

Submission to the Portfolio Committee on Justice and Correctional Services by Just Detention International – South African (JDI-SA) on the Department of Correctional Services’ progress, and 2013–14 Annual Report, October 2014

Just Detention International – South Africa (JDI-SA) would like to thank the Portfolio Committee on Justice and Correctional Services (the Committee) for the opportunity and invitation to make this submission. While JDI-SA is unfortunately unable to attend the hearings on October 14th and 15th, it hopes that this submission will be of interest and use to the Committee. JDI-SA looks forward to future engagement and collaboration, and wishes the Committee well in its deliberations and work.

JDI-SA is a non-partisan, non-governmental organisation that works to end sexual abuse and ill-health in places of detention. Sexual abuse in detention constitutes a human rights and public health crisis in South Africa, with devastating consequences for its victims and for the communities to which they return. When the government takes away someone’s freedom, it takes on an absolute responsibility to protect that person’s safety and treat him or her with dignity. JDI-SA believes that no matter what crime someone has committed, rape must never be part of the penalty. The vast majority of sexual abuses can be prevented with the right leadership, policies and practices. JDI-SA has been at the forefront of work to achieve this in South Africa.

The Department of Correctional Services’ (DCS) interaction with the critical problem of sexual abuse in its facilities has been uneven: at times very positive, and at others immensely frustrating. In brief summary of key developments, in 2008, Commissioner Peterson convened a meeting focused on sexual abuse in prison and invited civil society stakeholders – including Just Detention International (JDI) (-JDI-SA’s founder), the Centre for the Study of Violence and Reconciliation (CSVR), and the media – to deliberate with DCS on the issues. This provided for further DCS attention to the issue, which was overdue and welcome.

Since 2002, civil society has alerted DCS to the prevalent problem of sexual abuse in DCS facilities, called for action to address it, and offered assistance for the task. Civil society interaction with DCS on the issue increased from 2006 when JDI began working in South Africa, and JDI and CSVR’s work with DCS – combined with the progressive and open leadership of the late Commissioner Peterson – paved the way for deepened attention to the issue. In 2009 and 2010 senior DCS officials worked hard with JDI and CSVR to develop the ground-breaking Policy to Address Sexual Abuse in DCS Facilities (the policy) – a comprehensive framework for the prevention, detection, response and documentation of sexual abuse in DCS facilities. Dr Lorinda Bergh, then head of Psychology at DCS, and Mr Hendrik Steyn from Security, championed the development of the policy, which was also a strong and informative example of DCS and civil society collaboration. Before her retirement at the end of 2010, Dr Bergh ensured that the policy had been approved by the different DCS regions and directorates, and was ready for the Commissioners’ approval. At that point

however, the process became stuck and, for 3 years, JDI-SA was unable to get information from DCS on the policy. During this time, in addition to numerous communications with DCS, JDI-SA – later with Sonke – made regular submissions to the Portfolio Committee on Correctional Services (PC) requesting information from DCS on the status of the policy, and underscoring the urgent need to take concrete steps against sexual abuses in DCS facilities. DCS did not provide clarification or explanation until 2013. In addition, JDI-SA was unable to advance plans that had been discussed between DCS Head Office and JDI to begin piloting the policy because of the lack of responsiveness and engagement from senior DCS officials.

In April 2013, in a DCS briefing to the PC, DCS noted that the policy was at the final stage of the approval process, and in May 2013, DCS finally approved it. This was three years later than could have been the case, but nevertheless welcome, and a victory for prisoners' rights. There was also a positive shift in DCS's willingness to engage with civil society organisations on the policy. JDI-SA has been heartened by recent related interactions with DCS, if also being concerned that the urgent process of implementation cannot be further delayed.

In addition to the focus on the policy, JDI-SA, and its partners, have, through the PC and other avenues, made repeated calls to DCS to implement specific key reforms to address sexual abuse. These are noted below and discussed further in relation to the 2013-14 Annual Report.

1) Disaggregate reports of sexual violence to DCS, from those of general assault, and make these publically available: While JDI-SA welcomes that DCS has heeded the call to distinguish reports of sexual violence from those of general assault, it is concerned that approximately 3 years since DCS reportedly began to do so, it still does not make these statistics publically available. Reports of sexual violence are generally viewed as representing only a fraction of actual incidents, undoubtedly even more-so in a prison environment, but the publication of such reports is an essential component of efforts to address this violence. It assists in bringing it out of the shadows and building an environment where survivors feel able to come forward about what has happened to them.

More broadly, over the years, the issue of sexual violence has been sorely lacking from DCS reports and strategic plans. JDI-SA had expected the 2013-14 Annual Report to state that the policy has been approved, and report on progress thus far. There is however no mention of the policy, including in the section, Policy Mandates.

JDI-SA remains deeply concerned that the problem of sexual abuse is invisible in DCS reports, except for a mention in its contingent liabilities.

2) There is no information on the development of the screening tool required by the Correctional Matters Amendment Act of 2011, in order to assess vulnerability of newly sentenced inmates to sexual abuse: The development and implementation of this screening tool is important for preventing assaults on inmates and would address an important component of the policy discussed above. JDI-SA has previously requested, and would welcome, feedback on the development of this tool and on its usage.

3) Update DCS's HIV and AIDS Policy to include the distribution of lubricants with condoms, and revisit the nature of condoms distribute: Condoms currently distributed to inmates are not designed for anal sex, nor distributed with lubricants – substantially jeopardizing their effectiveness. The 2013-14 Annual Report reports only a monitoring tool to capture condom distribution, but shares no information on numbers of condoms distributed or whether initiatives are underway to distribute condoms that are appropriate for anal sex, with lubricants.

4) Need for Improved Information on HIV, AIDS, and TB: JDI-SA is concerned about the scant information on HIV and TB contained in this and previous reports. JDI-SA urges DCS to report on its strategy to prevent and respond to TB beyond the minimal noting of percentages of inmates accessing treatment. This should include holistic interventions to address the intersections of TB and HIV in DCS facilities including infection control and adherence to treatment, particularly among those co-infected with HIV and TB.

5) Torture and Violence: It is worrying that DCS does not discuss its strategy to address torture – especially given key developments over the last year, including serious incidents at several facilities, and that DCS's obligation to prevent torture is now legislated through the Prevention and Combatting of Persons Act (2013).

More broadly, JDI-SA has repeatedly called for DCS to prioritise training for staff to prevent and appropriately respond to violence, including sexual violence. DCS officers have reported that they are ill-equipped to deal with violence and sexual violence.

6) Shift System and Lockup (7 day establishment): JDI-SA has repeatedly drawn attention to the staffing crisis in DCS facilities and the related deeply problematic practice of having only skeleton staffing during “lock up” (from approximately 15h00 to 7h00) and over weekends. At these times inmates are only cursorily monitored and response processes to emergencies are typically lengthy, cumbersome and sometimes fatal. This situation is a key contributor to violence and ill-health in DCS facilities, and requires urgent attention. It is not only a matter of staff capacity to supervise inmates but key to most processes that need to occur – such as the assessment of new inmates for health and safety needs. In both DCS's previous and current annual reports, it stated that discussions were underway regarding an alternative shift system that better serves its needs. Implementation of an alternative system is urgent, as is the prioritisation of the safety of inmates and staff as key consideration in development of the model.

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