

**Annual Report for the period 1 April 2006 to 31 March 2007**

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**Submitted to Mr Thabo Mbeki,  
President of the Republic of South Africa**

**Mr Ngconde Balfour, Minister of Correctional Services**

**and**

**Ms Loretta Jacobus, Deputy Minister of Correctional Services**

**by**

**The Acting Inspecting Judge of Prisons  
Judge Nathan Charles Erasmus**

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

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31 March 2007

To His Excellency  
**Mr Thabo Mbeki**  
President of the Republic of South Africa  
Tuynhuis  
Cape Town

Dear Mr President

In accordance with Section 90 4(a) of the Correctional Services Act, Act 111 of 1998, it is my duty and privilege to submit to you the 8<sup>th</sup> Annual Report of the Inspecting Judge of Prisons.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nathan C Erasmus J', is enclosed within a large, hand-drawn oval. There are a few stray ink marks below the oval.

**NATHAN C ERASMUS. J**  
**Acting Inspecting Judge of Prisons**

and to:

**The Honourable Mr Ngconde Balfour. MP**  
Minister of Correctional Services  
Parliament  
Cape Town

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## FOREWORD BY THE INSPECTING JUDGE OF PRISONS

*“The experience of South Africa and of all people everywhere has taught that in order for the rights and freedoms embodied in constitutions to be realised, they must become a part of everyday reality of citizens’ lives, and the institutions protecting them must be deeply entrenched.”*

*Nelson R Mandela (1998)*

After my appointment as acting Inspecting Judge of Prisons on 05 June 2006, I sought to gain a better understanding of the role of the Judicial Inspectorate of Prisons (JIOP) within the correctional services environment.



Judge Nathan Charles Erasmus

From June 2006 until March 2007, I visited sixty three prisons in all parts of our country and met with most of the senior management and hundreds of staff members of the Department of Correctional Services (DCS). I also attended and addressed various workshops, held discussions with stakeholders which included the Judiciary, civil society, the organized legal profession and a diverse group of other role-players. I studied relevant documents including the White Paper on Correctional Services, various research papers and the report of Mr. Justice Jali viz. *“Commission on Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services appointed by order of the President of the Republic of South Africa in terms of Proclamation No. 135 of 2001 as amended”*.

Having done this, I came to the conclusion that although we are faced with some very serious challenges in our criminal justice system, we have a window of opportunity to fundamentally change the way in which our correctional services contribute to enhancing our national values and goals. This window of opportunity, in my opinion, also best illustrates the progress that has been made since 1994, in transforming the old prison services to a Correctional Service.

We have a window of opportunity to fundamentally change the way in which our correctional services contribute to enhancing our national values and goals.

As a nation, including the DCS, we made a decisive and deliberate break from the past by embarking on a programme aimed at restoring and protecting human dignity. Before this break, prisoners and communities, including correctional officials, were locked in a system of racial segregation, discrimination, minority domination and of military command and control.

The challenge now is no longer against a system that is repugnant, but rather for the implementation of a system that is aligned with our national values as approved by Parliament in the form of the Correctional Services Act, Act 111 of 1998 (the Act), and the White Paper on Correctional Services 2005, and underscored by our supreme law.

The window of opportunity is driven by a strong feeling of common purpose amongst role-players within the correctional services environment, which includes prisoners, to ensure that every person who is detained, is held under humane conditions, treated with human dignity and reformed so that they occupy their rightful place in society and contribute to a better life for all when released from custody.

The challenges faced by DCS are to implement and render the services stipulated within the current legislative framework underpinned by strategic direction and policies based on sound values. This will only be achieved through effective short, medium and long term strategies.

I believe that the JIOP has a specific and important role to play at this stage of the transformation process. Strong independent oversight forms an integral part of any effort to enforce compliance and improve service delivery. During this time, all role-players, including the Executive and Parliament, need accurate and independent information about the progress or the lack thereof made by DCS in the implementation of the aforementioned service.

Against this background I have focused on advancing compliance and service delivery in line with the principles of Batho Pele by increasing our levels of representation at local prison level, fostering partnerships with key role-players and strengthening our

management team. Building capacity and levels of accountability were a prerequisite for each and every step.<sup>1</sup>

The JIOP conducted a national inspection of 235 of the 237, i.e. 99.2%, operational prisons in South Africa during the period January 2007 to March 2007<sup>2</sup>. The purpose of these inspections was to establish the level of compliance with the minimum requirements laid down for humane detention and to gather information about the current situation in our prisons. Our findings are reflected and discussed in Chapter One of this report. Readers of the report are respectfully cautioned against looking at the issues, which were identified, in isolation. It is necessary to emphasize that corrections is a highly complex system which functions as a whole and depends on the interactions of its many parts in order to function effectively.

During our national inspections, we identified problems which exist in most of the prisons inspected. Problems such as a lack of staff, poor infrastructure, prison overcrowding, lack of rehabilitation programmes, lack of vocational and recreation facilities and inadequate healthcare were prevalent. These issues are not isolated problems experienced by some Heads of Prisons but clearly systemic. We must guard against isolating these issues in seeking “quick fix” solutions, which are bound to fail when pitched against such complex problem situations. A greater understanding of the complexity of the challenges within the correctional system is called for, in order to effectively combat these problems.

A full system analysis of the identified problem areas, suggests that overcrowding remains a driving force behind most of the problems experienced in DCS. Although much success has been achieved in reducing the number of prisoners in custody, much still needs to be done to align the number of people in prison with the current capacity of DCS. In turn, the capacity problems of DCS are driven by dilapidated and outdated infrastructure as well as a systemic shortage in the allocation of resources. As a result of this, the current motivation and performance levels of correctional officials are low. Few prisoners have access to work and rehabilitation programmes, while levels of frustration and violence within prisons are increasing.

In order for us to address these problems we need to focus on the following four imperatives:

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<sup>1</sup> More detailed information is provided in chapter 4 of this report

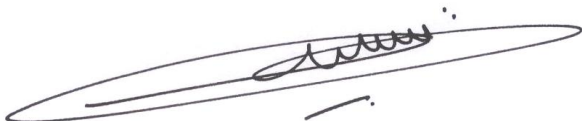
<sup>2</sup> This national inspection audit was complementary to inspections and visits conducted during the year.

- The level of integration and co-operation between all role-players within the criminal justice system especially the SAPS, Justice, DCS, and Social Development should be strengthened. Integration between these role-players should not be restricted to planning and cooperation only, but should extend to the sharing of resources and information.
- The level of respect for a human rights culture in our prisons must be continually fostered and promoted with strong independent oversight. All prisoners and correctional officials must understand that the culture of human rights in our prisons is not negotiable nor is it subject to the availability of resources.
- The level of vocational, rehabilitation programmes and opportunities available to prisoners must be increased. These must offer prisoners the opportunity to reform their offending behaviour, to learn new skills and ensure their safe and timely integration into society.
- An increased level of accountability by management and staff in their administration of the law, principles and policy must be achieved.

The culture of human rights in our prisons is not negotiable nor is it subject to the availability of resources.

The nature of oversight reporting is such that it focuses on structural challenges and failures within a system. We acknowledge the substantial progress made by DCS towards achieving the goals as set out in the legislative framework.

I believe that a strong foundation has been established to effect the changes needed to transform the correctional system in line with the values of this nation as expressed in our legislative framework and Constitution.



**NATHAN CHARLES ERASMUS**  
**Acting Inspecting Judge of Prisons**

31 March 2007



## CHAPTER ONE: STATE OF OUR PRISONS<sup>3</sup>

### 1.1 *Transforming our correctional system*

*“A society should be judged not by how it treats its outstanding citizens but by how it treats its criminals”*

*Fyodor Dostoevsky*

The South African Parliament has over the last decade initiated a number of processes aimed at the transformation of our prisons, which started with the drafting of a new Constitution. Protection was stipulated for **“Arrested, detained and accused persons”**. Section 35 (2) of the Constitution (Act 108 of 1996) reads:

- “Everyone who is detained, including every sentenced prisoner, has the right -*
- a) to be informed promptly of the reason for being detained,*
  - b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;*
  - c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
  - d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;*
  - e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and*
  - f) to communicate with, and be visited by, that person’s –*
    - i) spouse or partner;*
    - ii) next of kin;*
    - iii) chosen religious counsellor; and*
    - iv) chosen medical practitioner.”*

The principles stipulated in section 35(2)(e) of our Constitution became the objectives of the DCS in South Africa. These objectives are to ensure that detention of all prisoners is consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation,

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<sup>3</sup> All data stated herein reflect the position as at 31 March 2007 unless otherwise stated.

nutrition, reading material and medical treatment. The protection and treatment of prisoners must further be measured having regard to the content and tenor of various International instruments. (See Appendix A)

The transformation of the Department of Prisons was further facilitated by renaming it to the DCS. This was followed by the adoption of a new White Paper on Corrections during 1994 and an extensive review of the Correctional System. This resulted in the approval, by Parliament, of the new Correctional Services Act (Act 111 of 1998). The White Paper on Correctional Services was reviewed in 2005, to provide for the establishment of a correctional service that emphasises rehabilitation as its mission, in line with the principles and policies of Government’s integrated justice system.

On 1 April 1996, DCS demilitarized. Uniforms, military ranks and parades were abolished with immediate effect. During 1997/1998 DCS embarked on a massive affirmative action drive to overhaul the racially skewed staff profile that existed.

In 1997, the then Minister of Correctional Services, Hon. Sipho Mzimela, with the approval of Cabinet, signed an agreement which allowed for the commissioning of two private prisons. For the first time DCS had “operating partners” from the private sector who invested an estimated R720 million in the building of two new ultra-modern prisons.

Government, during this period, increased its allocation of financial resources to DCS by a considerable margin. As indicated in Table 1, the spending on Correctional Services amounted to R3,1 billion in the financial year 1996/1997, this amount has since escalated to R10.7 billion. This increase amounts to about 237%, which is much higher than the official inflation rate and the SA economic growth rate for the same period.

| Year      | Budget- Rmillion | % Growth |
|-----------|------------------|----------|
| 1996/1997 | R 3,178,984      |          |
| 1997/1998 | R 3,580,054      | 13       |
| 1998/1999 | R 4,515,581      | 26       |
| 1999/2000 | R 4,679,993      | 4        |
| 2000/2001 | R 5,392,819      | 15       |
| 2001/2002 | R 6,658,102      | 23       |
| 2002/2003 | R 7,156,897      | 7        |
| 2003/2004 | R 7,601,778      | 6        |
| 2004/2005 | R 8,559,706      | 13       |
| 2005/2006 | R 9,234,085      | 8        |
| 2006/2007 | R 10,742,331     | 15       |
| 2007/2008 | R 11,365,798     | 11       |
| 2008/2009 | R 12,267,765     | 6        |

**TABLE 1**

## **1.2 The need for prison oversight**

An important element of the transformation process was the establishment of the JIOP in 1998 as a prison oversight body. The JIOP was set up by Parliament as part of a number of independent institutions to bolster and support democracy and the human rights enshrined in our Constitution. As Judge Trengove<sup>4</sup> stated, *“The establishment of the JIOP must be viewed against the background of the new Correctional Services Act as a whole, which provides for the introduction of radical and far-reaching changes in our correctional system and seeks to give effect to the Bill of Rights in the Constitution, Act 108 of 1996, and in particular its provisions with regard to prisoners.”*

The statutory mandate of the JIOP requires it to *“facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions in prisons.”*<sup>5</sup>

## **1.3 Overview of correctional facilities**

The 237 prisons in South Africa under the control of the DCS, were built to collectively provide accommodation to 115 327 prisoners. The size of the prison buildings varies from the smallest prison located at Bergville, Kwa-Zulu Natal which provides accommodation for 31 prisoners, to Kutama-Sinthumule private prison located at Makhado, Limpopo, which provides accommodation for 3024 people. Only 67 out of the 237 prisons in our country are filled to the capacity for which they were designed (100% or less). The other prisons are all overcrowded to some extent. The prison with the highest population is Johannesburg Medium A which, although designed to accommodate 2 630 people, accommodates 6 111 prisoners.

Most of our prisons are much smaller than the “super structures” such as Pollsmoor, Johannesburg, Durban-Westville or Boksburg which accommodate more than 2 000 people each.

The national average occupation level of the 237 prisons is 140.2%. The highest occupation levels are recorded in the Gauteng Region at 166.3%

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<sup>4</sup> First appointed Inspecting Judge of Prisons, JIOP Inaugural Annual Report 2000

<sup>5</sup> Section 85 of the Act

followed by the Eastern Cape Region at 156.2%. The prisons in the Northern Cape and Free State recorded the lowest occupation levels at 119%.

The total number of prisoners in custody is 161 674 of which 158 115 are male and 3 559 female. Prisoners serving a term of direct imprisonment or as an alternative to an unpaid fine total 113 213. The other 48 461 are unsentenced prisoners. These are people who have been arrested and who are kept in prison awaiting the finalization of their cases.

A total of 2 077 children (younger than 18 years) are in custody of which 61 are girls and 2 016 boys. Another 16 714 prisoners are between the ages 18 to 21 years.

#### **1.4 National Inspection Audit**

During the period February 2007 until April 2007, staff of the Inspectorate visited and inspected 235 (99.2%) of the 237 operational prisons in the country. The objectives of these inspections were to increase the presence of the Inspectorate, audit the performance of Independent Prison Visitors (IPVs), and gather information about prison conditions and the treatment of prisoners. As part of these inspections, structured interviews were conducted with all Heads of Prisons or their representatives. We also interviewed more than 1 200 prisoners in private, affording them the opportunity to report any matter to us in total confidentiality. A report on every inspection was compiled the information was analyzed. In addition to these inspections, the JIOP also relied on the reports of IPVs for information about the conditions in prisons and the treatment of prisoners. During 2006, the IPVs collectively spent a total of 99 633 hours visiting the 237 prisons and interviewing tens of thousands of prisoners. Their observations, including the number and nature of complaints received from prisoners, are reported to the JIOP monthly via the electronic reporting system.

All inspections were done with the assistance of a 'checklist' developed in line with the legislative and regulatory framework in which the JIOP operates. During this process, we have come to the realization that there is no set of standards available, that is easily accessible and user-friendly, in order to monitor conditions in prisons. Therefore we have embarked on a research project aimed at the compilation of such a document. It is envisaged that the

final document will include a manual, referenced by our domestic framework and the instruments mentioned in Appendix A of this report. The document should be finalized by the end of the third quarter of this year.

### **1.5 General findings**

*“The more we study the major problems of our time, the more we come to realize that they cannot be understood in isolation. They are systemic problems, which mean that they are interconnected and interdependent.”*

*Capra (1996)*

Many variables affect the correctional system including crime levels, effectiveness of the SAPS, our courts, socio-economic factors, labour relations and the accountability of role players.

Hence it is understandable that the process of transformation in such a complex environment is a slow and, to some extent, painful process and that many problems and complaints will surface. The JIOP, during our inspections of the 235 prisons countrywide, received thousands of complaints and identified hundreds of shortcomings which are detailed in the individual inspection reports. This was expected since systemic problems such as a lack of staff, poor infrastructure, prison overcrowding, and lack of rehabilitation programmes are common to most prisons.

The JIOP focused its attention on the systemic problems and concentrated on obtaining an understanding of how the parts function and how they are related so as to serve the purposes of the whole. We envisage the investigation of each of the systemic issues and draft thematic reports in the upcoming year.

### **1.6 Systemic problems**

During the inspections we received various inputs relating to the conditions in prisons and the treatment of prisoners. These inputs, mostly in the form of physical observations and structured interviews, provided an almost endless list of problems faced by correctional officials and prisoners during the day-to-

day running of the prisons. The following categories of problems were identified in no specific order:

- Shortage of staff
- Lack of medical staff and facilities
- Prison overcrowding
- Staff development
- HIV/AIDS
- Infrastructure and maintenance
- Gangsterism
- Requests for Prisoner transfers
- Focus on security
- Lack of rehabilitation and vocational training programmes
- Assaults

An Affinity Diagram was constructed of the inputs received during our inspections from which an Interrelationship Diagram (ID) was constructed which tested the relationship between the problem “variables” in order to establish the “link” and the causal relationship that exists between these problems. The summary of the ID is attached as Appendix B.

From the ID it was established that the level of prison overcrowding remains a driving force behind most of the inefficiencies that exist in our correctional system. The ability to manage prisoner numbers remains critical to our efforts to transform the correctional services. Chapter Two deals with this topic in more detail.

We measured our findings and observations against the legislative and regulations framework as set out in Paragraph 1.1 of this report<sup>6</sup>.

### **1.6.1 Approach to safe custody**

The provisions of Section 4 of the Act should be interpreted to cover three important areas namely:

- a) the requirement of all prisoners to “accept the authority and to obey the lawful instructions” of correctional officials;

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<sup>6</sup> See also Appendix A

- b) the explicit responsibility on DCS to ensure the safe custody of every prisoner; and
- c) the responsibility of DCS to maintain security and good order in every prison.

It is common cause that many prisoners do not accept the authority of correctional officials nor do they necessarily obey lawful instructions. The best examples of these are the involvement of many prisoners in prison gangs, gang assaults, and the smuggling of contraband. Based on our observations and the reports of Independent Prisons Visitors (IPVs), these acts of defiance are common to most prisons. Linked to this high level of defiance is the lack of security and good order in many of the prisons. The JIOP receives daily reports and complaints from prisoners and their families of assaults and intimidation by fellow prisoners and prison gangs. Clearly the ability or willingness of some correctional officials to protect prisoners and ensure their safety is lacking.

We observed instances of prisoners roaming the prison corridors selling food illegally or promoting gang activities, often in clear sight of correctional officials. Order must be established and maintained if we are to create an environment conducive to rehabilitation.

### **1.6.2 Focus on security**

Closely linked to ensuring safe custody and order in prisons is the responsibility of DCS to prevent escapes from prison. This is an area in which DCS has over the last eight years achieved success. During our inspections we observed a high level of mindfulness by all correctional officials around security aspects and preventing escapes. Many prisons are equipped with modern security control gates, fingerprint recognition systems, electrified fencing and metal detectors. However, some of the equipment was not fully operational and the day-to-day maintenance of the equipment seemed to be lacking.

The system analysis highlighted that this focus on security has other implications. At one prison the cutting of grass on the prison terrain has been outsourced to a private company. This is done whilst about 5 000 minimum and medium security risk prisoners are available, at that prison, to perform the work. The explanation we received was that the risk of escapes is best managed by keeping the prisoners locked-up. Many work, rehabilitation,

vocational and recreation opportunities to prisoners are forfeited due to the focus on security. This statement is corroborated by the decline since 1999 in the number of prisoners working on prison farms and workshops. Notwithstanding the fact that the staffing numbers of DCS is at its highest levels ever, fewer prisoners are involved in work and rehabilitation programmes.

If we wish our prisons to become rehabilitation centers instead of human warehouses, we need to accept some risks. High security and maximum term prisoners must be kept under the strictest possible security conditions at all times and any escape must be prevented at all costs. However, when dealing with minimum, medium and non-violent prisoners, DCS has to balance the benefits of work, rehabilitation and recreation opportunities against the possibility of escapes. The current blanket focus on security at the cost of rehabilitation is a cause of concern.

### **1.6.3 Accommodation**

The Constitution confirms the right of all prisoners to be detained in conditions that are consistent with human dignity including adequate accommodation. The Act, Section 7 (1), states that *“Prisoners must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installation and general health conditions. These requirements must be adequate for detention under conditions of human dignity.”*

The norms applied in South African prisons for floor space per prisoner is 3.5m<sup>2</sup> for communal cells, 5.5m<sup>2</sup> for single cells, 5m<sup>2</sup> for communal hospital cells and 9m<sup>2</sup> for single hospital cells. This means that at those prisons which are overcrowded, i.e. 72% of all prisons, prisoners have a living space of less than 3.5m<sup>2</sup>. At those prisons that have critical levels of overcrowding, prisoners often have less than 1.2m<sup>2</sup>, the size of an average office table, in which they must sleep, eat and spend 23 hours per day, see Table 2.



**TABLE 2**

| <b>Correctional Centre</b> | <b>Approved accommodation</b> | <b>Unsentenced</b> | <b>Sentenced</b> | <b>Total</b> | <b>% Occupation</b> |
|----------------------------|-------------------------------|--------------------|------------------|--------------|---------------------|
| Pietermaritzburg           | 1330                          | 1291               | 1243             | 2534         | 190.53              |
| Grahamstown                | 309                           | 326                | 268              | 594          | 192.23              |
| Barberton Farm Max.        | 845                           | 3                  | 1640             | 1643         | 194.44              |
| George                     | 514                           | 343                | 692              | 1035         | 201.36              |
| Baviaanspoort Max.         | 355                           | 0                  | 718              | 718          | 202.25              |
| East London Med. B         | 543                           | 1107               | 10               | 1117         | 205.71              |
| Zonderwater Med. A         | 877                           | 0                  | 1825             | 1825         | 208.10              |
| Grootvlei Max.             | 890                           | 1373               | 525              | 1898         | 213.26              |
| Durban Med. B              | 2053                          | 0                  | 4381             | 4381         | 213.40              |
| Pretoria Local             | 2171                          | 4368               | 367              | 4735         | 218.10              |
| Leeuwkop Max.              | 763                           | 0                  | 1671             | 1671         | 219.00              |
| Mount Frere                | 42                            | 0                  | 92               | 92           | 219.05              |
| Pollsmoor Max.             | 1872                          | 3255               | 925              | 4180         | 223.29              |
| Caledon                    | 215                           | 366                | 115              | 481          | 223.72              |
| St. Albans Max.            | 717                           | 0                  | 1611             | 1611         | 224.69              |
| Lusikisiki                 | 148                           | 178                | 161              | 339          | 229.05              |
| Thohoyandou Female         | 134                           | 19                 | 289              | 308          | 229.85              |
| Umtata Max.                | 720                           | 0                  | 1662             | 1662         | 230.83              |
| Johannesburg Med. A        | 2630                          | 5957               | 154              | 6111         | 232.36              |
| Fort Beaufort              | 162                           | 170                | 215              | 385          | 237.65              |
| Bizana                     | 57                            | 73                 | 68               | 141          | 247.37              |
| Middledrift                | 411                           | 0                  | 1060             | 1060         | 257.91              |
| King Williams Town         | 301                           | 532                | 264              | 796          | 264.45              |
| Johannesburg Med. B        | 1300                          | 0                  | 3579             | 3579         | 275.31              |
| Thohoyandou Med. B         | 219                           | 696                | 24               | 720          | 328.77              |
| Umtata Med.                | 580                           | 1092               | 953              | 2045         | 352.59              |

The extent to which our prisons are currently overcrowded has already been discussed in Paragraph 1.3 page 11 of this report. Chapter Two deals with specific proposals on how to manage our prison population. However, chronically overcrowded prisons impact on the prison conditions and treatment of prisoners significantly and therefore must be emphasized. Although progress has been made to reduce prison numbers, more must be done especially at the prisons mentioned in Table 2, which have reached critical levels of overcrowding.

The JIOP recommends that DCS immediately conducts a full audit of all prisoners kept at these prisons to identify prisoners who can be removed, by utilizing options that include the following:

- transfers to less overcrowded facilities;
- being considered for release under section 63 (A) and or 62 (f) of the Criminal Procedure Act (Act 51 of 1977);

- converting unpaid fines, of which a daily average of more than 2000 prisoners are affected, to alternative sentences such as community corrections; and
- placement on parole.

The allocation of additional human and other resources at these prisons are also necessary. Continued evaluation of the situation and risk assessments should be done at these prisons to prevent incidents such as a breakout of disease, hunger strikes and/or violence.

Based on our assessments, a strong relationship also exists between the levels of overcrowding and the ability of the prison infrastructure to cope. Some serious failures of existing infrastructure were observed during our inspections. These failures include the breakdown of water reticulation systems, toilets, showers, kitchen equipment and a lack of fresh water and hygiene in kitchens and hospitals. At many of the prisons the infrastructure was simply unable to cope with the increased numbers and continued maintenance becomes almost a futile exercise unless the numbers of prisoners are reduced.

At prisons which were not overcrowded, the lack of maintenance was mostly due to ageing infrastructure and the buildings' design. The Van Rhynsdorp prison in the Western Cape, Tzaneen in Limpopo and the Springbok prison in the Northern Cape are constructed from corrugated iron in areas where the temperatures often exceed 40° Celsius, making the conditions in which prisoners must stay and correctional officials must work unbearable. The JIOP observed many prisons which are equipped with open toilet facilities in communal cells shared by 20 to 30 adults resulting in no privacy. The following prisons had, at the time of our inspection, a lack of fresh running water.

- Stutterheim
- Mqanduli
- Mount Frere
- Elliotdale
- Bizana
- Tabankulu

The state of many of the prisons' infrastructure calls for continued capital investment to replace or at least renovate these old prison structures. A

national priority list of urgent renovation work, aimed specifically at ensuring humane detention, is needed.

#### 1.6.4 Admissions

The Act sets out clear obligations of the State towards a prisoner upon admission. These include the right to be informed of the rules governing the treatment of prisoners in a manner that is understood by the prisoner and the right to undergo a health status examination which “*must include testing for contagious and communicable diseases.*”<sup>7</sup>

Sadly very few prisons comply with these provisions. It is still the norm that prisoners are admitted to prisons without any information given to them. This is so, especially in the case of awaiting trial prisoners. We found that few unsentenced prisoners are given the opportunity to bath or shower and undergo a health status examination upon admission. Non-compliance with particularly the health status examination has far-reaching consequences<sup>8</sup>.

Searches done on newly admitted prisoners are dehumanizing. These people, many first time offenders, are ordered to undress in groups until they are naked. With clothes in hands and in clear sight of all onlookers, they must then squat (crouch with the hamstring resting on the backs of the heels) whilst opening their mouths and sticking out their tongues. Correctional officials explained that this is standing practice to ensure that no contraband is smuggled into prisons.

As a minimum requirement, information brochures, in all official languages, regarding the rules governing the treatment of prisoners, the disciplinary requirements, the authorised channels of communication for complaints and requests, the parole process, the role of the JIOP / IPVs and the right to medical treatment should be handed out to all prisoners on admission to prisons.<sup>9</sup> IPVs will also be called on, by the JIOP, to assist with informing prisoners about these rights and obligations.

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<sup>7</sup> See Section 6 of the Act

<sup>8</sup> Discussed in Chapter 3, paragraph 3.2 dealing with deaths in prisons

<sup>9</sup> See 1<sup>st</sup> B-order Chapter 1 19.0

### **1.6.5 Nutrition**

It is a requirement of the Act that prisoners must be provided with an adequate diet to promote good health and that such diet must make provision for the nutritional requirements of vulnerable groups such as children, pregnant women and the disabled. Provision is made in the Act for religious dietary requirements and cultural preferences. The Act was amended in 2001, when sub-section (5) was inserted which stipulated that *“Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast.”*

Feeding a daily prison population of about 160 000 people for 365 days per year is an enormous task. Some basic calculations indicate that DCS has to prepare an estimated 480 000 meals per day, this amounts to 3.3 million meals per week or 175 million per year.

It is understandable that due to the overcrowded conditions, dilapidated infrastructure in many kitchens and staff shortages, many problems are experienced on a daily basis in providing the required diet to prisoners. Food remains a chief source of complaint among prisoners and the cause of much frustration and acts of violence. Most prison gangs use food as their preferred currency when trading inside prison. These are all factors which contribute to the complexity of complying with the provisions of the Act in particular the intervals between meals and the availability of clean drinking water. However, we found no instances of malnutrition or hunger in our prisons. DCS is willing to comply with the nutritional requirements stipulated in the Act. These efforts are negatively affected by overcrowding, staff shortages and a lack of adequate kitchen equipment.

### **1.6.6 Hygiene**

It is an obligation of every prisoner to keep his/her person, clothing, bedding and cell clean and tidy. DCS must provide the means to do so. On our inspections we found hygiene to be of an unacceptably low standard especially in the awaiting trial sections. Unsentenced prisoners are not issued with prison uniforms and most of them have only the clothes on their backs. If they wish to wash their clothes they must strip naked and wait for the clothes to dry,

surrounded by 30-50 other adults who share the communal cell. Coupled with poor personal hygiene we found that the lack of maintenance of infra-structure such as toilets, showers and wash basins contributes to poor general hygiene in most of our prisons. In many communal cells, toilets are situated next to the sleeping area with neither partitions nor privacy.

DCS needs to be more vigilant of the dangers associated with poor hygiene in a communal environment such as a prison. Insistence upon and compliance by all prisoners with the requirements of personal hygiene should be the norm. DCS must identify and rectify the structural factors which are leading to poor hygiene.

### **1.6.7 Clothing and bedding**

All prisoners must, as stipulated in section 10 of the Act, be provided with sufficient bedding and clothing to meet the requirements of hygiene and climatic conditions. These provisions of the Act are, in practice, however interpreted by correctional officials as excluding unsentenced prisoners. The JIOP is of the view that this is an incorrect interpretation and that the DCS must provide all prisoners with clothing and bedding. The provisions of section 10(2) allow for an unsentenced prisoner to retain or acquire appropriate clothing and bedding of his/her own choice. This does not exclude the obligation of the DCS to provide when there is a need. The JIOP staff observed a worrying occurrence of prisoners having to pay other prisoners to acquire clothing and bedding.

It is not uncommon to find prisoners doing their own laundry in their sleeping accommodation and hanging it out of the windows to dry. This practice leads to various other problems including damp walls, lack of ventilation and a general state of untidiness and should be discouraged.

### **1.6.8 Lack of rehabilitation programmes**

Most Heads of Prisons could not supply us with accurate statistical information about the number of sentenced prisoners involved in formal rehabilitation and vocational programmes. Our assessment during the inspections, indicates that only about 11% of sentenced prisoners were actively involved in rehabilitation and vocational programmes. The programmes and training infrastructure that

are available to prisoners are very limited except for a few prisons which are equipped with workshops and class rooms.

Many prisoners spend most of their day (23 hours) locked-up in their cells with no rehabilitation taking place. The lack of programmes available to prisoners is affecting the functioning of the Case Management Committees and the Parole Boards who are unable to recommend the placement of prisoners on parole due to the fact that such prisoners have not completed the prescribed vocational and rehabilitation programmes. Some prisoners reported that they had approved parole dates but could not be released due to the requirement that they must complete a “pre-release” programme or rehabilitation and vocational training, but that the programmes were not available at that prison.

#### **1.6.9 Shortage of staff**

The concern raised by most Heads of Prisons was the shortage of staff which impacted all areas of service delivery. DCS is in the process of increasing its staffing levels from 33 666 in the 2003/04 financial year to an estimated 42 222 in the current financial year. Services such as the running of kitchens have also been outsourced. Closer inspection of the situation however, revealed a number of other concerns. Most notable are the high levels of absenteeism amongst staff. This seems to result from the concept of “days off” for weekend work. The result is that “production” workers have an extra 24 to 30 days leave per year in addition to their normal vacation, sick, family responsibility, study and special leave. Prison workshops are closed for at least one day per week to allow correctional officials to take leave for the time worked over weekends. The loss in production time amounts to thousands of hours per year.

The cost of appointing extra staff coupled with the reality of fluctuating prison numbers and the need for more specialized personnel such as psychologist and social workers, necessitates a review of performance levels among correctional officials.

Unless senior management is ruthless in insisting on the maintenance of standards, never tolerating anything less than what is required, while recognising what is good, or better, no organization can hope to succeed.

Measurable production/ performance standards and minimum production targets should be developed and implemented.

Closely related to the shortage of correctional officials is the observation that many of the prisons are unable to provide prisoners with the level of medical treatment, as stipulated in the Act, due to the lack of qualified medical staff and inadequate medical facilities.

#### **1.6.10 Health care**

The right to adequate health care for every prisoner, including unsentenced prisoners, is clearly defined in Section 35 of the Constitution and Articles 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners:

*“22(1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, treatment of states of mental abnormality.*

*22(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.*

*22(3) The services of a qualified dental officer shall be available to every prisoner.*

*23(1) In women’s institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.*

*23(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.*

24. *The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.*

25(1) *The medical officer shall have the care of the physical and mental health of prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.*

25(2) *The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.*

26(1) *The medical officer shall regularly inspect and advise the director upon:*

- (a) the quantity, quality, preparation and service of food;*
- (b) the hygiene and cleanliness of the institution and the prisoners;*
- (c) the sanitation, heating, lighting and ventilation of the institution;*
- (d) the suitability and cleanliness of the prisoners' clothing and bedding;*
- (e) the observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.*

26(2) *The director shall take into consideration the reports and advice that the medical officer submits according to rules 25(2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority".*

DCS must provide health care as stipulated in the Act:

*"Section 12(1) The Department must provide, within its available resources, adequate health care services, based on the principle of primary health care, in order to allow every prisoner to lead a healthy life.*



*Section 12(2)(a) Every prisoner has the right to adequate medical treatment but no prisoner is entitled to cosmetic medical treatment at State expense.*

*Section 12(3) Every prisoner may be visited and examined by a medical practitioner of his or her choice and, subject to the permission of the Head of Prison, may be treated by such practitioner, in which event the prisoner is personally liable for the costs of any such consultation, examination, service or treatment.”*

Health care in most of our prisons is in crisis. A lack of medical staff, prison overcrowding, poorly resourced prison hospitals and operational inefficiencies are some of the contributing factors. Reports from medical staff, doctors, IPV's, prisoners and court documents attest to this.

A recent investigation into health care at one of our biggest prisons found that *“no records exist of patients, dispensary is not operational and medication has expired. Pregnant prisoners share accommodation space with TB patients and have no access to gynecological services. Only 10 of the 53 approved posts for nurses were filled and there is no nursing staff to attend to emergencies after hours. Prisoners with infectious diseases are not isolated from the general prison population and only limited medical screening takes place of newly admitted prisoners”*.

HIV/AIDS is a challenge and particular attention must be given to addressing all the facets thereof. The JIOP proposes that a full enquiry be conducted into the health care of offenders in all centres.

#### **1.6.11 Mentally ill patients**

The Act is silent on the mentally ill prisoners with only limited reference being made in the DCS, B-orders at Chapter 3 which deal with prisoners who became mentally ill while in prison.

During the inspections done in 2007, the JIOP found 1 363 prisoners being held in correctional centres who should have been held in more suitable accommodation for mentally ill prisoners. DCS does not purport to be able to

cater for mentally ill persons. The practice of sending persons to prison when a care facility is available must be discouraged. DCS should be vigilant not to admit mentally ill prisoners who they are unable to care for. The Mental Health Care Act, Act 17 of 2002, Chapter VII places the responsibility for providing separate facilities for mentally ill prisoners with the Head of the Health Department – together with the concurrence of provincial departments.

Chapter VII, places a great deal of emphasis on the Heads of Prisons to cause the mental health status of prisoners to be enquired into and to recommend the provision of care in a prison.

It goes further to have an enquiry before a magistrate to have a mentally affected prisoner transferred to a health facility. A reading of the chapter illustrates that Heads of Prisons have a responsibility to deal with mentally ill prisoners that is in line with humane treatment of prisoners.

#### **1.6.12 Contact with community**

The lack of contact with families remains one of the most common complaints received by IPVs during 2006. Prisoners are spending longer periods in prisons (see paragraph 2.3 of this report), more are classified as maximum security risk prisoners and therefore have less outside contact.

When a prison is designed, the number of visitation booths provided to prisoners is calculated based on the number of prisoners for which the building is designed. If the building is overcrowded it results in a shortage of visitation facilities, which, in most of the prisons, is overcome by shortening the visitation time. Many prisoners complain that their family with limited means, must travel hundreds of kilometers, wait for hours before they are assisted in order to visit them for 20 minutes at a time.

Notwithstanding the reality and effects of overcrowded facilities and staff shortages we must bear in mind that the right to be visited as stipulated in section 35 (2)(f) of the Constitution and section 13 of the Act, may not be ignored or unreasonably limited. The existence and maintenance of family support structures remain at the core of effective rehabilitation and reintegration of prisoners.

### 1.6.13 Children in prisons

Section 28(g) of the Constitution states that *“Every child 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”*

Section 1 of the Act, defines a child as a person under the age of 18 years. There are 2 077 children in prison of which 912 are sentenced and 1 165 are unsentenced. Nine hundred and fifty nine of the children in prison were sentenced or arrested for aggressive crimes, 714 for economic crimes, 291 for sexual crimes and 21 due to narcotics. The remaining 92 children are kept in prison for crimes classified as ‘other’.

Our government ratified the Convention on the Rights of the Child on 16 June 1995, thereby embracing our responsibilities towards children. Article 40 of this Convention demands that children accused of crimes are entitled to be treated in a way that promotes their sense of dignity and worth and encourages in them a respect for the rights of others.

Sentenced children are generally well looked after (considering that they are incarcerated). They are mostly kept at so-called Youth Detention Centres which are seldom overcrowded and are equipped to cater for the specific needs of children such as classrooms, social worker programmes and recreation. The manner in which these Youth facilities is managed and or operated is not uniform. For example, at the Rustenburg Correctional Centre at Medium B these conditions were found:

*“**Medium B** is a Centre of Excellence, housing about 200 inmates. All inmates are kept busy through school and workshops. Sentence plans are mostly in place. The building is also old, but the unit visited seems to be in a better state than Medium A. It is cleaner and neater than “A”. There are TWO Social workers for the 200 inmates and a more modern (Electric) Kitchen supplies the inmates with their meals.”*

In contrast at the same correctional centre at Medium B, Unit B, the following conditions were found:

**B Unit**

*"This unit houses Medium category juveniles and is the biggest in the Centre. Some single cells were visited as well as one communal cell. The unit was dirty and it was found that some of the fixtures were out of order. The toilet area in the Single Cell section of the unit was very dirty and smelly. The communal showers in the single area didn't function. In some cells the taps (and in one case a toilet) are stuck in the open position wasting water. Windows were broken and in some single cells the lights are not working. There were a lot of single cells not in use by inmates, as the toilets, lights and basins were out of order. It would seem as if neither the inmates nor the members place a high priority on hygiene."*

The biggest problem at these sentenced Youth Facilities is that many of them are located in areas far from their families. The families, who are mostly indigent, cannot afford the travel and accommodation costs to visit their children.

Of grave concern to the JIOP are the 1 165 unsentenced children who are mostly kept at normal "adult" prisons because they need to be close to courts. Although they are separated, to some extent, from the ordinary prison population they often do come into daily contact with adult prisoners. They are also mostly transported to and from court with adult prisoners. These children are extremely vulnerable to acts of intimidation, violence and rape. Children in prison are a preferred "target" of the number gangs who eagerly recruit them under the false pretences that the gangs will provide them with protection and care during imprisonment. In exchange for these favours they are often called on to perform sexual acts on gang members. Of the 1 165 unsentenced children in prison, 840 have been awaiting the finalization of their cases in court for less than 3 months, 188 for between 4 to 6 months, 105 for between 7 to 12 months and 32 have been waiting for longer than a year.

The JIOP regards an efficient and independent complaints procedure as critical to the protection of children. If daily complaints are taken by a person whom

they trust (like an IPV), we may succeed in addressing their fears during imprisonment and by so doing create a sustainable alternative opposed to joining prison gangs. Our efforts in conjunction with other role-players to achieve this will be intensified. We need to intensify our efforts in the treatment of youthful offenders to change offending behaviour. A failure to heed this call will result in our facilities remaining universities of crime with revolving doors.

#### **1.6.14 Females, Mothers and Babies**

Females make up 2.2% of the total prison population. This is much lower than the “international norm” of about 7%. The total number of female prisoners is 3 559, consisting of 1 087 unsentenced and 2 472 sentenced women. One hundred and sixty five of these women are serving sentences of longer than 25 years.

A detailed inspection conducted at all female prisons in 2004<sup>10</sup>, which included interviews with most female prisoners yielded the following results:

- 72% of female prisoners are unmarried, 8% divorced and 20% are still married.
- 845 of all women in prison are mothers. 33% have one child, 25% have two children, 42% have three or more children.
- 74% of mothers reported that their children were in the care of friends or family. Only 17% had children placed in formal foster care, were in children’s homes or have been adopted.

As on 31 March 2007, 168 babies (younger than 5 years) were in prisons with their mothers. The prison environment is clearly not conducive to their development and alternative placement, where possible, should be considered for these children. The risk exist that the interests of imprisoned mothers are overemphasized to the detriment of the children. As a prerequisite DCS must comply with the principle that any action taken must be in the best interest of the child. The best way to achieve this is to open a children’s court enquiry in respect of every child imprisoned with a parent.

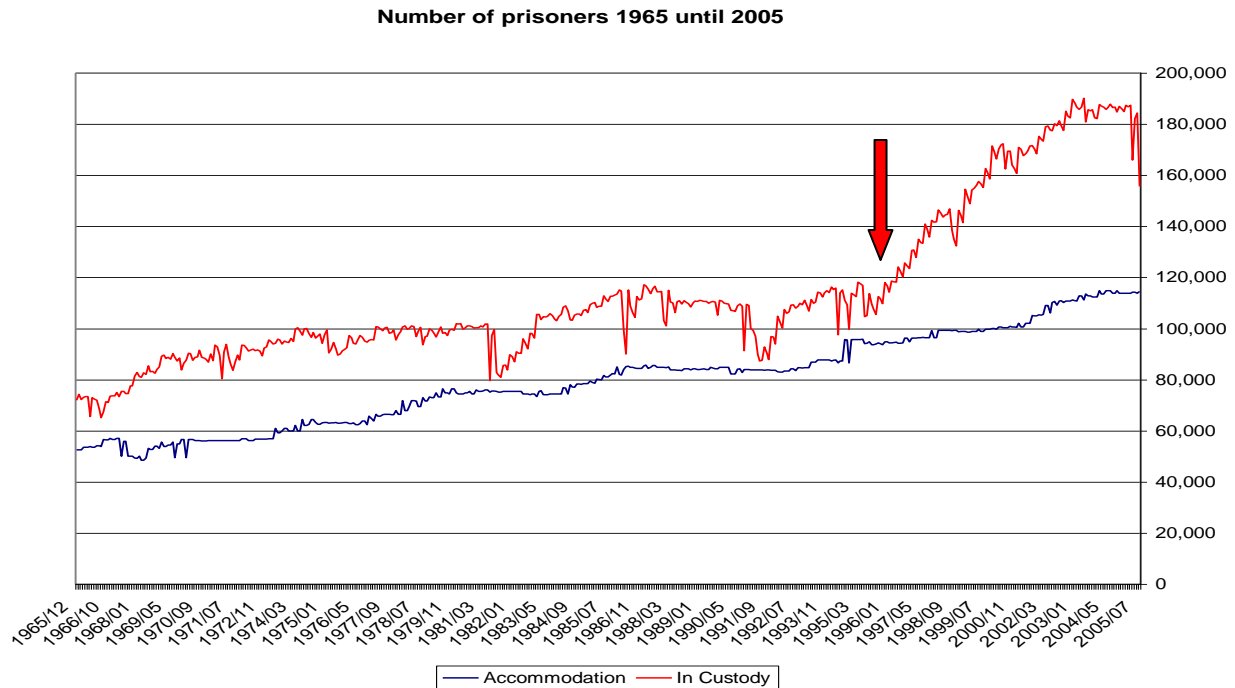
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<sup>10</sup> Follow-up inspections needs to be done in the new financial year.

## CHAPTER TWO: MANAGING PRISONER NUMBERS

### 2.1 Growing prison population

A growing prison population in South Africa is nothing new. South Africa has since 1965 experienced a continual growth in the prisoner population with varying levels of prison overcrowding as illustrated in **Figure 1**.



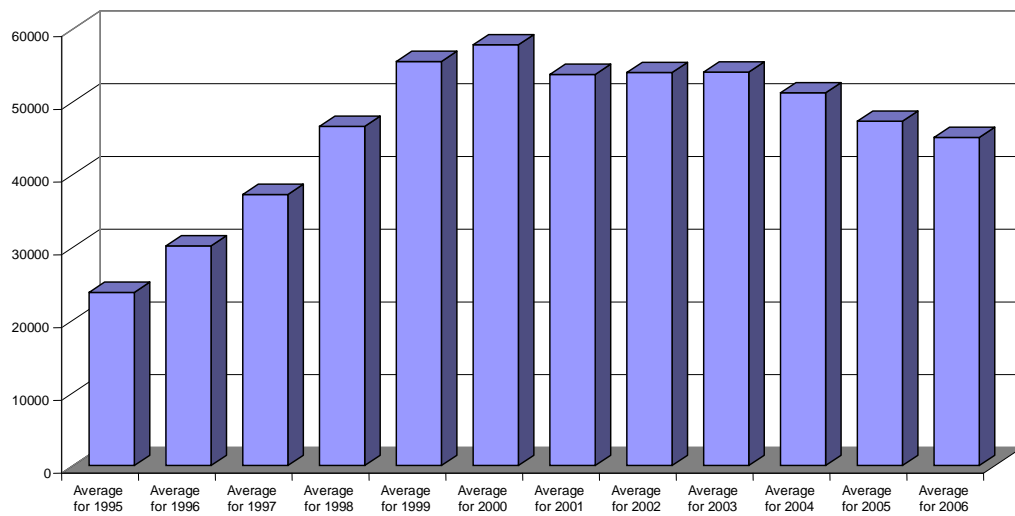
**Figure 1: Number of prisoners in custody 1968 until 2007**

The “growth rate” in our prison population accelerated during 1997/1998. This increase in the prison population has not only caused an escalation of costs of maintaining the correctional system but also resulted in the detention of prisoners under severely overcrowded conditions, resulting in a lack of rehabilitation programmes and a lack of adequate health care. It is not uncommon to find prisoners forced to share bed space, sleeping on the floor or under beds, in toilets and showers and not having access to sufficient exercise.

### 2.2 Reducing prison numbers

Since 2000, considerable success was achieved in reducing the number of prisoners in custody, most noticeably the reduction in the number of unsentenced prisoners which has decreased from 64 000 in April 2000 to its

current level of 48 461. As illustrated in the graph in **Figure 2** these numbers have declined over a period of 6 years.



**Figure 2: Number of unsentenced prisoners in custody: 1995 to 2006**

Based on these figures the JIOP is of the view that the downward trend in the number of unsentenced prisoners is sustainable and should accelerate with the improved co-ordination between government departments, the focus on the efficiency of our courts, the efforts of the Legal Aid Board and the work of prosecutors, police, correctional officials, the judiciary and other stakeholders.

Notwithstanding the good results achieved with regard to the reduction in the number of unsentenced prisoners we are still faced with various challenges. Some of these can be managed more efficiently than others.

### **2.2.1 Unaffordable bail and Section 63A**

On 19 April 2007, 10 841 people were in prison simply because they were too poor to pay the bail amount set by court. In determining an amount of bail to be paid, the court would find that it is in the interest of justice that the individual not be detained pending his/her trial. This would include the court's enquiry that he/she does not pose a danger to society and that the risk of re-offending was minimal. Ideally these persons should await their trial outside prison where they may continue with their employment or schooling. However, the

amount of bail remains unpaid and the accused remains in prison at a cost to the state, which is estimated at about R2.34 million\* per day.

| UNSENTENCED OFFENDERS WHO HAVE THE OPTION OF BAIL STILL IN CUSTODY<br>AS AT 19 APRIL 2007 |              |               |                |                 |             |              |
|---|--------------|---------------|----------------|-----------------|-------------|--------------|
| Region  | R1 to<br>100 | R101<br>to300 | R301 to<br>500 | R500 to<br>1000 | R1000+      | Total        |
| EASTERN CAPE  | 20           | 546           | 778            | 440             | 191         | 1975         |
| GAUTENG   | 2            | 50            | 480            | 949             | 1441        | 2922         |
| KWAZULU/NATAL   | 6            | 66            | 387            | 671             | 894         | 2024         |
| LIMPOPO, MPUMALANGA & N.W.  | 1            | 33            | 194            | 470             | 399         | 1097         |
| NORTHERN CAPE & FREE STATE  | 9            | 201           | 393            | 422             | 238         | 1263         |
| WESTERN CAPE  | 5            | 386           | 648            | 402             | 119         | 1560         |
| <b>RSA TOTAL</b>  | <b>43</b>    | <b>1282</b>   | <b>2880</b>    | <b>3354</b>     | <b>3282</b> | <b>10841</b> |

### **Section 63A of the Criminal Procedure Act, 51 of 1977**

In September 2000, Cabinet approved the release of about 8500 unsentenced prisoners with unpaid bail up to R1 000.00. This was done on recommendations from the then Inspecting Judge of Prisons Judge J J Fagan, and effected in terms of the provisions of section 67 of the “old” Correctional Services Act 8 of 1959 (as amended).

On 7 December 2001, the Criminal Procedure Act, Act 51 of 1977 (CPA) was amended by the Judicial Matters Amendment Act, Act 42 of 2001. The amendment included the insertion of section 63A.

The Judicial Inspectorate of Prisons, in consultation with the Department of Correctional Services, piloted the implementation of these provisions of the CPA at prisons in Pollsmoor and Johannesburg. The Inspecting Judge reported the results of the pilot in his Annual Report 2001/2002. This is what he reported;

*“In March 2002 the Judicial Inspectorate assisted the Head of Maximum Prison, Pollsmoor, to bring the first applications under section 63A of the Criminal Procedure Act 51 of 1977. That section, inserted in December 2001, provides for a head of prison, who is satisfied that overcrowding in his prison is constituting a material and imminent threat to the human dignity, physical health or safety of awaiting-trial prisoners who are unable to pay their bail amounts, to apply to court for their release under various conditions. It cannot be used where the charges are for serious offences.*

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\* calculated at R 215.85 per prisoner/day



*About 176 prisoners were released in Cape Town. Similar applications in Johannesburg and Pretoria led to further releases.*

*The introduction of section 63A has, however, not been successful in reducing overcrowding. Firstly it is invidious for heads of prison to state on oath that the overcrowding in his/her prison “constitutes a material and imminent threat to the human dignity, physical health or safety” of the accused. An affidavit to that effect could reflect on the head of prison and might be used in damages claims by prisoners. Secondly it is at times not possible to determine from the warrants of detention whether the offences that prisoners are charged with, fall within the prescribed categories. Thirdly, the requirement that the application must contain a certificate from a duly authorized prosecutor that the prosecuting authority does not oppose the application, leads to long delays as the prosecutors call for reports from the investigating officers concerned. Fourthly, several applications are necessary as applications must be made to the court that imposed bail and a particular prison might serve numerous magisterial areas.*

*To make section 63A workable as a tool to reduce overcrowding, and that surely was the intention of the Legislature, it would have to be simplified.*

*The Judicial Inspectorate has therefore been asking Heads of Prison to compile lists of awaiting-trial prisoners with bail of up to R1000 who could not afford to pay it and to take such lists to the prosecutor (if possible, weekly) and to the magistrate at the monthly or two-monthly meeting of the Integrated Justice Forum. In this way the prosecutor and the magistrate can timeously be informed that the bail set was unaffordable and that it should either be reduced or the prisoner be released under the supervision of a correctional official.”*

It is important to refer to the directions issued by the National Prosecuting Authority of South Africa under reference 1/4/3-1/02 dated 3 July 2002 and more specifically paragraph 2, 3, 4, 5 and 8 of the said letter which reads as follows:

2. *Spearheaded by Judge Fagan, the Department of Correctional Services (DCS) commenced implementing the above provision (s63A) in the Western Cape. The Judge and the DCS have expressed gratitude for the co-operation received from the Cape Town DPP and his Senior Public Prosecutors. The stage has now been reached that DCS will be seeking to implement the law in other centres. DCS indicated that it has come to*

*realize that successful implementation is impossible without co-operation at local level from the prosecution and investigating officers.*

3. *Section 63A essentially provides for an application to court (with process requirements) and therefore for a form of litigation (which could be avoided). The documentation supplied to you contains an example of a Western Cape application. Significantly, most of the awaiting-trial prisoners who were identified for possible release or bail reduction in terms of s 63A were in fact not released, or had bail reduced, strictly in terms of the provision. Prosecutors had assisted by having the prisoners to court where they indicated that they did not oppose reduction of bail or release on warning.*
4. *It is suggested that a proactive stance be adopted when DCS officials approach the DPP or his/her Senior Prosecutors. After all we did commit ourselves to the R1000-00 bail exercise (which has a wider scope than the offences and prisoners envisaged by s63A). The difference is that DCS now has the backing of legislation which ensures that the alleviation of the awaiting trial population remains a fixed feature of our work and that prosecutors remain sensitive to the concerns underlying the provision.*
5. *That being said, the way to reduce the awaiting-trial population is to actively ensure that cases are timeously screened, brought to court and prosecuted. If a matter is to be withdrawn or nolle-ed, that must be done early. Prosecutors have to consider the interests of the public, the investigation of crime and the administration of justice, and not only those of the accused. It is, however, a regrettable fact that prisoners are left in limbo because of unacceptable system failures.*
8. *I return to the general policy approach alluded to in paragraph 3 and 4, supra. It is believed that much more will be achieved by regular liaison and cooperation, thus rendering formal (and time consuming) applications unnecessary.”*

Prosecutors are, in our experience, mostly willing to assist with these cases when brought to their attention. The problem seems to be one of ineffective communication between the Heads of Prisons and the local Prosecutors. When the prisoner is granted bail, the court assumes (at least to some extent) that the accused will pay the bail and be released. However, if the person does not pay her/his bail the court will only become aware when the accused appears again in court.

The Inspectorate holds the view that by making name lists of all people with unaffordable bail available to prosecutors on a weekly basis, the Heads of Prisons can play a more pro-active role in preventing persons with unaffordable bail from remaining in prison. Research commissioned by this office showed that the consultation with legal representatives was also delayed in that the vast majority (75%) of unsentenced prisoners reported that they only saw their legal representative at the next court appearance.

### **2.2.2 Plea bargaining and guilty pleas**

Independent Prisons Visitors (IPVs) often see cases where the prisoner admits to committing a crime and intends to enter a plea of guilty. However, due to the backlogs in our courts and the lack of contact with legal representatives, these cases are often kept pending until the person appears in court after about 3 months. During this time, the prisoner is kept as an unsentenced prisoner, with dire consequences for the Head of Prison, the justice system as a whole and the accused.

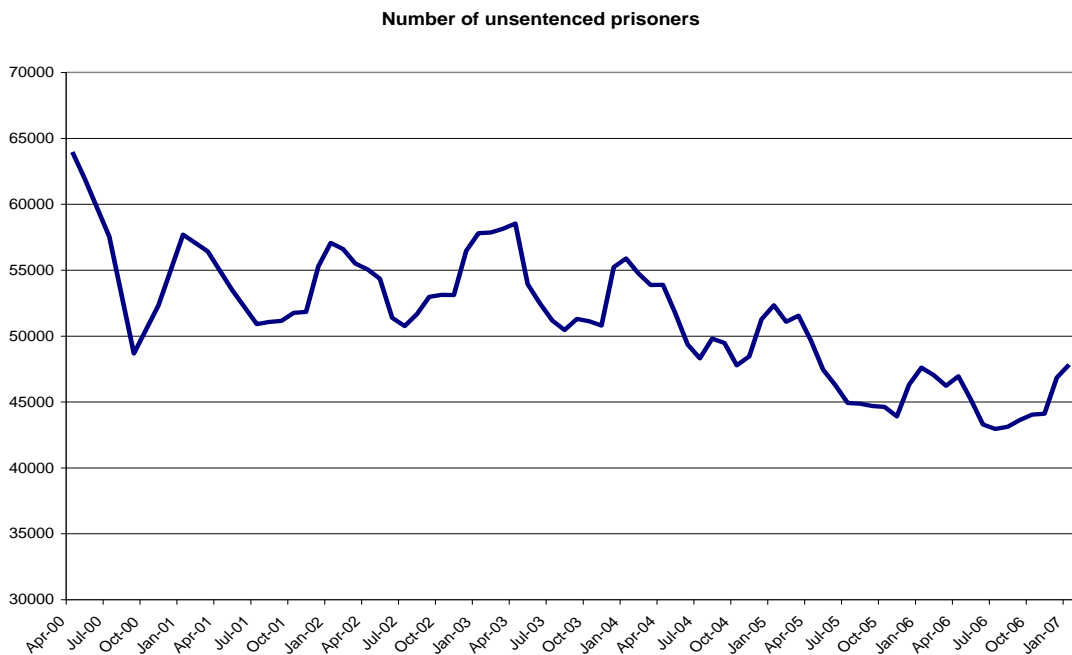
The JIOP is of the view that many of these and other cases can be dealt with via plea bargaining procedures. Our own efforts to implement plea bargaining more widely failed, mainly due to the fact that the accused is required to plead guilty before an “offer” is made to him/her. The offer is for an appropriate sentence with due consideration to the merits of the case and the likelihood of success. Prisoners are reluctant to plead guilty before they know what the offer is, a reluctance which can be ascribed to the historic mistrust that prisoners have of our courts and “state” attorneys. We need to revisit the process of the implementation of the legislation to determine how it can be simplified to provide justice for all and to make implementation of the relevant provisions quicker and more efficient.

What is needed is for prosecutors, when they decide to prosecute, to at the same time, consider the possibility of a plea bargain and at that stage to offer an appropriate sentence (which may also include a term of imprisonment). It is our view that for plea bargaining to succeed, it must be prosecutor driven. The public perception is unfortunately that this process is reserved for the rich and famous. The fact that the wording of the legislation restricts its use for the legally represented accused and that the practical application is cumbersome and time consuming, does not assist the process.

The JIOP joined in an initiative with the Legal Aid Board in a pilot project from 1 June 2006 until 31 May 2007. The project saw 19 IPVs appointed and trained specifically to assist prisoners with complaints about legal representation, access to courts and all other kinds of related complaints. We are currently in the process of evaluating the success of this project and will report thereon in the next financial year.

### 2.2.3 Seasonality of unsentenced prisoner numbers

An analysis of the number of unsentenced prisoners in custody on a month-to-month basis, clearly indicates a strong seasonal fluctuation in the numbers. As illustrated in **Figure 3**, a cycle exists regarding the number of people in prison during certain periods of the year. The “peak” period occurs during the months December until February and the “low” period occurs during August to October. The difference in the number of people between the peak and low periods is between 8 427 (in 2005) and 4 660 (in 2006).



**Figure 3: Number of unsentenced prisoners per month: April 2000 until Jan 2007**

This fluctuation in the number of people that need accommodation has various implications on Correctional Services. Most noticeable a shortage of staff, of vehicles and of additional resources during the peak period. It is also during this period that our prisons become severely overcrowded resulting in detention under inhumane conditions.

Strategies which are aimed at achieving a more even distribution in the number of unsentenced prisoners should be developed. These may include giving preference to cases of people already in prison during the “peak” periods and of people outside prison during the “low” periods. It is important that the Department of Justice takes cognizance of these factors to assist case flow management in courts and the diarizing of trends.

#### 2.2.4 Turnover rate

A prison population is not static. New people are admitted and others are released on a daily basis. The table below provides an indication of the rate at which people move in and out of prisons on an annual basis. If this number (368 150) is compared with the average number of prisoners in custody for the same period of time a turnover rate can be calculated. This is an important indicator, especially when looking at unsentenced prisoners. For 2006 the turnover rate for unsentenced prisoners was 6.5, meaning that every about 2 months we had about 45 079 people passing through our prisons as unsentenced prisoners. This again highlights the difficulties in the management of this category of prisoners. We need to slow down the turnover rate by means of diversion programmes and ensuring that people are not arrested and unnecessarily detained in prison.

| <b>Release Type 2006</b>                     | <b>Total</b>   |
|--|----------------|
| Medical                                      | 70             |
| Bail pending appeal                          | 316            |
| Bail paid                                    | 64 705         |
| Unsentenced to court not returned from court | 241 592        |
| Unsentenced transferred to SAPS              | 4 551          |
| Deportation/repatriation                     | 3 301          |
| Fine paid                                    | 14 019         |
| Parole Board prisoners                       | 10 422         |
| Parole Non-Board prisoners                   | 6 734          |
| Detainees                                    | 2 436          |
| Sentenced prisoners on sentence expiry date  | 15 141         |
| Warrant of Liberation                        | 5 249          |
| <b>Total:</b>                                | <b>368 150</b> |

Detainees refer to prisoners incarcerated on authority other than a court  
 Parole Board prisoners refer to prisoners with a sentence of more than 1 year (2 y. before 31 July 2004)

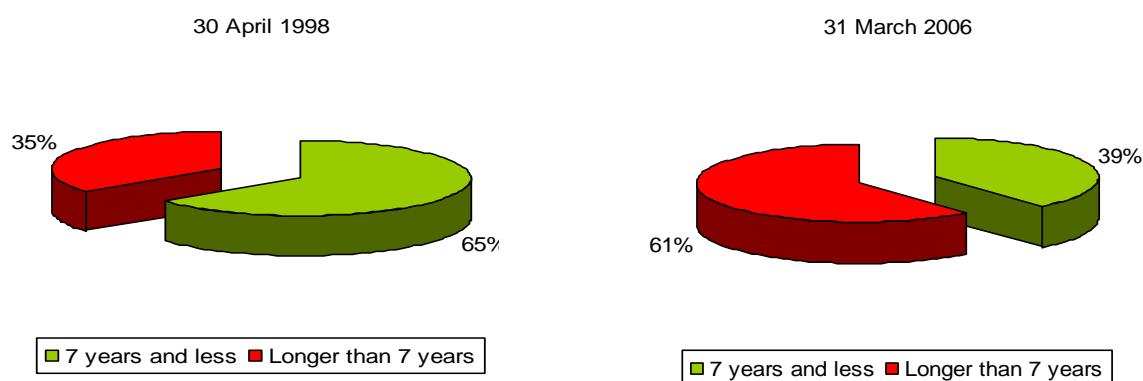
### 2.2.5 Sentenced prisoners

During the last two years, the number of sentenced prisoners declined. In 2004, the daily average number of sentenced prisoners was 135 253. This figure reduced to 122 154 in 2005 and further reduced to 113 779 in 2006. This is an overall reduction of 21 474 sentenced prisoners over a two year period. This reduction can be attributed to improved coordination between various government departments and other role-players as well as the special remission programmes aimed at releasing short-term non-violent prisoners on parole.

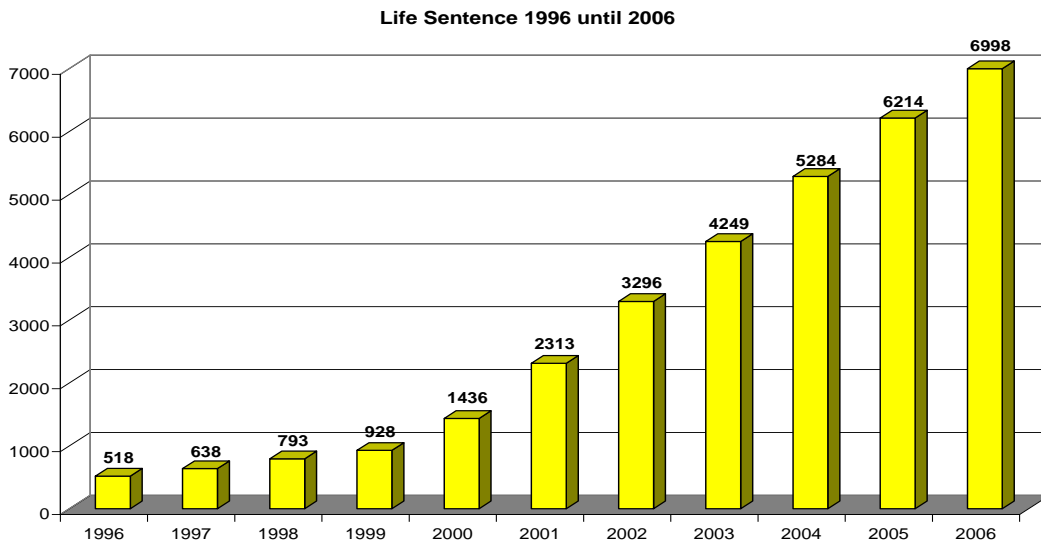
The sustainability of the reduction in the number of sentenced prisoners is being challenged by two variables namely, the length of the prison sentences and the efficiency of the release processes. It is imperative that the strict boundaries between incarceration and community corrections become blurred in order to facilitate easier migration between the two.

### 2.3 Length of sentences

The number of people sentenced to long prison terms has increased considerably over the last 8 years. In support of this statement we need to consider the following statistical indicators. Firstly, the number of prisoners sentenced to 7 years or more has, since 1998, increased from 35 459 prisoners to 69 980 prisoners as at December 2006. This means that we now have 61% of the entire sentenced prison population serving 7 years or longer with 53 318 serving more than 10 years. The number of sentenced prisoners serving sentences of less than 7 years has over the same period of time declined from 65 605 to 43 684.



Secondly, as illustrated by **Figure 4** the number of people sentenced to life imprisonment in South Africa has gone up from 793 in 1998 to 6 998 in 2006, that is an increase of more than 782% in eight years.



**Figure 4**

These “long term” prisoners (serving sentences of longer than 7 years) are also affected by the “security risk classification system” which is used to grade sentenced prisoners according to their security risk. This system relies on information about the nature of the crime, previous convictions and the length of sentence. Each of these elements is graded. For example, a person convicted of murder will be given a score of 14 compared to a person convicted of housebreaking who will be allocated a score of 2 points. The length of the sentence has a big impact on the scoring with 45 points allocated to a person with a sentence of more than 11 years. As a result of this the number of prisoners classified as Maximum Security has escalated from 12 138 such prisoners in January 1998 to 36 963 in 2005 (an increase of 204% in 8 years).

Maximum Security prisoners are not allowed to perform work outside the prisons, they have less access to rehabilitation programmes and recreation facilities. Their contact with families is generally limited to non-contact visits once or twice per month. Long sentences tend to alienate prisoners from their families and their support structures. These support structures are much needed to secure their reintegration into the community upon release.

The system of sentence plans was only recently introduced and only after an already existing backlog. This means that long term offenders are only exposed to programmes late in their sentence and for a limited period of time before being released.

| <b>SECURITY CLASSIFICATIONS</b> | <b>1998/01</b> | <b>2006/12</b> |
|---------------------------------|----------------|----------------|
| Maximum                         | 12138          | 36963          |
| Medium                          | 72204          | 63057          |
| Minimum                         | 3704           | 1337           |
| Non-Board                       | 12110          | 12022          |
| Unclassified                    | 543            | 70             |
| <b>Total</b>                    | <b>100699</b>  | <b>113449</b>  |

The JIOP holds the view that the security classification system must be amended to rectify the current “disproportionate” weighting of the length of sentence. Specific guidelines should be issued to Case Management Committees which are aimed at achieving a better balance in the classification of prisoners.

#### **2.4 Correctional Supervision and Parole Boards (CSPBs)**

Currently there are 52 CSPBs countrywide. These CSPBs are community based. This means that the majority of members of a CSPBs, including the chairperson, are from the local communities. The administration of these CSPBs is done by the DCS but the CSPBs function independently as regards their decision making competencies in compliance with section 74 of the Act.

On 31 March 2007, the numbers of vacancies in respect of the chairperson posts in the various regions were as follows:

| <b>Region</b> | <b>Chairperson</b> |               |
|---------------|--------------------|---------------|
|               | <b>Filled</b>      | <b>Vacant</b> |
| Gauteng       | 4                  | 7             |
| Western Cape  | 6                  | 4             |
| Eastern Cape  | 6                  | 2             |
| KZN           | 5                  | 3             |
| FS/ NC        | 6                  | 1             |
| LMN           | 7                  | 1             |
| <b>Total</b>  | <b>34</b>          | <b>18</b>     |

Two members from the community serve on a part time basis on the CSPB. On 30 April 2007, 77 of these posts were filled and 27 were vacant.

Since all positions on the CSPB have not been filled, DCS personnel have been appointed in acting capacities and all CSPB are functioning. DCS reported that the existing vacancies will be filled during June 2007. They also reported that the posts of deputy chairpersons will be filled by appointment of members of the communities.



During our inspections 97% of all the Heads of Prisons interviewed, reported that their CSPBs were in place and fully functional. However 32% of them reported that backlogs exist in considering cases for parole. DCS reported that some problems are being experienced by CSPBs e.g. the late submission of Profile Reports by Case Management Committees (CMCs), the general lack of evidence of participation in rehabilitation programmes and the lack of programmes in addressing offending behaviour. The functioning of the CMCs impacts directly on the CSPBs and should be evaluated and monitored carefully. It is of grave concern that we continue to receive complaints from prisoners that they are not properly prepared or informed by the CMC of parole and the effects thereof.

Complaints are received from prisoners that the CSPBs lacks uniformity in their decision to grant parole. It is not uncommon to find two co-accused, serving similar sentences, with different release dates but with no apparent difference between their profiles.

The current “lack of representation” of the Heads of Prisons or representatives of DCS on the CSPBs is a concern. These representatives’ inputs and continued involvement on the CSPBs remain important without which the CSPBs will find it difficult to function.

## **CHAPTER THREE: MANDATORY REPORTS**

### **3.1 *Legislative framework***

The Correctional Services Act 8 of 1959 was amended to provide for the establishment of the JIOP on 20 February 1997 by proclamation of the Correctional Services Amendment Act 102 of 1997. The powers, functions and duties of the JIOP as stipulated in this act were expanded on 19 February 1999 by proclamation of sections 85 to 94 of the Correctional Services Act, Act 111 of 1998 (The Act).

The Act requires that all Heads of Prisons report to the Inspecting Judge in any case of death in prisons (section 15), solitary confinement (section 25), use of mechanical restraint (section 31) and segregation (section 30). These provisions became operational on 31 July 2004.

The underlying purpose of compelling Heads of Prisons to report to the JIOP is to avoid human rights abuses by correctional officials. A second outcome is to ensure that accurate, independent information is available on these matters. During 2006 the JIOP received a total of 4 415 such reports from Heads of Prisons the detail of which is reflected hereunder.

### **3.2 *Deaths in prisons***

Section 15 (2) of the Act states that *“any death in prison must be reported forthwith to the Inspecting Judge who may carry out or instruct the Commissioner to conduct any enquiry”*.

During 2006, the Inspectorate received 1 253 reports of deaths in prisons from Heads of Prisons. However, the information on the Management Information System (operated by DCS) indicates that a total of 1 315 deaths in prison were recorded for the year 2006. This indicates that Heads of Prisons neglected to report 4.7% of deaths in prisons to the Inspecting Judge. Although the under-reporting is unacceptable, it represents a much higher reporting rate than was recorded during previous years and the JIOP will, during the current financial year, continue to focus on monitoring compliance by DCS in respect of the provisions of the Act.

It appears that the statistical information provided by DCS in regard to the number of deaths in custody is substantially correct. According to these figures 1 315 prisoners died during 2006 of which 1 249 deaths were recorded as “natural” and 66 were “unnatural” deaths. 1 287 were male and 28 were female, 1 010 were sentenced and 305 were awaiting-trial prisoners.

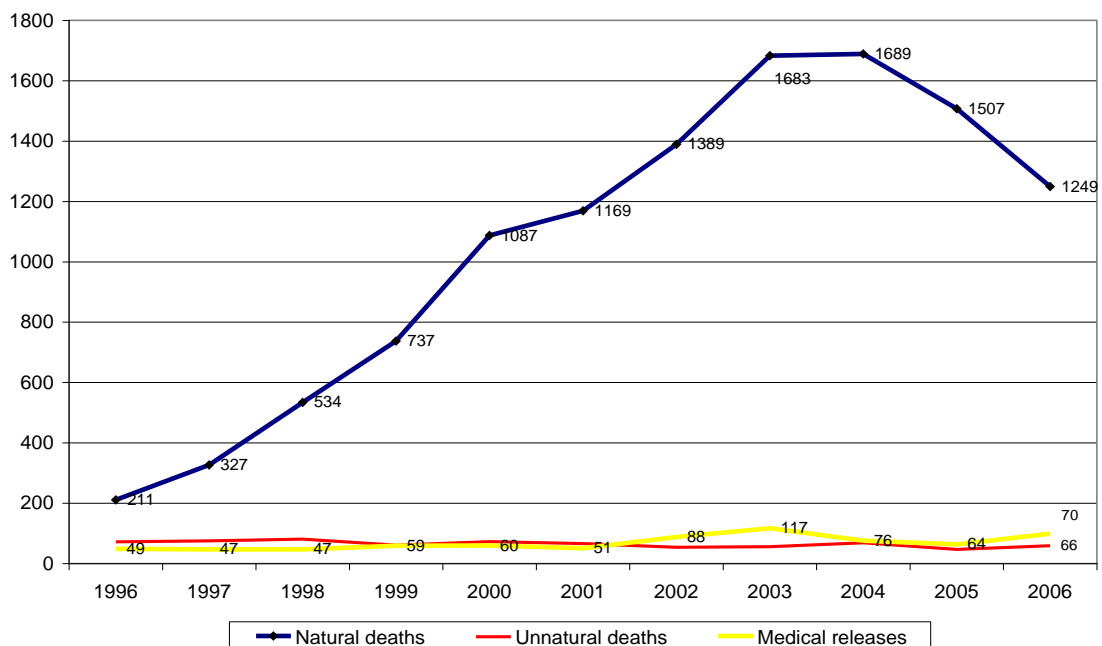
The overall number of deaths in prisons decreased from 1 554 in 2005, due mainly to the reduction in prisoner numbers. However, the reduction in prisoner numbers for 2006 amounted to 6% whereas the number of deaths declined by a nominal rate of 15.4%, indicating a real reduction of 9.4% in the number of deaths recorded in South African prisons for the year 2006.

This finding is supported by the calculated death rate per 1 000 prisoners which declined from 9.2 deaths per 1 000 prisoners in 2005 to its current level of 8.3 deaths per 1 000 prisoners per annum.

The number of terminally ill prisoners who were released on medical grounds in terms of the provisions of section 79 of the Act, increased from 64 in 2005 to 70 in 2006. This accounts for only 5.3% of terminally ill prisoners.

It is the view of the Inspectorate that deaths in prisons should be avoided where possible by utilising the provisions of the Act which allow for a terminally ill prisoner to be placed on medical parole with conditions.

**Natural, Unnatural deaths and medical releases**



One of the main concerns to the JIOP is to establish why prisoners are dying in custody and how such deaths can be prevented. An analysis of the variable namely “the time spent in prison before the death occurred” was performed. This variable is closely linked to the question whether prisoners are dying from diseases contracted inside prison or from diseases contracted outside prison before they were admitted. The results of this analysis are reflected in **Figure 4**. Thirty seven percent of all deaths transpired within the first 12 months of admission to prison, 52% within the first 24 months and 62% within the first 36 months. It becomes evident that the vast majority of deaths occurred shortly after the persons were admitted to prison.



These results provide a strong indicator that prisoners, dying of diseases such as Aids, cancer and TB, did not contract these diseases in prison but were already sick on admission. However, it also raises serious concerns about the thoroughness of the medical examinations taking place on admission to prison (see Paragraph 1.6.4 of this report) and the quality of medical care while in prison provided to prisoners who are admitted with chronic illness and or need medication (see Paragraph 1.6.9 of this report). A full audit and enquiry into deaths since section 15 became operational i.e. July 2004, will be done in the next financial year<sup>11</sup>.

<sup>11</sup> At the time of publication the audit would have reached an advanced stage

### **3.3 Solitary confinement**

The Act defined the term solitary confinement as “... *being held in a single cell with the loss of all amenities*”.

Section 25 (1) of the Act states that “*A penalty of solitary confinement must be referred to the Inspecting Judge for review.*”

Section 25 (2) states that “*The penalty of solitary confinement may only be implemented when the Inspecting Judge has confirmed such penalty.*”

From the provisions of the Act it is clear that solitary confinement is a form of punishment placed at the disposal of the Head of Prison. It is done in an isolated part of the prison with little or no contact with other prisoners. The negative effects that isolation has on human beings are well documented and general consensus exists between role-players that these provisions of the Act should be used with great caution and proper monitoring. Any deviation from the legislative framework should not be tolerated.

During 2006, the JIOP received 149 reports of solitary confinement which were all dealt with in accordance to the provisions of section 25 of the Act. The reasons for prisoners being placed in solitary confinement included acts of smuggling with dagga, acts of violence and gang activities. A worrying factor is that none of these matters led to further and detailed investigation into the cause and background due to the limited mandate and capacity of the JIOP.

### **3.4 Segregations**

Section 30 (1) of the Act states that “ (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 the written request of a 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 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 Prison considers that it is the interests of the administration of justice.”*

Section 30 (6) states that *“All instances of segregation and extended segregation must be reported immediately by the Head of Prison to the Area Manager and to the Inspecting Judge.”*

- The JIOP received 2 956 reports of segregation during 2006. Of these reports 43% of cases were segregation due to “violence” in terms of section 30 (1)(d);
- followed by 30% “on request of prisoner” section 30 (1)(a);
- 12% for reasons of “restriction of amenities” in terms of section 30 (1)(b);
- 8% on the “request of the police” in terms of section 30(1)(f);
- 5% of cases of segregation were “prescribed by the medical officer” in terms of section 30(1)(c);
- 2% were prisoners placed in segregation due to “recapture after escape” in terms of section 30(1)(e).

These statistical indicators point to unacceptable levels of violence in our prisons. These are not necessarily only from correctional official on prisoner but also prisoner on prisoner.

### **3.5 Mechanical restraints**

Section 31(1) states that *“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 exist 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.”*

Section 31(4) states that *“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”*

The JIOP received only 57 reports on the use of mechanical restraints during 2006.

### **3.6 Under reporting**

The level of compliance by Heads of Prisons with the provisions of the Act relating to mandatory reports namely sections 15, 25, 30 and 31, is constantly checked during inspections. From our inspections, it was established that, for 2006, 95.3% of all deaths in prison were reported to the Inspecting Judge. However, only about 63% of Heads of Prisons complied with their statutory responsibility to report all cases of solitary confinement, segregation and the use of mechanical restraints.

The JIOP provided training where requested and made a list of non-complying Heads of Prisons. Follow-up visits and the services of IPVs will be used to improve the level of compliance with these provisions of the Act.

## CHAPTER FOUR: THE JUDICIAL INSPECTORATE OF PRISONS

### 4.1 *Statutory Mandate*

The Judicial Inspectorate of Prisons (JIOP) was established as an independent statutory body in terms of section 85 of the Act to monitor the conditions in prisons, the treatment of prisoners and to report to the President and the Minister of Correctional Services. It was further mandated to appoint Independent Prison Visitors (IPVs) to visit prisoners and, should there be complaints, to try to have them resolved.

### 4.2 *Vision*

To ensure that all prisoners are detained under humane conditions, treated with human dignity and prepared for dignified reintegration into the community.

### 4.3 *Organizational change*

During 2006, the JIOP received a number of reports, both from outside and inside the organization. These criticized the organization for “dealing only with prison overcrowding” and neglecting other important issues. Discussions with various role-players including Members of Parliament, the Judiciary, Civil Society and others confirmed that a process of review and change was needed within the JIOP. It is however, also our experience that words such as “change” and “restructuring” are used very loosely and often with little explanation of the rationale behind change and the restructuring of organizations. For this reason it was decided to include, at the risk of oversimplification, as part of this report an explanation of the business model which was used to identify and implement the changes needed in the JIOP.

#### 4.3.1 *Defining the business model of the JIOP*

In order to understand the business of the JIOP, the concept of the business idea as introduced by Kees van der Heijden and Wiley (1996) was used. They provide the following definition “*the Business Idea is the organization’s mental model of the forces behind its current and future success.*”<sup>12</sup>

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<sup>12</sup> Kees van der Heijden and Wiley, Scenarios – The Art of Strategic Conversations, 1996



They argue that although all organizations do have a Business Idea, which is often embedded in the heads of the founding members, it is necessary to articulate the Business Idea in order for it to be studied, discussed, modified and improved. They state that *“in order to work effectively in the organization, the articulated Business Idea must be a rational explanation of why the organization has been successful in the past, and how it will be successful in the future.”*

They list four elements which need to be specified in order to define a completed business idea namely;

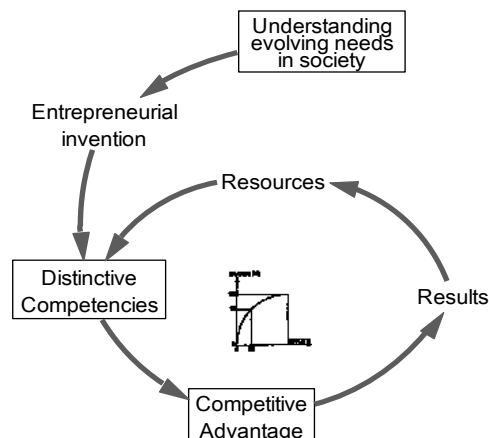
- The societal/customer value created.
- The nature of the competitive advantage.
- The distinctive competencies which, in their mutually reinforcing interaction, create competitive advantage.

These three elements must be configured into the fourth element;

- A positive feedback loop, in which resources generated, drive growth.

It is also argued that due to its systemic nature, a business idea is best represented as an influence diagram. **Figure 8** shows this in its generic form.

**Figure 8: Business Idea as influence diagram**



In applying this generic model of a business idea to the JIOP the following description of the business of the JIOP was formulated;

#### 4.3.2 Understanding societal/customer needs

The first requirement of the business idea is to identify the needs that exist for the services of the organization. This is called the profit potential with the

understanding that an organization cannot exist if there is no need or market for the services it provides.

The societal and customer needs supporting the existence of the JIOP can be classified into four main categories. The first is the need to support our newly created democracy. Various international treaties such as the United Nations Minimum Standards for the Detention of Prisoners, the Convention Against Torture and the Optional Protocol to the Convention Against Torture (OPCAT) require the establishment, by governments, of independent oversight or inspection bodies to monitor the treatment of prisoners and the conditions in prison.

The second category of needs that exist is for the JIOP to provide the Executive, Parliament and other stakeholders with accurate information about the conditions in prisons. This information, about an environment which has historically been closed to outside scrutiny, is necessary for the legislature and the public to understand the problems and challenges that exist in the prison system. This, in theory, allows government to direct the limited resources which are available to the areas where it is most needed in order to improve the correctional system. Examples of this are the various amendments that have been made to legislation and the release of thousands of prisoners by Parliament based on the information provided to them by the JIOP concerning the conditions under which such prisoners were detained and the treatment they received. The reports of the JIOP are also available to other organizations and are widely used by universities, the media, researchers and courts.

The third category of needs is from prisoners. The legislature mandated the JIOP to deal with complaints from prisoners. The resolution of prisoner complaints is aimed at reducing the tension levels in prisons and should contribute to the creation of an environment conducive to rehabilitation. Prisoners do not have access, like the general public, to the police, medical care and legal aid mainly because their movements are restricted and closely controlled by DCS. Therefore they are unable in many cases to attend to their personal problems and need someone to assist them by “speaking on their behalf”. The JIOP fulfils this need by means of a process of regular visits to

prisons, interviewing prisoners, recording prisoner complaints and facilitating the resolution of such complaints.

The last category of needs is the need of Parliament to prevent human rights abuses taking place in our prisons. Extensive powers and resources are given to the JIOP to monitor and report human rights abuses taking place. Heads of Prisons are also compelled by legislation to report incidents such as deaths in prisons, segregation of prisoners, solitary confinement and the use of mechanical restraints to the JIOP.

In summary, the JIOP exists because of the:

- a) democratic principle/nature of the South African Government
- b) need that exists for independent and accurate information about the conditions in our prisons and the treatment of prisoners.
- c) need that exists among the prison population to have their complaints dealt with independently from Correctional Services.
- d) need that exists in Parliament to prevent human rights abuses in prisons.

#### **4.3.3 Alignment of needs with services**

To evaluate the strength of our current strategies and our organizational objectives, an evaluation was made to determine to what extent the services on offer from the JIOP are aligned to the needs that exist (paragraph 4.3.2 supra). The rationale behind this is that the JIOP, as most other organizations, has limited resources. Therefore, to achieve the best possible results, those limited resources must be focused, as closely as possible, to the needs that exist.

As a statutory body, our services are limited to the mandate and to the powers assigned to us by the Legislature. This forms the legislative framework within whose confines the JIOP must operate. A comprehensive list of all powers, functions and duties assigned to the JIOP is attached hereto marked Appendix B.

The evaluation yielded a number of results, most noticeably the threats that exist to achieving / maintaining operational independence, the need to

improve data integrity, the ability to analyze and interpret statistical data in order to identify trends and build forecast models and the need to expand and improve service delivery.

In order for the JIOP to improve the effect of its work, we will have to become an “organization fit for change”. The correctional environment in which we operate is highly unpredictable due to a constant rate of change and transformation. New crises develop daily which demand the attention of the JIOP as oversight body.

#### **4.3.4 Designing the organizational structure**

*“Our institutions are failing because they are disobeying laws of effective organizations which their administrators do not know about, to which indeed their cultural mind is closed, because they contend that there exists and can exist no science competent to discover those laws.”*

*Stafford Beer (1974)*

A viable system diagnosis of the JIOP structure, demonstrated that the JIOP management, having started out as a project team, has failed to grant autonomy to its operation level systems. If autonomy is granted to operational systems (level 1) much of the complexity stemming from day-to-day operations will be attenuated. The demands on management will reduce and they can then refocus attention on quality control and planning opposed to spending their time dealing with crisis management.

Because most of the members of staff, including IPVs, are deployed at prisons distant from its head office, the capacity of the co-ordination between systems must be improved to prevent silo-functioning. Stronger feedback between the organization and the environment in which it operates is needed especially with its shareholders (Parliament) and its customers on operational level namely prisoners.

The Inspectorate reviewed its current structures to ensure that its limited resources are focused on areas of service delivery. This resulted in various changes to its organizational structure including the splitting of the role of the

Director into two separate directorates namely Functional Services and Corporate Services. Secondly, we abolished the four separate units which existed in the JIOP and replaced it with a regional management system to prevent silo-functioning between the units and to promote the viability of the operational “leg” of the organization.

As the Inspectorate continues to grow in its size and in the complexity of its tasks, it is deemed necessary to enhance the level of autonomy within the organization especially at local prison level to ensure that prisoner complaints are dealt with timeously without undue delays caused by unnecessary bureaucratic processes. For this reason the Inspectorate appointed 45 full-time Visitor Committee Coordinators at local prison level. Their primary functions include supporting Visitors Committees and IPVs and dealing with prisoner complaints and day-to-day monitoring and reporting.

This year the Inspectorate will further strengthen the Visitors Committees by the appointment of Chairpersons for each committee, and by the establishment of partnerships with local organizations and communities.

Such partnerships are aimed at enhancing the skills’ level of the Visitors Committees and at ensuring active community involvement in the oversight of prisons in all areas.

#### **4.3.5 Staff Composition**

On 31 March 2006, the staff of the JIOP consisted of:

| <b>Post level</b>    | <b>Posts</b> | <b>Salary level</b> |
|----------------------|--------------|---------------------|
| Director             | 2*           | 13                  |
| Deputy directors     | 3            | 11                  |
| Assistant directors  | 5            | 9                   |
| Inspectors/Managers  | 10           | 8                   |
| Admin. support staff | 23           | 7 and lower         |

The Director Functional Services has been appointed to this post in an acting capacity pending the creation of a level 13 post on PERSAL.

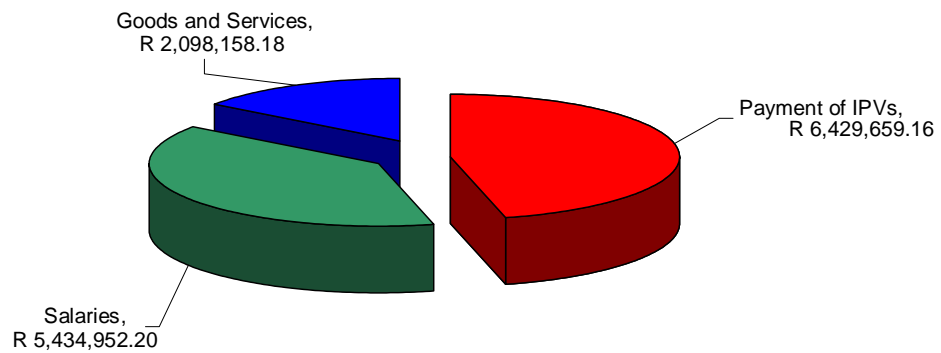
Thirty two staff were employed in Cape Town, 8 at the Regional Office in Centurion. An additional 4 people were appointed on a fixed term contract.

One hundred and ninety three IPVs were engaged throughout the country to visit prisoners.

#### **4.4 Total expenditure of JIOP**

The JIOP is funded from the budget of DCS Vote 19. The total expenditure of the JIOP for the 2006/2007 financial year amounted to R 13 962 769.54

Total expenditure for 2006/2007



## CHAPTER FIVE: EXPANDING NEEDS

### 5.1 *Defining a prison and prisoner*

The mandate of the JIOP is limited to a prison which is defined in section 1 of the Act as follows “ ***prison*** means any place established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to detention in placement under protective custody, and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any persons have been sent for the purpose of imprisonment, detention, protection, labour, treatment or otherwise, and all quarters of correctional officials used in connection with any such prison, and for the purposes of sections 115 and 117 of this Act includes every place used as a police cell or lock-up”

The JIOP visits only prisons under the control of DCS. Its work and this report therefore does not include any other place of detention. We know that a great number of detainees are held either as unsentenced prisoners or for other reasons at facilities other than prisons. Our mandate also excludes those individuals that are serving a sentence under correctional supervision or have been released on parole.

Prisoner is defined in the Act as “any person, whether convicted or not, who is detained in custody in any prison or who is being transferred in custody or is en route from one prison to another prison”

### 5.2 *Jali Report*

The Commission of Inquiry’s full report, led by Judge Jali, on corruption, maladministration, violence, and intimidation in DCS was made public during November 2006. This report<sup>13</sup> attests to the complexity and extent of the problems faced in correctional services. The Commission made 114 recommendations which covered:

- The procurement of goods and services;
- The recruitment, appointment, promotion and dismissal of employees;

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<sup>13</sup> some 1800 pages

- The treatment of prisoners;
- Dishonest practices and unlawful activities between employees and prisoners;
- Incidents of non-adherence to departmental policy and deviation from national norms and standards;
- Incidents of violence against or intimidation of employees;
- The lack of implementation of recommendations of past investigations relating to the Department.

The Commission dealt extensively with the JIOP and its operations, with specific reference to the provisions of the Act, and how it inhibits the organization fulfilling the purpose of its existence and mandate. We are in full agreement with the findings of the Commission and look forward to the Legislature giving effect thereto.

The JIOP believes it is in the interest of all South Africans that public confidence in DCS is restored. This can be accomplished by a transparent process aimed to fully implement the recommendations made by the Commission. Due to the complexity of the task which involves several groups and in order to restore public confidence in DCS, the JIOP recommends the appointment of a panel of specialists with a specific mandate to oversee this process.

### **5.3 OPCAT**

#### **OPTIONAL PROTOCOL TO THE UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT (OPCAT)**

South Africa became party to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT Convention) in 1998. Article 2 of the Convention requires states parties to “take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction”. The Optional Protocol to the Convention (OPCAT) was drafted in response to this need and was designed to assist member states to fulfil their obligations. It recognized the important role of independent bodies in preventing torture by conducting regular oversight and inspection of places of detention.



The objective of OPCAT is to establish a system of regular visits undertaken by international and national bodies of places where people are deprived of their liberty. The Protocol requires the establishment of an international Subcommittee on Prevention. In addition, each state party is required to set up, designate or maintain one or more visiting bodies operating at a domestic level for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. These bodies are referred to as national preventative mechanisms (NPMs). Both the domestic NPMs and the international body shall be allowed to visit any place where persons are deprived of their liberty within the state party, with a view to strengthening the protection against and prevention of torture. This would include people held in prisons, police stations, private or public custodial settings, institutions for the accommodation of children in need of care or secure care, psychiatric institutions, and military detention facilities. The Protocol outlines the powers and responsibilities of the NPMs.

South Africa played a key role in the drafting of OPCAT and was one of the promoters in ensuring its acceptance. OPCAT came into force on 22 June 2006, and South Africa became a signatory in September of the same year. State parties are obliged to establish (or designate) at least one or more NPMs within one year of the Protocol coming into force, or within one year of ratification or accession. South Africa has not yet ratified the Protocol.

In February 2007, the Centre for the Study of Violence and Reconciliation (CSV) and the South African Human Rights Commission (SAHRC) hosted a workshop looking at the obligations of state parties under OPCAT. Interrogating a draft report prepared by CSV, the workshop participants also looked at the suitability of existing oversight mechanisms, such as the Judicial Inspectorate of Prisons, to be designated as an NPM in terms of OPCAT, as well as different mechanisms for possible coordination of existing bodies.

The SAHRC will establish a committee to take forward the issues discussed at the workshop. Oversight bodies represented at the workshop, need also to conduct their own internal enquiries as to their suitability as NPMs, and how they could fulfill the requirements in terms of the Protocol or how the protocol

will impact on their work. The JIOP conducted such enquiry and has aligned its internal operations with the requirements of the Convention and OPCAT.

#### **5.4 Stop Prisoner Rape**

In 2006, the Judicial Inspectorate began collaborating with Stop Prisoner Rape (SPR), a U.S.-based international human rights organization dedicated to ending sexual violence against incarcerated men, women, and children. SPR had identified the Judicial Inspectorate of Prisons as critical to South Africa's prison reform efforts, and is interested in promoting a similar model of independent oversight in the U.S. SPR visited South Africa to learn more about the Independent Prison Visitors and to share its unique expertise on the subject of sexual violence in detention with the IPVs, JIOP and DCS staff.

In September, SPR, a JIOP staff member, a corrections official from Pollsmoor Prison, and a researcher with the Centre for the Study of Violence and Reconciliation co-hosted workshops for all IPVs in the Western Cape and Gauteng. These workshops covered a range of topics concerning sexual abuse in detention, including the dynamics of prisoner rape; the link between prison gangs and sexual violence; the emotional repercussions of rape; and how to identify survivors who may be reluctant to seek help for fear of retaliation. Corrections officials at Brandvlei Prison, Leeuwkop Prison, Malmesbury Prison, and Pretoria Prison also attended these sessions, providing a unique opportunity for IPVs and officials to jointly discuss how to work together in responding to sexual violence in their facilities.

In the coming year, IPVs in the remaining provinces will participate in similar workshops, and SPR's materials will be incorporated into the curriculum for the training of all future IPVs.

## **CONCLUSION**

The Government has set out on a path of transforming the prison system to a correctional system which is aligned with national values. As I have attempted to illustrate in this report, some progress has been made. I am mindful of the long road ahead and the various challenges that will be faced in achieving the objectives of effective rehabilitation of all prisoners in South Africa. I am optimistic that, with the goodwill and the assistance of all stakeholders, ultimately our goals will be achieved.

The recommendations made in this report are to be read in the broader context of creating a safe South Africa in which human dignity of all is protected and respected.

Due appreciation is given to the Ministry, the Management, officials of DCS and the many stakeholders and individuals that assisted in the work of the JIOP during my term of office as Inspecting Judge of Prisons. I am particularly grateful to my predecessor, Mr. Justice J J Fagan, for the support and encouragement in my endeavours to continue on the path that he set this organization. The members of staff of the JIOP and the many IPVs throughout the country are thanked for their support and continued commitment to support the quest for humane treatment, dignity, a better life for all and equal justice under the law.

## **Appendix A**

### **INTERNATIONAL TREATIES - S.A.**

- Convention on the Elimination of Racial Discrimination (CERD)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention Against Torture (CAT)
- Convention on the Rights of the Child (CRC)
- International Convention on Protection of Migrant Workers (CMW)

### **UN HUMAN RIGHTS INSTRUMENTS**

- UN Standard Minimum Rules for Treatment of Prisoners
- Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment
- Declaration on the Protection of All Persons from Enforced Disappearance
- Basic Principles of the Use of Force and Firearms by Law Enforcement Officials

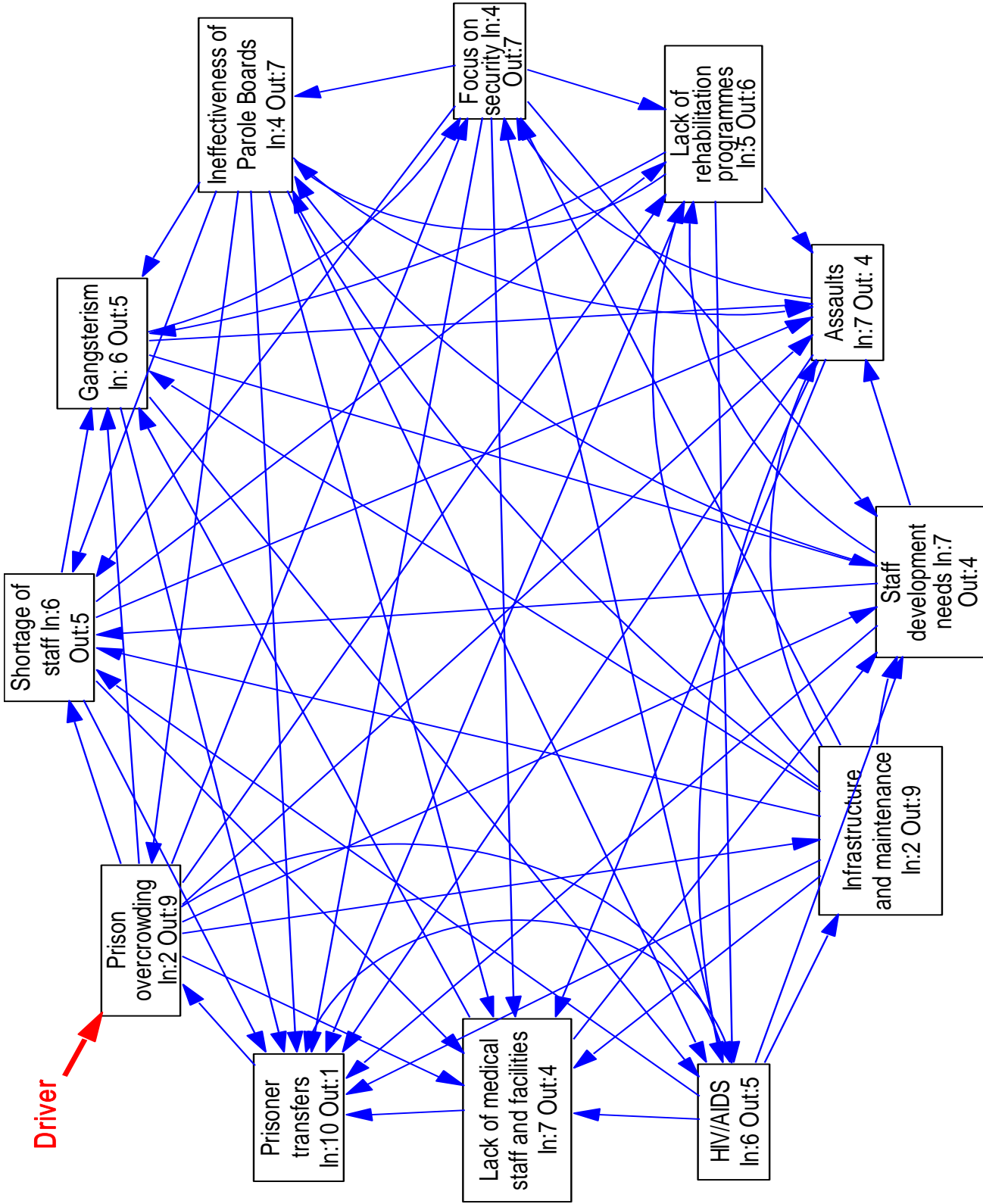
### **REGIONAL INSTRUMENTS**

- Robben Island Guidelines: Guidelines and Measures for the prohibition and prevention of torture, cruel, inhuman, or degrading treatment or punishment in Africa
- African Charter on the Rights and Welfare of the Child
- African Charter on Human and People's Rights

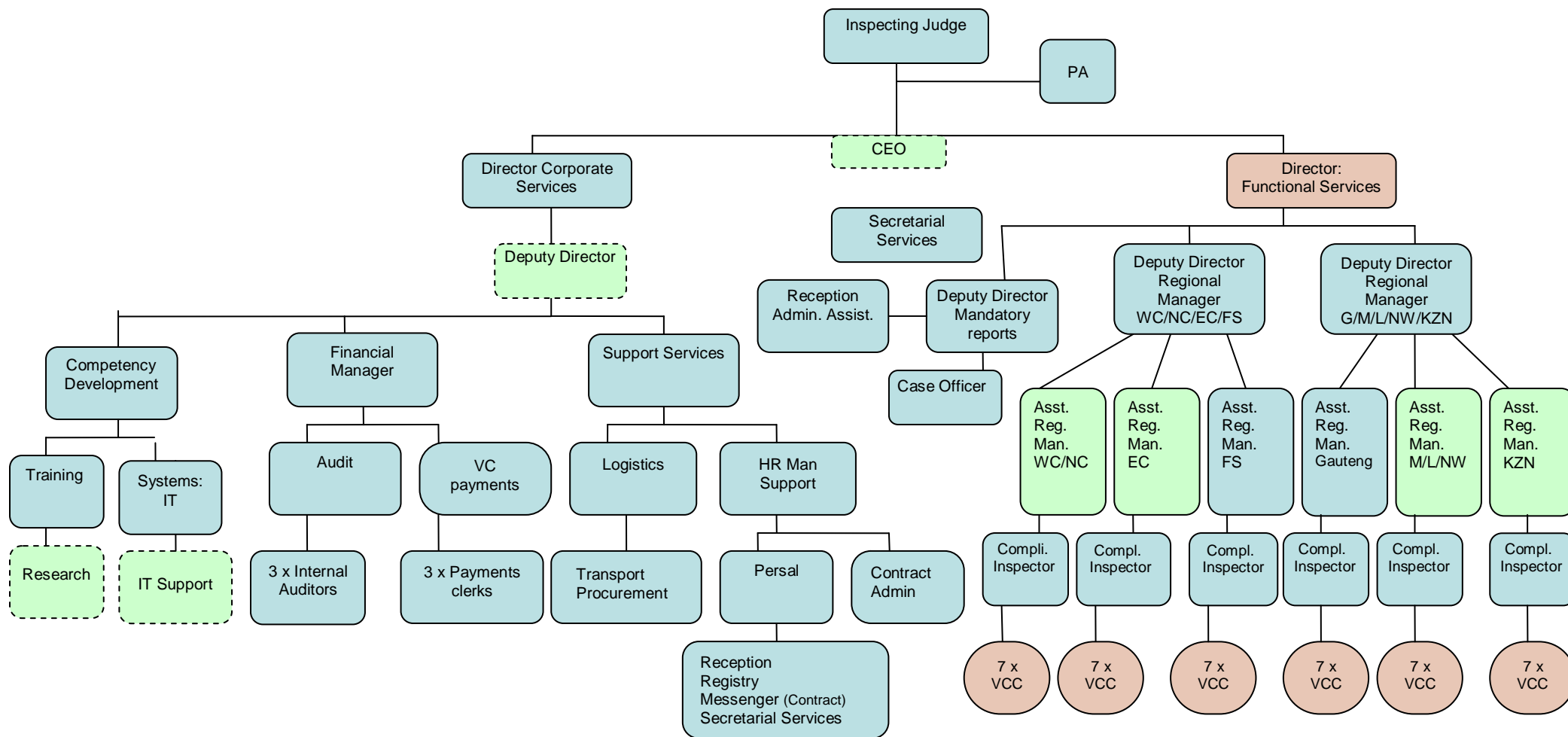
**A comprehensive list of the services provided by the JIOP as per legislative framework.**

- The inspection of prisons. (Section 85[2])
- Reporting to the Minister on the treatment of prisoners in prisons and on conditions and any corrupt or dishonest practices in prisons. (Section 85[2])
- The appointment, from time to time, of one or more person or persons with a legal, medical or penological background as an Assistant or Assistants to assist in the performance of the duties of the Inspecting Judge. (Section 87[1])
- The appointment of the staff complement of the Judicial Inspectorate. (Section 89)
- Performing administrative tasks associated with the efficient functioning of the JIOP. (Section 89)
- Receive and deal with the complaints submitted by the National Council, the Minister, the Commissioner, a Visitors' Committee and in cases of urgency, an Independent Prison Visitor or of his own volition deal with any complaint. (Section 90 [2]).
- Delegation of functions. (Section 90 [7] read with Section 89)
- Submit a report on each inspection to the Minister (Section 90[3]).
- Submit an Annual Report to the President and the Minister (Section 90[4a])
- Make any enquiries and hold hearings at which sections 3, 4, and 5 of the Commission Act, 1947 (Act no. 8 of 1947) would apply for the purpose of conducting investigations (Sections 90[5 & 6]).
- Make rules, not inconsistent with the Act, as are considered necessary or expedient for the efficient functioning of the Judicial Inspectorate (Section 90[9]).
- Carry out or instruct the Commissioner to conduct any enquiry into any death in prison (Section 15[2]).
- Review all penalties of solitary confinement and confirm or set aside the decisions or penalties and substitute appropriate orders. (Section 25).
- Receive and deal with appeals from prisoners who are subjected to segregation. (Section 30[6])
- Receive reports, and deal with appeals from prisoners subjected to mechanical restraints. (Section 31).
- Receive and deal with appeals from persons who are not satisfied with decisions of the Commissioner granting or refusing permission for publications referred to in sub section (2) and (3) of Section 123 of the Act.
- Manage the expenses of the Judicial Inspectorate (Section 91).

- Appointment of Independent Prison Visitors. (Section 92[1]).
- Suspending or terminating the services of Independent Prison Visitors. (Section 92[3]).
- Receive and deal with any dispute between Heads of Prisons and Independent Prison Visitors relating to their functions. (Section 93(4)).
- Make rules concerning Independent Prison Visitors, specify the number of visits to be made to the prison over a stated period of time and the minimum duration of a visit, or any other aspect of the work of an Independent Prison Visitor (Section 93[6]).
- Receive and deal with the reports of the Independent Prison Visitors. (Section 93[5] & [7])
- Establish Visitors' Committees to perform the functions as laid down in Section 94(3) of the Act. (Section 94{1])
- Receive and deal with complaints, and minutes of meetings, from the Visitors' Committees. (Section 94[3])



# Appendix D



Existing funded posts  
 Future development



