolio Committee has also recently been requesting feedback on the development of a Policy to Manage Sexual Abuse of Inmates in DCS. This Policy and Framework will be a positive marker for DCS as it will indicate clearly the zero tolerance of sexual violence in our facilities.

The Policy will not necessitate additional human resources but training of all personnel in the management and treatment of inmates who have been sexually abused in our facilities. Implementation of the Policy will create a safer environment for all inmates in the future.

The Policy also forms part of the Anti-Gang Strategy of the Department.

6. LEGAL IMPLICATIONS

The new Criminal Law (Sexual Offences and Related Matters) Amendment Act no 32, 2007 has legal implications for DCS as well as all correctional officials and therefore all personnel need to be made aware of this Act as well as this Policy to minimize litigation.

SUBJECT:	REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES
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7. FINANCIAL IMPLICATIONS

The estimated costs for all administrative tasks, training of personnel, human resources needed, Infrastructure, etc. have been broken down and included in the Implementation Plan (Annexure C). The total costs for implementation of this Policy have been calculated at an estimated amount of **R1, 030, 320.00**. The funds have not been budgeted for the 2013/14 financial year.

8. COSTING OF THE ACTIVITY OVER MTEF

Due to the fact that this Policy is an overarching Policy which affects Incarceration & Corrections and Human Resource it is recommended that the Budget Committee decide where the primary responsibility lies as it should then be costed by the primary responsibility.

9. COMMUNICATION IMPLICATONS

The Policy will need to be communicated with all internal and external stakeholders (e.g. by the Minister at a Portfolio Committee meeting), the different Clusters, with the Media, with inmates and all personnel. Pamphlets and brochures should be utilized to spread the most important messages within all Correctional Centres (including Remand Centres) as well as in Community Corrections.

10. PARTIES CONSULTED, RESPONSES AND COMMENTS

The Policy and Framework has been finalized in consultation with the following stakeholders:

- 10.1 Internally with Directors and or other delegated personnel from the Branches Corrections and Corporate Services on an ongoing basis by the task team (Annexure D – 24 June 2010)
- 10.2 With personnel from all 6 Regions and their inputs were incorporated into the documents (Annexure E -10 September 2010)

CONFIDENTIAL

SUBJECT: REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES

- 10.3 Externally (nationally) with the Internal Departmental Management Team dealing with Sexual Offences (See Annexure F – 12 October 2010).
- 10.4 Externally (nationally) with the CSVr - Ms Gear from CSVr was also a task team member and her inputs were consulted and included into the documents.
- 10.5 Externally (internationally) with Just Detention International especially Ms Totten and Ms Lovisa Stannov. They have been assisting the task team and provided much help and assistance continuously and also provided a letter for the National Commissioner (Annexure D - dated 20 December 2010).

11. RECOMMENDATIONS

It is recommended that the Policy to Address Sexual Abuse, Framework and the Implementation Plan of Inmates in DCS be submitted to the Minister for approval.



RST SELLO

DC PERSONAL WELL-BEING

Date: 2013/05/03

Comments:

Recommended/ Not recommended/ Recommended with amendments

✓
This policy is overdue - the Portfolio Committee has raised this matter on several occasions and it was confirmed on 17 April 2013 that final inputs were affected and approval is therefore expected shortly. (Inputs by CDC's are included in the final draft).

JG SMALBERGER

CDC INCARCERATION AND CORRECTIONS

Date: 2013/05/06.

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Comments:

~~Recommended/ Not recommended/ Recommended with amendments~~


N JOLINGANA

CHIEF OPERATING OFFICER

Date: 10.05.2013

Comments:

~~Recommended/ Not recommended/ Recommended with amendments~~

I recommend that this Policy be fast tracked for approval, stakeholders raised their dissatisfaction about the delay in approving the document during the stakeholder hearings for our Strategic Plan and APP sessions with Portfolio Committee


TB RASEROKA

Act: CDC STRATEGIC MANAGEMENT

Date: 13/05/2013

CONFIDENTIAL

SUBJECT: REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES

Comments:

Recommended/ Not recommended/ Recommended with amendments

Once the Policy is approved by the Hon Minister, the COO will have to open/roduce the implementation process across the entire department (colleges) and put measures for monitoring and effectiveness to reduce sexual abuse.



TS MOYANE

NATIONAL COMMISSIONER: CORRECTIONAL SERVICES

Date: 17 May 2013

DECISION

- 11.1 The Policy Approved/ ~~Not approved/ Approved with amendments~~
- 11.2 The Framework Approved/ ~~Not approved/ Approved with amendments~~
- 11.3 The Implementation Plan Approved/ ~~Not approved/ Approved with amendments~~



JS NDEBELE (MP)

MINISTER OF CORRECTIONAL SERVICES

Date: 24/05/2013

ANNEXURE C

POLICY IMPLEMENTATION PLAN: TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES

ACTIVITY	ACTION	RESPONSIBILITY (National)	RESPONSIBILITY (Regional)	RESPONSIBILITY (Operational Level)	TIME FRAME	MILESTONE	ESTIMATED COST
Administrative arrangements for policy implementation after approval by the Minister	Interaction with role players internally and externally on implementation of policy	CDC Incarceration and Corrections CDC Remand Detention CDC Community Corrections CDC Human Resource DC Personal Well-Being DC Personal Development DC Personal Corrections DC HR Development DC HR Management DC Communications	Regional Commissioners/ Deputy Regional Commissioners/Regional Heads Development and Care/Regional Heads Corrections/ Regional Heads Corporate Services	Area Commissioners/ Area Coordinators Development and Care/ Area Coordinators Corrections	31/10/2013 (depending when National Commissioner approves policy)	Communicated approved policy to all levels within DCS and to external service providers Intranet Duplication of Policy	R76,320 (R12,720 per Region)
Printing of policy per Region for distribution/communication to all levels	Distribution of material to all Management Areas Implementation at all Management Areas	DC Personal Well-Being DC Personal Development DC Personal Corrections DC HR Development DC HR Management DC Communications	Regional Commissioners/ Deputy Regional Commissioners/Regional Heads Development and Care/Regional Heads Corrections/ Regional Heads Corporate Services	Area Commissioners/ Area Coordinators Development and Care/ Area Coordinators Corrections	30/02/2014	Approved policy including: Brochures Pamphlets Posters	R63,600 (R10,600 per Region)
Training of 3 Master Trainers per Region for personnel	Identify and train Master Trainers for the Region	DC HR Development	Regional Heads Corporate Services	Identify and train Master Trainers for the Region	30/06/2014	Informed personnel Policy available and understood	R63,600 (R10,600 per Region)

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Training of 2 Master Trainers per Management Area for personnel	Identify and train Master Trainers for all Management Areas	DC HR Development	Regional Heads Corporate Services	Regional Heads Corporate Services Area Commissioners/Head of Correctional Centres & Community Corrections	30/05/2014	Informed personnel Policy available and understood	R127,200
Awareness raising of development and Care and Corrections personnel	Identify Management Area for testing Awareness raising of personnel	DC Personal Well-Being DC Personal Development DC Personal Corrections	Regional Heads Development and Care/Regional Heads Corrections	Area Commissioners/ Area Coordinators Development and Care/ Area Coordinators Corrections	31/08/2014	Informed personnel Policy available and understood	R63,600 (R10,600 per Region)
Pilot testing/Audit of Compliance in identified Management Areas Roll out to all Regions after pilot testing	Implement in test site Evaluation Report Address gaps	DC Personal Well-Being DC Personal Development DC Personal Corrections	Regional Heads Development and Care/Regional Heads Corrections	Area Commissioners/ Area Coordinators Development and Care/ Area Coordinators Corrections	31/10/2014	Informed offenders Policy available and understood	Expenses relating to these activities will form part of the normal day-to-day operations and responsibilities
Monitor implementation of the policy	Inspection of selected Management Areas	DC Personal Well-Being DC Personal Development DC Personal Corrections DC Corporate Services	Regional Heads Development and Care/Regional Heads Corrections/ Regional Heads Corporate Services	Area Commissioners/ Area Coordinators Development and Care/ Area Coordinators Corrections/ Regional Heads Corporate Services	15/12/2014	Audit Inspection Reports	Expenses relating to these activities will form part of the normal day-to-day operations and

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							responsibilities
Evaluation of the implementation of the policy	Analysis of the inspection reports Action plan to address gaps and challenges identified in feedback report Feedback report	DC Personal Well-Being DC Personal Development DC Personal Corrections DC Corporate Services	Regional Development and Care/Regional Heads Regional Heads Corporate Services	Area Commissioners/ Area Coordinators Development and Care/ Area Coordinators Corrections/ Regional Heads Corporate Services	31/06/2015	Feedback report	Expenses relating to these activities will form part of the normal day-to-day operations and responsibilities
Human resources	<p>Develop training material (e.g. manuals, brochures, pamphlets and posters) for all new recruits at Training Colleges and for offenders in Correctional Centres and Community Corrections</p> <p>3 Master Trainers need to be trained per Region to train at least 2 officials in every Management Area for the implementation and roll-out of the policy</p> <p>At least 1 correctional official presenting correctional programmes and 1 social worker/psychologist/chaplain should be trained per Management Area for the implementation and roll-out of the policy</p> <p>All correctional officials should be informed by means of pamphlets, brochures or posters of the implementation of this policy</p> <p>This policy needs to be brought to the attention of all new appointees and at Basic Training at Colleges</p>						
Infrastructure	The constant changing environment of Correctional Services makes increasing demands on the availability of infrastructure and human resources. The DCS is aware that the present internal resources are not sufficient to address the diverse needs of all offenders and therefore it has been innovative in many instances to tap into internal and external resources to assist in maximizing services						
Finances	<p>Provision should be made within DCS budget to fund some of the training of personnel.</p> <p>Awareness Raising of offenders can form part of allocated budgets for services and programmes that are allocated to Directorates annually</p> <p>The 2 external stakeholders CSVR and JDI have indicated that they will be able to find external funding/donors for some of the training of personnel</p>						
General	The Policy has been aligned with the White Paper on Corrections (2005)						
TOTAL COST							R 1,030,320

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