



JUST DETENTION

INTERNATIONAL

RAPE IS NOT PART OF THE PENALTY

Submission to the Parliamentary Portfolio Committee on Corrections

*An End to Torture: Making Sexual Abuse of Inmates in
Department of Correctional Services Centres a Budget Priority*

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I. Introduction

Just Detention International (JDI) is grateful to the Portfolio Committee on Corrections for considering this stakeholder submission in connection with its April 17, 2012 session on the Department of Correctional Services' (DCS) proposed 2012 budget and Strategic Plan (2011/12-2015/16). In this submission, JDI would like to draw the Committee's attention to the urgent need for the DCS to prioritize addressing the problem of sexual abuse of inmates as part of the Incarceration, Rehabilitation, Care, and Social Reintegration portions of its budget.

JDI is an international health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI has worked in South Africa since 2005, when the organisation was contacted by officials at Pollsmoor Correctional Centre for help in stemming rampant sexual violence at that prison. Since then, JDI has provided workshops on addressing rape in prison to hundreds of corrections officials nationwide, as well as to ombudspersons of the Judicial Inspectorate of Correctional Services (JICS). Most recently, JDI has collaborated with the DCS at the national level, developing a comprehensive framework of policies to address sexual violence in DCS facilities. JDI, which recently opened an office in Johannesburg, works closely with other civil society stakeholders, including the Civil Society Prison Reform Initiative (CSPRI), in its efforts to improve safety in DCS facilities.

II. Sexual Violence in DCS Correctional Centres

Sexual abuse in DCS facilities is a serious human rights problem. In 2007, the JICS found that seven percent of inmates surveyed reported that they had been subjected to unwanted sexual attention during their incarceration; nearly half of all inmates reported that sexual abuse in prison happens either "sometimes," "often," or "very often."¹ Other studies indicate that sexual abuse plagues not only adult prisons, but DCS juvenile facilities as well.²

Sexual violence in DCS facilities is linked to gang violence and its power structures. Anecdotal evidence suggests that prisoner rape fuels a cycle of victimization; once an inmate has been sexually assaulted, he or she becomes a target for repeated abuse. Even prisoners who are not raped are forced to adapt to an environment in which anyone not perceived as hyper masculine or dominant is at risk for sexual abuse. In male facilities, those who wield power over other inmates are considered "men" or "husbands." More vulnerable prisoners, such as those who are young, first-time inmates, nonviolent, gay, transgender, or of small build, are referred to as "women" or "wyfies" and often treated as slaves, forced to provide sex and domestic services for their "husbands."

The situation for vulnerable inmates is most dire during "lock-up"-- from mid-afternoon to the following morning -- when prisoners are locked in communal cells, sometimes with as many as 80 other inmates and with no access to guards for protection. During this time, inmates are at the

mercy of predatory gang members and are at extremely high risk of sexual abuse, with virtually no hope of receiving help from DCS staff until their cells are unlocked in the morning. Not surprisingly, sexual violence often occurs during “lock-up.”

In the past decade, former President Mbeki’s Jali Commission, various NGOs, and U.N. treaty bodies have all expressed concern regarding the prevalence of torture in DCS facilities, including the sexual abuse of detainees.³ The U.N. Human Rights Committee’s November 2010 opinion on a 2006 torture case at the St. Albans Correctional Centre highlights the systemic nature of sexual abuse by staff in DCS facilities and the glaring lack of institutional accountability.⁴ During this incident, a group of about 50 guards forced inmate Bradley McCallum and nearly 70 other inmates in his communal cell to strip and lie down on the wet floor of the corridor in a line with their faces in the inner part of the anus of the inmate lying in front of them. The officials, including 20 female guards, then reportedly walked over the inmates, kicking their genitals while making mocking remarks.⁵ The guards proceeded to beat the inmates with pickaxe handles, brooms, and pool cues; one of the guards anally raped Mr. McCallum using a baton.⁶ McCallum has since filed a lawsuit on behalf of himself and 230 other prisoners in what is perhaps the largest damages claim ever filed against the DCS.⁷

III. The DCS Must Make Sexual Abuse Prevention a Budget Priority

Sexual violence in detention is not inevitable. On the contrary, through committed leadership, strong policies, and sound practices, the vast majority of sexual assaults behind bars can be prevented. Many of the changes in policy and practice necessary to prevent and address the sexual abuse of inmates can be accomplished with only a minimal outlay of resources. Other tangible improvements, however, will not occur unless sexual abuse prevention is prioritized within the DCS’ budgeting and strategic planning processes.

Despite some initial bold steps toward addressing sexual violence within its facilities, most notably by partnering with JDI and the Centre for the Study of Violence and Reconciliation (CSV) in 2009 to develop a comprehensive policy framework on preventing and responding to inmate sexual abuse,⁸ the DCS has stopped short of effectuating real improvements to inmate safety. More than a year after completion of the policy framework, DCS leadership has yet to adopt it.

Moreover, the DCS fails to include any mention of its plans to address rape and other forms of sexual abuse in its proposed 2012 budget and Strategic Plan (2011/12-2015/16).⁹ The issue should be integrated throughout the Incarceration, Rehabilitation, Care, and Social Reintegration Programme areas of the budget. For example, the budget’s Incarceration Programme is aimed at

providing:

“...appropriate services and well maintained infrastructure that support safe and secure conditions of detention consistent with human dignity of inmates, personnel and the public; and provide for profiling of inmates and compilation of needs based correctional sentence plans, administration and interventions.”¹⁰

The DCS specifies among its objectives and measures for the Incarceration Programme a reduction in the number of inmate assaults by approximately 40 percent by 2014/15.¹¹ However, the DCS does not distinguish sexual assaults from other physical violence; nor does it include the issue among its objectives for each of its program areas.

On the positive side, the DCS’ incarceration-related objectives include plans to reduce overcrowding, including by limiting the average length of time remand detainees spend in correctional facilities.¹² This reform can be expected to lower the incidence of sexual abuse. Similarly, by expanding access to mental health services, DCS has an opportunity to improve access to much-needed counseling for survivors of sexual abuse. Nevertheless, the DCS should address the problem of sexual abuse directly, specifying in its budget steps to be taken and the measures that will be used to determine success, while apportioning the needed resources to do so.

IV. Addressing Sexual Abuse of Inmates is Cost Effective

The DCS is legally mandated to address sexual abuse in its prisons. Doing so will lead to overall improvements in the management of DCS prisons and will increase the safety of staff and inmates alike. Facilities that are run safely have fewer security breaches, lower levels of violence, and greater staff retention. Most importantly, by reducing the extent to which inmates endure the trauma of sexual abuse in detention, the DCS will be able to reduce recidivism and increase the likelihood that inmates become law-abiding and contributing members of society upon release.

Addressing sexual abuse is also cost-effective. Fewer incidents of abuse will reduce the costs of the investigations and medical and mental health care required after an assault. A decrease in sexual abuse will also result in a reduction in HIV transmission, thereby lowering the prevalence rate in the nation’s prisons -- estimated to be above 40 percent -- and in turn, the costs of HIV/AIDS treatment.¹³

Ultimately, the benefits of protecting inmates from sexual abuse and improving overall prison safety will vastly outweigh the costs of doing so. As policies to address sexual abuse are implemented and a zero-tolerance standard for such violence is fully integrated into daily DCS operations, best practices will become normalized, the DCS corrections culture will become

safer, incidents of sexual abuse and other types of violence will be reduced, and improvements will be seen with respect to collateral safety concerns such as levels of gang activity and inmate safety during “lock-up.” Moreover, there will be an improvement in the DCS’ compliance with constitutional requirements to prevent torture and ill-treatment, to maintain conditions of detention consistent with human dignity, and to protect inmate health. All of this will lead to a reduction in legal actions against the DCS, while improving South Africa’s fulfillment of its duty to prevent torture and other related international human rights obligations.

V. Conclusion

The DCS must make the prevention of sexual violence a central aspect of its budgeting and strategic planning processes, while ensuring that inmates who are victimized are able to access the services they need to heal. For this reason, initiatives to address sexual abuse must feature appropriately throughout the agency’s budget, and must not be overlooked or relegated to a single program area. No matter what crime someone might have committed, rape is not part of the penalty. Only by squarely addressing the sexual abuse of inmates in its planning and budgeting processes can the DCS hope to stamp out this terrible human rights abuse, once and for all.

¹ Judicial Inspectorate of Correctional Services (JICS), *Annual Report 2007/2008* at 33 (April 2008), available at <http://judicialinsp.pwv.gov.za/Annualreports/Annual%20Report%202007-2008.pdf>.

² Centre for the Study of Violence and Reconciliation (CSVR), *Situational Analysis of Boksburg Youth Centre, Sexual Violence in Prison Pilot Project: Survey Report 2006*, at 68-74 (2006), available at http://www.csvr.org.za/index.php?option=com_content&view=article&id=1333%3Asituational-analysis-of-boksburg-youth-centre-sexual-violence-in-prison-pilot-project-dec-2004--jan-2005-survey-report-&Itemid=2.

³ See Judicial Commission of inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services (“Jali Commission”), Final Report (2006); additional stakeholder submissions to the Parliamentary Portfolio Committee on Corrections regarding torture in DCS facilities available at <http://www.pmg.org.za/report/20111130-stakeholder-hearings-prevalence-torture-correctional-centres>.

⁴ *McCallum v South Africa*, UN Doc CCPR/C/100/D/1818/2008 (2 November 2010), available at http://www.bayefsky.com/pdf/southafrica_iccpr_t5_1818_2008.pdf.

⁵ *Id.* at ¶2.3.

⁶ *Id.* at ¶2.4.

⁷ Carolyn Raphaely, *Raped Inmate Sues Prison Service*, INDEPENDENT ONLINE, March 3, 2012, available at <http://www.iol.co.za/saturday-star/raped-inmate-sues-prison-service-1.1247938?ot=inmsa.ArticlePrintPageLayout.ot>.

⁸ The policy framework lays out a range of best practices for preventing and responding to the sexual abuse of inmates, whether committed by other inmates or staff. It requires, among other things, the agency to train all DCS employees about their absolute duty to protect inmates in their charge. The framework also requires that all inmates attend an orientation session on their right to be free from sexual violence. It further requires that inmates have a meaningful way of reporting abuse, including externally through confidential reports to the JICS, and that all reports of sexual abuse are taken seriously and investigated promptly. The framework further recommends the use of closed-circuit television (CCTV) and other appropriate technologies as a means of supplementing abuse prevention, detection, response, and monitoring efforts. For further information, see Just Detention International (JDI), *Sexual Abuse of Inmates in Department of Correctional Services (DCS) Facilities*:

A Nationwide Human Rights Crisis (Feb. 24, 2012), submitted to this Committee in connection with its hearing on torture in DCS correctional centres; *available at* http://www.justdetention.org/pdf/Submission_to_Parliamentary_Portfolio_Committee_on_Corrections_2-24-12.pdf.

⁹ For example, the 2011 Correctional Matters Amendment Act, at clause 6(c), requires that unsentenced detainees be assessed to determine their vulnerability to sexual abuse.

¹⁰ NATIONAL TREASURY, *Estimates of National Expenditure, Budget 2012 (Vote 21)*, at 453.

¹¹ *Id.* at 460.

¹² *Id.* at 461.

¹³ U.N. Office on Drugs and Crime, *et al.*, *HIV in Prisons in Sub-Saharan Africa: Opportunities for Action*, at 21 (2007), *available at* http://www.unodc.org/documents/hiv-aids/Africa%20HIV_Prison_Paper_Oct-23-07-en.pdf.