Annual Report for the period 1 April 2008 to 31 March 2009

Submitted to Mr Jacob Gedleyihlekisa Zuma,
President of the Republic of South Africa

and

Ms Nosiviwe Mapisa-Nqakula, Minister of Correctional Services

and

Ms Hlengiwe Buhle Mkhize, Deputy Minister of Correctional Services

by

The Inspecting Judge of Prisons
Judge Deon Hurter van Zyl

in compliance with section 90 (4) of the
Correctional Services Act, Act 111 of 1998.

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TABLE OF CONTENTS

FOREWORD BY INSPECTING JUDGE

It has been a little more than a year since I first took office in the Judicial Inspectorate of Prisons, initially (1 May 2008 – 31 October 2008) as Acting Inspecting Judge of Prisons and subsequently (as from 1 November 2008 for a period of three years) as Inspecting Judge of Prisons. Once the envisaged amendments to the *Correctional Services Act* 111 of 1998 ("the Act") have come into operation, hopefully sooner rather than later in terms of the *Correctional Services Amendment Act* 25 of 2008 ("the Amendment Act"), the Judicial Inspectorate of Prisons will be known as the "Judicial Inspectorate for Correctional Services" ("Judicial Inspectorate") and the Inspecting Judge of Prisons will simply be called the "Inspecting Judge". Prisons will become "correctional centres", imprisonment will make way for "incarceration" and prisoners will be described as "inmates". The term "inmate" will include any person, whether convicted or not, who is detained in a correctional centre or is being transferred while in custody or being moved from one correctional centre to another. An inmate who has been convicted and sentenced to incarceration or correctional supervision may also be known as a "sentenced offender", whereas one who has been convicted but not yet sentenced may be termed an "unsentenced offender" or simply an "awaiting trial detainee". For present purposes I shall make use of the terminology as set forth in the Amendment Act.

Judge D H van Zyl

The approach required of the Inspecting Judge has much in common with that of any other judicial officer, who is required to be fearlessly independent and dedicated to achieving justice, fairness and reasonableness for all. These concepts constitute the basic values of, and core objectives required for, exercising the judicial function. They are allied to the democratic values and fundamental human rights contained in our constitutional doctrine and characterising our diverse, yet unified, equal and free society.

They are demonstrated in the preamble and founding provisions of our *Constitution*, Act 108 of 1996, the supreme law of the Republic of South Africa, chapter 2 whereof boasts our own unique Bill of Rights, appropriately described in section 7(1) as "a cornerstone of democracy" which "enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom".

The Bill of Rights is also the cornerstone of the legislation which governs correctional services and the concomitant criminal procedure which gives rise to any correctional order. The rights to equality, human dignity and life (sections 9, 10 and 11 of the *Constitution*) immediately precede the right to freedom and security of the person dealt with in section 12 thereof. In the context of corrections, and of the Judicial Inspectorate in particular, section 12(1) bears quotation:

Everyone has the right to freedom and security of the person, which includes the right –

(a) not to be deprived of freedom arbitrarily or without just cause;
(b) not to be detained without trial;
(c) to be free from all forms of violence from either public or private sources;
(d) not to be tortured in any way; and
(e) not to be treated or punished in a cruel, inhuman or degrading way.

This right has special application to any child under the age of eighteen years who, in terms of section 28(1)(g), has the right –

not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –

(i) kept separately from detained persons over the age of 18 years; and
(ii) treated in a manner, and kept in conditions, that take account of the child's age; …

This is in line with the basic principle enunciated in section 28(3), namely that the best interests of a child "are of paramount importance in every matter concerning the child".

The cited legislative provisions must be read with those contained in section 35 of the *Constitution*, in which the rights of "arrested, detained and accused persons" are spelt out. Anyone who is arrested on a charge of allegedly committing an offence is, in terms of section 35(1)(f), entitled to be released from detention "if the interests of justice permit subject to reasonable conditions". All imprisoned or detained persons are entitled to detention conditions which are (section 35(2)(e)) "consistent with human dignity" and are likewise entitled (section 35(3)(d)) "to have their trial begin and conclude without unreasonable delay".

It is quite clear from these provisions that the detention or incarceration of any person constitutes an infringement of such person's right to freedom. Section 36(1) of the *Constitution*, however, provides for the limitation of all constitutionally protected rights, including the right to freedom, in terms of generally applicable law "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". In thus limiting such right "all relevant factors" must be taken into account.

It is against this statutory background that the functions and duties of the Judicial Inspectorate must be gauged. In this regard its mandate is, on the face of it, somewhat limited in that section 85(2) of the Act provides that the object of the Judicial Inspectorate is "to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on the conditions in correctional centres". The reports in question are to be made to the Minister of Correctional Services ("the Minister") and, once the aforesaid amendments to the Act have come into operation, also to the Parliamentary Portfolio Committee on Correctional Services ("the Portfolio Committee"). The Annual Report of the Inspecting Judge is presented to the President and the Minister, and then tabled and debated in Parliament.

A significant aspect of the Judicial Inspectorate's function relates to the various lines of communication it has with a number of important role players and stakeholders. I speak here primarily of the Government Departments of Correctional Services, Justice and Constitutional Development, Police, Social Development, Basic Education and Health, all of which play an important role in the life of detainees from the moment of their arrest until the date of their release, more particularly during their detention in correctional centres where they are subjected to a process of restorative justice in the sense of rehabilitation and preparation for reintegration into the community.

Among the further role players there are a number of non-governmental organisations (NGOs) which are closely involved with various facets of correctional services. They include, on a local level, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), the Civil Society Prison Reform Initiative (CSPRI), the Open Society Foundation for South Africa (OSF-SA), the Centre for the Study of Violence and Reconciliation (CSVR), the Institute for Security Studies (ISS), the Child Justice Forum, Khulisa and others. In the international sphere mention may be made of several like-minded organisations such as the International Penal and Penitentiary

Foundation (IPPF), the International Corrections and Prisons Association (ICPA), Just Detention International (JDI), the Association for the Prevention of Torture (ATP), the International Centre for Prison Studies (ICPS) and the International Commission of Catholic Prison Pastoral Care (ICCPPC). During the past year members of the Judicial Inspectorate have had regular contact with representatives of these and similar organisations. This Office has also had useful communication with Her Majesty's Chief Inspector of Prisons in the United Kingdom.

My approach to the functioning of the Judicial Inspectorate has throughout been a holistic one, calling for the sharing of collective knowledge, expertise and experience. This is already the case, in the Western Cape, with the monthly Provincial Stakeholder Meeting, chaired by the Director of Public Prosecutions, the Provincial Integrated Case Flow Management Meeting for the High Court, chaired by the Judge President of the Western Cape High Court, and the Provincial Lower Court Case Flow Management Meeting under the chairmanship of the Regional Court President. The Judicial Inspectorate has been represented at all meetings of these bodies, held at various venues in Cape Town, and also at monthly meetings, held in Pretoria, of the National Initiative/Forum to Address Overcrowding in Correctional Facilities chaired by Judge E Bertelsmann of the North Gauteng High Court. It is likewise represented at conferences and seminars of various NGOs and institutions held on a regular basis throughout the country.

The Judicial Inspectorate cannot function without a closely co-operative relationship with the Department, more particularly, on the one hand, with the Minister and Deputy Minister as political heads of the Department and, on the other hand, with the administrative leadership and management of the Department on various levels. I speak here of the National Commissioner, Chief Deputy Commissioners, Deputy Commissioners, Regional Commissioners and Area Commissioners in the upper echelon, followed by the Heads of the 237 currently operational Correctional Centres ("Heads of Centres") in South Africa. During the initial stage of my appointment as Inspecting Judge I personally met with the previous and current Minister, Deputy Minister and National Commissioner, and also with a substantial number of officials in the top structure of the Department, including numerous Heads of Centres and a variety of other stakeholders.

However important co-operation with the aforesaid role players and stakeholders may be for the proper functioning of the Judicial Inspectorate, it must be emphasised that it is

and remains an independent statutory institution which will not hesitate to level serious criticism at the Department and its functionaries should this at any stage be required. In this regard it has a general oversight function directed at monitoring, in terms of its statutory mandate, the treatment of inmates in correctional centres and the conditions pertaining in such centres. More particularly it strives to ensure that all inmates and detainees are incarcerated or detained under humane conditions consistent with their human dignity and constitutionally protected human rights. In this regard it is indeed part and parcel of the process of transformation that correctional services in South Africa have undergone since the promulgation of the Act, which in turn was aligned with the unique system of values contained in the 1996 *Constitution* and refined by the *White Paper on Corrections in South Africa* of 2005 ("the White Paper"). This constituted a radical change from simply "warehousing" offenders to directing genuine efforts at rehabilitating and reintegrating them into the community in accordance with pre-release programmes and the principles of restorative rather than retributive justice.

It should be noted that, of the 237 operational correctional centres in South Africa, only the two private correctional centres, namely Mangaung in Bloemfontein and Kutama-Sinthumule in Makado (Louis Trichardt), accommodate a fixed number of inmates. A substantial number of the other centres, however, are still hopelessly overcrowded inasmuch as the Heads of Centres in question must accept, clothe, feed and accommodate the persons directed there by the courts, regardless of what their number may be. This has inevitably created intolerable conditions for the inmates, most of them spending up to twenty-three hours per day cooped up in communal cells with limited ablution and toilet facilities. An obvious solution to this problem would be to involve inmates, who are physically and otherwise able, in outside activities such as gardening, farming and productive workshops or factories on the premises of the correctional centres. Not only would this have the effect of giving the inmates fresh air and exercise on a regular basis, but it would also contribute significantly to reducing the effects of overcrowding. In addition the agricultural production of meat, vegetables and fruit for distribution to and consumption in correctional centres would be in line with the provisions of section 3(2)(b) of the Act, which requires that the Department must "as far as practicable, be self-sufficient and operate according to business principles".

The issue of overcrowding has engaged the attention of the Judicial Inspectorate for some time and has made interaction with the other role players and stakeholders, with a view to addressing the issue, a matter of extreme urgency. It goes without saying that an

overcrowded correctional centre must necessarily have a significant bearing on the conditions pertaining in such centre and on the treatment of inmates detained therein. The construction of new correctional centres may furnish a temporary solution to the problem but it does not, in our view, address the issue adequately. There are other considerations which, if properly taken into account, will hopefully have a significant and lasting effect on the reduction of overcrowding.

The root cause of overcrowding remains, in our view, the incarceration of vast numbers of awaiting trial detainees, currently numbering some fifty thousand (almost a third) of the approximately one hundred and sixty thousand inmates housed in correctional centres throughout the country. The vast majority have been arrested in terms of section 40 of the *Criminal Procedure Act* 51 of 1977 without warrant of arrest on the basis of a reasonable suspicion or belief that they have committed an offence. In a substantial number of cases compliance with the reasonableness criterion has been extremely questionable in that it later ensues that there has been a total lack of *prima facie* evidence justifying a subsequent conviction in a court of law. It may well be, of course, that further investigation may unearth sufficient supplementary evidence to sustain a conviction. In far too many cases, however, no such evidence is produced and prosecutors are compelled to withdraw charges after numerous postponements as a result of which the accused might have been detained for months, if not years. In those cases where further investigation gives rise to little or no evidence of substance, the investigating officer has a duty to inform the prosecutor thereof and the latter must, in turn, communicate this to the presiding judicial officer, who should release the detainee forthwith.

The judicial officer does, of course, have the power to grant an accused person bail on reasonable conditions as envisaged by the provisions of section 60 of Act 51 of 1977, provided that it is in the interests of justice to do so. In many such cases, however, the impression has been created that the accused person or his family or friends will be able to pay the bail. Their failure to do so unfortunately has the effect that, as a result of the non-payment of a relatively small amount of bail, persons are detained for varying lengths of time at huge expense to the State and, ultimately, to the taxpayer. Fortunately section 62 of the said Act empowers the Court to add further conditions of bail should it be required, including (section 62(f)) placing the accused under the supervision of a probation officer or correctional official. This goes hand-in-hand with the court's power to amend conditions of bail in terms of section 63 by increasing or reducing the amount of

bail initially determined, or by amending or supplementing any bail condition. Section 63A of the said Act, which was inserted in the Act by section 6 of Act 42 of 2001, has been less successful, however, probably because of its burdensome and complicated procedure in accordance with which the Head of Centre may apply to a court for the release of an accused or for the amendment of his or her bail conditions on account of prison conditions. This relates more particularly to cases where a correctional centre is overcrowded in that its population reaches "such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused".

An important way in which the number of awaiting trial detainees may be reduced is by the application of what has become known as a "plea-bargaining" process in terms of section 105A of Act 51 of 1977. This entails that an accused is given the opportunity, by agreement with a public prosecutor duly authorised thereto by the relevant Director of Public Prosecutions, to plead guilty to a charge on the basis that an agreed sentence will be imposed by the court hearing the matter. The court must, of course, be satisfied that the agreement was voluntarily concluded, that the accused has admitted the allegations in the charge to which he or she has agreed to plead guilty and that the agreed sentence is just. Although there have been offers by Legal Aid South Africa (previously known as the Legal Aid Board) and, to a limited extent, the legal profession to assist in negotiating plea-bargains, it may be useful to involve retired judicial officers or legal practitioners, provided they are experienced in criminal matters and have sufficient time on their hands to deal with a substantial number of cases in a particular area of jurisdiction. It must, however, be emphasised that the process should be "prosecutor-driven" rather than be initiated by the defence. In addition it must be considerably simplified inasmuch as the somewhat onerous and complicated nature of the various steps of the process might have contributed to the relative lack of progress in its use.

It is relevant, at this stage, to mention an important role player with a strongly judicial character, namely the National Council for Correctional Services ("National Council"). It consists of representatives from various sectors of the legal and correctional sphere, including two (to be increased to three in terms of the Amended Act) Supreme Court of Appeal or High Court judges. One of them serves as chairperson and the other as vice-chairperson(s). The primary function of the National Council, in terms of section 84(1) of the Act, is "to advise, at the request of the Minister or of its own accord, in developing policy in regard to the correctional system and the sentencing process". Section 84(4), again, provides that the National Council "may examine any aspect of the correctional

system and refer any appropriate matter to the Inspecting Judge". When the Amendment Act comes into operation the National Council will also have the power, in terms of the newly inserted section 73A of the Act, to develop a so-called "incarceration framework" in accordance with which minimum periods of incarceration must be determined before a sentenced offender may be considered for placement under community corrections. This framework is directed at creating consistency and general applicability to all sentenced offenders.

Of particular importance is the fact that the National Council may appoint from its ranks a Correctional Supervision and Parole Review Board ("Parole Review Board") under the chairmanship of a judge. This Board has the power, in terms of section 75(8) of the Act, to review decisions of Correctional Supervision and Parole Boards ("Parole Boards") when such decisions are referred to it for reconsideration by the Minister, National Commissioner or (once the Amended Act has become operational) the Inspecting Judge. This includes decisions relating to correctional supervision or parole on medical grounds as provided in section 79 of the Act.

During the approximately eleven years of its existence the Judicial Inspectorate has gone from strength to strength, largely owing to the commitment and dedication of the entire team constituting its structure, namely 43 permanent and 6 fixed-term contract employees supported by more than 180 Independent Correctional Centre Visitors (Independent Visitors). It would be remiss of me not to express my appreciation to the Director of the Judicial Inspectorate, Mr Gideon Morris, for his special brand of management and leadership, and to all members of the Judicial Inspectorate for the important contributions they have made to its effective functioning and singular development as an influential role player in the sphere of correctional services.

Chapter one of this report provides an overview of the 237 correctional centres currently operational in South Africa. It includes an analysis of the inmate population as on 31 March 2009, with specific reference to the gender composition and numbers of children in custody. Good news indeed, is that the number of both females and children in custody continues to decline. The number of female inmates constitutes only about 2% of our total inmate population which is much lower than comparative figures for most other countries such as Canada (9%), Australia (7%), USA (6.9%) and England and Wales (6%).

When comparative statistics are used for purposes of measuring and demonstrating the effect on overcrowding of increasingly long sentences, however, a less promising picture emerges. From such statistics it appears that sentenced inmates serving a sentence in excess of five years currently make up 67% of the total sentenced inmate population, as opposed to only 49% in 1998. The growth rate amongst those serving a sentence of life imprisonment, for the period 1998 until 2009, stands at a staggering 1023%. This underlines the need to develop accurate forecast models for our inmate population in order to enable us to become more proactive in our efforts to deal with overcrowded conditions in correctional centres.

Chapter two deals with the reports received from Heads of Centres, in compliance with statutory requirements, relating to deaths of inmates and to instances of solitary confinement, segregation and the use of mechanical restraints. From these reports and the additional information obtained from the Department and our Independent Visitors, we are able to report that the number of deaths of inmates continued to decline from 1136 in 2007 to 1048 in 2008. Of these deaths 982 were recorded as so-called “natural deaths” and 66 as “unnatural deaths”. The manner in which deaths are recorded or classified as “natural”, however, is a cause of serious concern. On our reading of the reports, Heads of Centres simply regard all deaths by “natural causes” as being “natural deaths” with scant regard for the duty resting on them to provide such inmates with adequate medical care. For this reason the majority of deaths of inmates are, wrongly in our view, subjected to neither *post mortem* examinations nor independent inquests in terms of section 2 of the *Inquest Act* 58 of 1959 (as amended).

Our analysis of the reports on segregation and solitary confinement confirms that many Heads of Centres still fail to report these matters to the Inspecting Judge in accordance with the requirements set out in sections 25 and 30 of the Act. It is also evident that much confusion exists as to whether placing an inmate in a single cell constitutes “solitary confinement” in terms of section 25, “segregation” in terms of section 30 or simply normal accommodation as provided in section 7(e) of the Act. Of particular concern is that these reports indicate that few inmates are subjected to “formal” disciplinary measures as contemplated in sections 23 to 25 of the Act. Instead they are often simply transferred, as an ostensibly disciplinary step, to a correctional centre far from their support structures. Such transfers constitute a major source of complaint by inmates. For this reason the Judicial Inspectorate is of the view that an inmate should have the right to appeal to the Inspecting Judge against any such transfer, whether it be

authorised by the Head of Centre or by any other official of the Department purporting to exercise the authority to order a transfer of this nature.

Chapter three of this report deals with the information obtained from Independent Visitors regarding the complaints they receive from inmates. Their appointment and the functions they perform, in terms of section 93 of the Act, have given rise to the establishment of a strong complaints procedure available to inmates. The underlying purpose of this procedure, which is operated independently of the Department, is to gather information concerning the treatment of inmates and the conditions existing in correctional centres. The most common complaints received from inmates during 2008 related to a lack of contact with their families, followed by complaints regarding transfers and inadequate medical treatment. Of particular concern is the discrepancy between the number of complaints received by Independent Visitors and that reported in their records by the Heads of Centres. A reconsideration of these records is, in our view, imperative. In this regard it would be advisable for the Department and the Judicial Inspectorate to formulate some or other understanding as to how incidents of this nature should be recorded and dealt with in future.

Chapter four provides information relating to community involvement in correctional matters in so far as it concerns the Judicial Inspectorate. It deals with the establishment and functioning of “Visitors Committees” with special reference to so-called “Stakeholder and Public Meetings” aimed at involving local communities in the functions of the Judicial Inspectorate and in the correctional centres situated in such communities. We subscribe fully to a system of “oversight for the community by the community”.

Chapter five deals with the Amendment Act to the extent that it relates to the Judicial Inspectorate and the powers, functions and duties of the Inspecting Judge. It includes a detailed analysis of the effect of these amendments on the current legislative mandate of the Judicial Inspectorate and considers the best way forward to ensure the immediate implementation of these amendments when they are promulgated. The date of promulgation has been postponed from time to time but it will hopefully take place on 1 October 2009. It has been with a growing sense of urgency that we have called on the Government to take the necessary steps to render the Amendment Act operational as soon as possible.

In chapter six of the report, the budget of the Department for the 2009-2010 financial year is discussed. This is based on a presentation made by the Judicial Inspectorate to the Portfolio Committee earlier this year when it was giving consideration to such budget in Parliament.

The last chapter of the report deals with the Judicial Inspectorate, its staff complement, strategic objectives and expenditure. Throughout the report use is made of graphs and tables for purposes of illustrating the various developments referred to in the report.

In conclusion it must be pointed out that, in recent times, the Government has increasingly recognised the need for criminal justice reform in South Africa and has undertaken important initiatives in this regard. The Judicial Inspectorate, we believe, can be a key role player in the reform process on the basis of its holistic approach to its oversight functions. Its involvement will hopefully also give rise to greater public confidence in both our criminal justice and correctional systems.

DEON HURTER VAN ZYL
Inspecting Judge
31 July 2009

CHAPTER ONE: THE STATE OF OUR CORRECTIONAL CENTRES

Overview

As on 31 March 2009, being the date on which the 2008-2009 financial year and the term covered by the present report ended, there were 237 operational correctional centres in South Africa. They collectively have the capacity to house 114 822 inmates on the basis of a standardised norm of 3.5m² floor space per inmate.

Of the said centres 8 accommodate only female inmates, 130 only male inmates while 86 accommodate both male and female inmates. In addition there are 13 centres which provide specifically for male juvenile inmates (including children younger than 18 years of age). Included in the total number of these centres there are 13 which have been classified as maximum security institutions.

The number of inmates detained in these centres varies considerably. The smallest, being Bergville and Flagstaff, have an approved capacity of only 31 inmates each. The largest is Kutama-Sinthumule, a "private" correctional centre in the Makado (Louis Trichardt) area which has a capacity of 3 024 inmates. As a result of overcrowding, by far the most inmates, namely 6 317, are housed in the Johannesburg Medium A Correctional Centre, which has a capacity of 2630 inmates and is hence over-populated to the extent of approximately 240%. On average, however, the population per centre may be gauged fairly conservatively at some 483 inmates each.

Inmate population

South African correctional centres presently (ie on 31 March 2009) accommodate a total of 165 230 inmates. This excludes persons detained in police cells or in other places of detention. Of the said total, 49 477 (30%) are unsentenced or awaiting-trial detainees and 115 753 are inmates serving a sentence of direct imprisonment. In terms of gender composition 3 656 are female and 161 574 male inmates. It is noteworthy to mention that the percentage of females in custody in South Africa, namely 2.2%, is significantly lower than in several other Commonwealth countries such as Canada (9%), Australia (7%), USA (6.9%) and England and Wales (6%). This represents a steady decline since 2002, when there were 4 267 female inmates in custody as opposed to the current 3 656, of whom 1 106 have not yet been sentenced. The 2 250 sentenced females are presently serving sentences in the following range: 611 less that 2 years; 869 between 2

and 5 years; 486 between 5 and 10 years; 399 between 10 and 20 years; and 185 more than 20 years (this includes 93 who have been sentenced to life imprisonment).

The total number of children (persons younger than 18 years old) in custody is 1 663 (1% of the total inmate population), 56 of whom are female and 1 607 male. Of them 860 have been sentenced while almost half (803) have not yet been sentenced.

Overcrowding

Overcrowded conditions in most of our correctional centres continue to impact negatively on the humane detention of inmates as well as on government efforts directed at the implementation of a system of rehabilitation and reintegration as opposed to simply "warehousing" inmates.

The approved capacity of our correctional centres was, on 31 March 2009, exceeded by 50 408 inmates. This constitutes an overcrowding level of 44%. The level of overcrowding is not, however, evenly spread among the various correctional centres owing to factors such as geographical location, security classification and the like. As a result, 49 correctional centres are occupied at levels below 100%, 107 at levels between 100% and 150%, 62 at levels of 150% to 200% and 19 at more than 200%.

The 19 most overcrowded correctional centres are listed in the table below. At these and other facilities, the conditions under which inmates are detained are not, generally speaking, consistent with human dignity and the further requirements set forth in section 35(2)(e) of the *Constitution*. In addition the utility of existing infrastructure, such as kitchens, hospitals and water reticulation, is extended substantially beyond capacity.

Overcrowding also tends to impact negatively on the staff employed in correctional centres. This may give rise to poor staff morale, unacceptable work ethic, absenteeism and the like. At most of these overcrowded facilities, there are few, if any, appropriate rehabilitation programmes and extremely limited recreational or work opportunities, in the form of gardening, farming, workshops or factories, available to inmates. By far the majority of them spend up to 23 hours per day in their cells with limited toilet and ablution facilities and in generally unhygienic conditions. It goes without saying that this constitutes an extremely unsatisfactory, and indeed unacceptable, environment for the care and development of offenders whom the Department has undertaken, in its White Paper, to rehabilitate and reintegrate into the community.

Name of Correctional Centre	Capacity	Unsentenced	Sentenced	Total	% Occupation
Pretoria Local	2171	4284	114	4398	202.58%
Middledrift	411	0	837	837	203.65%
Zonderwater Med. A	877	0	1795	1795	204.68%
Obiqua	239	0	491	491	205.44%
George	514	309	767	1076	209.34%
Grahamstown	309	301	347	648	209.71%
Umtata Max.	720	24	1555	1579	219.31%
Hoopstad	76	85	83	168	221.05%
Pietermaritzburg Med B	125	0	278	278	222.40%
Leeuwkop Max.	763	0	1725	1725	226.08%
Mdantsane	582	0	1322	1322	227.15%
Umtata Med.	580	1235	83	1318	227.24%
Durban Med. B	1853	0	4228	4228	228.17%
Pollsmoor Max.	1872	3688	593	4281	228.69%
Caledon	215	453	60	513	238.60%
Johannesburg Med. A	2630	6158	159	6317	240.19%
Johannesburg Med. B	1300	0	3190	3190	245.38%
Thohoyandou Med. B	219	516	29	545	248.86%
King Williams Town	301	675	78	753	250.17%

It is generally accepted that the problems associated with overcrowding should not be exclusively attributed to the Department, which might not reasonably be able to address them on its own, but should look to other stakeholders and role players to partner it in its endeavour to create a suitable environment for it to carry out its vision and mission.

Understanding the causes of overcrowding

The phenomenon of overcrowded prisons is not uniquely South African. Most countries in the world, including the United Kingdom and the United States of America, are currently experiencing high levels of prison overcrowding.

The term “overcrowding” refers, in broad terms, to the excessive inmate population of a particular correctional centre with limited accommodation. It is calculated in accordance with a pre-determined “floor space norm” which, in South Africa, is 3.5m² for communal cells (ablution area included) and 5.5m² for single cells. The space norm for hospital cells is 5m² for communal cells and 9m² for single cells. The calculation of these “floor space norms”, which were determined during the early 1980’s by a committee comprising the then Departments of Public Works, Treasury and the Prison Services, impacts directly on the current capacity or bed-space of our correctional centres. Should these norms be changed, it would have a significant effect on the levels of overcrowding in such centres. Should the norms hence be adjusted to, say, 3m² per inmate per

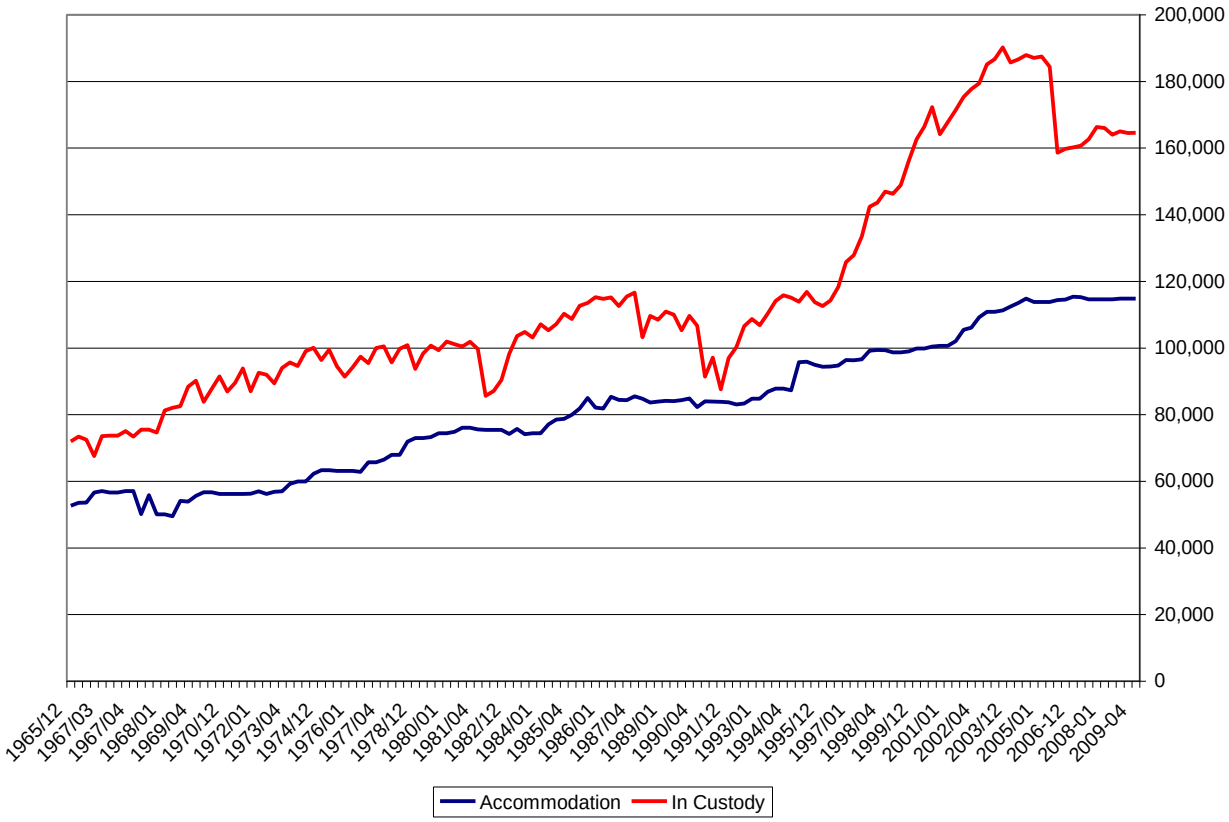
communal cell, the bed capacity would increase by approximately 19 137 beds and overcrowding would decrease by 20%.

Although this may appear to be a futile exercise, it must be borne in mind that the existing norms were developed with a view to "warehousing" inmates during a time when it was regarded as acceptable to keep prisoners locked up for 23 hours per day. The current policy governing incarceration in correctional centres, however, focuses on offender correction, rehabilitation and reintegration as its core purpose. This is in line with the White Paper, which provides for a variety of programmes directed at, amongst others, the correction of anti-social and offensive behaviour, care (in the sense of mental and physical well-being and access to social, medical and psychological services), development of skills and the after-care required to ensure the successful reintegration of the inmate into the community on expiry of the incarceration period. This must occur in a safe, secure and humane environment in conditions conducive to and consistent with the human dignity and the fundamental human rights of offenders.

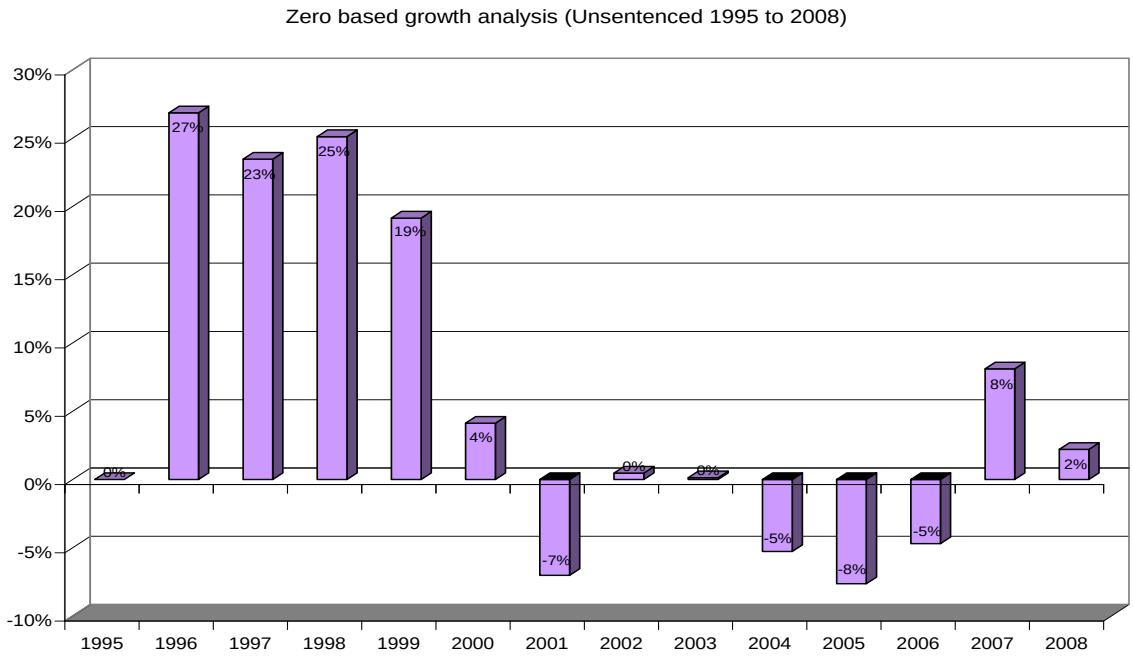
It follows that it is incumbent on the Department to provide inmates with correctional, rehabilitative and work programmes with a view to correcting their offending behaviour and reintegrating them into the community as useful citizens. The reduction of the number of hours they spend in their cells could have the effect that they might in fact be accommodated in a smaller floor space and that the money earmarked to build additional prisons (R8.4 billion in the next three years) might well be used to create more rehabilitation facilities such as workshops, gardens, farms, class rooms and so forth. Stated differently, the effects of overcrowding can, given the economic realities, best be mitigated by limiting the time that inmates must remain locked up in their cells. Available funds may then be used to create the aforesaid facilities with a view to enabling inmates to work, develop skills and undergo more intensive educational programmes outside their cells.

The overcrowding of our correctional centres is nothing new. As can be seen from the graph below, South African prisons have experienced vacillating levels of overcrowding since 1965. During the period 1997/1998, however, the rate of growth of our prison population accelerated to levels never before experienced.

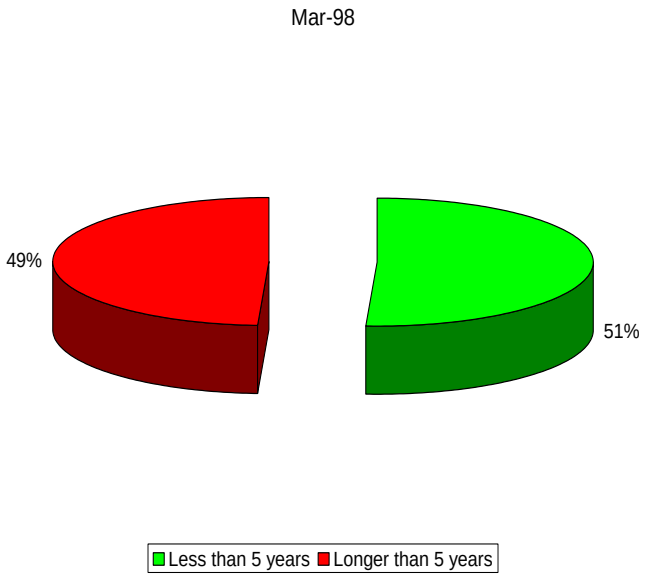
Number of inmates 1966 until 2009

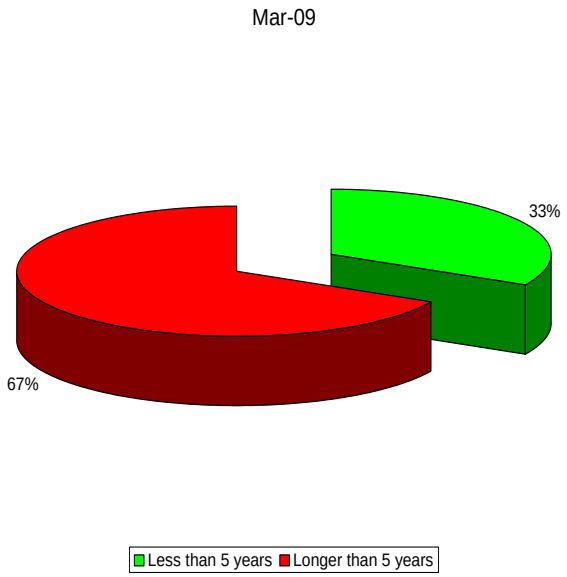


The significant increase in the number of inmates during the period 1996 to 2000 may be attributed to the rapid growth in the number of unsentenced or awaiting trial inmates. A “zero based growth analysis”, the results of which are reflected in the graph below, clearly indicates that between 1996 and 1999 the unsentenced inmate population grew by approximately 20% per annum. This is reflected in the increase in the number of unsentenced inmates from 21 213 in April 1997 to 64 234 in April 2000. Since that time, however, the growth rate has decreased. Thus in 2000, 2003, 2004 and 2006 negative growth rates were recorded while there were only slight increases (8% and 2% respectively) in 2007 and 2008. Overall, the number of unsentenced inmates decreased from around 64 000 in April 2000 to its current level of approximately 49 000. From this it may be concluded that the unsentenced inmate population of our correctional centres should no longer be regarded as the exclusive driving force behind overcrowding.



In our view the prime cause of overcrowding in correctional centres since the year 2000 may be attributed to the increased length of incarceration imposed as sentences on inmates convicted on serious criminal charges. As illustrated in the graphs below it is clear that the number of inmates serving sentences in excess of 5 years has increased by a considerable margin and currently constitutes 67% of the total inmate population as opposed to 49% in 1998. An aggravating circumstance in this regard is the marked increase in the number of inmates serving life imprisonment, namely from 793 in 1998 to 8 911 on 31 March 2009. This represents an effective increase of 1023%. It goes without saying that the continuation of this trend will impact negatively on overcrowding.





In order to address overcrowding, the Department has budgeted for an increase in bed capacity by 16 711 beds over the next three financial years at an estimated cost of R 8 272.7 million[1]. In this regard the construction of a number of new correctional centres, including four so-called "Public-Private Partnership" correctional facilities in Paarl, East London, Klerksdorp and Nigel, is envisaged.

Although the Judicial Inspectorate supports the construction of new facilities, we have already raised the concern, in our Annual Report for 2007/2008, that the Department should develop forecast models for future inmate populations[2] as part of a more holistic approach to managing overcrowding in correctional centres. This remains a priority, especially when considering the envisaged capital investment of some R8.2 billion required in the next three years for the construction of new correctional centres.

The need to develop forecast models to predict future inmate populations and composition was also raised by the Jali Commission[3], led by former Judge T S B Jali, who stated in his final report to the President:

The issue of overcrowding is also a product of mismanagement, amongst others, in the application of parole provisions and in adequate planning regarding the impact of bail and minimum sentence legislation, the failure to implement the recommendations of some of the agencies that investigated the Department previously.
The department mismanaged the situation in that it failed to project and forecast that by changing the parole regulations or guidelines there would be an upsurge in the number of prisoners in the system, particularly if one takes into account the imposition of minimum sentences and stringent bail laws.

Conclusion

Overcrowding has for the past decade or more been a major cause of the poor and quite inadequate treatment accorded large numbers of inmates, as well as of the well-nigh inhuman and unacceptable conditions pertaining at most of our correctional centres. It is almost impossible, under such conditions, to run effective rehabilitation programmes. Resolving the overcrowding issue is therefore a prerequisite for successful correctional programmes directed by the Department at placing "rehabilitation at the centre of all its activities"[4].

[1] National Treasury: Estimates of National Expenditure 2008: Vote 18: Correctional Services page 391.
[2] Judicial Inspectorate for Prisons: Annual Report 2007/2008, page 24.
[3] TSB Jali Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation in the Department of Correctional Services in terms of Proclamation No. 135 of 2001, as Amended: Final Report: Executive Summary p 44-45.
[4] Correctional Services White Paper (2005): Executive Summary p 13 par 1.

It should be clear that it is no alternative to attempt to "build our way out" of this situation, as a quick calculation will demonstrate: a shortage of 50 408 beds at a cost of R495 000 per bed[5] amounts to an estimated cost of R22.6 billion to provide the extra bed space required to house the number of currently incarcerated inmates. Other alternatives must hence be considered. This should, in our view, include the following:

- The release of all inmates who have been granted bail but who remain in custody simply because they are too poor to pay the bail amount set by the courts. Currently almost 8 500 people are in prison due to unaffordable bail.
- The Police Service must introduce improved monitoring systems to prevent unnecessary arrests. Their current performance indicator, which is based on the number of arrests made, gives rise, in our opinion, to a large number of unnecessary arrests, very few of which result in successful prosecutions.
- The implementation of legislative alternatives, especially plea-bargaining, must be driven by the National Prosecuting Authority and could be used to resolve many of the so-called petty offences. A system of plea-bargaining combined with the innovative use of alternative sentences such as victim compensation, could create a sustainable model to keep petty offenders out of our correctional centres.
- The current space-norm used by the Department should be reconsidered and steps should be taken to involve inmates in work, schooling and rehabilitation programmes, thereby minimising the time they have to remain incarcerated in their cells and lessening the effects of overcrowding.
- The Department should develop a statistical model, based on the study of variables affecting inmate populations, to conduct proper forecasts of future inmate populations. In this way it will become more proactive in its approach to managing overcrowding.

[5] Latest tender estimates (note 1 above): p 404

CHAPTER TWO: PREVENTION OF HUMAN RIGHTS VIOLATIONS

Introduction

The Judicial Inspectorate has, as one of its strategic objectives, the prevention of human rights violations in correctional centres. To achieve this objective, various systems and procedures have been developed, more particularly the system of so-called mandatory reports and the complaints procedure available to inmates. In this chapter we shall deal with mandatory reports and in the next with the complaints procedure.

In terms of the mandatory report system all Heads of Centres are compelled, by law, to submit reports to the Inspecting Judge concerning incidents of death, solitary confinement, segregation and the use of mechanical restraints in correctional centres. The Inspecting Judge then has the power to inquire into the circumstances surrounding such incidents and to gather reliable and accurate information regarding their nature and frequency.

In what follows the various statutory provisions governing the mandatory reporting of reportable incidents, the analysis of the reports received and the findings made by the Judicial Inspectorate will be considered.

Deaths in Correctional Centres

Section 15 of the Act provides:

> (1) Where a prisoner dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of Prison must in terms of section 2 of the Inquest Act, 1959 (Act 58 of 1959), report such death.
> (2) Any death in prison must be reported forthwith to the Inspecting Judge who may carry out or instruct the Commissioner to conduct any enquiry.
> (3) The Head of Prison must forthwith inform the next of kin of the prisoner who has died or, if the next of kin are unknown, any other relative.

For the period 1 January 2008 to 31 December 2008, the Judicial Inspectorate received 1 155 death reports. The data drawn from the Management Information System (MIS) of the Department, however, indicates that a total of 1 048 deaths occurred during 2008. This discrepancy became evident shortly before the writing of this report and will be subject to further investigation. In the meantime the information recorded on the MIS of the Department may be regarded as constituting a sufficiently reliable source for purposes of our analysis.

Classification of deaths

Our first analysis concerns the classification of deaths as “natural” or “unnatural”. This is important since a death classified as “natural” is dealt with internally by the Department and is not subjected to an independent inquest in terms of section 2 of the *Inquest Act* 58 of 1959.

This Act unfortunately does not define the terms “natural” or “unnatural”. On our reading of the death reports, it is evident that Heads of Centres simply regard all deaths by natural causes, such as heart attacks, strokes, cancer, tuberculosis and the like, as “natural” and hence not subject to independent inquests. Inasmuch, however, as the Department is custodian of all inmates incarcerated in correctional centres, it has a clearly defined duty to provide adequate care for them. In this regard many deaths by natural causes may in fact be the direct result of the actions or inaction of correctional officials. Thus, for example, if an inmate dies of chronic heart disease, which will usually be classified by the Department’s medical practitioner as “natural causes”, it may be that such death was in fact the direct result of the failure by a correctional official to provide the inmate with prescribed chronic medication. In such a case the death should in fact be classified as “unnatural”.

For these reasons we regard as suspect the classification of a death by natural causes as a “natural” death in that it fails to take cognisance of the treatment, or lack thereof, accorded an inmate prior to his or her death. We are therefore of the view that all deaths in correctional centres should automatically be subjected to *post mortem* examinations and independent investigations in terms of the *Inquest Act*.

Medical Parole

Our second analysis of deaths in correctional centres concerns parole on medical grounds. This is dealt with in section 79 of the Act, which reads as follows:

> Any person serving any sentence in a prison and who, based on the written evidence of the medical practitioner treating that person, is diagnosed as being in the final phase of any terminal disease or condition may be considered for placement under correctional supervision or on parole, by the Commissioner, Correctional Supervision and Parole Board or the court, as the case may be, to die a consolatory and dignified death.

From a sample of 269 death reports received during early 2009, it appears that in 230 (86%) cases the inmates received medical treatment prior to their death. It is thus fair to assume that the seriousness of their medical condition and their deteriorating health

were known to the Department. Although medical parole was considered in 36 (14%) of these cases, the inmates in question were not granted medical parole prior to their passing away. From this it may be inferred that medical parole is not considered in the majority of cases where inmates are terminally ill. During 2008 only 54 inmates were released on medical parole, which represents only 5.5% of the 987 deaths recorded.

The uncertainty surrounding medical parole has placed renewed emphasis on the urgent need for the Amendment Act to be put into operation without delay. In terms of section 75(8) of the Act as amended, and after consideration of the Parole Board decision and the documents supporting or denying medical parole, the Inspecting Judge may refer such decision for review to the Parole Review Board.

It should be noted in this regard that the Amendment Act does not amend the grounds required for consideration of medical parole in section 79 of the Act. This Office has respectfully raised the question whether the stringent prerequisites contained in such grounds, namely “the final phase of any terminal disease or condition”, should not be reconsidered. Apart from the difficulty of determining when a person is in the final phase of a terminal disease or condition, the continued detention of a seriously ill or debilitated inmate may constitute a clear breach of his or her constitutionally protected right to human dignity.

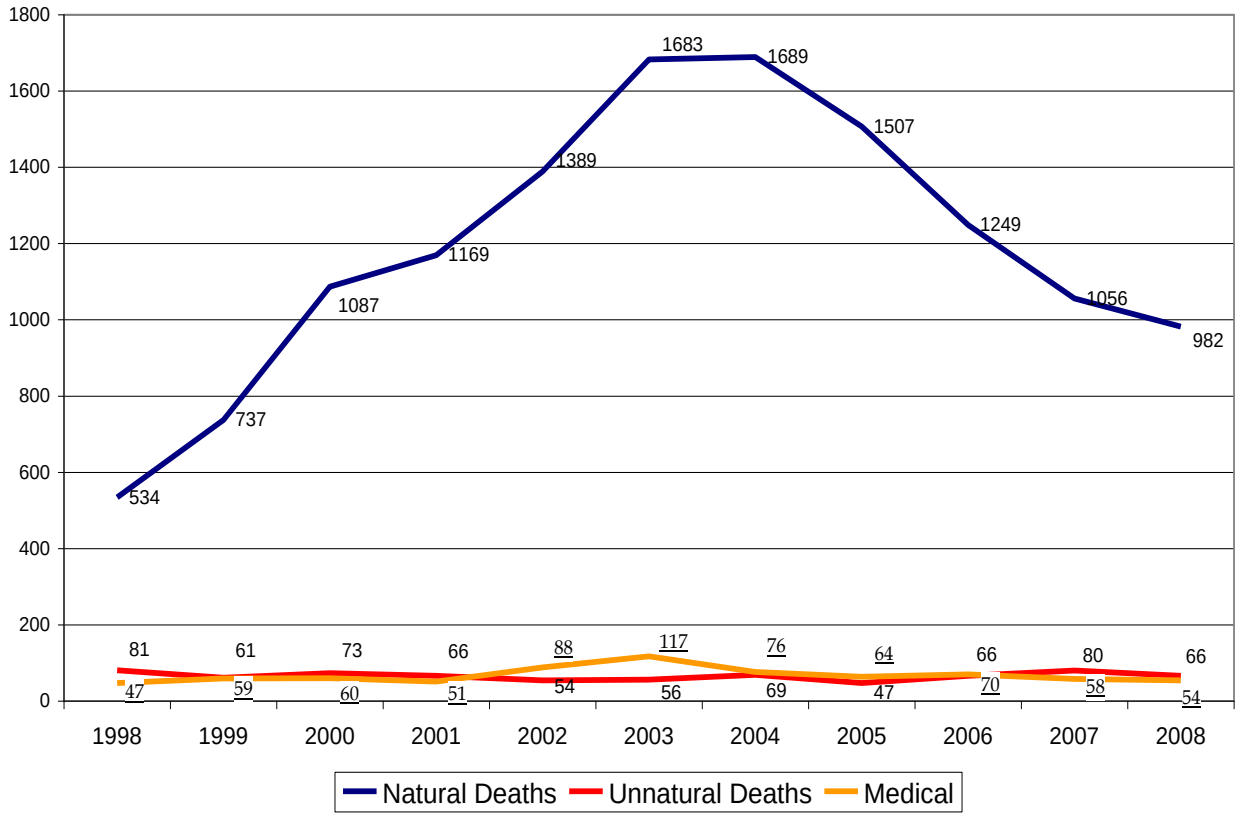
The issue of medical parole is complicated by the fact that it does not apply to awaiting trial or unsentenced detainees who may be terminally or chronically ill and who have not been granted bail or are unable to pay the amount of bail set by a court. The Act does not provide for this kind of eventuality although the Department has issued an order dealing with “physically debilitated or handicapped awaiting-trial prisoners”. In such cases a court must be approached to decide on such person’s further detention or release. We are respectfully of the view that statutory provision should be made for release when it is clear that the detainee’s medical condition is so serious that his or her continued detention would constitute a breach of human dignity. This would avoid the unacceptable situation arising when a terminally ill awaiting trial detainee dies an undignified death in prison. Providing for release in such cases would clearly be consistent with the fundamental human rights to which every detainee, sentenced or not, is entitled.

Trends analysis in death rates

Our third analysis of deaths is in the form of a “behaviour over time” graph (see below), illustrating the trends in the number of natural and unnatural deaths, as well as in the number of inmates released on medical parole per year, for the period 1998 to 2008.

From this it is clear that the number of deaths for 2008 is down by 7% when compared with the number for 2007. Furthermore, considering that the average number of inmates in custody during 2008 was 164 103, the number of deaths in 2008 translates to a death rate of 6.4 per 1000 inmates. This is slightly lower than the rate for 2007 but significantly lower than that for 2003, when it was almost 10 deaths per 1000 inmates. Of the 1 048 deaths recorded in 2008, 751 were sentenced and 297 unsentenced inmates.

Deaths in Correctional Centres 1998 until 2008



Unnatural deaths

During 2008 a total of 66 unnatural deaths were recorded. According to the Department this was due mainly to acts of suicide and assaults. The Judicial Inspectorate has, since January 2009, intensified its efforts to establish and investigate the circumstances under

which such deaths have occurred. In this regard it has resuscitated the Legal Services Unit which is staffed by well qualified and experienced lawyers. They are ably assisted by a newly created Case Administration Unit which has as its primary objective the effective monitoring and recording of death reports.

Of particular concern are the deaths caused by alleged assaults on inmates by correctional officials. On 11 June 2009, three correctional officials were convicted by the High Court on charges of murder arising from their involvement in the deaths of three inmates at the Krugersdorp Correctional Centre during April 2007. The officials were each sentenced to 20 years' imprisonment.

Reports of the death of inmates allegedly due to assaults by correctional officials have recently been received from the George and Ncome Correctional Centres. Neither of the relevant investigation reports has, to date, been finalised by the Department and it may be necessary for this Office to launch its own investigation.

Solitary confinement

Section 25 of the Act reads as follows:

> (1) A penalty of solitary confinement must be referred to the Inspecting Judge for review. The Inspecting Judge must within three days, after considering the record of the proceedings and a report from a registered nurse, psychologist or medical officer on the health status of the prisoner concerned, confirm or set aside the decision or penalty and substitute an appropriate order for it.
> (2) The penalty of solitary confinement may only be implemented when the Inspecting Judge has confirmed such penalty.
> (3) A prisoner in solitary confinement must be visited at least once every four hours by a correctional official, once a day by the Head of the Prison, and his or her health assessed once a day by a registered nurse, psychologist or medical officer.
> (4) Solitary confinement must be discontinued if in the view of the registered nurse, psychologist or medical officer it poses a threat to the physical or mental health of the prisoner.

It is important to note that, in terms of section 19 of the Amendment Act, this section is to be repealed. This means that the concept of solitary confinement as a punishment or penalty will no longer exist once the Amendment Act becomes operational. The Judicial Inspectorate fully supports this amendment in that it will have the effect of eliminating the stigma attaching to solitary confinement as a process of being locked up in a dark and damp cell, totally isolated from the rest of the world. In addition it should serve to address the apparent confusion among correctional officials, particularly Heads of Centres, as to when placing an inmate in a single cell constitutes solitary confinement in

terms of section 25, segregation in terms of section 30 or normal accommodation in a single cell as envisaged in section 7(2)(e) of the Act.

On the other hand, although the concept of solitary confinement is destined to be removed from the Act, the practice of placing an inmate in a single cell as a form of punishment will continue in terms of the envisaged amendment of section 30(1) of the Act relating to segregation of an inmate. In terms of section 24(a) of the Amendment Act segregation may include detention in a single cell other than as a form of normal accommodation as contemplated in section 7(2)(e) of the Act. Section 24(b) of the Amendment Act then provides explicitly that segregation may be imposed "to give effect to the penalty of the restriction of amenities". Any inmate thus penalised, however, may, in terms of section 30(7) of the Act, refer the matter to the Inspecting Judge (see below).

Reports received

During 2008, the Judicial Inspectorate received a total of 263 reports of solitary confinements, many of which were incorrectly reported as solitary confinements when in fact they were segregation cases. Our analysis of these reports high-lights the fact that, notwithstanding many incidents of violence, smuggling and the like in which inmates are involved, only few of them are subjected to "formal" disciplinary measures, as contemplated in sections 22 to 25 of the Act. This observation is supported by the small number of reports received from Heads of Centres and the few referrals received from inmates.

Segregation

Section 30 (1) of the Act reads as follows:

> (1) Segregation of a prisoner for a period of time, which may be for part of or the whole day and which may include detention in a single cell, other than normal accommodation in a single cell as contemplated in section 7(2)(e), is permissible –
> (a) upon written request of the prisoner;
> (b) to give effect to the penalty of the restriction of amenities imposed in terms of section 24 (3)(c) or (5)(c) to the extent necessary to achieve this objective;
> (c) if such detention is prescribed by the medical officer on medical grounds;
> (d) when a prisoner displays violence or is threatened with violence;
> (e) if a prisoner has been recaptured after escape and if there is a reasonable suspicion that such prisoner will again escape or attempt to escape; and
> (f) if at the request of the South African Police Service, the Head of the Prison considers that it is in the interest of the administration of justice.

Sub-sections (6) and (7) of section 30 read:

> (6) All instances of segregation and extended segregation must be reported immediately by the Head of the Prison to the Area Manager and to the Inspecting Judge.
> (7) A prisoner who is subjected to segregation may refer the matter to the Inspecting Judge who must decide thereon within 72 hours after receipt thereof.

Reports received

During 2008 the Judicial Inspectorate received a total of 6 022 reports of segregation. The table below provides a breakdown of the reports of segregation received and the reasons why such inmates were placed in segregation.

Reason for segregation	Number of reports
Section 30(1)(a) upon written request of an inmate;	**1 868**
Section 30(1)(b) to give effect to the penalty of the restriction of amenities imposed in terms of section 24(3)(c) or (5) to the extent necessary to achieve this objective;	**1 055**
Section 30(1)(c) if such detention is prescribed by the medical officer on medical grounds;	**336**
Section 30(1)(d) when an inmate displays violence or is threatened with violence;	**2027**
Section 30(1)(e) if an inmate has been recaptured after escape and there is a reasonable suspicion that such inmate will again escape or attempt to escape;	**32**
Section 30(1)(f) if at the request of the South African Police Service, the Head of Centre considers that it is in the interest of the administration of justice.	**704**

From this table it is evident that most inmates were placed in segregation because they reportedly displayed violence or were threatened with violence. This further supports the analysis that “formal” disciplinary action is not taken at most correctional centres against inmates who commit disciplinary infringements as stipulated in section 23 of the Act. Many inmates are also segregated “at own request”. This is understandable, considering the overcrowded conditions that exist in most communal cells. The Judicial Inspectorate, however, is concerned about what it perceives as “under-reporting” of segregation cases by the Department. It is likewise concerned about its own apparent inability to implement an efficient “referral” procedure in terms of section 30(7) of the Act.

The level of under-reporting of cases of segregation is borne out by the fact that, of the total of 114 822 available bed spaces, approximately 10% (some 11 482) are in the form of single cells which, from our observations during inspections, are for the most part occupied. Furthermore, in terms of section 30(4) of the Act segregation may be enforced for a maximum period of 7 days unless extended segregation is required and a medical officer or psychologist certifies, in terms of section 30(5), that it will not be harmful to the health of the inmate. It follows that, if all such cases of segregation and extended segregation were indeed reported to the Judicial Inspectorate, the number of reports received should be far in excess of the 6 022 reports received. The situation is being carefully monitored by the use of performance audits conducted by Independent Visitors.

Mechanical restraints

Sections 31(1), (4) and (5) of the Act read as follows:

> (1) If it is necessary for the safety of a prisoner or any other person, or the prevention of damage to any property, or if a reasonable suspicion exists that a prisoner may escape, or if requested by a court, a correctional official may restrain a prisoner by mechanical restraints as prescribed by regulation.
> (4) All cases of the use of such mechanical restraints except handcuffs or leg-irons must be reported immediately by the Head of Prison to the Area Manager and to the Inspecting Judge.
> (5) A prisoner who is subjected to such restraints may appeal against the decision to the Inspecting Judge who must decide thereon within 72 hours after receipt thereof.

Reports received

During 2008, only 41 reports of mechanical restraints were received from Heads of Centres. Once again this number is low, ostensibly because of defective compliance, by Heads of Centres, with the relevant provisions of the Act. An additional reason may be the fact that the use of handcuffs or leg-irons was excluded as a form of mechanical restraint in section 31(4) of the Act.

There may be some consolation in the fact that the problem appears to be addressed, to some extent, by section 25 of the Amendment Act, which will amend subsection 3 of the Act, by addition of the following paragraph:

> (d) All cases of the use of mechanical restraints must be reported immediately by the Head of the Correctional Centre to the National Commissioner and to the Inspecting Judge.

Use of force

Section 32 of the Act is couched in the following terms:

(1) (a) Every correctional official is authorised to use all lawful means to detain in safe custody all prisoners and, subject to the restrictions of this Act or any other law, may use force to achieve this objective where no other means are available.

(b) A minimum degree of force must be used and the force must be proportionate to the objective.

(c) A correctional official may not use force against a prisoner except when it is necessary for:

(i) self-defence;

(ii) the defence of any other person;

(iii) preventing a prisoner from escaping; or

(iv) the protection of property.

(2) Force may be used only when authorised by the Head of Prison, unless a correctional official reasonably believes that the Head of Prison would authorise the use of force and that the delay in obtaining such authorisation would defeat the objective.

(3) If, after a correctional official has tried to obtain authorisation, force is used without prior permission, the correctional official must report the action taken to the Head of Prison as soon as reasonably possible.

(4) Any such permission or instruction to use force may include the use of non-lethal incapacitating devices or firearms, subject to the restrictions set out in sections 33 and 34.

(5) If force was used, the prisoner concerned must undergo an immediate medical examination and receive the treatment prescribed by the medical officer.

Parliament has, with its approval of the Amendment Act and more particularly section 26 thereof, expanded the system of so-called mandatory reports by the addition of the following subsection to section 32 the Act:

(6) All instances of the use of force in terms of subsection (2) and (3) must be reported to the Inspecting Judge, immediately.

The Judicial Inspectorate welcomes this amendment and is confident that it will play a significant role in the reduction of violence in our correctional centres.

CHAPTER THREE: DEALING WITH COMPLAINTS RECEIVED FROM INMATES

Introduction

Section 90(2), read with sections 21 and 93 of the Act, places a responsibility on the Judicial Inspectorate to deal with complaints received from inmates. We regard this as important because, by dealing with such complaints we are able to promote our vision, namely "to ensure that all inmates are treated with human dignity", and in doing so, we are able to gather valuable information relating to the conditions in correctional centres and the treatment of inmates.

In order to carry out this responsibility the Judicial Inspectorate has developed a system of Independent Correctional Centre Visitors ("Independent Visitors"), being community members appointed by the Inspecting Judge after a process of publicly calling for nominations and consulting with community organisations. The work of the Independent Visitors is supported by an electronic system which allows them to record complaints, to submit reports to the Inspecting Judge and to enquire about the progress made in the internal resolution, where applicable, of such complaints.

The electronic system also furnishes a data base of all visits to correctional centres, the time spent on such visits and the number and nature of complaints received at each correctional centre over a specific period of time. The data collected in this fashion has been used to good effect to identify systemic problems that may exist at a particular correctional centre, and has been made freely available, for purposes of research, to universities, NGO's, the media and various other stakeholders. This constitutes a collective effort to inform public opinion on the conditions prevailing in correctional centres and on the treatment of inmates being detained there. Informing public opinion is, in our view, a prerequisite for changing the popular public perception that correctional centres are "five star hotels". This perception must be changed in order to facilitate the practical rehabilitation and reintegration of inmates into their communities.

Appointment of Independent Visitors

Section 92(1) of the Act reads as follows:

> (1) The Inspecting Judge must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an Independent Prison Visitor for any prison or prisons.

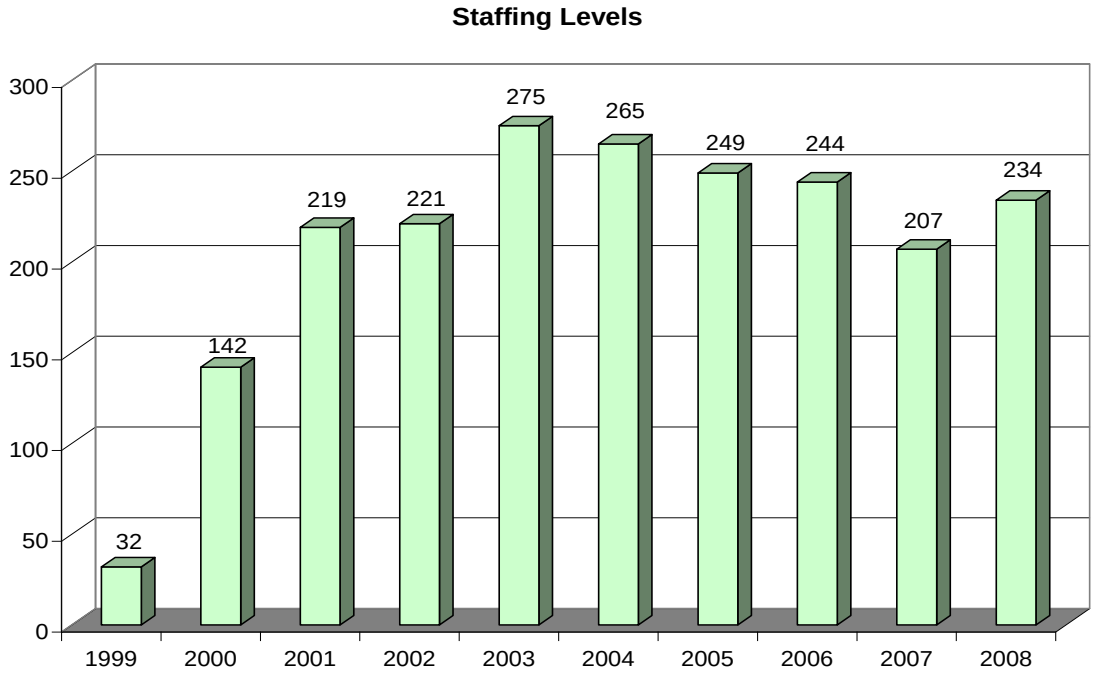
As on 31 March 2009, a total of 191 Independent Visitors had been appointed and were deployed in the various provinces as indicated in the table below.

Province	Number of Independent Visitors
Gauteng	**34**
North West	**11**
Limpopo	**8**
Mpumalanga	**7**
Western Cape	**31**
Kwazulu Natal	**25**
Eastern Cape	**39**
Free State	**28**
Northern Cape	**8**

As is illustrated in the graph below, the average number of Independent Visitors per year has fluctuated. This was particularly so during 2007 and 2008, when the Judicial Inspectorate battled to maintain staffing levels amongst Independent Visitors at acceptable levels. This was primarily due to changes in the operational procedures of the Judicial Inspectorate. In the meantime this situation, together with its concomitant operational challenges, has been remedied and measures have been put in place to ensure that the staffing levels of Independent Visitors improve.

An important development that will arise from the envisaged amendment of section 92 of the Act is the need to appoint an Independent Visitor at each correctional centre. The process of publicly calling for nominations and consulting with community organisations is already in an advanced stage and a number of appointments will be made shortly.

Prior to the appointment of Independent Visitors, the Judicial Inspectorate negotiates with each of them a number of duties described as “minimum standards of service delivery”. This includes the number of visits to be made to correctional centres, the number of interviews to be conducted, meetings to be attended and similar activities, all of which is stipulated in the service agreement between the Independent Visitor and the Inspecting Judge. Compliance with these duties is enforced by regular performance audits conducted by the Judicial Inspectorate.



Dealing with complaints

A correctional centre is an “unnatural” environment dissimilar to any of the often diverse communities it serves. It is therefore understandable that many complaints will come to the fore in such an environment. These complaints vary from those which may be regarded as flippant to more substantial complaints such as serious assaults and even murders. The Judicial Inspectorate regards it as important to deal with all complaints, whatever their nature, with a view to functioning as an effective tool in protecting and promoting the humane detention of inmates. In addition the frequently pent-up frustration amongst inmates is reduced when reasonable attempts are made to have their complaints resolved. Young or “first-time” offenders often turn to prison gangs when they feel threatened (a common phenomenon in an unnatural environment) or when they are unable to elicit assistance in resolving their many problems. The establishment of an efficient and independent complaints procedure therefore remains, in our opinion, a highly effective strategy to reduce unrest and the deleterious effects of prison gangs.

The main method employed by the Judicial Inspectorate to deal with the complaints of inmates, is to promote the active functioning of Independent Visitors. Section 93(1) of the Act requires that they deal with complaints in various ways:

(a) regular visits;
(b) interviewing prisoners in private;

(c) recording complaints in an official diary and monitoring the manner in which they have been dealt with;
(d) discussing complaints with the Head of Prison, or the relevant subordinate correctional official, with a view to resolving the issues internally.

Although these provisions are couched in peremptory terms, they may be regarded as general guidelines in the sense that the Independent Visitor should be able to exercise discretion in deciding on a course of action. Thus interviews with inmates may take place in private or collectively, depending on the circumstances and on the nature of the complaints. In this regard Independent Visitors are not restricted to discussing complaints only with the Head of Centre or correctional officials, but they may also hold discussions with members of a Visitors' Committee or with officials from the Judicial Inspectorate with a view to establishing the most effective way to resolve the issues in question.

It is important to note that, in terms of section 21 (1) of the Act, every inmate must, on admission and on a daily basis, be given the opportunity to make complaints or requests to the Head of Centre or a duly authorised correctional official. If the inmate is not satisfied with their response, the Head of Centre must refer the matter to the Area Manager for consideration. Should the inmate still be dissatisfied, the matter may be referred to the Independent Visitor, who must deal with it in terms of the procedures laid down in section 93 of the Act. Generally speaking this means that complaints, unless of a confidential or sensitive nature, should first be recorded in the complaints register of the Department (the G365 register), after which the Head of Centre is afforded a reasonable time, depending on the nature of the complaint, to resolve the issue before it is dealt with by the Independent Visitor.

During 2008 Independent Visitors paid a total of 7 103 visits to correctional centres. In the process they interviewed 344 657 inmates and recorded a total of 69 415 private consultations with inmates who were dissatisfied with the efforts of the Head of Centre or delegate to have their complaints resolved. The number and the nature of the complaints recorded by the Independent Visitors are reflected in the table below. From this it appears that the most common complaint relates to transfers from one centre to another. This is followed by complaints arising from a lack of contact with their families and from not having been granted bail.

COMPLAINTS RSA	EC	FS	GP	KZN	LIM	MP	NW	NC	WC	All
Appeal	1,007	2,509	2,628	3,335	1,964	1,075	1,257	864	1,543	16,182
Assault (Inmate on Inmate)	139	522	302	371	407	167	68	137	771	2,884
Assault (Member on Inmate)	132	204	179	145	8	197	45	68	1,032	2,010
Bail	1,383	1,413	5,559	3,235	765	738	26	2,102	7,570	22,791
Communication with Families	1,452	3,510	7,532	1,891	1,821	2,684	1,660	2,174	4,608	27,332
Conditions	962	650	3,761	1,008	113	186	144	1,020	2,308	10,152
Confiscation of Possessions	49	177	217	52	5	189	77	184	241	1,191
Conversion of sentences	119	488	247	475	124	239	74	42	121	1,929
Corruption	77	57	66	208	0	22	12	31	27	500
Food	815	1,468	1,979	752	343	171	458	477	1,570	8,033
Health Care	2,574	1,670	3,154	2,258	778	2,221	1,944	911	3,248	18,758
Inhumane Treatment	157	393	1,854	282	9	166	87	489	786	4,223
Legal representation	1,089	1,517	4,805	3,032	1,956	2,247	198	879	3,303	19,026
Medical Release	61	381	75	140	2	6	34	22	43	764
Parole	466	1,667	5,506	1,860	930	2,396	1,039	1,018	1,991	16,873
Rehabilitation programmes	910	1,757	5,284	648	357	1,713	1,244	968	3,142	16,023
Remission	44	55	63	22	1	63	1	24	45	318
Transfers	1,959	6,254	4,286	3,228	1,197	2,163	3,584	1,086	4,459	28,216
Other	3,564	4,980	18,304	9,339	6,356	4,317	6,354	2,037	7,812	63,063
All Complaints	16,959	29,672	65,801	32,281	17,136	20,960	18,306	14,533	44,620	260,268

Although one may be tempted to compare these statistics with those of previous years, such an exercise would, at the present stage, be unreliable. Statistics relating to the nature and number of complaints received are affected by too many variables, such as the vacancy rate of Independent Visitors, problems with training and the like. They are therefore not appropriate for a statistical analysis of the present nature. The Judicial Inspectorate nurtures the hope, however, to develop a statistical model in accordance with which, after due consideration of the said variables, it will be possible to express the number of inmate complaints as a performance indicator of the treatment of inmates and the conditions prevailing in correctional centres.

Suffice it to say, on the basis of the statistics at our disposal, that the trend of complaints has remained virtually the same. The fact that so many inmates are housed in correctional centres in areas situated far from their homes and families, and the fact that they are apparently often transferred as “punishment” for allegedly offensive behaviour in the centres where they have hitherto been housed, appear to be the driving forces behind the high levels of dissatisfaction current amongst the inmate population.

The Judicial Inspectorate holds the view that inmates should be protected against the apparently arbitrary decisions taken to transfer them from one correctional centre to

another. It believes that they should have the right to direct an appeal to the Inspecting Judge, similar to that available in cases of segregation and the use of mechanical restraints, should they be dissatisfied with their transfer. Alternatively, strict measures should be put in place to prevent inmates, who have lodged complaints concerning alleged assaults on them, from being transferred until such complaints have been resolved.

The large number of complaints received about health care is also of particular concern. The prison environment provides ideal conditions for the rapid spread of contagious diseases such as TB, HIV/AIDS and the H1N1 flu virus. It is therefore of the utmost importance to maintain the highest levels of medical care and treatment possible. Often new admissions are not properly screened for diseases or chronic medical conditions. This makes it extremely difficult to prevent contamination of other inmates, or to determine further medical needs. Most inmates are given access to medical treatment only after they have fallen seriously ill.

The many complaints from inmates about the lack of legal representation remain systemic throughout the country, despite efforts made by many role players to address this. In 2006 the Judicial Inspectorate, after consultation with Legal Aid South Africa, appointed eight Independent Visitors to receive specialised training on how to deal with complaints of this nature. These Independent Visitors, who were deployed at correctional centres housing a large number of awaiting trial detainees, were also tasked with the responsibility of establishing a link between the various justice centres and such centres with a view to facilitating applications from inmates for legal assistance or representation. Unfortunately only limited success was achieved in reducing the number of complaints of this nature and the joint project has since come to an end.

The number of inmates complaining about the lack of rehabilitation programmes is also of particular concern especially considering the emphasis placed, in the White Paper and the Act, on the rehabilitation of all inmates. Most of their concerns relate to access to pre-release programmes and the possible impact this may have on their parole dates. A large number of inmates also complain that they wish to participate in work or training programmes. More should, we believe, be done to ensure that all inmates are kept busy, in a meaningful manner, performing work and participating in such programmes.

CHAPTER FOUR: COMMUNITY INVOLVEMENT

Introduction

The Judicial Inspectorate promotes, as one of its strategic objectives, "the community's interest and involvement in correctional matters". To achieve this objective it has been necessary to initiate a number of procedures and projects, which are discussed in more detail below.

Appointment of Independent Visitors

As mentioned in chapter 3 above, the Inspecting Judge must, "as soon as practicable, after publicly calling for nominations and consulting with community organisations", appoint Independent Visitors for any correctional centre (section 92(1) of the Act). Such appointments, which are generally made from the ranks of community members, especially those who are actively involved in community projects, have become an important link between correctional centres and local communities. Independent Visitors hold office, in terms of section 92(2), for such period as the Inspecting Judge may determine at the time of appointment. This is usually a period of three years, unless exceptional circumstances dictate an extension of the appointment. Through regular visits to the correctional centres allocated to them, they have become advocates of both the Judicial Inspectorate and the community whence they come. They do valuable, if not indispensable, work by informing public opinion about the conditions in our correctional centres and the treatment of all inmates housed in such centres. Their powers, functions and duties as set forth in section 93 of the Act have been dealt with in chapter 3 above.

Visitors' Committees

In terms of section 94(1) of the Act the Inspecting Judge may establish Visitors' Committees for a particular area. As appears from the table below, there are currently 14 such committees in the Northern Region and 11 in the Southern Region. These committees, which consist of the Independent Visitors appointed to do duty at the correctional centres situated in the particular area, are required to meet at least quarterly (section 94(2) of the Act), but they in fact meet monthly. Meetings are convened and chaired by a chairperson, assisted by a secretary. Hitherto the Area Manager, a correctional official appointed by the National Commissioner to take charge of all correctional officials in a particular area, has usually been represented at such meetings, but in terms of the Amendment Act this office will no longer exist.

The functions of a Visitors' Committee are set forth in section 94(3) of the Act, namely:

(a) to consider unresolved complaints with a view to their resolution;
(b) to submit to the Inspecting Judge those complaints which the Committee cannot resolve;
(c) to organise a schedule of visits;
(d) to extend and promote the community's interest and involvement in correctional matters; and
(e) to submit minutes of meetings to the Inspecting Judge.

Stakeholder meetings

Once per quarter so-called Stakeholder Meetings, which are an extension of the meetings of Visitors' Committees, are held in the relevant area. All NGO's, community-based organisations and other stakeholders in the area are invited to attend these meetings with a view to meeting the Independent Visitors and discussing matters of mutual interest in so far as they relate to the treatment of inmates and the conditions in correctional centres. The Judicial Inspectorate has established a comprehensive data base of all organisations attending the Stakeholder Meetings, which organisations are all involved, at different levels, in providing services to inmates or are simply interested in the improvement of conditions at correctional centres.

List of Visitors' Committees established in various areas/correctional centres

Northern Region	Southern Region
1. Pretoria	1. Kimberley
2. Leeuwkop/Krugersdorp/ Rustenburg	2. Kroonstad
3. Rooigrond	3. Grootvlei
4. Johannesburg	4. Middelburg
5. Boksburg/ Modderbee	5. St. Albans
6. Thohoyando	6. East London
7. Witbank	7. Umtata
8. Groenpunt	8. Swartland
9. Waterval/Ncome	9. Southern Cape
10. Durban	10. Goodwood/Pollsmoor
11. Qalakabusha/ Empangeni	11. Breederivier
12. Baviaanspoort/Zonderwater	
13. Barberton/Nelspruit	
14. Pietermaritzburg	

A Visitors' Committee may also, from time to time, arrange public meetings aimed at informing local communities about the powers, functions and duties of Independent Visitors and calling for the nomination of persons who may be interested in doing duty as such. In this regard it may be pointed out that chairpersons of Visitors' Committees are also required to attend local Police Forum meetings.

Partnership with other role players

It is common cause that many of the problems faced in correctional services today, are highly complex and interrelated. These problems, such as poverty, poor health care, lack of adequate education, high crime rates and the like, expand far beyond the scope of one Government department namely Correctional Services. For this reason it is important that a holistic approach be followed, firstly, in trying to understand and study these problems and, secondly, in seeking solutions thereto. In doing so it is necessary to establish strong links with as many role players as possible. This requires a conscious effort to share information, knowledge, expertise, experience and, where possible, resources.

The Judicial Inspectorate has for some time been involved in efforts to establish such links between role players and stakeholders. In this regard it has found support in the Department which, during the past few years, has been visibly involved in what may be termed "broad stakeholder consultation". At virtually every correctional centre in the country one may encounter NGOs, community-based, faith-based, welfare-based and similar organisations involved in presenting programmes or providing services to inmates. The various "round-table" discussions recently hosted by the Minister, Deputy Minister and National Commissioner on topics such as health, gang activities and deaths in correctional centres, have contributed significantly to strengthening the links between the role players participating in such discussions, while at the same time informing public opinion regarding the many and varied challenges faced by correctional services. These initiatives and the transparency with which the Department generally interacts with the role players are commendable, but in our interaction with many of such role players they have raised a number of concerns which, if correct, may, in our respectful view, compromise the sustainability of the existing partnership between such role players and the Department. Examples of such concerns include the following:

- the "accreditation" process required by the Department prior to permission being granted to NGOs and other role players to furnish services to inmates are reportedly used by some Heads of Centres to exclude certain of the organisations

or to silence individuals from making negative comments about the manner in which those particular correctional centres are managed;

- although the Department relies on these organisations to render services to inmates, they are reportedly not willing to fund the activities of such organisations nor are they willing to pay for these services;
- the requirements set by the Department for permission to conduct research in correctional centres have become so stringent that it actually discourages much-needed research.

The Judicial Inspectorate has not purported to investigate these concerns in any depth and emphasises that it does not present this as a critique of the Department. On the contrary it wishes to share this information in the hope that it will add value to the efforts undertaken by the Minister and the Department to create strong and sustainable relationships among all role players with a view to addressing effectively many of the problems and challenges presently being experienced in our correctional centres.

List of role players

The Judicial Inspectorate has, during the financial year covered by this report, continued with its involvement in the forums, seminars, conferences, meetings and other forms of interaction initiated or presented by the following role players:

- National Prosecuting Authority: Provincial Stakeholder Meeting (held monthly and chaired by the Director of Public Prosecutions, Western Cape);
- Provincial Integrated Case Flow Management Meeting (held quarterly and chaired by the Judge President of the Western Cape High Court};
- Provincial Lower Court Case Flow Management Meeting (held monthly and chaired by the Regional Court President of the Western Cape);
- National Initiative/Forum to Address Overcrowding in Correctional Facilities (held monthly and chaired by Judge E Bertelsmann of the North Gauteng High Court);
- Human Rights Committee on the Implementation of the Optional Protocol on the Prevention of Torture (OPCAT) (chaired by a member of the Human Rights Commission);
- National Institute for Crime Prevention and the Reintegration of Offenders (NICRO);
- Civil Society Prison Reform Initiative (CSPRI);
- Open Society Foundation for South Africa (OSF-SA);
- Centre for the Study of Violence and Reconciliation (CSVR);

- Institute for Security Studies (ISS);
- Child Justice Forum (monthly meetings chaired by a member of the Department of Justice and Constitutional Development);
- Khulisa;
- President's Awards;
- International Penal and Penitentiary Foundation (IPPF);
- International Corrections and Prisons Association (ICPA);
- Just Detention International (JDI),
- Association for the Prevention of Torture (ATP);
- International Centre for Prison Studies (ICPS);
- International Commission of Catholic Prison Pastoral Care (ICCPPC).

These bodies or organisations constitute what the Judicial Inspectorate has experienced as the major role players and stake holders in the world of correctional services. We have much to share and even more to learn. Time is, as always, of the essence and it is only with unconditional cooperation that the community's collective efforts at improving the situation in our correctional centres will have any chance of success.

The Judiciary as a role player

Although members of the Judiciary (Judges and Magistrates) do not, strictly speaking, represent the community, they may be regarded as important role players in the correctional environment in that they make decisions in bail applications, apply their discretion in postponing criminal matters and decide on an appropriate sentence for a convicted offender. Perhaps equally important, in correctional context, is the exercise of their right of access to correctional centres in terms of sections 99(1) and (2) of the Act, which read as follows:

> (1) A judge of the Constitutional Court, Supreme Court of Appeal or High Court, and a magistrate within his or her area of jurisdiction, may visit a prison at any time.
> (2) A judge and a magistrate referred to in subsection (1) must be allowed access to any part of a prison and any documentary record, and may interview any prisoner and bring any matter to the attention of the Commissioner, the Minister, the National Council or the Inspecting Judge.

In the past, members of the Judiciary have paid regular visits to correctional centres in various parts of the country. Such visits have served to forge strong links between Correctional Services and the Judiciary, who have had the opportunity to observe first hand the treatment of inmates and the conditions pertaining in correctional centres. Sad to say, it would appear that such visits have become extremely rare and only a small

number of Judges have, in recent times, exercised their right of access and furnished reports on their observations to this Office. We sincerely appreciate their proactive involvement in correctional services and express the hope that more members of the Judiciary will become similarly involved in the future. The insights they will acquire in this regard will not only stand them in good stead when they are called upon to make decisions concerning the incarceration or release of offenders, but will assist in establishing them as essential role players in the correctional environment. Based on our experience it is evident that such judicial visits add great value to the continued efforts to ensure humane detention of all inmates.

In this regard it is gratifying to note that members of the Portfolio Committee have, in recent times, been actively engaged in visits to correctional centres and have regularly referred matters to this Office for investigation.

CHAPTER FIVE: THE CORRECTIONAL SERVICES AMENDMENT ACT 25 OF 2008

Background

The former Minister introduced the Correctional Services Amendment Bill [B 32-2007] to the National Assembly of Parliament on 18 May 2007, after which the Bill was referred to the Portfolio Committee for consideration and adoption.

A lengthy process was followed by the Portfolio Committee in considering the proposed amendments to the Act. This included public hearings, various information sessions, meetings and vigorous Parliamentary debates. On 11 November 2008, the Amendment Act, as assented to by the President, was published in Government Gazette No. 31593. We have been given to understand that, except for sections 48 and 49 thereof, which relate to the amendment of section 73 and the insertion of section 73A in the Act, the Amendment Act will become operative on 1 October 2009.

The amendments introduced by the Amendment Act impact on the functioning of the Judicial Inspectorate in different ways and to varying degrees. In order to determine the nature, ambit and effect of such impact, an analysis of the relevant amendments may be useful with a view to providing a basis for strategic planning of the envisaged functions and activities of the Judicial Inspectorate in the future. Before conducting such analysis, however, it should be noted that the initial Amendment Bill [B 32-2007] intended to introduce far-reaching changes to the current structuring of the Judicial Inspectorate, most significantly the replacement of the Inspecting Judge by an Inspector-General, who would not be required to be a Judge. The name of the Office would then change from the Judicial Inspectorate of Prisons to the Office of the Inspector-General for Correctional Services, which would be under the "control" of the National Commissioner. Clause 73 of the Bill would replace section 89 of the Act and provide for the appointment of a Chief Executive Officer ("CEO"), seconded by the National Commissioner to such Office to perform financial, administrative and clerical functions, and for other officers in the public service, similarly seconded by the National Commissioner in terms of public service law. Their conditions of service, including salaries and allowances, would be regulated by the *Public Service Act*.

The fierce debates and serious inputs emanating from various role players, subsequent to the tabling of the Bill, highlighted their concern that the proposed amendments would undoubtedly undermine the independence of the Judicial Inspectorate. This made it

evident that there was a general consensus, among Parliamentarians, NGOs and other stakeholders, that the Judicial Inspectorate should maintain, and indeed strengthen, its independence from the Department.

After careful consideration of the Bill during the aforesaid Parliamentary process, the Portfolio Committee recommended that the post of Inspecting Judge as head of the Judicial Inspectorate be retained and also suggested the adoption by Parliament of various other amendments aimed at strengthening the independence of the Judicial Inspectorate. A detailed analysis of these amendments, and their probable impact on the functioning of the Judicial Inspectorate, will be presented in what follows.

The impact of the Amendment Act on the Judicial Inspectorate

The Judicial Inspectorate may be described as an "integrated work system" of which the whole is dependent on the functioning of, and interaction between, its various parts. For this reason the changes to be introduced by the Amendment Act should be considered holistically, as opposed to engaging in a narrow interpretation of their possible effect. We have therefore made use of a number of systemic tools for purposes of evaluating the impact of such amendments. In doing so the following steps were taken:

- A detailed analysis of the Amendment Act was undertaken with a view to identifying and listing the specific sections which would impact on the work of the Judicial Inspectorate. A summary of these sections is provided below.
- The impact of the amendments was considered from three perspectives, namely organisational efficiency, cost implications and service delivery.
- On the basis of this assessment the various changes to be implemented were identified, listed and grouped or categorised.
- A 2x2 matrix was used to evaluate current levels of impact and uncertainty in the Judicial Inspectorate and to determine, firstly, how the envisaged changes would affect its functioning and, secondly, how the implementation of such changes should continue.
- A number of recommendations pertaining to the manner in which such changes could best be implemented were formulated.

Analysis of the Amendment Act

The amendments identified by the analysis of the Amendment Act as impacting on the work and functioning of the Judicial Inspectorate are listed and interpreted, with brief

explanations, below. The analysis focuses on those provisions which are regarded as having a "direct" impact on such work and functioning. Amendments which may have an "indirect" impact thereon are not, of course, excluded inasmuch as they should be considered in the context of the legislation as a whole.

Amendment Act	**Interpretation of section**
Section 19 repeals section 25 of the principal Act.	The mandatory review, by the Inspecting Judge, of solitary confinement as a penalty falls away.
Section 24 amends section 30 of the principal Act.	Segregation may be used "to give effect to the penalty of the restriction of amenities", but inmates subjected to segregation may appeal to the Inspecting Judge.
Section 25 amends section 31 of the principal Act.	The use of mechanical restrains (including leg-irons and handcuffs) must be reported to the Inspecting Judge.
Section 26 amends section 32 of the principal Act.	The use of force to detain inmates in custody must be reported to the Inspecting Judge immediately.
Section 51 amends section 75 of the principal Act.	The Inspecting Judge may refer decisions of a Parole Board to the Parole Review Board for reconsideration.
Section 53 amends section 77 of the principal Act.	The Parole Review Board must give consideration to any submission made by the Inspecting Judge.
Section 61 amends section 85 of the principal Act.	The "Judicial Inspectorate of Prisons" becomes the "Judicial Inspectorate for Correctional Services".
Section 62 repeals section 87 of the principal Act.	The right of the Inspecting Judge to appoint specialist Assistants falls away.
Section 63 inserts section 88A into the principal Act.	Provides for the appointment of a CEO with defined duties and functions.
Section 64 amends section 89 of the principal Act.	Deals with the power of the CEO to appoint staff no longer linked to the Department but whose conditions of service, including salaries and allowances, are regulated by the Public Service Act. It also provides for the CEO to appoint specialist assistants when required by the Inspecting Judge.
Section 65 amends section 90 of the principal Act.	Requires the Inspecting Judge to submit a report on each inspection, not only to the Minister but also to the Portfolio Committee. Provides that he may "assign" (amendment of "delegate" in section 90(7)) any of his functions to inspectors, except when he has to conduct a hearing. He no longer has the power to appoint specialist assistants (section 90(8) deleted) but retains the power (section 90(1)) to report on "any corrupt or dishonest practices" in correctional centres. This appears to be in conflict with section 85(2).
Section 66 amends section 92 of the principal Act.	Transfers the duty to appoint Independent Visitors from the Inspecting Judge to the CEO. The process to be followed, namely, publicly calling for nominations and consulting with community organisations, remains the same. The CEO is required to appoint Independent Visitors at "each" (as opposed to "any") correctional centre and has the power, if valid grounds exist, to

	suspend or terminate their services at any time.
Section 67 amends section 93 of the principal Act.	Introduces name change from "Independent Prison Visitor" to "Independent Correctional Centre Visitor". The power of the Minister to determine remuneration and allowances to be paid to Independent Visitors, who are not in full-time service of the State, is removed (section 93(8) deleted).
Section 70 inserts section 95C into the principal Act.	Provides, in section 95C(2), for the Inspecting Judge to request a copy of any account of the process and results of compliance monitoring, investigations and disciplinary proceedings involving correctional officials.
Section 80 amends section 123 of the principal Act.	The power of the Inspecting Judge to review certain decisions of the Commissioner regarding prohibited publications is transferred to the Minister. There have been only three such referrals over the past nine years.

Considering the impact of the amendments on the Judicial Inspectorate

The impact which these amendments may have on the work and functions of the Judicial Inspectorate was considered from the perspectives of organisational efficiency, cost implications and service delivery. Since a detailed exposition of the envisaged changes is too cumbersome to include in this report, only a summary thereof is furnished below.

Clarity of purpose

Some of the envisaged provisions, such as those arising from the deletions and insertions aforesaid, as well as the involvement and interaction of the Judicial Inspectorate with Parole Boards and the Parole Review Board, must be clarified in more detail. Thus the deletion of section 93(8) creates uncertainty as to how the remuneration and allowances of Independent Visitors will be determined in future. The position of the Inspecting Judge on how he should deal with reports relating to corruption in terms of section 95C also requires clarification.

Understanding legal implications

We are concerned that the deletion of section 93(8), read with section 92, may impact on the current status of Independent Visitors as "independent contractors", as opposed to "employees" as defined in the *Labour Relations Act*. In order to avoid future litigation and, if necessary, to proactively adjust the policies and procedures of the Judicial Inspectorate, there should be a clear understanding of the legal position resulting from the envisaged amendments. In addition to the approximately 223 Independent Visitors in its employ, it also has a staff component currently appointed by the Inspecting Judge on a contractual basis in terms of the provisions of section 90(8) read with section 89, both of which have been repealed. Since no specific provision has been made for the CEO to

make contractual appointments, clarity is required on how the amendments will affect persons contractually appointed. Clarity is also required on the legal rights, if any, of current members of staff following the change in their conditions of employment. Some may in fact be interested in being redeployed in the Department.

Implementation of transitional arrangements

Section 87 of the Amendment Act provides that it will come into operation on a date to be fixed by the President by proclamation in the *Gazette.* Different dates may be fixed for different provisions of the Act and sections 73 and 73A of the principal Act will come into operation only after the regulations contemplated in section 73A(6) have been made and published in the *Gazette*. As mentioned previously we have been given to understand that the amendments, except those requiring regulations, will become operative on 1 October 2009. Until such date it will be difficult for the Judicial Inspectorate to plan and implement the changes required by the Amendment Act. Many of the current policy documents, in accordance with which members of staff conduct their work, functions and activities, will have to be reconsidered and in many respects reformulated. In addition its current electronic system will have to be updated as a matter of extreme urgency.

Review of organisational structure and determination of staffing needs

The implementation of the Amendment Act will necessitate a review of the current organisational structure of the Judicial Inspectorate, including its staffing needs. This is a Public Service prerequisite for making appointments or carrying out the restructuring of the staff complement. Given the provisions of the new section 88A, read with the amended section 89(1), the Department of Public Service and Administration may be called upon to undertake a full job-evaluation to determine the salary and the conditions of employment of all members of staff, starting with the CEO.

It follows that the appointment of staff, including the CEO, will be a priority matter. The process will involve drafting job-descriptions, adverts and the like, and will require the replacement of current service agreements between the Inspecting Judge and employees, including those with Independent Visitors, with new agreements. The responsibility to appoint staff to the Judicial Inspectorate will, of course, be that of the CEO, but the Amendment Act makes no mention of the process that the CEO must follow in determining the number of staff to be appointed or under what circumstances new posts may be created. Should this be done in consultation with the Inspecting

Judge or the National Commissioner? It will be necessary to draft rules for approval by the Inspecting Judge, in terms of the provisions of section 90(9), to regulate the appointment of staff to the Judicial Inspectorate.

Operational needs prior to implementation

The electronic system which allows for Independent Visitors to perform their work, capture their reports, record unresolved complaints and carry out other functions will have to be updated to allow for the changes introduced by amendments such as those contained in sections 30, 31 and 32 of the Act. The Independent Visitors will have to be apprised of and trained, or retrained, to understand how their amended functions should be carried out. The website, information brochures and similar documentation will likewise have to be upgraded and amended to reflect the various changes relating to the name, structure and mandate of the Judicial Inspectorate.

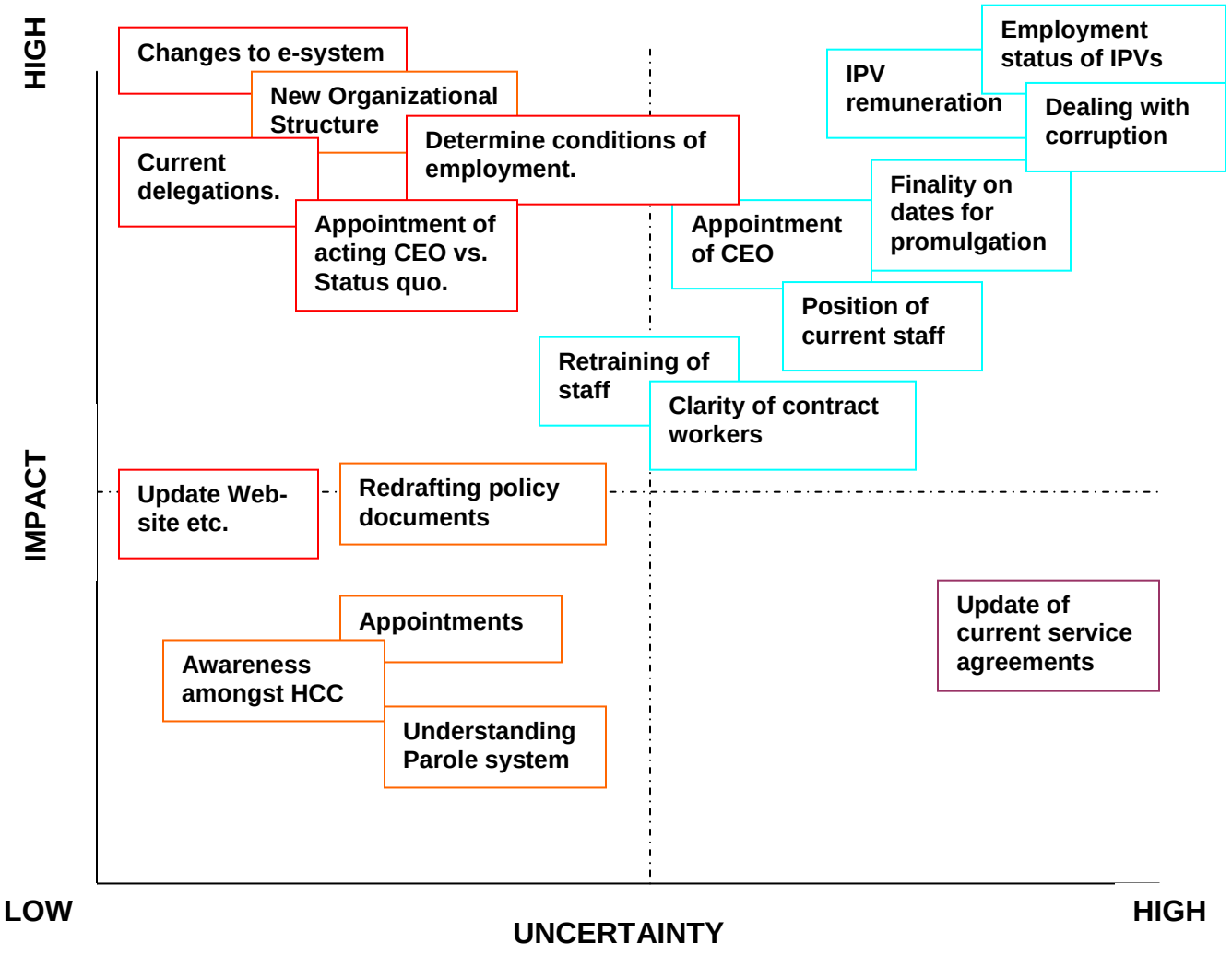
Cost implications

The immediate cost implications relate to the appointment of a CEO, which will entail an additional amount of approximately R800 000 per year. The changes required for the practical development of the electronic system used by Independent Visitors and Heads of Centres will cost an estimated amount of around R520 000,00, while the cost of appointing additional Independent Visitors at each correctional centre in the country is estimated at about R3.4 million. Given its limited resources, the Judicial Inspectorate will not be able to implement all these changes in the short term. It is therefore essential to plan, strategise and prioritise a viable way forward.

Using an Impact / Uncertainty 2x2 Matrix

The changes requiring implementation were plotted on a 2x2 Matrix to test two variables, namely the Impact that it will have on the Judicial Inspectorate and the level of Uncertainty that exists within the Judicial Inspectorate on how to proceed with these changes (see figure below). Those changes which have a high level of Impact on the organisation but low levels of Uncertainty can be implemented immediately after proclamation of the Amendment Act. In such cases the steps to be taken are clear, provided there is a mandate from the Inspecting Judge. Changes which have a High Impact and a High Uncertainty level pose the biggest challenge in that they are changes which are considered to impact extensively on the current processes but which create uncertainty as to how they should be implemented. It may be necessary to seek legal

opinion on some of these issues, such as the status of Independent Visitors, their remuneration and the like.



Recommendations

It is recommended that regular meetings be arranged between the Inspecting Judge, the Deputy Minister and the National Commissioner with a view to continually updating the progress made regarding the implementation of the amendments and providing feedback to the Minister and the Portfolio Committee. It would be useful to establish a task team representing the Department and the Judicial Inspectorate to facilitate:

- the changes to be made to the electronic system;
- the restructuring process necessitated by the amendments;
- the process required to make appointments, including that of the CEO, in line with the changes envisaged by the Amendment Act;

- finalising the position of current members of staff (including contract workers and Independent Visitors), which may give rise to the redeployment of staff who wish to continue their employment within the Department;
- obtaining clarity on the manner in which parole and corruption issues should be addressed.

CHAPTER SIX: ANALYSIS OF THE BUDGET OF THE DEPARTMENT OF CORRECTIONAL SERVICES FOR THE 2009/2010 FINANCIAL YEAR

Introduction

The Portfolio Committee has, for the past nine years, invited the Judicial Inspectorate to participate in the "public hearings" which are held in Parliament for purposes of considering the budget of the Department. These invitations are always accepted with appreciation inasmuch as the budget is regarded as a powerful lever in the hands of the Portfolio Committee, which can use it as an instrument to guide and influence the strategic direction to be taken by the Department. In addition it has a strong connection with the statutory mandate of the Judicial Inspectorate, namely to report on the treatment of inmates and on the conditions subsisting in correctional centres. What follows is an extract of the inputs, presented earlier this year, by the Judicial Inspectorate to the Portfolio Committee, on the budget of the Department for the 2009/2010 financial year.

The total budget proposed by the Department for the 2009/2010 financial year amounts to R13 238 600 000[6]. This means an expenditure of approximately R36 million per day to secure and care for 112 618 inmates and 49 477 awaiting-trial detainees currently incarcerated in correctional centres.

The revised estimate of expenditure[7] for the Department in the 2008/2009 financial year amounts to R12.3 billion. This means that the nominal growth rate of actual expenditure from such financial year to the next amounts to 7.3% which, if discounted against the current headline inflation estimates of 6.7%[8], constitutes a real increase of 0.6%.

The medium-term expenditure estimate for the Department indicates that, within the next two years the expenditure on correctional services will be in excess of R18 billion per year. When it is considered that, during 1997, only R3.5 billion[9] was being expended, the continued escalation in the cost of maintaining our correctional system should be of concern to us all. The sustainability of such continued growth is extremely questionable when other needs, such as those of health, education, care and social development, are considered (see table below).

[6] 2009 Estimates of National Expenditure Vote 18
[7] 2008 Estimates of National Expenditure, p 357
[8] Fast Facts, South African Institute of Race Relations, No 04/2009 (April 2009)
[9] Department of Correctional Services Annual Report 1997

Focus on self-sufficiency

Year	Budget- Rmillion
1997/1998	R 3,580,054
1998/1999	R 4,515,581
1999/2000	R 4,679,993
2000/2001	R 5,392,819
2001/2002	R 6,658,102
2002/2003	R 7,156,897
2003/2004	R 7,601,778
2004/2005	R 8,828,792
2005/2006	R 9,631,216
2006/2007	R 9,251,186
2007/2008	R 10,754,409
2008/2009	R 11,671,834
2009/2010	R 13,238,600
2010/2011	R 14,268,600
2011/2012	R 18,098,700

The Judicial Inspectorate has previously expressed concern about the lack of focus in the budget and in the strategic plan to develop the business side of the Department. Section 3(2)(b) of the Act states clearly that the Department must, "as far as practicable, be self-sufficient and operate according to business principles".

Achieving self-sufficiency necessitates the setting up of correctional centre industries, farms, factories and the like. Business principles are concerned with continuously improved production through innovation, reduction in cost and waste and creating value.

This does not mean that correctional centres should become profitable industries, nor that forced labour should be reintroduced. The Act is clear, however, about the fact that the Department has a statutory obligation to create industries and use the labour at its disposal to achieve self-sufficiency, which could constitute substantial savings for the taxpayer.

The simple truth is that far too many able bodied young inmates are still not involved in any meaningful work or rehabilitation programmes. These, mostly young men, spend up to 23 hours per day locked up in their cells wasting away their lives. The Department should use its statutory mandate to get these inmates to work to achieve higher levels of self-sufficiency and to save costs.

It is quite correct that in some cases the Department has achieved remarkable results in this regard, as is amply demonstrated by its poverty alleviation programmes (using prison labour to produce vegetables for poor communities), the industries at the Boksburg Correctional Centre, the candle factory at Mangaung and others. Unfortunately these initiatives are currently undertaken on a relatively small scale and involve only a handful of inmates. Available performance indicators, as obtained from the Department's Annual Reports, indicate that there has been a reduction in the levels of self-sufficiency over the past few years, but an increase in the need to expand these programmes and

to get more inmates involved. This may be illustrated by the table below which draws a comparison between the situation in 1997 as opposed to that ten years later, in 2007.

Number of inmates involved in:	**1997**	**2007**
- Agriculture	6 674	2 210
- Production workshops	2 359	1 757

Production of goods	**1997**	**2007**
- Fruit	611 393kg	558 482kg
- Eggs	1 166 928 doz	1 084 045 doz
- Red meat	541 431kg	585 115kg
- Vegetables	9 125 973kg	10 380 607kg

The reduction in the number of prisoners involved in work and the loss of production took place despite the fact that there are now more correctional officials (46 083), with the best official to prisoner ratio (1:3.5), than ever before.

Distribution of funds

The next issue raised pertains to an evaluation of how the available funds are distributed among the various programmes and priority areas. From this evaluation the following spending patterns emerged: a substantial portion of the funds, namely 33.4%, is earmarked for security, followed by 26.2% for administration costs, 13.4% for facilities, 12.0% for care, 8.4% for corrections and only 3.4% and 3.2% respectively for development and social reintegration. This spending pattern, it is respectfully submitted, is skewed in favour of security at the expense of equally important priorities such as development and care on the one hand and rehabilitation and social reintegration on the other. It is also in conflict with the values, principles and policies set forth in the White Paper, in which repeated emphasis is laid on the need to rehabilitate offenders and to reintegrate them into the community on the basis of restorative rather than retributive justice. This must, of course, be balanced with the need to detain them in a safe and secure environment. In par 29 of the Executive Summary of the White Paper it is stated:

> The Department thus has a clear needs-based framework for implementation of our function of safety and security within a human rights context. This needs-based approach will ensure that there is a perfect balance between secure and safe custody on the one hand, and correction, promotion of social responsibility and human development on the other hand.

If, however, one looks at the table below, it can be seen that little progress has been made, since the 2004/2005 financial year, in aligning the budget with the new vision of rehabilitation as a core objective.

Movement of funds 2004/05 to 2009/10

Programme	2004/2005	2009/2010	2011/2012
Administration	31.39%	26.27%	23.02%
Security	33.34%	33.43%	27.76%
Corrections	5.66%	8.40%	7.09%
Care	10.00%	12.02%	10.85%
Development	4.50%	3.39%	2.76%
Social Reintegration	3.52%	3.22%	2.48%
Facilities	18.96%	13.27%	26.04%

Of particular concern is the fact that the programmes relating to care and development will, based on current inflation and projected growth rates, experience negative growth during the medium-term expenditure period up to the 2011/2012 financial year. This will necessitate massive savings on operational levels, despite the fact that a number of new correctional centres will have to be opened during the same period of time. The question will inevitably be asked how the Department proposes to deal with these issues.

It is a fact that Department has, over the past few years, experienced good results in its improved external security planning. It has succeeded in substantially reducing the rate of escapes by inmates from correctional centres. It is our respectful view, however, that the Department has, in this regard, reached the point of diminishing returns and that continued investment in perimeter fencing and external security measures is becoming wasteful. To be spending billions of rands each year in an effort to reduce the escape rate from 5 to 4 per 10 000 inmates cannot be regarded as justified expenditure or value for money. This money should rather be channelled into the care, development, rehabilitation and social reintegration of inmates. Investing in these areas should also enhance the capacity of the Department to achieve higher levels of self-sufficiency than at present.

We have noted, and fully support, the laudable intention of the Department to "provide an environment that ensures the safety of all persons"[10] This is long overdue, since reports of assaults by gang members on vulnerable inmates such as children and first-

[10] 2009 Estimates of National Expenditure: Vote 18

time offenders are common and require urgent attention. To date, however, limited progress appears to have been made in creating a safe environment in many, if not most, of our correctional centres. Electronic aids such as intercoms, CCTV and panic buttons in cells are still very much the exception rather than the rule. Any strategy aimed at creating a safe environment inside correctional centres should, in our view, include the maintenance and the expansion of the complaints system. Inmates should have confidence in such a complaints system so that they will report incidents when they feel threatened and must be able to rely on it when they wish to have their complaints resolved.

It is our view that the Portfolio Committee should set specific performance targets to which the Department should adhere in order to ensure that their rate of spending achieves a balance between safety and security on the one hand and care, development, rehabilitation and social reintegration on the other. In this way the needs presently experienced in correctional centres will be addressed in line with the values, principles and policies enunciated in the White Paper.

In conclusion it may be of some interest to note that the budget of the Judicial Inspectorate, which forms part of the Department's budget, reflects a total expenditure of R15.1 million for the 2008/2009 financial year. This amounts to approximately 0.12% of the Department's budget for such year.

CHAPTER SEVEN: JUDICIAL INSPECTORATE OF PRISONS

Introduction

This chapter contains information relating to the statutory mandate, vision, objectives, staffing and expenditure of the Judicial Inspectorate in compliance with the requirements of the Public Service Regulations, 1999 as published in Government Gazette No. 6544 on 1 July 1999, more particularly part III, chapter J thereof.

Statutory mandate

Chapter IX of the Act provides for the establishment of the Judicial Inspectorate. Section 85 thereof provides:

(1) The Judicial Inspectorate of Prisons is an independent office under the control of the Inspecting Judge.
(2) The object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners and on conditions in prisons.

Vision

The vision of the Judicial Inspectorate is to ensure that all inmates are detained under humane conditions, treated with human dignity and prepared for reintegration into the community.

Strategic objectives

With reference to the existing needs for the services of the Judicial Inspectorate, its statutory mandate, its available resources and current business models, the following strategic objectives have been determined:

- to establish and maintain an independent complaints procedure for all inmates;
- to collect accurate, reliable and up-to-date information about the conditions in correctional centres and the treatment of inmates;
- to inform public opinion about the conditions in correctional centres and the treatment of inmates;
- to ensure and maintain the highest standards of good governance;
- to prevent possible human rights violations, through a system of mandatory reporting and visits to correctional centres;
- to promote and facilitate community involvement in correctional matters.

Staffing and structure

Section 89 of the Act states that:

(1) The staff complement of the Judicial Inspectorate must be determined by the Inspecting Judge in consultation with the Commissioner.
(2) The Inspecting Judge must appoint within this complement inspectors and such other staff, including a secretary, as are required.
(3) Such employees are deemed for administrative purposes to be correctional officials seconded to the Judicial Inspectorate, but are under the control and authority of the Inspecting Judge.

As on 31 March 2009, the staff complement of the Judicial Inspectorate consisted of 49 employees appointed on the salary levels appearing from the table below:

Post level	**Number of posts**	**Salary level**
Directors	1	Level 13
Deputy Directors	3	Levels 11 – 12
Assistant Directors	5	Levels 9 – 10
Inspectors and Supervisors	10	Level 8
Administrative staff	24	Levels 5 to 7
Staff on fixed term contracts	6	Levels 5 and 6*

* An allowance of 37% is paid to all contract employees in compliance with resolution 1 of 2007.

Of the said employees 38 were based at the National Head Office of the Judicial Inspectorate in Cape Town and 11 at the Regional Office in Centurion. Their gender composition was 54% female and 46% male, while 93% fell within the "designated groups" as defined in the *Employment Equity Act* of 1998.

The total per capita cost of employees, including contract workers, amounts to R 159 866.18 per year. For Independent Visitors the per capita cost amounts to R28 785.30 at a rate of R55.70 per hour.

During the financial year no "overtime" payments were made to any member of staff employed by the Judicial Inspectorate. The conditions of service of employees comply with the provisions of section 89(5) of the Act while the salaries and allowances of such employees are regulated by the *Public Service Act*. The total personnel cost is reflected in the table below.

COMPENSATION OF EMPLOYEES	AMOUNT
S&W: BASIC SALARY (RES)	R 5 436 349.38
S&W : PERFORMANCE BONUS (RES)	R 77 557.62
S&W: LEAVE DISCOUNTING (RES)	R 0.00
S&W: COMPENS/CIRCUM OTHER (RES)	R 20 338.95
S&W: PERIODIC PAYMENTS OTH (RES)	R 5 497 991.52
S&W: CAPITAL REMUNERATION (RES)	R 16 705.28
S&W: HOME OWNERS' ALLOWANCE (RES)	R 216 634.00
S&W: NON PENSIONABLE ALL OTH(RES)	R 197 115.34
S&W: SERVICE BONUS (RES)	R 387 528.80
EMPL CONTR: BARGAIN COUNCIL(RES)	R 1 202.50
EMPL CONTR: MEDICAL (RES)	R 461 363.96
EMPL CONTR: PENSION (RES)	R 871 647.10
TOTAL	**R 13 184 434.45**

Disciplinary action

During the 2008/2009 financial year, 6 Independent Visitors were dismissed on the grounds of misconduct and 10 because of poor performance, while 2 resigned for health reasons. Amongst members of staff who committed transgressions of disciplinary codes, four received written warnings, which included one final written warning, and one member of staff was suspended without pay for one month.

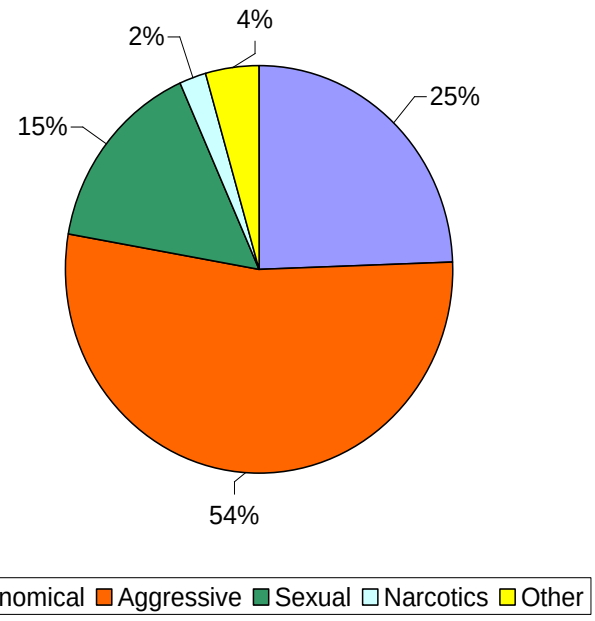
Expenditure

Section 91 of the Act provides that the Department "is responsible for all expenses of the Judicial Inspectorate". The total expenditure of the Judicial Inspectorate for the 2008/2009 financial year, as set out in the table below, amounted to R 15 131 057.82.

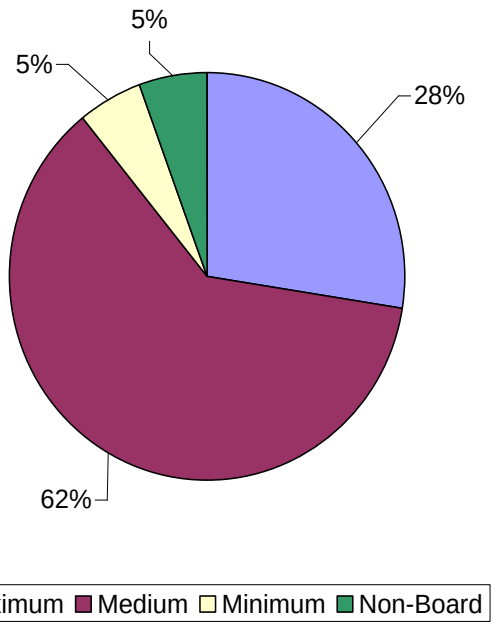
COMPENSATION OF EMPLOYEES	**R 13 184 434.45**
SALARIES: PERMANENT STAFF	R 7 686 442.93
SALARIES: INDEPENDENT VISITORS	R 5 497 991.52
GOODS & SERVICES	**R 1 946 623.37**
COMMUNICATION	R 524 869.27
TRAVEL & SUBSISTENCE	R 906 875.48
LEASES: DOMESTIC EQUIPMENT	R 14 352.32
STATIONERY & PRINTING	R 70 758.49
VENUES & FACILITIES	R 331 717.98
OTHER	R 98 049.83
TOTAL EXPENDITURE	**R 15 037 017.65**

Additional Information.

CRIME CATEGORIES



SECURITY CLASSIFICATION



Average number of inmates in custody per province for 2008.

NATIONAL PROVINCES	SENTENCE GROUPS	
	Unsentenced	Sentenced
EASTERN CAPE PROVINCE	5670	13411
FREE STATE PROVINCE	3111	11376
GAUTENG PROVINCE	16068	26200
KWAZULU/NATAL PROVINCE	8729	16829
LIMPOPO PROVINCE	1132	4814
MPUMALANGA PROVINCE	2246	7103
NORTH WEST PROVINCE	1850	8346
NORTHERN CAPE PROVINCE	1154	3920
WESTERN CAPE PROVINCE	6910	19320