



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

**Regarding the  
2011/12 Annual Reports of the**

***Department of Correctional Services***

**and the**

***Judicial Inspectorate For  
Correctional Services***



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**WITS**  
Journalism

## 1. Background

The Wits Justice Project (WJP) is a project of the Journalism Department of the University of the Witwatersrand and aims to impact significantly on the lives of people by striving for changes in the criminal justice system.

Through the four arms of the project – journalism, advocacy, law and education – WJP strives to bring substantial changes to the law and its practice and the wider criminal justice system as a whole. It uses transparent activism to promote the foundational values enshrined in the South African Constitution and international Human Rights law.

## 2. Introduction to this Submission

The WJP is grateful for the opportunity to make this submission to the Parliamentary Portfolio Committee on Correctional Services, on the 2011/2012 annual reports of both the Department of Correctional Services (DCS) and of the Judicial Inspectorate for Correctional Services (JICS). This submission will comment on issues common to both reports as well as provide feedback on each report individually.

## 3. Statistics sited in both DCS and JICS reports

The WJP notes that there are discrepancies in the statistics provided in both reports, for the same period and in the same month (March 2012). A summary is provided below:

	<b>DCS Report</b>	<b>JICS Report</b>
<b>Total Population</b>	158, 790	158, 165
<b>Sentenced</b>	112, 748	111, 814
<b>Unsentenced (remand)</b>	46,062	46,351
<b>Correctional Centres</b>	243	236

Such discrepancies indicate that the statistics available for those in our correctional services are not reliable and that better and more regular census-taking is needed. Accurate information is necessary and crucial for the efficacy and effectiveness of correctional and rehabilitation services.

#### 4. Department of Correctional Services Report

The value chain depicted below, and included in the report, is an excellent infographic on the processes of an integrated and well-functioning criminal justice system.



However, WJP would like to highlight a few of the challenges pertaining to this system, some of which DCS has recognised. Better integration of a range of government IT systems and stringent evaluation for key justice mechanisms would go a long way towards solving some of these endemic problems:

- The adjudication of bail is a big challenge facing the criminal justice system: for many, the lack of a formal address and identification document can cause delays, postponements and could result in prolonged detention for a bail-able offence.
- A clogged court roll slows down access to justice and can result in lengthy delays before a trial can proceed.
- Acquittal is not the end of the road for some remand detainees: if they have been incarcerated for a lengthy period of time, they may have lost their jobs and could have the stigma of 'being inside' attached to them. What kinds of support could be made available?
- As detailed in this report, rehabilitation initiatives require significantly more input and focus from DCS. It is reassuring to see that the Honourable Minister of Correctional Services, Mr Sibusis Ndebele has highlighted this issue for action.

### *a. Remand Detention*

The creation of a remand detention branch in DCS, and the appointment of its head, the “Chief Deputy Commissioner: Remand Detention” is a welcome development. The Branch has so far been involved in various stakeholder events, providing opportunity for interaction with civil society and experts. This is highly commendable and the WJP looks forward to working with the Branch in the future.

There is a clear need to both reduce the number of people in remand, and to reduce the time in pre-trial detention. Remand detainees have not been found guilty, and are to be presumed innocent under the South African Constitution. It is clear, therefore, that excessive and arbitrary use of remand detention undermines the presumption of innocence: one of the cornerstones of a rights-based system.

The bottlenecks along the entire criminal justice system result in the high number of remand detainees in the country (approximately 30% of the prison population). Efforts must be made to better integrate the work of the police, courts and prison services to address systemic failures, and to improve cooperation and coordination.

Convicted inmates have access to educational and vocational training programmes, to rehabilitation and social services and to psycho-social support. It is crucial to ensure that remand detainees have access to comparable services, in practice as well as in theory.

According to a report by the Open Society Justice Initiative<sup>1</sup>, those in remand are more prone to committing suicide than convicted inmates, due to “confinement shock” a sense of hopelessness and because of the violence and rape they are exposed to. It is vital that every effort be made to lessen the impact on detainees, especially by having dedicated remand facilities and by keeping first-time offenders and habitual offenders separate.

It is encouraging to see that Minister Ndebele acknowledges, in his forwarding statement, the need for educational opportunities and skills development for remand detainees. We look forward to seeing this vision being implemented as a matter of urgency.

### *b. Budgetary under-spending and irregular expenditure*

We note with concern the under-spending reported, of R893.9 million. Especially worrying is the R483 million allocated to funded vacancies which have not been filled. In a service which is constantly battling with under-capacity and under-staffing, every effort should be

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<sup>1</sup> [http://www.soros.org/sites/default/files/Justice\\_Initiati.pdf](http://www.soros.org/sites/default/files/Justice_Initiati.pdf), page 19 cites findings by the World Health Organization on suicide in prisons and remand facilities.

made to fill all vacancies. This impacts not just on the working environment for the DCS officials, but also for the inmates whose lives are so directly affected by such deficiencies in the system. This includes the practice of “lock down” in correctional centres, where inmates are locked into their cells from early afternoon to the next morning. The reason cited for such a problematic practice is that of under-staffing.

We would like to highlight the fact that R71 million of “fruitless and wasteful expenditure” is cited, but all are still pending investigation. It would be useful to provide a timeline for such investigations and to make public the results thereof.

*c. Draft White Paper on Remand*

We look forward to the speedy finalization of this key document and to extensive consultations with experts and key stakeholders.

## **5. Judicial Inspectorate of Correctional Services Report**

*a. Mechanical Restraints and Use of Force*

We note with concern that the use of mechanical restraints has increased from 67 instances in the previous year, to 239 incidents in this year. Such a sharp increase is a worrying trend, especially given the vague legislation surrounding the use of such tools, as well as a lack of training in their proper use.

Furthermore, while there is a process in place whereby an inmate can appeal the use of mechanical restraints before being subjected to them, no such appeals were made during the reporting period, whereas 50 reports were made last year. According to JICS, all inmates waived their right to such an appeal. This seems unlikely. Have inmates been regularly and sufficiently informed of their rights to appeal punishments? Or is the problem with incorrect statistics, as cited above. The JICS report gives one explanation, stating that there is a lack of an integrated electronic system for heads of prisons to report such incidents.

The Correctional Services Act permits the use of restraint mechanisms such as electronically activated stun belts, electric shock shields, leg irons, belly chains and batons. But the use of force by correctional officials or their training in the use of this restraint equipment is not clearly legislated or regulated. Nor does the legislation define minimum or maximum force. Rather it permits the use of internationally condemned equipment, such as stun belts, which if abused can be employed to deliberately violate inmates’ rights.

The number of incidents of “use of force” has increased from 10 in the previous year, to 50 this year. Warder-on-inmate violence takes many forms. The baton, widely accepted as having a legitimate law enforcement function, is nevertheless easily abused in the absence of clear regulations governing its use. And when blunt-force, soft-tissue head injury is recorded as the cause of death, it is often consistent with baton abuse. Warders regularly complain that they do not feel confident using batons because they are not trained to distinguish between minimum and maximum force. They are told not to use excessive force but don’t know what this means and there’s nothing in the legislation to explain it.

There is urgent need for training in appropriate, responsible use of restraint equipment, including batons, as well as in conflict resolution skills to prevent an escalation of unnecessary violence. Perhaps, because of the ambiguity surrounding the definition of excessive force, routine searches in prison for drugs, knives or cell phones could result in violence.

#### *b. Violence faced by officials*

Although there are comprehensive figures on warder-on-inmate, and inmate-on-inmate violence, there are no figures specifying inmate-on-warder violence, or how many warders are killed whilst on duty. In order for correctional services to function optimally, the working environment for correctional officials must be enhanced and made more secure. The first step to ensuring this environment is transparency of statistics.

#### *c. Health issues of inmates*

The major cause of inmate deaths in prison is reported to be due to a treatable and manageable disease, tuberculosis. Inmate access to health services is enshrined in the South African Constitution, and needs to be made a priority for Correctional Services.

Research<sup>2</sup> shows that prisons are especially conducive to TB transmissions and that prisoners and remand detainees are at an especially high risk of infection. A study in Pollsmoor Prison showed that there is a 90% risk of TB transmission per year. We cannot hope to control the spread of TB in South Africa without controlling it in our prisons. The same study showed that just by implementing the current national recommendation on cell occupancy, the transmission rate could be cut by 30%.

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<sup>2</sup> South African Medical Journal: <http://www.samj.org.za/index.php/samj/article/view/5043>

## 6. Conclusion

The public perceptions of crime in South Africa, and its frustration with the authorities in dealing with the problem makes difficult to advocate on behalf of someone accused of breaking the law. Many people mistakenly believe that the worse the situation in prisons is, the more of a deterrent it becomes. This has clearly shown itself not to be the case.

It is important for people to understand the rights enshrined in international human rights law, and in the South African Constitution. Even more importantly, it is crucial that people understand that when systemic failures deprive even one person of their rights, it can spread as a contagion and affect the whole of society.

We all need to work towards change and to help the responsible authorities protect the rights of all citizens of South Africa – even those behind bars.

Respectfully Submitted

A handwritten signature in black ink, appearing to be 'Nooshin Erfani-Ghadimi', written over a horizontal line.

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