



**Sonke Gender
Justice Network**
HIV/AIDS, Gender Equality, Human Rights

JUST DETENTION 
INTERNATIONAL
RAPE IS NOT PART OF THE PENALTY

Submission to the Portfolio Committee on Correctional Services

***The Use of Closed Circuit Television Technology in DCS Facilities
to Address the Sexual Abuse of Inmates***

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I. Introduction

Just Detention International (JDI)¹ and Sonke Gender Justice Network (Sonke)² welcome the opportunity to make this submission to the Portfolio Committee on Correctional Services ('the Portfolio Committee') on the proposed use of closed circuit television technology (CCTVs) to curb violence in Department of Correctional Services (DCS) facilities, and would like to express its gratitude for and support of the stakeholder hearing on this issue scheduled for the 30th of May, 2012.

JDI and Sonke believe that strategic use of CCTV technology can play an instrumental role in preventing sexual abuse in DCS facilities. However, such technology will never take the place of committed leadership, smart staffing, and aggressive use of in-person patrolling. If CCTV technology is to be adopted, JDI and Sonke offer the following recommendations:

1. **Develop a comprehensive security strategy that makes smart use of CCTV technology.** In particular, this strategy should require live monitoring of CCTV footage that complements - not supplants - in-person patrolling. Use of this technology must also incorporate inmates' right to privacy.
2. **Undertake proper resource and maintenance planning to make full use of CCTV technology.** Any funding plan for CCTV technology must account for the varied types of DCS facilities and cells and the inevitable need to replace and upgrade equipment. Finally, the strategy should mandate annual assessments of each facility's security-related technology.
3. **Adopt the proposed DCS policy framework to address the sexual abuse of inmates.** The Draft Policy Framework to Address Sexual Abuse of Inmates in DCS Facilities (the Framework) is a key component of an overall safety strategy, of which CCTV technology is but one aspect. The National Strategic Plan for HIV, STIs and TB 2012-2016 also outlines a comprehensive approach, and requires DCS to enforce laws and policies to prevent sexual abuse of inmates.³
4. **Implement the Correctional Matters Amendment Act provision on sexual abuse prevention.** This Act, enacted in 2011, requires the DCS to develop a screening tool to assess newly sentenced inmates' vulnerability to sexual abuse. DCS should work with civil society partners and experts on the sexual abuse of inmates to develop and implement this screening tool in its facilities nationwide.

¹ See www.justdetention.org.

² See www.genderjustice.org.za.

³ See "Preamble" of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

A. Sonke Gender Justice Network

Sonke was established in 2006. Today, Sonke has a growing presence on the African continent and plays an active role internationally. Sonke works to create the change necessary for men, women, young people and children to enjoy equitable, healthy and happy relationships that contribute to the development of just and democratic societies. Sonke pursues this goal across Southern Africa by using a human rights framework to build the capacity of government, civil society organisations and citizens to achieve gender equality, prevent gender-based violence and reduce the spread of HIV and the impact of AIDS.

Sonke has worked closely with DCS since 2007, conducting peer education for offenders and members in facilities in the Western Cape and Gauteng. Using our One Man Can and Brothers for Life curricula,⁴ the peer education focuses on improving the health-seeking behaviors of inmates and members, and trains participants to act as leaders within their correctional community, providing support, education, and an example of healthy living to their counterparts. Rigid gender norms and negative masculinities contribute to gender-based violence and the spread of HIV in communities inside and outside of correctional centres. Thus, in addition to providing information on sexually transmitted infections and HIV, we also train offenders and members about the unequal gender dynamics that contribute to the spread of HIV, prevent men from accessing health services, and lead them towards violence – both between men and against women and children. Sonke now works in partnership with JDI and Johns Hopkins Health and Education for South Africa, among other organisations, and seeks to promote a policy environment that addresses the issues of sexual violence and HIV in DCS centres. Sonke, JDI, and Wits Justice Project serve as co-secretariats for a recently formed civil society coalition called Detention Justice Forum, which works to increase accountability on issues pertaining to inmate health and rights.

B. Just Detention International

JDI is an international health and human rights organisation 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 corrections officials at Pollsmoor Correctional Centre requesting help in stemming rampant sexual violence at their prison. Since then, JDI has provided training to hundreds of corrections officials

⁴ Please see www.brothersforlife.org, and <http://www.genderjustice.org.za/onemancan/>.

nationwide – ranging from brief workshops to five-day master trainings – as well as to officials and prison visitors 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. In April 2010, JDI, along with the Centre for the Study of Violence and Reconciliation (CSVR), made a presentation to this Committee on sexual abuse in DCS facilities and recommended best practices for addressing the problem. JDI also provided input to this Committee on the development of the 2011 Correctional Matters Amendment Act provision requiring that inmates be assessed to determine their vulnerability to sexual abuse in detention. JDI, which has an office in Johannesburg, works closely with other civil society stakeholders, including Sonke and the Civil Society Prison Reform Initiative (CSPRI), in its efforts to improve safety in DCS facilities.

II. Sexual Violence in DCS Correctional Centres

The DCS must contend with the high levels of violence in its correctional centres. Overcrowding, lock-up procedures that routinely leave inmates with minimal supervision for about 16 hours per day, and staffing challenges exacerbate the problem. In an effort to lower rates of violence, this Committee is currently considering the widespread use of CCTV technology as a means of enhancing surveillance capabilities, providing evidence of the abuse of inmates, monitoring officials' compliance with agency policy, and otherwise addressing gang violence and drug smuggling. While CCTV technology may be a valuable tool in such efforts, it is crucial to avoid overreliance on it to address violence and other misconduct in DCS facilities. This submission speaks to the use of CCTV technology and its limitations in addressing the sexual abuse of inmates.

Sexual abuse in DCS facilities is rife. Anecdotal evidence underscores the findings of reports produced by the JICS indicating that nearly half of all inmates surveyed reported that sexual abuse in correctional centres happens “sometimes”, “often”, or “very often.” Warders have observed that it is routine for newly admitted inmates to be raped on the first night in a communal cell. One warder surmised that an offender may be “branded a perpetrator coming to prison, but he can arrive at court or at home as the victim.”⁵ Research indicates that sexual violence, which is largely unreported, is ritualised and is utilised

⁵ E. Ghanotakis, *et al*, “Stop Prison Rape in South Africa” Agenda 74 (2007).

by powerful inmates to establish offender identities and hierarchies.⁶ In such an environment, even inmates who are not raped are forced to adapt to an environment in which anyone not seen as hyper-masculine and dominant is at risk for sexual abuse. In male facilities, those who wield power over other inmates are considered “men” or “husbands.” More vulnerable inmates, such as those who are young, first-time inmates, nonviolent, gay, transgender, or of small build, are often referred to as “women” or “wyfies” and often treated as slaves, forced to provide sex and domestic services to their “husbands.”

Sexual abuse in DCS facilities both reflects and reinforces the widely held view of sex as an expression of male dominance. Male survivors often report feeling that sexual abuse has robbed them of their manhood. As one offender described, “it is like your manhood is taken away from you. At the end of the day, you feel justified by raping the next person...it feels like retaining your manhood.”⁷

The physical and emotional trauma, ongoing humiliation, and degradation that inmates experience as a result of sexual abuse has a direct, negative impact on the communities they return to when most are eventually released from prison. While sexual violence in prison is clearly linked to prison gang violence and culture, abuse and rigid gender roles that are enforced inside detention centres contribute to the abuse of women, men, and children, and the spread of HIV in the community, when inmates are released.

When the government takes away someone’s freedom, it incurs an absolute responsibility to protect that person’s safety. Sexual abuse in detention, and the failure of corrections officials to take the needed steps to address it, violates inmates’ fundamental rights. The DCS must therefore take the needed steps to prevent sexual abuse and ensure that inmates who are victimised receive the services and care they need. Currently, for example, there is no effective classification procedure in place to ensure that vulnerable inmates are segregated from likely sexual perpetrators. As a result, those inmates most vulnerable to sexual violence are commonly housed with predatory gang members in large communal cells, where the majority of sexual assaults occur during lock-up hours.⁸

III. Recommendations for Effective Use of CCTV Technology to Address Sexual Violence

Video monitoring systems, when properly designed, managed, maintained, and fully integrated into the

⁶ S. Gear, “Behind the Bars of Masculinity: Male Rape and Homophobia in and about South African Men’s Prisons,” *Sexualities*, Vol. 10(2): 209-227 (2007).

⁷ E. Ghanotakis *et al*, *supra* note 4.

⁸ Just Detention International, Fact Sheet: “Sexual violence plagues South Africa’s prisons,” March 2009.

DCS' overall security strategy, can serve as effective mechanisms for helping to address sexual abuse and other forms of violence in detention settings. However, CCTV technology must not be regarded as a panacea for preventing sexual violence and other forms of abuse in DCS correctional centres. Unless they are fully integrated with other security measures, such technology is unlikely to be effective. Thus, we make the following recommendations to the Portfolio Committee and the DCS with respect to the use of CCTV technology for lowering the incidence of sexual abuse and other forms of violence in DCS facilities:

1. Develop a comprehensive security strategy that makes smart use of CCTV technology.

First, the DCS must consider the limitations of CCTV technology, and the importance of utilising it as one aspect of a comprehensive policy plan to address this problem. For example, research indicates that CCTV technology is effective at deterring inmates from non-violent misbehaviour and planned acts of violence, but does not deter spontaneous violent acts such as fights.⁹ Research also indicates that correctional officials tend to focus less on actively monitoring areas that are under CCTV surveillance, leaving these areas more vulnerable. Further, video systems may simply displace abuse to unmonitored areas, thereby relocating – but not reducing – violence against inmates.¹⁰ For these reasons, any effective strategy for employing CCTV technology must go hand-in-hand with in-person patrolling. Correctional staff members are the first line of safety and security in prisons, and adequate staffing is required to oversee the inmate population. While cameras can enhance safety, an important caution is that they cannot replace staff surveillance and supervision of inmates. Overreliance on cameras in place of well-trained staff who conduct regular patrols and respond to disturbances can place inmates and staff in danger.¹¹ For example, CCTV technology leaves blind spots unmonitored, and staff and inmates can quickly get to know where cameras are situated, and thus take care to avoid detection in pre-meditated incidents. Thus CCTV technology can only supplement warders' real-time efforts to keep inmates safe and to maintain order. Indeed, the use of CCTV technology is itself likely to require a significant investment of staff time. The DCS will have to decide whether staff will monitor camera footage live, requiring greater personnel resources, or whether to use the cameras only to record footage that can be reviewed for evidence after an incident transpires.

⁹ Allard, *et al*, "The Effect of CCTV on Prisoner Misbehaviour", the Prison Journal, 88 (3) 404-422 (2008).

¹⁰ *Id.*

¹¹ N.G. La Vigne, et al., *Evaluation of a situation crime prevention approach in three jails: the Jail Sexual Assault Prevention Project*, the Urban Institute (2011).

The most significant gap in staff surveillance occurs during lock-up. The lock-up procedure not only leaves vulnerable inmates at extreme risk of sexual abuse and other violence, but can also cause extreme stress among inmates, thus sparking altercations.¹² Moreover, minimal staffing during lock-up lessens DCS' ability to prevent and respond to violence. Indeed, there is typically only one staff person on duty in each section of a correctional centre at night. A further concern is that any plan for the utilisation of cameras for monitoring purposes needs to provide for an immediate response to emergencies, including sexual and other forms of violence occurring in cells after lock-up. Currently officials on duty during lock-up can only access a cell key up to an hour after an emergency has occurred.

Altering lock-up procedures would improve protections for inmates and prevent sexual abuse. Yet, the DCS consistently argues that staff shortages prevent it from altering the lock-up procedure. Contrary to the DCS' claims, the JICS has noted that the DCS, with 41,000 employees for an inmate population of approximately 162,000, has a favourable staff-to-inmate ratio (approximately 1:4). Instead of a staff shortage, JICS points to poor staff scheduling (i.e. implementation of a two-shift system and inadequate staff leave policies) as key sources of its personnel difficulties.¹³ The JICS also noted that, in some prisons, no senior officials were present during visits and staff members who were present were disproportionately doing administrative tasks instead of providing security.¹⁴ In addition to the consideration of CCTV camera use, DCS can best prevent sexual abuse by urgently improving deployment and utilisation of existing staff so that it can provide more security and alter lock-up procedures.

If the DCS employs cameras as a security measure, it must do so in a manner that balances inmates' constitutional right to safety against that of privacy. It seems unlikely that the use of CCTVs in DCS centres would be construed by the courts as an unjustified limitation on inmates' right to privacy, as these rights are limited, and the cameras will be used to protect important interests for inmates and DCS – crime prevention and detection, improving safety, gathering evidence, and general site management.¹⁵ However, well-intentioned attempts to increase inmate safety and security through cameras will actually decrease inmates' safety and dignity if poorly placed cameras capture images of inmates as they shower. DCS can take reasonable precautions to ensure that the use of cameras does

¹² *Id.*

¹³ <http://www.pmg.org.za/report/20100310-money-act-stakeholder-hearings-department-correctional-services-strat>.

¹⁴ <http://www.pmg.org.za/report/20110315-department-correctional-services-201112-strategic-plan-budget>.

¹⁵ See T Allard, et al, "The Purposes of CCTV in Prison" *Security Journal* (2006) 19, 58–70.

not unnecessarily infringe on inmates' privacy rights, such technology can be used effectively to increase safety.

For example, many corrections agencies in the U.S. place cameras outside of smaller cells (holding one or several inmates). This placement provides surveillance of traffic in and out of the cell without infringing on the privacy of inmates within the cell. At the same time, safety concerns in large dormitory cells may require that cameras be placed within the cells. However, such placement must take care not to capture areas where inmates shower and use the toilet. In instances where toilets and showers are in open view, officials can provide inmates privacy screens or towels to allow for basic privacy without compromising security. Cameras also should not provide an unnecessarily intrusive view of individual inmate beds. Cameras can be used without unduly infringing on inmates' privacy rights; however, there is a need for clear safeguards to ensure that the CCTV technology is used effectively and within appropriate parameters. Additionally, routine observation of cells by staff is critical to monitoring areas outside of camera range.

2. Undertake proper resource and maintenance planning to make full use of CCTV technology.

Research on implementing CCTV systems indicates that institutions often believe they will save money by installing cameras; however, they often underestimate the expense over time of maintaining them.¹⁶ For example, CCTV technology is constantly changing. When DCS is ready to update a part of its system, it may find that it is at the mercy of one vendor because some brands of equipment are not compatible with others.¹⁷ Moreover, anecdotal evidence suggests that DCS facilities have wasted (?) funds on other types of costly security-related technology. In one common scenario, costly security equipment breaks down, but the vendor has gone out of business, leaving the agency with costly, but worthless, security equipment. Thus, in order to utilise CCTV technology properly, DCS must give due consideration to the funds needed to maintain and update its systems.

In order to assess these and other issues, the DCS would need to undertake an in-depth assessment of its technology needs. For example, the DCS must take into account the age and design of each facility

¹⁶ J. Anderson and A. McAtamney, "Considering local context when evaluating a closed circuit television system in public spaces," Trends & Issues in Crime and Criminal Justice No.430 October 2011, Australian Institute of Criminology.

¹⁷ *Id.*

where cameras are to be installed, as well as the layout of each housing area. Measures will also have to be taken to protect the cameras from damage by inmates or staff.

3. Adopt the proposed DCS policy framework to address the sexual abuse of inmates.

In 2009, the DCS began to work collaboratively with JDI and the CSVr to develop a comprehensive policy framework to address the sexual abuse of inmates (the Framework is available upon request). The draft Framework, which is awaiting implementation by DCS leadership, provides a series of policies aimed at preventing, detecting, responding to and monitoring the sexual abuse of inmates, whether committed by inmates or staff. It requires the DCS to uphold a zero-tolerance standard for sexual abuse and to train all DCS employees on 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; 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.

While the Framework also recommends the use of CCTV and other appropriate technologies as a means of maintaining inmate safety, it recognises that such tools must *supplement* the DCS' sexual abuse prevention, detection, response, and monitoring efforts, and are not, in themselves, a solution to the problem of sexual abuse.

4. Implement the Correctional Matters Amendment Act provisions on sexual abuse prevention.

The Correctional Matters Amendment Act, 2011, amended Section 38 of the Correctional Services Act, 1998, to require that newly sentenced inmates be screened for vulnerability to sexual abuse. This critically important provision, which codifies a core component of the Framework, acknowledges that vulnerable inmates, such as those who are LGBT, first-time offenders, or mentally ill, are at a disproportionately high risk for sexual abuse. In keeping with its legal responsibility to protect the inmates in its care, the provision requires the DCS to screen inmates in order to ensure that those who are more vulnerable to sexual abuse are housed separately from predatory inmates. As discussed above, CCTV technology is insufficient to protect vulnerable inmates from abuse, but may increase inmate safety when used in conjunction with safety measures such as a vulnerability screening. To implement this provision, the DCS must develop an appropriate screening tool and train staff members on its use. The DCS should work with civil society partners and experts on the sexual abuse of inmates to develop and implement this screening tool in its facilities nationwide.

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