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THE CORRECTIONAL SERVICES PORTFOLIO COMMITTEE: 2004 - 2009

SA Prisons at a glance

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Introduction

In *CSPRI Newsletter No. 24 (Dec 2007)* the question was asked, with reference to the Judicial Inspectorate of Prisons and the Portfolio Committee on Correctional Services, whether prison oversight has come of age? By looking at transparency, accountability and independence it was concluded that "The answer is not a simple yes or no, but rather the satisfying conclusion, based on events of the past four years, that the fundamentals are in place for effective oversight. While the two structures focussed on above, the Committee and the JIP [Judicial Inspectorate of Prison], have been in place for many years, they have both demonstrated an increased willingness to engage with the substantive challenges facing the South African prison system. Increased transparency, effective independence and a stronger accountability relationship with the DCS have been demonstrated."¹

On 17 February 2009 the Portfolio Committee on Correctional Services (the Portfolio Committee) adopted its handover-report to the incoming Portfolio Committee that will take office after the April 2009 elections.² This 19-page report provides an opportunity to again assess the work of the Portfolio Committee and its contribution to the reform of the prison system in South Africa. In contrast to its predecessors, the outgoing Portfolio Committee, under the chairmanship of Mr. Dennis Bloem (ANC), proved itself to be extremely active and vocal. The Portfolio Committee was furthermore characterised by a somewhat unusual sense of unity in purpose, which is ascribed to the leadership of Mr. Bloem.³ The unanimous adoption of the hand-over report by the Committee gives further support to this view.

Overview of the handover report

The report briefly deals with some of the Portfolio Committee's achievements and notes the amendments to the Correctional Services Act (the Correctional Services Amendment Bill 32 of 2007).⁴ It also notes, as some of its achievements, improvements to the prison health care system as well as its cooperation with other Parliamentary Committees. Other highlights noted in the report are improved public awareness about prison reform issues and the Portfolio Committee's participation in the review of the criminal justice system. The Portfolio Committee notes two important challenges to its oversight role, namely the relationship with the executive authority of the Department of Correctional Services (DCS), and the quality and accuracy of the Department's presentations and reports. In respect of the latter, the Portfolio Committee notes that "it has at times been very difficult to obtain accurate information from its officials. Documentation for meetings is often received late, sometimes with insufficient and inaccurate information".⁵ This remark should, however, be seen within the context of the relationship between the Portfolio Committee and the Minister of Correctional Services, Mr. Ngconde Balfour, which the Portfolio Committee described as follows: "The Committee's relationship with the entity and the department it oversees was generally very good. Unfortunately the relationship with the DCS' Executive Authority was less so. The extent of the breakdown in the relationship between the Committee and that authority is starkly illustrated by the latter's neglect to inform the Committee of the re-deployment of the former National Commissioner in November 2008."⁶

The report then proceeds to list and describe a range of issues for the incoming Portfolio Committee to follow-up on. These include: the outsourcing of nutritional services; Public-Private-Partnership prisons; the Kimberley 'new generation' correctional centre; unresolved investigations; suspensions; Occupational Specific Dispensation (OSD); Seven-day Establishment (SDE); vetting of officials; vacancies; critical skills shortages; parole and medical parole; the incarceration framework; Judicial Inspectorate of Prisons;

children in conflict with the law; prison overcrowding; prisoner privileges; prison labour; health care services in DCS; audit qualification; and the National Council for Correctional Services.

It is not within the scope of this newsletter to deal with each of the issues listed by the Portfolio Committee in its handover report. However, a number of cross-cutting and underlying issues will be dealt with.

Private sector involvement in the prison system

In addition to the two existing privately operated prisons, the DCS is planning for five new prisons to be constructed and operated as Public-Private Partnerships (PPP). Since October 2004 the DCS has also sub-contracted food provisioning to the private sector at a number of prisons.⁷ The Portfolio Committee has consistently expressed deep concern about private sector involvement in the prison system and has found the changing policies of the DCS perplexing: "Taking into consideration the inordinate cost escalation, the government took the decision to halt any further plans to build prisons using the PPP financing model. That notwithstanding, the Minister of Correctional Services stated that the DCS would continue with the construction of five additional such prisons in Nigel, Klerksdorp, East London, Port Shepstone and Paarl." In respect of the food provisioning contracts and especially their controversial extension in 2008, the Portfolio Committee asked penetrating questions and requested the DCS to supply certain information. The Department, however, ignored the request and the Portfolio Committee never received the answers to its questions.

The debate around privatisation and private sector involvement in the prison system has been continuing since the mid-1990s without clear answers emerging and the DCS changing its position on the desirability of private sector involvement. It is therefore not surprising that the Portfolio Committee "has not been convinced" about private sector involvement.⁸ The manner in which the contracts for food provisioning were renewed also raised strong suspicions with the Portfolio Committee and the former National Commissioner's transfer to another department during this period only served to add to already existing doubts. To date only one company, Bosasa, has benefited from the privatisation of food provisioning to an amount in excess of R1 billion and suspicions remain that the tender process was manipulated.

Fundamental to the controversy surrounding privatisation is the absence of an independent evaluation of the existing contracts as well as an independent assessment of the broader question of the appropriateness of privatisation in the South African prison system. Even the DCS admitted that the catering contractor, Bosasa, was not meeting its contractual requirements.⁹ Privatisation in the prison sector remains a highly contentious issue and opinions vary greatly on the issue. Even in countries with longer experience of private sector involvement, opinions remain divided. One authority on the issue concluded that: "*[However,] from existing research the indication is that only modest savings are produced and it is not clear exactly how they are achieved, what the effect on qualitative standards is, or whether they are the unique by-product of private sector efficiency.*"¹⁰

The allocation of funds for the construction of the new privately operated prisons by the Minister of Finance in his 2009 Budget Address flies in the face of the concerns that the Portfolio Committee has consistently raised since the issue was first addressed in Parliament. Fundamentally this situation raises questions about the authority of Parliament and the respect that the Executive affords Parliament, especially in relation to key policy decisions.

The relationship with the Minister of Correctional Services

It is difficult to pinpoint the circumstances that led to the breakdown in the relationship between the Minister and the Portfolio Committee. The Portfolio Committee notes its dissatisfaction with reports received from the DCS as well as the accuracy of the information received.¹¹ Heated debates on a number of issues (e.g. the prison construction programme, privatisation of food provisioning, corruption and poor health services) indicate that the Portfolio Committee was resolute about not 'rubber-stamping' the decisions of the Executive. What provoked the ire of the Portfolio Committee perhaps were the Minister's responses to some of the questions raised. When the Portfolio Committee rejected, in March 2007, the DCS report on the escape of Mr. Annanias Mathe from C-Max, the Minister's office issued a statement labelling the members of the Portfolio Committee as weak political leaders lacking sound judgement.¹² He subsequently apologised, explaining that the statement was issued without his authorisation, but the damage had been done. In October 2008, in its review of human resource matters, the Portfolio Committee received a briefing from the then-National Commissioner on resignations and suspensions of senior officials. Initially the Minister was reported to not be attending the meeting due to ill health. However, he later sent a letter stating that: "Regarding the instability within the Department, I must submit that it is not an oversight matter for the Portfolio Committee."¹³ This approach was not received well and it was evident that the relationship was now firmly in trouble. It was therefore not surprising that in February 2009 the Committee Chairperson accused the Minister of directly interfering in the awarding of the controversial prison catering contract to Bosasa.¹⁴

Human resources

The DCS has a large staff corps, within excess of 45 000 posts allocated to the Department of which more than 40 000 are filled.¹⁵ This amounts to roughly one official for every four prisoners. The situation at ground-level is, however, often far different from what this ratio may indicate. In the programmes key to the implementation of the Department's White Paper, the DCS records, to the great concern of the Portfolio Committee, vacancy rates ranging from 19% to 27%. It is further noted by the Portfolio Committee that the overall vacancy rate increased from 8% to 11% whereas the target was to reduce it to 5%. The debate around vacancies has frequently centred on the attraction and retention of scarce skills. To address this, the OSD was developed in the Public Service Coordinating Bargaining Council in an effort to adjust remuneration for these skills categories.¹⁶ The OSD was to be implemented from 1 July 2008 but in May 2008 the DCS informed the Portfolio Committee that it would not be able to implement the OSD by the due date.¹⁷ The Portfolio Committee requested a revised time-frame from the DCS but this was never submitted.¹⁸ The OSD was to be the solution for the Department's long-standing problem with the remuneration of professionals and other scarce skills, but it appears that despite having nearly one year's forewarning of the implementation date it was not able to make the necessary arrangements.

Two other issues are also worth noting in respect of human resources. The first is the vetting of officials to ensure that they do not pose a security threat to the DCS. The vetting policy was announced in September 2007 and in the same year the DCS established its own Internal Vetting Fieldwork Unit. The results are dismal: of 987 vetting forms submitted to the National Intelligence Agency (NIA) 523 were sent back for corrections and only 30 of the 344 finally submitted forms were cleared. Despite security and other concerns, it needs to be asked whether vetting of this nature is indeed a realistic option. The second issue is the SDE which would see payment for overtime falling away and officials being compensated in time only. The shift system of the DCS would also be restructured to ensure longer active operational hours. It was furthermore agreed that the DCS would employ additional staff to enable the SDE and such staff were employed. However, by end 2008 it was reported that the SDE was being piloted at only one prison. On 24 June 2008 the National Commissioner reported to the Portfolio Committee that the gains made under Resolution 2 of 2005 of the Departmental Bargaining Chamber (which allowed for the phasing out of overtime payment) were then reversed with the passing of Resolution 1 of 2007 by the Public Service Coordinating Bargaining Council, which removed the option of time off in lieu of overtime and insisted upon the reintroduction of the weekend overtime pay.¹⁹ The SDE is fundamental to the Department's operations and in particular with reference to legislative compliance. Having longer operational hours will also enable a better dispensation for prisoners and improved access to services.

It then appears that the DCS is facing significant challenges in respect of human resources and that the new Portfolio Committee will have to keep a close watch on unfolding events. Some of the human resource management problems are outside the control of the DCS, but in other instances, such as vetting and the SDE, it appears that decisions were taken and announced before being properly investigated.

Qualified Audits

For the full term of the out-going Portfolio Committee the DCS received qualified audits; a dubious achievement shared only with the Department of Home Affairs. The lack of internal controls seems to be the core of the problem. Although the DCS underspent only by 3% in 2007/8, the Auditor General was still not satisfied. Of more concern to the Portfolio Committee was the fact that the DCS did not implement previous recommendations from the Auditor General and also failed to implement resolutions from the Standing Committee on Public Accounts (SCOPA). Key to the problems around financial management seems to be a lack of skill and expertise at the level of Chief Financial Officer.

Conclusions

Even though the outgoing Portfolio Committee has not achieved all it set out to achieve, it has nevertheless established a new standard in Parliamentary oversight over the DCS. It pursued a number of issues in the Department's performance with doggedness and made it, at times, quite uncomfortable for the DCS when it was unable to provide convincing responses to questions raised. It was in these instances that the media picked up on the growing tension between the Portfolio Committee, the DCS and the Minister.

A number of investigative articles in the media focussing on allegations of corruption (e.g. catering tenders, fencing, and television installations) provided good support to the oversight role of the Portfolio Committee. In a broad sense it may be concluded that the South African public is now better informed of the workings of the prison system than five years ago. The Portfolio Committee also acknowledges the role of non-governmental organisations that supported it when called upon to make presentations or those who made submissions on the Correctional Services Amendment Bill, annual reports and the budget votes. Many of the issues raised by these organisations are noted in the hand-over report of the Portfolio Committee and thus demonstrating the value of civil society participation in Parliament's work.

Lastly, the outgoing Portfolio Committee is giving the new Committee a long 'to-do' list and each of the

issues raised are substantive and complex. It would, of course, be ideal if the same committee members would continue in this portfolio after the April 2009 elections, but this should not be assumed especially in the light of the relationship issues noted above. Vigilance on the part of civil society is called for to ensure that the new Portfolio Committee meets and even exceeds the standards set by its predecessor.

Endnotes

1. Muntingh L (2007) "Has prison oversight come of age in South Africa? Reflections on the Judicial Inspectorate of Prisons and the Portfolio Committee on Correctional Services" CSPRI Newsletter No. 24 (December 2007).
2. Portfolio Committee on Correctional Services (2008) Overview Report of the Oversight Activities of the Portfolio Committee on Correctional Services (2004-2009), Parliament of the Republic of South Africa, Cape Town.
<http://www.pmg.org.za/report/20090217-correctional-services-committee-reports-and-minutes-adoption> Accessed 4 March 2009.
3. "Committee Members unanimously agreed that the Committee's success and good working relationship with each other can, to a large extent, be ascribed to the leadership provided by its Chairperson, Mr Dennis Bloem. He led the Committee by example, always with fairness and respect, good humour and good judgement, giving all Members opportunity to voice their opinions and to be heard - true collective leadership. The Committee was chaired with a passionate and fearless dedication to the oversight of the DCS, and to holding the Department and its Executive Authority to account. This dedication inspired the Committee to greater heights, and it is its hope that the incoming Committee will benefit from similar leadership that will take it to even greater heights." p. 2
4. At the time of writing, the Bill was still awaiting promulgation. See CSPRI Newsletter No. 27 for a description of the amendments.
5. Portfolio Committee on Correctional Services (2008), Note 2, p.4
6. Portfolio Committee on Correctional Services (2008), Note 2, p.3
7. Sloth-Nielsen, J. (2007) 'The state of South Africa's prisons' In S. Buhlungu, J. Daniel, R. Southall & J. Lutchman State of the Nation - South Africa 2007, HSRC Press, Cape Town.
8. Portfolio Committee on Correctional Services (2008), Note 2, p. 6
9. 'Prison catering contract riddled with non-compliance' Business Report, August 19, 2008, Accessed 1 March 2009 at <http://www.busrep.co.za/index.php?fSectionId=561&fArticleId=4566716>
10. Thompson P (2000) PPPs in criminal justice, New Economy, IPPR, p. 152.
11. Portfolio Committee on Correctional Services (2008), Note 2, p. 4
12. 'Balfour apologises over attack on prisons committee' 19 March 2007, Mail and Guardian,
<http://www.mg.co.za/article/2007-03-19-balfour-apologises-over-attack-on-prisons-committee> Accessed 1 March 2009.
13. PMG Minutes 21 Oct 2008, <http://www.pmg.org.za/report/20081021-briefing-national-commissioner-department-correctional-services> Accessed 1 March 2009.
14. 'MP hits out at Balfour' The Times, 8 February 2009, reported by Ndivhuho Mafela,
<http://www.thetimes.co.za/PrintEdition/Article.aspx?id=934538> Accessed 1 March 2009.
15. Department of Correctional Services (2008) Annual Report 2007/8, DCS, Pretoria, p. 151.
16. PSCBC Resolution 1 of 2007, Gazetted 29 August 2007
17. PMG Minutes 27 May 2008 <http://www.pmg.org.za/report/20080527-briefing-department-correctional-services-occupational-specific-dispe>
18. Portfolio Committee on Correctional Services (2008), Note 2, p. 9
19. PMG Minutes 24 June 2008 <http://www.pmg.org.za/report/20080624-recruitment-and-retention-strategy-report-back-department-implemmentat>

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Category	Jan '08	Dec '08	Incr/Decr %
Functioning prisons	237	237	0.0
Total prisoners	165,987	164,957	-0.6
Sentenced prisoners	112,552	114,673	1.9
Unsentenced prisoners	53,435	50,284	-5.9
Male prisoners	162,437	161,475	-0.6
Female prisoners	3,550	3,482	-1.9
Children in prison	2,049	1,691	-17.5
Sentenced children	870	847	-2.6

Unsentenced children	1,179	844	-28.4
Total capacity of prisons	114,559	114,782	0.2
Overcrowding	144.89%	143.70%	
<i>Most overcrowded</i>			
Umtata Medium	429.48%	313.00%	
<i>Least overcrowded</i>			
Mapumulo	25.97%	27.27%	
Awaiting trial longer than 3 months	23,945	22,287	-6.9
Infants in prison with mothers	178	166	-6.7

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