



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



ACJR SUBMISSION ON THE JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES DRAFT BILL

23 October 2020

Introduction

1. Africa Criminal Justice Reform (ACJR) is a project of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights at the University of the Western Cape. ACJR's work supports targeted evidence-based advocacy and policy development promoting good governance and human rights in criminal justice systems. We have a particular focus on effective oversight over the criminal justice system, especially in relation to the deprivation of liberty.
2. ACJR welcomes the opportunity to provide inputs on the Judicial Inspectorate for Correctional Services draft Bill ("draft Bill"). We commend the efforts of the Judicial Inspectorate for Correctional Services (JICS) in the drafting of legislation and for requesting the participation of civil society at this early juncture of the legislative writing process. In this submission we will not conduct a full scale assessment of the draft Bill but will highlight our main concerns with the draft Bill – most of which we have dealt with in parliamentary submissions on strengthening JICS. ACJR looks forward to engaging and conducting a full assessment of the official JICS Bill at a later stage.
3. The role of JICS as an independent oversight body is crucial for the effective functioning of the criminal justice system as a whole. If JICS is to function effectively, then it is important that steps be taken to safeguard its long-term independence. It is our overall submission that unless drastic changes are made to the current investigation regime in prisons, it is unlikely that more successful investigations and prosecutions will take place.

Concerns on JICS Draft Bill

4. ACJR has previously raised concerns regarding the investigative role of the Department of Correctional Services (DCS) in investigations implicating its own officials, the lack of transparency in respect of investigations undertaken by the DCS and the South African Police Service (SAPS) into unnatural deaths and assaults in custody, and the lack of prosecutions for cases implicating officials.¹
5. The continued direct involvement of DCS in criminal investigations implicating its own employees, as described in the draft Bill, and where it would interview witnesses, alleged perpetrators and assess physical evidence is not in line with the international law requirement that such investigations must be conducted by impartial and independent authorities.²
6. The lack of successful prosecutions over the years indicates that such investigations are not particularly thorough or sufficiently independent and further gives reason to believe that problems persist with the manner in which SAPS investigates such cases.

¹Available at: <file:///C:/Users/Admin/Downloads/CSPRI%20JICS%20submissions%2030%20October%202012.pdf>

² Art. 13 and 14, UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

7. We believe that JICS continued limited role when it comes to the investigation of deaths and assaults in prison, the DCS's involvement therein as well as the lack of regulation of the relationship and cooperation between JICS, SAPS and the NPA will further enable a culture of impunity which has prevailed in the DCS over the years. As a result, DCS officials will not be held criminally responsible for serious human rights violations against inmates.
8. The overall impression of the draft Bill is that internal departmental investigations for disciplinary purposes implicating officials in serious human rights violations take precedence over investigations for determining criminal liability.
9. The draft Bill does not confer upon JICS final and binding powers. The large number of complaints recorded by the JICS Independent Correctional Centre Visitors (ICCVs), particularly relating to assaults, and the difficulties of the DCS to take instructions and advice from JICS indicates that there are a range of fundamental problems within the current prison oversight system. JICS have previously reported on a lack of responsiveness from DCS in relation to complaints or request for information. We are therefore concerned that this position fails to address the persistent challenges that have plagued JICS over the years - which is the blatant disregard by the DCS to take the recommendations of JICS seriously.
10. Lastly, the ability of the JICS to effectively promote and protect the rights of inmates depends on the extent to which it is independent of political and executive influence. We are therefore concerned that aspects of the draft Bill fail to provide an adequate level of independence to JICS. For example, Section 9 of the draft Bill notes that the Chief Executive officer (CEO) is appointed by the 'Director General' after being identified by the Inspecting Judge and that any matters relating to misconduct and incapacity of the CEO are referred by the Inspecting Judge to the Director-General who may remove the Chief Executive Officer from office on account of misconduct; ill health; or inability to perform their duties effectively and efficiently.
11. The draft Bill vaguely refers to a 'Director General' and leaves open scope for a broad interpretation as to who the 'Director General' is. JICS is hereby reminded of the *Sonke Gender Justice NPC v President of the Republic of South Africa and Others*³ judgement confirming that the CEO is meant to be independent of the Department and that the prevailing sections that deal with the appointment and dismissal of the CEO is inconsistent with the Constitution to the extent that they fail to provide an adequate level of independence.

³ *Sonke Gender Justice NPC v President of the Republic of South Africa and Others* (24227/16) [2019] ZAWCHC 117 Available at: <http://www.saflii.org/za/cases/ZAWCHC/2019/117.html>

Conclusion and recommendations

12. It is our submission that JICS must promote transparency and accountability in the prison system by dealing with complaints promptly and effectively and that the DCS be held accountable when it fails to take measures against frequently reported problems.
13. JICS should have greater investigative powers. The DCS should be prohibited from conducting any internal investigations into serious human rights violations involving its officials. The draft Bill must succinctly detail the level of cooperation between JICS, SAPS and the NPA in order to promote transparency in reporting on reasons for decisions not to prosecute cases.
14. JICS is hereby reminded of South Africa's obligation under the Optional Protocol to the Convention against Torture (OPCAT) and in particular Article 18 (1) that compels states to guarantee the functional independence of National Preventive Mechanisms as well as the independence of its employees. We hereby request that the draft Bill address all independence issues that still prevails.

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