



Roundtable Discussion on the 2008/9 Annual Report of the Judicial Inspectorate for Correctional Services

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Welcome and introduction

Participants were welcomed by Lukas Muntingh, CSPRI Project Coordinator. He explained that CSPRI is hosting a series of three roundtable discussions which are intended to bring stakeholders together to promote discussion on prison reform. The discussions aim to identify the most critical issues for reform, and to refine an agenda for that reform. The central theme of the discussions is: 'What should prisons in a constitutional democracy look like?'

This roundtable discussion was called review the 2008/9 Annual Report of the Judicial Inspectorate for Correctional Services (the Inspectorate), and to identify challenges and achievements in the work of the Inspectorate. The roundtable discussion also provides an opportunity for civil society organisations to articulate their expectations with regard to the Inspectorate, and also about the Inspectorate's future priorities.

The following presents a summary of the discussions:

- overview by the Inspecting Judge;
- the state of the nation's correctional centres;
- prevention of human rights violations.

Overview of the Annual Report by the Inspecting Judge

Judge Deon van Zyl noted that the 2008/9 annual report is the 10th annual report of the Inspectorate. The Inspectorate was established in 1998 and initially

headed by Judge John Trengove. The first two years were preparatory years, after which the Inspectorate gained considerable impetus under the second Inspecting Judge, Judge Hannes Fagan, who served from 2000 to 2005. He was succeeded briefly by Judges Nathan Erasmus and James Yekiso, who were seconded from the High Court as Acting Inspecting Judges for approximately one year each. Judge Van Zyl then took over as Acting Inspecting Judge from 1 May to 31 October 2008 before being appointed for a three year period commencing on 1 November 2008.

The Judge reflected on the reform of the prison system over the last few years. In terms of policy and nomenclature: 'prisons' have now been transformed into 'correctional centres' with the aim of correcting offending behaviour.

Judge Van Zyl provided an overview of his foreword to the annual report, explaining that he had used it to outline his understanding of the mandate and functioning of the Judicial Inspectorate. In this regard he spoke briefly on the relevant constitutional framework and the Correctional Services Act 111 of 1998, as recently amended, and referred to the development of the *White Paper on Corrections in South Africa* which sets the policy direction for the Department of Correctional Services (DCS).

The foreword also deals briefly with the different chapters of the Annual Report and highlights key areas. He indicated that all the Inspecting Judges to date have struggled with the central problem: how does one deal with the overcrowding of prisons?

The mandate of the Inspectorate is limited to inspection with a view to reporting on conditions in prison and the treatment of prisoners. Judge Van Zyl noted that the Inspecting Judge has no power to order the DCS to comply with any of the recommendations of the Inspectorate. He also remarked that there had been some discussion in the Inspectorate internally on whether the powers of the Inspectorate should be increased, but the understanding was that the Inspectorate should not take on the function of assisting in the running Correctional Services, but should rather restrict itself to oversight and making recommendations.

The amendments to the Correctional Services Act (in terms of Act 25 of 2008), which became effective on 1 October 2009,¹ resulted in several changes to the mandate of the Inspectorate, as outlined in chapter 5 of the report. In terms of the amendments, the Inspectorate must now also report to the Portfolio Committee on Correctional Services. This would strengthen its oversight function, as the Portfolio Committee has the power to compel any official of the DCS to appear before it and account for its acts and omissions. The Committee can, for instance, call on the Minister to explain whether or not the Inspectorate's recommendations have been considered. The amendment therefore holds great potential to improving the accountability of the DCS.

The Inspectorate has also looked closely at its relationship with other stakeholders and role-players. The Judge reported that one of the most satisfying aspects of his job was communicating with the variety of role-players who are passionate about working in the correctional sector and are dedicated to what they do. The Inspectorate has experienced strong support from them in what it aims to achieve. This support emanates from various civil society organisations as well as other government departments, such as the South African Police Service and the Department of Justice and Constitutional Development.

Among the issues which the Inspectorate has discussed with other departments is the poor understanding of section 36 of the Constitution.² This section allows for the limitation of a person's right(s), such as the right to liberty. In the case of prisoners, a right which may not be unjustifiably denied. Judge van Zyl noted that in many cases where people are detained, there is little or no *prima facie* evidence to support a conviction, but magistrates often deny bail, or they allow a further postponement even when there is no indication that the police are making progress in their investigation. As a result, too many people are being detained unnecessarily or without proper justification. He emphasised that if the limitation provisions contained in section 36 were properly understood and applied, the awaiting trial population would be drastically reduced.

Judge Van Zyl remarked that it is his observation that there are many awaiting trial detainees who would be happy to plead guilty to a crime or to plea bargain in terms of section 105A of the Criminal Procedure Act. This section is frequently used only in exceptional and unusual cases, such as when wealthy or famous individuals are prosecuted.³

The Judge indicated that it was his aim to encourage a drastic reduction of the awaiting trial detainee population. He pointed out, however, that this problem was not unique to South Africa, but also occurred in many countries constituting the developed and developing world.

Discussions

Appointment of a CEO

The amendments to the Correctional Services Act require the appointment of a Chief Executive Officer (CEO) to head the Judicial Inspectorate. A participant asked when this was likely to happen.

The Judge indicated that this issue is dealt with in the Annual Report, but expressed his concern that there had been inadequate preparation for this appointment although the Inspectorate had raised the issue with the

National Commissioner of Correctional Services when the Correctional Services Amendment Act was passed in 2008. It is not yet clear what salary band the CEO will be placed in and what the functions of the CEO will be. He noted that the Department of Public Service and Administration (DPSA) needs to become involved in the appointment process. The DPSA must assess and evaluate the post, the post needs to be advertised, and a specified process of appointment must be followed. Until the person is appointed, the Inspectorate will continue with its current structure.

Non-custodial sentencing and diversion

A participant expressed concern that the Inspectorate has not sufficiently addressed other means of reducing the prison population, such as through non-custodial sentencing and diversion.

Judge Van Zyl agreed that these two options are important and reported that this was briefly referred to in the Annual Report. He also indicated that it would be important to meet with the Chief Justice and Regional Court Presidents and Chief Magistrates to create more awareness around non-custodial sentencing, and also to focus on the training of judicial officers.

Law Reform

One participant felt that there is a need to look at comprehensive criminal justice law reform. It was remarked that, for example, there are several aspects of the Criminal Procedure Act that are difficult to apply, such as section 63A⁴ which provides for an application to release a person who has been granted bail but who cannot afford to pay it. It was explained that the procedure is cumbersome and the Head of Correctional Centre is required to state that a person is detained under inhumane conditions and should be released. Because of this requirement, few Heads of Correctional Centres are likely to argue this in respect of their own correctional centres.

Judge Van Zyl referred to an initiative of the Western Cape High Court which held a criminal procedure

workshop to look at ways to use the Criminal Procedure Act more effectively.

The Judge was asked to reflect on how the Judicial Inspectorate had over the years contributed to penal reform. He responded by noting the Inspectorate's interaction with the previous Deputy Minister of Justice, Mr. J De Lange, and his interactions with the Minister of Police, particularly around the denial of liberty. The Inspectorate also had some interactions with the Criminal Justice Review Process, but the Judge admitted that he was unsure as to what has happened with the review process.

A participant also noted that a confusing article recently appeared regarding proposed amendments to the bail legislation, alleging that an accused person will not be permitted to apply for bail twice. The Judge replied that he was not aware of such a proposal, but if this was the case, it would not be in line with the Constitution as a person can apply for bail as many times as he or she wants to.⁵

Accounting to Parliament

A participant reflected on the weak response by civil society in holding the Minister and Department of Correctional Services to account. It was noted that at the recent public hearings on the DCS Annual Report there were only six organisations from civil society who made submissions. It was emphasised that it is incumbent on civil society to inform Parliament on what is expected of government and also of the Inspectorate.

Critical comment on the Department of Correctional Services

A question was asked about whether the Inspectorate has ever had occasion to level serious criticism against the DCS, and what their response to this had been.

The Judge stated that the 2008/9 Annual Report had focused more on procedural and legal issues as it is intended to promote and have these issues taken up within the Ministry and the Department. In future, the

Inspectorate aims to concentrate on audits of prisons focusing on attention being paid to rehabilitation (as the core business of the DCS), HIV/Aids, and deaths in custody. The Inspectorate does compile and submit regular reports to the Minister and that these will in future be structured into regular monthly reports containing all the issues dealt with during the month.

However, if something urgent arises, the Inspectorate must maintain its ability to respond immediately. The Judge gave a recent example from Pollsmoor prison where the authorities moved all the children into another section where they were exposed to the juvenile (18 – 21 years) population. In this case, there appeared to have been no consideration of the requirement that a child's best interests are paramount in all decisions concerning that child (section 28 of the Constitution).⁶ As a result of the Inspectorate's intervention, the prison responded by saying that the children would be moved to alternative accommodation where they would enjoy the same treatment that they had received in the previous section. The Inspectorate subsequently received a report that the children were moved to a different section where they would have access to the same services and not be exposed to the older prisoners.

The state of our correctional centres

Mr. Morris, Director of the Judicial Inspectorate for Correctional Services, prefaced his presentation by explaining that the success of the Inspectorate depends on it being able to direct its services where they are most needed, as it has limited resources.

He referred to the list of most overcrowded facilities (p. 17). The Inspectorate would like to see more crisis management around this, but reported that they are not seeing much being done at ground level. The DCS appears not to be responding to the issue and additional resources are not being allocated to these severely overcrowded prisons. It appears as though

overcrowding has become accepted as part of the day-to-day experience.

The Inspectorate tried to grapple, in its report, with how capacity and accommodation levels are calculated and suggested alternative methods, as explained in the Annual Report. Private prisons calculate capacity by counting the number of beds, rather than square metre floor space per prisoner. At Goodwood and Malmesbury they have increased capacity by having more beds.

In terms of the capacity levels, Mr. Morris reflected that overcrowding is not a new phenomenon. Since 1997, there was a rapid increase much higher than the historical norm. The highest prison numbers were in 2002 when levels rose to 195 000. Since then, there has been a change in the levels of unsentenced prisoners, although there is a seasonal effect on this.

The Inspectorate had a pilot project in relation to section 63A of the Criminal Procedure Act and requested the Independent Visitors (IVs) to compile a monthly list of prisoners who had been granted unaffordable bail. This was taken to the relevant prosecutors and as a result of this and other initiatives taken by role-players, the number of awaiting trial prisoners who are in custody as a result of being unable to pay their bail was reduced from 21 000 to about 8 500.

However, he stated that overcrowding is now not driven by unsentenced prisoners, but by those who have been sentenced to long terms of imprisonment. There are two indicators of this: the number of prisoners serving life sentences has increased dramatically from approximately 400 in 1995 to 9 200 by 2009. The other indicator is that the majority of sentenced prisoners are now serving sentences of longer than five years.

Mr. Morris noted that the longer a prisoner's sentence, the more difficult it becomes for successful reintegration. The Inspectorate has recommended that the DCS should develop a forecasting model for

predicting incarceration levels, taking into account a whole range of variables (such as the impact of additional police, changes in the bail legislation, etc.). Such a model would help the DCS to do proper planning. It would also allow the DCS to make decisions about when and where to build new prisons. These should be built in places where there are the highest levels of occupation and overcrowding, rather than in the places where fewer prisoners are being held. Currently, however, most of the new prisons have been designated at localities where there is little need for additional accommodation.

Judge Van Zyl added that the minimum sentencing legislation was anathema to the notion of judicial discretion. After the legislation was amended to allow magistrates to impose minimum sentences after conviction, there has been a sharp increase in the number of minimum sentences handed down and the length of sentences. Although those sentenced to minimum sentences may appeal their sentences, this is not sufficient to regulate the growth in the number of such sentences being handed down. The Judge noted that because of delays in the appeal process, any impact on the sentenced population is unlikely to be observed.

Discussion

In relation to minimum sentences, a participant reminded the group of how civil society had argued against the extension and amendment of the legislation. A study by Prof Stephan Terblanche had made some practical and sensible recommendations regarding a sentencing framework that would be fairly easy to implement.⁷ Many of the organisations tried to bring to the attention of the Portfolio Committee on Justice the concern that increasing the jurisdiction of magistrates in sentencing would increase the number of people receiving minimum sentences and would contribute to congestion in the prisons.

Section 73A of the Correctional Services Amendment Act, although not in operation yet, provides that prisoners sentenced to life imprisonment may have

their sentences reconsidered. There would no longer be a requirement that a person must serve 25 years. The period which a person sentenced to life imprisonment must serve before being considered for parole would be determined by the National Council on Correctional Services in terms of the incarceration framework. The incarceration framework may provide for different sentences in relation to the same offence depending on the measure of good behaviour or cooperation of a prisoner.⁸

The Judicial Inspectorate was encouraged to urge the Department of Correctional Services to develop a forecasting model. There are several variables that impact on the growth in the prison population and this needs to be taken into account. For example, the number of admissions of sentenced prisoners has dropped by 50% from 2003 to 2008, yet the prison population continues to rise as a result of the long sentences. As a result of government's increasing expenditure on the criminal justice system, an increase in the prison population can be expected. When the DCS and the Inspectorate were closely monitoring the unsentenced population they were able to make an impact by reducing the number of unsentenced prisoners. This form of active monitoring should continue.

Judge Van Zyl stated that to his knowledge a forecasting model has not been developed within the DCS. Instead, the emphasis seems to be put on building new prisons though there are not sufficient funds for this. He emphasised that building new prisons is not the answer to the problem. He thought that it was possible that government was considering doing away with minimum sentencing, in which case, they might think that forecasting is not so important.

It was also suggested that forecasting has not been developed because it requires a specific kind of expertise. Mr. Morris responded that there are different levels of forecasting, and some very simple kinds can be done with easily available software programmes. For example, one can easily calculate

that if one continues to do things in the same way over a period of time, the result will be the same. The DCS should start with basic forecasting. While this may be possible, the DCS may need particular expertise to analyse the data correctly.

A participant remarked that the DCS is very inward focused, and seems to be more concerned with how it is being run, rather than on its outcomes. It was noted that more than 50% of Department's targets resort under the programme Administration.

Another trend observed is that the DCS has increasingly adopted an approach of sub-contracting out its risks; e.g. food provisioning, security and, increasingly, accommodation. As a result, the DCS is not developing internal capacity to carry out these functions. This is in conflict with section 3(2)(b) of the Correctional Services Act which obligates the DCS to work towards self-sufficiency.

A question was asked about how the Inspectorate calculated the construction cost of each bed space. Mr Morris responded that this was calculated according to the latest tender amounts for the construction of a whole correctional centre, and divided up by the number of beds. There is also concern that more prisons are being built, while technical workshops and other facilities which might contribute to the rehabilitation of inmates are being neglected. The gap between what is spent on infrastructure and service delivery needs to be critically examined.

An issue was raised about the implementation of plea bargaining. Section 57A of the Criminal Procedure Act allows for an accused person to plead guilty and pay a fine of up to R5 000 for certain minor offences.⁹ The participant noted that this appears to have been incorrectly interpreted in the courts to mean that the accused person must be fined R5 000, and that no lesser fine could be imposed, with the result that this section is not often being applied to more indigent offenders. The participant argued that if magistrates and prosecutors were made properly aware of this

section, it could have an impact on the number of awaiting trial prisoners.

A participant noted that many children are being kept in correctional centres awaiting trial. Knowing that it would be some time before they are brought back to court, the participant was distressed to note that the children would likely remain incarcerated until the New Year. The Judge responded that this should be raised at the next stakeholder meeting on case flow management, and people should be encouraged to look at ways of expediting their cases, including using section 57A of the Criminal Procedure Act.

Prevention of Human Rights Violations

Continuing with his discussion of the Annual Report, Mr. Morris explained how the report had tried to differentiate between systemic problems (those common to several prisons) and incident-related or centre-specific problems. In its report, the Inspectorate analysed the Correctional Services Act and identified how the DCS should go about implementing the Act's objectives.

The legislation provides that the Heads of Correctional Centres must report certain incidents to the Inspectorate. This furnishes the Inspectorate with a substantial body of information which can be analysed and systemic issues be identified. For example, unnatural deaths are subject to inquests, but natural deaths do not require inquests. The Inspectorate is increasingly concerned about this classification. Even if someone dies ostensibly of so-called natural causes, there may be other factors leading to the death, such as the kind of medication that was available or not, and the treatment, etc. The current classification of deaths is over-simplified. The statistics show that the majority of deaths occur within the first 36 months of imprisonment. This is an indication that chronic medication is often not available and proper medical assessments are not being done of newly admitted

prisoners. The Inspectorate recommends that all deaths should be subject to an inquest in the same way that it is required that all deaths in police custody are subject to an inquest.

Another issue is the extremely low number of people released on medical parole. The number of people who died in prison, who had previously been considered for parole, is also very small. Mr Morris reflected that the medical parole system is completely deficient and needs to be reviewed.

The trend analysis of deaths in correctional centres revealed a relationship between the population of the centre and the number of deaths. When the population increases, so do the number of deaths rise. This impact becomes most acute when occupancy levels exceed 175%.

The Annual Report also deals with reported cases of solitary confinement and segregation. It would appear from the number of reported cases of segregation that the disciplinary system is not being applied effectively and fairly. Instead, correctional officials seem to be using an informal system where people are put in a single cell for a few days, or they are transferred. This appears to be a way of avoiding a disciplinary hearing.

The Inspectorate proposes that all transfers of inmates should be subject to the right of appeal to the Inspecting Judge. It is also proposed that the Correctional Services Act be amended to provide for a mandatory report when a child is admitted to prison.

Discussion

Dealing with individual complaints

The Inspectorate was commended on the amount of information and analysis that was included in the Annual Report. A question was asked about the extent to which the Department has responded to the issues raised by the Inspectorate in this, and previous, annual reports, as well as other *ad hoc* reports submitted to the Minister and DCS. Mr. Morris responded that this

annual report deals primarily with systemic issues. On incident-related cases, the Inspectorate looks into the merits of the case and makes recommendations to the DCS. During 2006/2007 the Legal Services Unit of the Inspectorate was done away with, and to some extent this curtailed its ability to investigate individual complaints and to analyse reports and follow up on recommendations. This unit has now been reinstated and people with LLB degrees have been employed. It is important to have legally trained people who can understand the legislative requirements. This will assist the Inspectorate to better analyse reports and follow up on the recommendations.

The Inspectorate is now asking Independent Visitors (IVs) to verify facts. They visit correctional centres and speak to inmates who have made a complaint. When they speak to inmates they often get a different version of events. Following this they compile status reports. In future, this information will be incorporated into the monthly reports the Inspectorate will compile. If issues are not dealt with, this can be reported to the Portfolio Committee which can take it up with the Minister or the DCS.

Sexual violence in prisons

Participants raised a concern that, unlike in previous reports, this report had not dealt with the issue of sexual violence amongst inmates. The Inspectorate had played an important role in putting this issue on the prison reform agenda in South Africa, and it had raised awareness among IVs as well. The Sexual Offences Act has implications for how sexual violence is understood and responded to. Judge Van Zyl responded that sexual violence is still an issue which is not spoken about openly in prisons and very few reports are made to the IVs. There is also the fear among inmates that they will suffer repercussions if they report sexual violence. There is further a concern that the DCS doesn't have adequate response measures to sexual violence.

It was remarked by a participant that research from the United States found that between 9% and 14% of

inmates were raped an average of nine times. Against this background it was noted that there is a lot that the Inspectorate could do to promote the prevention of sexual violence, rather than focusing only on gathering information on its prevalence. For example, vulnerable inmates could be separated from others. Another participant added that the IVs could do a lot to help create an open environment where inmates are more willing to report sexual violence or to seek help.

The importance of programmes to address sexual violence, and programmes for rape victims was discussed. Nicro reported that it receives many reports from prisoners who are being threatened or intimidated by gangs and feel too vulnerable to report this to the prison authorities. Because complaints are not responded to immediately they feel that their lives are in danger. The existing complaints mechanism is not sufficient to protect inmates.

Mr. Morris responded that the Inspectorate should adopt this as one of their core areas of concern. One possible response would be to expand their categories of complaints so as to include a specific reference to sexual or gang violence or intimidation. However, the point was raised that it is important to adopt a holistic response, such as that put forward by *Just Detention International*.¹⁰ It was noted that the discussion with DCS on sexual violence needs to continue.

A participant cautioned against raising awareness among inmates of sexual violence and creating an expectation that something could be done about it, in the absence of a real ability on the part of correctional officials to respond adequately and protect inmates. Correctional officials are the first line of protection, rather than the IVs or external personnel.

Judge Van Zyl concurred and added that the role of oversight bodies and civil society was to raise the issue with the DCS and to create awareness, but that they could not step in and actually run the prisons.

Health issues and professional staff

The Inspectorate was asked whether they have statistics on the numbers of health professionals employed in correctional centres, and on their declining numbers. There was a concern expressed that the DCS often reports inaccurately on the actual number of health staff employed. Mr. Morris responded that the numbers of staff are reflected in the DCS annual report. He added that even when the numbers of medical staff remained the same, the one factor which was related to an increase in the number of deaths was the level of overcrowding. In his view, the numbers of professional and custodial staff are not what make the difference in prisons. At the moment, the staff-to-inmate ratio is the best it has ever been, at 1 to 3.6. However, this doesn't take into account the high rate of absenteeism among staff, resulting in the actual ratios being far less favourable. The most important determinant of improved safety is how officials are managed. At some point one has to consider that increasing the number of staff does not necessarily result in a good return on the investment.

It was pointed out that DCS has a better ratio of social workers to prisoners than the two private correctional centres. But, in contrast to the DCS centres, inmates in the private facilities are kept occupied all day with programmes, education, training and work. The issue is essentially about the daily centre programme and how officials are managed to implement this. However, a participant pointed out that the number of professional staff has declined. Mr. Morris responded that although some of the ratios seemed to be small, a ratio of one pharmacist to 200 inmates may in fact be better than what exists outside of prison. Again, he stressed that it is not a matter of the number of resources, but rather the manner in which they are managed.

Human rights violations

It was suggested that the Inspectorate should play a greater role in the *prevention* of human rights violations. One way to do this would be to make information available to the Heads of Correctional Centres on what constitutes good practice. An example

of this is the guidance notes issued by the International Centre for Prison Studies at King's College in London¹¹ which would then deal with specific issues such as health care, children in prison, etc. It would be important to assist correctional centre management to understand what good practice is, and what the standard should be in relation to health care, for example, what an inmate could expect. The Inspectorate could also look at issuing General Comments, similar to that of the UN treaty monitoring bodies, on particular legal issues. General Comments would provide it with an opportunity to express what it would like to see as acceptable practice in correctional centres.

General concern was expressed by the participants that a human rights culture is lacking in the DCS and, consequently, that rehabilitation efforts suffer.

Mr. Morris responded that vast amounts of money have been spent on staff development with very little impact. Regrettably, staff training can become a bottomless pit consuming all available resources. There is a continued lack of alignment between the DCS's core mandate, namely the philosophy of rehabilitation, and the budget.

Mr. Morris reported that although the DCS annual budget has increased, in the context of the economic recession there will be a real decrease in funds. This will result in a shortfall over the next two to three years and it is most likely, given past experience, that budget cuts will occur in respect of Care and Development, rather than in terms of staff salaries. Ultimately, the inmates will suffer the cuts in the budget. Neither the DCS annual report nor their strategic plans makes mention of self-sufficiency or how the DCS intends to address the shortfalls, or how the Department will be run according to business principles, as required by the Correctional Services Act.

A participant added that in a climate of insecurity, people are more likely to support additional funds being spent on security. She added that an argument

should be made in the submissions to Parliament by civil society organisations and the Inspectorate that it is still possible to promote the safety of the public by spending money on development and care of offenders, rather than spending only on security. She called for a stronger civil society response, and said that the Open Society Foundation had developed a handbook for how civil society organisations could engage with departmental budgets, and this should be utilised for guidance.¹²

Participants reflected that these issues have been stated before, by both civil society and by the Inspectorate. The question was asked, 'How can we say these things louder? What must civil society do?'

Judge Van Zyl responded that Ministers Manuel and Gordhan should be approached and be made aware of these issues. They should also be made aware of how the money is being spent and of the successive qualified audits. Although the DCS has received qualified audits year after year, little seems to have been done to improve the situation. Participants felt that better qualified people need to be appointed in the DCS, especially persons with sound management understanding and experience.

One participant asked whether it wasn't time for the Inspectorate to become more strident in the expression of its concerns, and that the time for tact and diplomacy had passed. Perhaps the Inspectorate should expose the DCS when it fails to respond to issues raised and recommendations made by the Inspectorate. Judge Van Zyl responded that this is a tricky issue and that the Inspectorate's experience is that one should work with the Department to get the right message across and influence its actions, rather than take an adversarial approach.

Mr. Morris explained that the problem lies not in making the recommendations, but in enforcing them. For this additional capacity will be required. This difficulty lies with all Chapter 9 institutions. There is talk of establishing a specific parliamentary committee

to deal with the Chapter 9 institutions and this might create greater potential for recommendations emanating from these bodies to be taken more seriously.

Participants were concerned about the costs involved in the public private partnership model (PPP), and that the new correctional centres were to be built according to this model. The tenders for these have been advertised and it would seem that some bids have been submitted. However, a recent report from the DCS indicated that this process might have been suspended. Mr. Morris indicated that the Inspectorate is not clear on what is happening with this process, and whether the PPP prisons are to go ahead. He was concerned that delays would result in additional costs to the tax payer, as every time a bidder submitted a bid, the costs incurred to them in the delays would be added to the bid costs. He said it was unfortunate that the two existing PPP prisons represent pockets of excellence, but that the government is not drawing lessons from them and applying it to its own correctional centres. There is also a lot that could be learnt from international developments around the design and running of correctional centres that has not been drawn upon, resulting in additional costs for South Africa.

Closure

Lukas Muntingh closed the workshop by thanking Judge van Zyl and Mr. Morris for presenting the Inspectorate's annual report and to all participants for attending and contributing to a stimulating discussion. In summing up, he said there were two central issues which emerged from the discussion:

- There are several challenges in correctional centres that need to be crystallised from a human rights perspective and that human rights concerns should be central to the management of such centres.
- The Inspectorate should strengthen its system of problem identification, recommendations to resolve the problems, and on following up on the implementation of these recommendations.

Finally, Mr. Muntingh ended the roundtable discussion by quoting Foucault: *'We are aware of all the inconveniences of prison, and that it is dangerous when it is not useless. And yet one cannot "see" how to replace it. It is a detestable solution, which one seems unable to do without.'*

Participants

Mr Lukas Muntingh – Civil Society Prison Reform Initiative

Mr. Gideon Morris – Judicial Inspectorate for Correctional Services

Judge Deon van Zyl – Inspecting Judge

Ms Berber Hettinga – Intern, Civil Society Prison Reform Initiative

Mr. Solomon Madikane – Realistic

Mr. William Kerfoot – Legal Resources Centre

Ms Sasha Gear – Centre for the Study of Violence and Reconciliation

Ms Venessa Padayachee – NICRO

Mr. Michael Desai – Open Democracy Advice Centre

Ms Chesne Albertus - Open Society Foundation South Africa

Ms Louise Ehlers – Open Society Foundation South Africa

Ms Fadlah Adams – South African Human Rights Commission

Ms Anthea van den Bergh - South African Human Rights Commission

Ms Carien du Plessis – Independent Newspapers

Dr Jamil Mujuzi – Open Society Foundation South Africa

Mr. Michael Stulweni – Realistic

Ms Amanda Dissel – Independent Consultant

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Civil Society Prison Reform Initiative (CSPRI)

Community Law Centre

University of the Western Cape

Private Bag X17

7535

SOUTH AFRICA

Tel: 27-21-959 2950

<http://www.communitylawcentre.org.za/Civil-Society-Prison-Reform>

The aim of CSPRI is to improve the human rights of prisoners through research-based lobbying and advocacy, and collaborative efforts with civil society structures. The key areas that CSPRI examines are: developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research, raising awareness of decision makers and the public, disseminating information, and capacity building.

Endnotes

¹ All but sections 21 (s 27 of the principal Act, dealing with searches of inmates), section 48 (section 73 of the principal Act, dealing with computation on sentences), and section 49 (section 73A, dealing with the establishment of an incarceration framework), were brought into effect.

² Section 36 provides that any right in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including: the nature of the right, the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose. Except for this provision, no law may limit any right entrenched in the Bill of Rights.

³ Section 105A of the Criminal Procedure Act deals with plea and sentence agreements where an accused is legally represented.

⁴ Section 63A of the Criminal Procedure Act provides for the release or amendment of bail conditions on account of

prison conditions. If a head of prison is satisfied that the prison population of a particular prison is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused charged with a minor offences, and who has been granted bail but is unable to pay the amount, he may apply to court for the accused to be released on warning, or for the amount of bail to be reduced.

⁵ A media article released following the seminar reported that Acting Director General Simon Jiyane, in his presentation to the Justice Portfolio Committee, indicated that the Justice Ministry was considering introducing law amendments that would deny repeat offenders bail. *Independent Online Media*, 'Plan to deny bail for repeat offenders', 18 November 2009. Available online at:

http://www.iol.co.za/index.php?set_id=1&click_id=15&art_id=nw20091118122352443C629384

⁶ Section 28 of the Constitution provides that a child has the right not to be detained except as a measure of last resort, and in addition to the rights contained in section 12 (dealing with freedom and security of persons) and section 35 (dealing with the rights of arrested, detained and imprisoned people), the child must be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years, and to be treated in a manner and kept in conditions that take into account the child's age. Section 28(2) provides that a child's best interests are of paramount importance in every matter concerning a child.

⁷ See Stephan Terblanche. (2008). *Research on the Sentencing Framework Bill*. Cape Town: Open Society Foundation.

⁸ Section 73A was introduced by the Correctional Services Amendment Act 25 of 2008, and provides for the establishment of an incarceration framework. The National Council, in consultation with the National Commissioner, must determine minimum periods for which all sentenced offenders must be incarcerated before being eligible for parole consideration. This section is one of the three that has not yet been brought into effect.

⁹ Section 57A provides for the admission of guilt and payment of a fine after an appearance in court where the public prosecutor reasonably believes that on conviction an accused will not be sentenced to a fine in excess of the amount determined by the Minister from time to time. Currently this amount has been determined at R5,000.

¹⁰ Just Detention International is a US based organisation that seeks to end all sexual abuse in detention, and has conducted several awareness raising workshops in South Africa. They have several resources and a model on how to prevent and respond to sexual violence. More information can be found on their website on: <http://www.spr.org/>.

¹¹ For more information about this organisation, see their website on <http://www.kcl.ac.uk/schools/law/research/icps>

¹² See Liese Jossel. (2009). *Tracking the Justice Budget: A Handbook for Interacting with Departmental Budgets and Spending*. Cape Town: Open Society Foundation. Available on: <http://www.osf.org.za/home/> .