

Submission by the Civil Society Prison Reform Initiative to the Parliamentary Portfolio Committee on Correctional Services in respect of the Correctional Services Budget Vote (Vote 19)

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Introduction

This submission will not deal with every aspect of the budget vote and CSPRI has selected a number of issues that it will focus on. It is also opportune at this stage to commend the Department of Correctional Services (DCS) for a number of significant achievements:

- Last year CSPRI brought to the attention of this Committee the number of unnatural deaths in prisons. This figure has decreased dramatically since then in nominal terms but also when calculated per 1000 prisoners in custody.
- Similarly, the Department has continued to reduce the number of escapes from custody, and thus contributing to public safety.
- The Department is also commended for its offender management information systems. The accuracy and comprehensiveness of the numerical data collected by the Department is singular in the criminal justice sector. It is our understanding that the current system is being improved to provide the information in real time; another improvement that we commend the Department for.

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- The continued facilities renovation and upgrading programme has continued without much media attention. We support this initiative and believe that this is a cost-effective approach to improving prisoner accommodation in the short to medium term.

We acknowledge the difficult circumstances that the Department are operating under and these achievements are therefore significant.

The remainder of this submission will focus on issues that we regard as critical and is based on the available information, namely the *Budget Vote (Vote 19)*, recent submissions by the Department to this Committee and the *Strategic Plan for 2007/8-2011/12* (the Strategic Plan). It is not our intention to be critical for the sake of being critical, this would be counter-productive. It is CSPRI's vision to see a prison system that treats every prisoner with dignity and respect, where prisoners have access to quality services, and the public has the confidence that offenders will at least not be adversely affected as a result of imprisonment. We believe that this is in line with the objectives of the Correctional Services Act.

Strategic plan

The Budget Vote and the Strategic Plan of the Department should be read together as the former is presumably a product of the latter. There are a number of concerns that CSPRI has regarding the *Strategic Plan for 2007/8-2011/12*. The first is that there appears to be a continuous adjustment of objectives and activities from one year to the next which makes monitoring and ultimately performance assessment difficult. The plan released in 2005 differs in significant ways from the one we have before us now. Adjusting strategic plans is a required management function, but such adjustments should not merely be an adjustment

to targets to meet the realities of the situation but rather adjustments to improve outputs to reach the targets set.

It is also noted that the Strategic Plan contains a number of targets (or indicators as they are referred to) that are non-numerical and open ended. For example, see *Strategy Implementation Plan F 1.5: "Monitor and evaluate the number of probationers placed under community corrections"*. This particular phrasing is neither an indicator nor a target and it is therefore impossible to track performance. Similarly, some indicators require merely an increase or decrease in something and not quantifying the exact target. See for example, *Strategy Implementation Plan A 2.3.1 "Increase in finalized disciplinary hearings"*. Technically, if something increases by 1% or 100%, it would carry equal weight. Such an approach to target setting cannot facilitate monitoring and transparency. It appears to be a common problem in the Strategic Plan that indicators, activities and targets are intermingled under the "Indicators" column heading, although these should technically be targets. It would assist greatly if there is consistency in the methodology followed.

There are a number of objectives reflecting the development of a policy or similar document as the target. Whilst these are necessary, policies and procedures ultimately need to result in more tangible changes in performance. See for example *Strategy Implementation Plan D 1.2.1*. This situation may be symptomatic of a Strategic Plan written by the Head Office defining its output and not necessarily what the entire Department must achieve.

Real and nominal value

In order to facilitate comparison and adjust for the effect of inflation, a distinction is made in this submission between real and nominal value. Real value refers to

values adjusted for inflation, and in this submission uses 2007 as the baseline year.² It therefore adjusts future and past values to be expressed in terms of “what money is worth in 2007”. Nominal value does not include an inflation adjustment, and are the budgetary figures as released by Treasury in the ENE.

Table 1 present the Departmental budget as presented in the ENE as per the seven programmes of the Department.³ In nominal terms the budget will increase from the 2007/8 level of R9.2 billion to R12.2 billion by 2009/10. The table also shows that significant downward changes have been made to the 2006 Budget estimates, of more than R1 billion per year from 2006/7 to 2008/9.

Table 1

<i>R thousands</i>	2003/04	2004/05	2005/06	2006/2007 ⁴	2007/08	2008/09	2009/10
1. Administration	2,309,227	2,837,099	2,545,673	2,423,946	2,771,323	2,983,001	3,313,878
2. Security	2,659,801	2,706,205	3,051,627	2,962,928	3,244,797	3,371,028	3,454,145
3. Corrections	437,253	481,083	613,560	766,914	1,236,791	1,333,824	1,430,447
4. Care	751,708	725,899	1,028,059	1,180,755	1,339,290	1,426,677	1,515,538
5. Development	269,022	266,008	478,337	394,343	403,917	463,479	490,780
6. Social Reintegration	291,174	288,079	301,335	323,894	336,118	334,446	359,422
7. Facilities	1,131,529	1,524,419	1,612,625	1,171,732	1,410,095	1,453,343	1,703,555
Total	7,849,714	8,828,792	9,631,216	9,224,512	10,742,331	11,365,798	12,267,765
Change to 2006 Budget estimate				-1,406,200	-1,025,158	-1,085,388	
Deflators	0.835376	0.86962644	0.908759625	0.953288847	1	1.047	1.094115

In the description that follows, real value is reflected as opposed to nominal value. The budget deflators, based on the CPIX, are given in Table 1. The ENE for

² Budget deflators from the Idasa Budget Information Service were used to calculate real growth estimates using 2007 as baseline.

³ See *CSPRI Newsletter No. 16* for a description on the seven programmes as well as more background information on the budgeting process.

⁴ The figures for 2006/7 are the revised estimate.

DCS expressed in real terms is presented in Table 2 below using 2007/8 as the baseline year.

Table 2

<i>Rand Thousands</i>	2003/04	2004/05	2005/06	2006/2007	2007/08	2008/09	2009/10
Administration	2,764,296	3,262,434	2,801,261	2,542,719	2,771,323	2,849,094	3,028,821
Security	3,183,957	3,111,917	3,358,013	3,108,111	3,244,797	3,219,702	3,157,022
Corrections	523,421	553,207	675,162	804,493	1,236,791	1,273,948	1,307,401
Care	899,844	834,725	1,131,277	1,238,612	1,339,290	1,362,633	1,385,172
Development	322,037	305,888	526,363	413,666	403,917	442,673	448,563
Social Reintegration	348,554	331,268	331,589	339,765	336,118	319,433	328,505
Facilities	1,354,515	1,752,958	1,774,534	1,229,147	1,410,095	1,388,102	1,557,016
Total	9,396,624	10,152,396	10,598,200	9,676,513	10,742,331	10,855,585	11,212,501

Chart 1

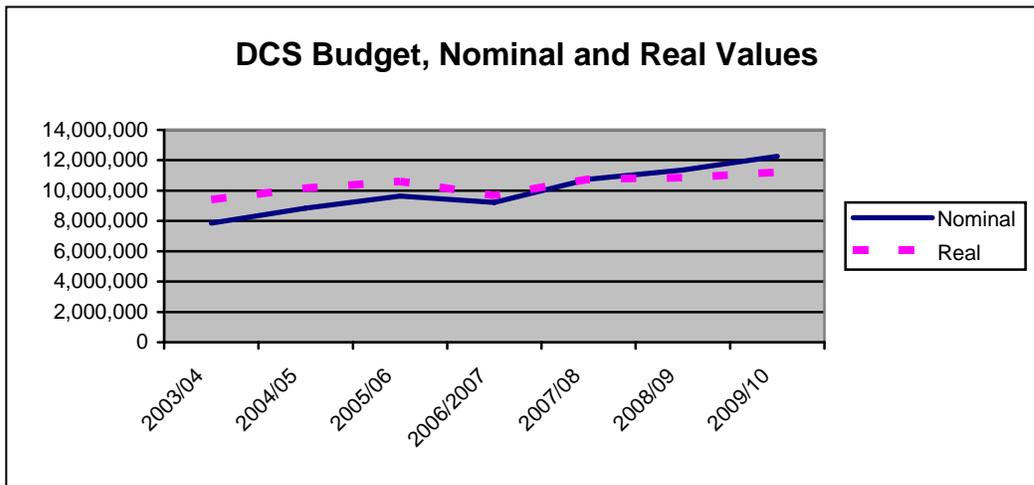
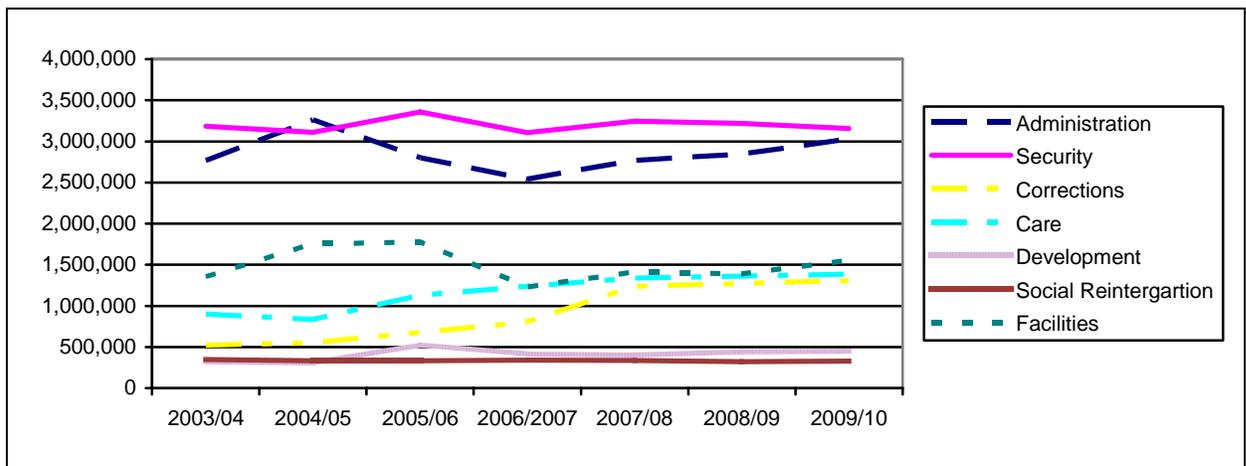


Chart 1 presents the trends in the real and nominal values of the total DCS budget over the period 2003/4 to 2009/10. Using 2007/8 as the baseline year, it is clear that the DCS budget is shrinking in real terms and that this downward trend is not insignificant. In nominal terms the increase look more significant but

in real terms the 2009/10 budget is estimated to be only R470 million more than the 2007/8 budget, or an increase of 4.4%.

Assessed per programme, the increases for some programmes are even less and indicate stagnation, if not a real reduction. Chart 2 shows the real values for each of the programme budgets.

Chart 2



The *Administration* and *Corrections Programmes* show significant real increases. The increase in the *Administration Programme* is attributed to the increases in bulk stores⁵, IT, human resources development, procurement of vehicles and accommodation. The increase in the *Corrections Programme* budget is attributed to the risk profiling of prisoners and the transfer of managerial personnel formerly placed under the *Security Programme* budget to the *Corrections Programme* budget. The *Care Programme* budget showed a steady increase until 2006/7 and thereafter levelled out. The *Security Programme* budget shows a real decline from 2007/8 onwards.

Seen against the backdrop of the White Paper and its mantra to place rehabilitation at the core of the Department's business, the miniscule increase in

⁵ Bulk stores include food, medication, and personal items for prisoners.

the *Development Programme* budget and negative growth in the *Social Reintegration Programme* budget, are perplexing. It should also be borne in mind that the budget allocation for Community Corrections (i.e. correctional supervision and parole) is located in the *Social Reintegration Programme*. The expansion and improvement of correctional supervision are thus not visibly reflected in the budget vote.

Size of the prison population

The size of the prison population is defined as one of the four main costs drivers of the Department's budget. The size of the prison population and the lack of adequate prison space has been a persistent problem since the mid-1990s. It was especially the previous Inspecting Judge who brought attention to the overcrowding problem, not only for the humanitarian impact on prisoners detained under these conditions but also the effect that overcrowding has on virtually all aspects of the Department's operations.

The overall trend that emerged over the past 12 years is that from 1995 to 2000 the unsentenced population was the main driver of the total prison population, but from 2000 to date, the main driver is the sentenced population. From 2000 onwards the unsentenced population stabilised and decreased to its current levels. The sentenced population increased significantly since 2000. This increase was due not to higher numbers of prisoners being admitted (in fact fewer prisoners were admitted) but to the increase in sentence lengths. The increase in sentence lengths can be attributed to three factors. Firstly, a more punitive attitude from sentencing officers from 1995 onwards resulted in longer sentences being imposed. Secondly, the increase in the jurisdiction of the magistrate and regional courts enabled magistrates to impose longer sentences. Thirdly, the promulgation of the so-called minimum sentences legislation compelled courts

to impose certain sentences for specified crimes. In tandem, these three factors pushed the sentenced population to unprecedented levels

Sentence legislation has remained the same and all indications are that it will remain the same for the next two to three years. Seen from this point, there is every reason to believe that trends apparent prior to the 2005 remissions programme will continue throughout the period covered by the ENE.

In its submission to this committee on 13 March 2007, the DCS presented its projections on the size of the prison population for the period 2007 to 2010. These estimates, predict that the total prison population will be 158 500 for 2007/8, 159 800 in 2008/9 and 161 100 in 2009/10.

Recent research, based on historical data supplied by the DCS, developed a projection of the future prison population and came to a substantially different conclusion, predicting that the prison population will be approximately 179 000 by 2010.⁶ The projection made by the DCS does not describe the assumptions upon which it is based on, nor how the actual projections are calculated. If the current legislative framework remains the same, the chances of this being accurate, are less than likely. It should furthermore be borne in mind that government has increased the allocations to the Dept of Safety and Security and Department of Justice significantly, and if the effectiveness of the criminal justice system improves as a result of this, it will have a further inflatory effect on the size of the prison population. There are therefore substantive reasons to question the projections used by the DCS in this budget vote. By January 2007 the prison

⁶ Giffard C and Muntingh L (2007) *The Impact of Sentencing on the size of the Prison Population*, Open Society Foundation, Cape Town, p. 43

population was already at 159 867⁷ or 1367 above the projection for the coming financial year

The issue of projections and statistical modelling of the projected prison population also did not escape the attention of the Jali Commission. The Commission, in a strongly worded recommendation, stated that the projections of the prison population is the responsibility of the Department and if it does not have the necessary skills to do this, such skills must be contracted in.⁸

To conclude this issue, what is required is a more reliable manner of predicting the size of the prison population that makes provision for the range of variables that affect this figure over the short and medium term.

Privatisation

In its submission on the budget vote last year CSPRI stated that a broader discussion on privatisation is required. We want to reiterate that position. The two privately operated prisons created a range of governance and financial problems for the DCS. The privatisation of a number of kitchens at the larger prisons was embarked upon without the apparent oversight of this Committee. A recent report revealed that there are problems with the privatised kitchens but a conclusive finding has not been made.⁹

On 9 March 2007 this Committee noted that the DCS now uses three private sector human resource recruitment agencies and CSPRI shares the concerns raised by this Committee in respect of this issue.

⁷ Figures supplied by the Office of the Inspecting Judge, 22 March 2007.

⁸ Jali Commission pp. 628-629

⁹ Die Burger 12/9/2006

In several submissions by the Department to this Committee regarding the construction of new prisons, reference was made to the so-called Public Finance Model, which would essentially entail the private sector being responsible for the financing, construction and maintenance of the planned new prisons. A detailed explanation of the costs and benefits of this model and in particular the nature of the private sector's involvement has not been given by the DCS.

It has also come to CSPRI's attention that the gardening service at Pollsmoor prison has been sub-contracted to a private company. Previously this service was performed by prisoners. It is unknown whether this is a general practice in the Department or if Pollsmoor is an isolated case. It is not clear why the gardening service was sub-contracted when there are more than enough prisoners sitting idle who would be able to perform this work at no cost to the tax payer. This situation is even more perplexing when it is known that the Department is well below reaching its targets for providing internal job opportunities to prisoners.

CSPRI is not categorically against privatisation, as it is acknowledged that in certain instances it may indeed be to the benefit of the tax payer and the Department to sub-contract certain services to the private sector. If the DCS does undertake the privatisation of certain functions this should be done on a consistent and principled basis, bring benefits to the tax payer, and contribute to the objectives of the Department. There is therefore a fundamental question about the motives for privatisation and the benefits that it brings to stakeholders. We are thus repeating our position of last year that a broader discussion on privatisation in the DCS is required.

Prison construction programme

The prison construction programme has now been on the agenda for several years with very limited results. The fact that this issue has been under discussion for so long not only raises questions about the manner it has been dealt with, but also more fundamentally about the need for new prisons. Bearing in mind that the prisons landscape has changed substantially since 2000 in respect of policy (i.e. the White Paper) and legislation (i.e. the full promulgation of the Correctional Services Act), the profile of the prison population and the services of the DCS. It may therefore be necessary to revisit the assumptions and motivations originally underlying the prison construction programme.

There remain many unanswered questions in the prison construction debacle, on both the principled issue of new prisons, as well as the manner in which this process was undertaken. There is also not certainty on whether the construction programme will indeed provide additional capacity or whether it will merely replace some of South Africa's crumbling and unsuitable prisons. If one is to accept the position that new prisons are indeed required, either as additional capacity or replacement, a principled decision needs to be taken on whether the proposed mega-structures housing 3000 prisoners is the best option, or whether smaller decentralised units that are closer to prisoners' community of origin would not be a better option and closer aligned to the objectives of the White Paper. Given the costs involved, it is essential that Parliament, through the Correctional Services Portfolio Committee and SCOPA, continue to monitor the prison construction programme closely.

Strategy Implementation Plan C 1.6.2 refers to remand detention facilities to be developed over the next four years. The Strategic Plan does not provide any further information in this regard. The Budget Vote is also silent on this issue

and it is therefore not clear if this initiative will have any cost implications, especially with reference to new infrastructure.

Low spending on the rehabilitation programmes

Table 1 reflects the significant cuts that have been made to the 2006 budget estimates; a total of some R3.5 billion over the period 2006/7 to 2008/9. The suspension of the prison construction programme (with the exception of Kimberley), savings as a result of the restructuring of the medical aid scheme, staff vacancies and the reduction in the number of prisoners are forwarded by the Department as the primary reasons for this. At the same time the DCS has embarked on an aggressive programme improving security hardware and employing more staff, compared to the relatively small and stagnant budget allocations in the *Care, Development and Social Reintegration Programmes*. One interpretation of this trend is that when these savings were incurred, it was a strategic decision to focus on security hardware rather than on the 'softer' programmes aimed at rehabilitation and reintegration. Spending on security hardware is inherently easier than spending on the rehabilitation of prisoners and assisting their post-release reintegration, as the installation of security hardware can be sub-contracted, involves large amounts of money, and is immediately visible.

Indicative of the difficulties in spending on rehabilitation and reintegration is the fact that the DCS planned in 2005/6 to have 23% of all offenders assessed in respect of their risk profile, a prerequisite for the development of a sentence plan that would assist in their rehabilitation. This target was not met and risk profiling will now begin in 2007/8 after the necessary tools have been approved.

Similarly the Department set itself a target of 30 000 inside work opportunities for sentenced prisoners in 2005/6 but only 3400 opportunities were provided.¹⁰

The DCS Annual Report of 2005/6 reflects that in that year 118 057 social work sessions were held,¹¹ but the target set in the Strategic Plan (see D1.3) is 96 660 to 113 000. Similarly for psychological sessions where the achievement in 2005/6 was 17 820 but the target for the planning period ranges from 15 500 to 16 800. It is not clear why the target is reduced below current achievements, especially in the light of the Department's intention to increase its capacity.

The challenge emerging from this is not one of lack of funds, but rather of how to spend on the rehabilitation and reintegration of prisoners. The *Corrections Programme* budget makes specific mention of the new programmes developed and planned in line with the White Paper but the amounts involved are small and comprise less than 3% of the programme budget. One is therefore left with the impression that allocations aimed at implementing rehabilitation and reintegration are not strongly articulated in the budget vote.

Community Corrections

In a recent Supreme Court of Appeals case¹², Judge Mthiyane expressed himself as follow regarding the use of correctional supervision [para 25]:

When correctional supervision was introduced, courts embraced it enthusiastically as a real sentencing option, something that will have a substantial effect on the prison population in this country. As time went on courts became more sceptical but I am now completely disillusioned.

¹⁰ National Treasury (2007) *Estimates of National Expenditure – Vote 19 Correctional Services*, pp. 375 – 392, <http://www.treasury.gov.za/> p. 383

¹¹ DCS (2006) *Annual Report 2005/6*, p. 32.

¹² *DPP (KZN) v P*, 363/2005 SCA

His disillusionment stemmed from the manner in which correctional supervision was administered in the case before the court. The Court found that it was done in an irregular manner to the point that it was nearly non-existent. The evidence presented to the SCA in this appeal case was extremely damaging to the image of non-custodial sentencing options in South Africa and the judge's disillusionment is shared by many sentencing officers of the lower courts.¹³

There is thus an urgent need to overhaul community corrections and ensure that correctional supervision is implemented correctly so that the judiciary may regain confidence in this sentencing option. It is therefore with some concern that we note that *Strategy Implementation Plan F1.3.2* states that the Department aims to trace only 36% of community corrections absconders in 2007/8, increasing to 42% by 2011/12. The implication is that between 64% and 48% of offenders who abscond will not be traced and that this is regarded as acceptable by the Department.

Strategy Implementation Plan F1.2 focuses on the Correctional Supervision and parole Boards and not on correctional supervision. The Strategic Plan does in fact not articulate how community corrections will be overhauled, apart from developing policy documents. Promoting community corrections with sentencing officers, as described in *Strategy Implementation Plan F1.5.1* appear disconnected from the rest of the plan if there is no real effort to increase the capacity of the Department to manage community corrections effectively and efficiently.

Strategy Implementation Plan F1.3.2 sets quotas for offenders to be released on parole, increasing from 35% in 2007/8 to 55% by 2011/12. Whilst planning for

¹³ In 2006 CSPRI was part of a consortium that provided training to more than 125 Magistrates across the country. It was clear that the majority of the training programme participants had lost confidence in correctional supervision.

case load is necessary, this approach to target formulation appears to depart from the principles of individualised punishment, risk assessment and community safety.

Conclusion

The Correctional Services Act defines the objectives of the Department: to implement the sentences imposed by the courts, to detain persons under humane conditions, and to promote the social reintegration of offenders. The Act does not place these three objectives in a hierarchical order and each carry equal weight. Prison systems do however have a natural (and unhealthy) inclination to give overriding priority to security concerns and interpret the first objective as the most important. It is therefore necessary to ask if the budget vote is seeking a balance between the three objectives and bring some parity, or if it is perpetuating the past biases.

The most noticeable feature of the current budget vote is the reduction in the budget compared to the projected allocations of 2005/6. The suspension of the prison construction programme and other savings incurred noted in the above are important reasons, but it is also indicative of a lack of capacity to spend. Spending appear to be driven by the increase in security hardware and the appointment of more staff and that the core programme outcomes required for the implementation of the White Paper remain obscure in the budget vote. The budget vote can therefore not be regarded as an attempt to give more attention to especially the third objective, namely to promote social integration.

It may also be argued that the objectives of the White Paper are of such a long term nature that it would be unfair to expect them visibly reflected in the current budget vote, even though the ENE covers a period four years after its release in

2005. The second objective described in the Act, ensuring the detention of prisoners under humane conditions, may therefore be a more tangible and realistic objective, but more importantly, it relates directly to the obligations set out in s 35 of the Constitution and described in more detail in the Correctional Services Act and Regulations. Given the extent of these requirements in domestic law as well as in international law, there should be little uncertainty as to what is needed. The appointment of more staff to enable the 7-day establishment, the provisioning of three meals, and the upgrading of numerous prisons (as described in the Facilities Programme) will make a significant impact on conditions of detention. Despite these initiatives, it appears that South African prisoners remain deeply unsatisfied with their conditions of detention if the more than 429 700 complaints recorded by Independent Prison Visitors in 2005/6 are used as an indicator. Deaths in custody, assaults, allegations of torture, limited access to medical care and allegations of corruption remain at unsatisfactory levels.

The focal points of the budget vote, as reflected by the requested allocations, struggle to find a balance between the requirements of the Correctional Services Act, addressing the human rights situation in the prison system, and the strategic aspirations of the White Paper. Shorter term security issues remain a major distraction in spending on the South African prison system.
