

SUBMISSION TO THE PORTFOLIO COMMITTEE FOR JUSTICE AND CORRECTIONAL SERVICES

“The Purpose and Impact of the Judicial Inspectorate for Correctional Services”

By Just Detention International – South Africa (JDI-SA)

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Introduction and background

Just Detention International – South Africa (JDI-SA) would like to thank the Portfolio Committee for the opportunity to make this submission.

JDI-SA is a health and human rights organisation dedicated to ending sexual abuse in all places of detention. Sexual violence in prison is a systemic and widespread problem with devastating consequences for prison communities and broader society. Shrouded in stigma and taboo, and shielded by the closed nature of prisons, and inadequate scrutiny of conditions inside them, prisoner rape has been kept in the shadows, and allowed to continue with relative impunity. Robust prison oversight is essential to tackling sexual abuse, and other forms of violence, behind bars.

JDI-SA, fellow NGOs, academics, and others including the Jali Commission, and members of the Portfolio Committee for Correctional Services, have, over several years now, highlighted fundamental shortcomings regarding the Judicial Inspectorate for Correctional Services (JICS), and especially since 2012, requested the Portfolio Committee to work to address these.¹ While JICS is a vital watchdog body, its lack of adequate independence, of a clear, strong mandate; and its limited capacity, severely hinder its effectiveness and ability to help protect inmates’ rights.

¹ For example see, Jagwanath, S. ‘A Review of the Judicial Inspectorate of Prisons in South Africa’, CSPRI Research Paper Series No 7, (2004); Muntingh, L. and Ballard, C. ‘CSPRI Submission On The Strengthening Of The Judicial Inspectorate For Correctional Services’ (2012) CSPRI, South Africa; Padayachee, V, NICRO Submission on Judicial Inspectorate of Correctional Services Annual Report; Just Detention International, Sonke Gender Justice Network, Wits Justice Project, ‘Submission to the Portfolio Committee for Correctional Services: Recommendations for Enhancing the Independence and Effectiveness of the Judicial Inspectorate for Correctional Services’, (2012); The Detention Justice Forum, Submission on the Department of Correctional Services and Judicial Inspectorate’s Annual Reports 2012/2013; Keehn, E., Nyembe, N., Sukhiya, T. ‘Evaluation of South Africa’s Judicial Inspectorate for Correctional Services: Assessing its independence, effectiveness and community engagement’, (2013) Sonke Gender Justice Network.

Recommendations

1. **Legislation governing JICS should be revisited to ensure independence from DCS:** Receiving its budget from the Department of Correctional Services (DCS), JICS is currently financially dependent on the very department it is required to oversee. With the exception of the Inspecting Judge, JICS staff are also administratively part of the DCS, which has compromised JICS functioning on various levels. That the Inspecting Judge is nominated by the Minister for Justice and Correctional Services, and appointed by the President (without further stakeholder involvement) is deeply problematic. Similarly, it is inappropriate that JICS's CEO is appointed by, and reports to, the National Commissioner for Correctional Services. This situation threatens oversight, and makes these processes vulnerable to political interference. Furthermore the Minister is currently empowered to unilaterally make regulations on issues² that have the potential to hinder JICS's ability to manage its own affairs.

To achieve meaningful independence from the DCS:

- JICS should have its own budget and receive its funding directly from Treasury.
- JICS should be administratively separate from the DCS.
- The Minister should be required to consult with the IJ when developing regulations that affect JICS work.
- The processes for the appointments of the IJ and CEO should be reviewed to enable stakeholder consultation, more extensive vetting of candidates, and prevent political interference.

2. **JICS's mandate requires review and strengthening, so that it clearly states its functions and powers:** JICS's mandate is not clearly defined. As Nevin points out, "Although neither the Correctional Services Act (CSA) nor any of its regulations clearly sets out JICS's powers and functions, it appears primarily to be an inspecting body and not an investigative or disciplinary body." While there is mention of investigation in relation to the Inspecting Judge, nowhere else is this expanded upon.³ Similarly, the CSA states that the Inspecting Judge is mandated to "deal" with complaints but does not detail what this may involve; and Independent Correctional Centre Visitors (ICCVs) have the power to 'discuss' complaints with Heads of Centre to attempt to resolve issues internally, but the Act gives no guidance on what further powers this may entail. Fundamentally, JICS has no way of enforcing its findings and recommendations, and DCS is not required to account for these.

To strengthen JICS's mandate:

- The governing legislation must be reviewed to clearly delineate JICS's powers and functions.
- At a minimum, these should include the power to inspect, monitor, investigate, report and make recommendations, as well as to hold DCS accountable (through mechanisms such as binding recommendations including that recommended disciplinary actions are instituted).

² For example, issues include visitation to correctional centres, procedures following inmate deaths, complaints and requests made by inmates and how officers should deal with them.

³ Nevin, A. (forthcoming), 'Comparative analysis of prison and other oversight bodies'- draft report, at Page 8;

- DCS should be legally obligated to respond to reports and recommendations made by JICS, detailing a plan on how it will address the issue, which should then be open to monitoring by JICS.

3. **JICS should be given clear investigative powers and have the power to make binding decisions regarding the referral of criminal cases to the South African Police Service (SAPS) and the National Prosecuting Authority (NPA), and to make recommendations on instituting disciplinary proceedings:** JICS is currently required to seek resolutions to issues internally with DCS, and can only make non-enforceable recommendations. At present there is no policy regarding the referral of JICS cases to SAPS and the NPA, and this contributes to a climate of relative impunity regarding abuses in facilities. Similarly, there is a lack of mechanisms to facilitate DCS accountability to JICS.

To enhance JICS's oversight capabilities:

- JICS should be empowered to investigate serious cases such as DCS staff involvement in torture, assault, sexual abuse, and unnatural deaths; and make binding decisions regarding their referral to SAPS and the NPA.
- Cooperation with JICS's inspections and investigations – by agencies such as the DCS, SAPS, and NPA -- should also be required in law.
- JICS should be empowered to make disciplinary recommendations regarding DCS officials.⁴

4. **Measures are needed to ensure that key challenges affecting the efficacy of Independent Correctional Centre Visitors (ICCVs) are addressed, including removing their reliance on DCS to conduct their work, and building their capacity and support structures:** ICCVs, who are responsible for addressing inmate complaints, are a key component of JICS, but face numerous challenges in their work. They are heavily reliant on the DCS for basic tools such as connectivity, computers, and office space, and also to access inmates and relevant information. This can contribute to reluctance on their part to antagonise DCS. Treading lightly with DCS becomes a necessary strategy. Also, many ICCVs pursue a career with the DCS after the end of their (relatively short) tenure with JICS, and this may compromise their willingness to fully follow-up on inmate complaints. These dynamics constitute conflicts of interest.⁵ Furthermore, ICCVs have very limited contact with the Inspecting Judge and higher levels JICS' staff, who could assist them both with navigating DCS bureaucratic processes, and addressing complex inmate complaints.

ICCVs are also inadequately prepared for their roles. They are only required to have a matric qualification and receive very limited training to prepare them to deal with complaints from inmates. Researchers⁶ have noted the gap between the training ICCVs receive and lived experiences of inmates.

⁴ The Independent Police Investigative Directorate (IPID), for example, is empowered to make disciplinary recommendations to the National Commissioner or provincial commissioners, who must initiate disciplinary actions within 30 days and provide feedback to IPID on the outcome of the process.

⁵ Gallinetti J., 'Report on the Evaluation of the Independent Prison Visitors System', CSPRI Research Paper Series No 5, (May 2004).

⁶ Id. At Page 17.

To strengthen the independence, legitimacy, and effectiveness of ICCVs:

- JICS should employ ICCVs on a longer-term basis and the selection process should include a range of stakeholders with relevant experience.
- As mentioned above, JICS requires its own operational systems and infrastructure.
- ICCVs should have direct lines of communication with the senior JICS staff.
- ICCVs should be well versed in human rights, and there should be measures in place to underscore for ICCVs, their absolute obligation for impartiality and independence in their work.
- Training of ICCVs needs to be robust, ongoing, and specifically geared towards anticipated complaints from inmates, including systemic issues such as violence, torture and sexual abuse, as well as encompass a range of nuanced responses to inmates' complaints.
- ICCVs should be accompanied by, or have immediate access to, a team of professionals (such as lawyers, health-care practitioners, drug treatment specialists, social workers, forensic experts, advocacy practitioners, former prisoners etc.) who can support ICCVs with complex complaints, and potential intimidation from DCS officials.

5. **There is a need for greater awareness among inmates and the broader public on the role and work of JICS:** Public awareness and visibility of JICS is weak. Inmates are often unaware of JICS and their basic right to access ICCVs. Although JICS has made its content available online, its visibility is still murky. In addition, JICS should promote transparency regarding DCS facilities by optimising its unprecedented access, and amplifying its findings in the public realm.

To increase accessibility to and availability of JICS:

- Upon induction and throughout the duration of incarceration, DCS should be required to inform inmates about their right to lodge a complaint with JICS.
- JICS should highlight, in the public realm, that inmates' families and the general public can lay a complaint on behalf of an inmate.
- JICS should use media as a tool to raise public awareness and garner public support by, for example, sharing information on its role and work⁷ and issuing media releases on its findings.

Conclusion

Following submissions in 2012 and 2013 to the Portfolio Committee for Correctional Services by numerous civil society organisations on the need to address the independence and powers of JICS, the Committee at the time communicated that it would hold a workshop to thrash out the requirements of a truly independent JICS and to establish a way forward to achieve this. Unfortunately, the meeting never took place. JDI-SA welcomes the current Committee's renewed focus on the JICS, and urges the Committee to urgently address the inadequacies of JICS as it is currently constituted, so that JICS can, as soon as possible, begin to effectively fulfil its duties to ensure that inmate rights are respected, protected, promoted and fulfilled, as required in our Constitution.

⁷ In South Africa radio remains the leading medium for widest reach of audience.

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