

# **SUBMISSION BY THE CIVIL SOCIETY PRISON REFORM INITIATIVE ON THE DEPARTMENT OF CORRECTIONAL SERVICES ANNUAL REPORT 2009/10**

## **INTRODUCTION**

It has now been more than five years since the DCS adopted the White Paper on Corrections in South Africa (the White Paper). It is regrettably the situation that progress towards the vision espoused in the White Paper has been slow whilst vast sums of public money have been spent on security hardware, public events, litigation and developing a plethora of information systems. It is also the case that the Department is again embroiled in corruption scandals. In this environment the question must be asked: What are the Department's priorities and what should they be? Related to this, it can also be asked if the White Paper is good policy and whether it is the appropriate policy for the current context?

It is CSPRI's position that the DCS must rather focus its activities on meticulous compliance with the Correctional Services Act and in particular meeting the minimum standards of humane detention. This requires rigorous implementation of the Act's requirements supported by appropriate sub-ordinate legislation (e.g. Regulations and Standing Orders). Five years after the adoption of the White Paper, policies and procedures aligned to the White Paper and replacing the 2004 B-Orders remain wanting. This is an untenable situation creating confusion amongst staff and inmates alike. There is little purpose in talking about corrections, development, care and social reintegration when vast numbers of prisoners remain locked in their cells for 23 hours per day with little to occupy them.

## **NOTABLE ACHIEVEMENTS**

1. The Annual Report reflects on a number of notable achievements and these are acknowledged:
  - 97 officials were found guilty of corruption and maladministration, representing an 88.9% conviction rate<sup>1</sup>
  - A draft policy was developed on the remuneration for NGOs<sup>2</sup>
  - There are now 21 accredited ARV sites in the Department<sup>3</sup>

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<sup>1</sup> p. 46

<sup>2</sup> p. 69

<sup>3</sup> p. 75

## ACCOUNTABILITY

2. The Constitution requires that the executive must account to Parliament<sup>4</sup> for its actions, policies, expenditure etc. Corder, Jagwanth, and Soltau explain its follows: “*Accountability can be said to require a person to explain and justify - against criteria of some kind - their decisions or actions. It also requires that the person goes on to make amends for any fault or error and takes steps to prevent its recurrence in the future.*”<sup>5</sup> Oversight has a broader meaning than accountability and includes a wide range of activities and initiatives aimed at monitoring the executive.<sup>6</sup> While accountability and oversight may differ in respect of scope and focus, it is also clear that the two are closely linked and mutually reinforcing. Against the backdrop of the 2009/10 annual report the issue of accountability within and of the DCS will be explored. In this sense the submission will look at internal accountability as well as accountability of the Department to external stakeholders (e.g. Parliament and Auditor General).
3. There is reason to conclude that **internal accountability** in the DCS is problematic. In a number of instances the annual report reflects that the responsible official did not submit the required information.<sup>7</sup> In one particular instance the required information relates to performance monitoring and the annual report notes that “reporting on quarterly performance information [is] poor due to non-submission of reports against performance indicators.”<sup>8</sup> Two important conclusions are drawn from this. Firstly, that officials lower down the hierarchy can apparently ignore instructions from the Head Office to submit required information, and secondly, that the quality and integrity of the information on performance in the annual report must be treated with caution. The problem with the quality of internal performance reporting and thus accountability is also noted in the Auditor General’s report: “*The quarterly reports of the department did not track progress against targets as per the approved strategic annual performance plan and therefore did not facilitate effective performance monitoring and evaluation, as required by Treasury Regulation 5.3.1.*”<sup>9</sup> The Auditor General is even more specific and notes that the Department does not have “*effective, efficient and transparent*

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<sup>4</sup> Section 55(2)

<sup>5</sup> Hugh Corder, Saras Jagwanth, Fred Soltau (1999) Report On Parliamentary Oversight and Accountability, Faculty of Law, University of Cape Town, <http://www.pmg.org.za/bills/oversight&account.htm> Accessed 14 August 2010.

<sup>6</sup> Hugh Corder, Saras Jagwanth, Fred Soltau (1999) Report On Parliamentary Oversight and Accountability, Faculty of Law, University of Cape Town, <http://www.pmg.org.za/bills/oversight&account.htm> Accessed 14 August 2010.

<sup>7</sup> pp. 61 (A.4.5), 66 (B.1.3), 72 (C.1.1), 73 (C.1.9),

<sup>8</sup> p. 61 (A.4.5)

<sup>9</sup> p. 132

*system and internal controls regarding performance management, which describe and represent how the institution's processes of performance planning, monitoring, measurement, review and reporting will be conducted, organised and managed, as required in terms of section 38(1) (a) (i) and (b) of the PFMA*".<sup>10</sup> However, the annual report notes that the Performance and Development Management system is aligned to the OSD and that Performance Agreements are aligned with the Strategic Plan.<sup>11</sup> This appears to be a clear contradiction of the Auditor General's analysis of the situation.

4. The implications of the Auditor General's statements are important because in the final analysis the Department has to account for the use of public funds. Moreover, it has to account that it has used these funds in an appropriate manner on agreed upon outputs that will contribute to the overall objectives of the correctional system as described in the Correctional Services Act.<sup>12</sup>
5. Under the programme Security it is reported that "access security is poor".<sup>13</sup> However, it is also reported that "*Due to austerity measures implemented by the Department no physical inspections were conducted*".<sup>14</sup> Similarly it is reported that regional visits by the Head Office were discontinued during the 2<sup>nd</sup> quarter of the financial year.<sup>15</sup> Given the importance of security in the correctional system and the importance that the Head Office retains a hands-on relationship with the regions and keep them accountable, the suspension of visits and inspections in order to save money may indeed have been counterproductive.
6. The Auditor General also notes that matters previously reported on relating to "deficiencies in the system of internal control and deviations there from" have not been fully and satisfactorily addressed<sup>16</sup> and that the internal audit function is under-resourced and cannot function optimally. The extent of this is staggering and the Auditor General notes that only 10 of the 28 posts in the internal audit function were filled by the end of the financial year.<sup>17</sup> For a department that has received numerous qualified audits and where financial management is a noted risk area, it seems to be a short sighted course of action to leave 65% of posts in the internal audit function vacant for the sake of implementing the so-called "austerity measures".
7. The annual report reflects on progress towards improved levels of compliance in the Department and concludes that this has increased by 1%.<sup>18</sup> The explanation provided is that the limited improvement (1% against a target of 5%) "*. . . is mainly attributed to the failure*

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<sup>10</sup> p. 131-2

<sup>11</sup> p. 41 (A.2.4)

<sup>12</sup> Section 2 Correctional Services Act (111 of 1998)

<sup>13</sup> p. 66 (B.1.2)

<sup>14</sup> P. 65(B.1.1)

<sup>15</sup> p. 121

<sup>16</sup> p. 111

<sup>17</sup> p. 121

<sup>18</sup> p. 61(A.4.3)

*by most management areas to improve on their previous level of performance and lack of effective corrective measures to address shortcomings identified in the previous inspections. This gap will be addressed through the development, implementation and proper monitoring of the implementation of corrective measures on all issues of non-compliance as uncovered during the inspection process.*<sup>19</sup> While the Department is acknowledged for this frank assessment, it is also extremely worrying that most management areas have failed to improve on the problems previously identified by the Department's Inspectorate. The conclusion must therefore be drawn that the Head Office is not capable of holding managers at management area level accountable for their lack of performance.

8. The substance and scope of the instrument being used to measure compliance is not presented in the annual report, which would have assisted in a more thorough assessment. However, attention must be drawn to the Department's first and foremost duty, namely to comply with the Correctional Services Act. It is indeed non-compliance with the Act that lands the Department frequently in court and not because of its shortcomings in implementing the White Paper.
9. The overall purpose of an annual report is to report on progress made towards clearly defined targets that are aligned to the strategic plan of the entity concerned. Departmental annual reports are fundamental to the accountability architecture and a requirement of the Constitution.<sup>20</sup> This requires, firstly, that the information presented in relation to a specific target must speak to the target and, secondly, that the level of compliance claimed must be open to validation. In a number of instances the information presented under "Actual Performance" does not speak to the target. For example, Strategy A.2.1 requires compliance with human resource policies and the target is to monitor compliance with said policies.<sup>21</sup> However, the Actual Performance notes that the policies concerned have not been finalised for implementation. The annual report therefore does not provide any information on the level of compliance with human resource policies. A similar problem is observed in respect of compliance with the Care policies<sup>22</sup> and Development policies.<sup>23</sup> In both instances it is reported that a substantial number of policies were approved and distributed to the regions, but no report is provided on compliance with said policies as is required by the target. Under the Social Reintegration programme, the first performance indicator is "Percentage of parole violations per 10 000 parolees" and it is reported that 9757 parolees violated their conditions against a set target of 10 780 and that there were thus 9.5% fewer violations.<sup>24</sup> The reported

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<sup>19</sup> p. 61(A.4.3)

<sup>20</sup> Section 92(3)

<sup>21</sup> P. 35 (A.2.1)

<sup>22</sup> p. 79 (D.1.1)

<sup>23</sup> p. 82 (E1.1)

<sup>24</sup> p. 90

information does not make sense as the ratio is never provided, namely the number of violations per 10 000 parolees. Moreover, to express a per 10 000 ratio as a percentage is not correct.

10. As noted in paragraph 9, information submitted in the annual report must be open to validation. In the above (paragraph 7) it is reported that levels of compliance in the Department had increased by 1%. However, it is also reported that “*The number of correctional centres that fully comply with Unit Management, including the Structured Day Programme and Three meals a Day System, increased from 86 to 126 out of the targeted 138 correctional centres*”<sup>25</sup> This seems to be at odds with the minimal improvement in compliance reported on above. It is also uncertain what is being meant with “fully comply with Unit Management”. Under the Development programme it is reported that “*Confirmation [was] received from Regions that all policies pertaining to Personal development of offenders are implemented*”.<sup>26</sup> Requesting a region to confirm that it is implementing a particular policy is not a reliable and verifiable source of compliance; it is inherently biased. Under the Social Reintegration programme it is reported that the Department “*successfully complied with the implementation*” of the Correctional Services Act and a host of subordinate legislation and policy papers.<sup>27</sup> However, on the following page it is reported that there is still not full compliance; the number of parole violations have in fact increased and that the community corrections admissions tool had not been implemented in three regions.<sup>28</sup> The statement that the Department is in full compliance with the Act and the policies concerned is in fact not supported by any verifiable information and the information presented contradicts the claim of compliance. Compliance is not something that should be treated lightly: it requires a rigorous process of validation, preferably by independent persons.
11. Linked to internal accountability is the **enforcement of the Disciplinary Code**. It is reported under the Central Services Operations Plan that the target “Disciplinary steps instituted and implementation of sanctions monitored” was not achieved.<sup>29</sup> However, under the same programme under the “Regulatory and Monitoring Strategy” it is reported that one sanction handed down in March 2010 still needs to be implemented.<sup>30</sup> This is confusing and does not give a precise picture of the situation. Regardless of this, trends in respect of disciplinary actions require closer scrutiny. Figure 1 below presents the data drawn from DCS annual reports for the period 1997 to 2010 in respect of the total number of disciplinary actions taken, dismissals and other sanctions imposed.

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<sup>25</sup> p. 72 (C.1.2)

<sup>26</sup> p. 86 (E.1.1)

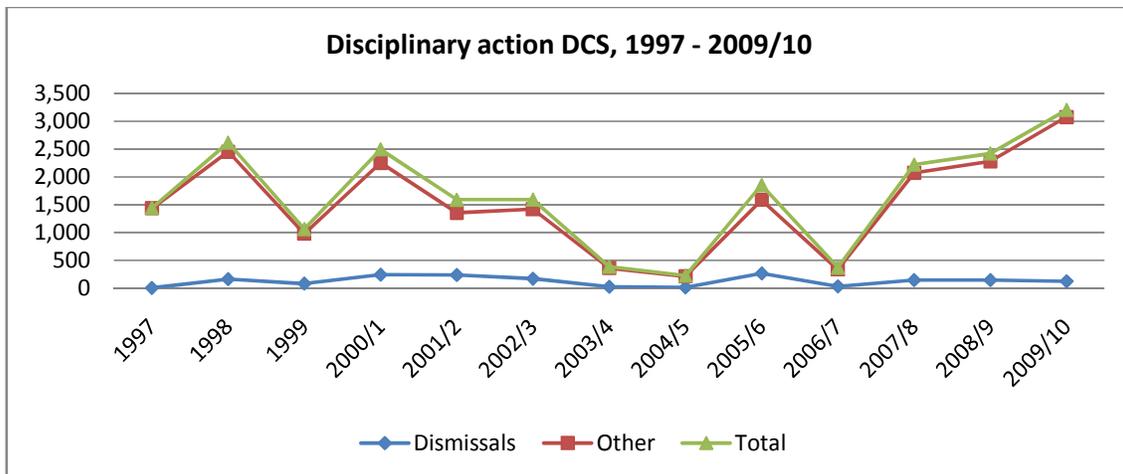
<sup>27</sup> P. 91 (F.1.1)

<sup>28</sup> P. 92 (F.1.1; F.1.2; F.1.4)

<sup>29</sup> p. 59 (A.3.2)

<sup>30</sup> P. 48 (A.3.2)

12. The most obvious trend in the data is the see-saw figure in the number of disciplinary sanctions imposed, from more than 2 600 in 1998, dropping to 1061 in the following year but climbing to just below 2 500 in 2000/1. The increased number of disciplinary actions during 1997 and 1998 were the result of the investigations undertaken by the Public Service Commission (PSC) and the Department of Public Service and Administration (DPSA). The spike in 2001-3 can be attributed to the early work of the Jali Commission and the Special Investigating Unit (SIU). During the first three years of the SIU’s involvement in the DCS (2002-2005), the total number of disciplinary actions dropped to a meagre 224 cases in 2004/5, but the fruits were harvested the following year when disciplinary sanctions climbed to 1 850, the highest level since 1998. These were cases primarily related to medical aid and social grant fraud. Dismissals, however, remain a rare event in the DCS. The highest number of dismissals was 264 in 2005/6, or 14 per cent of total disciplinary sanctions imposed. In the following year, 2006/7, the total number of disciplinary actions dropped to 367 with only 33 dismissals. From 2007/8 the number of disciplinary actions increased rapidly and is now at its highest level, indicating a particular focus on code enforcement.



13. The see-sawing in the number of disciplinary actions taken against employees of the Department may reflect an attitude, or even a decision, by DCS management that the “SIU and Departmental Investigating Unit (DIU) will take care of discipline”. If this is indeed the case, it is extremely unfortunate. The two investigating units are there to support the DCS with specialist skills and knowledge and to provide comprehensive forensic solutions, but they do not replace the day-to-day duty of every manager in the Department to enforce the disciplinary code and promote good performance. Enforcement of the disciplinary code by every operational manager also lends sustainability to the achievements of the investigations into corruption and maladministration, by making compliance with prescripts and codes part of organisational culture.

14. The Department's relationship with **external stakeholders** also requires closer scrutiny. It is reported that "*Some of the recommendations of the oversight reports from Cluster & Parliamentary Liaison were implemented such as suggestions on the reduction of overcrowding, the implementation of offender labour and the review of privileges for offenders*".<sup>31</sup> It is similarly reported that "*The Department of Correctional Services will continue to work with the Inspectorate to address the shortcomings identified in the annual and other reports.*"<sup>32</sup> The annual report provides in fact no information on how the Department has responded to the specific recommendations from Parliament and the JICS and merely notes that some of the recommendations were implemented. The annual report does not provide a list of recommendations made, the actions taken or the reasons why certain recommendations were not implemented. This is a particularly worrying situation, especially in respect of the mandate of the JICS which is tasked with reporting on the treatment of inmates and conditions of detention.<sup>33</sup> The JICS is also required to submit a report to the Minister on each inspection undertaken.<sup>34</sup> There is no record of what recommendations were made and how the Department responded to these. It will therefore be difficult for the JICS in its annual report to reflect on its impact and how it has worked with the DCS to improve the situation of inmates. Moreover, Parliament and the public have a right to know exactly what steps are being taken by the DCS in response to recommendations from the JICS - this must not be hidden from public view.
15. As noted above, the Department finds itself frequently in court. Annexure 3B to the financial statements indicate that the Department has significant liabilities emanating from litigation.<sup>35</sup> The selection of liabilities presented in Table 1 below amounts to nearly R1.2 billion. It is in particular the liability of R986 598 000 for Bodily injury/assault on which clarification is sought. A claim of such a nature cannot be ignored. The information in Table 1 below also indicates that the Department is significantly exposed to claims of a human rights nature, indicating that there is significant non-compliance with the Correctional Services Act. The extent to which these claims can be attributed to weak internal accountability mechanisms requires further investigation. A first step in this regard would be if the Department includes in the annual report a more detailed description of the claims against it.

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<sup>31</sup> p. 49 (A.3.8)

<sup>32</sup> p. 15

<sup>33</sup> Section 90(1) Correctional Services Act

<sup>34</sup> Section 90(3) Correctional Services Act

<sup>35</sup> p. 190

**Table 1 Selected liabilities of DCS<sup>36</sup>**

<b>Nature of liability</b>	<b>Amount</b>
Damages HIV	R 3,455,000
Bodily injury/assault	R 986,598,000
Unlawful detention	R 176,235,000
Death in detention	R 14,130,000
Rape	R 4,089,000
Pain and suffering	R 10,937,000
<b>TOTAL</b>	<b>R 1,195,444,000</b>

## **INMATE LABOUR**

16. It is reported that the DCS will develop a framework that clearly defines the role that the Offenders Labour Force can play in the development of communities.<sup>37</sup> On 11 August 2010 the Portfolio Committee held public hearings on inmate labour and CSPRI made a submission in this regard. The Committee's attention is drawn to the following points from the CSPRI submission as they require clarification from the DCS:

- Working prisoners are not employees of the DCS and their status remains legally uncertain. Prisoners are not mentioned in the Basic Conditions of Employment Act, Unemployment Insurance Act or in the Occupational Health and Safety Act. This leaves them in a situation where they perform labour but are not recognised as workers and excluded from the concomitant protections arising from this status.
- A further issue which requires clarification is the compensation of prisoners injured whilst performing labour. This is currently done through an *ex gratia* payment at the discretion of the National Commissioner. The exact manner in which this is currently being done is uncertain. However, the procedure needs to be measured against the requirement in section 34 of the Constitution affording everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
- Whilst it is accepted that labour in prisons is not employment, it is also not clear what it is. It is not described in the Correctional Services Act as part of a training programme or as an amenity (privilege). However, a working prisoner may lose his

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<sup>36</sup> p. 190  
<sup>37</sup> p. 7

work as a result of a disciplinary infringement. It then appears that at operational level labour is regarded more as a privilege than anything else. This has often been a source of great dissatisfaction amongst prisoners because of the severe lack of such opportunities in the prison system. In view of this it is required to gain greater clarification about the status of “work” in prisons and distinguish working in, for example, the kitchen from participating in an in-service training programme with clear goals, objectives and achievements.

17. It is reported that the total number of **offenders involved in production workshops have declined** from the 2005 baseline and now stands at 1745, or roughly 1.5% of the sentenced population.<sup>38</sup> The reason presented for the decline is the lack of “suitable offenders”. However, no further explanation is provided and it is thus difficult to understand how offenders have become “less suitable” from 2005 to date. At the rate the number of offenders involved in production workshops is declining, these workshops will soon be entirely empty.
18. Under the Corrections programme it is reported that the number of **offenders participating in labour has declined**<sup>39</sup> but no further information is provided to quantify this and present explanatory information. However, as noted above (paragraph 14), the DCS reports that it has adopted recommendations from external stakeholders regarding offender labour. Whilst external stakeholders recommended an increase in inmate labour, the result was a decline.
19. Annexure 2B of the financial statements reflect that R11 853 000 was paid to inmates as gratuity for work performed. The **low value of the gratuity** was raised in CSPRI’s recent submission on inmate labour. It is requested that the Committee explore the issue further with the DCS to develop a solution that is practical and fair.

## **PAROLE AND SOCIAL REINTEGRATION**

20. The overall impression of the Social Reintegration programme is that very little has in fact changed. More than **two years ago the DCS undertook to overhaul community corrections**, but very little tangible progress has been made.<sup>40</sup> The budget allocation remains the same if not less (3.3% of the total) and the programme does not contain any targets aimed at rendering needs-based services to persons placed under community corrections.

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<sup>38</sup> p. 86 (E.1.1)

<sup>39</sup> p. 69

<sup>40</sup> “The DCS planned to achieve this by reviewing and aligning policy procedures and standards with the White Paper on Corrections, effective administration and effective implementation of Community Corrections systems.” PMG Report on Portfolio Committee on Correctional Services, 11 March 2008, <http://www.pmg.org.za/report/20080311-dcs-strategic-planning-and-ene-budget-allocation-briefing>

21. It is reported that the drafting of the **incarceration framework** has been completed.<sup>41</sup> The Committee is reminded that the adoption of the incarceration framework is subject to approval by Parliament in terms of the Correctional Services Amendment Act (25 of 2009).<sup>42</sup> However, CSPRI reiterates its concerns about the incarceration framework which were raised during the public hearings on the Correctional Services Amendment Bill:
- it will create a third parole regime and thus adding to the already confusing situation on parole administration;
  - the right to liberty is a fundamental constitutional value and should not be regulated by subordinate legislation; and
  - even if the incarceration framework is adopted, there is no provision in the Correctional Services Amendment Act that prescribes an appropriate mechanism for affecting amendments to the incarceration framework.
22. It remains CSPRI's position that the **incarceration framework is an undesirable mechanism** and that parole provisions must be described in the principal legislation, as is the case now.
23. In 1994/5 there were approximately 400 inmates serving life imprisonment. By May 2010 this figure had increased to above 9700. This has been a direct consequence of the mandatory minimum sentences legislation. It can also be expected that this figure will accelerate since the jurisdiction to impose life imprisonment has been extended to the regional courts. The annual report notes that the National Council for Correctional Services (NCCS) considered 52 inmates serving life imprisonment for parole during the year under review.<sup>43</sup> All inmates serving life imprisonment must be considered for parole after they had served 20 years if sentenced before October 2004 and after 25 years if sentenced after October 2004. It is thus foreseen that in the not too distant future that the **NCCS will have to deal with hundreds of lifers per year**. The consideration of inmates serving life imprisonment for parole is something that requires time and rigour and should not be taken lightly and the necessary capacity needs to be developed.
24. Strategy F.1.4 reads "Improved stakeholder involvement in community corrections" and four targets are set. However, the development of a stakeholder management document could not be developed due to capacity constraints and alternative sentencing could not be promoted due to the austerity measures. The explanations provided are insufficient and it is not clear how austerity measures impacted on the promotion of non-custodial sentencing.

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<sup>41</sup> p. 68 and 89

<sup>42</sup> Section 49

<sup>43</sup> p. 14

## HUMAN RESOURCES MANAGEMENT AND STAFF WELL-BEING

25. The Department faces a substantial task in **training its staff** to comply with legislative requirements as well as the development of the necessary skills to implement strategic objectives. The demand in this regard cannot be underestimated. Some progress is reported on relating to the training undertaken with financial support from SASSETA.<sup>44</sup> However, the report also notes that, amongst others, 14 officials received Narcotic Dog Training; 20 officials received Patrol Dog Training; 1504 officials received Fire Arm Training; and 73 officials received Basic Corrections Science training. Questions must be asked whether these training programmes support the priorities of the Department. The target in this regard stipulates that training must be provided in terms of the prioritised needs determined by the National Learning Committee, but since these priorities are not presented in the annual report, it is unknown if the extensive fire arm and dog training undertaken are in fact part of the identified priorities.<sup>45</sup> It is CSPRI's observation that, in general, officials of the Department have limited knowledge and understanding of the Correctional Services Act and that they seldom possess or have access to a copy of the legislation. Table 12.2 in the annual report notes that the bulk (75%) of training provided was given in the form of "Other forms of training" and not as "Learnerships" or "Skills programmes and other short courses".<sup>46</sup> It is uncertain what this means and whether these other forms of training were in line with the priorities identified by the National Learning Committee.
26. In 2008 CSPRI released a report on the **impact of HIV and Aids on correctional system governance** which was presented to the Department at a workshop in Pretoria.<sup>47</sup> The report focussed in particular how the pandemic is affecting staff of the Department and their ability to fulfil their job functions. The report concluded, amongst others, that *"Notwithstanding the launch of the new Framework policy, the findings of this investigation suggest that at the operational level, the extent of the challenge facing the DCS has yet to be fully recognised whilst it is steadily growing in magnitude. It also points to a situation which, if left unchecked, will unquestionably compromise the operations of many correctional institutions across the country and will materially affect the goals and strategic plans of the Department due to staff attrition."*

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<sup>44</sup> p. 26

<sup>45</sup> p. 37 (A.2.6)

<sup>46</sup> p. 219

<sup>47</sup> Tapscott C (2008) *An Assessment of the Impact of HIV/AIDS on Correctional System governance with Special Emphasis on Correctional Services Staff*, CSPRI Research Report No. 16, Community Law Centre, University of the Western Cape.

27. It is therefore noted with concern that the annual report reflects that there is a severe shortage of Employee Assistance Programme practitioners.<sup>48</sup> However, training under the same strategy focused on fire fighters, first aid and COID (acronym explanation not provided in list on p. 224). Under the same programme it is noted that a mere 26 officials were “empowered on the relationship between HIV and Aids and gender”.<sup>49</sup> Table 10.2 in the annual report sketches a sombre picture. It is reported that “*There is only one national and one Regional (2 year contract) HIV & AIDS Co-ordinators for officials at ASD level. EAP’s assist with counselling on HIV & AIDS. There are 11 EAP’s (salary levels 8) nationally. The annual budget is approximately R2.3 million for compensation of employees*”.<sup>50</sup> The overall impression gained is that the DCS is not serious about the impact of HIV and Aids on its staff and that little is being done to manage the impact of the pandemic on the Department’s staff corps.
28. It is reported that **labour relations forums** are functioning and evaluation reports made available.<sup>51</sup> This forms part of the strategy to improve employee relations. The annual report does, however, not reveal what the contents of these reports are and it is therefore unknown what the state of employer-employee relations are. However, during the recent industrial action by public servants the DCS had to approach the courts to obtain an interdict in late August 2010 against POPCRU to prevent officials from striking.<sup>52</sup> From this it must be concluded that the labour relations forums are not functioning optimally.
29. It is noted from the annual report that a number of **key human resource management policies** were not completed.<sup>53</sup> These are: Recruitment; Transfers and Termination; Persal data management and Access; Security; Access security; Organizational development; Employee health & wellness; Corporate wear; Service benefits; Performance and Career management; and Employee Relations. It is similarly noted that Health and Safety Committees were established in only three of the six regions without an explanation being provided in respect of the other three regions.<sup>54</sup>
30. The annual report is replete with references to the **7-day establishment** and how this has had a negative impact on operations, resulting reportedly in cutting down on other planned activities. The response from the Department has been to delegate to Area Commissioners the authority “*to adopt what they consider to be an appropriate shift system for their centres and*

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<sup>48</sup> p. 35 (A.2.8)

<sup>49</sup> P. 39 (A.2.10)

<sup>50</sup> p. 215

<sup>51</sup> P. 39 (A.2.9)

<sup>52</sup> “Acting national Commissioner Sokhela welcomes Labour Court granting of interdict against striking workers in correctional services”, 27 August 2010,

<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=12497&tid=16239>

<sup>53</sup> P. 41 (A.2.1)

<sup>54</sup> p. 43 (A.2.11)

*staffing levels and the migration of officials who have opted for centre-based responsibilities to the centres*".<sup>55</sup> This is a perplexing solution as the result may in fact be a return to the old system. If every Area Commissioner develops his or her own permutation of the 7-day establishment this may indeed have significant financial consequences but also be detrimental to the nature and quality of services that officials must provide to inmates. It is submitted that the Committee seeks clarification from the DCS on this matter.

## SERVICES TO OFFENDERS

31. Under the Corrections programme it is reported that in excess of 25 000 **correctional sentence plans** (CSP) were developed against a target of 11 000 and the Department is acknowledged for this higher-than-planned output.<sup>56</sup> However, the annual report is vague on how the CSP guided service delivery and ensured that offenders receive the programmes they require. Under C.1.1 it is reported that 44 481 offenders participated in correctional programmes<sup>57</sup> but under C.1.4 (Implement correctional programmes) it is reported that 63 officials were trained in facilitation skills; 4000 booklets were distributed; monitoring visits took place, and reports on unit management, 3-meal system, CSP and programmes were submitted.<sup>58</sup> Despite the target being specific about the programmes that must be delivered, the annual report provides no information in this regard.<sup>59</sup> It is furthermore important that the Department distinguishes between programmes rendered by its officials and programmes rendered by external agencies, such as non-governmental organisations.
32. An efficient and effective way to add value to imprisonment is through **education**. It can safely be assumed that a significant proportion of the people who end up in our prisons are functionally illiterate. The results reported on in respect of education of offenders are thus somewhat disappointing as indicated in Table 2 below. The net result is that only 18% of offenders were involved in education programmes. The outputs are even greater cause for concern when taking into account that nearly half of unsentenced inmates and a third of sentenced offenders are under the age of 25 years. Without access to education their futures look bleak.

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<sup>55</sup> p. 117

<sup>56</sup> p. 72 (C.1.3)

<sup>57</sup> P. 72 (C.1.1)

<sup>58</sup> P. 73 (C.1.4)

<sup>59</sup> Improve implementation of correctional programmes viz; Anger Management, Substance Abuse, Preparatory Programme for Sexual Offenders; Pre-release; New Beginnings; Cross Roads and Restorative Justice by 10% to offenders serving 24 months and longer.

**Table 2 Offenders involved in education in the 2009 academic year.<sup>60</sup>**

Category	Nr
Literacy (Pre-Abet)	4835
Abet	10309
Further Education and Training	3445
Higher Education and Training	2056
Computer Based Training	907
Total	21552

33. CSPRI has over the years made several submissions dealing with, amongst others, inmate safety. The number of unnatural deaths during the year under review amounted to 50 (3.1/10 000) and 2240 assaults (137.7/10 000) were reported.<sup>61</sup> The number of assaults are significantly up from the previous year when it was 83/10 000.<sup>62</sup> While such an increase may be partially attributed to better record-keeping, it indicates nonetheless that our prisons are not safe. There remains a significant information gap in respect of prison violence. CSPRI's review of the extant literature on prison violence found that the only scientifically proven method to reduce prison violence is to provide prisoners with access to education, training and meaningful programmes: *"Further research findings lend solid and overwhelming support for providing prisoners with academic and vocational training programmes as a means to reduce violence and disorder in prisons. McCorkle et al report on a study of 317 U.S. state prisons where it was found that, '[E]ven after controlling for other institutional characteristics, prisons in which a large percentage of the prisoner population was involved in educational, vocational, and prison industry programs reported lower rates of violence against inmates and staff.'* (McCorkle, Miethe, & Drass, 1995, p. 325)<sup>63</sup>
34. CSPRI remain of the opinion that **every death in custody should be properly investigated** before it is categorised as natural or unnatural. It is submitted that the Judicial Inspectorate can play a valuable role in this regard.

## FINANCES

35. The annual report is replete with reference to "austerity" and "belt tightening" measures that the Department had to implement during the period under review. While the impact of such measures is not denied, the **choices made must also be critically assessed**. It is especially in

<sup>60</sup> p. 86 (E.1.1)

<sup>61</sup> p. 66 (B1.2)

<sup>62</sup> DCS (2009) Annual Report 2008/9, p. 49

<sup>63</sup> Muntingh L (2009) *Reducing prison violence: implications from the literature for South Africa*, CSPRI Research Report No. 17, Community Law Centre, University of the Western Cape.

relation to measures that would ultimately result in savings and improved risk management where the DCS should not have cut expenditure.

36. It is reported that purchasing material for production workshops had to be cut back resulting in reduced production and a reduction in the number of offenders working in these workshops.<sup>64</sup> The Act requires that the department must as far as possible be self-sufficient<sup>65</sup> and the production workshops is a means towards this requirement. Aligning the production workshops to the needs of the Department may thus result in greater savings than curtailing their operation. While expenditure on the production workshop was reduced the DCS proceeded to appoint a space planning expert to work on plans for new head office accommodation.<sup>66</sup> Similarly work on a much needed psychological risk assessment tool was halted, but televisions were purchased.<sup>67</sup> It is equally questionable why the internal audit function is severely under-resourced, as remarked upon earlier, while the Department continues to receive qualified audits.<sup>68</sup> Related to this it is noted that certain critical occupations are vacant at high levels: Financial and related professionals (67.8%); Information technology related (78.4%) and Logistical support personnel (80.6%).<sup>69</sup> Vacancy rates at these levels pose significant risks to the Department and these risks may result in substantially higher costs to the tax payer than by filling these positions. It was recently reported that the Department has set aside R21 million to recruit 496 interns specifically to strengthen its asset management capacity in all its 48 management areas, six regional offices and the Head Office.<sup>70</sup> Asset management has been a long term problem identified in the reports of the Auditor General and it is unclear why the Department is taking such drastic measures now.

## CONCLUSION

37. It is reported that the bulk of the Department's officials earn an annual salary of R 229 333.<sup>71</sup> This is by all standards a decent salary and for this value must be created in the correctional system. It remains first and foremost the duty of the Department to implement and comply with the prescripts of the Correctional Services Act.<sup>72</sup> Regardless of what other admirable goals we may have for the correctional system, the Act is clear on the minimum standards of

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<sup>64</sup> p. 87 (E.1.4)

<sup>65</sup> Section 3(2)(b) Correctional Services Act

<sup>66</sup> p. 106

<sup>67</sup> p. 108

<sup>68</sup> p. 111 and 121

<sup>69</sup> P. 198.

<sup>70</sup> 'Young Guns to Help Corrections Dept' AllAfrica.com, 7 October 2010, <http://allafrica.com/stories/201010070579.html>

<sup>71</sup> p. 195 Table 2.2

<sup>72</sup> Sections 3(2) and 3(6) Correctional Services Act

humane detention – there is little room for ambiguity. The Inspecting Judge has in successive annual reports identified and highlighted various problems relating to compliance with the minimum standards of humane detention, but it remains uncertain the extent to which the Department has taken heed of these and implemented recommendations. In a constitutional democracy this information must be in the public domain.

38. The above submission has touched on a wide range of issues, but it is also clear that internal and external accountability of the Department has been found wanting. Numerous instances were noted where information was not submitted, identified problems not addressed and recommendations from external stakeholders not heeded. Despite negative connotations with the concept, what is required in order to take the Department forward is a functioning bureaucracy. In this regard three issues are highlighted. Firstly that there must a clearly defined and detailed regulatory framework describing the specific duties of officials. Secondly, officials must be held accountable for failure to perform their duties. In the DCS particular attention must be paid to holding heads of centres accountable for what happens in their centres with reference to legislative compliance. Thirdly, officials of the Department must be thoroughly trained in the Correctional Services Act, Regulations and standing orders.

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