



Roundtable discussion on oversight over the prison system



This roundtable discussion, the first in a series of three, included representatives from Parliament, the Judicial Inspectorate for Prisons, SAHRC, media and civil society organisations. The discussions focused on the different oversight mandates, successes achieved in exercising oversight as well as the problems faced. Strategic priorities in prison oversight were identified by the participants.

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Proceedings from a roundtable discussion hosted by CSPRI, 25 August 2009, Centre for the Book, Cape Town.

Welcome and introduction

Lukas Muntingh, CSPRI Project Coordinator, welcomed all participants and opened the meeting. He explained that this roundtable is the first of three, funded by the Open Society Foundation (South Africa), to review progress in criminal justice and prison reform, and to assess future priorities.

This roundtable focused on oversight over the prison system, from the perspectives of the Portfolio Committee on Correctional Services, the Judicial Inspectorate of Prisons, the media, Chapter Nine institutions and civil society. Representatives from these institutions were invited to reflect on the role of their institutions in this regard. The discussion aimed to look at successes and challenges in the prison system and at what are key strategic areas for the next five years. Two main requirements were emphasised for effective oversight: transparency, which is about the availability and quality of information; and accountability. Effective oversight would enable us to work towards a system where officials act in a manner that is visible, predictable and understandable. It is also important to strengthen vertical accountability towards the electorate, society and international treaty monitoring mechanisms.

Portfolio Committee on Correctional Services

The Chairperson of the Portfolio Committee on Correctional Services, Mr. Vincent Smith (ANC), outlined the Portfolio Committee's strategic objectives for the next five years, the legal framework of correctional services, and the challenges facing the previous and current committee.

The strategic plan of the committee was developed at the second meeting of the new portfolio committee and identified a number of key areas:

- **Administration:** In order to focus on improving financial administration and oversight the committee has decided to hold quarterly meetings with the Department of Correctional Services (DCS) and the Auditor-General to review in-year financial records of the department, and to identify problems as they occur. This will be a significant improvement on previous years when reports were usually only presented 18 months after expenditure.
- **Overcrowding:** Some of the problems identified include the reluctance of the police to grant bail, and delays in the finalisation of cases of people awaiting trial, leading to overcrowding of trial-awaiting facilities. The Committee has visited several correctional centres to look at conditions and to gather more information on the duration of awaiting trial detention. As part of the Criminal Justice Review, it was argued that the police should be given a time frame in which to finalise their investigations. The Committee will also focus on clearing delays in the construction of the five new correctional centres.
- **Criminal justice review:** This is linked to the issue of overcrowding, and here the focus is on challenging the judiciary's reluctance to grant bail, police supervision of people released on bail, and stipulating a time frame for completing trials.
- **Care and Development:** The Committee is concerned by the skewed budget of the DCS, which allocated the greatest percentage to facilities and

security and a very limited amount for care and development, regardless of the priorities espoused in the White Paper on Correctional Services. Reference was also made to personnel shortages amongst professional staff.

- **Social reintegration:** Great concern was expressed about the fact that 70% of prisoners are between the ages of 18 and 35 years. This indicates serious problems in a society that generates such a high proportion of young offenders. The importance of society's role in preventing crime, as well as in assisting with the reintegration of ex-offenders, was emphasised. As part of this process, it is also important to strengthen the role and functioning of the parole boards. Here the Committee intends to invite representatives of all the parole boards to a workshop to iron out some of the problems. The under-utilisation of non-custodial sentencing also requires attention.
- **Facilities:** The Committee accepts that South Africa cannot build itself out of prison overcrowding. However, existing facilities need to be improved in order to provide for the appropriate separation of different categories of prisoners and the implementation of unit management. Many of the existing facilities are also in a poor condition. In addition, the construction of the planned facilities needs to be completed. Linked to the prison construction programme, it was noted that the debate on private sector involvement in the prison system needs to be critically examined.
- **Privileges for inmates and inmate work:** Concern was expressed about the idleness of prisoners. There is a need to review the amount of time that inmates are able to watch TV in their cells. More time should be spent in constructive work, which should also help to make the prisons self-sustainable.

In terms of the legal framework, the Committee is guided by Public Finance Management Act (PFMA). The legislation establishes clear frameworks for the accounting officer, against which the Committee can hold him/her accountable. When reviewing the annual report of the Department, the Committee aims to measure the Department's achievements against its stated strategic plan and budget.

The Portfolio Committee also has a number of tools which it will use in fulfilling its mandate. These include: interacting with a range of stakeholders; proper examination and debate of the budget; asking tough questions in Parliament;

passing Notices of Motion; engaging with institutions supporting democracy; and obtaining information from the Judicial Inspectorate of Prisons and parole boards.

Challenges:

The following challenges were identified in respect of the Portfolio Committee:

- While members of the legislature now have a greater understanding of their role in terms of law making, the oversight function is not always that clearly understood.
- Lack of clarity of the role of Members of Parliament often led to them being fearful of criticising the executive in the past. It was emphasised that even the ruling party needs to challenge the executive, and this should no longer only be the preserve of opposition parties.
- There needs to be clarity on whether it is the Minister or the accounting officer which accounts to the Portfolio Committee. Both may be required from time to time.
- The Committee will be sober about money Bills.
- Resources are skewed in favour of the Department. The Committee has insufficient administrative and research support which places limitations on its ability to exercise oversight. These need to be addressed in order for it to effectively hold the Department accountable.
- There were many challenges from the previous Committee which need to be dealt with. These include the Department's successive qualified audits for the previous five years; its presentation of its budget and annual report; and personality issues between the executive and the former committee chair.
- There is little coordination between the criminal justice portfolio committees.

In closing, it was stressed that oversight must be aimed at improving service delivery to sentenced and awaiting trial prisoners within a framework of human dignity. Reintegration, care and rehabilitation are challenges to society as a whole, and not only for the Department of Correctional Services.

Judicial Inspectorate for Prisons

Mr. Gideon Morris began his presentation by outlining the mandate of the Judicial Inspectorate, which he said was introduced to contribute to the holistic transformation of correctional services so as to promote rehabilitation within a humane and safe correctional system. The Judicial Inspectorate developed six strategic objectives during 2008 to help it achieve its vision. These are:

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

The presentation focused on three of these areas:

Independent complaints procedure for inmates: The recruitment, appointment and role of the Independent Correctional Centre Visitors (ICCV) were explained. In addition to attending to individual prisoner complaints, the ICCVs compile short monthly reports on the prisons they are responsible for. Their reports also provide information on the number and nature of prisoner complaints, allowing the Inspectorate to identify trends at each prison. Some of the challenges are that recommendations from the ICCVs are often ignored by the Heads of Centres, and the ICCVs have limited powers to resolve complaints and issues. Attracting properly skilled independent visitors in some areas has also been a challenge. The wide range and scope of the problems existing in prisons also present a challenge.

Prevention of human rights abuses through mandatory reporting: The DCS is obliged to report incidents of deaths, solitary confinement, segregation and the use of mechanical restraints to the Judicial Inspectorate enabling the Inspectorate to enquire into the nature and circumstances of these events and to analyse trends and identify problems. The new Correctional Services Amendment Act (25 of 2008) will expand the range of mandatory reports to include the reporting of incidences of use of force. The Judicial

Inspectorate has developed reporting formats which have allowed for information to be collected on circumstantial factors, such as whether a deceased inmate was ever recommended for medical parole. This data has allowed for studies on unnatural deaths and the use of force. A number of challenges were noted in this regard:

- The Judicial Inspectorate lacks capacity in terms of investigative skills. It is also questionable whether the Judicial Inspectorate should duplicate an investigation when it is carried out by the police in terms of the Inquest Act, but these are not always conducted thoroughly.
- Some heads of centres fail to comply with the mandatory reports.
- There is a lack of implementation on recommendations.

Promote and facilitate community involvement: The Judicial Inspectorate draws on models for effective oversight from other civilian bodies, such as school governing bodies. The establishment of Visitors Committees is designed to play an advisory role and to strengthen oversight. The amendment to the Act requires that independent visitors are appointed at each prison which will require that their number be increased from 166 to at least 250. This will make the role of the Visitors' Committees even more important. There is also the potential for retired magistrates and community leaders to become involved in these committees.

Open Democracy Advice Centre (ODAC)

Mukelani Dimba explained that ODAC is a law centre which focuses on the Promotion of Access to Information Act (PAIA) and the Protective Disclosures Act. These two pieces of legislation form part of the legal arsenal to achieve accountability. ODAC has assisted and represented a number of people in relation to the DCS. For example, they assisted Dr Theron who blew the whistle on medical care at Pollsmoor prison. They also represented a nurse raising medical concerns at Pollsmoor prison, and assisted the Treatment Action Campaign (TAC) relating to access to information on a prisoner who died of an AIDS related illness.

ODAC's interaction with DCS drew them to the conclusion that the DCS is not meeting the requirements of PAIA, and is failing to respond to requests for information. Generally, the DCS is not forthcoming with information.

ODAC also assists prisoners wanting to access information in preparation for their appeal application or parole hearing. Prisoners need transcripts of their court records, but are required to pay a fee for them, which may be in the region of R6,000. As indigent people, ODAC argues that prisoners should be allowed their court records for free. However, in discussion it was clarified that typing of court records is outsourced and this has to be paid for - either by the state or the accused. Where the court record has already been typed then the prisoners should be able to obtain a copy. There is a need for a policy directive indicating when a person may obtain a record at no cost. Judge van Zyl pointed out that it would be unlikely for such a ruling to be made as each case must be decided on its merits.

The Media

Carien du Plessis, Senior Political Correspondent at Independent Newspapers, presented on the role of the media in oversight.

Although the media does not have a legislated oversight mandate, it sees itself as playing a role in assisting Parliament and other oversight bodies in holding government accountable. The media has, however, been receiving ambiguous messages from DCS. In one instance, relating to the exposure of the Commissioner of Correctional Services on allegations of corruption, the current Minister of Correctional Services stated that her actions were prompted by media reports. However, in a later case relating to the alleged sightings of Shabir Shaik, the Minister refused to take action based on 'mere media reports'.

An overview was given on the range of prison-related stories covered by the media with regard to prisons. These include public relations type reports of 'good news' stories. But there are also negative news stories, such as coverage of escapes and prison violence, both of which are of great interest and public concern. The media also covers policy and legal issues and reports on debates in Parliament and on discussions in the committees, and so contributes to oversight over policy making.

Media coverage is shaped by information from a number of sources, but it is also important that the information is given to the right journalist with the seniority and ability to follow

up the story and have it published. Information from the public and prisoners is not always reliable and needs to be verified. Despite the reluctance of the more reputable media to act on uncorroborated information, the tabloid newspapers have featured some interesting stories. Information is often given to the media by DCS staff, independent organisations, politicians and companies tendering for DCS contracts. Often this information is coloured by people or interest groups who are disgruntled, which requires thorough verification.

Ms du Plessis related her experiences in investigating allegations of corruption involving the former Commissioner, Mr. Linda Mti, and the Bosasa group of companies, and particularly about how difficult it was to obtain information from both the DCS and Bosasa. There was extensive media coverage on this issue and a parliamentary enquiry. Mr. Mti subsequently resigned from his position as Commissioner and took up a position outside the DCS. However, it is uncertain whether these actions were prompted by the media investigation and reporting on the issues.

Challenges:

The following challenges were noted in respect of the media promoting and facilitating effective oversight:

- Prisons are highly controlled environments and the public and media do not have unrestricted access. Media access is subject to special permission.
- Obtaining a response from DCS is often not easy as official spokespersons of the DCS are difficult to contact to get a response, or take too long to revert on a query. The DCS also often refuses to provide the information necessary to carry out an investigation. The cases of Toni Yengeni and Shabir Shaik were cited as examples.
- Officials of DCS are often nervous about approaching the media or in talking to the media as officials require permission from their superiors before talking to the press. This delays publication and it often appears as though the media is being deliberately frustrated.
- It is also acknowledged that individuals may approach the media with information but they have their own agendas and this may have an impact on what is reported and how it is reported.
- Press releases from civil society are often not sent out in good time, or do not reach the most appropriate journalists.

South African Human Rights Commission

Ms Judith Cohen outlined the mandate of the South African Human Rights Commission (SAHRC) but reflected that the Commission was often unclear about where to situate itself. It is one of several institutions designed to support constitutional democracy. It is an independent body, but operates with tax payers' money, and is thus accountable to the public, as well as to government.

The SAHRC Parliamentary Programme engages with Parliament on a number of levels. It monitors the daily parliamentary programme and interacts purposefully with the relevant committees. In respect of the Portfolio Committee on Correctional Services, the SAHRC has contributed its opinions on a number of issues from a human rights perspective. It also engages around the law making process and budget debates, but noted that the budget is virtually finalised by the time it gets to Parliament, and external input may only have a limited impact. However, the budget enables external agencies, such as the SAHRC, to raise and maintain its concern with particular issues over time. The Commission has more recently shifted its focus to looking at oversight in respect of social and economic rights, and is doing this particularly at provincial level.

At the international level, the Commission monitors the implementation of international instruments and engages with international treaty monitoring bodies. It also engages the State around these treaties, such as the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), and is lobbying for the ratification and implementation of the Optional Protocol to the CAT (OPCAT). A Section 5 committee on Torture involving oversight bodies and civil society has been established to tackle this issue.

In respect of complaints and legal issues concerning prisoners, it was indicated that most matters were referred to the Judicial Inspectorate. The SAHRC receives numerous complaints from prisoners which clutter their system.

The following challenges were noted:

- The SAHRC has a very broad mandate, which requires that the Commission must often prioritise the issues it attends to. It is often also caught in a bind between advertising its services to the public,

and then not having enough capacity to cope with the requests for assistance.

- There exists a tension between the desire to make an impact, and of stepping into the role of government and rendering services.
- The Commission is often invited to make input to Parliament on short notice. This is appreciated as it allows information to be disseminated into the public domain, but preparation and presentation takes time away from other tasks. In many cases, it was pointed out that other important role players are absent from such forums, such as the Youth Commission and Commission on Gender Equality.
- The terms of office of all but one of the current commissioners comes to an end at the end of September. The appointment process for new commissioners is going ahead, but it is not clear whether they will be appointed in time. If not, the SAHRC will be operating unconstitutionally. New commissioners will bring with them a new sense of direction and strategy.

Discussion

Following each speaker's input, participants were invited to ask questions and contribute to the discussion. These points have been captured thematically below:

Judicial Inspectorate reporting to Portfolio Committee

The amendments to the Correctional Services Act are due to be promulgated on 1 November 2009, with the exception of sections 48 and 49 which will be held over. This will for the first time require the Judicial Inspectorate to report to the Committee, although it has in the past provided ad hoc briefings as well as presentations on the annual report. Mr. Smith indicated that the Portfolio Committee should establish regular quarterly meetings with the Judicial Inspectorate, and that its reports should follow a particular format. Once the Portfolio Committee is informed about issues, it should be able to follow them up.

Following up on recommendations from the Inspectorate

A concern was raised about the Inspectorate's inability to follow up on its recommendations and the lack of feedback from the Department on these. It was suggested that there should be more information available to the public on what

recommendations have been made to the DCS, and that the department should be given a particular time frame in which to follow up, and be required to report on how the recommendations are dealt with. It was also proposed that the recommendations made by the Judicial Inspectorate to the DCS should be made available to the Portfolio Committee and that this will be a very practical way of improving oversight.

Although the availability of information to the public has improved over the years, there is still a lot that is not accessible.

Participants felt that it was the role of each organisation and individual represented at the meeting to follow up on the recommendations made to the DCS in their various capacities and forums. The Portfolio Committee can ask questions in Parliament, the media can do follow up investigations, and researchers should conduct research to follow up on implementation.

Parole

Concern was raised about the amendments to the Correctional Services Act that will introduce yet another change to the parole regime creating further confusion among inmates, parole boards, judges, magistrates and presenting the risk of numerous court applications to challenge individual decisions regarding parole.

Prison privatisation

Regarding privatisation, participants raised concern about the lack of information available to the public. Mr. Smith indicated that he was still relatively uninformed about private prisons, and had not yet visited them as he wishes to maintain an open mind until the issue has been debated. It was, however, agreed that there needs to be broader debate about private sector involvement in the prison system.

Prisoner idleness

Participants were in agreement that prisoners need to be occupied productively and that the pervasive idleness characterising prison life is unacceptable. Many of the prisons have well equipped workshops and facilities that could be used to keep prisoners occupied and make the department more self-sustaining. However, in many places these are often not fully utilised due to skilled staff not being appointed or not being at work, lack of materials, and security concerns. It was also mentioned that since the workshops are largely demand-driven and cater to the needs of DCS, they are not in use when there are no orders.

Instead, prisoners are often idle, or used for menial work for which they are paid very little. This issue needs to be looked at, and the workshops used to help make the prisons self sustainable.

Participants felt that there should be some restriction on TV viewing, but felt that they could be used more constructively for educational programming.

Basic prison facilities

There was agreement that the lack of basic facilities in the prisons, such as eating utensils, was unacceptable and there was support for focusing firstly on meeting the minimum standards of humane detention, rather than on sophisticated issues of management. A lack of basic necessities is a denial of basic human rights.

Children and babies in prison

There was also a concern about the number of babies in prison with their mothers, and a concern that some mothers, particularly illegal foreigners, may even deliberately commit a crime before giving birth so that the state takes care of the delivery and the baby's aftercare. The prison environment is not conducive to their development and socialisation, and needs to be looked at. NICRO indicated that it had done research on babies in prison recently, but the Department did not want the research to be released.

A concern was raised about the number of people awaiting trial, and how it would appear that black and coloured children, in particular, are less likely to be released pending trial. This may be related to socio-economic factors, including their inability to pay for lawyers and bail. However, many people often do not have anywhere to be released to, either pending trial or when they are considered for medical parole. This needs more role players to be proactive in assisting such people.

The recent Constitutional Court decision of *S v M* requires sentencing officers to consider the circumstances of the offender's children before sentencing. The public and courts are not aware of this, but the Portfolio Committee could assist in publicising this judgement.

The Portfolio Committee should take note of the Child Justice Act which comes into operation on 1 April 2010 and which has implications for the detention of children in prison, as well as the Constitutional Court decision of *Centre for Child Law v Minister of Justice and Constitutional Development* (2009) which found that minimum sentencing is unconstitutional in respect of children. These present

opportunities for the Portfolio Committee to be proactive on the imprisonment and treatment of children.

Families

The role of families is recognised as an important one for providing support to inmates in prison and in their reintegration into the community. However, prisoners are often transferred to prisons away from their families. NICRO had proposed a pilot project to establish a Family Centre at Johannesburg Correctional Centre, but this has been put on hold.

Role of the media

The presentation on the role of the media noted the generally good media relationship with the Portfolio Committee on Correctional Services, but it was noted that it would be helpful if the media were invited to accompany the Portfolio Committee on its visits to prison. The Portfolio Committee Chairperson acknowledged that this was important and indicated that he generally welcomed communication with the media and they were specially invited to particular discussions of the Portfolio Committee. Concern was, however, raised about the use of electronic media in prison (e.g. television cameras), as this opens the opportunity for abuse and ‘grandstanding’ by prisoners. In such circumstances it is difficult for the committee or the DCS to counter incorrect reporting.

It was proposed that decisions around allowing the media into prison should be guided by considerations of what is the intention of the reporting and what can be gained by allowing the media and especially television cameras into prisons. Visual images are often more powerful than print, and can make a valuable contribution to bring the plight of prisoners under the public’s attention. It was also suggested that it may be helpful to try and ensure that the media adheres to rigorous standards and ethical conduct when entering prisons, such as the codes that apply to researchers in similar situations.

The importance of obtaining the ‘other side’ of a story was also stressed, and it was noted that journalists often have difficulty in receiving a response from the DCS. Turnover in journalists at the media houses also result in some stories not being followed up due to changes in journalists on duty at any particular point, but it was noted that high profile stories are usually followed up.

It was reported that verification is done as far as possible before going to print and it often is the case that, after

checking with the DCS, a particular story is not of real media interest and is consequently not published. However, it was stressed that the media will not go and report a problem directly to the DCS and suppress a story which needs to be exposed.

The Judicial Inspectorate reported that in its 11 years of existence it has never released a press statement and had seldom been proactive in its communications with the media. However, it was explained that the Inspectorate had good relationships with the media and were willing to engage with them on request and frequently provided them with information and statistics. It was noted that it may be important to develop a more proactive relationship in the future.

A concern was raised about the negative publicity that the DCS continues to attract in the press. The Portfolio Committee Chairperson stated that the intention is to use the media strategically rather than to compete with the Minister or Department for attention.

Chapter Nine institutions

Participants referred to the Kader Asmal Commission into the Chapter Nine institutions undertaken some years ago, and which had still not been presented to Parliament. As a result, the findings and recommendations have not been taken forward, and there is an ongoing lack of coordination between the institutions and no clear delineation of roles, mandate and strategic foci.

Closure

Mr. Muntingh closed the meeting by thanking everyone for attending and summing up the discussion. He made the following points:

- We should be clear about what we want to see from a prison system in a constitutional democracy. The role of the prison system in a constitutional democracy needs to be critically examined and clarity must be sought on what function it will fulfil and what our expectations are from the prison system.
- We should look at how we should promote transparency around the prison system, and whether we are using transparency in the best possible way. For this we need quality information, which should be available not only from the

Department of Correctional Services, but also from the Judicial Inspectorate.

- Cooperation between the different oversight institutions, civil society and the fourth estate needs to be enhanced. The relationship of each sector with the DCS is often acrimonious, and at times fragmented. The Transformation Forum on Correctional Services that was established in 1996 was an example of an attempt to create a forum to build relationships, ongoing communication and cooperation with the Department. Its collapse does not negate the need for such a forum to exist.
- Oversight must be aimed at ensuring that we get responsible and accountable expenditure from the Department of Correctional Services, and that governance is improved.
- Oversight needs to ensure that the DCS delivers on its plans, and that it does not allow itself to be distracted from its core activities and strategic direction. The lack of continuity in DCS leadership has contributed to this lack of follow-through.
- There needs to be clarity on what are the priorities for prison reform. From an oversight perspective, we need to be clear about what it is that we expect. This should at the very least focus on ensuring that the prison system meets the minimum requirements of humane detention.

Mr. Lukas Muntingh - CSPRI

Ms. Vennessa Padayachee - Nicro

Prof Julia Sloth-Nielson - Faculty of Law, University of the Western Cape

Mr. Vincent Smith - Portfolio Committee on Correctional Services

Judge Deon Van Zyl - Judicial Inspectorate for Correctional Services

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Civil Society Prison Reform Initiative (CSPRI)

Community Law Centre

University of the Western Cape

Private Bag X17

7535

SOUTH AFRICA

Tel: 27-21-959 2950

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

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

Participants

Ms. Fadla Adams - SA Human Rights Commission

Ms. Judith Cohen - SA Human Rights Commission

Mr. Mukelani Dimba - Open Democracy Advice Centre

Ms. Amanda Dissel - Independent Consultant

Ms. Carien du Plessis - Independent Newspapers

Dr. Catherine Eady - SA Human Rights Commission

Dr Chandré Gould - Institute for Security Studies

Mr. Gideon Morris - Judicial Inspectorate for Correctional Services

Mr. Jamil Mujuzi - Open Society Foundation