

## **SUBMISSION TO THE WCPP ADHOC COMMITTEE ON COVID-19**

### **Regarding the Public's Experiences and Thoughts on COVID-19 Government Response**

12 August, 2020

The Detention Justice Forum ('DJF') is a civil society coalition of non-governmental organisations and individuals working to ensure that the rights and well-being of those who are detained are respected and upheld, as enshrined under the South African Constitution, laws, and regional and international human rights norms and standards. Our membership includes community organisations, lawyers, social workers, former inmates, and academics with varied foci and degrees of engagement in the detention and human-rights sectors—spanning direct service provision and (former and current) detainee support and empowerment, advocacy and policy development.

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1. Ever since South Africa entered into a National State of Disaster as a result of the novel Coronavirus (Covid-19) pandemic, DJF has been concerned about the devastating effect that the spread of Covid-19, as well as the government's response thereof, may have on people in places of detention. As such, the forum has vigilantly monitored the government's response to the pandemic as far as detention institutions and facilities are concerned. Furthermore, not only has the DJF made numerous attempts to engage with the relevant government departments to get information regarding their plans vis-a-vis the situation in detention facilities, but we have also made recommendations that could assist the government in controlling the spread of the virus in detention facilities while at the same time remaining committed to the mandate to ensure that the rights, safety, and well-being of people in detention are upheld.
2. To date, over 7 000 South African Police Service (SAPS) members have tested positive for the virus and the Department of Correctional Services (DCS) has reported over 5 500 positive cases among inmates and staff and we fear that these figures will continue to rise exponentially in places of detention in South Africa. We are equally concerned by the fact that similar statistics for other places of detention such as police cells, Lindela Repatriation Centre, child and youth-care centres, and military detention facilities, for example, are not easily available and it is almost impossible to know what the situation is in those facilities or if any oversight or monitoring of the facilities is taking place.
3. While we appreciate the preventative efforts that the government has taken to curb COVID-19, we have also noted the government's reluctance to disseminate information speedily and regularly, not only to people in detention but also to civil society, despite numerous requests for information from organisations such as ours. At the beginning of the lock-down, much information on the operation and COVID-19 Protocols pertaining to the operation of courts were gazetted but none was immediately available in the public domain on the operation of detention facilities besides the immediate cessation of visits to such places. In this regard there has also been a failure and lack of transparency on the part of some government institutions responsible for the detention of such persons (i.e. Police, Home Affairs, Social Development, Correctional Services, etc.) with no effort being made to immediately make publicly available their directives or standing operating procedures on managing the spread of COVID-19.
4. When the DCS eventually made public its Strategic Operational Plan, we noted that it was almost exclusively concerned with health issues and did not touch on human rights issues that are not health related, but similarly critical—such as those of safety, justice, and effective oversight. Put differently, the measures that the DCS has implemented during this period seem to have been publicised on an *ad hoc* basis, in response to issues as they arose, with no engagement with other stakeholders—civil society, people in detention and their loved ones, and in some instances (according to media reports) even staff.

5. This lack of official information has had a significant impact on public perception of government departments responsible for withholding people's liberty and the right to access to information; impeded civil society organisations' ability to engage with, provide assistance to, and hold the government to account; and has led to much anxiety, and in some cases, violent reactions on the part of those in detention as well as their families.
6. We made numerous requests to the Ministers of Justice and Correctional Services, SANDF, SAPS, Home Affairs, and Health to furnish us with their Operational Plans in addressing COVID-19 in South Africa's places of detention as well as the department's Health Plan—especially as it relates to quarantine and the treatment of non-emergency medical needs during the pandemic. Unfortunately, these efforts were to no avail.
7. In addition, while we also welcomed the Minister of Justice and Correctional Services' eventual decision to release 19 000 low-risk incarcerated persons on parole as a way to reduce the overcrowding in South Africa's prisons—an undeniable driver of the spread of disease in prisons. However the high number of arrests during the same period has resulted in the numbers of people in detention that were meant to have decreased as a result of the release of the 19 000, greatly increasing again—therefore leaving prisons as overcrowded as before. The volume of arrests for persons violating lockdown measures exacerbates the pressure on the already strained criminal justice system. While these and other additional measures are a response to the pandemic, having people go through the criminal justice system is counter-productive and exposes them to numerous additional risks, including a heightened risk of infection owing to the unsanitary and overcrowding in police cells and remand facilities in the country.
8. Furthermore, reports made on 24 June 2020 to the Portfolio Committee, the Minister and other senior departmental officials admitted that the process of releasing the 19 000 low-risk detainees had bottle-necked the system. As of 23 June 2020, only 3875 detainees had been released on this special parole. It goes without saying that this alarming situation is highly undesirable and needs to be addressed as a matter of urgency. Similarly, there needs to be more transparency—through regular updates as well as government engagement with civil society—than what there currently is regarding the progress on these releases and reintegration plans.
9. As the Minister of Justice and Correctional Services has indicated several times in public statements, overcrowding continues to be a major challenge in most DCS facilities which ultimately creates severe health, safety, and dignity concerns for inmates and staff. The COVID-19 regulations that are in place to curb the spread of the virus, have created new sets of minor offences which previously did not exist. While these and other additional measures are a response to the pandemic, their enforcement through arrest and detention is unproductive and troubling, and only exacerbates the public health problem.
10. The imposition of criminal sanctions for numerous less serious, non-violent violations of lockdown measures will have severe consequences for persons in the future as they will

have criminal records. They will likely be denied access to job opportunities and this may prevent them from providing for their families. This will further exacerbate the plight of the poor and vulnerable as a result of the pandemic and increase the burden on the state for grants and services. While we acknowledge that the Deputy Minister of Justice noted in a Portfolio Committee on Justice and Correctional Services meeting held on 18 May 2020 that the Ministry intends to introduce a Judicial Matters Bill preventing persons from receiving a criminal record for most admission of guilt (AOG) fines--including COVID-19 AOG fines--because in most cases due process is not followed. It remains unclear when this will happen and what this Bill will look like. This, in turn, creates huge long-term problems for individuals.

11. The Department, along with the NPA, SAPS and the judiciary, should be more committed than they have been to date, to significantly decrease prison and immigration detention populations during this period. As such, the intake of offenders into correctional and immigration detention centres should be reduced through consideration of alternative measures for those who qualify. Indeed, detention should be used as a last resort, beyond the pandemic as well.
12. Finally, South Africa is a state party to the Optional Protocol to the Convention against Torture (OPCAT) since June 2019 and has designated the SA Human Rights Commission (SAHRC) as the National Preventive Mechanism (NPM) as required by OPCAT. The Protocol requires the NPM to monitor and report on the situation of people deprived of their liberty with the aim to prevent torture and other ill treatment. The SAHRC is designated to perform a coordinating and functional role in the NPM together with other oversight bodies such as the Judicial Inspectorate for Correctional Services (JICS). It is thus the responsibility of the SAHRC to oversee and ensure coordinated oversight and monitoring at all places where people are deprived of their liberty. Civil society can play a crucial role here, and we have made continuous efforts at encouraging the NPM to establish a consulting forum to engage relevant civil society bodies and institutions.
13. The immediate cessation of the statutory obligation to monitor correctional facilities by the JICS Independent Correctional Centre Visitors has been deeply worrying for the DJF. It appears that the cessation of visits was imposed on JICS and the ICCVs by the State of Disaster regulations. The initial State of Disaster regulations promulgated prohibited all visits to detention centres and thus prevented them from fulfilling their oversight mandate. The updated regulations (29 April 2020) did not explicitly enable visits by JICS and ICCVs and left this to the discretion of the Minister of Justice and Correctional Services. Initially, JICS personnel (including ICCVs) remained excluded from “essential services” under the regulations which only made provision for DCS officials and Chapter 9 and other Constitutional institutions. Directives allowing explicit visits by the JICS and ICCVs were only published three months after the initial lock-down was imposed (22 June 2020). While we have been informed by the Inspecting Judge

that there will be a phased-in return to work, we remain critical of the government's initial response to drastically curtail the duties of oversight mechanisms-and for such an extended period-as it significantly jeopardised the safety, well-being, and rights of people in detention.

14. It is clear that the government failed to prioritise the oversight/visiting role of JICS as “essential services” in the gazetted regulations at the beginning of the lockdown to the detriment of ensuring that the rights and wellbeing of inmates are monitored. This should not have happened in the first place. The DJF member organizations received a number of calls from families, expressing their concern on this issue. The JICS could also have played a critical role in the engagement of families and civil society if it were allowed to continue its oversight visits.
15. The cessation of visits as a result of gazetted regulations at all other places where people are deprived of their liberty have also been concerning, particularly because there is very limited information available on the status of monitoring at immigration detention facilities, police cells, and child and youth care facilities, etc. The DJF has written to the SAHRC to garner clarity on the extent of monitoring of detention by the SAHRC (as NPM) but we are still unclear on the extent of monitoring actually carried out.
16. In closing, we thank the committee for the opportunity to make this submission. We recognise the mammoth challenge this pandemic has posed for government departments charged with facilitating the detention of persons and with a duty of care for people in detention; we acknowledge that the government is working around the clock to protect the people in detention from the crisis. We hope that our comments and concerns will be given serious consideration. We look forward to opportunities to work with stakeholders in ensuring and upholding the rights of people in detention.

Respectfully submitted

DJF

***Endorsed by:***

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