

ONE JUDGE ONE JAIL



A guide for inspecting and reporting
on places of detention in South Africa.

A resource produced for the 'One Judge, One Jail' campaign
by Sonke Gender Justice on behalf of the Detention Justice Forum.

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**DETENTION
JUSTICE FORUM**



HIV/AIDS • GENDER EQUALITY • HUMAN RIGHTS

SECTION 35 OF THE SOUTH AFRICAN CONSTITUTION

1. Everyone who is arrested for allegedly committing an offence has the right -

- a. to remain silent;
- b. to be informed promptly -
 - i. of the right to remain silent; and
 - ii. of the consequences of not remaining silent;
- c. not to be compelled to make any confession or admission that could be used in evidence against that person;
- d. to be brought before a court as soon as reasonably possible, but not later than -
 - i. 48 hours after the arrest; or
 - ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
- e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- f. to be released from detention if the interests of justice permit, subject to reasonable conditions.

2. Everyone who is detained, including every sentenced prisoner, has the right -

- a. to be informed promptly of the reason for being detained;
- b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- f. to communicate with, and be visited by, that person's -
 - i. spouse or partner;
 - ii. next of kin;
 - iii. chosen religious counsellor; and
 - iv. chosen medical practitioner.

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GLOSSARY

ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights (also known as the Banjul Charter)
ACJR	Africa Criminal Justice Reform
APT	Association for the Prevention of Torture
ART	Anti Retroviral Treatment
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CSA	Correctional Services Act 111 of 1998, as amended
DCS	Department of Correctional Services
DJF	Detention Justice Forum
HIV	Human Immunodeficiency Virus
ICCVs	Independent Correctional Centre Visitors
JICS	Judicial Inspectorate for Correctional Services
MPs	Members of Parliament
NGO	Non-Governmental Organisation
NOC	National Operating Committee
OCJ	Office of the Chief Justice
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PRI	Penal Reform International
RDs	Remand Detainees (previously referred to as Awaiting-Trial Detainees)
STIs	Sexually Transmitted Infections
TB	Tuberculosis
UN	United Nations

DEFINITIONS

Amenities	Recreational and other activities, diversions or privileges which are granted to inmates in addition to what they are entitled to as of right and in terms of the CSA, including: exercise; contact with the community; reading material; recreation; and incentive schemes.
Child	A person under the age of 18 years.
Correctional Centre (or prison)	Any place established under the CSA for the detention and confinement of persons who have been charged or convicted of a criminal offence by a court of law. Ideally, these places should provide treatment and rehabilitation. However, as this is not the reality in South Africa, human rights advocates use the word 'prison' instead, as a symbol of protest against the ineffectiveness of the facilities as correctional centers. In this guide, 'correctional centre' and 'prison' are used interchangeably.
Head of Correctional Centre (or Head of Prison)	A correctional officer designated by the National Commissioner to manage and control a particular correctional centre, as defined in section 1 of the CSA.
Independent Correctional Centre Visitor	A person appointed under section 92 of the CSA to deal with the complaints of inmates by means of: regular visits; private interviews with inmates; recording complaints and monitoring the manner in which they have been dealt with; and discussing complaints with the Head of the Correctional Centre.
Inmate	Any person, whether convicted or not, who is detained in custody in any correctional centre or who is being transferred in custody or is en route from one correctional centre to another correctional centre.
Inspecting Judge	A judge appointed under section 86 of the CSA as head of the JICS, who must inspect or arrange for the inspection of correctional centres and remand detention facilities in order to report on the treatment of inmates and conditions in correctional centres.
International instruments	International agreements, treaties, conventions, guidelines and protocols of the UN and other regional institutions, to which the Republic of South Africa is party.

DEFINITIONS (CONTINUED)

Judicial Inspectorate for Correctional Services	The inspectorate established under section 85 of the CSA, under the control of the Inspecting Judge. Its object is to facilitate the inspection of correctional centres, so that the Inspecting Judge may fulfil their duties.
Juvenile	Person over the age of 18 years, but under the age of 21 years.
Mother and child unit	A unit within a prison where provision is made for separate sleeping accommodation for mother and child, as well as a crèche facility, and where the focus is on the normalisation of the environment in order to promote the child's physical and emotional development and care. These children are not 'inmates' as defined (i.e. they have not been charged with a crime), they are simply residing with their mothers.
National Commissioner	National Commissioner of Correctional Services, appointed in terms of section 3(3) of the CSA.
National Council	The National Council for Correctional Services, established under sections 83 and 84 of the CSA, to advise on the development of policy in regard to the correctional system and the sentencing process.
Prison oversight	Set of functions, including regulation, audit, monitoring, investigation, and reporting, used to ensure transparency and accountability of prison services. ¹
Primary health services	Universally accessible, first-level contact, clinic-based health services essential to enable the inmate population to acquire, maintain and promote health.
Remand Detainee	The term "remand detainee" replaces the term "awaiting-trial detainee" as the latter did not cover the various unsentenced persons held in detention. Remand detainees can include persons who are awaiting trial as well as those who have been convicted but are awaiting sentence. It excludes sentenced offenders, state patients and persons awaiting deportation. ²
Solitary confinement	Confinement in a single cell without access to amenities.

PURPOSE OF THIS GUIDE



“It has been said that a nation’s level of civilization can be judged by looking at conditions in its Correctional Centres. Prisons are indeed not luxury hotels. They are not cages, torture chambers, or zoos either. In the words of the title of a play by the iconic South African dramatist Athol Fugard: ‘People are living there.’”

– JUDGE JOHAN VAN DER WESTHUIZEN, INSPECTING JUDGE, JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES³

This guide outlines the basic minimum standards of treatment for all persons in prison custody, and provides guiding principles and a tool that will assist judges, magistrates and Members of Parliament (MPs) in conducting holistic and consistent prison inspections sensitive to the specific population incarcerated (e.g. remand detainees, migrants, sentenced inmates, women or children).

This guide was developed as a resource for the **One Judge One Jail** campaign, which is an initiative of the Detention Justice Forum (DJF), a coalition of civil society organisations and individuals working towards the transformation of prisons.

The **One Judge One Jail** campaign was born of the recognition that prison oversight is vital to the protection of inmates' human rights. In order for prison oversight to be effective, it must be independent and accessible, and should include a number of different functions, including: robust inspection and monitoring, investigation, and reporting.

The Campaign was inspired by the Constitutional Court Prison Visits Programme, which was instituted in 2009 by the judges of the Constitutional Court and took effect from 2010. The Constitutional Court has since developed a commendable programme for prison visits and reporting that has the potential to increase transparency in places of detention, and could be replicated by other courts. This Programme has

demonstrated that oversight can provide for the accountability of the executive and administrative branch of government to both the legislature and the public.

The aims of the One Judge One Jail campaign are:

- to encourage all judges to undertake one prison visit per year and to report on their visits to the Office of the Chief Justice (OCJ);
- to strengthen the working relationship between the Judicial Inspectorate for Correctional Services (JICS) and the judiciary so as to ensure that inspections are comprehensive, and address areas identified by JICS as being problematic;
- to encourage civil society involvement in highlighting priority concerns at prisons; and
- to strengthen civil society's role in monitoring prisons and publicising findings.

The importance of judicial visits to prisons has been recognised by the National Operating Committee (NOC) for the OCJ, which took a resolution on 11 April 2015 to “remind the Judiciary of its duty in terms of section 99 of the Correctional Services Act 111 of 1998 to conduct prison visits to monitor the conditions of correctional centres.”⁴

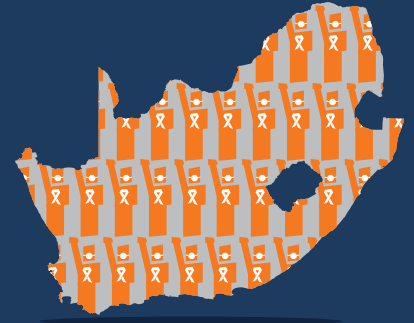
It was with this resolution in mind that the DJF developed the One Judge One Jail guide, in the hope that it will provide useful context and guidelines for any person mandated to conduct such prison visits.

ONE JUDGE, ONE JAIL

The 'One Judge, One Jail' campaign aims to bring together the judiciary, the Judicial Inspectorate for Correctional Services (JICS) and civil society to strengthen prison oversight and to ensure the humane treatment of prisoners in South African correctional centres.

1 THE PROBLEM

South African prisons are fraught with conditions that lead to human rights abuses and high rates of sexual violence, HIV transmission and TB infection.



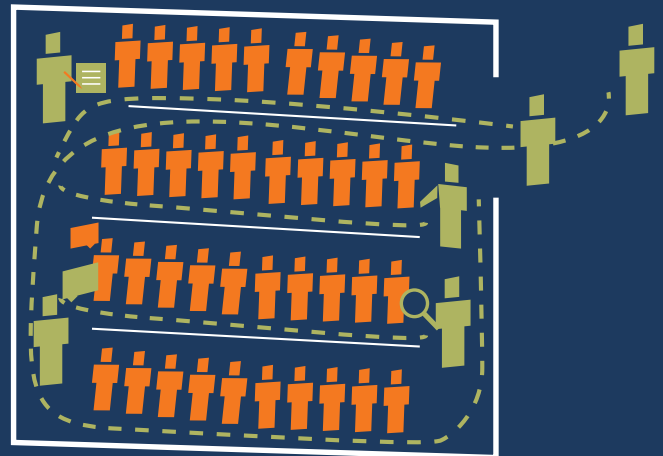
2 THE SOLUTION?

Regular monitoring and reporting acts as a preventative measure against human rights abuses in prisons, including ill treatment and torture.



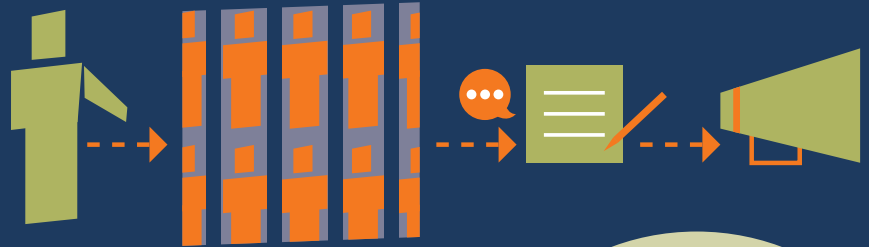
3 CORRECTIONAL SERVICES ACT

The Correctional Services Act 111 of 1998 empowers judges and magistrates to visit any prisons in their jurisdiction at any time, and to access all areas of the prison, interview any prisoners, and access all prison records and documents.



4 CONSTITUTIONAL COURT PRISON VISITS PROGRAMME

The Constitutional Court started a prison visit programme in 2009. Every year, each judge on the bench of the Constitutional Court visits one or two prisons and publishes a report on their findings, which is made available to the public.



5 A SOUTH AFRICAN SOLUTION

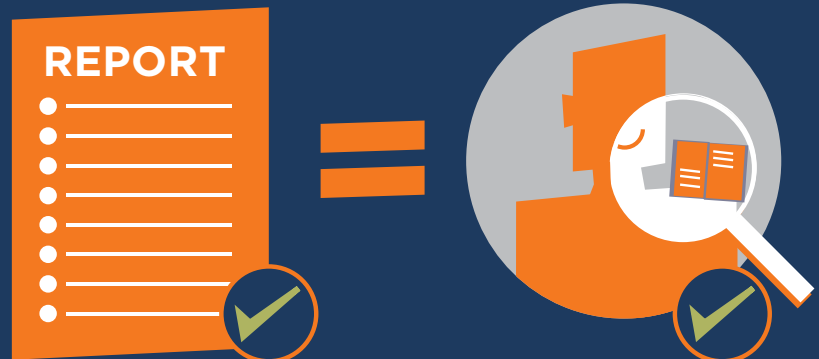
There are approximately 232 judges in the high courts, Supreme Court of Appeal and Constitutional Court. If each judge visited one prison per year, every prison would receive an annual inspection, allowing for consistent monitoring.



6 ONE JUDGE, ONE JAIL

We need judges to visit prisons.

If one judge visits one jail every year and provides a detailed report, we will achieve improved human rights for prisoners.



INTRODUCTION

The risk of torture and other ill-treatment is inherent to places of detention, where detainees are in a state of powerlessness in relation to the detaining authorities and the place of detention is outside the public eye.⁵ The monitoring and inspection of prisons, with an independent external mechanism that reviews inmates' treatment and complaints, is central to the protection of human rights of inmates. In fact, it forms part of South Africa's obligations under domestic, regional and international law.⁶

The Judicial Inspectorate for Correctional Services (JICS), acting under the control of the Inspecting Judge, is established in terms of section 85 of the Correctional Services Act 111 of 1998 (CSA). JICS' mandate includes inspecting, monitoring and reporting on the treatment of inmates and the conditions of correctional centres.

The monitoring task is enormous: the Department of Correctional Service (DCS) Annual Report for 2015/2016 reflects that 45 257 remand detainees, 116 727 sentenced inmates and 33 684 DCS personnel are located in 232 active prisons.⁷ South African prisons experience unacceptably high rates of overcrowding (for example, Pollsmoor Remand Detention Facility was operating at an average of more than 200% capacity from 2011 to 2016), which is associated with a range of negative consequences including: an increase in safety risks for prison staff and inmates,⁸ transmission of diseases such as TB and HIV, and unsanitary cell conditions. These risks are exacerbated by notable staff shortages within DCS.⁹

Unfortunately, JICS is presently neither sufficiently independent nor accessible to be an effective oversight mechanism on its own.¹⁰ However, the judiciary, an independent, impartial and well-respected branch of government, is also empowered by the Constitution and the CSA to oversee prisons and is well-positioned to hold the executive branch accountable and ensure the protection of inmates' constitutional human rights.¹¹ Considering the burden on the Inspecting Judge of JICS, as well as the dire conditions in which inmates are forced to live in South African prisons, judges and parliamentarians have been strongly encouraged by the OCJ to make use of their powers to conduct regular visits to prisons, and to report on the conditions and treatment of inmates.

Who can conduct prison inspections?

The CSA empowers the following persons to access correctional centres and conduct visits:¹²

- A judge of the Constitutional Court, Supreme Court of Appeal or High Court;
- A magistrate within his or her area of jurisdiction; and
- Members of the parliamentary Portfolio Committee for Justice and Correctional Services and the National Council of Provinces select committee on Security and Justice.

Following a visit, these persons should generate reports of their observations, findings and recommendations.

The reports are submitted to the relevant Chief Magistrate or Judge President, the Inspecting Judge and the OCJ.¹³

HOW THIS GUIDE WORKS

The One Judge One Jail guide begins by providing the legal framework that prescribes minimum standards for the dignified treatment of inmates and conditions of confinement. It then provides enforcement guidelines, including background on different prison populations and potential issues specific to each, as well as suggestions for how to conduct inspections that take these issues into account. Finally, it outlines best practice guidelines for prison inspections and provides a simple toolkit that can be adapted and used by prison visitors to inspect and report on prisons. The DJF hopes that this will be helpful to prison visitors and encourage more regular and comprehensive visits.

**WHAT DOES THE
LAW SAY REGARDING
MINIMUM STANDARDS
FOR CONDITIONS IN
PRISONS?**

The basic minimum standards for conditions in prisons, the state’s obligations regarding inmates and their treatment, as well as judicial visits are prescribed in various domestic, regional and international instruments. Some of the key guiding instruments are summarised below:

MINIMUM STANDARDS AND OBLIGATIONS	LEGAL INSTRUMENT (SOURCE OF OBLIGATION)
<p>All inmates (remand and sentenced) have the right to conditions of detention that ensure their human dignity.</p> <p><i>This includes: assessment upon admission; reasonable accommodation (which includes a bed and bedding, adequate lighting and ventilation, and ablution facilities); sufficient nutrition; exercise; available healthcare; contact with family and friends; development and care programmes and services; recreational activities; access to legal advice; and reading material.</i></p>	<ul style="list-style-type: none"> • Constitution of the Republic of South Africa, 1996, section 35(2)(e) • CSA, Chapter III • Correctional Services Regulations, published in Government Gazette no. 35277, 12 April 2012 • United Nations Standard Minimum Rules for the Treatment of Inmates (Nelson Mandela Rules) • Kampala Declaration on Prison Conditions in Africa
<p>Human rights of inmates should be safeguarded at all times.</p> <p><i>Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms guaranteed by the Constitution and other international human rights instruments.</i></p>	<ul style="list-style-type: none"> • Kampala Declaration on Prison Conditions in Africa • UN Basic Principles for the Treatment of Inmates
<p>Vulnerable groups (including juveniles, women, mothers and babies, the elderly, the very ill and terminally ill, the mentally and physically disabled, as well as foreign nationals) in prison must be especially protected and provided for.</p> <p><i>Prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. The different categories of prisoners shall be kept in separate institutions or parts of institutions (for example, sentenced offenders must be kept separate from persons awaiting trial or sentence; male inmates must be kept separate from female inmates; and inmates who are children must be kept separate from adult inmates).</i></p>	<ul style="list-style-type: none"> • CSA, section 7 • Kampala Declaration on Prison Conditions in Africa • Nelson Mandela Rules, rules 2 and 11

MINIMUM STANDARDS AND OBLIGATIONS	LEGAL INSTRUMENT (SOURCE OF OBLIGATION)
<p>No inmate shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p><i>The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.</i></p> <p><i>Prison rape has been recognised as a form of torture.¹⁴</i></p>	<ul style="list-style-type: none"> ▪ Universal Declaration of Human Rights, article 5 ▪ African Charter on Human and People’s Rights (also known as the ‘Banjul Charter’ and hereinafter referred to as ‘ACHPR’), article 5 ▪ United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 2¹⁵ ▪ Nelson Mandela Rules, rule 1 ▪ Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman, Degrading Treatment or Punishment in Africa (Robben Island Guidelines), Part II
<p>Judges, magistrates and parliamentarians are mandated to make visits to prisons, and should be encouraged to do so.</p> <p><i>Visits should include: inspections, interviews, reports and recommendations. The objective of these visits is to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, in order to ensure the protection of inmates’ rights.</i></p>	<ul style="list-style-type: none"> ▪ CSA, section 99 ▪ Kampala Declaration on Prison Conditions in Africa ▪ Nelson Mandela Rules, rules 83-85 ▪ Robben Island Guidelines, sections 38-44.

OVERSIGHT



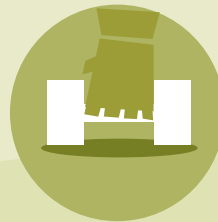
health



reading
materials



protection



exercise

MONITORING THE ENFORCEMENT OF MINIMUM STANDARDS



“The cells were filthy and cramped. In one of the cells, we noted 60 inmates with 24 beds. There are no sheets on the beds. Some detainees displayed rashes, boils, wounds and sores to us. 50 to 60 people are forced to use one toilet and one shower. [There was] no privacy (and) no hot water. Even in the middle of the day, the cells were dark, dingy and cold. There is hardly any natural light. The thickness of the air and lack of ventilation was palpable. Detainees pleaded for exercise and told us they have not been out of their cells for an entire month”.

– JUSTICE EDWIN CAMERON (2015) REPORT: POLLSMOOR CORRECTIONAL CENTRE – REMAND CENTRE AND WOMEN’S CENTRE. CONSTITUTIONAL COURT OF SOUTH AFRICA.

Various national, regional, and international legal instruments provide that all inmates (including remand detainees and sentenced inmates) have the right to conditions of detention that are consistent with human dignity. At a minimum, inmates should have access to: adequate accommodation, exercise, medical treatment, nutrition, and reading material.¹⁶

However, in reality there are many challenges faced by incarcerated individuals, prisons, and DCS. Some of these include: overcrowding, torture and abuse; unhygienic living conditions; lack of cleaning materials; and insufficient beds and bedding, medical care and exercise.¹⁷ On 5 December 2016, the Western Cape High Court found that such conditions of incarceration were unacceptable to the point of being unconstitutional.¹⁸

This section outlines the minimum standards against which prison conditions and treatment of inmates should be evaluated, as well as the legal requirements for the treatment of specific prison populations. Following each subsection, non-exhaustive suggestions are provided for what prison visitors can look for, and the questions they can ask in order to assess whether these standards are being met.

Although this guide sets out the minimum norms and standards for prison conditions according to domestic, regional and international law, it should be noted that if South Africa is truly to achieve its objective of rehabilitating inmates as provided in its White Paper on Correctional Services,¹⁹ the DCS not only needs to satisfy these minimum standards but to aim higher to achieve truly humane conditions.

PRISON CONDITIONS

I. ACCOMMODATION AND ABLUTION FACILITIES

Minimum standards regarding accommodation and ablution facilities require that:

- There is provision for general sleeping and in-patient hospital accommodation, consisting of single or communal cells, depending on the availability of accommodation.²⁰
- Inmates can move freely and sleep comfortably whilst in their cells.
- Cells have sufficient ventilation.²¹
- Cells have sufficient natural or artificial light to enable inmates to read and write.
- Every inmate must be provided with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.²²
- There are sufficient and accessible ablution facilities, portioned off in communal sleeping areas, with hot and cold running water.²³



What to look for during the visit:

- What is the approved capacity of the cell, and how many people is it currently holding?
- Can inmates move freely around the cell without bumping into other inmates?

- Does each inmate have a bed, and if not, how many inmates are sharing beds? Why has this not been remedied?
- Does each inmate have bedding, and how frequently are they able to clean their bedding?
- How many toilets and showers does the cell have, and are these facilities partitioned for privacy?
- Do inmates have access to hot and cold water?
- How many windows does the cell have, and can the windows be opened and closed easily?
- Do the windows open into outside air or inside corridors, and is there cross-ventilation in the cell?
- Is there sufficient natural or artificial light to read and write?
- How does the cell smell?
- Is it easy to breathe inside the cell?

II. HEALTH CARE

Health care and infection prevention requirements include:

- Primary health care must be available at least on the same level rendered by the State to members of the community.
- The services of a Correctional Medical Practitioner and a Dental Practitioner must be available at every correctional centre.
- A registered nurse must attend to all sentenced inmates and remand detainees who are ill, including pregnant inmates and the mentally ill, at least once a day.²⁴
- There are appropriate hospital beds, bedding and clothing for effective patient care.²⁵
- Every inmate must keep him or herself, his or her clothing and bedding, as well as the cell clean and tidy - with DCS providing the means to do so.²⁶
- The following inmates must be detained separately from others: inmates suffering from mental or chronic illness; and inmates whose health status will be affected detrimentally or whose health status poses a risk to other inmates if detained in a communal cell.²⁷



What to look for during the visit:

- How many doctors and nurses are employed in the prison, and what is the doctor:inmate ratio, and the nurse:inmate ratio?
- What is the rate of absenteeism among medical staff?
- Are there any medical staff vacancies? How long have these positions been vacant and what has been done to mitigate this?
- Have inmates ever been denied access to health care or medication?
- If inmates have been denied access to health care, what reasons were given?
- Are condoms made available to inmates?
- Does the infirmary have sufficient beds, bedding and clothing for patients?
- Are inmates with mental or chronic illnesses being detained separately?
- Are inmates with infectious diseases such as TB being detained separately? If not, why not?

III. REPRODUCTIVE HEALTH CARE

Minimum standards for reproductive health care include the following:

- Pregnant inmates in remand detention must have access to pre-, intra- and post-natal services.
- Pregnant inmates may request additional visits from the alleged biological father, next of kin, and other supportive persons.
- Pregnant inmates or lactating inmates must be provided with the appropriate food.²⁸



What to look for during the visit:

- Have any pregnant inmates or detainees been denied access to pre-, intra- or post-natal services?
- Have pregnant inmates been permitted to request additional visits from the biological father or other family members?
- Do inmates have access to termination of pregnancy services?

IV. NUTRITION

Minimum standards for inmates' nutritional needs include:

- Food must be stored, prepared, cooked and served in compliance with the provisions of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 and the principles of good hygiene.²⁹
- Meals are served at intervals of not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during each 24-hour period. This means that all incarcerated individuals must receive three meals a day.³⁰
- Each sentenced inmate must be provided with the following:³¹
 - 2 000 kilocalories per day for adult females;
 - 2 500 kilocalories per day for adult males; and
 - 2 800 kilocalories per day for children, between the ages of 13 and 18 years of which at least 0,8 grams per kilogram of bodyweight per day must be from the protein group.
- Meals must be balanced and include grain; fruits and vegetables; dairy products; meat and protein; and fats, oils and sugar.



What to look for during the visit:

- Where is the food stored, prepared and cooked, and is this hygienic?
- What do meals comprise of, and how do they taste?
- At what times are meals served?
- If intervals between meals are longer than stipulated by the regulations, why is this the case? Has a timeframe been given for the situation to be remedied?
- What is the number of cases reported in the past 12 months of food poisoning?

V. EXERCISE

Inmates are entitled to the following exercise requirements:

- Every inmate is entitled to at least one hour of exercise daily, in the open air if the weather permits.³²
- Certain categories of inmates – such as an inmate who is ill, or complains that they are injured or ill; an inmate who receives prescribed medicines and/or medical treatment; an inmate who receives continued or additional medical treatment; and a pregnant inmate – must be certified by the Correctional Medical Practitioner regarding exercise.³³



What to look for during the visit:

- How often and for how long are inmates allowed out of their cells to exercise?
- Have inmates been denied the opportunity to exercise, and if so, why?
- Are there any limitations on exercise, and if so, why?

VI. ASSESSMENT

All inmates must be assessed as soon as possible after admission, in order to determine the following: security classification; health needs; educational needs; social and psychological needs; religious needs; specific development programme needs; work allocation; allocation to a specific correctional centre; and needs regarding reintegration into society.³⁴

According to the Policy to Address Sexual Assault of Inmates in DCS Facilities (Sexual Assault Policy),³⁵ “All inmates, including those in remand detention, must [also] be assessed during intake and on an on-going basis to inform housing and bed assignments based on vulnerability to sexual abuse. In assessing an inmate’s risk for victimisation, correctional officials must take into account whether an inmate previously has been sexually victimised, and whether they have been convicted of a sex offence.” In addition, correctional officials must consider whether the inmate is –

- Mentally ill, or has an intellectual impairment;
- Physically disabled;
- Elderly;
- Younger than fellow inmates;
- Of slight build or frail;
- Gay or bi-sexual, or likely to be perceived as such;
- Gender non-conforming (e.g. transgender or inter-sex identity) or likely to be perceived as such;
- Non-violent;
- A first-time inmate;
- Relatively poor and unlikely to get visitors (e.g. orphans, street children, persons ostracized from families or communities); and/or
- Convicted of a sexual offence against a child.



What to look for during the visit:

- Are all inmates being assessed upon admission/arrival?
- Are inmates being classified according to the Sexual Assault Policy, taking into account all listed considerations?
- Are inmates being housed according to their classification?

VII. CORRECTION, DEVELOPMENT AND CARE PROGRAMMES AND SERVICES

Social work and psychological services must be rendered to sentenced inmates in need of such services.³⁶ Should these services be unavailable, DCS must take the necessary steps to ensure that such services are available as soon as possible.



What to look for during the visit:

- Are inmates able to access social work services if they need to, and if not, why not?
- Are there any inmates with mental health issues who need to access psychological or psychiatric services, and if so, are they able to do so? If not, why not?
- What rehabilitative and skills development programmes are available to inmates?
- If there are obstacles to the provision of such programmes, what are those obstacles and what is being done to address them?

VIII. READING MATERIAL

Every inmate must be allowed access to available reading material.³⁷ Reading material refers to any publication, video, audio material, film or computer

programme. As far as is reasonably practicable, every prison should have a library containing appropriate recreational and educational literature.³⁸



What to look for during the visit:

- Does the prison have a library?
- Do all inmates have access to reading material? If not, why not?

IX. RELIGION, BELIEF AND OPINION

All inmates remain entitled to their right to religion, belief and opinion. All inmates may attend religious services and meetings held in the prison freely and voluntarily, and may have in his or her possession religious literature.³⁹



What to look for during the visit:

- Are inmates allowed to keep religious literature?
- Does the prison have a place of worship? If so, is it accessible to inmates of all denominations?
- Does the prison have a regular spiritual counsellor, and do all inmates have access to that person?

X. SAFE CUSTODY

All prisons must ensure the safety of their correctional officers, and the safe custody of all inmates.⁴⁰



What to look for during the visit:

- Is the perimeter fence secure and in good order?
- Are the access gates to secure areas functioning effectively?
- Are the electric fences switched on?
- Is the CCTV fully functioning? If not, for how long has it not been functioning?
- Were you, and are other visitors, searched upon entry to the prison?
- Are prison personnel and staff searched upon entry to the prison?
- What percentage of prison cells have been searched in the last 30 days?

Some important questions to ask:

- Have many inmates have escaped and attempted to escape in the past 12 months?
- What is the number of reported assaults (inmate on correctional official; correctional official on inmates; and inmate on inmate) in the past 12 months?
- What is the number of suicides and attempted suicides committed in the past 12 months?
- What is the number of unnatural deaths in the past 24 months?
- What is the number of dangerous weapons seized in the past 12 months?
- What is the number of cellphones seized in the past 12 months?
- What amount of drugs has been seized in the past 12 months?

PRISON POPULATIONS

XI. REMAND DETAINEES

“This centre has a capacity of 763 but currently holds 1635 offenders. This is far in excess of its capacity and therefore results in serious overcrowding. There is a grave shortage of professionals. There is only one social worker and there are no psychologists.”

*– JUDGE SISI KHAMPEPE, PRISON VISIT REPORT, LEEUWKOP CORRECTIONAL CENTRE (22-23 JULY 2010)*⁴¹

Approximately a quarter of incarcerated individuals in South Africa are remand detainees (RDs).⁴² Pre-trial detention is not intended to be punitive, but is a measure to ensure the presence of the accused at their trial.⁴³ Unlike sentenced inmates, RDs are intended to be a transient population, meaning that fewer long term provisions are made for their detention. Despite this, RDs can spend months or even years awaiting trial, and are therefore more vulnerable to conditions of overcrowding and neglect than sentenced inmates.⁴⁴ Indeed, many remand detention facilities in the Western Cape operated at more than 200% capacity in 2016.

The White Paper on Remand Detention Management in South Africa (2014)⁴⁵ highlights challenges particular to RDs, including:

- Inadequate provision of mental health and medical services;

- Insufficient Remand Detention Centres, that have exacerbated overcrowding and the associated security risks for both RDs and DCS staff;
- Inappropriate accommodation;
- Wearing of private clothes that leads to a high risk of escape, poor hygiene and increased health risks;
- Poor access to amenities;
- Understaffing;
- Difficulties in implementing existing or new policy;
- The length of time awaiting trial for all RDs; and
- The reason for detention whilst awaiting trial for all RDs.

Of particular concern is the plight of foreign nationals. Consideration should therefore also be given to:

- The particular vulnerability of migrants in the context of high levels of xenophobia that pervade many parts of the country; and
- Migrant detention of 30 or 90 days.

It is important to note that any person committed to a remand detention facility, or a correctional facility, including migrant detainees, has the same rights and privileges, and the same obligations and limitations, as a remand detainee.⁴⁶

Consider the following requirements specific to remand detainees:

- An RD must be provided with a complete outfit of clothing and bedding.⁴⁷

- When an RD appears in Court, they must appear in private clothing and if no such clothing is available, DCS must provide appropriate clothing.⁴⁸
- Sentenced inmates must be kept separate from unsentenced inmates.⁴⁹
- Pregnant inmates in remand detention must have access to pre-, intra- and postnatal services.⁵⁰



What to look for during the visit:

- What are RDs wearing, and in what state are their clothes?
- Are RDs detained separately to sentenced inmates?
- Are migrant detainees detained together with other RDs?
- Are RDs able to access health care, social work and psychological services?
- Do RDs receive the same food as the sentenced inmates?
- If the cells are severely overcrowded, has the Head of Prison endeavoured to employ relevant sections of the CSA and the Criminal Procedure Act⁵¹ to apply to a court to alleviate these conditions? How many such applications have been made and what were the outcomes?

XII. FEMALE INMATES

Incarcerated females may face different challenges to incarcerated males. These include a possible history of domestic violence and their unique health care needs.

Requirements that are specific to female inmates include:

- Male and female inmates must be housed separately.⁵²
- Male and female sections must have different locks on doors and gates.⁵³
- Only female correctional officers may have keys to areas where female inmates are housed.⁵⁴
- A male visitor to the female section must be constantly accompanied by a female correctional official.⁵⁵
- A female inmate can have her child with her until the child reaches two years of age.⁵⁶ DCS must provide food, clothing, health care and facilities for the sound development of the child whilst the child is in prison.⁵⁷
- Where practicable, there must be a mother and child unit.
- If pregnant, female inmates must have access to reproductive health care, including the right to a termination of pregnancy.
- Female inmates must have access to feminine hygiene products.



What to look for during the visit:

- Are male and female inmates housed separately?
- Who holds keys to the female sections?
- Have female inmates ever been left alone with male guards or visitors?
- Are there any mothers and children in the facility and where are they housed?
- Is there a mother and child unit?
- Do female inmates have access to feminine hygiene products?
- Do females have access to health care?

XIII. JUVENILE INMATES

Inmates between the ages of 18 and 21 years must be detained separately from inmates who are classified as ‘children’ under the Child Justice Act⁵⁸ or who are over the age of 21 years.⁵⁹



What to look for during the visit:

- Are inmates between the ages of 18 and 21 years detained separately from inmates who are classified as children or who are over the age of 21 years?

XIV. CHILDREN INMATES

Prison is not an appropriate environment for children (i.e. persons under the age of 18 years), who are particularly vulnerable and impressionable. The DJF does not support the detention of children, and instead supports the use of non-custodial options such as diversion, supervision, community service, and victim-offender mediation. Children face greater risks in terms of physical and emotional abuse, neglect, ill-treatment and even torture, from other incarcerated children and adults. Regular inspection and monitoring by independent mechanisms is therefore essential to ensure that detention facilities accommodating children are appropriate, and to prevent ill-treatment. As children are less aware of their rights, and therefore cannot always exercise their rights, they are extremely vulnerable.

Legislation requires the following for incarcerated children:

- Access to and attendance of education programmes.
- Social work services, religious care, recreational programmes and psychological services.
- If practicable, children must remain in contact with their families through additional visits and by other means.⁶⁰
- Detained children must be kept in separate cells to adult inmates in accommodation that is age appropriate.⁶¹
- Each sentenced child, between the ages of 13 and 18, must be provided with 2 800 kilocalories

per day, which at least 0,8 grams per kilogram of bodyweight per day must be from the protein group.⁶²



What to look for:

- Are there any children in the facility and if so, why?
- How long have they been in detention?
- Are they detained separately from adults and juveniles?
- Is there any evidence of physical injury or psychological trauma?
- Do they have regular access to health care or to psychosocial services?
- Are children always permitted visits by parents, guardians, legal representatives, and social workers?
- Are they participating in an education programme?
- What do they eat, how many times a day, and at what time?



STAFFING



“Staff numbers have a serious impact on staff and inmate safety, and on inmates’ living conditions. Staff numbers, of both security officials and professionals, such as nurses, doctors and psychologists, also profoundly affect the ability of correctional centres to fulfil their constitutional and legislative obligations.”

– AMANDA DISSEL, (2016) ‘BY THE GRACE OF GOD’: STAFFING CORRECTIONAL CENTRES

DCS is under-staffed. The table below reflects the filled posts by critical occupations as at 31 March 2016. The last column indicates the ratio of critical occupations to the total prison population of 207 027 (i.e. 45 043 remand detainees and 161 984 sentenced inmates) during the same period.

TABLE 1: EMPLOYMENT AND VACANCIES BY CRITICAL OCCUPATIONS AS AT 31 MARCH 2016⁶⁴

CRITICAL OCCUPATION	NUMBER OF POSTS ON APPROVED ESTABLISHMENT	NUMBER OF POSTS FILLED	VACANCY RATE	RATIO OF CRITICAL POST TO TOTAL PRISON POPULATION
Custodial and security personnel	33 864	31 624	6.6	1:6
Educationalists	595	504	15.3	1:411
Medical practitioners	18	7	61.1	1:29 575
Pharmacists	51	39	23.5	1:5 308
Professional nurses	1 026	857	16.5	1:241
Psychologists and vocational counsellors	95	79	16.8	1:2 620
Social work and related professionals	637	574	9.9	1:360
TOTAL	36 286	33 684	7.2	Average 1:6

These dire staff shortages mean that:

- There are often insufficient security officials to escort inmates to court and external hospitals, and internally, to a doctor, nurse, psychologist, or social worker.⁶⁵
- The safety of DCS staff and inmates is affected: when inmates are out of their cells, their movements must be closely monitored. Sufficient staff are required to control their movements, and respond should the need arise.⁶⁶ As a result, inmates are locked up for the greater portion of the day.⁶⁷ This, in turn, impacts on the daily routine and rights of inmates, such as exercise and access to medical care and psychosocial services.
- Staff's ability to assist victims of violence and to discipline perpetrators is constrained, which in turn increases the likelihood of violence.⁶⁸
- There is low morale amongst correctional officers, and this is made worse by high staff turnover and vacancy rates.⁶⁹ The vacancy rate of 7,2% for

2015/2016 was compounded by 2 668 terminations of DCS personnel (or 6,7% of filled posts) between April 2015 and March 2016.⁷⁰

- Staff to inmate ratios may be inadequate. An ideal inmate to staff ratio is two to one.⁷¹ The figure above reflects an average staff ratio of six inmates to one member of staff. However, this ratio assumes an even and constant distribution of custodial staff across facilities, which is often not the case. One must take into account staffing establishments, shift patterns, vacancies and absenteeism. For example, the current shift patterns result in periods where only half of a centre's staff complement is on duty at one time.⁷² If there are insufficient custodial staff on duty on a given day, this not only reduces their capacity to respond to security issues; it will also have an impact on inmates' access to health care services and rehabilitative programmes, as inmates must be accompanied by custodial staff when they are not in their cells.⁷³

PRISON INSPECTION GUIDELINES



*“The guiding principle during a visit should be at all times the **do no harm principle**, which can be described as follows: “Detainees are particularly vulnerable and their safety should always be kept in mind by visitors, who should not take action or measure which could endanger an individual or groups. In particular, in cases of allegations of torture or ill-treatment, the principle of confidentiality, security and sensitivity should be kept in mind, Poorly planned or prepared visits ... can actually do more harm than good.”*

*– ASSOCIATION FOR THE PREVENTION OF TORTURE (2012) DETENTION MONITORING BRIEF NO. 4:
MITIGATING THE RISKS OF SANCTIONS RELATED TO DETENTION MONITORING, AT 6-7.*

SUGGESTED GUIDELINES BEFORE THE VISIT:

1. **Develop a strategy** for the prevention of sanctions (or reprisals) against inmates who provide visitors or inspectors with information;
2. **Establish clear guidelines for reporting** individual cases of deliberate ill-treatment and guaranteeing confidentiality against sanctions;
3. **Involve JICS staff and Independent Correctional Centre Visitors (ICCVs)** from the relevant prison, as they will likely be knowledgeable about the salient challenges facing that particular prison;
4. **Collect relevant information** from third parties such as non-governmental organisations (NGOs) working directly or indirectly with inmates;⁷⁴
5. **Establish the size of the monitoring team:** members can be sub-divided and where appropriate, work in teams.⁷⁵ and
6. **Do not provide too much advance warning of the visit** to ensure that your findings are an accurate assessment of the day-to-day conditions of the prison. However, do give sufficient notice (one to two weeks) to allow officials to collect any data that you would like to scrutinise, allowing for greater transparency of the inspection and reporting process.

SUGGESTIONS FOR PRISON INSPECTIONS:

1. **Conduct interviews** with key informants, so that information obtained from DCS personnel and

inmates can be cross-checked. Key informants should include:

- Head of Prison: first, inform him or her about the objectives of the visit; and second, obtain statistics and other pertinent information about the prison's population and DCS staff;
 - The medical doctor: ask about inmates who have been assaulted; the availability of basic medical supplies (such as gloves, bandages, syringes, drips, basic ointments for skin infections etc.), medication, particularly antiretroviral treatment (ART) and TB medication; and other challenges s/he faces;
 - The pharmacist;
 - A psychologist and/or social worker;
 - Nurses;
 - Admissions staff;
 - Kitchen staff; and
 - Individual or group interviews with some sentenced inmates; remand male, female and juvenile detainees; and any children.
2. **Conduct inspections** of at least the following areas:
 - Admissions area;
 - Medical wing;
 - Remand detention and sentenced inmates' (males, females, juveniles, and children) cells and ablution facilities;
 - Kitchen; and
 - Exercise facilities.

3. **Examine documentation and records** such as admission documentation, that must record the identity of the inmate, the reason for the committal, and the day and hour of admission and release. Records cannot be easily manipulated and avoid the potential bias brought to direct observations. An inmate must be provided with written information, in a language they understand, that includes the rules and the treatment of inmates and channels for communicating complaints and requests.⁷⁶

SUGGESTED GUIDELINES FOR INTERVIEWS DURING THE VISIT:

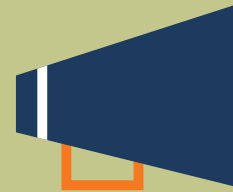
1. **Choose a large and random selection** of people to interview so as to prevent interviewed inmates from being identified;
2. Conduct the interviews in **absolute privacy**, and if possible, out of sight of DCS staff and other inmates;
3. The interview should be a **safe space**, where inmates feel comfortable to share information and their experiences with you honestly;
4. Avoid formulating recommendations, suggestions or petitions immediately after the interviews, except in cases of extreme urgency;
5. Be aware of the **presence of possible informants**, such as officials or predatory inmates, who might intimidate key interviewees and therefore stifle investigations, particularly when dealing with allegations of torture or other ill-treatment;
6. Only disclose identifying details with **express and informed consent** of the inmate concerned; and
7. Ensure that the most vulnerable inmates (children, juveniles, women, foreigners and the mentally disabled) are **aware of their rights**.⁷⁷



monitor



investigate



report

REPORTING GUIDELINES

Following the visit and inspection of a prison, a report should be compiled recording observations and findings based on the inspection. A judge or magistrate may bring any matter to the attention of the Commissioner, the Minister, the National Council or the Inspecting Judge.⁷⁸

Ideally, the report should contain the following:

1. Action items

These are immediate measures to be taken that improve the conditions of detainees and inmates, such as: addressing allegations against DCS personnel regarding assaults; lack of physical exercise; medical access and medication; beds; basic hygiene of clothing and bedding; ablution facilities; lighting and ventilation; access to reading material; testing and preventative

measures for HIV, STIs and TB; and detaining migrants separately from other detainees.

2. Systemic issues

These are recommendations that address systemic issues, whilst remaining sensitive to the laws and policies DCS personnel are obligated to implement, often with inadequate budgets and “patently unfit environments”.⁷⁹ Such recommendations could include: budget increases through Parliament; increasing staff who are adequately trained, and retaining skilled current staff; possible solutions to extreme overcrowding; increased access to nurses, doctors and dentists; action by the Department of Public Works to address infrastructure defects promptly; and increased cooperation between JICS and the relevant prison.



CONCLUSION: THE ETHICAL OBLIGATIONS OF PRISON MONITORS AND JUDGES IN PARTICULAR



“The objective of the Constitutional Court’s and other courts’ prison visits ... is for the judiciary and correctional services to work together, while giving the judiciary a glimpse into personnel’s working, and detainees’ living, conditions. At the same time, the visits provide a channel of direct complaint, sharing information in an effort to remain transparent and improving conditions in the prison system in accordance with notions of accountability. ... Like all my colleagues I am committed to finding ways to advance constructive progress for the benefit of both those detained and the personnel whose task it is to guard them.”

- JUDGE EDWIN CAMERON (2015) REPORT: POLLSMOOR CORRECTIONAL CENTRE – REMAND CENTRE AND WOMEN’S CENTRE. CONSTITUTIONAL COURT OF SOUTH AFRICA.



“When Judge Cameron visited our centre and asked to see me and two other [HIV] support group leaders, seeing the head of centre and other top officials running up and down looking for us, [made me feel like] ‘Yes! Our lives are important too, we are not forgotten.’ We were hopeful that our problems would be highly prioritised.”

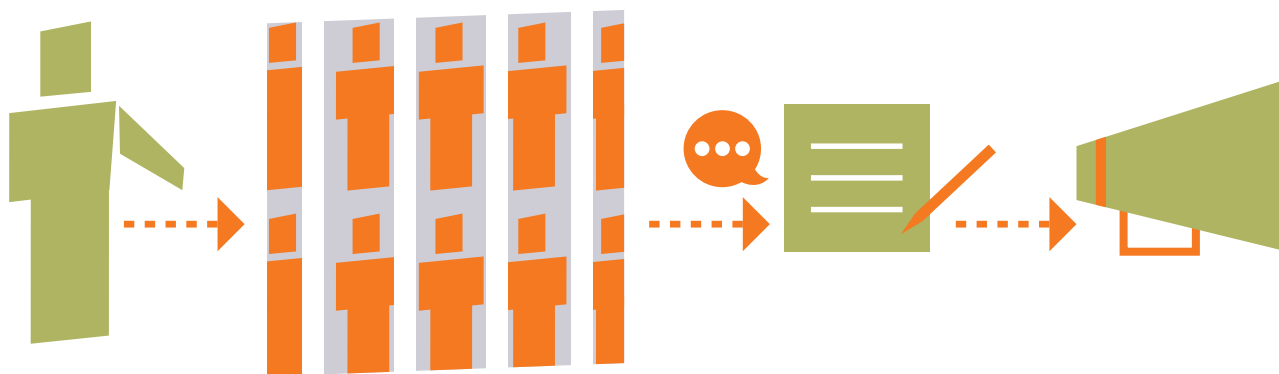
– THULANI NDLOVU, FORMER INMATE AT BOKSBURG CORRECTIONAL CENTRE.

Monitoring and inspecting prisons, with an independent external mechanism that reviews inmates’ treatment and complaints, are central to the protection of human rights of inmates; and are part of South Africa’s obligations under international, regional, and domestic law.

It is vital that judges and magistrates visit prisons regularly not only to provide additional oversight and accountability, but also to demonstrate to inmates that their wellbeing is important and that judges serve as an additional conduit for their concerns. It also provides

an important link between the places in which criminal justice is decided, and where it is ultimately executed. It is vital that these spaces do not operate in silos, and judicial inspection visits remain an important link in this respect, as well as a vital component of our democracy.

Finally, there remains an ethical duty on judges and magistrates to see, and experience, the places to which they sentence people, and simultaneously to serve as the representative of the society that inmates have wronged, but into which they will be accepted again.



ADDENDUMS

ADDENDUM A:

Judicial Inspection and Reporting Tool

IDENTIFYING INFORMATION	
Name and position of judicial officer / parliamentarian	
Name of persons accompanying judicial officer	
Name of prison	
Location of prison	
Type of facility (remand, sentenced, juvenile, male, female)	
Approved accommodation capacity of prison	
Number of inmates / detainees actually accommodated in prison	
Number of prison staff and personnel	
Names (and positions) of accompanying DCS personnel	
Date of visit	
Duration of visit	

ADMISSIONS AREA

	YES/NO	RECORDS AVAILABLE	COMMENTS
Are all inmates being assessed upon admission?			
Do all inmates undergo a medical examination upon admission?			
Are inmates housed according to their assessment?			
Are the following considerations taken into account during the assessment: (tick all that apply)			
<input type="checkbox"/> security classification <input type="checkbox"/> health needs <input type="checkbox"/> educational needs <input type="checkbox"/> social and psychological needs <input type="checkbox"/> religious needs <input type="checkbox"/> needs regarding reintegration into society <input type="checkbox"/> work allocation <input type="checkbox"/> specific development programme needs		<input type="checkbox"/> inmate has been convicted of a sex crime <input type="checkbox"/> inmate has been a victim of sexual assault <input type="checkbox"/> mental illness <input type="checkbox"/> physically disabled <input type="checkbox"/> elderly or younger than fellow inmates <input type="checkbox"/> sexual preference <input type="checkbox"/> gender identity <input type="checkbox"/> first-time offender	
Further comments/observations?			

MEDICAL WING

	TOTAL NUMBER	NUMBER PRESENT ON DAY OF VISIT	OBSERVATIONS / COMMENTS
Doctor			
Nurse			
Dentist			
Beds			
Inmates			

	COMMENTS
Are condoms freely available?	
Are there sufficient stocks of essential medicines (ART and TB medication)?	
What is the average waiting period experienced by inmates in need of medical attention?	
Are there medical staff vacancies?	
Have inmates ever been denied access to health care services and/or medication?	
Do pregnant inmates have access to pre-, intra-, and post-natal care?	
Do inmates have access to termination of pregnancy services?	
Further comments/observations?	

KITCHEN/EATING AREA

	COMMENTS
Rate the cleanliness and hygiene of the kitchen on a scale of 1 to 10 (1 being poor, 10 being very hygienic)	
How many meals do inmates receive per day, and at what times are they served?	
What food comprises the meals?	
How does the food taste?	
Do male, female, and children inmates receive different meals?	
What is the capacity of the eating area (i.e. how many inmates)?	
Are all inmates issued clean eating utensils?	
Further comments/observations?	

EXERCISE

	COMMENTS
How frequently and for how long are inmates allowed to exercise?	
Have inmates ever been denied exercise? If so, for what reason and how frequently does this occur?	
Where does exercise take place?	
Is there any exercise equipment (e.g. soccer goal posts, soccer balls)?	
Further comments/observations?	

SAFETY AND SECURITY

	YES/NO	COMMENTS
Is the perimeter fence secure and in good order?		
Are the access gates to secure areas functioning effectively?		
Are the electric fences switched on?		
Is the CCTV fully functional? If not, for how long has it not been functioning?		
Were you, and are other visitors, searched upon entry to the prison?		
Are prison personnel and staff searched upon entry to the prison?		
What percentage of prison cells have been searched in the last 30 days?		
Have any inmates escaped and/or attempted to escape in the past 12 months?		
Have there been any assaults (inmate on correctional official; correctional official on inmates; and inmate on inmate) reported in the past 12 months?		
Have there been any dangerous weapons seized in the past 12 months?		
Do staff members feel secure and sufficiently supported in their day to day duties?		
What is the staff to inmate ratio?		
Any other comments/observations?		

REMAND DETAINEES

INSPECT TWO TO THREE RANDOMLY SELECTED COMMUNAL CELLS.

	NUMBER	COMMENTS
Designed capacity: number of beds		
Actual capacity: number of inmates		
Custodial staff overseeing cell		
Ablution facilities (shower, basin, toilet)		
Windows		
	YES/NO	COMMENTS
Every inmate has complete outfit of clothing and bedding (including sheets and blankets)		
Clothing and bedding is appropriate/sufficient for climatic conditions		
Private clothing for court proceedings is available for those who require it		
Inmates have adequate access to cleaning materials		
Ablution facilities have hot and cold running water, sufficient drainage		
Ablution facilities are screened off, to ensure privacy		
Lights in the cell are functional and unbroken		
There is sufficient light in the cell, whether artificial or natural		
Inmates have access to reading materials		

There are only remand detainees in the cells, no sentenced inmates		
Female, male, juvenile, and child remain detainees are detained separately		
Inmates are allowed to exercise for at least one hour per day		
General comments:		
Hygiene, cleanliness, smell		
Overcrowding		
Ventilation (windows)		
Lighting		
Physical appearance of inmates		
Frequency of exercise		
Reports of ill-treatment		
Further comments/observations?		

FEMALE INMATES (ADULT, SENTENCED)

INSPECT TWO OR THREE RANDOMLY SELECTED COMMUNAL CELLS:

	NUMBER	COMMENTS
Designed capacity: number of beds		
Actual capacity: number of inmates		
Custodial staff overseeing cell		
Ablution facilities (shower, toilet, basin)		
Windows		
	YES/NO	COMMENTS
Every inmate has complete outfit of clothing and bedding (including sheets and blankets)		
Clothing and bedding is appropriate/sufficient for climatic conditions		
Private clothing for court proceedings is available for those who require it		
Inmates have adequate access to cleaning materials		
Lights in the cell are functional and unbroken		
There is sufficient light in the cell, whether artificial or natural		
Ablution facilities have hot and cold running water		
Ablution facilities are screened off, to ensure privacy		

Inmates have access to feminine hygiene products		
Inmates have access to reading materials		
Locks on doors and gates do not correspond to those of the male section		
Keys are permanently in the possession of a female DCS correctional officer		
There are only female inmates in the cells, no trans men or juvenile inmates		
Inmates are allowed to exercise for at least one hour per day		
General comments:		
Hygiene, cleanliness, smell		
Overcrowding		
Ventilation (windows)		
Lighting		
Physical appearance of inmates		
Frequency of exercise		
Reports of ill-treatment		
Further comments/observations?		

MALE INMATES (ADULT, SENTENCED)

INSPECT TWO TO THREE RANDOMLY SELECTED COMMUNAL CELLS:

	NUMBER	COMMENTS
Designed capacity: number of beds		
Actual capacity: number of inmates		
Custodial staff overseeing cell		
Ablution facilities (shower, toilet, basin)		
Windows		
	YES/NO	COMMENTS
Every inmate has complete outfit of clothing and bedding (including sheets and blankets)		
Clothing and bedding is appropriate/sufficient for climatic conditions		
Private clothing for court proceedings is available for those who require it		
Inmates have adequate access to cleaning materials		
Ablution facilities have hot and cold running water		
Ablution facilities are screened off, to ensure privacy		
Inmates have access to reading materials		
There are only male inmates in the cells, no female or trans women inmates, juvenile males or children		

Inmates are allowed to exercise for at least one hour per day		
General comments:		
Hygiene, cleanliness, smell		
Overcrowding		
Ventilation (windows)		
Lighting		
Physical appearance of inmates		
Frequency of exercise		
Reports of ill-treatment		
Any other comments/observations?		

CHILDREN IN DETENTION

CHECK TWO TO THREE RANDOMLY SELECTED COMMUNAL CELLS:

	NUMBER	COMMENTS
Designed capacity: number of beds		
Actual capacity: number of inmates		
Custodial staff overseeing cell		
Ablution facilities (shower, toilet, basin)		
Windows		
	YES/NO	COMMENTS
Every child has complete outfit of clothing and bedding (including sheets and blankets)		
Clothing and bedding is appropriate/sufficient for climatic conditions		
Private clothing for court proceedings is available for those who require it		
Children have adequate access to cleaning materials		
Ablution facilities have hot and cold running water		
Ablution facilities are screened off, to ensure privacy		
Children have access to reading materials		
There are only children in the cells, no adult or juvenile inmates		

Children have access to educational programmes		
Children are permitted to receive visits from family, legal representative, social workers		
General comments:		
Hygiene, cleanliness, smell		
Overcrowding		
Ventilation (windows)		
Lighting		
Physical appearance of children (any signs of physical injury or psychological trauma)		
Frequency of exercise		
Reports of ill-treatment		
Any other comments/observations?		

ADDENDUM B:

Relevant legal instruments

DOMESTIC

The Constitution of the Republic of South Africa Act 108 of 1996.

Correctional Services Act 111 of 1998.

Correctional Services Regulations, published in Government Gazette no. 35277, 12 April 2012.

Department of Correctional Services Policy to Address Sexual Abuse of Inmates in DCS Facilities, May 2013.

REGIONAL

African Commission on Human and Peoples' Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman, Degrading Treatment or Punishment in Africa (Robben Island Guidelines), April 2008.

Kampala Declaration on Prison Conditions in Africa, September 1996.

Organization of African Unity, African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981.

INTERNATIONAL

United Nations (UN) General Assembly, Universal Declaration of Human Rights, 10 December 1948.

UN General Assembly, Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, 9 December 1988.

UN General Assembly, Basic Principles for the Treatment of Prisoners, 14 December 1990.

UN, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, June 1987.

UN, Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 30 August 1955.

UN, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 4 February 2003.

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- ¹ Deitch M. (2010). Special populations and the importance of prison oversight. *American Journal of Criminal Law*, 37(3) 291-315.
- ² South Africa, Department of Correctional Services (2014). *White Paper on Remand Detention Management in South Africa*. Pretoria: Department of Correctional Services at 10.
- ³ Judicial Inspectorate for Correctional Services, *Annual Report 2015/2016*, at 14.
- ⁴ Communication with Yvonne van Niekerk, Deputy Director of Judicial Relations Coordination in the Office of the Chief Justice. 8 September 2015.
- ⁵ Association for the Prevention of Torture (hereinafter 'APT'). (2012). *Detention Monitoring Brief No. 4: Mitigating the risks of sanctions related to detention monitoring*.
- ⁶ Correctional Services Act 111 of 1998 (hereinafter the 'CSA'); Correctional Services Regulations, published in *Government Gazette no. 35277*, 12 April 2012; Constitution of the Republic of South Africa, 1996 (hereinafter the 'Constitution'); UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948; United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955; *Kampala Declaration on Prison Conditions in Africa*, September 1996; Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* (also known as the 'Banjul Charter'), 27 June 1981; United Nations, *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, June 1987; African Commission on Human and Peoples' Rights, *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman, Degrading Treatment or Punishment in Africa (Robben Island Guidelines)*, April 2008.
- ⁷ Department of Correctional Services, *Annual Report 2015/2016*, at 29-30. Available at <http://www.dcs.gov.za/docs/2016%20doc/DCS%20Annual%20Report%202015-16.pdf> [accessed 3 February 2017].
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- ⁹ Gear, S. (2015). *In Their Boots: staff perspectives on violence behind bars in Johannesburg*. Just Detention International South Africa.
- ¹⁰ Keehn, E., Nyembe, N., and Sukhija, T. (2013). *Evaluation of South Africa's Judicial Inspectorate for Correctional Services: Assessing its independence, effectiveness and community engagement*. Sonke Gender Justice.
- ¹¹ CSA, section 99; Constitution, section 35.
- ¹² CSA, section 99.
- ¹³ Meeting with Judge Erasmus, 12 October 2016.
- ¹⁴ Just Detention International. (2009). *Fact sheet: Prisoner rape is torture under International Law*. Available at: <https://justdetention.org/wp-content/uploads/2015/10/FS-Prisoner-Rape-is-Torture-Under-International-Law.pdf> [accessed 23 March 2017].
- ¹⁵ As evidenced by the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment General Comment no. 2: Implementation of article 2 by State parties* (24 January 2008). Committee against Torture.
- ¹⁶ Constitution, section 35(2)(e).
- ¹⁷ JICS *Annual Report 2015/2016*, supra note 3.
- ¹⁸ *Sonke Gender Justice v Government of South Africa and others* (unreported) case no. 24087/15, decided 5 December 2016.
- ¹⁹ Department of Correctional Services. (2005). *White Paper on Corrections in South Africa*. Pretoria: Department of Correctional Services.
- ²⁰ CSA, section 7(e).
- ²¹ Ventilation requirements are in accordance with the *National Building Regulations SABS O400 of 1990*, issued in terms of section 16 of the *Standards Act 29 of 1993*.
- ²² CSA, section 10(1).
- ²³ Correctional Services Regulations, published in *Government Gazette no. 35277*, 12 April 2012 (hereinafter 'CSA regulations') at s 3(2)(d).
- ²⁴ *Ibid*, section 7(4).

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- 27 CSA regulations, section 3(2)(i).
- 28 Ibid, section 26D.
- 29 Ibid, section 4(3).
- 30 CSA, section 8(5).
- 31 CSA regulations, section 4(1).
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- 33 CSA regulations, section 6(1).
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- 39 CSA, section 14.
- 40 Ibid, section 26.
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- 42 DCS Annual Report 2015/2016, supra note 7.
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- 46 CSA regulations, section 26.
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- 55 Ibid, section 3(2)(f)(iii).
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- 61 Ibid, section 7(2)(c).
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- 67 Ibid at 66.
- 68 Gear supra note 9 at 117.
- 69 Ibid.
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- 71 Judge Edwin Cameron (2015) Report: Pollsmoor Correctional Centre – Remand Centre and Women’s Centre. Constitutional Court of South Africa, at 9.
- 72 Ibid; Dissel, supra note 64, at 62.
- 73 Ibid.
- 74 APT Detention Monitoring Brief, supra note 5, at 7.
- 75 APT. (2009). Detention Monitoring Brief No.2: The Selection of Persons to Interview in the Context of Preventive Detention Monitoring, at 1.
- 76 CSA, section 6(4)(a).
- 77 APT (2012) Detention Monitoring Brief, supra note 5, at 7.
- 78 CSA, section 99(2).
- 79 Cameron J, supra note 70, at 122.

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African Criminal Justice Reform (ACJR) (formerly Civil Society Prison Reform Initiative (CSPRI))

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Web: www.childwelfarebfn.org.za

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Web: no site available as yet

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Thembisa: Rabasotho Community Centre,
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Umlazi: Prince Mshiyeni Hospital, Comfort Zone
Kwa Mashu: Kwa Mashu Police Station
Chatsworth: Chatsworth Crisis Care Centre
Port Shepstone: 1 Voortrekker Place

Outer West: Mobile Unit in Other West / Pinetown areas
Ndwedwe: Ndwedwe Justice Centre, Ndwedwe
Inanda: Mobile Unit in Inanda

Gender, Health & Justice Research Unit (GHJRU)

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South African prisons are fraught with conditions that lead to human rights abuses and high rates of sexual violence, HIV transmission and TB infection.

Regular monitoring and reporting acts as a preventative measure against human rights abuses in prisons, including ill treatment and torture.

This guide outlines the basic minimum standards of treatment for all persons in prison custody, and provides guiding principles and a tool that will assist judges, magistrates and Members of Parliament in conducting holistic and consistent prison inspections sensitive to the specific population incarcerated (e.g. remand detainees, migrants, sentenced inmates, women or children).



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