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
Website: www.genderjustice.org.za

Sasha Gear
Programme Director
Just Detention International
Tel: 083 565 7318
E-mail: sgear@justdetention.org
Website: 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.[1] 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".[2] 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[3], 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."[4]

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,"[5] 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.

[1] 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.
[2] p 33, JICS Annual Report 2007/2008.
[3] p 7. DCS Annual Report, 2011/12.
[4] p 10, DCS Annual Report, 2011/12.
[5] 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 publically. 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.[6] 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.[7] 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.[8] 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".[9]

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

[6] p 47, DCS Annual Report, 2011/12.
[7] p 196, DCS Annual Report, 2011/12.
[8] p 41, JICS Annual Report, 2011/12.
[9] 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[10] 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".[11] 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"[12] 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*.

[10] p 38, DCS Annual Report 2011/2012.
[11] p 47, DCS Annual Report, 2011/12.
[12] 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[13], 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[14] 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.[15] 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."[16]

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"[17] – 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.

[13] p 35, JICS Annual Report 2011/2012
[14] p 27, DCS Annual Report 2011/2012.
[15] p 29, DCS Annual Report, 2011/2012.
[16] p 25, DCS Annual Report 2011/2012.
[17] 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[18], 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[19]. 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.[20] 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

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[18] 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.

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

[20] 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)

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.[21]

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[22] 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[23]. 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[24], 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.[25] 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

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[21] p 54, JICS Annual Report, 2011/2012.
[22] See note 20 above.
[23] p 49, JICS Annual Report, 2011/2012.
[24] IRIN Global, *South Africa: Prisons expand HIV services*, 26 July 2011.
http://www.irinnews.org/Report/93336/SOUTH-AFRICA-Prisons-expand-HIV-services
[25] 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.