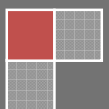


2013

# CSPRI BUDGET VOTE SUBMISSION 2013/14



## Contents

Introduction.....	5
1. Alignment of strategy and expenditure.....	5
(a) There is stagnation in the strategic plan regarding education.....	5
(b) The Department is not placing sufficient emphasis on the training of staff.....	8
(c) Budget allocations should be rooted in policy priorities .....	9
(i) Value for money in high tech security solutions? .....	9
(ii) Training for the ideal correctional official .....	9
(iii) Infrastructure for education.....	10
(iv) Overcrowding in female prisons .....	10
(d) The current performance indicators are inadequate .....	11
(e) Access to health care .....	12
2. Safer prisons.....	13
(a) The absolute prohibition of torture.....	13
(a) Effective investigations .....	14
(b) The duty to prevent torture and other ill treatment.....	15
(c) Reducing violence in prisons.....	20
3. Rehabilitation and reintegration.....	22
(a) What are the challenges faced by released prisoners?.....	22
(b) Principles for effective interventions .....	23
(c) What does not work.....	25
(d) Innovation, research and evaluation.....	25
(e) Support NGO's to deliver re-entry services .....	26
(f) Social Reintegration Programme .....	26
(g) Sentence plans and correctional programmes .....	27
4. Conclusion .....	28

## **Executive Summary**

The submission is made in response to the 2013/14 Budget Vote as accompanied by the Department of Correctional Services (DCS) Strategic Plan 2013/14 - 2016/17 and Performance Plan 2013/14 - 2016/17. The submission deals with three broad issues: (1) alignment between the Strategic Plan and the budget, (2) creating safer prisons, and (3) rehabilitation and reintegration. The latter two focal areas are in response to a general request from the Portfolio Committee for submissions on these two issues.

### *Alignment between the Strategic Plan and the budget*

It is submitted that the difficulties in aligning the budget to the strategy goals of DCS (i.e. rehabilitation) are reflected in the prioritisation, or lack thereof, of several key policy issues. This submission presents data showing that, for example, the number of prisoners accessing education and training is nearly the same as it was in 1997, and that a decline is in fact planned for. In view of this it is recommended, based on international good practice, that the feasibility of handing over the education and training portfolio in prisons to the Department of Basic Education be investigated.

This submission presents a number of examples showing that budget allocations are not rooted in policy positions. One such example is the emphasis on hi-tech security solutions (e.g. inmate tracking devices) whereas the White Paper emphasises dynamic security exercised by staff in a unit management system. Other examples relate to the budget allocation towards training of officials; the budget allocation and strategic priority for infrastructure to facilitate education and training; and overcrowding in female facilities.

CSPRI, in support of the Auditor General's observations, further submits that there are serious problems with the current performance indicators and their targets. This raises an important deficiency in the Strategic Plan, namely that it sets targets on a broad front of issues, but seldom explains how these targets will be achieved. This makes it extremely difficult to have insight into how the budget will in fact be utilised.

Access to health care is a persistent problem in the prison system. International good practice indicates that the best results are achieved when prison health care services are rendered by the government department responsible for general health care. It is therefore recommended that the feasibility of handing prison health care over to the Department of Health be investigated.

### *Safer prisons*

The UN Convention against Torture places a number of obligations on the South African government, and these cascade down to DCS. It is regrettably the case that there are too many assaults and unnatural deaths in custody, but it is seldom that the implicated officials are held accountable. In

short, a culture of impunity prevails. To address this, it is required that a new investigative regime be established to investigate assaults and unnatural deaths where officials are implicated. The submission sets out the duties under the obligation to prevent torture and other ill treatment and makes a number of recommendations to this end. Primarily, it is put forward that the Strategic Plan should reflect these duties, such as regularly reviewing policies and practices, establishing an effective complaints mechanism, abolishing the use of electro-shock equipment, training of staff on the absolute prohibition of torture, and developing a policy on the prevention of torture and other ill treatment.

This submission presents research findings on creating safer prisons, arguing that a holistic approach is necessary. In this regard, the management approach is key, as the research findings have established that control-based approaches increase the risk of violence, but consensual approaches have yielded better results. There is furthermore solid evidence that access to education and training, as well as other constructive and meaningful programmes, reduces the risk of violence. A focus on education and training would therefore yield results directly supportive of the White Paper and reduce violence in prisons.

#### *Rehabilitation and reintegration*

This part of the submission starts with an overview of the challenges faced by released prisoners and argues that these are the risks that the strategic plan should speak to. The social reintegration programme has regrettably reduced community corrections to a policing function, obsessed with parole violations and neglecting post-release support services. The submission sets out good practice principles for effective programmes as well as what has been demonstrated not to be effective. There is little evidence that current DCS programmes adhere to these good practice principles. It is further recommended that DCS should allocate funds to stimulate research and innovation and also support NGOs rendering services supporting the Department's mandate.

# CSPRI BUDGET VOTE SUBMISSION

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## **Introduction**

We wish to thank the Portfolio Committee on Correctional Services (the Portfolio Committee) for the opportunity to engage on the budget vote and strategic plan of the Department of Correctional services (DCS).

The submission is made in response to the 2013/14 Budget Vote as accompanied by the DCS Strategic Plan 2013/14 - 2016/17 and Performance Plan 2013/14 - 2016/17. The submission deals with three broad issues: (1) alignment between the Strategic Plan and the budget, (2) creating safer prisons, and (3) rehabilitation and reintegration. The latter two focal areas are in response to a general request from the Committee for submissions on these two issues, amongst others.

There are too many issues in the Strategic Plan and Budget Vote to comment on and this is by and large due to the fact that the areas of concern are recurring and constant. In the ten years that CSPRI has existed there has indeed been little change in the prison system. Fundamental problems around human rights and governance continue to loom over the prison system like a permanent shadow. These have been noted by the Portfolio Committee itself, the Judicial Inspectorate and civil society organisations. For reasons that are not clear, the senior management of DCS remains either unresponsive to good and sincere advice, or it is not able to implement policy decisions down to operational level, or a combination of both.

## **1. Alignment of strategy and expenditure**

### **(a) There is stagnation in the strategic plan regarding education**

It will be argued below that there is stagnation in the strategic plan and the DCS is not coming any closer to the goal of access to education and training in the White Paper. This point is made using comparative statistics from 1997 and 2011/12, and also assessing the targets set for 2013/14 against the targets set for the previous year.

A comparison between the numbers of sentenced prisoners accessing education in 1997 and 2011/12 illustrates the stagnation in the strategic plan well. Table 1 below presents the education and training results as reflected in the respective annual reports. In 1997, a total of 21 391 prisoners accessed some form of training and education. Fourteen years later, this number has increased to 25 224, or 3833 more. As a percentage of the sentenced population in custody at the time, there was an increase of 1.2%. The presented results clearly demonstrate that the White Paper on Corrections, despite its focus on rehabilitation, has had a negligible impact on the number of sentenced prisoners accessing education and training. This is despite access to education and training being a key component of rehabilitation and of the goal to reduce the risk of re-offending by improving employment or self-sufficiency chances upon release.

**Table 1**

	<b>1997</b>		<b>2011/12</b>	
<b>Education</b>	Literacy	4735	Literacy	2452
	Primary Education	2151	Youth in formal schooling	3351
	Secondary	4030		
			ABET	11296
	Correspondence	2097		
	<b>Sub-total</b>	<b>13013</b>		<b>17099</b>
<b>Vocational training</b>	Building	764		
	Hairdressing	70		
	Workshop	436		
	<b>Sub-total</b>	<b>1270</b>		<b>0</b>
<b>Career directed training</b>	External course	1777	FET	546
	Agriculture	605	FET College	3655
	Internal	2040		
	In-service training	1727	Various skills development	3924
	Entrepreneurial	959		
	<b>Sub-total</b>	<b>7108</b>		<b>8125</b>
<b>Total</b>		<b>21391</b>		<b>25224</b>
<b>Size of sentenced population</b>		100975		112467
<b>Percentage benefitting from training and education</b>		21.2		22.4

The targets set for 2013/14, as reflected in the Performance Plan (pp. 30-31) do not instil a sense that active progress is being made with regard to providing as many offenders as possible with access to education and training. Table 2 below provides a summary in this regard. Of the 92 047 offenders considered eligible, it is planned that only 21.4% will indeed participate in education and training. This is in fact a reduction from what was achieved in 2011/12, and even below what was achieved in 1997.

**Table 2**

<b>Programme</b>	<b>Target</b>	<b>Eligible</b>	<b>Percentage</b>
AET	11372	16929	67.2
FET Mainstream	565	39566	1.5
Skills Training	4872	16954	28.7
FET College	2929	21427	13.7
<b>Total</b>	<b>19738</b>	<b>92047</b>	<b>21.4</b>

It is therefore somewhat inexplicable that while much is being said about access to education and training,<sup>1</sup> the performance is regressing. Moreover, it is indeed planned for that performance will deteriorate from 25 224 prisoners accessing education and training in 2011/12 to a target of 19 738 in 2013/14.

It should also be added here that research published by CSPRI in 2012 found that the DCS is flouting the Correctional Services Act and the Schools Act by not providing access to education to children in its custody who are of compulsory school-going age.<sup>2</sup> Above all, it should be a priority of the Department to comply with its statutory duties in respect of children in its care.

In view of the above, especially the slow progress having been made to date in providing access to education and training, it is submitted that serious consideration should be given to removing the provision of education and training of prisoners from the mandate of DCS and that this function be allocated to the Department of Basic Education. There is evidence from Europe that this approach is best suited to ensure that prisoners receive the same quality of education inside prison as what is available outside prison.<sup>3</sup> In the US state of Texas, all prison education is provided by the Department

<sup>1</sup> 'Prisoner education to be compulsory – report' *IOL*, 5 March 2013, <http://www.iol.co.za/news/crime-courts/prisoner-education-to-be-compulsory-report-1.1480912#.UVVjIzdy07s>

<sup>2</sup> Muntingh, L. and Ballard, C. (2012) *Report on children in South African prisons*, Belville: Community Law Centre.

<sup>3</sup> European Commission (2012) *Survey on Prison Education and Training in Europe – Final Report*, Order 23 of the DG Education and Culture Framework Contract 02/10 - Lot 1, A report submitted by GHK in association with Anne Costelloe, Torfinn Langelid and Anita Wilson, Birmingham, [http://ec.europa.eu/education/adult/doc/survey/survey\\_en.pdf](http://ec.europa.eu/education/adult/doc/survey/survey_en.pdf) Accessed 28 March 2013.

of Education under the Windham School District and a soon to be released report demonstrates extremely encouraging results.<sup>4</sup> Education for prisoners in Mozambique is also provided by the Department of Education and at Central Prison in Maputo, more than half of the more than 2000 prisoners (sentenced and unsentenced) are participating in formal education.<sup>5</sup>

### **(b) The Department is not placing sufficient emphasis on the training of staff**

The bulk of the Department's expenses are on compensating employees (R12.5 billion, or 66%), yet only R5 million is set aside for training and development.<sup>6</sup> This works out to roughly R122 per employee for 2013/14. For 2013/14, the DCS will spend 22 times this amount on consultants (R110 million).<sup>7</sup> While the use of consultants is not *per se* a negative, the extremely small allocation towards staff training is perhaps part of the reason why DCS remains reliant on consultants where it should have developed internal capacity. Reinventing the prison system, as the White Paper intends to achieve, cannot happen if employees are not thoroughly trained and continuously engaged in refresher training to address identified problems. Poor decision-making, rights violations and non-compliance with legislative prescripts can in many instances be traced back to staff that are inadequately trained. It is therefore submitted that the allocation for staff training be reviewed to be supportive of the strategic objectives of the DCS, especially to improve the humane treatment of prisoners, and to progressively reduce reliance on consultants.

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<sup>4</sup> "The study was based on offenders released from TDCJ facilities in Fiscal Year 2009, whose activities were followed through 2012. In FY2009, there were 72,218 offenders released from state prisons, with 51,058 – or 70 percent – who participated in educational programs offered by the Windham School District. Offenders who participated in adult basic education classes achieved "significantly higher" reading, math and language scores than non-program participants, and those advancements, particularly in reading, resulted in much lower re-incarceration rates among offenders, the study found. The study compared recidivism rates among first time offenders with person, property, drug and other crimes with offenders who did not participate in the Windham programs. In addition to education and recidivism, offenders who participated in Windham educational programs generally had higher earnings than those who did not. Participants in the vocational certification programs and cognitive intervention program earned "significantly higher" wages after their release from prison, with an average of \$3,010.59 and \$3,180.81 earned respectively each quarter. This compared to \$2,843.65 and \$2,795.39 earned quarterly by those who did not take part in Windham educational offerings." ('Sam Houston State tests prison education programs', 30/1/2013, *EurekaAlert*, [http://www.eurekaalert.org/pub\\_releases/2013-01/shsu-shs012913.php](http://www.eurekaalert.org/pub_releases/2013-01/shsu-shs012913.php) Accessed 28 March 2013. )

<sup>5</sup> Presentation by Head of Prison on 12 February 2013 to visiting CSPRI delegation.

<sup>6</sup> 2013 ENE- DCS p. 3 and 4.

<sup>7</sup> 2013 ENE- DCS p. 4.



### **(c) Budget allocations should be rooted in policy priorities**

A 2003 research report by CSPRI highlighted the trend in DCS at the time that many decisions and other initiatives were not rooted in policy.<sup>8</sup> It is necessary to again pose this question: are budget allocations rooted in policy? There are regrettably some signs that this is not always the case and a few examples are highlighted below.

#### **(i) Value for money in high tech security solutions?**

One example concerns the improvement of security measures through high-tech solutions. The Budget Vote refers to the implementation of an inmate tracking system that would reduce escapes from 54 to 42 per year.<sup>9</sup> The precise amount to be spent is not provided, but it will no doubt be substantial. It will, however, result only in only 12 fewer escapes per year. The return-on-investment in this case calls for scrutiny. Moreover, the White Paper makes no reference to high-tech security solutions, but rather emphasises dynamic security or direct supervision (i.e. monitoring by officials) to improve security within a unit management system.<sup>10</sup> There is therefore no policy basis for relying on technology-driven solutions, but rather a basis in policy to rely on human resources. Moreover, seen against the costly debacle of the biometric security system introduced from 2006 onwards it is evident that the DCS is not capable of managing such options.

As an aside, it is interesting to note that after much was made of unit management since the early 2000s, the concept appears to have been abandoned from the Department's terminology and no reference to it can be found in the latest annual report, the Strategic Plan, Budget Vote or Performance Plan.

#### **(ii) Training for the ideal correctional official**

A further example concerns the issue of staff training, noted above. Chapter 8 of the White Paper of Corrections is devoted to the "Ideal Correctional Official" and provides a useful assessment of the situation at that time. Section 8.7 of the same chapter sets out the framework for developing human resources in the DCS. The White Paper sees the quality of DCS officials and therefore their re-training as key to fulfilling its goals, yet the Budget Vote does not recognise the importance of this. Instead, the Budget Vote makes numerous references to increases in expenditure destined at improving conditions of service for staff, i.e. increased remuneration; estimated to amount to R984

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<sup>8</sup>Sloth-Nielsen, J. (2003) *Policy developments in the Department of Correctional Services 1994-2002*, Bellville: Community Law Centre.

<sup>9</sup>2013 ENE- DCS p. 9.

<sup>10</sup>White Paper para 5.3.4.

million.<sup>11</sup> There is therefore an increasing risk that DCS staff will be under-trained but well remunerated – a situation that does not make for value for money, but is also not supported by the central policy document.

### (iii) Infrastructure for education

A third example relates to creating infrastructure to enable access to education for inmates. The White Paper, correctly, emphasises education and training.<sup>12</sup> There is, however, little in the budget vote that supports this objective. It assumed that the improvement of infrastructure at various facilities listed in the Budget Vote would include the addition of classrooms and other training facilities, but these facilities are only a few of the more than 230 centres operated by the Department. The Budget Vote lists further the development of school facilities at “various centres” at a cost of R135 million over the next three years.<sup>13</sup> It is, however, not clear how many school facilities will be created, their capacity and their locality. It is submitted that a much more assertive approach needs to be adopted to provide infrastructure where education and training can take place. Linked to this is access to adequate reading material, a very clearly listed Constitutional right. There is, however, nothing in the strategic plan and budget vote indicating that the DCS is taking steps to meet this requirement by, for example, building and stocking libraries.

### (iv) Overcrowding in female prisons

The fourth example of budget allocations not rooted in policy relates to female prisoners and the infrastructure available to them. Table 3 below lists the centres where 73% of women are detained as well as the available capacity and level of occupation as at the end of February 2011.

Correctional Centre	Capacity	Unsentenced	Sentenced	In Custody Total	% Occupation	Shortfall
Pollsmoor Female	245	282	219	501	204.49%	-256
Pretoria Female	166	68	259	327	196.99%	-161
Johannesburg Female	605	386	718	1104	182.48%	-499
Worcester Female	142	22	224	246	173.24%	-104
Thohoyandou Female	134	0	201	201	150.00%	-67
Durban Female	244	116	235	351	143.85%	-107

<sup>11</sup>2013 ENE- DCS p. 5.

<sup>12</sup>White Paper para 12.2.1.

<sup>13</sup> 2013 ENE- DCS Table 21E, p. 25.

<b>TOTAL</b>	1536	874	1856	2730	Ave: 175%	-1194
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The six prisons listed in Table 3 reflect a situation where 73% of South Africa’s female prisoners are detained in facilities that are on average a 175% full. The implications of this are twofold. Firstly, the White Paper errs when it states that overcrowding is not a problem in female prisons.<sup>14</sup> Secondly, there exists by implication in other prisons a substantial amount of space (65% of total dedicated female space) currently occupied by 27% of the female prison population.

If the DCS is indeed serious about overcrowding and treating women fairly, then it should develop a more equitable distribution of female prisoners, or alternatively, create the infrastructure where it is needed, i.e. in the six prisons listed above. The Budget Vote, in the Summary of Expenditure on infrastructure, does not indicate the development of additional capacity at female prisons.<sup>15</sup>

**(d) The current performance indicators are inadequate**

The utility and accuracy of the performance indicators in the Strategic Plan has already been remarked upon by the Auditor General in his report of 2011/12 and again emphasised by the Portfolio Committee in a recent meeting.<sup>16</sup> CSPRI share these concerns that the current performance indicators do not provide a comprehensive framework that will report on what the Department achieves but rather how it keeps itself busy. For example, the first indicator under the programme Administration (as noted in the Strategic Plan 2013/14-2016/17) reads “Percentage of cases brought against the Department defended”.<sup>17</sup> The technical description provided for this indicator in the same document<sup>18</sup> sketches a situation where the Department is unaware of litigation against it (primarily from parole decisions) and it is therefore not present in court to defend itself. To this the DCS sets a target that it will be aware of and defend court challenges in 80% of instances in 2013/14 and increasing this to 100% over the MTEF.

The issue is not whether the Department is present in court, but rather that the Department should actively work towards reducing its risk of exposure to litigation by ensuring that its staff (and parole board members) are properly trained and thus able to make decisions that will not be challenged in court in the first place, or act in manner that does not amount to a rights violation.

<sup>14</sup> White Paper Para 11.4.1

<sup>15</sup> 2013 ENE- DCS Table 21E, p. 24.

<sup>16</sup> *PMG Report on the meeting of the Portfolio Committee on Correctional Services*, PMG, 20 March 2013, [http://www.pmg.org.za/report/20130320-department-correctional-services-operational-performance?utm\\_source=Drupal&utm\\_medium=email&utm\\_campaign=Free%20Alerts](http://www.pmg.org.za/report/20130320-department-correctional-services-operational-performance?utm_source=Drupal&utm_medium=email&utm_campaign=Free%20Alerts)

<sup>17</sup> p. 25.

<sup>18</sup> p. 33.

The two indicators dealing with community corrections, assessing performance against the number of violations, are equally problematic.<sup>19</sup> The technical descriptions of the two indicators do not define what a violation is and this is problematic since community corrections officials yield significant discretion in how they monitor parolees.<sup>20</sup> More importantly, the indicator does not provide any information on how the programme is performing in respect of its real goal, namely, to support and facilitate reintegration. Such an approach would require the Department to investigate, for example, the number of parolees who have found employment or became economically self-sufficient, or able to access further education and training and so forth. The indicator(s) should collect data on the extent to which reintegration is indeed achieved.

### (e) Access to health care

In 2011/12, the JICS received 34 202 complaints from prisoners regarding health care services.<sup>21</sup> The same Annual Report also provides a useful assessment of health care issues.<sup>22</sup> Few, if any, of the issues raised are new, thus indicating that these are systemic problems. In respect of prison health care, the World Health Organisation (WHO) and the UN Office on Drugs and Crime (UNODC) recommend that the government department responsible for health care for the general population should also be assigned the responsibility for prison health care.<sup>23</sup> There are a number of advantages to this arrangement. Firstly, it facilitates national consistency in the implementation of the national health care policy. A problem in this regard arose with reference to the provisioning of ARVs to prisoners and culminated in the *EN and Others* decision of 2006. The court compelled the DCS to implement the existing policy of the national Department of Health.<sup>24</sup> Secondly, it facilitates consistent training of health care staff working in prisons, ensuring their participation in training activities undertaken by the Department of Health. Thirdly, medical personnel working in prisons need to be independent from the prison administration as they fulfil an important oversight role in recording and reporting on rights violations and conditions of detention that may amount to torture

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<sup>19</sup>DCS Strategic Plan 2013/14- 2016/17, p. 30-31.

<sup>20</sup>DCS Strategic Plan 2013/14- 2016/17, pp. 50-52.

<sup>21</sup>Office of the Inspecting Judge (2012) *Annual Report of the Judicial Inspectorate 2011/12*, Cape Town: Office of the Inspecting Judge, p. 43.

<sup>22</sup>Office of the Inspecting Judge (2012) *Annual Report of the Judicial Inspectorate 2011/12*, Cape Town: Office of the Inspecting Judge, pp. 43-50.

<sup>23</sup> “44. Integrate prison health into wider community health structures, and assign responsibility for the management and provision of prison health services to those same ministries, departments, and agencies providing health services to the general population. Where this is not achievable in the short term, action should be taken to significantly improve cooperation and collaboration between prison health services and community health services.” [WHO & UNODC (2006) *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings - A Framework for an Effective National Response*, New York: WHO & UNODC, p. 22]

<sup>24</sup>*EN and Others v Government of the RSA and Others* (2007) ((1) BCLR 84 (SAHC Durban 2006).

and other ill treatment. They are ultimately responsible to provide the same level of care to prisoners as those who are not imprisoned.<sup>25</sup> The extent to which they are able to perform this independently whilst being employed by the DCS has been questioned and the Jali Commission found evidence that, in some instances, their independence had been compromised.

Against this background, it is submitted that an investigation be undertaken to assess the feasibility of handing over prison health care services to the Department of Health.

## **2. Safer prisons**

The Portfolio Committee requested specific inputs on the prevention and eradication of torture. This section will respond to this request by (1) emphasising the absolute prohibition of torture (2) setting out the duty to prevent torture and other ill treatment, and (3) providing a summary of what is available in the extant literature on reducing violence in prisons. The central aim is to alert the Committee to key issues in the prevention and eradication of torture and creating safer prisons in South Africa. It is these issues that the DCS Strategic Plan, and consequently the budget, should respond to. It is unfortunately the case that the prevention of torture and other ill treatment is not manifestly visible in the Strategic Plan and thus not in the budget.

The failure of DCS to create safe prisons has a permeating effect on all operations. This is even more so when officials are implicated and even guilty of gross rights violations, such as assaults and even deaths. It is near impossible to achieve the lofty ideals of the White Paper on Corrections when prisoners feel unsafe, their rights are not promoted and upheld as required by the Constitution, and officials who commit rights violations are not held to account. In such an environment, rehabilitation and restorative justice processes become empty rhetoric.

### **(a) The absolute prohibition of torture**

The Portfolio Committee is well aware of the high number of complaints by prisoners alleging assaults by officials and it is not necessary to present the data here again. This has been a longstanding

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<sup>25</sup> “Principle 1: Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”  
*UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,  
Adopted by General Assembly resolution 37/194 of 18 December 1982.

problem, indicating systemic problems within the Department to ensure that its officials act in accordance with constitutional and legal prescripts. When DCS officials assault prisoners and this result in severe physical and/or mental suffering, this would meet the requirements in the definition of torture in article 1 of UNCAT.<sup>26</sup> Assaulting a prisoner, and thus going beyond the minimum force threshold, is not a lawful action and can in no way be justified by such statements as “prisoners are difficult people” or “the prisoner assaulted an official”. The prohibition of torture is absolute and there can never be any justification for it. This is accepted in international law and carries the status of a peremptory norm.

The UNCAT places four broad obligations on South Africa being (1) the duty to combat impunity, (2) the duty to prevent torture and other ill treatment, (3) the duty to provide redress to victims of torture, and (4) the duty to report to the treaty monitoring body (the Committee against Torture – CAT). The submission will deal briefly with the first two duties as they relate directly to creating safer prisons.

### **(a) Effective investigations**

In order to fulfil the duty to combat impunity, it is necessary, amongst others, that the act of torture be criminalised in domestic law. This process is well underway and should be completed within 2013 by the enactment of the Prevention and Combating of Torture of Persons Bill. Further, appropriate punishments must be imposed on perpetrators of the crime of torture. The Bill will prescribe these. This legislative advance will, however, have little meaning if there are no effective investigations.

Article 12 of UNCAT requires that “[e]ach State Party ... ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” The failure to conduct effective investigations and hold perpetrators accountable, even under existing and limiting legislation, has created a culture of impunity in the DCS.

The UN Commission on Human Rights defines impunity as “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making

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<sup>26</sup> Art 1(1) For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

reparations to their victims.”<sup>27</sup> The duty to combat impunity rests firmly on the state and Principle 20 of the 1996 Report of the UN Independent Expert on the Question of Impunity made it clear that impunity is a consequence of “the failure of States to meet their obligations under international law to investigate violations, take appropriate measures in respect of the perpetrators, particularly in the area of justice, ensure that they are prosecuted and tried and provide the victims with effective remedies.”<sup>28</sup>

CSPRI has made a number of submissions in recent years to the Portfolio Committee on the question of impunity as it related to unnatural deaths in custody. The Judicial Inspectorate has also brought it to the attention of the Portfolio Committee that investigations into unnatural deaths in custody seldom, if ever, result in prosecutions and even then, it is unlikely that an appropriate sentence will be imposed. In a November 2011 submission CSPRI concluded on this issue: “The overall impression gained is that when officials beat prisoners to death, investigation are slow; disciplinary charges minor; sanctions imposed light; and criminal prosecutions unlikely. The net result is a culture of impunity.”<sup>29</sup> This situation will persist unless perpetrators are brought to account and, if found guilty, sentenced in a manner that reflects the gravity of the crime of torture.

In view of the above, it is submitted that a new investigative regime to deal with assaults and unnatural deaths in prisons implicating officials be implemented as a matter of urgency. CSPRI notes that the Portfolio Committee is in the process of assessing the mandate of the Judicial Inspectorate for Correctional Services and urges the Committee to prioritise this.

### **(b) The duty to prevent torture and other ill treatment**

A joint reading of articles 2<sup>30</sup> and 16<sup>31</sup> of UNCAT places a clear duty on South Africa to prevent acts of torture and other ill treatment. This duty extends to DCS and thereby compels it to implement measures to prevent torture and other ill treatment. Given the seriousness of the crime of torture and

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<sup>27</sup> E/CN.4/2005/102/Add.1Definitions. This definition differs slightly from the one adopted in 1996 (E/CN.4/Sub.2/1996/18) by adding the words “if found guilty, sentenced to appropriate penalties, and to making reparations to their victims”

<sup>28</sup> E/CN.4/Sub.2/1996/18.

<sup>29</sup> Submission by the Civil Society Prison Reform Initiative on the prevention and eradication of torture in South African prisons, November 2011, p. 7.

<sup>30</sup> Art 2(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

<sup>31</sup> Art 16 (1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

the strong judicial rebuke it has invoked,<sup>32</sup> there is a legitimate expectation that steps to fulfil this obligation should be included in the Strategic Plan of the Department.

It is CSPRI's assessment that the DCS has not taken this duty seriously and that this failure is in part the reason for the high number of complaints alleging assault by officials as well as complaints relating to other ill treatment. The submission below will provide a brief summary of the duties imposed by UNCAT with the view that DCS should undertake practical measures, as it is obligated to do under article 2 of the UNCAT, to fulfil its obligations. It should be noted that to develop a policy document but not support its implementation with staff training, monitoring and corrective measures should not be considered as a "practical measure" since it will have little success in changing the behaviour of officials.

*State Parties should develop, implement and systematically review the framework for safeguarding the rights of persons subject to any form of arrest, detention or imprisonment in any territory under their jurisdiction.* It is required that the DCS should continuously review its existing policies and practices to identify problem areas and implement corrective measures. For example, consistent complaints about access to healthcare (as the case is) require that it be addressed in a manner that may depart from previous approaches. The Strategic Plan presents a reduction in the number of assaults as a target, but it is not explained how this will be achieved.<sup>33</sup> Furthermore, this target does not distinguish between inter-prisoner violence and violence perpetrated by officials of the Department. The definition of the crime of torture requires, amongst others, that it be committed by a public official or with the consent or acquiescence of a public official. Lumping all assaults into one category masks the contribution that officials make to the total number.

*All State Parties must ensure the necessary procedural safeguards are in place when people are deprived of their liberty.* This is particularly the case with unsentenced prisoners but not exclusively so. From the McCullum case it became clear that the assaulted prisoners were denied not only access to medical treatment, but also to their legal representatives. This is entirely unacceptable. The Draft White Paper on Remand Detention states that remand detainees must be able to prepare for their defence, but it is not spelt out what this will mean in practical terms. The Strategic Plan should speak to this since this may have significant cost implications (e.g. providing access to legislation, case law, libraries etc), but this is not reflected in the Strategic Plan or Budget Vote. The Department should therefore ensure that it is able to uphold and protect procedural safeguards.

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<sup>32</sup> The revulsion with which the torturer is regarded is demonstrated by the very strong judicial rebuke, condemning the torturer as someone who has become "like the pirate and slave trader before him – *hosti humani generis*, an enemy of all mankind", and torture itself as an act of barbarity which "no civilized society condones," "one of the most evil practices known to man" and "an unqualified evil". [Extracts from two cases, being: *Filartiga v. Pena-Irala* [1980] 630 F (2nd Series) 876 US Court of Appeals 2nd Circuit 890, and *A (FC) and others v. Secretary of State for the Home Department* (2004) House of Lords.]

<sup>33</sup>p. 27.



*State Parties must ensure humane conditions of detention.* Prison overcrowding is a recognised form of ill treatment<sup>34</sup> and thus prohibited under article 16 of UNCAT. The Committee is well aware of this problem and the fact that it is a systemic problem. Numerous solutions have been proposed, yet overcrowding remains chronic. It is submitted that in seeking solutions, the emphasis must be placed on reducing the number of arrests for non-priority crimes executed by SAPS; returning to the sentencing reform proposals developed by the SA Law Reform Commission in the late 1990s, and reducing the length of custody for awaiting trial prisoners by providing effective access to legal representation. The Strategic Plan presents a target in this regard, but it is not explained how this will be achieved. Overcrowding will not be reduced by not attending to the problem.

As is the case here in respect of overcrowding and elsewhere in the Strategic Plan, the setting of targets without explaining how they will be achieved creates an opaque process of planning, closing it off from public scrutiny. It is difficult to comment on the merits or not of the targets when it is unknown what steps will be taken and what their cost implications are.

*People should only be detained in recognised, official places of detention and incommunicado detention is prohibited.* There is at this stage little, if any evidence to indicate that this as problem in South Africa. CSPRI is, however, concerned about what appears to be significant numbers of suspects who spend extended periods of time in police custody. There are also indications that segregation (as provided for in the Correctional Services Act) is used extensively and poorly regulated.

*States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment.* The reliance on technology in DCS to enhance security is problematic since it contradicts the fundamental aim of the White Paper, as supported by the Constitution, to create a more humane prison system by, amongst others, fostering a mutually respectful relationship between officials and prisoners.

In 2009 the DCS purchased 900 electric stun belts at a cost of R2.7 million.<sup>35</sup> Internationally, the use of stun belts has been criticised by human rights groups,<sup>36</sup> and US jurisprudence has left it only a narrow scope, namely for use when the prisoner is appearing in court (i.e. outside the secure environment of the prison building).<sup>37</sup> In 1997 the UN Special Rapporteur on Torture, Nigel Rodley, had already expressed deep concerns about the use of stun belts and other electroshock

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<sup>34</sup>See UN Docs. A/51/44, para63; CAT/C/CR/31/6, para 4(b); CAT/C/SR.264, para20; A/56/44,para 128(h).

<sup>35</sup> 'Prisoners in for a shock' *IOL*, 9 February 2009, <http://www.iol.co.za/news/south-africa/prisoners-in-for-a-shock-1.433834> Accessed 18 December 2011.

<sup>36</sup> Citing a report compiled by Amnesty International 'The stun belt: Torture at the push of a button', World Socialist website, 19 June 1999, <http://www.wsws.org/articles/1999/jun1999/stun-j19.shtml> Accessed 18 December 2011.

<sup>37</sup>*People v. Mar*, 02 S.O.S. 4412.

equipment.<sup>38</sup>The CAT, in its concluding observations on the US's first report, recommended banning the use of stun belts as a method of restraining prisoners as "their use almost invariably leads to breaches of article 16<sup>39</sup> of the Convention".<sup>40</sup> Other electroshock equipment, such as riot shields, are also used by the DCS, and the Jali Commission was appalled by their use at Pretoria C-Max to inflict ritualised torture on new admissions to the prison.<sup>41</sup> Against the backdrop of these findings, the purchase of stun belts by the Department in 2009 appears to have been ill-advised. The continued use of electroshock equipment in prisons poses significant risk for prisoners' right to be free from torture and other ill treatment, and this purchase of additional equipment was a retrogressive step, flagrantly disregarding guidance from both the Special Rapporteur on Torture and the growing body of research on the topic. It is therefore submitted that the use of any electroshock equipment be taken under review with a view to abolish its use.

*All law enforcement officials and other persons working with or responsible for people deprived of their liberty should be trained on the absolute prohibition of torture and other ill-treatment. The content of the training should be comprehensive, focusing on the prohibition of torture and other ill-treatment, as well as preventive and reactive measures addressing torture and other ill-treatment. As far as could be established through DCS documents available in the public domain, there is no evidence that the Departments' officials receive comprehensive training, either during induction or thereafter, on the absolute prohibition of torture. It is furthermore unknown if the Department has a policy on the prevention and eradication of torture and other ill treatment. If this assessment is correct, it is a serious shortcoming in the Department's efforts to create safer prisons and prevent torture and other ill treatment. People deprived of their liberty are particularly vulnerable to torture and other ill treatment and the officials responsible for their custody must, as an imperative, know and understand what constitutes a violation of the absolute prohibition of torture. There is nothing in the Strategic Plan or Budget Vote that speaks to this obligation.*

In view of these remarks it is submitted that (1) the Department develops a policy on the prevention and eradication of torture and other ill treatment (2) incorporates the content of this policy into induction training and refresher training (3) all officials of the Department undergo training on the prevention and eradication of torture and other ill treatment, (4) a monitoring mechanism be put in place to assess the effectiveness of the training, and (5) the Judicial Inspectorate also monitors the impact of the training.

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<sup>38</sup> Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, E/CN.4/1998/38 para 193.

<sup>39</sup> Article 16 prohibits other ill treatment that does not amount to torture.

<sup>40</sup> UN Committee against Torture (2000) *Conclusions and Recommendations of the Committee against Torture: United States of America*. 15/05/2000. A/55/44, paras.175-180. (Concluding Observations/Comments) Para 180

<sup>41</sup> Jali Commission, Vol. II Chapter 25.

*State Parties should promote public education on the prohibition of torture and other ill-treatment and involve NGOs in such initiatives.* The extent to which inmates are upon admission informed of their rights, particularly the right to be free from torture and other ill treatment, is uncertain. Research undertaken by CSPRI indicates that this is at best inconsistent. At some centres it appears that new admissions do receive a briefing on their rights whilst at others it is done superficially if at all. The Department has a duty to properly inform new admissions of their rights, procedural and substantive in nature.<sup>42</sup> The Strategic Plan should therefore reflect what steps are being undertaken and planned by the DCS to ensure that all admissions are properly informed of their rights, especially the right to be free from torture and other ill treatment.

*Every person, including those deprived of their liberty, has the right to lodge a complaint regarding his or her treatment to an independent authority, including violations of the right to be free from torture and other ill-treatment.* The JICS, through its Independent Visitors, provides for such a mechanism. CSPRI's concern with the current system is that there is no information available on whether it is effective or not in resolving complaints firstly and secondly, if the current system enables the prevention, or at least the reduction, of the substance of the complaint. The proportional distribution of the categories of complaints annually recorded by JICS shows remarkable stability, indicating that the complaints system itself does not have a systemic impact. It is consequently submitted that JICS commissions an independent evaluation of its complaints mechanism and specifically establish whether it is effective in resolving individual complaints, and further if it enables the resolution of systemic problems. Furthermore, the Strategic Plan states that "[t]he relationship that the department has with the Judicial Inspectorate for Correctional Services is of particular importance in the protection of the human rights of inmates."<sup>43</sup> The Strategic Plan is, however, void of any steps or measures that would render substance to this statement. It is not unreasonable to expect the Department to have as a strategic objective the active engagement with the JICS and to respond systematically to recommendations by reporting on their acceptance or not (and reasons thereto), steps taken to address problems, and the results thereof. At this stage, JICS does not appear to form part of or inform strategic thinking in the Department.

*States should ensure that persons who have lodged complaints of torture and other ill-treatment, as well as witnesses to such acts, are protected from retaliation and intimidation.* Anecdotal evidence suggests that prisoners who have lodged complaints against officials or against other prisoners are not always protected from retaliation and intimidation. The Jali Commission found evidence, especially relating to allegations of sexual victimisation, that victims were not adequately protected. The Strategic Plan should reflect on measures planned and taken to protect victims of and witnesses to human rights abuses implicating DCS officials.

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<sup>42</sup>S 6(4) Correctional Services Act.

<sup>43</sup>p. 12.

*Whenever there are reasonable grounds to believe that an act of torture has taken place in a State Party's jurisdiction, this should be investigated promptly by independent and impartial authorities.* The issue of investigations by independent and impartial authorities have already been dealt with to some extent above under "Combating impunity". CSPRI has also made a submission to the Portfolio Committee in respect of the mandate of the JICS and it is not necessary to repeat here.

*State Parties should establish and maintain independent mechanisms to systematically review practices concerning the treatment of all persons deprived of their liberty and the conditions of detention.* In addition to the internal review process of policies and practices referred to above, it is necessary that independent reviews also take place. It is submitted that JICS is ideally placed to conduct such an independent review. JICS is furthermore mandated to appoint Special Assistants to assist the Department with its tasks and such a review may indeed benefit from such an appointment.

### **(c) Reducing violence in prisons**

It is generally accepted that South African prisons are not as safe as they ought to be, due to inter-prisoner violence as well as violence between prisoners and officials. The Strategic Plan again notes targets in this regard but, as already noted above, does not explain how these will be attained. The Strategic Plan refers to a gang management strategy as well as gang management unit. The problem of prison violence is, however, more complex than managing gangs. The DCS approach also assumes that gangs are the only architects of, and their members the only perpetrators of, prison violence. This is clearly not the case.

Reducing prison violence, or rather making prisons safer, requires a comprehensive approach rooted in scientific evidence on the subject. A 2009 CSPRI report reviewing the literature on prison violence confirmed this and pointed to various dimensions of the prison system that needs to be overhauled in order to make prisons safer.<sup>44</sup> At least, the following needs to be taken into account as facilitators of prison violence:

- violence can be seen as responses to an abnormal environment
- management culture is a key variable in understanding prison violence
- staff culture and attitudes towards prisoners
- the management of overcrowded prisons
- architectural design
- staff experience and training

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<sup>44</sup>Muntingh, L. (2009) *Reducing prison violence: implications from the literature for South Africa*, CSPRI Research report No. 17, Bellville: Community Law Centre.

- vulnerability to violence of particular groups and individuals
- gang membership
- individual profiles of prisoners.

The above-mentioned report provides a detailed description of findings in the literature. The following key findings have emerged from the literature. Firstly, due to the nature of the prison as an institution, management should be acutely aware of its own legitimacy deficit and thus be sure that its decisions and actions build legitimacy rather than eroding it further. Secondly, management approaches to reducing violence driven by the control model is not supported by the evidence and consensual approaches have yielded better results in creating safer prisons. Thirdly, the day-to-day relationship between staff and prisoners is central to creating safer prisons. How prisoners are treated, spoken to and interacted with have a material impact on levels of conflict and the potential for violence. Fourthly, the situational approach to managing conflict and violence holds significant potential for reducing violence in prisons. Fifthly, risk classification systems relying on objective indicators are not reliable and approaches to reducing violence in prisons should not depend on these.

A further research finding of great importance is that there is solid and overwhelming support for providing prisoners with academic and vocational training programmes as a means to reduce violence and disorder in prisons.<sup>45</sup> McCorkle et al recommend that order in the prison is best achieved when prisoners are engaged in meaningful programmes that offered opportunities for self-improvement and not just a structured day-programme that kept prisoners busy. According to McCorkle *et al* meaningful programmes create something valuable that prisoners prefer not to lose through a violent incident:

“To an inmate participating in such a programme, the immediate costs of aggression may be judged to [be] high: falling behind in the programme, the loss of an industry job, and the transfer to a more custody oriented prison. Participants in meaningful programmes would also be looking forward to release, and with new skills acquired, the chance of a fresh start. Weighed in the balance with their dreams, the momentary satisfaction derived from an act of violence would likely be discounted”.<sup>46</sup>

The pervasive idleness and long lock-up periods characterising South African prison life then emerges to be one of the major risks to safe custody. Even in the absence of sophisticated analyses of the

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<sup>45</sup> McCorkle et al report on a study of 317 U.S. state prisons where it was found that, “[E]ven after controlling for other institutional characteristics, prisons in which a large percentage of the prisoner population was involved in educational, vocational, and prison industry programs reported lower rates of violence against inmates and staff.” (McCorkle, R., Miethe, T., & Drass, K. (1995). *The Roots of Prison Violence: a test of the deprivation, management, and "not so total" institution models. Crime and Delinquency, 41* (3), 325.)

<sup>46</sup> McCorkle, R., Miethe, T., & Drass, K. (1995). *The Roots of Prison Violence: a test of the deprivation, management, and "not so total" institution models. Crime and Delinquency, 41* (3), 328.

underlying causes of prison violence, access to educational and training programme will not only benefit prisoners directly by improving their chances of successful re-entry, but will also contribute to safer prisons. The Strategic Plan of the Department seems to veer in a different direction by emphasising control, and not providing sufficient access to education and training (as discussed above in section 1(a)).

### 3. Rehabilitation and reintegration

The Committee requested specific in-puts from civil society on rehabilitation and reintegration. The submission below responds to this request by outlining a number of key issues, both as context as well as proposals for improvement. While the submission below may not always speak directly to the Budget Vote, the intention is to put forward issues of strategic concern that should ultimately inform the budget allocations.

#### (a) What are the challenges faced by released prisoners?

Studies on prisoner re-entry are a fast emerging field, especially in US-based research<sup>47</sup>, and seek to understand what happens to prisoners when they are released, and in particular what hurdles they face.

Prisoner re-entry research typically focuses on four dimensions being:

- *Personal issues facing returning prisoners:* Returning prisoners confront a range of personal issues that jeopardize their chances of succeeding in the community and reoffending. Substance abuse, mental illness, lack of accommodation, being HIV-positive or having Aids, being unemployed and having low educational qualifications are some personal challenges faced by released prisoners.
- *Impact of prisoner re-entry on families:* Returning parents have to resume or start assuming the role of parent in a family set-up that often faces significant challenges. Families may in themselves experience deep-seated problems and therefore have great difficulty in accepting a family member or parent that has been in prisons. The incarceration of a parent remains an important indicator for future delinquency amongst children.
- *Impact of prisoner re-entry on communities:* There is increasing evidence that certain communities and indeed certain families contribute disproportionately to the prison

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<sup>47</sup> Baer D et al (2006) *Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio*, Urban Institute, Washington, p. 1

population and that high incarceration communities are destabilized in a variety of ways.<sup>48</sup> The net effect is large numbers of predominantly young men circulating through the prison system on a continuous basis from these communities.

- *Challenges to prisoner re-entry*: ‘Returning prisoners confront a number of challenges that make it difficult for them to gain access to jobs, benefits, or services that might assist in their transition back into the community’.<sup>49</sup> Unlike the USA, there are few barriers that legally exclude release prisoners from state assistance, but poor support services, uncoordinated services or absence of services to released prisoners and their families remain a significant problem.

From the above it is evident that DCS, in collaboration with other government departments across the other two tiers of government, has a clear responsibility towards released offenders. This is particularly the case with offenders who are placed under community corrections. It may indeed be concluded that the investment made in rehabilitation programmes inside the prison is indeed at great risk of being lost when there are poor or non-existent post-release support services. The Strategic Plan of the Department and specifically the programme Social Reintegration must speak to the re-entry challenges faced by prisoners as listed above.

## **(b) Principles for effective interventions**

The interventions (or programmes) offered by the DCS should be based on scientific evidence, recognising what has been demonstrated to work and avoiding what has been shown to be ineffective. The Strategic Plan, especially for the programme Rehabilitation, should therefore create a context where this can be achieved.

Based on an extensive meta-analysis by Cullen and Gendreau, a number of principles for effective interventions have emerged.<sup>50</sup>

First, interventions should target the known predictors of crime and recidivism, also referred to as criminogenic needs and divided into static and dynamic needs.<sup>51</sup> The focus of interventions is on

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<sup>48</sup> Clear T (2007) *Imprisoning Communities – How mass incarceration makes disadvantaged neighbourhoods worse*, Oxford University press, New York.

<sup>49</sup> Social, Economic and Workforce Programs Division (2004) *The Challenges and Impacts of Prisoner Reentry*, NGA Centre for Best Practices, <http://www.nga.org/Files/pdf/REENTRYBACKGROUND.pdf> Accessed 16 May 2008.

<sup>50</sup> Cullen, F.T. and Gendreau, P. (2000). See also McKenzie, D.L. ‘Criminal Justice and Crime Prevention’ in LW Sherman et al (1997) *Preventing Crime: What Works, What Doesn’t, What’s Promising*, National Institute of Justice, US Department of Justice, Washington.

dynamic predictors in particular, namely: anti-social or pro-criminal attitudes, values, beliefs and cognitive emotional states; pro-criminal associates and isolation from anti-criminal others; and anti-social personal factors such as impulsiveness, risk-taking, and low self-control.

Second, the treatment services should be behavioural in nature.<sup>52</sup> In this regard it is important to match the interventions with the needs of offenders or to ensure “general responsivity”. Moreover, interventions should be intensive, lasting from three to nine months and occupying 40-70% of the offender’s time when on the programme.<sup>53</sup> Short, generic, information-based, just-before-release interventions do not satisfy this principle.<sup>54</sup>

Third, treatment interventions should be used with higher risk offenders and target their criminogenic needs to bring about change.<sup>55</sup> It requires accurate risk assessments resulting in targeting high-risk individuals for interventions; this potentially has the biggest pay-off when successful, since these individuals are responsible for a larger proportion of crime.

Fourth, a range of other considerations, if addressed, will increase treatment effectiveness.<sup>56</sup> The work by Cullen and Gendreau also identified a wide range of issues that contribute to intervention-effectiveness, such as community-based interventions<sup>57</sup> versus institutional interventions, ensuring well-trained staff and monitoring them, following up on and supporting offenders after they have completed the programme, and structured relapse-prevention. Matching the treatment and programme style to the learning styles of offenders has also been shown to be critically important. Further programme considerations include a lack of motivation to participate, depression, anxiety and childhood trauma.

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<sup>51</sup> Williamson, P. et al (2003) ‘Assessing Offender Readiness to Change Problems with Anger’ *Psychology, Crime and Law*, Vol. 9 No. 4. Cullen F.T. and Gendreau P. (2000), p. 145.

<sup>52</sup> Deci, E.L. and Ryan, R.M. (2000) The ‘What’ and ‘Why’ of Goal Pursuits: Human Needs and the Self Determination of Behaviour, *Psychological Inquiry*, Vol. 11 No. 4; McMurrin, M. and Ward, T. (2004) ‘Motivating Offenders to Change in Therapy: An Organizing Framework’, *Legal and Criminal Psychology*, Vol. 9; Prochaska, J.M. et al (2004) ‘The Trans-theoretical Model of Change for Multi-level Intervention for Alcohol Abuse on Campus’, *Journal of Alcohol and Drug Education*, Vol. 47 Issue 3; Cullen, F.T. and Gendreau, P. (2000), p. 145.

<sup>53</sup> Shrum, H. (2004) No Longer Theory: Correctional Practice that Works, *Journal of Correctional Education*, Vol. 55 No. 4, p. 233.

<sup>54</sup> Muntingh, L. (2005), p. 34.

<sup>55</sup> Cullen, F.T. and Gendreau, P. (2000), p. 147.

<sup>56</sup> Lawrence, S. et al (2002) *The Practice and Promise of Prison Programming*, Urban Institute, Washington, p. 9. Cullen, F.T. and Gendreau, P. (2000), p. 147.

<sup>57</sup> Lynch, J.P. and Sabol, W.J. (2001) ‘Prisoner Re-entry in Perspective’ *Crime Policy Report*, Vol. 3 September 2001, Urban Institute, Washington.



### **(c) What does not work**

Research has similarly identified the characteristics of interventions that are not effective and which should naturally be avoided. The following are noteworthy in this regard. Interventions that aim at greater control over offenders (e.g. various forms of supervision and probation) and which are regarded as by-products of the get-tough-on-crime approach are not effective in reducing recidivism.<sup>58</sup> Moreover, in the same manner that effective programmes are based on sound theory and empirically-tested methods and interventions, control-inspired interventions appear to be based on “a common-sense-understanding that increasing the pain and/or the surveillance of offenders would make them less likely to commit crimes”.<sup>59</sup>

Also ineffective are deterrence-oriented programmes,<sup>60</sup> which in some instances actually increased the recidivism rate.<sup>61</sup> The overall conclusion is that there is no evidence to suggest that greater deterrence or increased punitiveness will result in reduced re-offending; indeed, the opposite was found to be true in a number of evaluations of deterrence-based programmes. With regard to the specific style of a programme, treatment modalities that appear to be ineffective lack general responsivity, rely on an insight-oriented approach and are less structured, self-reflective and verbally interactive.<sup>62</sup>

### **(d) Innovation, research and evaluation**

There is little to indicate that the current correctional programmes presented by DCS or any other post-release interventions have been subject to rigorous evaluations. This creates a number of risks, chief amongst which is the real possibility that staff time and other resources are being wasted on interventions that are ineffective.

To address this, the following is proposed:

- Rigorous evaluations be undertaken to evaluate the impact of the current programmes presented by DCS to determine their effectiveness. Such an evaluation must conform to the standards of scientific evaluation by using matched control and experimental groups as subjects.

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<sup>58</sup> Cullen, F.T. and Gendreau, P. (2000), p. 154.

<sup>59</sup> Cullen, F.T. and Gendreau, P. (2000), p. 154.

<sup>60</sup> Examples of such sanctions are ‘Scared Straight’, boot camps, shock probation, fines, and split sentences.

<sup>61</sup> Cullen, F.T. and Gendreau, P. (2000), p. 155. McKenzie, D.L. (1997) *Criminal Justice and Crime Prevention*. In Sherman, L.W. et al *Preventing Crime: What Works, What Doesn't, What's Promising*, National Institute of Justice, Washington: US Department of Justice.

<sup>62</sup> Cullen, F.T. and Gendreau, P. (2000), p.146.

- DCS should make available funds to academic institutions and civil society organisations to develop new programmes, implement them and be subjected to rigorous evaluations.

### **(e) Support NGO's to deliver re-entry services**

Research undertaken by CSPRI into the role of civil society organisations in offender rehabilitation found that it is a very small group of NGO's that are active in the field and that there is indeed a great degree of fragmentation, poor coordination between these organisations and DCS, and growing financial pressures.<sup>63</sup> These organisations are almost entirely self-funded and as far as could be established receive no support from DCS. In some instances they do receive support from the Department of Social Development as well as local government structures. Despite this situation, their activities are by and large in support of the DCS mandate, and DCS relies on them, in particular on re-entry services. Even organisations that render programmes inside DCS facilities receive no financial support. In recent years the funding environment of these organisations has become increasingly tough and some were forced to retrench staff. Despite this, the expectation remains that civil society must support DCS objectives.

This is an untenable and unfair situation, which is only aggravated by the quantum of fruitless and wasteful expenditure in the DCS (some R71 million) as reported by the Auditor General for the previous financial year. In view of this situation it is proposed that the DCS develops through proper consultation with civil society organisations a financial support and service delivery model to be presented to the Portfolio Committee.

### **(f) Social Reintegration Programme**

The allocation to the Social Reintegration Programme constitutes little over 4% of the total budget, which constitutes little change from previous years. From the Strategic Plan, it is evident that none of the targets, with perhaps the exception of the one relating to halfway houses, relate to the challenges faced by returning prisoners as outlined in section 3(a) above. The targets are rather focussed on policing parolees and probationers, the internal functioning of the Department and promoting non-custodial sentencing options. The question therefore remains: what will the Department do in practice to facilitate re-entry and reintegration as determined by the challenges faced by returning prisoners?

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<sup>63</sup> Muntingh, L. (2008) '*A societal responsibility*' - *The role of civil society organisations in prisoner support, rehabilitation and reintegration*, Pretoria: ISS and Community Law Centre.

At minimum the Department should through this programme:

- Facilitate access to community-based resources that could be of assistance to returning prisoners. It has been found that even when resources exist, prisoners are not informed of these prior to their release.
- Render financial support to NGOs and CBOs to assist returning prisoners.
- Facilitate access to services rendered by provincial and local governments to former prisoners and their families.
- Ensure that there are contacts and links between a prisoner and his or her family prior to release.
- Establish mentoring programmes for former prisoners.
- Focus on high risk individuals to mitigate the risk of re-offending.

The Social Reintegration Programme plans on expanding the use of halfway houses and this may sound like an attractive option. However, the jury is still out on whether halfway houses are effective in facilitating reintegration and reducing recidivism. A recent report by the Pennsylvania Department of Corrections on recidivism found little difference between the arrests rates of prisoners paroled to halfway houses and those paroled to their homes.<sup>64</sup> In view of the uncertain findings on the effectiveness of halfway houses, it must be inquired on what evidence the DCS chose this particular option. Moreover, given the large numbers of releases per month, it is clear that only a very small percentage could be accommodated in halfway houses, thus calling the appropriateness of this option into question.

### **(g) Sentence plans and correctional programmes**

The Strategic Plan notes that, of the 79 334 offenders with sentence plans, only 29 750 (or 37.5%) completed correctional programmes in the previous financial year.<sup>65</sup> For 2013/14, it is planned that nearly double this number (55644) will complete correctional programmes. From the strategic plan it is not clear what additional capacity will be put in place to enable such a massive increase in output. The Budget Vote indicates that the sub-programme “Correctional Programmes” only has 82 staff members and there are no plans to increase this capacity.<sup>66</sup> This means that 82 DCS officials will be expected to oversee correctional programmes of 55 644 offenders, or a rate of 676 offenders per official. It is consequently not clear how the output will be nearly doubled with the same amount of staff.

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<sup>64</sup> Pennsylvania Department of Corrections (2013) Recidivism report 2013, Mechanicsburg: Pennsylvania Department of Corrections, p. 27.

<sup>65</sup> DCS Strategic Plan 2013/14 – 2016/17 p. 28.

<sup>66</sup> ENE p. 14.

## 4. Conclusion

A leading American psychiatrist, the late Karl Menninger, expressed himself about imprisonment as a criminal sanction as follows:

"After a solemn public ceremony we pronounce them enemies of the people, and consign them for arbitrary periods to institutional confinement on the basis of laws written many years ago. Here they languish until time has ground out so many weary months and years. Then with the planlessness and stupidity only surpassed by that of their original incarceration they are dumped back on society, regardless of whether any change has taken place in them for the better and with every assurance that changes have taken place in them for the worse. Once more they enter the unequal tussle with society. Proscribed for employment by most concerns, they are expected to invent a new way to make a living and to survive without any further help from society."<sup>67</sup>

While the prison is, as Michel Foucault noted, a detestable solution but one that we cannot seem to do without, we do not have to be planless and leave released prisoners to their own devices in an unequal tussle with society. This would, however, require a rethink of what the prison should achieve and what our expectations are. While there are many unknowns when talking about prison reform, we can nonetheless be certain that what has been attempted in the past 20 years did not work.

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2 April 2013

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<sup>67</sup> Menninger, K. (1985) 'Therapy, not punishment' in J G Murphy (ed), *Punishment and rehabilitation*, Wadsworth, Belmont