



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



SUBMISSION

to the

**Portfolio Committee on Correctional
Services**

on the

**Correctional Services Amendment Bill
B14-2023**

1. Introduction

The Parliamentary Liaison Office of the Southern African Catholic Bishops' Conference welcomes this opportunity to comment on the *Correctional Services Amendment Bill*, B14-2023 ('the Bill'). This Bill purports to amend the Correctional Services Act 111 of 1998 ('the CSA') to give effect to the judgment in *Sonke Gender Justice NPC v the President of the Republic of South Africa*. We welcome the Constitutional Court's confirmation of the decision of the Western Cape High Court regarding the independence of the Judicial Inspectorate for Correctional Services and the rights of prisoners. The question is whether or not this Bill sufficiently addresses these issues?

We will comment briefly on some individual clauses in the Bill, but the main intention of this submission is to set out the general attitude of the Church to the question of incarceration and the rights of prisoners, and to highlight some concerns.

2. The State's Responsibility

The Church believes that the State has "the twofold responsibility to *discourage* behaviour that is harmful to human rights and the fundamental norms of civil life, and to *repair*, through the penal system, the disorder created by criminal activity".ⁱ However, more than merely preserving and defending public order, the Church argues that there is a moral element involved in the correction of the guilty party, which moves beyond punishment to redemption and reconciliation. The Church's Social Doctrine is clear that "there is a twofold purpose here. On the one hand, encouraging the re-insertion of the condemned person into society; on the other, fostering a justice that reconciles, a justice capable of restoring harmony in social relationships disrupted by the criminal act committed".ⁱⁱ Furthermore, "because of her belief in the inalienable dignity we each bear, the Church argues that prison environments must uphold and respect human dignity. The balance between appropriate punishment and effective rehabilitation must be maintained and so we must continue to engage with our penal system and hold it to account for both these ends".ⁱⁱⁱ

3. Prison Conditions

Prisons are very violent places and South Africa is no exception to this rule. "Prisoners face a substantial risk of being coerced, assaulted, raped and even killed at the hands of prison officials and fellow prisoners. Officials also face a substantial risk of violent victimisation by prisoners. While the Correctional Services Act and case law are clear that it is the duty of the state to ensure safe custody and to maintain standards of human dignity, violence and the threat of violence forms an integral part of the prison experience."^{iv} Measures to mitigate this violence, as this Bill sets out to do, are to be welcomed – but they are limited.

An article in the Daily Maverick in 2020 pointed out that "our justice system's over-reliance on locking people up has led to overcrowding and inhumane conditions. In some places, we

force personnel to cram three times more prisoners into cells than intended. Some don't have beds. Living conditions are unhygienic and unsanitary".^v Violence and ill-treatment are common during arrest and while in prison. Sexual abuse is a common phenomenon and it is linked to overcrowding rates and understaffing.^{vi} The COVID-19 pandemic has aggravated these conditions.

4. The Judicial Inspectorate

Recommendation by the Judicial Inspectorate of Correctional Services (JICS) are not automatically binding. This contrasts with jurisdictions in other countries where some prisons inspectors' findings are binding, for example the Zambian Human Rights Commission, the Correctional Investigator in Canada, and the Prison and Probation Ombudsman in the United Kingdom. JICS's statutory limitations underscore the urgent need to strengthen its independence and authority. We note that the operational requirements of JICS are set out in the JICS Bill which has to date not been released for public comment. We further note that the introduction of the JICS Bill into Parliament is dependent on the approval of the Minister of Finance (through National Treasury) for the establishment of JICS as a national government component with its own funding model.

The need to strengthen JICS is urgent, as evidenced by an empirical study which examined incarcerated offenders' perceptions of correctional officers in selected correctional centres in South Africa. Broadly,

“correctional officers require the voluntary compliance and cooperation of incarcerated offenders to realise the goals of the custodial institutions. But the perennial incidents of violence, abuse and brutality, and other forms of misconduct by correctional officers toward incarcerated offenders are inimical to the actualisation of such goals. Using a sample of 315 male participants from a cross-sectional survey, this study assessed whether experiences of abuse and brutality, social distance and corruption predict incarcerated offenders' perception of correctional officers in South African correctional centres. The findings of this study corroborate broader attitudinal research findings in institutional corrections, and indeed in the criminal justice system. The study points to the effects of abuse and brutality, and corruption in eroding confidence in correctional officers, decreasing the ratings of their procedural fairness, and their overall effectiveness or performance”.^{vii}

Furthermore, we note that South Africa is a party to the Optional Protocol to the Convention against Torture (OPCAT), which has condemned “ the rape of detained persons by, or with the knowledge of, state officials is as a form of ‘torture’ as it amounts to intentional suffering for the purposes of the punishment, intimidation or coercion, securing a confession, or for any reason based on discrimination of any kind, when inflicted by or at the instigation of, or with the consent or acquiescence of, a public official”.^{viii} As such South Africa is obligated to address this issue. Given that violence is rampant inside correctional services centres, it seems clear that there is insufficient recourse for inmates when they are hurt or raped inside a correctional services centre.^{ix}

5. Abusive Practices

In an incident at the maximum-security Leeuwkop Prison in Johannesburg, a number of prisoners were badly beaten: “In one instance before the festive season, warders concealing their identities with balaclavas allegedly entered cells and instructed inmates to lie down on the floor. They allegedly put leg-irons on them before assaulting them, demanding to know whether they had drugs in their possession”.^x Relatives of these victims of assault laid charges against the warders with the South African Police Service (SAPS), whose members visited the prison in the to take down their statements. Furthermore, an officer at SAPS said “several cases of grievous body harm and torture had been reported in the past, but the cases went nowhere as officials from the Department of Correctional Services apparently protected their members, sometimes with the co-operation of medical staff”.^{xi} Family members were able to photograph the injuries when visiting the prison.

Families play an important oversight role and need to be able to report abuse and evidence thereof without fear of retaliation against the prisoner. In this regard, Section 90 of the CSA should be amended to recognize the right of family members of inmates to make complaints to the JICS and to have their complaints independently addressed.

JICS has previously submitted that prison authorities are in violation of the Constitution when they resort to solitary confinement as punishment. The initial period of solitary confinement extends for up to six months. This is out of step with international laws, norms and standards regarding the use of solitary confinement; it could be considered a form of torture and must be done away with.^{xii} Furthermore, JICS has expressed deep concern about the harsh impact of solitary confinement, which can result in severe long-term health issues, including depression and suicidal tendencies. There is no evidence that solitary confinement deters crime. Moreover, “research found that that approximately 25% of people in prison and 35% of those in jail who had spent 30 days or longer in solitary confinement during the previous year had symptoms of serious psychological distress. The rates were similar for those who only spent one day in isolation”.^{xiii} Moreover, “many individuals who experience confinement become incapable of living around other people”.^{xiv} Solitary confinement/segregation cannot be seen as rehabilitative in any way. The Bill goes some way to address our concerns, as Clause 2 requires that an inmate subjected to solitary confinement (‘segregation’) must be notified of their right to appeal to appeal to JICS. Clause 3 provides similarly in cases of the use of mechanical restraints. We support both these clauses.

6. Conclusion

Because of our belief in the inalienable dignity of every person – a value shared and upheld by the South African Constitution – “the Church argues that prison environments must uphold and respect human dignity. The balance between appropriate punishment and effective rehabilitation must be maintained and so we must continue to engage with our penal system and hold it to account for both these ends. [We must] help ensure our prison system is a place of punishment, yes, but also one that respects human dignity and gives prisoners, and the entire community, a real chance at rehabilitation”.^{xv} We would urge that the Minister of Finance should release the funds necessary for the independence of JICS as a

standalone oversight entity. That would go some way toward the transformation of our punitive and harsh criminal justice system.

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ⁱ <https://justiceandpeace.org.au/catholic-social-teaching-on-imprisonment/>

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^{iv} <https://acjr.org.za/resource-centre/Reducing%20Prison%20Violence.pdf>

^v <https://www.dailymaverick.co.za/article/2020-09-04-violence-in-prisons-is-increasing-and-the-prisons-watchdog-need>

^{vi} <https://www.prison-insider.com/countryprofile/prisonsinsouthafrica>

^{vii} <https://www.tandfonline.com/doi/full/10.1080/23311886.2022.2062913>

^{viii} <https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

^{ix} <https://www.capetalk.co.za/articles/451911/is-there-justice-for-prison-abuses>

^x <https://www.iol.co.za/sundayindependent/news/violence-and-covid-19-take-toll-on-sas-prisoners-d3ccc664-2715-4e82-90>

^{xi} <https://www.iol.co.za/sundayindependent/news/violence-and-covid-19-take-toll-on-sas-prisoners-d3ccc664-2715-4e82-90>

^{xii} <https://www.dailymaverick.co.za/article/2022-01-18-report-voices-deep-concern-over-impact-of-solitary-confinement-i>

^{xiii} <https://www.medicalnewstoday.com/articles/solitary-confinement-effects#definition>

^{xiv} <https://www.medicalnewstoday.com/articles/solitary-confinement-effects#definition>

^{xv} <https://justiceandpeace.org.au/catholic-social-teaching-on-imprisonment/>