



CSPRI SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON
CORRECTIONAL SERVICES ON THE DEPARTMENT OF CORRECTIONAL
SERVICES BUDGET AND STRATEGIC PLAN, VOTE 20.

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Introduction

1. The Civil Society Prison Reform Initiative (CSPRI) is a project of the Community Law Centre at the University of the Western Cape and was established in 2003. CSPRI focuses on prisons and corrections, with the aim of improving the human rights situation in South African prisons through research-based lobbying and advocacy, and collaboration with civil society structures. By stimulating public debate and participation in government structures, the aim is to influence the development of appropriate human rights oriented transformation in South African Correctional Services. The objectives of CSPRI are:
 - To develop and strengthen the capacity of civil society and the civilian institutions related to corrections to improve awareness of prison-related issues, in order to provide effective oversight on correctional matters
 - To promote improved prison governance, based on the Constitution and on a human rights culture, in the South African context
 - To promote the greater use of non-custodial sentencing in general, and correctional supervision in particular, as a mechanism for reducing overcrowding in prisons and as part of a commitment that imprisonment should be used as a sentence of last resort
 - To improve reintegration services to prisoners to reduce the risk of recidivism.
2. The purpose of this submission is to inform the Portfolio Committee on Correctional Services of CSPRI's views and comments regarding the Department of Correctional Services (DCS) MTEF and five year strategic plan. The submission is made with the aim to provide the Portfolio Committee with information and views that may assist it with its deliberations on Vote 20. As part of civil society, CSPRI attaches great value to the role and function of the portfolio committees of Parliament, especially when public hearings are held on pertinent issues, as it provides members of the public a direct voice at a high level of decision-making.
3. This submission will deal with three broad themes in relation to the budget and strategic plan, namely achievements of the DCS, areas of concern, and reporting. Whilst there are numerous issues that we seek clarification on from the DCS, this is not the appropriate forum and we are sure that the DCS will be able to provide such clarification at a later stage. The submission will therefore deal with issues that CSPRI feels are pertinent to the oversight role of the Portfolio Committee.

4. CSPRI's views are based on human rights as articulated in the international instruments, the Constitution and the Correctional Services Act. The fact that imprisonment must always be in line with the minimum requirements of human detention is not negotiable, and when there is deviation from these minimum standards, there should be the appropriate urgency to correct the situation. This is a demanding task and serves to confirm the fact that deprivation of liberty is an extremely serious sanction and that when the State imposes such a sanction, it should do so in line with the standards accepted in a constitutional democracy.

Achievements of the DCS

5. CSPRI wishes to acknowledge a number of the DCS's achievements in the past year:
 - The phasing out of overtime payment has commenced and will save the taxpayer enormous amounts in years to come
 - The phased implementation of the seven day establishment has commenced and this will make a significant improvement to the daily routine of prisons, access to services by prisoners, and safety and security issues.
 - The fraud and corruption investigation by the SIU into the medical aid scheme showed that significant progress can be in rooting out corruption over relatively short periods of time.
 - The restructuring of the medical aid contributions will further be to the benefit of the taxpayer and also reduce misuse of the fund.
 - The employment of additional staff to increase capacity in support of the seven day establishment will improve safety and security at prisons
 - The remissions programme in the second half of 2005 proved successful in alleviating the pressure on overcrowded facilities. It also made a significant contribution to reducing the number of children in South Africa's prisons.
 - The opening of an accredited anti-retroviral therapy (ART) centre at Grootvlei prison recently demonstrated the department's willingness to meet the demands of the time.
 - The number of escapes was below the target set.
6. From a management point of view, lessons should be learned from these achievements to ensure that other projects and initiatives can benefit from the approach and methods followed.

Areas of concern

7. *Deaths in prison:* The Strategic Plan under the Security Programme in B 1.1 sets targets of 5% per annum in the reduction of unnatural deaths in prisons. Deaths of prisoners is an extremely serious situation and to treat it as merely a target that needs to be met is, apart from being callous, creating a threshold of tolerance that is not acceptable in terms of the minimum requirements of humane detention.

The immediate target should be nil unnatural deaths. Deviation from this target reflects the state's ability to provide safe custody. Any death in prison is serious and needs to be investigated thoroughly to ensure that perpetrators are held accountable, whether they are staff or fellow prisoners. Such investigations also need to reflect properly on systemic weaknesses and avoidable risks. From a human rights perspective it is not possible to accept a position that in 2006/7 there will die, due to unnatural causes, 71 prisoners in South Africa's prisons. The fact that there died, due to unnatural causes, 75 prisoners in 2004/5 whilst the "target" was 48, is reason for deep concern. It means that every two weeks, three prisoners die in the country's prisons. At the planned rate it will take 83 years and 1405 dead prisoners (based on 2004/5 figures) before there are nil unnatural deaths in South Africa' prisons in one year. Deaths in custody, especially of this category, are a reliable and robust indicator of the general safety situation in a prison. CSPRI therefore requests this committee to pay particular attention to this issue and recommend further steps to be taken to address this.

8. *Anti-gang Strategy*. Following from the above, it is noted that under the Security programme in B 1.2 reference is made to the implementation of an anti-gang management strategy. The description in the Strategic Plan is confusing as it refers to the development of the plan as the strategy but the implementation as the indicators. This is further raised as a concern because it is well known that prison gangs pose serious safety and security threats to both staff and prisoners. The Strategic Plan aims that by 2010/11 there will be full implementation of the Anti-gang Strategy. We urge the Committee that this objective to be re-prioritised to ensure earlier delivery on this, as it relates directly to the first concern raised above.
9. *Research*. It is indeed with delight that the Research Programme under the Administration Programme (A4.2) is noted. An appropriate correctional environment needs to be simultaneously receptive to, and reflective of, the outcomes that a rehabilitation programme is working towards. Experts in the field advocate for "evidence-based corrections" which, in practice means the following¹:
 - embracing professionalism that is respectful of data;
 - training of practitioners based on research;
 - the creation of correctional training academies;
 - the implementation of programmes informed by empirically-based theory of effective interventions;
 - the integration of evaluation as part of delivery, and
 - the auditing and accreditation of agencies and programmes.

The Strategic Plan does however state that funds need to be raised for this. CSPRI is of the opinion that the DCS should fund its own research programme from its annual allocation. It would furthermore be in the interests of the department to invest in multi-year thematically-based research programmes. There is

¹ Cullen FT and Gendreau P (2000) Assessing Correctional Rehabilitation: Policy Practice and Prospects in J Horney (ed) Criminal Justice 2000, Volume 3: Changes in Decision Making and Discretion in the Criminal Justice System, US Department of Justice, Washington, p 111.

very little information available on the prison population and re-offending patterns, and addressing this need should not be subject to fundraising activities by the department. We request that a specific allocation in this regard be made to support research in the DCS.

10. *Prison construction programme:* The prison construction programme is now substantially behind schedule and it is also evident that projected costs now far exceed the budgeted allocation. Over the MTEF this allocation is reportedly in the region of R3.7 billion.² Given this set of circumstances, as well as the time that has passed, it is necessary to critically re-examine the initial set of assumptions and identified needs to verify if increasing the capacity of the country's prison system is indeed a sustainable option. At this stage it is not certain at what rate and for how long the prison population will continue to increase, as this is influenced by a number of variables that may change over time. To the knowledge of CSPRI there is as yet no accurate population prediction model for South Africa' prison population. We therefore request the committee to pay particular attention to this issue as it is not merely an issue of build or not build, but rather of assessing how well increased capacity (with its current price tag) will serve the prison system and what the alternatives are. With regard to alternatives, this should be investigated not only in terms of different construction options but also in terms of non-construction options.
11. *Costing of the Act:* The 1998 Act created a legislative framework for the DCS in line with the Constitution and its full promulgation by October 2004 heralded a new era in South Africa' prison system. To the knowledge of CSPRI the full implementation of the Act has not been costed. Such a costing will provide clear guidance on strategic direction and also on ensuring that expenditure is at all times aimed at meeting the minimum requirements of humane detention as articulated in the Act. CSPRI will be strongly supportive of such an endeavour as it will undoubtedly make an enormous long term contribution to the South African prison system.
12. *Privatisation:* Recent and tragic events at the Kutama Sinthumule Maximum Security Prison as well as the sub-contracted food provisioning at seven of the larger prisons, has brought the issue of privatisation to the fore again. CSPRI is of the opinion that at least in these two examples sufficient time has lapsed to warrant an evaluation of the models applied. It is further recommend that this committee hold public hearings with regard to privatisation in the DCS. This will enable all stakeholders to provide in-put in an open and transparent manner, an attribute that was lacking when the two privately operated prison contracts were awarded.
13. *Community corrections:* It is with deep concern that CSPRI has noted that community corrections and thus correctional supervision is not visibly included in the Strategic Plan of the DCS. The DCS submission to this Committee on 9 March 2006 alluded to the fact that the Department wants "to overhaul the Social Integration Programme" and that this would include addressing issues relating to Community Corrections. CSPRI's concern is based on a number of facts. The first is that the number of offenders placed on correctional supervision and sentenced to correctional supervision has been in steady decline

² ENE, Vote 20 p. 454

for the past years.³ This is indicative of perhaps attitude of magistrates but also of the ability of the department to provide and promote correctional supervision as an alternative to imprisonment. Secondly, the allocation to the Social Reintegration programme shows a growth of less than 5% in real terms over the MTEF and ends the period in fact on a negative growth rate of -5.1% in real terms. CSPRI is strongly in favour of alternatives to imprisonment and urges a review of this budgeting trend. Thirdly, in a recent Supreme Court of Appeals case (DPP v P)⁴, Justice Harms expressed his dissatisfaction with a particular case and commented as follows:

[25] In spite of my reservations about the duty of a sentencing court to investigate prison conditions and the like, I have to refer to the fact that the witnesses from Correctional Services misled the court below. When correctional supervision was introduced, courts embraced it enthusiastically as a real sentencing option, something that will have a substantial effect on the prison population in this country. As time went on courts became more skeptical but I am now completely disillusioned. We asked for a report from Correctional Services to determine the nature and scope of their supervision since the judge had requested that the accused should be visited at least four times per week at irregular intervals. Without proper supervision house arrest has no value. The affidavit indicates that although the accused was sentenced on 17 December 2004, there were no visits during the festive season, in January there were 9, in February 3, in March 2, then one per month and, suddenly when the appeal was enrolled, there were 6 during October. Although a telephone had been installed, there were six telephone contacts in all. More disturbing is the fact that the visits and contacts were all during office hours, leaving the accused free to do what she wishes after hours and during week-ends. We have invited counsel for the state to provide us with proposals of how to make the house arrest effective, but they have failed to file any suggestions.

It is of the utmost importance that correctional supervision is in a healthy state and continues to grow. The case cited above did immeasurable damage to the reputation of non-custodial sentencing in South Africa and CSPRI would strongly support a rapid budgetary expansion of this programme. Fourthly, non-custodial sentencing options available to courts for adult offenders are increasingly limited and the effective demise of community service orders has further contributed to this trend. The DCS has the opportunity over the next three years to restore the faith of the judiciary in non-custodial sentencing options. Fifthly, CSPRI believes that correctional supervision requires active promotion within the DCS and broader criminal justice system and this should be done by a visible champion of the cause.

³ Skelton A (2004) Alternative Sentencing Review, CSPRI Research Paper Series No 6, p. 23.

⁴ Supreme Court of Appeals, Director of Public Prosecutions KwaZulu-Natal v P, Case no. 363/2005.

Reporting

14. The issue of reporting is dealt with under a separate heading as it does not relate directly to the budget for the period under review but relates to monitoring the performance of the department. In this regard CSPRI has some procedural and technical issues that it wishes to raise with the Committee.
15. The 2004/5 Annual Report utilised a reporting format that differed substantially from the Strategic Plan in place at the time. This made it extremely difficult to assess progress on particular objectives. We therefore submit to the Committee that the departmental annual report should follow the exact format of the Strategic Plan to facilitate the monitoring of progress, and further that the reporting should be historical in nature, in other words reflecting the progress made towards a particular target over a multi-year period.
16. The Strategic Plan that was submitted to This Committee on 9 March 2006 was the third five year plan since 2004. Whilst we acknowledge that some changes are necessary, we trust that there will henceforth be stability in this regard.
17. Whilst the annual report serves its purpose, the Committee may in fact benefit from more regular (possibly quarterly) reporting by the Department, especially on key issues that the Committee may identify or that the State President has emphasised in his State of the Nation address, ie. children in prison, prison construction, and the recommendations of the Jali Commission.

Conclusion

18. We wish to conclude by thanking the committee for this opportunity and assure it of CSPRI's commitment to penal reform in South Africa.

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