



CSPRI SUBMISSION ON THE DEPARTMENT OF CORRECTIONAL SERVICES ANNUAL REPORT 2011/12

INTRODUCTION

This submission deals with human resources, staff training, children in prisons, discipline and turnstiles. There is much more that could have been commented on, but a selection was made to maintain focus.

Many of the problems facing the Department are long standing and the Committee is familiar with these. What is perhaps more worrying is the persistence of these problems – for reasons that are not always clear the same issues undermine performance in the Department without a solution in sight. The Seven Day Establishment is a case in point. Part of the reason may indeed lie at senior management level and CSPRI is particularly concerned that 20% of senior management positions are vacant (p. 179). Given the size and complexities of DCS's operations, such a vacancy rate in the senior management places the Department at tremendous risk of a variety of ills.

HUMAN RESOURCES

The Annual Report (p. 28) notes that in order to implement the Seven Day Establishment (SDE) and additional 18 430 posts at a cost of R4.8 billion will be required annually. This will bring the DCS staff establishment to 58 493, or a ratio of one official for every 2.7 prisoners, from its currently level of 3.9.¹ If this scenario materialises just over 70% of the DCS budget will be spent on compensation of employees, meaning that the balance is for all

¹ For the purposes of calculating this ratio the total prison population was taken to be 159 000 (p. 22).

other activities of the Department. It will also push up the daily cost per prisoners from R290 to R372. The affordability of this proposal requires serious examination.

Six years after the initial implementation date, the DCS is still struggling to get the SDE off the ground. Regardless of what technical and practical difficulties there may be, it is evident that this initiative was not properly planned and costed. The employment of thousands of more officials would add significantly to the already bloated budget of the Department. Moreover, merely employing more staff may not solve the problem if they are not properly trained and monitored to perform the tasks they are required to do by law and policy. The Auditor General notes numerous problems (pp. 103-104) with performance monitoring and employing more staff in the current system is destined to add to the Department's woes.

In the current economic climate it is unlikely that R4.8 billion will be found to employ an additional 18 430 DCS officials and answers will therefore need to be sought elsewhere. Moreover, a careful assessment of the Department's performance, especially where it concerns the treatment of prisoners and services available to them, leaves much to be desired.

Meeting the minimum standards of humane detention

CSPRI has previously expressed its concerns about the White Paper on Corrections and its aim to make rehabilitation the core business of the Department. More modest goals over shorter time periods may indeed be more achievable. Adjusting strategy to focus first and foremost on meeting the minimum standards of humane detention as stipulated in the Correctional Services Act may alleviate some of the pressures created by the White Paper.

Reducing prisoner numbers

Much has been written and said about the size of the prison population over the past twenty years, yet it remains a persistent problem. Nonetheless, by reducing the prison population, a more favourable staff to prisoner ratio will be created. To this end a first priority should be to reduce the remand detention population. Nearly a third of the prison population are awaiting trial which places a significant burden on the DCS. However, it has been established that just more than half of these prisoners' cases will not proceed to trial and they will ultimately be released.² Ensuring that pre-trial detention is not used unnecessarily will require that the

² Karth, V. (2008) *'Between a rock and a hard place' - Bail decisions in three South African courts*, Cape Town: Open Society Foundation (South Africa), p. 32.

DCS engages actively with the National Prosecuting Authority to ensure that detention is used appropriately.

It is difficult to determine the extent to which the police make unnecessary arrests, but the Judicial Inspectorate made such an attempt in its 2004/5 Annual Report. It estimated that in excess of 18 000 people per month were unnecessarily arrested by the police and consequently ended up in prison awaiting trial.³ Even though the exact quantum may be hard to pin down, it is well known that the police have monthly arrest targets and it is hence likely that these targets contribute to unnecessary arrests.⁴ A closer analysis of police arrests statistics shows that 53% of the 1 452 600 arrests made by the police in 2010/11 were not for priority crimes, or crimes less serious than shoplifting;⁵ it can be assumed that at least some of those suspects will have been detained in prison. Even if only a relatively small proportion of the unnecessary arrests made by the police end up awaiting trial for a relatively short period of time, it will nonetheless make a significant contribution to the unsentenced prisoner population.

There are at present nearly 11 000 prisoners serving life, the majority of whom will have to serve 25 years before they can be considered for parole. In general sentence tariffs have increased since the mid-1990s due to mandatory minimum sentences and the increase in the sentence jurisdictions of the district and regional courts.⁶ Of particular concern is the large number of prisoners serving sentences of less than two years. While they do not make up a large proportion of the daily average prison population (approximately 10%), they constitute more than 50% of releases. They are excluded from having a sentence plan and their imprisonment therefore serves little purpose. The need for comprehensive sentencing reform remains to ensure that South Africa has a prison system that can meet the demand for prison space. This can be facilitated through sentencing guidelines to determine appropriate tariffs and the more extensive use of non-custodial options (i.e. correctional supervision). This will require an appropriate budget allocation to community corrections in the DCS budget, an issue that CSPRI has raised on numerous occasions in the past.

³ Office of the Inspecting Judge (2005) *Judicial Inspectorate for Correctional Services Annual Report 2004/5*, Cape Town: Office of the Inspecting Judge, p. 21.

⁴ Women's Legal Centre (Undated) *Submissions on South Africa to the Commission on status of Women*, para 188.

⁵ SAPS (2011) *Annual Report 2010/11*, Pretoria: SAPS, p. 66.

⁶ Giffard, C. and Muntingh, L. (2006) *The effect of sentencing on the size of the South African prison population*, Cape Town: Open Society Foundation (SA).

To conclude this section on human resources, it is submitted that simply employing more officials in the DCS is not a suitable or desirable or affordable option. The solution, rather, lies in using existing staff more efficiently and reducing the prison population to create a staff to inmate ratio that is more favourable.

Children

In 2011 CSPRI conducted a survey of children in prison. Copies of the report were recently made available to the Committee and it is not necessary to deal with the detailed findings.

An important finding of the study is that the policies in respect of the services and activities available to children across the centres surveyed, are varied and inconsistent. These include, but are not limited to, information provided at admission, orientation of new admissions, conditions of detention, the segregation of children from adults, access to education, access to recreation and preparation for release. The DCS should make all efforts to identify such inconsistencies and align the services rendered with the requirements of the Correctional Services Act, subsidiary legislation and relevant policies.

Practices compliant with the relevant legislation were identified at certain DCS facilities, demonstrating that the required standards can be met in the current environment and context. In this regard Brandvlei Youth Correctional Centre should be used as a benchmark example.

Since 2003 the total number of children imprisoned in South Africa across all categories has declined rapidly from 4500 to 846 in February 2011. The substantial decline in total numbers does, to some extent, mask some of the shifts that have taken place in offence and sentence profiles. Children charged with and convicted of non-violent offences are now far less likely to be imprisoned. However, sentence tariffs for children have increased slightly; a trend reflected in the total prison population. The child imprisonment rate in South Africa (4.6/100 000) compares favourably with other developing countries (Argentina 39.3/100 000) and even some developed countries (USA 11.9/100 000).

Based on snapshot data, children remain awaiting trial in DCS facilities for an average of 70 days. This is a considerable length of time. Moreover, the general lack of services available to such children (educational, social work, therapeutic, developmental and recreational) exacerbates the situation considerably. Of particular concern is the fact that children of compulsory school-going age in awaiting trial facilities are excluded from educational

programmes and that conditions of detention are wanting in many regards in several facilities surveyed due to limited infrastructure, overcrowding and “staff shortages”.

The situation in respect of sentenced children is noticeably better compared to their unsentenced counterparts, but there is room for significant improvements, particularly in relation to conditions of detention, the range and accessibility of services and programmes, and access to education for all children, especially those of compulsory school-going age.

Child safety inside prisons is another reason for concern. Although difficult to determine if the mortality rate of children is of itself reason for concern, reports of violence (including sexual violence) and intimidation were received. The authors also found that the overwhelming majority of DCS officials working with children (sentenced and unsentenced) have not received specialist training on working with children, anti-bullying strategies, suicide prevention or conflict management.

There was very little evidence that DCS take any specific measures to promote contact between children and their families, despite the legislative duty to do so. The children must purchase phone cards from their own funds and it is only at a few centres that children are supplied with stationery to write letters to their families. Children, without the necessary funds, are effectively cut off from their families. It was found that 40% of children had not had any visitors in the three months preceding the fieldwork.

Information on aftercare services rendered to children after their release from prisons is scant. Thus, more rigorous data collection from the DCS as well as the Department of Social Development will be required.

Generally, children have access to complaints mechanisms in DCS facilities. However, despite the Independent Visitors from the Judicial Inspectorate being well distributed across the prisons surveyed, few children knew about them and what their functions are.

Interviews with children revealed that many of them had found their court appearances and trials very confusing. Thus, the extent to which the DCS provides new admissions with information and a proper orientation regarding their rights and responsibilities (in accordance with their legislative mandate), could be vastly improved.

The report does not deal with the quality of the programmes rendered by the DCS to sentenced offenders in any particular depth. Nevertheless, the accessibility of programmes is

a cause for concern as is the consistency with which they are rendered across the prisons surveyed.

Staff training

The Annual Report (pp. 38-39) presents information on training received by DCS officials. From the information presented it is not clear if officials received any training on human rights and more specifically on the rights of prisoners as articulated in the Constitution and the Correctional Services Act. On p. 47 mention is made of human rights training but it is not clear how many officials were trained. While this may be part of initial training, it is critically important that this is done on a continuous basis to ensure that a staff culture respectful of prisoners' rights is developed and maintained. There are regrettably too many allegations of assaults by officials on prisoners and thorough and continuous human rights training may contribute significantly to prevent such incidents.

Discipline

Figure 1 shows the number of disciplinary actions initiated by the Department against employees per 1 000 employees for the period 2002/3 to 2011/12. In 2002/3 this stood at 48 disciplinary actions for every 1 000 employees. By 2010/11 this ratio had increased to 106 disciplinary actions for every 1 000 employees. The result is that by 2010/11 nearly one out of every ten DCS employees was the subject of a disciplinary action in that year.

Figure 1

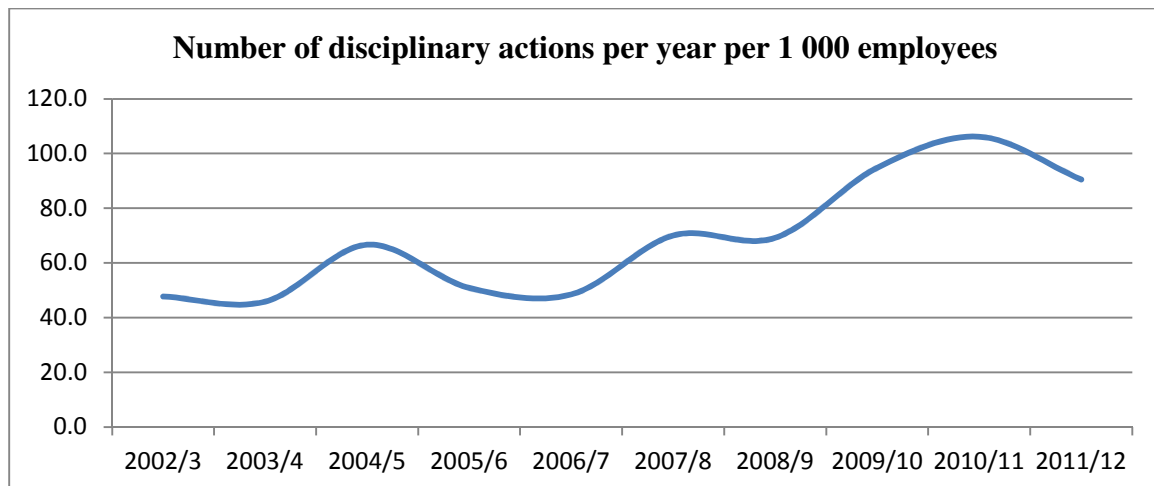


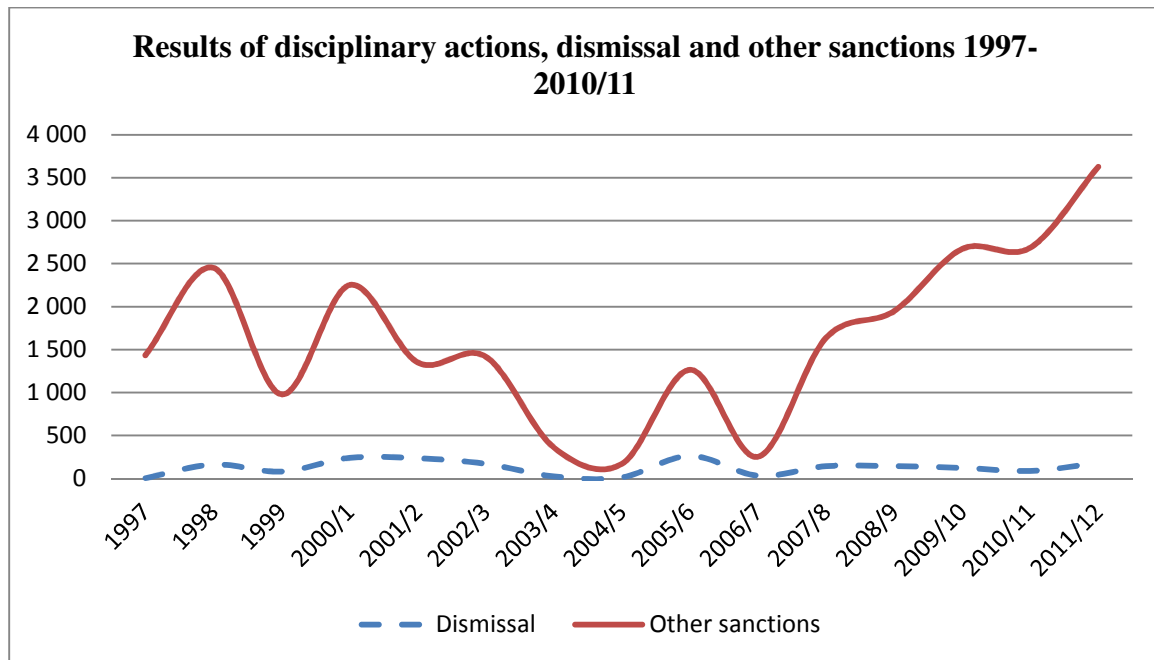
Figure 2 shows the profile of sanctions imposed as a result of disciplinary actions per year from 1997 to 2011/12. Two categories of sanctions are presented, namely dismissals from the employ of the Department and Other.⁷

Given the findings of the Jali Commission and the work of the SIU, one would have expected a consistent, if not growing, trend in disciplinary actions against DCS officials and a significant proportion of dismissals. However, as shown in Figure 2, the trends point in a different direction at least until 2007/8.⁸ The most obvious of them is the see-saw figure in total disciplinary sanctions imposed, standing at nearly 2 500 in 1998, dropping below 1 000 the following year but then climbing above 2300 in 2000/1. The high number of disciplinary actions in 1997 and 1998 were the result of the investigations undertaken by the Public Service Commission (PSC) and the DPSA. The spike in 2001 to 2003 can again be attributed to the early work of the Jali Commission and the SIU. During the first three years of the SIU's involvement in the DCS (2002-2005), the total number of disciplinary actions did, however, drop to just above 200 cases in 2004/5. But the fruits were harvested the following year when disciplinary sanctions imposed climbed again to above 1200. These were cases primarily related to medical aid and social grant fraud. Dismissals, nonetheless, remain rare events in the DCS. The highest number of dismissals was 264 in 2005/6. In the following year, 2006/7, the total number of disciplinary sanctions imposed dropped to 253, with only 33 dismissals. An encouraging trend is visible from 2007/8. A sharp increase in disciplinary sanctions imposed has been sustained since then, and the period 2009 to 2011 saw the highest-ever number of disciplinary sanctions imposed against employees – more than of 2 500 per year. The trend from 2007 onwards also shows that code enforcement had become less a function of external investigations and increasingly the result of DCS internal actions, demonstrating that internal capacity and commitment to enforce the code has improved.

⁷ 'Other' refers to the following: corrective counselling; verbal warning; written warning; final written warning; dismissal; demotion; and suspension without pay.

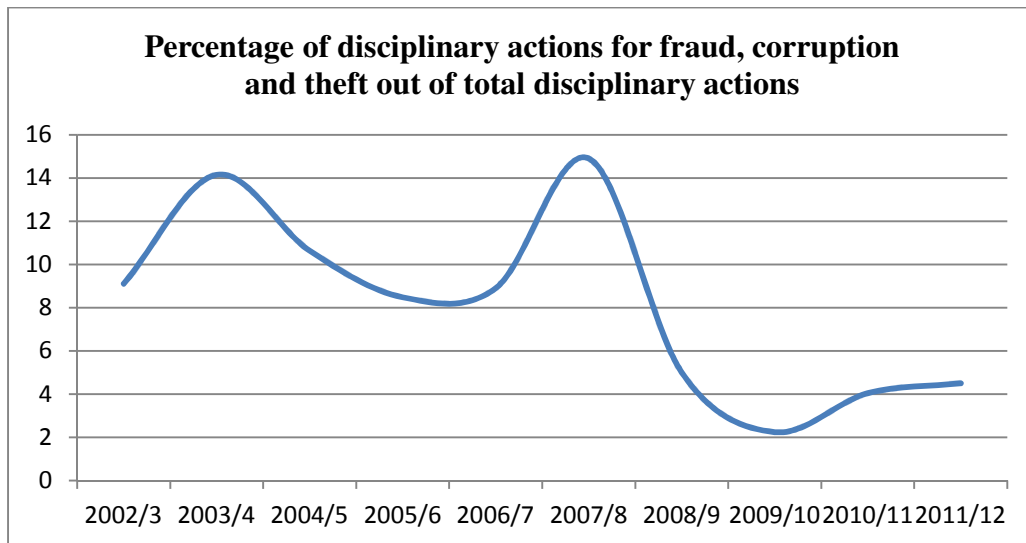
⁸ The data used in Figure 2 were extracted from the various annual reports of the DCS of the period covered. It should be noted that the report for 2000/1 covers a 15-month period when the Department changed its reporting period from a calendar year to a financial year.

Figure 2



Notwithstanding the widespread findings of corruption, fraud and theft, the number of disciplinary actions initiated in response to this group of offences remains relatively low. It, too, describes a see-saw pattern, as shown in Figure 3. Between 2002/3 and 2007/8, this category constituted between 9% and 15% of initiated disciplinary actions, but thereafter its proportional share had dropped to as low as 2% by 2009/10. A possible explanation could be that corrupt officials had been prosecuted and disciplined, an explanation warranted by the repairs that have been made to systemic weakness and loopholes that have been closed; improvements in the general employee culture in the Department could also be contributing to the trend. A more pessimistic explanation is that after the SIU ended its investigations in 2009, the DCS found itself bereft of the specialised skills and additional capacity needed to investigate the more forensically complex cases of fraud and corruption. If the latter is indeed the more accurate explanation, it would mean that the Department is at risk of an increase again in corruption.

Figure 3



In overview, we wish to encourage the DCS to continue and sustain its effort at code enforcement and ensure that it has the internal capacity to deal effectively with fraud, corruption and dishonest practices.

Turnstiles

The Annual Report (pp. 48-49) notes that 27% of the intended 78 electronic turnstiles are operational. The turnstiles were procured at great expense but have not delivered on promises. The Annual Report further notes that the Department lacks the technical expertise to do the maintenance and that an external service provider needs to be brought in to do the management, maintenance and upgrading of the system.

We submit that the Committee requests the DCS to explain when and if the turnstiles will all become operational and how it will be ensured that the DCS does not find itself in a similar situation again.