



**The Wits Justice Project
Submission to the Parliamentary Portfolio Committee on Justice and
Correctional Services**

**On remand detention
and the 2013/2014 Annual Report of
the Department of Correctional Services
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WITS
Journalism

1. Background

The Wits Justice Project (WJP) is a project based at 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 Justice and Correctional Services, on the issue of remand detention in South Africa, as well as some brief comments on the annual report of the Department of Correctional Services (DCS) for 2013/2014. This submission focuses on issues including the implementation of new legislation and the training of staff members; health; and torture in correctional facilities.

We would like to bring to the attention of the Portfolio Committee the short time frame between the release of the reports and the deadline for submissions. In order to provide substantive input to the Committee's deliberations, more time should be given to study the often lengthy and technical documents. This is especially so since the reports are not immediately available digitally.

3. Comments of the DCS Annual Report 2013/2014

a. Reduction of remand detainee population

We would like to congratulate DCS on making progress towards the reduction of the remand detainee population, which positively impacts on the many ills resulting from over-crowding in correctional facilities. The annual report cites non-custodial alternatives and better co-ordination within the cluster as reasons for these reductions.

The Annual report specifically mentions Section 63A of the Criminal Procedure Act (the "bail protocol") and Section 49G of the Correctional Matters Amendment Act as key pieces of legislation that have aided the reduction of remand detainees. While the Wits Justice Project agrees that both of these sections – that require proactive referrals from DCS to court – have strong potential to reduce overcrowding, the view from the ground is not always as positive.

The Wits Justice Project has first-hand experience of the lack of awareness on the part of the judiciary regarding these sections, and a lack of interest in interrogating the "interests of justice" clause, particularly in Section 49G hearings. Equally, referrals that are directed to court through the National Prosecuting Authority have not been timeously submitted. So while we applaud the efforts of DCS to

get their house in order, it is clear that buy-in from members the judiciary and NPA on the ground remains a sticking point.

b. Bail

We note with concern that this annual report states that “on average, 15% of remand detainees (approximately 8,700 inmates) are in custody despite having been granted bail”. According to bail legislation, court officials must follow a 2-stage bail enquiry: the first stage determines whether the person in question should be granted bail. The second question is a determination of what bail is appropriate, depending on the decision reached regarding suitability for bail. Thus, once a remand detainee has been deemed suitable for bail, it is a violation of the 2-stage inquiry to then set a bail amount that is unaffordable. We urge DCS to examine these 8700 remand detainees’ cases more closely, and hold the relevant magistrates accountable for the bail amounts set.

A major problem with the granting of bail is that the South African environment has very few guarantees to ensure a return to court, which is the purpose of bail. The SAPS are over-stretched, and the lack of formal and registered addresses in many of South Africa’s housing areas remains a concern. The idea of electronic monitoring is thus an excellent solution to these challenges, and we look forward to a wider roll-out and more comprehensive application of this new technology to assist with the granting of bail and the reduction of over-crowding.

c. Ability to root out and punish abuse and torture

We note with concern that this annual report applauds DCS’s culture of human rights and rehabilitation:

“Looking back twenty years ago, we are proud, as the Department of Correctional Services (DCS), to report that we have transformed prisons from sites of gross human rights violations to centres of safe custody and rehabilitation”.

While the Wits Justice Project is convinced that many correctional facilities are doing their utmost to instil a culture of respect, rights and rehabilitation, we must emphasise the repetitive nature of gross human rights violations that are taking place in 2014 – many of the reminiscent of what was happening 20 years ago. A brief look at the latest JICS report highlights the many cases of abuse that have been reported to Independent Correctional Centre Visitors (ICCVs), and the Inspecting Judge himself has raised the issue of violence relating to the deployment of Emergency Support Teams at correctional facilities.

The Wits Justice Project routinely receives information - confirmed by medical records and affidavits – of assault, electro-shocking, segregation and solitary confinement, to name a few. Lawyers affiliated with our work have visited correctional facilities in the North-West, Eastern Cape, Gauteng, the Free State and KwaZulu-Natal to investigate these matters. It is unhelpful that the South African public must wait for NGOs to find both legal counsel and the money to pay them, before these gross violations are investigated. We understand that JICS has a mandate for undertaking this investigative work, but we

call on DCS to not only do their own investigations into allegations of torture and abuse, but to publish such investigations and promote transparency and accountability in the correctional system.

4. New legislation affecting remand detention

Firstly, we would like to acknowledge the work that the department has put into remand detention over the last few years. This includes the writing of a draft and now final White Paper on remand detention; the establishment of a remand detention directorate within the DCS structure; and alterations to the Correctional Matters Amendment Act of 2011, which revises the Correctional Services Act of 1998 in light of new remand detainee policy.

It is worth highlighting some of these excellent legislative changes:

- The term “remand detainee” - a change from “awaiting trial detainee” - now covers all persons who are awaiting action from the court. Crucially, this term now includes those who have completed their trials and are awaiting a sentence; and those who still awaiting their trial¹.
- Section 49E, which allows the head of a correctional facility to refer an ill, incapacitated or disabled remand detainee – who cannot look after themselves and who cannot be adequately cared for by the facility - for release into their community pending their trial
- Section 49G, which stipulates that the head of correctional facility must refer to court, all remand detainees who have been awaiting their trials for 2 years or more.

However, like any policy or legislative change, **implementation is key**. Part of good implementation is ensuring that officials who will be carrying out the changes in their daily activities are well-informed and adequately trained for carrying out a new mandate or new method. The challenge here is that training is required throughout the criminal justice system – a vast and varied work environment. This can be seen in the uneven success of implementing section 49G in Gauteng (which relates to judicial willingness to entertain new ideas) and section 63A, which relies on a head of prison to refer remand detainees to court. Without training that targets officials implementing the changes, success will be slow.

5. Health care

Other initiatives that DCS deserves recognition for are its efforts in the field of health management of both remand and sentenced inmate, including the deployment of an advanced system of TB diagnosis (the GeneXpert machinery).

However, we remain concerned regarding loopholes in the system, and the appropriate functioning and efficacy of the TB management strategy. In particular, it is worrying that while the White Paper stipulates all remand detainees must undergo a medical exam as soon as possible after admission, this is sometimes too late to prevent infection in the case of communicable disease (like TB); or could result

¹ White Paper on Remand Detention, p. 10 accessible at <http://www.dcs.gov.za/docs/landing/White%20Paper%20on%20Remand%20Detention%20Management%20in%20South%20Africa.pdf>

in severe health crises (a particular concern is gaining immediate access to medication such as insulin for diabetic remand detainees). Over-crowding of cells, poor structural conditions (such as ventilation in cells) and inadequate environment for taking medication (including the lack of access to appropriate foods to accompany medication) will continue to stymie progress.

Of particular concern is the lack of consistency across the justice system, in terms of inmate accommodation. Without adequate consideration of other places of detention outside correctional facilities, including police and court holding cells, a TB and communicable disease strategy will not succeed. Health management of inmates is not only the responsibility of DCS, but the justice cluster as a whole. TB is biggest killer in correctional facilities, and as we all know, prison walls are porous. The health of inmates, particularly remand detainees, can have a huge impact on their lives and the lives of their community after they have been released. Take the case of Dudley Lee, a remand detainee from Pollsmoor prison who contracted TB while awaiting trial from 1999 to 2004. His successful ruling from the Constitutional Court in 2013, which awarded him damages, gave legal precedent to Lee's claim that he contracted TB inside this correctional facility – something DCS has repeatedly challenged in court. Dudley Lee passed away in May of this year.

6. Torture

In 2013, South Africa passed a piece of ground-breaking legislation that criminalised torture. Unfortunately, this Act is too late to provide recompense for William Dube, a remand detainee at Grootvlei prison near Bloemfontein, who was booked out of the facility by SAPS investigators and taken to the nearby Bloemfontein Tourism Centre, where he was subjected to interrogation and torture. In his own words:

“They put a plastic bag over my head and closed it with duct tape. They only remove the plastic when you collapse, then they take it off. While they were suffocating me, they put pepper spray inside the plastic bag and sealed it.

“They kicked and punched me in the eye and ear. I still can't hear properly. Then they took me to the balcony. Two people were holding me, each held one leg. While I was hanging upside down, I agreed to co-operate. I was terrified they'd drop me. They told me places to point out, how to make a confession and what to say. I did the pointing out the next day².”

Although the new White Paper has closed one of the gaps that allows this kind of abuse - the booking out of a remand detainee must now be approved by the National Commissioner of DCS, legislated in Section 49F – our primary concern is the action (or lack thereof) that is taken by DCS when responding to complaints of this nature. The case of the mass beatings and assaults at St Albans prison in Port Elizabeth – both in 2005 and 2014– is a clear example of how DCS appears to be failing its constitutional mandate. Indeed, the St Albans case is not the only case of violence where DCS has failed to discipline those responsible for violence and assault.

² http://www.iol.co.za/the-star/apartheid-tactics-stand-test-of-time-1.1500167#.U8y4M_mSy5I

The public has also not been made aware of the status of the DCS and JICS investigation into allegations of forced injections, assault and torture at Mangaung prison. Repeated requests to access this report have been unsuccessful. Without transparency and the visible disciplining and accountability of staff, we fear that abuse and torture will continue unchecked in our correctional facilities.

7. Conclusion

Once again, we thank the Portfolio Committee for affording us the opportunity to provide input into its important deliberations. The work of the Committee is crucial in maintaining the balance and oversight enshrined in the Constitution, and we are proud to be able to take part in the process.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Nooshin Erfani-Ghadimi', written in a cursive style.

Nooshin Erfani-Ghadimi

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