



# **DETENTION JUSTICE FORUM**

## **Submission to the Portfolio Committee on Justice & Correctional Services**

### **Department of Justice & Correctional Services' Budget 2015-2016**

**10 April 2015**

1. This submission on the Department of Justice & Correctional Services 2015-2016 budget is from the Detention Justice Forum (DJF), a civil society coalition that works to protect the rights and well-being of prisoners and others in detention in South Africa.
2. The DJF is gravely concerned with the wasteful defence of civil claims against the Department and the high amount of contingent liabilities that continue to be projected by the Department. As recorded in the 2013-2014 Annual Report, the Department reported R984, 317, 000 in contingent liabilities. There is no information publicly available on what portion of these contingent liabilities will result in payment to the State Attorney for legal expenses incurred in defending civil claims for damages by current and former inmates. However, we assert that the Department often defends in court claims that it should rather settle out of court, thereby wasting limited public money that could be better spent protecting the public and addressing the conditions that led to the claims in the first place.
3. The 2012 case of *Lee v Minister of Correctional Services* is a useful example. In this case, the Constitutional Court held the Department's wrongful acts and omissions caused Mr Lee to become infected with and develop active tuberculosis (TB). The Department was ordered to pay R270 000 in damages to Mr Lee. In addition, the Department was ordered to pay the legal costs for Mr Lee's representatives at Jonathan Cohen & Associates, which totalled R2 074 646.74 and also included the costs of counsel in three different courts. Further, the Department will have incurred its own expenses in defending this case, the total amount of which we do not know, and would also have included the costs of counsel in three different courts.
4. Three other ex-inmates are also suing the Department for damages for developing TB in prison. Two of the three, Zaid Seedat and Glen Spencer, are represented by Jonathan Cohen & Associates. In 2009, the State attorney CJ Benkenstein who was representing the Department in *Lee v Minister of Correctional Services*, wrote to Mr Cohen asking him to remove Mr Seedat and Mr Spencer's matters from the roll, stating, "If you are successful in the Lee matter...the other two matters may be settled." The Department has reneged on this commitment and is now aggressively, and we submit fruitlessly, defending against the claims.

5. Not only is the Department wastefully defending these claims with virtually identical facts as those in the *Lee* case, it is doing so by repeating its arguments, particularly as to factual causation, that failed in that case.
6. Instead of wastefully defending against the claims by Mr Seedat and others similarly situated, we assert that the Department should use its resources to mitigate against the spread of TB behind bars. It can do so, inter alia, by ensuring that it complies with its own Standing Orders around cell occupancy rates and reducing overcrowding in its facilities. Studies indicate that these measures alone would decrease the spread of TB by 30%. The Department can also ensure that there are clear ventilation guidelines that are developed and adhered to. It can also mitigate risks by respecting inmates' constitutional rights to exercise, nutrition, and adequate healthcare.
7. We acknowledge the National Task Team for TB and HIV in Correctional Services is working to improve the Department's performance on these infectious diseases, but assert that the Department must invest more in strategies that ensure its respect for inmates' human rights as a strategy to stem the spread of TB, as well as to reduce its own risk of continuing to be sued for damages in similar cases.
8. In light of the above, we recommend the following:
  - 8.1. The Department should stop its wasteful expenditure trying once again to defend against claims for damages in matters that have already been dealt with by the courts.
  - 8.2. The Department should re-direct resources to ensuring it complies with constitutional standards, laws, policies, and its own standing orders, that, if adhered to, would decrease the spread of TB in prisons.

**Signed,**

**The Detention Justice Forum**

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