**NICRO SUBMISSION** *by Venessa Padayachee*

**THE PURPOSE AND IMPACT OF THE JUDICIAL INSPECTORATE OF CORRECTIONAL SERVICES**

21 September 2016

**INTRODUCTION**

1. Over the years, Parliament has heard a number of submissions on JICS and its impact, and much input has been provided by a range of stakeholders on how the JICS can be strengthened. NICRO is pleased that this issue has been taken up by this committee again, and we trust that actual decisions can be taken to move this issue forward;
2. An effective, independent oversight mechanism is the best way to deal with monitoring the human rights of inmates[[1]](#footnote-1)
3. On the 31st October stakeholder inputs on the Strengthening and impact of JICS some of the key concerns were[[2]](#footnote-2):
   1. The JICS lacks financial, administrative, and operational independence from the DCS
   2. There had been no criminal prosecutions in the previous three years of officials implicated in assaults and for the death of inmates[[3]](#footnote-3). The CSPRI recommended that DCS internal investigations not take precedence over South African Police Service (SAPS) and JICS investigations. She recommended that the Portfolio Committee conduct its own investigation into how investigations of death and assault were being conducted. The JICS had to have stronger investigative powers and the right to subpoena witnesses[[4]](#footnote-4);
   3. There was a lack of knowledge about Independent Correctional Centre Visitors (ICCVs) among inmates; ICCVs - operational independence - their services and monitoring function is compromised by the higher level lack of independence. ICCVs have very little to do with IJ and higher levels in JICS, and receive insufficient support and training, nor are they required to have any qualifications beyond matric. They are also effectively under the control of DCS officials to access prisons, prisoners, information. Issue of independence runs down all the way to the ICCVs.
   4. There was a plea for more civil society involvement in the Oversight structure;
   5. The Inspecting Judge agreed in a comment by the JICS that there had to be a workshop about JICS independence. There had to be inputs about the review of legislation, and appointments. He stated that the three year term of the Inspecting Judge was too short for a judge to become sufficiently involved. He commented on the lack of consequences for officials implicated in assault and death. It was still a matter of no one being supposedly to blame, as it had been found with the death of Steve Biko.

**NICRO INPUT[[5]](#footnote-5) ON JICS INDEPENDENCE**

1. There has to be legislation to enforce JICS recommendations; Proposals are for separate legislation for JICS. Further a binding mechanism should be introduced for the implementation of recommendations made by the JICS. That a DCS team be established that will rationalise and prioritise the recommendations (including outstanding recommendations) from the various external reviews and monitoring bodies, in particular the JICS;
2. The results of investigations should be published & JICS should host seminars on thematic areas that need attention;
3. DCS needs to improve its performance on transparency and accountability;
4. The JICS should be able to make unannounced visits. The Inspector of Prisons (Ireland) carries out announced and unannounced visits during business hours and at night, which is another area to be explored, particularly given the alarming concerns raised about lock-up;
5. ICCV’s: The work of ICCVs had to be restructured. It can be said that it appears that the ICCV’s may face the challenge of institutional capture by the DCS, where they have been perceived by inmates to serve the interests of the DCS, and not function effectively as an independent body; Review the existing functions and powers of the ICCV’s and Visiting Committees, as well as the appointment and reporting process, with a view to strengthening their role as a lay monitoring system. Make resources available to ensure that all members of the Visiting Committees are appropriately trained, including in International Human rights standards pertaining to the situation of people in any form of detention. Regarding ICCV’s-recruitment for the right skills and competencies, particularly those that have the skills to influence decision-makers;
6. Even without changing its current mandate, the JICS can conduct more focused inspections, on a per-prison basis and/or thematically;
7. International trends show that the two functions of individual complaints and inspections are distinct and separate and yet through JICS we have merged them into one organizational management entity. NICRO’s supports the establishment of a Prison’s Ombudmans and team of lay ICCV’s be part of their team. We believe that the establishment of a Prison Ombudsman that deals with prisoners, their families, and visitors and complaints, to which a strengthened Lay Visitor System can report to be considered, together with the Prison Visiting Committees. Individual complaints therefore will then become the responsibility of the Independent Office of Prison Ombudsman. In Ireland the Inspector of Prisons carries out regular inspections of prisons. Expressly excluded from investigating or adjudicating on individual complaints from prisoners, although they may examine the circumstances relating to such a complaint. The Irish have also established a Call centre to determine eligibility of complaints, which can then be follow-up with a face to face contact by Lay visitors;
8. JICS to consider the Inspection model of the UK, which could include the Inspecting Judge strengthening teams of professional specialist inspectors, who work on key areas such as Remand detention, Juveniles, etc. NICRO also recommended that JICS consider the publication of a set of Inspection standards and performance indicators that will constitute a benchmark for the assessment of prison conditions and subsequent reports based on the assessment against those standards. Introduce necessary legislation to put the standards on a statutory footing. The development of standards and performance indicators is necessary to effectively monitor individual prisons in respect of the treatment of prisoners and compliance with the Correctional Services Act.[[6]](#footnote-6) Standards for the Inspection of Prisons were published in 2009, in Ireland by their Inspector of Prisons, Judge Michael Reilly. The Inspector based his standards on international human rights treaties and norms which set down best practice for the treatment of prisoners and the management of prisons. Standards of such a nature is extremely important to the improvement of prison conditions, and encourage using their standards as a bench-mark in meeting International Human Rights standards;
9. More cooperation between the DCS and JICS system can achieve a lot. An external oversight mechanism should not be seen as a hostile system. A criticism is that the DCS is always on defence, regard recommendations as criticism against them, and should rather be encouraged to focus on being positive of feedback that will eventually aim at improving the management of correctional centres;
10. Improve DCS internal complaints. Look at training on problem solving etc.
11. IMPROVE JICS REPORTING AND ANALYSIS OF INFORMATION:
    1. Given the large number of complaints recorded by the IPV’s, it would be relatively easy to do a trend analysis and identify particular themes in complaints, or particularly problematic prisons. Since its establishment the JICS has not published inspection reports of this nature, and has relied primarily on its annual reports (and now quarterly reporting to PC) to convey its findings to Parliament. Focused reports will assist greatly in bringing a deeper understanding to particular issues, such as access to health care or on particularly problematic prisons;
    2. An example of HM Chief Inspector of Prisons (Canada) unannounced Inspectorate Report Format: (a) Introduction; (b) Fact page; (c) Summary; (d) Progress since last report; (e)Summary of Recommendations; (f)Appendices –Inspection team; prison population profile;
    3. The Committee Thematic research reports with key recommendations are needed on key issues, e.g. Remand detainees; the use of Restorative Justice in prisons etc. –HM Chief Inspector –Canada and LM publication on prison accountability;
    4. That time-frames be established for the completion of investigations and producing a report?
    5. Provide case study narratives in Annual report or thematic reports;
    6. the Committee requests to the JICS to adjust the format of their quarterly reports and Annual Report to clearly reflect a section on recommendations, indicating new ones, progress on previous ones and those not attended to since previous, and consider thematic research reports and per prison reports. This would ensure more accurate monitoring, and strengthen the ability of the Committee to exercise effective oversight.
12. Deaths in custody –the need for strengthened mechanisms of accountability. JICS to investigate all deaths in custody.
13. We also support the recommendation raised by Muntingh 2007:6, that we need as a country to foster a culture of transparency and openness[[7]](#footnote-7)

**JICS IMPACT**

1. The JICS ANNUAL reports are a valuable source of information on their monitoring efforts; however recommendations made are unenforceable, hereby compromising accountability and effective oversight. There is no comprehensive data base of all recommendations over the years and the DCS response, and how many issues have been resolved or not.
2. The lack of administrative, operational and financial independence has compromised the efforts of the JICS.
3. ICCVs - operational independence - their services and monitoring function is compromised by the higher level lack of independence. ICCVs have very little to do with IJ and higher levels in JICS, and receive insufficient support and training, nor are they required to have any qualifications beyond matric. They are also effectively under the control of DCS officials to access prisons, prisoners, information. Issue of independence runs down all the way to the ICCVs;
4. JICS staff should be more visible in the media and in the public eye, at relevant stakeholder forums etc.
5. Although it is in the JICS mandate to host seminars and workshops, as far as we are aware the only stakeholder engagement is through the presentation around the Annual report annually;
6. However NICRO’s experience of the JICS staff has mostly been positive. Both the Head office and the ICCV’s on the ground have mostly responded positively when we had reported discrepancies to policy that needed to be followed up and inmates complaints. There have been some investigations that have yielded very positive results, particularly when NICRO receives calls that inmates are fearing for their lives from other inmates, etc, the JICS has been able to step in and assist.
7. It is challenging though as many inmates complaints are not always readily resolved, despite huge efforts by the ICCV’s and the JICS staff. We often have to go from pillar to post in some cases to assist inmates. Some cases get referred from one body to the next, over a long period of time, and in some instances more than one agency is dealing with a particular case at a time. More attention needs to be given to create a more coordinated and streamlined system. At present efforts are fragmented and uncoordinated. More cooperation and structured partnerships need to be formed, particularly between the JICS and the SA human Rights Commission and other such bodies, and civil society.

**PROGRESS on the ISSUE OF INDEPENDENCE OF JICS**

1. The Detention Justice Forum commissioned a comparative analysis of oversight mechanisms in Africa and other parts of the world; Significant in these findings were that “best practice” prioritises meaningful independence, clarity of mandate, functions and powers, and the holistic practice of oversight that includes, at the very least, inspection, monitoring, investigative and reporting powers. Meaningful independence requires that the oversight body enjoy financial, legal and operational, and institutional independence, as well as security of tenure for its staff[[8]](#footnote-8).

**RECOMMENDATIONS**

1. NICRO recommends that in order to further develop and maintain prisoner and public confidence, recommendations regarding strengthening the independence of the JICS be considered, and that the JICS inspection and investigative role be strengthened.
2. NICRO calls for an investigation by the South African Law Commission on the need for separate JICS legislation that would facilitate more administrative, financial and operational independence from the Department of Correctional Services. We support recommendations made by other stakeholders that the budget for the DCS be given directly from Treasury, and that the JICS continue to report to Parliament as an independent oversight body. JICS should be given more powers, to enforce certain recommendations;
3. Consideration should be given to the JICS mandate to be extended to include Child and Youth Care centres, who at present are not independently monitored, or given the challenges with JICS, the lobby for the Children’s Ombudsman be revived.
4. While elements of perceived independent inspection and monitoring of prisons are currently in place in South Africa, the system falls short of what is required by international human rights standards.
5. JICS in its Annual Report publishes some serious human rights violations that require more serious accountability measures from the Portfolio Committee. Further the Committee should request a Year in year out list of all JICS recommendations, and progress on their implementation or not, and respective DCS responses. This will help the committee identify key areas to monitor;
6. The JICS should host stakeholder workshops and invite further input and strategies on various thematic areas needing attention within DCS;
7. JICS staff should be more visible in the media and in the public eye, at relevant stakeholder forums etc.
8. Further NICRO calls on the Committee to relook at South Africa ratifying OPCAT, which aims to establish a National Preventative Mechanism under the protocol for Torture, but that, would include the monitoring of all places of detention;
9. More attention needs to be given to create a more coordinated and streamlined system in dealing with inmates complaints. At present efforts are fragmented and uncoordinated. More cooperation and structured partnerships need to be formed, particularly between the JICS and the SA human Rights Commission and other such bodies, and civil society.

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