



## DETENTION JUSTICE FORUM

### **Statement from the Detention Justice Forum in response to the findings of the Judicial Inspectorate for Correctional Service on solitary confinement in South African prisons**

19 Jan 2022

The Detention Justice Forum (DJF), a coalition of civil society organisations and activists, welcomes the [findings by the Judicial Inspectorate for Correctional Services \(JICS\)](#) on practices amounting to solitary confinement in a number of South African prisons.

Under international law, the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR, 2015) reflect as follows on solitary confinement: “. . . solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days."

The UNSMR further notes that "[I]n no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment," thereby specifically prohibiting prolonged solitary confinement. The initial phase of confinement at two super-maximum-security facilities (C-Max in Pretoria and Ebongweni in Kokstad) entails a minimum period of six months of effective solitary confinement. This is in violation of the UNSMR, as well as the right to be free from torture and other ill treatment guaranteed by the Constitution.

The detention regimes practiced at the two super-maximum prisons have been criticised over the years by rights advocates. The criteria for selecting certain prisoners to be held in super-maximum facilities have also been the subject of criticism as far back as 2006 by the Jali Commission.

The Correctional Services Act was amended in 2008 to remove, in name, solitary confinement from the statute. The result was that solitary confinement can still be practiced under the euphemistic term "segregation", but important protective measures under "solitary confinement" were removed. Previously, solitary confinement as a disciplinary measure could only be implemented with approval of the Inspecting Judge. This ensured effective monitoring and oversight. Subsequent to the amendment, a prisoner in segregation must be informed that they "may refer" the matter to the Inspecting Judge [Correctional Services Act, s 30(7)]. The result is that very few such appeals have been lodged with the Inspecting Judge.

We accept that some prisoners can be extremely disruptive and pose a threat to others and the good order of a facility. The administration should therefore have a clear mechanism to deal with such individuals but such a mechanism remains subject to obligations under international law, the Constitution and domestic law. Where there is reason to believe that torture or other ill treatment

have taken place, there is a duty on the state to conduct a prompt, effective and impartial investigation.

The DJF therefore calls upon the government to:

- Ensure that the detention regimes at the super-maximum facilities are compliant with the UNSMR and that it fulfils its obligations under the UN Convention against Torture (UNCAT) and the Prevention of Combating and Torture of Persons Act (13 of 2013); and
- Address the shortcomings in the legal framework and restore the protective measures that were there.

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**For more information, please contact:**

Lukas Muntingh  
ACJR (UWC)  
[lmuntingh@uwc.ac.za](mailto:lmuntingh@uwc.ac.za)  
082 200 6395

*The Detention Justice Forum (DJF) is a civil society coalition, comprising of non-governmental organisations and individuals seeking to ensure that the rights and well-being of those who are detained are respected as enshrined under the South African Constitution, laws, and international human rights norms and standards.*

The following DJF members endorse the above statement:

- ACJR (Africa Criminal Justice Reform (Dullah Omar Institute, UWC))
- APCOF (African Policing Civilian Oversight Forum)
- Centre for Applied Legal Studies (CALS, Wits)
- Just Detention International (South Africa)