

## **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.
2. We wish to express our gratitude to the portfolio Committee on Correctional Services for the invitation to make a submission on the budget vote. This is always a highlight on the calendar. This submission will focus on four aspects of the budget vote which are, in our view, fundamental to the direction of the Department of Correctional Services (DCS). These are:
  - the size of the prison population;
  - the seven-day establishment;
  - the prison construction programme, and
  - spending towards the White Paper.

## **The size of the prison population**

3. The costs of the DCS are driven by four factors, as defined by the National Treasury, namely:
  - the size of the prison population
  - the number of probationers and parolees
  - the number of employees of the Department
  - the strategic intentions of the Department.<sup>1</sup>
4. On the latter two factors, the DCS has control over; the Department decides how many staff it wants to employ and it also determines its own strategic priorities. However, on the size of the prison population the DCS has limited control as it is at the receiving end of a decision-making process. In respect of the number of probationers and parolees it has more control, but has to operate within certain prescripts, such as the sentences imposed by the courts.
5. The budget vote proposes that 20 400 new bed spaces will be provided over the medium term expenditure period to reduce the level of overcrowding “from 64% (72 960) in 2004/5 to 13% (17 170) in 2010/11”. However, by December 2007 there were 166 267 prisoners in custody, or roughly 45% above capacity. While the remissions programme of 2005 had a dramatic effect on the size of the prison population, the total population has climbed steadily from 155 000 (August 2005) to its currently level of 166 000. This increase is the result of a steady, albeit slow, increase in both the sentenced and unsentenced prison populations. The number of sentenced prisoners has increased from 110 994 in August 2005 to 114 226 by end November 2007. The unsentenced population has increased from 44 864 in August 2005 to 53 649 by December 2007. It is also

---

<sup>1</sup> PMG Minutes of the Portfolio Committee on Correctional Services meeting, 7 March 2006.

evident that the profile of the sentenced population is changing in material ways. At present, 60% of specified capacity is occupied by prisoners serving sentences of longer than seven years.

6. The forecasting in the Budget Vote<sup>2</sup> predicts that there will be 152 504 prisoners by 2010/11.<sup>3</sup> As indicated above, this level has already been surpassed with the current population of 166 627. These projections are evidently not in line with the reality of the situation.
7. In response to the 2007/8 budget vote the Portfolio Committee on Correctional Services expressed itself as follows: “*The Committee will interrogate discrepancies in the models used to predict growth in the prison population and the projected offender figures provided by the Department and those provided by other research organisations.*” Projecting and estimating the size of the prison population has been raised by CSPRI with the Committee on previous occasions. It is our conclusion that projecting the size of the prison population, as well as the profile of the population, is fundamental to the planning of the DCS. One way to illustrate the importance of this is with reference to the number of prisoners serving sentences of life imprisonment. In 1994/5 there were approximately 400 prisoners falling in this category. By 31 December 2007 there were 7863 prisoners serving life. Effectively this means that more than two of the newly planned prisons will be occupied by prisoners serving life for at least the next 25 years. Under these circumstances it is evident that the plans to create more capacity through prison construction will be a constant, but unsuccessful, game of ‘catch-up’.
8. It is indeed systemic conditions that are creating and contributing to prison overcrowding and if current trends continue, prison population figures will soon be back to the 2005 levels. This requires an urgent review of sentencing legislation as well as policies and practices. The increase in the unsentenced population also indicate that an urgent assessment of case administration is required to review the number of unsentenced prisoners as well as the period that they remain in detention before their case are adjudicated.<sup>4</sup>
9. It is in view of these trends and shifts in the prison population that we submit that the DCS must develop, as a priority, a reliable model for forecasting the size and profile of the prison population.

### **The seven-day establishment**

10. The seven-day establishment was conceived to provide a full and comprehensive service to prisoners with specific reference to providing three meals as required by section 8 of the Correctional Services Act and to reduce the reduction of overtime payment to the staff of the Department. To this end the staff establishment of the DCS increased from 35 960 approved posts in 2004/5<sup>5</sup> to 42 222 in 2006/7 and to 45 674 in 2007/8.<sup>6</sup> This is an

---

<sup>2</sup> National Treasury (2008) *Estimates of National Expenditure – Vote 18 Correctional Services*, pp. 357, <http://www.treasury.gov.za/>, p. 354.

<sup>3</sup> The current capacity is 114 559 and the new prisons will add 20400 new beds, bring capacity to 134 959. The projected occupation for 2010/11 is 113% or 152 504.

<sup>4</sup> At the end of November 2007, 44% of the unsentenced prison population had been in custody for longer than three months.

<sup>5</sup> Dept. of Correctional Services (2005) *Annual Report 2004/5*, Pretoria, p. 131

<sup>6</sup> National Treasury (2008) *Estimates of National Expenditure – Vote 18 Correctional Services*, pp. 357, <http://www.treasury.gov.za/>, p. 359

increase of 27% in the total staff establishment over a three-year period. The 2007/8 staff establishment also brings the staff-to-prisoners ratio to 1 official for every 3.5 prisoners.<sup>7</sup>

11. Reviewing the budget votes of the preceding two years with reference to the seven-day establishment raises some questions. The 2006/7 budget vote reported: “*The decrease of 0.8% in 2008/9 is a result of the final implementation of the seven-day working week*”.<sup>8</sup> The 2007/8 budget vote reported: “*Compensation of employees increases over the medium term, providing for the appointment of more officials for full implementation of the seven day establishment, which started in June 2005 and runs to March 2008.*”<sup>9</sup> The 2008/9 budget vote, with reference to the centres of excellence, states: “*Training on unit management began in January 2008 in all centres of excellence, and a range of projects are to be piloted. These include: the seven day establishment and . . .*”.<sup>10</sup>
12. These reports in the three budget votes create a confusing picture in respect of what has been achieved in respect of the seven-day establishment. On the one hand it is clear that a significant number of staff had been recruited, as indicated above in paragraph 10. On the other hand, it appears that the seven-day establishment will from 2008/9 be piloted at the centres of excellence. The 2006/7 budget vote also predicted that the seven-day establishment will be fully implemented by 2008/9 but this, based on the 2008/9 budget vote, did not happen. This then raises the question of what the purpose was of recruiting more staff during 2006/7 to 2007/8 if the seven day establishment was only to be piloted at the centres of excellence in 2008/9? In view of this, we submit that the Committee seeks clarification from the DCS on its plans in respect of the seven-day establishment. It is also submitted that the Committee seeks clarification from the DCS on any further large scale recruitment of entry level staff. The actual number of staff required for the seven-day establishment is becoming an issue of increasing importance. The issue of staff recruitment also becomes relevant in respect of the PPPs, discussed further below.

## **The prison construction programme and PPPs**

### ***Is it cheaper?***

13. The construction of eight new prisons was announced in 2005 and 2006 by President Mbeki in his State of the Nation addresses.<sup>11</sup> The construction of six new prisons is planned for in the Medium Term Expenditure Estimates (MTEE). Progress has been extremely slow and to date construction of only one (in Kimberley) has started and is scheduled to be completed in 2009 at a cost of R810 million. With capacity for 3000 prisoners, the construction cost is therefore R270 000 per bed. It must be assumed that the construction of further prisons will exceed this cost estimate. Into the costs must still be included the payment for services over a 25-year period, which includes the funds borrowed by the private sector to fund the construction of the prisons.
14. One UK study found that privately operated prisons are between 13-18% cheaper than government operated prisons.<sup>12</sup> Other studies have found that there is little or no

---

<sup>7</sup> The ratio is calculated based on the total prison population for November 2007, which was 163 464.

<sup>8</sup> National Treasury (2006) *Estimates of National Expenditure – Vote 18 Correctional Services*, pp. 357, <http://www.treasury.gov.za/>, p. 446

<sup>9</sup> National Treasury (2007) *Estimates of National Expenditure – Vote 18 Correctional Services*, pp. 357, <http://www.treasury.gov.za/>, p. 379

<sup>10</sup> National Treasury (2008) *Estimates of National Expenditure – Vote 18 Correctional Services*, pp. 357, <http://www.treasury.gov.za/p.> 356

<sup>11</sup> *State of the Nation Address 2006* <http://www.info.gov.za/speeches/2006/06020310531001.htm> Accessed 17 March 2007

<sup>12</sup> Genders E (2003) Privatisation and Innovation – Rhetoric and Reality: The Development of a Therapeutic Prison, *The Howard Journal*, Vol. 42 No 2, p.154

difference in cost between public and private sector prison and another study from the UK found that it was in fact 2-3% more expensive.<sup>13</sup> Statements that PPPs are cheaper than government operated prisons should therefore not be accepted as fact on face-value. Costing projects over such a long time period with a wide range of variables is extremely complex and unforeseen factors may indeed have a material impact on costs.<sup>14</sup>

15. One way in which private operators reduce cost is by saving on staff. Private operators in Scotland typically pay their operational staff 25% less than the public sector and their management staff more than in the public sector.<sup>15</sup> Private operators are able to reduce costs by offering lower wages, lower pension fund contributions and a lower staff to prisoner ratio.<sup>16</sup> One authority on the issue concluded that: “[However,] from existing research the indication is that only modest savings are produced and it is not clear exactly how they are achieved, what the effect on qualitative standards is, or whether they are the unique by-product of private sector efficiency.”<sup>17</sup>

### **Privatising the core mandate**

16. Using the current size of the sentenced prison population of 114 266 as guide, it would mean that when all the PPPs are operational (the existing two plus the five new, noting that Kimberley is not a PPP), that a total of 27 000 prisoners or 23.6% of the sentenced prison population will be imprisoned in facilities operated by the private sector. It needs to be asked whether it is indeed good practice and advisable to sub-contract such a large proportion of the Department’s core mandate to the private sector. At the risk of being facetious, it needs to be asked if a quarter is acceptable, why not sub-contract half or three-quarters of the core mandate. In the UK approximately 10% of prisons are sub-contracted to the private sector.<sup>18</sup>

### **Value for money**

17. Advocates of privatisation argue that private sector principles and methods bring accountability and management skills to the sector and a visitor to any of the two existing private prisons will find little reason to disagree with this position. Even opponents of privatisation will agree that these two facilities are well-managed and that they do present a model of good prison management to the DCS. The question is then why the public sector is not able to achieve similar accountability and management standards and practices?
18. Advocates of privatisation argue that it brings better value for money. If ‘value for money’ is the yardstick, how is this value for money measured? Is this only limited to what the state spends on an annual basis or do we include other measures, for example, the benefits of private sector business models to the broader public service and its employees. It would not be ‘value for money’ if the PPPs operate as islands of ‘value or money’ in a sea of low-value-for-money. Instead, PPPs should make a value generating and value distributing contribution within the broader system: it should be the proverbial yeast in the dough. There is scope for adding value to the existing approach to PPPs that go beyond the narrowly defined scope of service delivery agreements. If the PPPs are to

---

<sup>13</sup> Thompson P (2000) PPPs in criminal justice, *New Economy*, IPPR, p. 152.

<sup>14</sup> The industrial action, riots and security breaches recently at Kutama-Sinthumule resulted in heavy penalties imposed on the operators and this must have had significant impact on their profit margins.

<sup>15</sup> Genders E (2003) Privatisation and Innovation – Rhetoric and Reality: The Development of a Therapeutic Prison, *The Howard Journal*, Vol. 42 No 2, p.155.

<sup>16</sup> Thompson P (2000) PPPs in criminal justice, *New Economy*, IPPR, p. 153.

<sup>17</sup> Thompson P (2000) PPPs in criminal justice, *New Economy*, IPPR, p. 152.

<sup>18</sup> Thompson P (2000) PPPs in criminal justice, *New Economy*, IPPR, p. 152.

go ahead, then the particular model needs to be interrogated to ensure that long term value for the DCS and its partners are created on a sustained basis.

19. The proposed contract term of 25 years is extremely long and a motivation for this has as yet not been provided. There is indeed a good case to be made for shorter contract terms (e.g. five years). Immediate advantages would be that the contracts are reviewable and can be renegotiated. Moreover, specifications can be changed to meet the changing needs of the DCS. The problems with the fixed 25-year contracts were recently illustrated in respect of the existing two PPPs.

### ***Addressing the key problem***

20. Fundamental to the debate on PPPs is what the DCS wants to achieve and more importantly, the priority problems it needs to address *en route* to the full implementation of the Correctional Services Act and White Paper. The problems that are currently undermining these objectives are system wide and systemic in nature; they are not isolated to a few prisons, certain staff members or certain prisoners. If the DCS is to address these problems, it requires system wide solutions and while PPPs may assist in addressing these problems, they are, in the current model, not able to address system-wide problems. The question is then whether the DCS is selecting the 'right tools' to fix these problems, and more specifically what would the 'right tools' look like and do PPPs meet these requirements?
21. Two of the four critical challenges identified in the White Paper relate to human resources referring to the 'prison culture' and the training of staff for the 'new paradigm'.<sup>19</sup> The White Paper is very specific about the role of staff in bringing about transformation: "*The relationship between staff and offenders is the key to correction and rehabilitation, as well as to the management of corrections.*"<sup>20</sup> (emphasis added). If it is accepted that staff capacity is indeed 'the key' to unlock the transformation process, then the construction of new prisons operated by the private sector appear to be detached from this objective. If the model of the current PPPs is followed, namely that there is limited contact between the DCS and the private prisons at operational and training levels, then the chances are slim that the DCS staff will acquire any new skills and knowledge about improved prison management.

### ***A radical shift in policy***

22. On 19 February 2008 the DCS briefed the Portfolio Committee on Correctional Services on progress made in the prison construction programme. From this meeting it is evident that the Portfolio Committee is extremely concerned about the DCS proposal for fully privatised facilities, similar to the two existing privately operated prisons in Bloemfontein and Makhado. The Committee was concerned about the change in policy and cited the minutes of a Committee meeting on 2 May 2006 where the Minister explained that the DCS has moved away from the Public Private Partnerships (PPP) model due to the high costs involved. The Committee also expressed concern about the constitutionality of the private sector being responsible for the incarceration of citizens and that the PPP situation was 'not enabling management of the correctional system'. CSPRI shares the Committee's concern in this regard and also about the radical change in policy on PPPs adopted by the DCS.
23. It is of critical importance to the integrity of the DCS that decisions about private sector involvement be taken in a completely open and transparent manner. The recent

---

<sup>19</sup> The other two critical challenges are: 'overcrowding and the state of the DCS facilities', and 'structuring for the new paradigm'. (White Paper on Corrections p. 33 para 2.9.1)

<sup>20</sup> Dept of Correctional Services (2005) *White Paper on Corrections* p. 55 para 8.2.1

(November 2007) proclamation by the President mandating the Special Investigations Unit (SIU) to investigate a range of matters<sup>21</sup>, believed to relate, amongst others, to the procurement of goods and services by the DCS from the private sector, serves as a stark reminder of the duty placed on the Department and Parliament to ensure transparency when transactions of this scale are engaged in.

### **Location and size**

24. There are two further issues related to the prison construction programme. The first concerns the size of 3000 prisoners per unit. These are large prisons by all standards and would result in the significant concentration of prisoners at these facilities. A consequence of this will be that prisoners may not have access to their families, especially families from rural areas. The White Paper and the Correctional Services Act place great emphasis on family contact and regard it as an important feature of the reintegration process. Large prisons, as those being proposed, will undermine this objective. Smaller units that are decentralised enabling people to be imprisoned closer to their communities of origin would be more aligned to the objectives of the White Paper. The second concern is the proposed sites for these prisons. The proposed sites are: Kimberley (already under construction), Nigel, Klerksdorp, Leeuwkop, Port Shepstone, Polokwane, Allandale and East London. A closer inspection of current occupation figures reveals that few of the identified sites are situated where severe prison overcrowding is experienced. It would therefore be helpful if a clearer motivation is provided by the DCS for the selection of these particular sites. Overcrowding should not be seen only as a national and general figure. There are indeed great differences between individual prisons and even sections inside prisons.

### **Spending towards the White Paper**

#### ***Trends in the Programmes***

25. It may indeed be trite to say that the DCS has only 17 years left to implement the 20-year vision of the White Paper. However, a closer inspection of current and planned spending on the four programmes that would embody the vision of the White Paper raises some questions as to how this vision will indeed be realised. The *Corrections Programme* show significant increases from 2004/5 to 2010/11. Much of this is allocated towards risk assessment and profiling, as well as Case Management Committees that advise the Correctional Supervision and Parole Boards (CSPB). The increase in the *Corrections Programme* is further accounted for in the re-allocation of staff expenses formerly under other programmes.
26. The *Care Programme* showed a significant increase in past years as a result of the introduction of the three-meal per day system and the progressive implementation of a national HIV/AIDS programme. The *Development Programme* description in the MTEE is, however, vague on what exactly spending will be aimed at. In 2005/6 a significant amount was spent on the installation of television monitors and these will be used in future for education and communication purposes. The *Social Reintegration Programme* budget will increase by 6% from 2008/9 to 2010/11 to 'provide for pre-release and reintegration programmes'.

#### **Performance indicators**

---

<sup>21</sup> Proclamation by the President of the Republic of South Africa, No. R. 44, 2007. November.

27. The Budget Vote also, for the first time, provides very specific performance indicators for the DCS.<sup>22</sup> One of these indicators is 'Number of offenders serving more than 24 months who are assessed and have sentence plans'.<sup>23</sup> At the end of December 2007 there were 100 291 sentenced prisoners in South Africa serving sentences of longer than 24 months. The performance indicators in the budget show that in 2007/8 there will be 1400 prisoners in this category with sentence plans, in the following year 2800, then 5600 and in 2010/11 a total of 8400 prisoners with sentence plans. Cumulatively, this represents 18% of the current population of prisoners serving sentences of longer than 24 months. The same performance indicators set very high targets in respect of prisoners participating in needs-based care sessions; 277 860 – 296 000 sessions per year. Between 65 000 and 85 000 prisoners are also targeted for participation in development programmes, and a further 22 500 prisoners are targeted for participation in formal education. Given the low number of prisoners for whom sentence plans would be in place, it is not clear how these high numbers will be selected for participation in needs-based care programmes, formal education and development programmes. It should, after all, be the sentence plan that determines what activities and programmes a prisoner should participate in.

### **Spending on rehabilitation**

28. Budget votes since the release of the White Paper, with its overarching purpose of rehabilitation, pose an interesting question: How does one spend on rehabilitation? Rehabilitation and social reintegration programmes do not ordinarily involve large capital programmes or expensive equipment. Typically it entails socio-psychological interventions aimed at cognitive behavioural modification of offenders, usually in the form of semi-structured programmes. While there are personnel costs involved, the interventions do not require significant expenditure above these in most instances. Even post-release support services are not dependent on significant capital costs similar to that of prison construction or security services. However, securing the right staff, with the correct skills and required levels of motivation are significant challenges and it is well known that the DCS is finding it difficult to retain scarce skills. It then appears as if it is indeed easier to spend the budget on large capital works and technologically advanced security systems.

29. One option is to acquire rehabilitation services from the private sector and given the turn-around on PPPs, it is evident that the DCS has already selected this option through the planned construction of eight new prisons of which seven will ultimately be operated by the private sector. Following the model of the existing two private prisons, there will be a full range of services available at these prisons. The second option is the involvement of civil society on a significant scale in the rehabilitation and reintegration of prisoners and ex-prisoners. There are numerous non-governmental organisations (NGOs) already providing services to prisoners, ex-prisoners and their families without payment from the DCS. This has been a bone of contention for many years amongst NGOs who feel that they are contributing significantly to the objectives of the Department without receiving compensation and little recognition. This situation is indeed in need of fundamental review.

### **Conclusion**

---

<sup>22</sup> National Treasury (2008) *Estimates of National Expenditure – Vote 18 Correctional Services*, pp. 357, <http://www.treasury.gov.za/>

<sup>23</sup> It should be noted that the Correctional Services Act requires that all prisoners serving a sentence of longer than 12 months should have sentence plan, although this will in all likelihood be raised to 24 months by the Correctional Services Act Amendment Bill.

30. Even though the DCS continue to face significant challenges, it is our view that significant advances have been made in the past two years to place it on the correct course. The following are worth noting in this regard:

- greater clarity and consistency in the strategic plan based on realistic targets;
- a concerted and focussed effort to address audit qualifications, and
- recent successes in addressing corruption.

End

**Prepared by:**

Lukas Muntingh

Coordinator: CSPRI

Community Law Centre

[lmuntingh@uwc.ac.za](mailto:lmuntingh@uwc.ac.za)

Tel. 021-959 2950

Cell 082 200 6395

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