



**Submission to the Portfolio Committee on  
Correctional Services**  
*Department of Correctional Services Annual Report  
2013/2014*

**10 October 2014**

**Submission by Marlise Richter & Katy Hindle**

**[Marlise@genderjustice.org.za](mailto:Marlise@genderjustice.org.za)**

**[Katy@genderjustice.org.za](mailto:Katy@genderjustice.org.za)**

**Cape Town Office**

4th Floor, Westminster House  
122 Longmarket Street, Cape Town, 8001  
PO Box 3126, Cape Town, 8000  
Tel. +27 21 423 7088 • Fax. +27 21 424 5645

**Johannesburg Office**

Stevenson Building, 3rd Floor, 62 Juta Street  
Braamfontein, 2017  
PO Box 31166, Braamfontein 2017  
Tel. +27 11 339 3589 • Fax. +27 11 339 6503

**Bushbuckridge Office**

Agincourt Health Centre  
Bushbuckridge Local Municipality  
Mpumalanga  
Tel. +27 13 795 5076 • Fax. +27 76 411 2665

[www.genderjustice.org.za](http://www.genderjustice.org.za) • [info@genderjustice.co.za](mailto:info@genderjustice.co.za)

**Board Members**

Kopano Ratele (Chairperson) • Donovan Muller (Treasurer) • Lucilla Blankenberg • Dmitri Holtzman • Liesl Gertholtz • Phumzile Mabizela  
Deborah Byrne • Dean Peacock (Ex-Officio) • Steven Robins • Mokgethi Tshabalala

Vat Reg. No: 4410231288

## Contents

<b>I. Executive Summary</b> .....	3
<b>A. Absence of data on the Policy Framework to Address Sexual Abuse of Inmates in the Department of Correctional Services:</b> .....	3
<b>B. No Sexual Assault Statistics included</b> .....	4
<b>II. Introduction</b> .....	4
<b>III. Background: Sonke Gender Justice</b> .....	4
<b>IV. The problem of Sexual Violence in Correctional Facilities</b> .....	6
<b>V. The Sexual Assault Policy Framework</b> .....	6
<b>VI. Sexual Violence in DCS Facilitates</b> .....	7
<b>VII. Screening Tool for Vulnerability to Sexual Abuse</b> .....	9
<b>VIII. Conclusion</b> .....	10
<b>IX. Appendices</b> .....	10

### Cape Town Office

4th Floor, Westminster House  
122 Longmarket Street, Cape Town, 8001  
PO Box 3126, Cape Town, 8000  
Tel. +27 21 423 7088 • Fax. +27 21 424 5645

### Johannesburg Office

Stevenson Building, 3rd Floor, 62 Juta Street  
Braamfontein, 2017  
PO Box 31166, Braamfontein 2017  
Tel. +27 11 339 3589 • Fax. +27 11 339 6503

### Bushbuckridge Office

Agincourt Health Centre  
Bushbuckridge Local Municipality  
Mpumalanga  
Tel. +27 13 795 5076 • Fax. +27 76 411 2665

[www.genderjustice.org.za](http://www.genderjustice.org.za) • [info@genderjustice.co.za](mailto:info@genderjustice.co.za)

### Board Members

Kopano Ratele (Chairperson) • Donovan Muller (Treasurer) • Lucilla Blankenberg • Dmitri Holtzman • Liesl Gertholtz • Phumzile Mabizela  
Deborah Byrne • Dean Peacock (Ex-Officio) • Steven Robins • Mokgethi Tshabalala



## **I. Executive Summary**

Sonke Gender Justice ('Sonke') is committed to assisting the Department of Justice and Correctional Services ('DCS') to meet its mandate of securing the health, safety and human rights of inmates. In this submission to the Portfolio Committee on Justice and Correctional Services (the 'Portfolio Committee'), we have focussed narrowly on the neglected area of sexual abuse within Correctional Facilities, which we believe needs to receive far greater attention.

This issue has been highlighted previously in a number of joint submissions which are attached for reference as Appendix A.

In this submission, we wish to focus on the following two key issues which relate to sexual violence of inmates:

### **A. Absence of data on the Policy Framework to Address Sexual Abuse of Inmates in the Department of Correctional Services:**

In March 2013, the Policy Framework to Address the Sexual Abuse of Inmates in the Department of Correctional Services facilitates (the 'Sexual Assault Policy Framework') was adopted. This was a significant development and at the time we congratulated the DCS for committing to instituting pro-active measures to prevent, detect and respond to sexual violence against inmates. Yet, we note that the current DCS Annual Report does not refer to the Sexual Assault Policy Framework under 'Key policy developments and legislative changes' (p.14) and that no data is provided on progress with the implementation of this policy.



## **B. No Sexual Assault Statistics included**

We note that the Judicial Inspectorate for Correctional Services ('JICS') reported 10 complaints of sexual assault in its 2013/2014 Annual Report. By contrast, the DCS Annual Report does not refer to sexual violence, except by indicating that DCS incurred R 1800 000 in contingent liabilities for rape during the year. No further information was provided. Further, we note that the data provided by JICS disaggregated statistics on sexual violence as separate from the general assaults category. DCS does not do this and we call on the DCS to collect and disaggregate its assault statistics to reflect data on sexual assault.

## **II. Introduction**

Sonke Gender Justice ('Sonke')<sup>1</sup> welcomes the opportunity to make this submission to the Portfolio Committee on Correctional Services (the 'Portfolio Committee') on the 2013/2014 Annual Report tabled by the DCS. This written submission will be supplemented by oral submissions before the Portfolio Committee on 15 October 2014.

## **III. Background: Sonke Gender Justice <sup>2</sup>**

---

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

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



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,<sup>3</sup> we implement peer education programmes in 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 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.<sup>4</sup> Cemented with a memorandum of understanding, Sonke provides technical support to JICS on the issues of HIV and sexual violence, and together with JDI helped JICS develop and adopt a specialised complaints system for inmate complaints on sexual abuse. In addition, Sonke, JDI, and Wits Justice Project serve as co-coordinators for the

---

<sup>3</sup> Please see [www.brothersforlife.org](http://www.brothersforlife.org), and <http://www.genderjustice.org.za/onemancan/>.

<sup>4</sup> 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>



civil society coalition, Detention Justice Forum (DJF), which works to increase accountability on issues pertaining to inmate health and rights.

#### **IV. The problem of Sexual Violence in Correctional Facilities**

Sexual abuse of inmates is widespread in correctional facilities, including those that are privately owned. Such abuse causes serious physical and psychosocial 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% respectively<sup>5</sup> - which is up to three times the national average. Nearly half of all inmates surveyed by JICS in 2007 reported that sexual abuse happens “sometimes,” “often”, or “very often”.<sup>6</sup>

#### **V. The Sexual Assault Policy Framework**

It is against this background that Sonke commend DCS for their continued efforts to protect the safety of inmates and by passing the Policy Framework to Address the Sexual Abuse of Inmates in the Department of Correctional Services facilitates (the 'Sexual Assault Policy Framework'), developed by DCS in collaboration with JDI and Centre for the Study of Violence & Reconciliation ('CSV') (see Appendix B) in 2013. We hope that the omission to mention the Sexual Assault Policy Framework in the DCS Annual Report

---

<sup>5</sup> Muntingh, L. (2008). “The prevalence of HIV in South Africa's prison system: some, but not all the facts, at last.” CSPRI Newsletter 26 May 2008; Schalkwyk, A. “Killer Corrections: AIDS in South African Prisons,” Harvard International Review, Spring 2005.

<sup>6</sup> Judicial Inspectorate for Correctional Services, *Annual Report 2007/2008*, at 33.



was an oversight as we believe it was a watershed moment and key development in the 2013/2014 year. We are not clear on aspects relating to implementation of the Sexual Assault Policy Framework across correctional facilities as it has similarly not been reported on.

### ***Background to the Policy***

The Sexual Assault Policy Framework is an important statement to all inmates and survivors of rape in correctional facilities that the DCS acknowledges that rape is a problem, and that it 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.

While a timeline and implementation plan for the Sexual Assault Policy Framework have been developed, it is our understanding from meetings with senior DCS staff<sup>7</sup> that very little progress has been made in the implementation of this policy. We would like to urge DCS to urgently accelerate the implementation of the policy, popularize it within correctional facilities, train staff on its provisions and monitor and report on its implementation. Sonke - designated an external stakeholder within the policy - would like to lend its support in the department's efforts to implement.

## **VI. Sexual Violence in DCS Facilities**

---

<sup>7</sup> Meeting on 4 September 2014 with Director: Psychological Services Dr Kometsi and colleagues.



DCS has not reported on sexual violence in DCS facilities for the year under review. For this reason, we can only rely on information obtained in the JICS Annual Report. According to the JICS Annual Report, only 10 formal complaints of “assault (sexual)” were logged in the period under review, (up from just 1 report of sexual assault in the 2012/2013, although assault (sexual) was not disaggregated from general assault in that reporting period).<sup>8</sup>

It is well established in research that sexual offences are highly underreported crimes in South Africa and for this reason a limitation of all data on sexual assault is the extent to which is it so routinely and extensively underreported. There is no reason to believe that this is any different in correctional centres and in fact may be worse, due to the difficulty in reporting and accessing services. A low number of reported sexual assaults may also indicate that inmates have little confidence that their report will be taken seriously or that complaints are inhibited by an adverse environment (see the Sonke submission on the JICS 2013-2014 annual report). For these reasons, it is unlikely that the 10 reported cases of sexual assault in the JICS annual report is a true reflection of the actual number of sexual assaults that occurred in correctional centres over the last year. Indeed, in its 2007 Annual Report, JICS reported that almost 50% of inmates confirmed that sexual abuse happens “sometimes”, “often”, or “very often” in correctional centres.<sup>9</sup>

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

---

<sup>8</sup> JICS *Annual Report 2013/2014*, at 51.

<sup>9</sup> JICS *Annual Report 2007/2008*, at 33.



Act<sup>10</sup> and the Sexual Assault Policy Framework. Such training will improve knowledge on sexual violence dynamics and enable timely detection and accurate reporting of such abuse. In this regard, we note that JICS have developed a specialized form for handling of complaints on sexual violence. We encourage the DCS to consider developing a similar, specialized tool which is specific to documenting sexual violence, and we could assist in such a project.

## **VII. Screening Tool for Vulnerability to Sexual Abuse**

The Correctional Matters Amendment Act of 2011 required that newly sentenced inmates be screened for vulnerability to sexual abuse.<sup>11</sup> We note that a screening tool for this has yet to be developed. We urge that a tool be developed and implemented in line with the Sexual Assault Policy Framework, and would like to extend an offer of support in this process.

---

<sup>10</sup> Criminal Matters (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

<sup>11</sup> Section 38(1)(k) of the Correctional Services Act, 111 of 1998 read with section 6 of the Correctional Matters Amendment Act, 5 of 2011.



## **VIII. Conclusion**

In summary, Sonke submits the following recommendations:

1. Ensure immediate implementation and monitoring of the Policy Framework to Address Sexual Abuse of Inmates in Correctional Facilities with a particular emphasis on training DCS staff on sexual assault;
2. Collect disaggregated data on sexual violence across all Correctional Facilities, including private centres; and
3. Develop a standard screening tool to screen for vulnerability to sexual abuse in correctional centres, as well as specialised complaint forms on sexual violence.

Sonke is committed to reducing sexual violence in South Africa, and in correction centres in particular, and would like to offer our support in taking these recommendations forward.

## **IX. 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**

**CONTACTS**

<p><b>Nomonde Nyembe</b> Policy Development and Advocacy Associate Sonke Gender Justice Tel: 011 339 3589 Fax: 011 339 6503 E-mail: <a href="mailto:nomonde@genderjustice.org.za">nomonde@genderjustice.org.za</a> Website: <a href="http://www.genderjustice.org.za">www.genderjustice.org.za</a></p>	<p><b>Lovisa Stannow</b> Executive Director Just Detention International Tel: 011 728 6299 Fax: 011 339 6503 E-mail: <a href="mailto:lstannow@justdetention.org">lstannow@justdetention.org</a> Website: <a href="http://www.justdetention.org">www.justdetention.org</a></p>
--	---

## I. Executive Summary

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

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

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

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

## II. Introduction

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

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

---

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

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

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

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

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

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

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

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

---

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

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

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

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

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

---

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

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

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

In ensuring its independence, we recommend the following:

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

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

## **B. Deaths in Custody**

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

---

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

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

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

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

### **C. Sexual Violence**

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

---

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

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

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

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

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

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

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

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

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

#### **E. Investigations**

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

---

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

## **B. Health of Inmates**

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

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

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

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

## **C. Sexual Violence**

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

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

---

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

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

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

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

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

#### **D. Assault**

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

#### **V. Conclusion**

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

---

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

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

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

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



# **Appendix A**



Sonke Gender  
Justice Network  
HIV/AIDS, Gender Equality, Human Rights

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

**Department of Correctional Services Annual Report 2011 / 2012**

**For the meeting on 10 October, 2012**

### Contacts

Emily Keehn  
Policy, Advocacy & Research Specialist  
Sonke Gender Justice Network  
Tel: 072 225 6041  
E-mail: [emily@genderjustice.org.za](mailto:emily@genderjustice.org.za)  
Website: [www.genderjustice.org.za](http://www.genderjustice.org.za)

Sasha Gear  
Programme Director  
Just Detention International  
Tel: 083 565 7318  
E-mail: [sgear@justdetention.org](mailto:sgear@justdetention.org)  
Website: [www.justdetention.org](http://www.justdetention.org)

## 1. Executive Summary

Sexual abuse of both awaiting trial and sentenced prisoners is a widespread and devastating feature of life in DCS facilities and dramatically increases the likelihood of HIV transmission within them (already a high risk environment). Sonke Gender Justice (Sonke) and Just Detention International (JDI) are concerned that DCS is not giving sufficient attention to the health and safety of inmates who live in its centres, which in turn, has grave consequences for society as a whole. While our full submission outlines a number of additional important concerns, our key points are summarised here.

- **Sexual abuse receives no mention in the DCS Annual report (save for a mention of rape in the breakdown of claims against the Department).** Statistics on reports received by DCS regarding rape and sexual assaults of inmates in DCS facilities continue to be absent from the Annual Report, and are rather merged into the general “assault” category. This is despite assurances over the last year that DCS recognises the need to disaggregate and track rape statistics, and that it now does so.
- **We urge DCS to adopt the *Framework to Address Sexual Abuse of Inmates in DCS Facilities*.** The Framework has been awaiting final DCS approval since December 2010 and its adoption and implementation is required in order for DCS to meaningfully address the abuse of inmates in its facilities.
- **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 would address an important component of the Framework, but this is not mentioned in the discussion on the Act in the report.
- **The number of HIV positive inmates on anti-retroviral treatment (ART) is critically low.** While we applaud DCS for substantially increasing the number of inmates who are accessing HIV testing, the Annual Report is missing vital information on the number of inmates who are known to be HIV positive, the recorded cases of Tuberculosis (TB), and the number of inmates treated for TB, despite the critical link between HIV and TB. Only 43% of HIV positive inmates who are eligible for anti-retroviral treatment (ART) are accessing such life-saving services. Meanwhile, JICS reports that HIV and AIDS continue to be leading causes of inmate death and that TB is the leading cause of death.
- **We urge the DCS to identify and address blockages to inmates’ access to health care and ART.** This should include an assessment of whether the accreditation of more DCS centres as pharmacies would contribute to alleviating the situation.
- **Lastly, we call on DCS to ensure that condoms are available to inmates in all centres together with lubricants.** Lubricants are necessary to prevent condoms from tearing during anal intercourse and thus essential to their efficacy.

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

## 2. Introduction

Sonke Gender Justice Network (Sonke) and Just Detention International (JDI) welcome the opportunity to make a submission on the Department of Correctional Services's (DCS) Annual Report for the 2011/2012 period. We represent a partnership between two NGOs that are working together to end sexual abuse in Department of Correctional Services (DCS) facilities and to promote the health rights of inmates, particularly focusing on the prevention of HIV. Sexual abuse of inmates is a widespread and devastating feature of life in DCS facilities and dramatically increases the likelihood of HIV transmission within correctional centres. HIV prevalence estimates from the DCS and Institute for Security Studies are 19.8% and 40% respectively.<sup>1</sup> Nearly half of all inmates surveyed by the Judicial Inspectorate for Correctional Services (JICS) in 2007 reported that sexual abuse happens "sometimes," "often", or "very often".<sup>2</sup> This submission focuses on aspects of the Annual Report pertaining to these issues.

## 3. Health and Safety – Part of the Core of DCS's Mission

As clearly stated at the outset of the report<sup>3</sup>, the DCS's mission includes the need to "[detain] all inmates in safe custody while ensuring their human dignity" as part of the broader goal "to contribute to maintaining and protecting a just, peaceful and safe society." Minister Ndebele further states that, "No effort will be spared to improve conditions of detention so offenders may have an environment conducive for them to participate in the rehabilitation opportunities and development programmes offered by the department."<sup>4</sup>

Inmate health and safety is indeed a fundamental and basic requirement that needs to be in place to provide for the DCS's ambitious plans to rehabilitate inmates – as well as to protect their basic human rights. We are equally concerned about the health and safety of inmates who have been found guilty and those who are still awaiting trial.

While the message from the former minister further states that "DCS continues to establish ambitious plans and priorities for success in making South Africa a safe country for all who live in it,"<sup>5</sup> we are concerned that DCS is, in fact, not giving sufficient attention to the health and safety of inmates who live in its centres, which in turn, has a negative impact on the rest of society.

---

<sup>1</sup> Muntingh, L. (2008). "The prevalence of HIV in South Africa's prison system: some, but not all the facts, at last." *CSPRI Newsletter* 26 May 2008; Schalkwyk, A. "Killer Corrections: AIDS in South African Prisons," *Harvard International Review*, Spring 2005.

<sup>2</sup> p 33, JICS Annual Report 2007/2008.

<sup>3</sup> p 7. DCS Annual Report, 2011/12.

<sup>4</sup> p 10, DCS Annual Report, 2011/12.

<sup>5</sup> *Id.*

## **4. Key Policy Developments – No Movement on Sexual Abuse Policies**

### **a. Correctional Matters Amendment Act, 2011**

The Correctional Matters Amendment Act, 2011, touched upon in the report, is indeed a major policy development for this reporting period. However, a key provision of this Act is not mentioned or reported on – its amendment of section 38 of the Correctional Services Act, 1998, which requires DCS to screen newly sentenced inmates for vulnerability to sexual abuse. JDI and Sonke have inquired into the status of the screening tool and offered support to help develop this tool, but have, to date, received no response from DCS' head office.

The screening tool required by the Correctional Matters Amendment Act, 2011, enacts a key requirement contained in the *Framework to Address Sexual Abuse of Inmates in DCS Facilities*, expounded on in the next section.

### **b. Framework to Address Sexual Abuse of Inmates in DCS Facilities**

For close to two years now, the *Framework to Address Sexual Abuse of Inmates in DCS Facilities* has been awaiting final DCS approval. The Framework was developed by senior members of the DCS Head Office in collaboration with JDI, and the Centre for the Study of Violence and Reconciliation (CSVR). It was widely consulted on within DCS and completed at the end of December 2010. Among other provisions, the Framework establishes a zero tolerance standard for sexual abuse and calls for all DCS employees to be trained on how to protect inmates from such violence. The Framework is also a crucial tool for fulfilling the goals of the new National Strategic Plan on HIV, STIs and TB 2012-2016, which identifies inmates as particularly vulnerable to HIV transmission and calls on the DCS to provide appropriate prevention and treatment services and to enforce laws and policies to prevent sexual violence in its facilities.

Despite numerous enquiries and requests by JDI and Sonke for clarification on the status of the Framework, DCS has not provided any response.

Sexual abuse of inmates is a widespread and devastating feature of life in DCS facilities, but with committed leadership, strong policies, and sound practices, the vast majority of rapes behind bars can be prevented. DCS's failure to act decisively here is disturbing and puzzling, and we again request an update on the status of the Framework, the screening tool, and DCS's plans for addressing sexual abuse in its facilities meaningfully.

### **a. Draft White Paper on Remand still not available**

Lastly pertaining to policy developments, we note that the Draft White Paper on Remand is still not available publicly. We urge the Department to make this available for public consumption as soon as possible.

## **5. Sexual Abuse – Assault and Rape Not Being Reported**

### **a. High Levels of Assault, Few Disciplinary Actions**

The DCS states that it did not succeed in bringing down assaults. In fact, the reported figures represent a slight increase, and high levels of the alleged assaults (17%) are staff-on-inmate.<sup>6</sup> 17% of alleged assaults would total 898 incidents of alleged staff-on-inmate assaults. Only 238 disciplinary actions reported on were for assault or attempts or threatening assault while on duty.<sup>7</sup> It is unclear how many of the “alleged” assaults were confirmed, and whether investigations resulted from the other 660 cases of alleged staff-on-inmate assault.

The JICS also received 71 complaints of staff-on-inmate assaults, and is of the opinion that the allegations, prima-facie, in 8 of the complaints they received amounted to acts of torture as defined in the Prevention and Combating of Torture of Persons Bill, 2011.<sup>8</sup> Shockingly, the JICS found that only one out of all 71 complaints resulted in disciplinary action being taken against the official in question, though 12 cases were opened with the South African Police Service (SAPS).

DCS explains that factors contributing to assaults generally include, “high levels of frustration due to centres that are still overcrowded, inmates still being idle in many centres, especially remand detainees, gangsterism, and misinterpretation with regard to the use of minimum force”. It continues, “strategies to deal with escapes, assaults and unnatural deaths include installation of intercom systems and panic buttons, the vigorous implementation of the gang management strategy, the retraining of officials on the human rights approach to corrections and the use of minimum force, and specific attention to programmes for offenders and meaningful activities for remand detainees and the effective implementation of multi-pronged strategy to reduce overcrowding”.<sup>9</sup>

These explanations and strategies make sense. At the same time, however, they raise additional questions and concerns regarding important opportunities for addressing inmate safety that are being lost, and questions that remain unaddressed. These include the failure to adopt policies pertaining to sexual abuse of inmates, the lack of statistics on sexual assault and rape, and the low levels of treatment being provided to HIV positive inmates that are leading to a high number of avoidable deaths.

### **b. Reporting on Assault Ignores Sexual Violence**

We welcome the Minister’s introductory emphasis on the need for the Department to produce credible and reliable information, but are concerned that information in the current Annual Report has substantial shortcomings. Specifically, assaults are not broken down to reflect those that are sexual in nature. Having ostensibly recognised the drawbacks of the historical lack of records of

---

<sup>6</sup> p 47, DCS Annual Report, 2011/12.

<sup>7</sup> p 196, DCS Annual Report, 2011/12.

<sup>8</sup> p 41, JICS Annual Report, 2011/12.

<sup>9</sup> p 25, 26, DCS Annual Report, 2011/12.

reported sexual violence occurring in correctional centres, we have over the last year been assured by members of the Department that this has been rectified and incidents of sexual violence are now recorded separately. This is not, however evident in the Annual Report. Indeed, the only mention of sexual violence occurring in DCS facilities is in the breakdown of claims against the department, which includes a category for rape. The JICS also does not report on sexual assault and rape separately from the broad category of assault. The failure to disentangle sexual abuse from other types of violence is highly problematic. A key component of the effort to bring sexual violence out of the shadows, and to build an environment where survivors feel able to come forward about what has happened to them, is to speak clearly about this form of abuse, and develop clear and focused strategies for eradicating it.

#### **c. No Training on Conflict Resolution, Violence Prevention, and Sexual Abuse Prevention**

It is notable in the outline of training provided to staff<sup>10</sup> that none of the training courses mentioned are directed at equipping corrections officers (as opposed to the Emergency Support Team and Dog Handlers) with skills in conflict resolution, violence prevention and dealing with sexual abuse – despite ongoing high numbers of assaults - both inmate-on-inmate and staff-on-inmate. The report talks about functional training, but it is unclear what this involves. It does state that one of the strategies to address assaults includes the “retraining of officials on the human rights culture and the use of minimum force”.<sup>11</sup> Retraining is certainly much needed but apparently not currently underway as it is not reflected in the reported training figures. It should not come as news to the Department that staff require training in preventing and appropriately responding to sexual violence, and we urge the Department to include such training in its strategy as a matter of urgency. JDI and Sonke have conducted training with DCS officials on a limited scale, but these workshops have not been incorporated into required, wide-scale training by the Department.

#### **d. Gang Management Strategy**

The DCS states that the gang management strategy, “was reviewed and implemented in all regions” and that this process led to the establishment of a “Gang Management Task Team that will function at national, regional as well as operational level at identified centres”<sup>12</sup> and that the inaugural meeting for the unit took place on 13 February 2012. There is no other information besides this, so it remains unclear whether the strategy has since been implemented at the local level or, indeed, whether it is contributing to inmate safety.

Sexual violence in DCS facilities is intricately linked to gang culture and structures. It is vital for any gang management strategy to include strategies to address sexual abuse of inmates. Again, we urge the adoption of the *Framework to Address Sexual Abuse of Inmates in DCS Facilities*.

---

<sup>10</sup> p 38, DCS Annual Report 2011/2012.

<sup>11</sup> p 47, DCS Annual Report, 2011/12.

<sup>12</sup> Id.

### **e. Shift System and Lock-Up**

The JICS report draws attention to the staffing crisis in facilities where skeleton staffing means that “inmates are only cursorily monitored” – particularly on weekends<sup>13</sup>, and that response processes in cases of emergency are typically lengthy, cumbersome and may be fatal. The DCS report notes that challenges relating to staffing remain at centre level<sup>14</sup> and explains that efforts are underway between management and labour to agree on hours and ideal shifts to enhance the implementation of the 7 Day establishment.<sup>15</sup> While it is unclear whether the shift models on the table seek to remedy the daily lock-up practice whereby dramatically minimised staffing leaves inmates virtually unsupervised from mid-afternoon until the next morning (together with the weekend reductions in centre-level staff) we urge the DCS, organised labour, JICS, and the Portfolio Committee to address the devastating lock-up practice as inmate safety discussions move forward. This practice combined with the substantial challenges staff face in dealing with emergencies put inmates at greatly increased risk of violence.

## **6. Care of Inmates – HIV and AIDS**

We applaud DCS for substantially increasing the number of inmates who are accessing HIV testing, from 19.1% in 2010/2011 to 42.5% in 2011/2012. This improvement is a big step forward towards understanding and addressing the health needs of inmates. However, the Annual Report is missing vital information on the number of inmates who are known to be HIV positive. Additionally, the reported number of HIV positive inmates on treatment is critically low. This failure stands in stark contrast to the report’s statement that “all diagnosed ... were provided with the necessary treatment that they needed.”<sup>16</sup>

In addition, the JICS report highlights the ongoing problems of inadequate assessments during the inmate admission process, and states that inmates are often, “only receiving treatment and services on their request after a significant time in detention”<sup>17</sup> – a problem that is attributed to persistent problems of shortages in professional medical, social, and educational staff. In a JICS survey reported in its 2011/2012 Annual Report, 38% of sampled inmates did not receive a medical examination after 24 hours of admission, which, as JICS points out, is in breach of Departmental policy.

### **a. Insufficient Information on Number of HIV Positive Inmates**

At present, there is not fully reliable data on HIV prevalence in DCS facilities. While DCS has, in the past, included statistics on HIV and AIDS infection rates in its Annual Reports, these are limited to reported cases from the health clinics in each facility. While this is still useful data, it is not a reliable way to estimate HIV prevalence because reporting is inconsistent, and not all inmates seek out health clinic services when ill. Furthermore, AIDS-related deaths are not always recorded as such.

---

<sup>13</sup> p 35, JICS Annual Report 2011/2012

<sup>14</sup> p 27, DCS Annual Report 2011/2012.

<sup>15</sup> p 29, DCS Annual Report, 2011/2012.

<sup>16</sup> p 25, DCS Annual Report 2011/2012.

<sup>17</sup> p 35, JICS Annual Report 2011/12.

For the 2011/12 period only statistics on the number of inmates on ARVs and the number of inmates tested for HIV are listed. Notably, the report does not contain information on the number of recorded cases of Tuberculosis (TB) or the number of inmates treated for TB, despite the critical link between HIV and TB.

As far as we know, only two independent studies have been conducted on HIV prevalence in DCS facilities. One was conducted in 2001 by the Health Economics and HIV and Aids Research Division of the University of KwaZulu-Natal, based on a study of a single facility – Westville. This report, never made publically available but cited in a TAC and AIDS Law Project submission to the Jali Commission of Inquiry<sup>18</sup>, found that 30% of the inmates sampled (80 out of 271) were HIV positive. A 2003 study by the Institute for Security Studies calculated prevalence on the assumption that HIV prevalence in DCS facilities is twice that of the prevalence amongst the same age/gender in the general population, and estimated that about 40% of inmates were living with HIV<sup>19</sup>. Both of these estimates are now drastically out of date.

In 2007, DCS itself commissioned a study that found an HIV prevalence of 19.8%. This study, conducted by Lim’Uvune Consulting, is not fully reliable because even though it sampled 10 000 inmates, and stratified sampling for rural, urban, gender, age, and region, it had methodological limitations – the most significant flaw being its exclusion of remand detainees, which make up about 30% of the inmate population.

#### **b. Low Levels of HIV Treatment and High Levels of HIV-Related Deaths**

Despite at *least* 19.8% of inmates being HIV positive, DCS has reported that only 43% of HIV positive inmates who are eligible for anti-retroviral treatment (ART) are accessing such life-saving services. Indeed, only 69% of inmates with CD4 counts of 350 or below are on ARTs (the CD4 count is a measure of the immune system’s strength).

Our reading of the DCS’s report is that it uses the CD4 count of 350 to determine inmates’ eligibility for ART, which would be appropriate given the heightened health risks in correctional centre environments, although this policy is not explicitly stated in the report. We would therefore like clarification regarding how DCS determines eligibility for ART.<sup>20</sup> The JICS Annual Report for 2011/2012 indicates that there are high levels of HIV-related deaths within DCS that are categorised as “natural deaths”. In fact, HIV and AIDS are reported as one of the leading causes of inmate death

---

<sup>18</sup> Goyer, K.C., Saloojee, Y., Richter, M., and Hardy, C. (2004) *HIV/AIDS in Prison: Treatment, Intervention, and Reform: A Submission to the Jali Commission*, Treatment Action Campaign and AIDS Law Project, 11 March 2004.

<sup>19</sup> Goyer, K.C. (2003). *HIV/AIDS in prison. Problems, policies and potential*. ISS Monograph No. 79.

<sup>20</sup> According to the *Department of Health’s Clinical Guidelines for the Management of HIV&AIDS in Adults and Adolescents*, one is eligible for ART when one has a CD4 count below 200 irrespective of the clinical stage of HIV they are in, or when one has a CD4 count below 350 if one is also pregnant, in stage IV of HIV and/or has both TB and HIV. Fast tracked ART initiation is required in cases where the person is pregnant, has a CD4 count below 100, is in stage IV without CD4 count availability, or if they have drug resistant TB (MDX/XDR-TB). (p 8, Department of Health’s Clinical Guidelines for the Management of HIV&AIDS in Adults and Adolescents 2010. [http://www.fidssa.co.za/Guidelines/2010\\_Adult\\_ART\\_Guidelines.pdf](http://www.fidssa.co.za/Guidelines/2010_Adult_ART_Guidelines.pdf))

in DCS facilities. TB, a common opportunistic infection for people who are HIV positive, is the leading cause of death. During this reporting period, 74 inmates died of HIV and AIDS, and 99 died of TB.<sup>21</sup>

ART can greatly reduce the chance of acquiring TB for someone who is HIV positive, which is one of the reasons why anyone who is HIV positive and also has TB is immediately eligible for ART, and those with drug resistant TB require fast track initiation of ART. Viewed in light of the Department of Health Guidelines<sup>22</sup> and the high level of deaths resulting from HIV and TB, we consider it unacceptable that only 43% of eligible inmates and 69% of inmates with CD4 Counts below 350 were on ART. This inadequacy is contributing to inmates' "natural" deaths from HIV and TB.

### **c. Uneven Access to HIV Prevention, ARTs, and Other Medicines**

Inmates are entitled to use condoms as an important HIV prevention method. Despite this policy, JICS reported that 19% of centres (40) do not have condoms fully available<sup>23</sup>. Access to lubricants is also vital (though not provided for in the Department's HIV policy) as condoms can easily tear without lubricant during anal sex. Inmates exposed to unprotected receptive anal intercourse are at very high risk for HIV and other sexually transmitted infections (STIs). In addition to providing inmates with full access to condoms, it is vital that DCS staff and inmates are made aware of available post-exposure prophylaxis and that inmates are given access to such life-saving medication after potential exposure to HIV, such as after rape.

We urge the DCS to ensure that HIV positive inmates who are eligible for fast-tracked initiation of medicines have reliable access to ART. Inmates regularly complain about gaps in their access to ART that can last for up to months at a time. One apparently contributing factor to the uneven availability of medications is that only 22 centres are accredited as pharmacies<sup>24</sup>, which often leads to delays in the delivery of essential medicines. Logistical challenges within the DCS also result in frequent failure to link inmates to outside health facilities when necessary. Inmates who have HIV must strictly adhere to their ART in order to benefit fully from their treatment. Failure to do so can result in the development of lethal drug-resistant forms of HIV, which require the use of a different mixture of medicines to suppress the virus. There are only two regimens of ART available in South Africa.<sup>25</sup> Similarly, TB treatment requires strict adherence to medication for a full 6-month period, and non-adherence can lead to lethal drug-resistant forms of the disease. Clearly, uneven access to medicines presents a risk not only to the sick inmate, but to other inmates, staff, and the wider community.

JDI and Sonke recommend that DCS identifies obstacles to continuous ART and other forms of treatment and implement measures to address these as a matter of urgency. Condoms should be consistently available and the Department's HIV policy should provide for access to lubricant. It is

---

<sup>21</sup> p 54, JICS Annual Report, 2011/2012.

<sup>22</sup> See note 20 above.

<sup>23</sup> p 49, JICS Annual Report, 2011/2012.

<sup>24</sup> IRIN Global, *South Africa: Prisons expand HIV services*, 26 July 2011.

<http://www.irinnews.org/Report/93336/SOUTH-AFRICA-Prisons-expand-HIV-services>

<sup>25</sup> p 9, Department of Health's Clinical Guidelines for the Management of HIV&AIDS in Adults and Adolescents 2010.

moreover vital for DCS to adopt the aforementioned *Framework to Address Sexual Abuse of Inmates in DCS Facilities* that mandates training for all staff on related issues, including on post-exposure prophylaxis.

## **7. Breakdown of Contingent Liabilities is Unclear**

While we welcome the breakdown of liabilities reflected in Annexure 2B, we note that there is not sufficient information to understand what these liabilities represent. At the outset, there is no indication as to how many cases they reflect, who won or lost, or whether they were all settled outside of court. It is also unclear to what types of cases the liabilities for “pain and suffering” are related. The nature of the liabilities is also unclear – for example, rape is listed but sexual assault is not, leaving us to wonder whether the rape category includes both rape and sexual assault cases. The category of “damages HIV” is also unclear – failing to specify whether they are for contraction of HIV during a sentence or improper care of HIV positive inmates.

We note that the liabilities for rape are high at a total R4.5 million, and are carried forward from the 2010/2011 period. The R4.5 million in liabilities is reported for rape. However, pain and suffering, HIV, and bodily injury could also form part of a claim for rape as inmates who are raped could experience these types of harm from their rapes. Thus the actual cost to the Department for inmates claiming damages for rape is likely to be significantly higher than the R4.5 million reported.

The high cost of contingent liabilities is yet another reason that DCS needs to take preventative measures to address sexual violence and the spread of HIV and to provide proper treatment for inmates who are HIV positive.

## **8. Conclusion / Summary of Recommendations**

In summary, JDI and Sonke are deeply concerned by the DCS’ failure to track and prevent sexual abuse and the spread of HIV in its facilities, as well as its uneven delivery of services, including life-saving medicines, to inmates who are HIV positive.

Our key recommendations are the following:

- Adopt and implement the *Framework to Address Sexual Abuse of Inmates in DCS Facilities*.
- Develop and implement the screening tool to assess vulnerability of newly sentenced inmates to sexual abuse, required by the Correctional Matters Amendment Act of 2011.
- Disaggregate assault statistics to track rape and sexual assault separately from other types of violence.
- Report on the number of HIV positive inmates.
- Provide access to condoms throughout all centres and distribute lubricants in addition to condoms.
- Identify and address blockages to inmates’ access to health care and ART, including an assessment of whether the accreditation of more DCS centres as pharmacies would contribute to alleviating the situation.

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

# **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

RESTRICTED

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.

## RESTRICTED

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.<sup>1</sup>

### 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

---

<sup>1</sup>Specifically, 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.”

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:

## RESTRICTED

- 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

## RESTRICTED

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

RESTRICTED

## 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,<sup>2</sup> the Correctional Services Act,<sup>3</sup> the Sexual Offences Act, the White Paper on Corrections in South Africa,<sup>4</sup> 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.

---

<sup>2</sup>The 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.

<sup>3</sup>Per 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."

<sup>4</sup>The 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;

## RESTRICTED

- 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.

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.

## RESTRICTED

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

## RESTRICTED

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,<sup>5</sup> 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:

---

<sup>5</sup>Should 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.

## RESTRICTED

- ✓ 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;

## RESTRICTED

- ✓ 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:

## RESTRICTED

- ✓ 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;

## RESTRICTED

- ✓ 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

## RESTRICTED

- 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

**RESTRICTED**

- 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"> <li>- Research and obtain applicable legislation.</li> <li>- Translate legislation into policies.</li> <li>- Develop policy, procedures or guidelines</li> <li>- Monitoring implementation and compliance.</li> <li>- Review existing policies/ policy procedures / guidelines</li> <li>- Consult with the Regions</li> <li>- Disseminating Policies/ procedures/ guidelines to the Regions</li> <li>- Facilitate training of officials</li> </ul>	<ul style="list-style-type: none"> <li>- Dissemination of legislation and policies to operational level.</li> <li>- Ensure implementation.</li> <li>- Ensure training of officials within the Region</li> <li>- Monitoring of implementation and compliance</li> <li>- Monthly feedback to national level</li> <li>- Facilitate training of officials.</li> </ul>	<ul style="list-style-type: none"> <li>- Implementation of legislation and policies.</li> <li>- Monitoring and compliance.</li> <li>- Evaluation of the training to officials</li> <li>- Monthly feedback to regional level.</li> <li>- Updating of Register of Sexual Offences by the Head of Centre</li> </ul>

**RESTRICTED**

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

**RESTRICTED**

<b>AREAS</b>		<b>ORGANIZATIONAL LEVELS</b>		
		<b>NATIONAL (CDC Development and Care and CDC Corrections)</b>	<b>REGIONAL (Regional Commissioner)</b>	<b>MANAGEMENT AREA (Area Commissioner)</b>
<b>Broad</b>	<b>Specific</b>			
<b>TREATMENT / ACTIVITIES / PROGRAMMES</b>	- 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
<b>PREPARATION FOR RELEASE</b>	- 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

**RESTRICTED**

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

**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			
<b>MANDATES</b>	- Legislation	<ul style="list-style-type: none"> <li>- Research and obtain applicable legislation (especially on Victim Offender Mediation)</li> <li>- Translate legislation into policies.</li> <li>- Monitoring of implementation and compliance.</li> <li>- Review of existing policies / policy procedures / guidelines</li> <li>- Consult with the Regions</li> <li>- Disseminating Policies/ procedures/ guidelines to the Regions</li> <li>- Facilitate training of officials</li> </ul>	<ul style="list-style-type: none"> <li>- Dissemination of legislation and policies to operational level.</li> <li>- Ensure training of correctional officials within the Regions (especially on Victim Offender Mediation)</li> <li>- Ensure implementation.</li> <li>- Monitoring of implementation and adherence.</li> <li>- Feedback to national level.</li> </ul>	<ul style="list-style-type: none"> <li>- Implementation of legislation and policies in all centres.</li> <li>- Monitoring and adherence.</li> <li>- Monthly feedback to regional level</li> <li>- Training / orientation of officials on legal mandate.</li> </ul>

**RESTRICTED**

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

**RESTRICTED**

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

**RESTRICTED**

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

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

**RESTRICTED**

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



CONFIDENTIAL

## correctional services

Department:  
Correctional Services  
REPUBLIC OF SOUTH AFRICA



### ROUTE LIST FOR DOCUMENTATION

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

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

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

<b>Tel:</b>	012 307 2855	<b>Fax:</b>	012 323 2675
-------------	--------------	-------------	--------------

### INTERNAL MEMO

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

<b>SUBJECT:</b>	<b>REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES</b>
-----------------	--

#### 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

<b>SUBJECT:</b>	<b>REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES</b>
-----------------	--

- 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**).

CONFIDENTIAL

<b>SUBJECT:</b>	<b>REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES</b>
-----------------	--

- 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 21<sup>st</sup> 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 03<sup>rd</sup> January 2011 and was finally received back on the 07<sup>th</sup> 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.

<b>SUBJECT:</b>	<b>REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES</b>
-----------------	--

### **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.

<b>SUBJECT:</b>	<b>REQUEST FOR APPROVAL OF POLICY TO ADDRESS SEXUAL ABUSE OF INMATES IN DCS FACILITIES</b>
-----------------	--

## **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.

CONFIDENTIAL

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

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)

RESTRICTED

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 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

RESTRICTED

							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 Corrections/ 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><b>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</b></p>						
General	The Policy has been aligned with the White Paper on Corrections (2005)						
<b>TOTAL COST</b>							<b>R 1,030,320</b>

RESTRICTED

RESTRICTED