

JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES

ANNUAL REPORT FOR THE PERIOD 01 APRIL 2012 TO 31 MARCH 2013

Submitted to the Honourable Mr. Jacob Gedleyihlekisa Zuma

President of the Republic of South Africa

and

The Honourable Mr. Sibusiso Ndebele

Minister of Correctional Services

and

The Honourable Dr. Ngoako Ramatlhodi

Deputy Minister of Correctional Services

by

The Inspecting Judge

Judge Vuka Eliakim Maswazi Tshabalala

(in compliance with section 90 (4) of the

Correctional Services Act 111 of 1998)

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Acronyms / Abbreviations

AG	Auditor General
CEO	Chief Executive Officer
CGE	Commission for Gender Equality
CMC	Case Management Committee
Constitution	Constitution of the RSA Act 108 of 1996
CSA	Correctional Services Act 111 of 1998, as amended
CSO	Civil Society Organisation
CSPB	Correctional Supervision and Parole Board
CSPRI	Civil Society Prison Reform Initiative
DCS	Department of Correctional Services
EPMDS	Employee Performance Management and Development System
HCC	Head of Correctional Centre
ICCV	Independent Correctional Centre Visitor
IPID`	Independent Police Investigative Directorate
MTEF	Medium Term Expenditure Framework
NPA	National Prosecution Authority
OPP	Office of the Public Protector
PFMA	Public Finance Management Act 29 of 1999, as amended
Portfolio Committee	Parliamentary Portfolio Committee on Correctional Services
PSA	Public Service Act 147 of 1999, as amended
SAHRC	South African Human Rights Commission
SAPS	South African Police Services
SCOPA	Standing Committee on Public Accounts
Sonke	Sonke Gender Justice Network
UK	United Kingdom
VC	Visitors' Committee
VCCO	Visitors Committee Co-Coordinator

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Foreword



This report covers the period 1 April 2012 to 31 March 2013 and represents my first report for an entire year. The previous report covered the period when my predecessor, Judge Deon Hurter Van Zyl, held office for the first six months and I for the latter period.

In my foreword to the 2011/2012 Annual Report I reported that on my assumption of office the Judicial Inspectorate had initiated the process of transforming the office with the objective of enhancing the quality and frequency of its services to inmates, which I fully endorsed after discussions with my staff. The project was induced by an internal review of the Inspectorate's structure, staffing and effectiveness. The Ministry, Department of Correctional Services (DCS), the Parliamentary Portfolio Committee on Correctional Services ("the Portfolio Committee") as well as civil society organs were kept informed of the process and approved the decision. A discussion initiated by the Portfolio Committee on the Inspectorate's relationship with the Ministry and Department about its further independence had commenced but has not been finalised. The structural placement of the Inspectorate within the DCS requires the legislature's attention and it is hoped that a broad ranging discussion involving all role-players will be given impetus, preferably in the legislature's current term. In my view since the establishment of the Inspectorate in 1998 it has reached the point where its importance and relevance in supporting constitutional democracy are indisputable. The Bill of Rights is the cornerstone of democracy in South Africa and it is apt to quote section 7(2): "*The state must respect, protect, promote and fulfil the rights in the Bill of Rights*". The Inspectorate, independent of the DCS, is the appropriate forum for the role envisaged by the Bill of Rights.

In the pages that follow I provide, as is my statutory obligation in terms of section 90(4) of the Correctional Services Act 111 of 1998 (as amended), my report to the President of South Africa, the Honourable JG Zuma and the Minister for Correctional Services, the Honourable S Ndebele and his deputy, the Honourable Dr N Ramathodi, providing an overview of my office's operations for the 2012/2013 period. I record my appreciation to the President, Ministry and the National Commissioner for Correctional Services, Mr T Moyane, for their and their staff's support to my office. Similarly I am grateful to the judges of the Constitutional and High Courts who have visited correctional facilities and provided me with their reports for their insights. My role as Inspecting Judge has also been supported by the Portfolio Committee on Correctional Services and my appreciation to its chairperson, the Honourable Mr V Smith, and members of the committee for their insights. The fraternal organs of state, including the offices of the Public Protector, South African Human Rights Commission, Legal Aid South Africa, Independent Police Investigative Directorate, and others who have referred matters to my office and with whom I have met, have provided useful and instructive insights on their operations which my office has taken heed of. Without the participation of civil society organs our democratic dispensation would be lacking. I

thank Sonke Gender Justice Network, the Civil Society Prison Reform Initiative and other civil society organisations for their role in the realm of Corrections in our country. Lastly and by no means least, my sincere appreciation to my Chief Executive Officer, Adam Carelse, the staff of the Inspectorate and the Independent Correctional Centre Visitors, whose dedication to improving the lives of inmates has enabled me to fulfil my tasks. To each and every sentenced offender and remand detainee, I trust that your incarceration is served within the rules and that upon your release you rejoin our communities with welcoming arms and make a meaningful contribution despite your temporary removal from society and deprivation of liberty.

In the international arena the Inspectorate is a source of credible evidence often quoted and referred to by, for example, the United Nations and continental organisations. We have hosted, amongst others, a delegation of Swedish lawyers and human rights organisations from Zimbabwe. In the United Kingdom (UK) the testimony of my predecessor, Judge Van Zyl, in the extradition matter of the Government of the Republic of South Africa and Shrien Dewani was accepted as an independent, credible and reliable view of the state of corrections in our country and has confirmed the importance of the Inspectorate in the jurisprudence of the UK. During the course of 2013 the Inspectorate has again been called to provide independent testimony in three further extradition matters in the UK. Our impending testimony will again provide our own assessment of the state of our facilities to assist the courts in coming to a decision.

During my tenure, over and above the activities of the Inspectorate I have chosen to focus on children and juveniles in our correctional facilities. The Bill of Rights requires that *“a child’s best interests are of paramount importance in every matter concerning a child”*. My programme is to ensure that the relevant constitutional provisions that fall within the ambit of the jurisdiction of the Inspectorate, namely, the right of every child *“not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be – (i) kept separately from detained persons over the age of 18 years; and, (ii) treated in a manner, and kept in conditions, that take into account the child’s age”*, are adhered to in the strictest terms. A joint project has been initiated between the Civil Society Prison Reform Initiative and myself in which much progress has been made.

This report is structured into various chapters and commences with describing the functions and operations of my office in greater detail as well as that of the various Directorates.

CHAPTER ONE: ADMINISTRATION

1. Introduction

This chapter of the report introduces the Inspectorate's statutory mandate and provides information on the vision, mission and values, structural transformation, management, human resources, financial management and supply chain management of the Inspectorate.

1.1 Statutory mandate

The Inspectorate draws its primary mandate from the Correctional Services Act ("CSA"), Chapters IX and X. Chapter IX provides for an independent office under the control of the Inspecting Judge, to be termed a Judicial Inspectorate for Correctional Services ("the Inspectorate").¹

Chapter IX further provides that the object of the Judicial Inspectorate is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres.²

Chapter IX goes on to provide for the appointment of the Inspecting Judge³ and his or her powers, duties and functions;⁴ the appointment of the Chief Executive Officer (CEO), who is responsible for all administrative, financial and clerical functions of the Inspectorate;⁵ and the appointment of staff and assistants.⁶

Chapter X provides for the appointment of one Independent Correctional Centre Visitor (ICCV) for each correctional centre.⁷ An ICCV must be given access to any part of the correctional centre and any document or record requested.⁸

ICCVs must deal with complaints of inmates through regular visits, interviewing inmates in private, and must record complaints in an official diary and discuss them with the correctional centre Head.⁹

An ICCV must report all unresolved complaints to a Visitors' Committee (VC), if one has been established at the ICCV's centre, or to the Inspecting Judge.¹⁰ The Inspecting Judge may make rules concerning the appointment of ICCVs, may specify the number of visits to be made to the correctional centre over a stated

¹ Section 85(1) Correctional Services Act 111 of 1998, as amended

² Section 85(2) Correctional Services Act 111 of 1998, as amended

³ Section 86 Correctional Services Act 111 of 1998, as amended

⁴ Section 90 Correctional Services Act 111 of 1998, as amended

⁵ Section 88A Correctional Services Act 111 of 1998, as amended

⁶ Section 89 Correctional Services Act 111 of 1998, as amended

⁷ Section 92 Correctional Services Act 111 of 1998, as amended

⁸ Section 93(2) Correctional Services Act 111 of 1998, as amended

⁹ Section 93(1)(a)-(d) Correctional Services Act 111 of 1998, as amended

¹⁰ Section 93(5) Correctional Services Act 111 of 1998, as amended

period of time and the minimum duration of a visit, and may make rules regarding any other aspect of the work of an ICCV.¹¹

1.2 Bill of Rights

The Inspectorate, in carrying out its work, is particularly mindful of the following rights contained in the Bill of Rights of South Africa's Constitution:

- Section 35(2)(e) – Arrested, detained and accused persons: *“Everyone who is detained, including every sentenced prisoner, has the right to ... conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.”*
- Section 10 – Human dignity: *“Everyone has inherent dignity and the right to have their dignity respected and protected.”*
- Section 12(1) (c) (d) (e) – Freedom and security of the person: *“Everyone has the right to freedom and security of the person, which includes the right ... to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.”*
- Section 33 – Just administrative action: *“Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.”*

1.3 Legislation

The Inspectorate is further guided in its work by the following legislation:

- The Promotion of Administrative Justice Act 3 of 2000, as amended
- The Criminal Procedure Act 51 of 1977, as amended
- The Health Act 61 of 2003, as amended
- The Child Justice Act 75 of 2008, as amended
- Promotion of Access to Information Act 2 of 2000, as amended
- The Public Service Act 103 of 1994, as amended
- The Employment Equity Act 55 of 1998
- The Labour Relations Act 66 of 1995

¹¹ Section 93(6) Correctional Services Act 111 of 1998, as amended

- The Basic Conditions of Employment Act 75 of 1997, as amended
- The Skills Development Act 97 of 1998, as amended
- The Occupational Health and Safety Act 85 of 1993, as amended
- The Compensation for Occupational injuries and Disease Act
- The Public Finance Management Act 1 of 1999, as amended
- The Preferential Procurement Policy Framework Act 5 of 2000, as amended
- The Broad Based Black Economic Empowerment Act 53 of 2003
- The Division of Revenue Act 6 of 2011, as amended
- The Appropriation Act 9 of 2008.

1.4 Vision, mission and values

The Inspectorate's vision is: *"to embody independent oversight of correctional centres for the advancement of human rights for all inmates"*.

To this end, the mission of the Inspectorate is to:

- Acquire up-to-date, accurate and reliable information regarding the conditions prevailing in correctional centres and the treatment of inmates in such centres;
- Facilitate inspections relating to the treatment of inmates and conditions in correctional centres in order that the Inspecting Judge may report to the Minister of Correctional Services and the Portfolio Committee on Correctional Services on these;
- Submit an annual report to the President and the Minister;
- Prevent human rights violations through the monitoring of mandatory reporting systems;
- Maintain an independent complaints system;
- Ensure and maintain the highest standard of corporate governance in accordance with best practices;
- Promote and facilitate community involvement in correctional matters through the appointment of ICCVs and external stakeholders; and
- Promote transparency regarding the activities of the Inspectorate.

In carrying out this work, the Inspectorate seeks to embrace the following values:

- Sound communication – The Inspectorate aims to listen to, receive, filter, analyse and transmit information related to correctional matters in sound manner.
- Ethical practices – In dealing with the public, colleagues and inmates, the Inspectorate aims to cultivate a culture of mutual respect, objectivity, transparency and integrity.

- Independence – The Inspectorate aims to carry out its work in an unbiased and impartial manner.
- Accountability – The Inspectorate aims to take ownership of its functions and responsibilities.
- *Batho Pele* principles – The Inspectorate aims to render its services in line with the *Batho Pele* principles.
- Teamwork – The Inspectorate aims to foster good working relations with all stakeholders in order to enhance service delivery.

1.5 Strategic planning session

The Inspectorate held a strategic session on the 14th and 15th February 2013 to reflect on the baselines and targets that were set in the 2011/2012 financial year and to measure the outcomes of the achievements made during the preceding year. Unit managers and Head of Directorates were requested to attend the two-day session. During the strategic session, the need to set more baseline items was identified as a result of the Inspectorate's new post establishment. Managers were also afforded an opportunity to propose measures to strengthen the Inspectorate's operations.

Various concerns were noted and proposals were made, including the following:

- Capacity constraints were raised throughout all Units and/or Directorates.
- Internal systems within Units should be strengthened.
- Policies need to be amended and reviewed, and draft policies and procedure manuals endorsed.
- Support Services noted that the reliance on DCS transversal systems results in operational challenges for the Directorate. There is also a need to review the Inspectorate's ICCV payment system as it has been in place since the Inspectorate's inception.
- The Directorate: Legal Services and Management Regions agreed that the alignment between the two Directorates must be strengthened.

1.6 Organisational restructuring update

As reported in the Inspectorate's 2011/2012 Annual Report, the Inspectorate is undergoing a restructuring process. Prior to 2011, the Inspectorate had two offices: the Head Office in Cape Town and one regional office in Centurion. A further three regional offices were established in George, Bloemfontein and Durban during the 2011/2012 financial year. Employees at the Head Office relocated to take up positions in these additional regional offices, pending finalisation of the restructuring process. The Inspectorate believes that the organisational shift was necessary to maintain effective management and strengthen further the ICCV system. More importantly, it would also ensure that services are more accessible to inmates, their families and ICCVs. The relocation doubled capacity needs at regional and Head Office levels, which accompanied budgetary constraints. On 22nd June 2012, a job evaluation process was concluded within the organisation, which would

make provision for additional positions ancillary to the restructuring process. A proposed structure was drawn up and submitted to the Minister of Correctional Services for his approval as this is a prerequisite for the establishment of additional posts and the restructuring of the Inspectorate. The Inspectorate is thankful for the support and assistance of the DCS during this process of operational expansion.

The CEO of the Inspectorate ensured conclusion of the restructuring process by engaging with the DCS and attending meetings with various stakeholders. This was a long and challenging period for the administrative Head. Towards the end of the third quarter, the Honourable J Sibusiso Ndebele endorsed the restructuring process, marking a significant milestone for the Inspectorate. However, the Inspectorate now faces other challenges.

Although the restructuring process dates back to 2011 and was approved and signed off by the Minister in 2012, the DCS did not allocate the proposed budget providing for the establishment of new posts in the Inspectorate. This situation is challenging for the organisation as the staff on fixed contracts, exercising crucial functions, constitute 43% of the total staff complement. This is not good for the organisation or the morale of staff members whose contracts have been renewed twice since 2011. A second challenge is the inability to create posts for the Inspectorate on the PERSAL system that is controlled by the DCS. The final challenge is the delay in procurement of three additional offices approved by the DCS National Commissioner in November 2011. In this instance, the Department of Public Works (DPW) is responsible for the delay.

1.7 Independence of the Inspectorate

On the 31st October 2012 the Portfolio Committee on Correctional Services invited civil society organisations (CSOs) to make submissions on strengthening the independence of the Inspectorate. The need for further engagement on the issue was identified for further debate before the Portfolio Committee.

The Inspectorate submitted a document to the Portfolio Committee in respect of the proposed engagement. However, the engagement was cancelled. The purpose of the submission document was to lay the foundation for interaction with the Portfolio Committee, CSOs and human rights institutions on matters pertaining to the overall independence of the Inspectorate. Submissions made by various stakeholders at the Committee meeting on 31st October 2012 were considered when drafting the document. Concerns raised by the Chairperson included: (a) the issue of independence – structural, administrative, financial and operational; and (b) the Inspectorate's powers and functions. A summary of the Inspectorate's submission document is provided below, addressing these two major concerns.

1.7.1 Background

The primary object of the Inspectorate is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates and on conditions in these centres.¹² The Inspectorate's mandate implies that the office is an oversight body over correctional facilities and/or the DCS, thus ensuring that the rights of inmates enshrined in section 35(2) of the Constitution¹³ are upheld. The Inspectorate seeks to achieve this through its inmate complaints system, investigating complaints, inspecting correctional facilities and monitoring the mandatory reporting system. The following provisions in the Correctional Services Act¹⁴ are identified as having an effect on the independence of the Inspectorate:

- Section 88 of the CSA states that the CEO of the Inspectorate is appointed by the National Commissioner of the DCS after the Inspecting Judge has identified a suitably qualified and experienced person. (This section implies or creates the perception that the Inspectorate is not an independent body in that the executive head of the oversight body is appointed by the DCS, the same Department it is mandated to oversee.)
- Section 90 of the CSA requires the Inspecting Judge to submit a report on each inspection to the Minister and the relevant Parliamentary Committees on Correctional Services. (This section affirms the Inspectorate's independence in that the Inspecting Judge submits these reports to the Parliamentary Portfolio Committee on Correctional Services and not the DCS.)
- Section 91 of the CSA states the DCS is responsible for all expenses of the Inspectorate. (This section has huge implications for the overall structural and operational independence of the Inspectorate as an oversight body, which has a filtering down effect on its effectiveness in fulfilling its mandate.) The Inspectorate's category of expenses is threefold, namely: (a) human resource; (b) finance; and (c) assets. In terms of human resources, in the Inspectorate's 2011/2012 Annual Report it was reported that the Inspectorate needs structural change. While restructuring was approved towards the end of 2012, there are no funds to finance posts on the new fixed establishment necessary for efficient and effective functioning. The Inspectorate's budget for the same year comprised 0.1% of the DCS budget. For the 2013/2014 financial year, the Inspectorate was informed that it would receive the same budget as the 2012 financial year, notwithstanding restructuring and three additional regional offices. This situation also affects the asset and infrastructural requirements of the Inspectorate, and has an impact on the effectiveness of the Inspectorate in fulfilling its mandate.

¹² Section 85 (1) – (2) Correctional Services Act 111 of 1998, as amended

¹³ The Constitution of the Republic of South Africa, Act 108 of 1996

¹⁴ The Correctional Services Act 111 of 1998, as amended

1.7.2 Overview of the Inspectorate by civil society organisations

There has been vigorous debate by CSOs on strengthening the Inspectorate. Many documents submitted to the Portfolio Committee refer to the Inspectorate's structural independence and limited powers and functions.¹⁵ Amongst others, submissions on the structural independence of the Inspectorate propose amending the CSA or creating separate founding legislation to ensure direct budget allocation from National Treasury (rather than through the DCS) and that the governing statute should clarify that all appointments of the Inspectorate can be made independently and need not be made in consultation with the National Commissioner of the DCS.¹⁶

A consistent criticism leveled at the Inspectorate relates to its limited powers and functions.¹⁷ It is argued that the Inspectorate should be given enhanced investigative powers similar to that of other human rights institutions such as the South African Human Rights Commission (SAHRC), the Commission for Gender Equality (CGE) and the Independent Police Investigative Directorate (IPID).¹⁸

There have been assertions that other human rights organisations can make binding decisions unlike the Inspectorate. The Inspectorate has also been criticized for not being mandated to investigate cases of abuse but rather to seek resolution internally within the DCS and make non-enforceable recommendations.

There has been discussion that lingers on the point that the Inspectorate should have investigative powers similar to those of the IPID in order to prepare court-ready documents for submission to the National Prosecution Authority (NPA).¹⁹ Also, that the DCS should not be allowed to conduct its own internal investigations on alleged criminal acts by staff members until the Inspectorate has made a final decision regarding referral to the South African Police Service (SAPS) and the NPA,²⁰ thus hinting that the Inspectorate should envisage a model similar to that of the IPID.

¹⁵ Submission documents available at www.pmg.org.za/report/20121031-strengthening-judicial-inspectorate-correctional-services-stakeholder

¹⁶ Just Detention International, Sonke Gender Justice and the Wits Justice Project Joint Submission, p 13

¹⁷ Ibid p 2

¹⁸ Ibid p 2

¹⁹ Ibid p 10

²⁰ Ibid p 15

1.7.3 Recommendations by the Inspectorate

Structural Independence: Operational, financial, administrative

The Inspectorate identified a potential organisational model which could address some of the major structural concerns, namely a Government Component to the Ministry of Correctional Services in line with section 7A of the Public Service Act 147 of 1999 as amended (“PSA”).

The Inspectorate is a sub-component of the DCS and receives its budget from the DCS, and not from National Treasury, specifically in order to focus on its main areas of service delivery. The Inspectorate is not necessarily being prioritized in the DCS budget and/or service delivery. The core functions of the DCS are security and rehabilitation. The Inspectorate’s mandate does not fall within these functional or core areas and is thus not a priority, as can be seen from its previous allocation of 0.1% of the DCS budget.

National or provincial government components are institutional mechanisms for conferring, assigning or delegating government functions within the public service without having to confer functions to a separate juristic person (e.g. public entity) outside the public service. National or provincial government components are partnered with a principal department. The Head of Component is the accounting officer of the Government Component in terms of the Public Finance Management Act 29 of 1999 as amended (PFMA). Provision is made for original financial powers for the Head of Component, who has the powers and duties of a Head of Department in terms of the PSA and regulations. If this model is pursued, the following applies:

- *Independence*: the Inspectorate will be separate from the Department but linked to the principal department rather than a sub-component of DCS;
- *Appointment*: the CEO will still be identified by the Inspecting Judge but appointed by the Minister of Correctional Services;
- *Accountability to Executive Authority*: directly accountable to the Minister and not the National Commissioner;
- *Mandate*: powers will be conferred or duties imposed by national legislation (original and enabling): such powers or duties assigned or delegated in terms of section 7A(5) and (6) of the PSA or other legislation and functions allocated or transferred in by the Minister of Public Service Administration;
- *Main funding*: will be derived by Parliament via a transfer from the Department vote.
- *PFMA and PSA*: The Inspectorate will be subject to Chapter 5 of the PFMA and PSA. The head of the Government Component is the Accounting Officer.
- The Inspectorate will be subject to the Standing Committee on Public Accounts (SCOPA), Auditor General (AG), DPSA, and Department of Labour.

- *Employer*: the employer will remain the state and thus the Inspectorate will be governed by the PSA, PSA regulations and bargaining processes and sectoral determinations.

Mandate: Powers and Functions

Each human rights institution or oversight body is unique and was established to focus on specific core areas and/or for a specific purpose. The Independent Police Investigative Directorate (“IPID”) was created to ensure independent oversight over the South African Police Service (SAPS). Although the previous organisational form or structure of the IPID (ICD) is similar to that of the Inspectorate, the major difference is that ICD/IPID exists primarily to “police” the police in the absence of any other independent law enforcement body. Its existence is imperative to ensure that police officials involved in criminal activity are investigated by a totally independent institution and to ensure a court-ready document for submission to the NPA.

The IPID only has the power to make recommendations for criminal prosecution of police officials; the NPA is the only body with power to decide whether or not to prosecute. Therefore, the decision of the IPID is neither binding nor enforceable on the NPA. The SAPS are the official law enforcement body mandated to deal with criminal matters and hence there is no need for the Inspectorate to have the powers that are bestowed to police officers.

The SAHRC, CGE and Office of the Public Protector (OPP) have broad powers explicitly stated in their governing statutes. While in all instances they can make recommendations, these are not binding as such recommendations and/or findings can still be subjected to review in a court of law.

The CSA gives the power to the Inspecting Judge to conduct an investigation enquiry. The CSA states clearly that an Independent Correctional Centre Visitor (“ICCV”), in the exercise and performance of his/her duties, must be given access to any part of the correctional centre and to any document or record. It reiterates that the Head of the Correctional Centre must assist an ICCV in the performance of his/her duties and, if there is a refusal to do so, the dispute must be referred to the Inspecting Judge whose decision will be final.

The Inspectorate’s legal service component does conduct in-depth investigations into matters. The challenge for the Inspectorate, however, remains the DCS’s failure to respond or comply with recommendations. The Inspectorate does lack explicit reference to certain powers or functions that are bestowed upon other Chapter 9 organisations and law enforcement bodies, and it is therefore recommended strongly that the Inspectorate be granted some of these powers, given the aforementioned difficulty experienced with compliance by the DCS.

1.7.4 Conclusion

In conclusion, the Inspectorate makes the following recommendations for consideration:

- 1) The Inspectorate recommends amendments to section 85(1), 88A(1) and (2), and 91 of the CSA which would address structural concerns, including:
 - a) Section 85(1) to read: *“the Judicial Inspectorate for Correctional Services is an independent government component in the Public Service under the control of the inspecting Judge..... ”*
 - b) Section 88A(1) to read: *“The Inspecting Judge must identify a suitably qualified and experienced person as Chief Executive Officer, who: (a) is responsible for all administrative, financial and clerical functions of the Judicial Inspectorate; (b) is accountable to the **Minister of Correctional Services**; and (c) is under control and authority of the Inspecting Judge.”*
 - c) Section 88A (2) to read: *“The person contemplated in subsection (1) must be appointed by the **Minister of Correctional Services.**”*
 - d) The entire section 91 to be amended so as to allow the Inspectorate’s budget to be considered by National Treasury, or where its budget is to be derived by Parliament, via a transfer from the Department vote.
- 2) The Inspectorate recommends amendments to the CSA to strengthen the Inspectorate’s mandate, including: making explicit reference to making recommendations, provisions addressing responses from the DCS, allowing explicitly for direct or indirect referral of complaints to other Chapter 9 or constitutional organisations and law enforcement bodies such as the Public Protector, SAHRC, CGE, SAPS and/or other relevant institutions.
- 3) The drafting and or implementation of regulations in consultation with the Inspecting Judge that will give effect to the above recommendations.

In order to pursue this organisational form, the Executive Authority (Minister of Correctional Services) may only request the establishment of a Government Component if the prescribed feasibility is conducted and its findings recommend the establishment of the Government Component. Implementing the recommendation for the Inspectorate to transition into a Government Component would take a shorter period than other forms of organisational structures. It could take between nine and 12 months to establish, and once it has been approved, it would be gazetted through Presidential proclamation and listed in schedule 3 of the PSA.

The above proposal or recommendation could also be seen as a transitional arrangement similar to the position or challenges the ICD/IPID faced and could be revised in the future.

2. Management of the Inspectorate

2.1 Office of the Inspecting Judge

The Judicial Inspectorate for Correctional Services Annual Report 2012/2013 marks the first full report under the leadership of Inspecting Judge VEM Tshabalala. The Inspecting Judge characterised 2012 as a year of uprisings by inmates in correctional centres. While gangsterism in correctional centres can be seen as a major contributing factor, amongst others, we cannot ignore that inmates have become frustrated with their conditions and treatment in correctional centres.

The focus of the Inspecting Judge for the 2012/2013 period was to ensure that the statutory obligations as enshrined under section 85(2) of the CSA, read with section 35(2)(e) of the Constitution of the RSA (Act 108 of 1996), are carried out: Section 85(2) of the CSA states that the object of the Inspectorate is to facilitate inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates and on conditions prevailing in these centres, while Section 35(2)(e) of the Constitution provides that every detained person, including a sentenced person, has a right to conditions of detention that are consistent with human dignity. In order to give effect to these statutory and constitutional obligations, the Inspecting Judge conducted inspections at 16 correctional centres covering the following DCS regional management areas: Limpopo/Mpumalanga/Nelspruit, Free State/Northern Carpe, Gauteng Province and the Western Cape. Overviews of all the Inspecting Judge's inspections are encapsulated in inspection reports and were reported to Parliament on a quarterly basis throughout the year.

Irrespective of ongoing debate about the independence of the Inspectorate, these visits establish and reinforce the independence of the Inspectorate and ensure ongoing awareness of the Office of the Inspecting Judge, which is of utmost importance to the Inspectorate. (See section 1.6 on the Inspectorate's Independence.)

It was important for the Inspecting Judge to maintain an alignment of the strategic direction of the Inspectorate and ensure optimal operation of the Inspectorate. During the second quarter of the year, the Inspecting Judge met with the Deputy Minister of Correctional Services, Honourable Dr. Ngoako A Ramatlhodi, to discuss matters including the Department's functional support to the Inspectorate, the reporting system of the Inspectorate and finalisation of the restructuring process.

The finalisation of the Inspectorate's restructuring process is imperative to ensuring that the Inspectorate can meet its statutory obligations. Towards the end of the third quarter, the Minister of Correctional Services, Honourable Minister J Sibusiso Ndebele, approved the Inspectorate's new organisational structure. However, the Inspectorate still faces a challenge in that 2013/2014 budget did not make provision for the approved

establishment of posts. The Inspecting Judge has met with DCS Management to discuss the implications of the proposed budget allocation.

Stakeholder engagement and ensuring a good working relationship with the DCS is of paramount importance for the Office of the Inspecting Judge. The Inspecting Judge attended the DCS Recognition of Long Services Awards/DCS Excellence awards, the DCS World Aids Day commemoration and the DCS Choir Festival. The Inspecting Judge also attended the President's Awards for youth empowerment. It was important for the Inspecting Judge to meet with key CSOs and individuals in the area of oversight in the South African correctional system. Relationships have been strengthened with organisations that have a direct bearing on the rights of inmates, including Legal Aid South Africa, the Law Society of South Africa (Northern) and the office of the Public Protector.

As reported in the 2011/2012 Annual Report, the Inspecting Judge met with Dr. Lukas Muntingh of CSPRI to create a children's monitoring tool for use in a Special Project implemented by the Inspecting Judge, namely: "*Children and juveniles in conflict with the law.*" The children's legislative monitoring tools were created and the Inspecting Judge assisted with conducting one of the pilot projects undertaken at the Durban Westville Correctional Youth Centre. These monitoring tools have been completed and the second stage of the project will commence during the next year.

In line with the focus of the Special Project "*Children and juveniles in conflict with the law,*" the Inspecting Judge addressed children and youth in correctional centres. Arising from the Judge's inspections at the Emthonjeni Correctional Centre, a need was identified to incorporate the Emthonjeni Youth Centre into the special project and an agreement to this effect was concluded between the Inspecting Judge, the Regional Commissioner, Area Commissioner and Head of Youth Centres of the Emthonjeni Correctional Centres. (See Chapter 4, Section 4.2 on the Inspectorate's special projects.)

2.2 Office of the Chief Executive Officer

The CSA provides for appointment of a CEO as administrative and accounting head to the Inspectorate.²¹ The CEO, Mr. Adam Carelse, continued to fulfill these obligations throughout the year under review. The finalisation of the restructuring process and the establishment of the Inspectorate's regional offices were placed high on the agenda for the 2012/2013 financial year. The CEO continued to drive the process of finalising the restructuring process. The Inspectorate relies on the operational and functional support of the DCS. At the beginning of the financial year, the CEO accompanied the Inspecting Judge to a meeting with the Deputy Minister of Correctional

²¹ Section 88A Correctional Services Act 111 of 1998, as amended

Services, Honourable Dr. Ngoako A Ramatlhodi, to discuss the Department's continued functional support to the Inspectorate. The CEO continues to engage the DCS on a quarterly basis with regards to operational matters such as the renewal of lease agreements of the Inspectorate's Head Office, the Centurion regional office and the procurement of additional offices for the Inspectorate's regional management areas.

The CEO engaged with the DCS management regions in respect of the Inspectorate's mandate and complaints process. The CEO met with the Free State/Northern Cape Regional Commissioner and gave a presentation to Area Commissioners and Heads of Centres on the Inspectorate's mandate. The CEO also met with Kwazulu – Natal Area Commissioners to discuss the Inspectorate's complaints system and with the Western Cape Region to discuss the Inspectorate's second term quarterly report.

In respect of operational management issues, the CEO continuously provided leadership and direction to employees. The CEO engages with all managers and heads of units on a quarterly basis in the form of operational management meetings at the Head Office. ICCVs play a pivotal role in ensuring an effective monitoring system in correctional centres and are the backbone of the Inspectorate. Therefore, the CEO engaged frequently with the Inspectorate's ICCV post establishment to ensure that all ICCV vacancies are filled in all correctional centres.

In respect of stakeholder engagement, the CEO attended a colloquium on overcrowding and high rates of incarceration in correctional centres hosted by the Minister of Correctional Services. The CEO spearheaded the Inspecting Judge's special project and continued to drive this project with the assistance of his Unit (see Chapter 4, Section 4.2 on the Inspectorate's special projects.) The Inspectorate signed a memorandum of understanding with Sonke Gender Justice Network, and agreed on activities highlighting capacity building by and future collaboration (see Chapter 4, Section 4.4).

The office of the CEO Unit consists of a Policy and Research Manager, Assistant Researcher and Communications Officer. The Policy and Research Manager provides assistance to the CEO in respect of policy and research. The Policy and Research Manager conducted a study on parole and correctional supervision and compiled a research survey for reporting purposes (see Chapter 4, Section 4.3 for the findings). The Policy and Research Manager also contributed towards the finalisation of the children's legislative monitoring tool for the planned release of a report on children in correctional centres towards the end of the Inspecting Judge's tenure at the Inspectorate. In this respect, two pilot projects were conducted on the children legislative monitoring tool at the Durban Westville and the Brandvlei Correctional Centre. During the third quarter, the CEO, Policy and Research Manager and Assistant Researcher conducted a five-day policy review session at which all internal organisational policies were reviewed and the need for amendments and new policies were identified. One of the key responsibility areas of the Policy and Research Manager is the compilation of the quarterly reports and

all other submissions to the Portfolio Committee. In this regard, draft reports were presented timeously to the CEO, Inspecting Judge and the DCS and all deadlines were met in this regard.

A Communications Officer post has been established within the Inspectorate for the first time, with the objective of maintaining and ensuring effective internal communication of information throughout the organisation to ensure that all employees are aware of operational matters and policy decisions. The rationale was to give effect to the regionalization and to ensure that all staff members, no matter where they are located, are kept abreast of developments within the organisation. The Inspectorate has also produced a newsletter for the organisation for the first time.

The CEO accompanied the Inspecting Judge to 16 inspections at correctional centres. In addition to this, the CEO conducted inspections at 19 other centres. Thus, the CEO inspected a total of 35 correctional centres covering all 6 DCS management regions.

3. Human Resources and Development

The Sub-directorate: Human Resource and Development provides assistance to the CEO in managing the Inspectorate's fixed term contracts and fixed post establishment. It also manages performance, staff development and training, labour and human resource-related matters. The Sub-Directorate also works closely with the Policy and Research Manager in the office of the CEO.

3.1 Post establishment

The Inspectorate currently has 45 approved and funded posts on the fixed post establishment, inclusive of the Inspecting Judge. These posts are 100% filled as at 31 March 2013, with vacancies generally filled within a six-week period.

Table 1: Overview of post establishment as at 31 March 2013

Post	No of posts	Salary level
Inspecting Judge	1	-
Deputy Commissioner(CEO)	1	14
Director	1	13
Deputy Director	3	11
Assistant Director	8	9
Managers	9	8
Administrative support staff	22	2 – 7
Staff on fixed term contract	34	5 and 6

In addition, the Inspectorate has 34 fixed-term contract posts to address the immediate needs of the organisation. While the Minister of Correctional Services has approved new fixed posts for the Inspectorate, these posts have not been funded to date.

3.2 Demographic composition

The racial composition of the Inspectorate is 80% Black African, 17% Coloured, 2% White and 1% Indian. The gender distribution of the Inspectorate is 52% female and 48% male as at 31 March 2013.

3.3 Disciplinary matters

Six verbal warnings, six written warnings of which one was a final written warning, were issued to staff members as at 31 March 2013.

3.4 Staff development

There was an increase in the budget allocation for staff development, which remains a priority for the Inspectorate. Table 2 shows the courses and workshops attended by staff members during the period under review. Seven employees benefited from the Inspectorate's bursary scheme for the year under review. Employees are studying to qualify towards formal qualifications in the legal, public administration and business fields.

Table 2: Employee development and training

COURSE/WORKSHOP	SUB-/DIRECTORATE & AMOUNT OF DELEGATES
LOGIS MODULE 1 – REQUESTING AND PROCURING OF GOODS AND SERVICES	FINANCE (1)
BASIC LABOUR RELATIONS	HR AND DEVELOPMENT (1)
BURSARY APPLICATION NATIONAL CERTIFICATE OCCUPATIONALLY DIRECTED EDUCATION AND TRAINING PRACTICES: ASSESSORS CLASS (PEOPLE DEVELOPMENT AFRICA)	MANAGEMENT REGIONS (1)
INVESTIGATIONS AND REPORT WRITING (LEXIS NEXIS)	INSPECTIONS/INVESTIGATIONS (1)
CHILDREN IN CONFLICT WITH THE LAW WORKSHOP AT GOODWOOD REGIONAL OFFICE:	CEO AND LEGAL SERVICES (11)
NATIONAL CERTIFICATE OCCUPATIONALLY - DIRECTED EDUCATION AND TRAINING PRACTICES: FACILITATION SKILLS (PEOPLE DEVELOPMENT AFRICA)	MANAGEMENT REGIONS (1)
HR TRAINING SESSION (KROONSTAD TRAINING FACILITY)	HR AND DEVELOPMENT (3)

DEVELOP OUTCOME-BASED LEARNING PROGRAMME (PEOPLE DEVELOPMENT AFRICA)	MANAGEMENT REGIONS (1)
BAS CASH RECEIPTS (PROVINCIAL TREASURY)	FINANCE (1)
PARALEGAL TRAINING (ICCV'S)	MANAGEMENT REGIONS (1)
DEVELOPMENT, POLICY AND MANAGEMENT, ORIENTATION TO RESEARCH METHODOLOGY AND WRITING SKILLS AND COMPUTER SKILLS, UNIVERSITY OF STELLENBOSCH	MANAGEMENT REGIONS (1)
LOGIS – REPORTS (NATIONAL TREASURY)	FINANCE (1)

3.5 Employee Performance Management and Development System (EPMDS)

The Inspectorate complied with the EPMDS process in respect of all employees on the fixed post establishment. The DCS assisted the Human Resource Sub-Directorate with training on the EPMDS. The DCS was requested to audit the Inspectorate's EPMDS process. All employees submitted their performance assessments and have been evaluated and moderated. Eight employees received performance bonuses and eleven employees received pay progressions.

3.6 Absenteeism

Staff leave is managed by the Sub-Directorate, reported in quarterly reports and submitted to the Portfolio Committee. For the year under review, one employee received one leave day without pay.

4. Financial Management and Supply Chain Management

The Sub-Directorate: Financial Management and Supply Chain Management manage the budget, expenditure, logistical support, internal audit and property management of the Inspectorate. The Sub-Directorate also manages financial control of the ICCV System.

The Inspectorate's budget comprises two main components, namely: 1) compensation; and 2) goods and services. Section 91 of the CSA states that the DCS is responsible for all expenses of the Inspectorate. The Inspectorate submits its budget and adjustment budget to the DCS in terms of National Treasury requirements and in the format of the Medium Term Expenditure Framework (MTEF). In the spirit of the provision in the CSA, the DCS submits the Inspectorate's budget to National Treasury for consideration.

4.1 Budget and expenditure

The Inspectorate was allocated a budget of R29 693 000 for the 2012/2013 financial year, which (in our calculation) represents 0.17% of the Department's total budget vote. The allocated budget was increased to R31, 832,600 and finally adjusted to R31, 832,500. At the end of the financial year, the Inspectorate's expenditure was R31, 321,506.67. During the 2011/2012 financial year the expenditure was R24, 174,206. The expenditure in the current year represents an overall increase of approximately 22.82% from the previous financial year. The increase can be attributed to the following factors: 1) the approved structure which includes additional posts; 2) additional regional offices; and 3) the increased need for additional ICCV posts. The table below illustrates the Budget allocation and expenditure over the previous three-year period.

Table 3: Budget of the Inspectorate, 2008/9–2012/12

	2010/2011	2011/2012	2012/2013
COMPENSATION OF EMPLOYEES	R 18,350,039.26	R 20,368,250.63	R 24,854,192.92
SALARIES: PERMANENT STAFF	R 9,067,002.04	R 10,097,816.21	R 12,251,234.57
SALARIES: ICCVs & CONTRACT STAFF	R 9,283,037.22	R 10,270,434.42	R 12,602,958.35
GOODS & SERVICES	R 1,912,741.23	R 3,805,955.63	R 6,467,313.75
COMMUNICATION	R 362,041.72	R 398,344.52	R 191,994.69
TRAVEL & SUBSISTENCE	R 1,082,903.46	R 1,986,269.80	R 2,975,901.65
LEASES: DOMESTIC EQUIPMENT	R 22,622.90	R 29,591.04	R 205,351.38
STATIONARY & PRINTING	R 188,927.81	R 333,354.37	R 256,560.12
VENUES & FACILITIES	R 123,151.45	R 165,766.80	R 61,138.90
OTHER	R 133,093.89	R 892,629.10	R 2,776,367.01
TOTAL EXPENDITURE	R 20,262,780.49	R 24,174,206.26	R 31,321,506.67

The item "Compensation of Employees" in Table 3 illustrates the balance in compensation over the three-year period in line with the increased staffing needs of the Inspectorate. The marked increase in Goods & Services, from R3, 805,955.63 in 2011/12 to R6, 467,313.75 in 2012/13, can be attributed to the establishment of the Office of the Inspecting Judge and regional offices in Durban, Bloemfontein and George.

Table 4: Breakdown of "Other" expenditure

RESETTLEMENT COST	R355,948.44
MOTOR	R1,441,336.10
ADVERT: RECRUITMENT	R 178,937.87
BURSARIES (EMPLOYEES)	R97,926.43
TRAINING & STAFF DEVELOPMENT	R 143,669.95
COMP HARDWARE & SYSTEMS DESKTOP	R 119,581.76
OFFICE FURNITURE	R 111,290.20
OTHER	R 327,676.26

The increase in the item "Other", which falls within Goods & Services, is due chiefly to recruitment and resettlement cost of new staff members. The Inspectorate purchased seven new vehicles during the 2012/13 financial year, which also contributed to the increase in costs. Table 4 provides a detailed breakdown of the line items included in "Other" totaling R 2,776,367.01 for the year under review.

4.2 Information Technology

As of 1 November 2012 SITA has been assisting the Inspectorate's Head Office with all hardware and software related matters. The DCS still assists the Head Office and regional offices with network related matters. An IT post has been created on the new post establishment. The Inspectorate is waiting for the DCS to fund the post. The Inspectorate has engaged the DCS to assist with upgrading its website, which has been in existence since 2002, as the technology used is now outdated. The website is also used as a workstation allowing ICCVs, staff members and head of centres to capture reports electronically hence the importance of upgrading. The value of a domain email address has also been identified and discussed with DCS to strengthen the notion of independence.

4.3 Internal audits and financial policies and procedures

The Inspectorate does not currently have an Internal Audit post on the fixed establishment. The new post establishment provides for an Internal Auditor but has not yet been funded by DCS. The Inspectorate currently relies on the DCS to assist with internal auditing. In June 2012 the CEO of the Inspectorate met with the Chief Audit Executive of the DCS to request their Unit's assistance until such time as the Inspectorate's internal

auditor post becomes funded. With the assistance of the DCS, audits were conducted on the human resource and financial aspects of the ICCV system.

An audit was also conducted on the Sub-directorate Human Resources in terms of its policies, procedures and personnel files. The audit findings were forwarded to the Portfolio Committee. In addition, the CEO mandated the assistant Researcher in the Inspectorate to conduct an audit on the Registry within the human resources sub-section, the bursary fund and the EPMDS process. The Inspectorate has consistently throughout the year reviewed, amended and created policies, procedures and guidelines regarding financial and logistical matters to ensure that financial control is maintained at all times and is aligned with the Department's policies and procedures.

4.4 Supply chain

Transport

The Inspectorate currently has 22 vehicles on its inventory list. At the beginning of the 2012/2013 financial year, the Inspectorate had 15 cars. During the year, the Inspectorate purchased 7 cars due to the condition of the fleet and to meet pressing operational needs. Four vehicles were identified for disposal due to being older than 10 years and extremely high mileage. Once additional vehicles are purchased, these vehicles will be disposed of. The table below provides detailed information about the Inspectorate's vehicle fleet.

Table 5: Information on the Inspectorate's fleet of vehicles

REGION	VEHICLES AS AT 1 APRIL 2012	VEHICLES PURCHASED DURING 2012/13	VEHICLE DISPOSAL 2013/2014
HEAD OFFICE	2	0	0
OFFICE OF THE INSPECTING JUDGE	0	1	0
CENTRAL MANAGEMENT REGION	3	1	0
SOUTHERN MANAGEMENT REGION	3	2	2
NORTHERN MANAGEMENT REGION	4	2	2
EASTERN MANAGEMENT REGION	3	1	0
TOTAL	15	7	4

Four car-related incidents/accidents were reported; in two cases no liability could be attributed to anyone, in one accident, liability could be attributed to an employee who was found liable for the full repair costs. The SAPS is liable for repairs to one vehicle as damage was caused by their negligence.

Property Management

The Inspectorate has reported on the procurement of new offices and lease renewals on a quarterly basis to the Portfolio Committee. The regional offices are currently housed in temporary accommodation until the procurement process, which is being conducted by the Department of Public Works, has been concluded.

CHAPTER TWO: INSPECTIONS, INVESTIGATIONS, COMPLAINTS AND MANDATORY REPORTING

1. Introduction

In the Annual Report for 2011/2012²² we reported on the establishment of a “Legal Services” Directorate within the Inspectorate. During the current period, we report on the progress made in respect of its structure and staffing and in achieving its objectives, namely, regular and standardized inspections and thorough investigations to deal with complaints and monitor submissions of the Department’s mandatory statutory obligation to report instances of deaths, segregation and mechanical restraint of inmates as well as any use of force.²³

The approved structure,²⁴ disappointingly, remains unfulfilled as a result of the Department not funding these posts and after representations by the Inspecting Judge and CEO. Under the circumstances, the Directorate has been obliged to employ additional staff on a contractual basis with their security of tenure being compromised. Notwithstanding these uncertainties and the impact on achieving stated objectives, regional inspectors were appointed at the Pretoria, Durban and Bloemfontein offices with the fourth inspector²⁵ stationed in Cape Town.

This report provides a summary overview and should be read in conjunction with quarterly reports,²⁶ which are provided to both the DCS and the Portfolio Committee. The Committee invites the Inspectorate and the DCS and interrogates these reports, which are necessary within our constitutional framework and the principle of accountability within the public administration.²⁷ The work of the Inspectorate, and its effectiveness in ensuring that all inmates are treated and held in conditions consonant with the Bill of Rights, domestic legislation and international standards, is inextricably linked to that of the Department. Our oversight requires that the DCS, in particular from centre level to regional commissioner, provides timeous, adequate and substantive answers to our queries and requests for documentary evidence.

Without the power to compel compliance, the Inspectorate relies on the *bona fides* of DCS officials. Our overall view is that, barring the instances recorded in our quarterly assessment reports, Heads of Centres readily accept that the Inspectorate’s powers, functions, duties and inquisitorial approach assist and complement their

²² www.judicialinsp.pwv.gov.za Chapter Two at pp 22 & 23

²³ The Directorate comprises three speciality units: Inspections/Investigations, Complaints and Mandatory

²⁴ By the Minister for Correctional Services in 2011

²⁵ The only one on the fixed establishment

²⁶ www.judicialinsp.pwv.org.za or www.pmg.org.za

²⁷ See generally sections 55, 56 and 195 of the Constitution of the Republic of South Africa Act no. 108 of 1996

management of correctional and remand facilities. Great emphasis is placed on insisting that all decisions taken by an official are underpinned by cogent and adequate reasons with proper justification. It is recognised that Heads of Centre who take decisions of an administrative nature within a legal context are not all trained in the field of law, and less so in the case of junior officials. The solution lies with the DCS at area and regional level – to whom all our requests and communications are copied – to continue to, and improve, their monitoring of and assistance to the heads from whom we request information. The Inspectorate appreciates the excellent work by the majority of officials during the period under review and calls for an improvement in the few cases where dilatory response times and repeated requests undermine our work and consequently adversely affect inmates.

The judgments of our courts are an important source of the rights of inmates and reciprocal duties of officials. Of seminal significance, amongst other judgments of our superior courts, was that delivered on 11th December 2012 by the Constitutional Court.²⁸ It provided an opportunity for this court to address directly the rights of remand detainees. The court found in favour of Mr. Lee who was detained for a considerable period when he became infected by tuberculosis. The Department, it was held, owed Mr. Lee the obligation to ensure that it took all reasonable steps to prevent him contracting the disease, which the court found had not occurred. During the course of the judgment the rights of inmates to adequate treatment and conditions of detention is addressed, and its corollary, the reciprocal duty owed by the Department to inmates. This judgment requires that the Department pay close attention to their health care obligations to inmates.

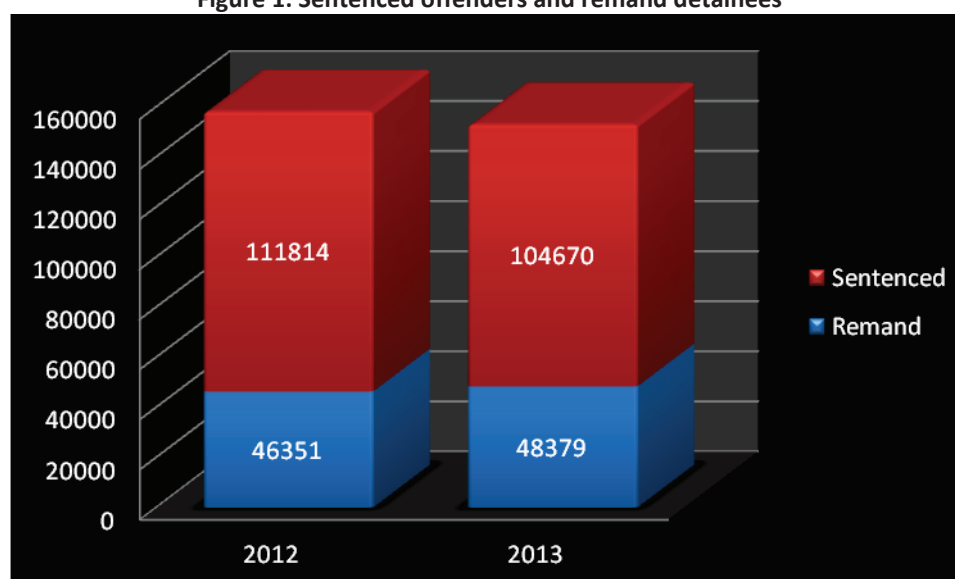
Our inmate population on 31 March 2013 was 153 049, comprising 104 670 sentenced offenders²⁹ and 48 379 remand detainees.³⁰ Those classified as “deportees” and “state patients” comprise 197. The comparative total on 31 March 2012 was 158 165, comprising 111 814 sentenced offenders and 46 351 remand detainees. We note that the sentenced offender population decreased by 7 144. By contrast the number of remand detainees increased by 2 082. We address the population (sentenced offender and remand detainees) and their distribution under “State of Correctional Centres”.

²⁸ Dudley Lee and Minister for Correctional Services and others CCT 20/12, [2012] ZACC 30

²⁹ Confirmed by Remand Detention on 29 August 2013 (ref: W Damons)

³⁰ Daily average provided by CDC Remand Detention on 28th August 2013

Figure 1: Sentenced offenders and remand detainees



Turning to the provisions of section 90(1)³¹ of the CSA,³² 93 general inspections of correctional and remand facilities were undertaken by the Inspecting Judge, staff and inspectors.³³ Our findings and recommendations are provided immediately to the DCS and progress is reported on quarterly. This represents an increase from 72 inspections reported in the previous financial year, which expands our knowledge about the treatment of inmates and conditions within correctional facilities.

In loco investigations were conducted in 39 matters,³⁴ an increase of 354% from the previous financial year. The exponential increase is the result of the increase in human recourse (fixed contractual basis) and the decentralization of our inspectors at regional offices.

Complaints received and dealt with by the ICCVs continued to increase; 530 183 matters were dealt with by 238 ICCVs.³⁵ During the 2010/2011 period the figure was 381 924 and for the 2011/2012 period 427 717. The percentage increase for each successive period is 11% and 25%. The policy adopted to immediately appoint

³¹ "The Inspecting Judge inspects or arranges for inspection of correctional centres and remand detention facilities to report on the treatment of inmates, conditions and any corrupt or dishonest practices in such facilities"

³² All references to "the Act" refer to this statute

³³ These include managers in addition to the specialist inspectors who are regionally based. We adopt the policy that all professional legal services staff complements their "desktop" functions with exposure to circumstances at centre level. The decision has also been made to guide the Independent Visitors in resolving complaints during meetings of the Visitors' Committees.

³⁴ www.judicialinsp.pwv.gov.za Chapter Two at p 36

³⁵ The average number of Independent Visitors

interim Independent Visitors for those whose contracts expire, resign or are terminated for contractual breach during the process of re-advertising and calling for nominations as required by the Act,³⁶ and improving their training and skill-sets in dealing with complaints, has borne fruit.

Efforts to improve the quality of services delivered by ICCVs and turn-around time for new appointments continue. Concomitantly, closer liaison of our inspectors with the regional staff that manages and assists Visitors Committees (VCs) who deliberate on complaints has also commenced.

The Complaints Unit based at our Head Office, in the main, is tasked with dealing with urgent matters and those that VCs refer as unresolved after mediation between inmates and the Department. This Unit received 999 matters, in contrast to 595 in the previous reporting period. Of these 99 cases of allegations of assault by an official were received.³⁷ The decisions in these matters, in particular where adverse findings and/or recommendations are made, are being monitored with regard to compliance by the Department's compliance through the ICCVs and will be reported on more fully in subsequent reports.³⁸

Deaths in custody, a mandatory reporting obligation for the DCS, totaled 709, in comparison with 852 in the 2011/2012 period, a decrease of 143. The classification of a death as "natural" or "unnatural" is guided by the definitions in the regulations,³⁹ promulgated under the National Health Act, no. 61 of 2003. 652 deaths were confirmed after evidential corroboration as arising from natural causes, while 57 were reported as unnatural. However, due to delays occasioned by the receipt of medico-legal post-mortem reports in 16 matters we have not concluded our findings. We have previously reported on the excessive lapse of time occasioned by the provincial Departments of Health, under whose jurisdiction the pathology services fall, in supplying the DCS and, in turn, the Inspectorate, with these reports.

The mandatory obligation on the Department to report instances where they have used an element of force on an inmate was promulgated in 2008.⁴⁰ The receipt of these reports initially fell short of expectations,⁴¹ in our assessment due to, amongst other reasons, lack of knowledge on the part of officials and an electronic reporting medium.⁴² For the current period the DCS reported 83 instances of the use of force. The obligation to report is canvassed during each inspection and during the ICCV training and interaction with Heads of Centre. In respect of reports on the use of a mechanical restraint, we received 207, consistent with the figure of 239 during the

³⁶ Section 92 Correctional Services Act 111 of 1998, as amended

³⁷ The allegations and status of these are fully reported in our quarterly reports

³⁸ Quarterly and annually

³⁹ Regulations regarding the rendering of Forensic Pathology Service, no R636 (2007)

⁴⁰ Commenced in 2009

⁴¹ When compared to the prison population and number of segregations and complaints recorded

⁴² This was implemented in January 2009

previous period. The segregation of an inmate was reported on 7 493 occasions, compared with 8 585 in 2011/2012. We report on the work of the units within the Legal Services directorate in more detail below.

The Directorate: Legal Services in each inspection, investigation, complaint and mandatory report matter requests the Head of Centre to provide its response prior to our final recommendations. We bring these matters to the attention to the offices of the Regional and Area Commissioners. At the end of each month and quarter, a composite report is submitted to all DCS senior managers. The objective behind this is that Regional and Area Commissioners oversee the operations of Heads of Centres and/or are privy to the Inspectorate's queries. The practice appears to have developed that Heads of Centres do not, in all instances, communicate directly with the Inspectorate but via their Regional or Area Commissioners. In numerous instances, delays occur in our receipt of information.

The 2012/2013 period has been fulfilling. The restructuring of the Inspectorate and the establishment of the Legal Services Directorate, and its specialized units, has placed the Inspectorate – under the guidance of the Inspecting Judge and CEO – on a progressive path to meeting our constitutional obligation as an organ of state to respect, protect, promote and fulfill the rights in the Bill of Rights. The past and continued assistance of the DCS will enhance that goal.

2. State of Correctional Centres

The inmate population⁴³ versus the number of beds available in our correctional facilities has long been identified by the Department as intolerable in particular locations. The ratio of inmate to available infrastructure has resulted in overcrowding amongst both sentenced offenders and remand detainees. During its 93 inspections, the Inspectorate has found that it is unhelpful when addressing overcrowding to characterize the entire correctional system as not meeting standards for the treatment of inmates and the conditions of their detention. Within regions, and indeed within a particular centre, the situation differs as does its effect on the rights of inmates.

In general, the exponential increase of inmates serving long sentences⁴⁴ upon the promulgation of our minimum sentencing legislation⁴⁵ has required the DCS to make appropriate facilities available. Concomitantly it required the DCS to put in place an efficient rehabilitation and parole regime. Consideration for possible early release of an offender is predicated on the premise that inmates willingly accept that incarceration requires that

⁴³ See Minister for Correctional Services "Budget Vote Speech" 2013/2014 to Parliament on 29 May 2013

⁴⁴ Offenders serving life imprisonment increased from approximately 400 in 1994 to 11 000 in 2013 – quoted in the speech above

⁴⁵ Criminal Law Amendment Act 105 of 1997

he/she participate in his/her own journey towards rehabilitation, and convince the DCS and the community which he/she will rejoin that the objectives of incarceration⁴⁶ have been met. Equally important is the positive duty placed on the DCS to ensure that incarceration standards, including humane conditions, available and skilled staff, efficient management, are in place. The conditionality attached to a release is illusory programmes are not in place and the parole readiness regime is deficient. The Case Management Committee,⁴⁷ Correctional Supervision and Parole Board,⁴⁸ the Correctional Supervision and Parole Review Board,⁴⁹ the National Council for Correctional Services,⁵⁰ the Medical Parole Advisory Board⁵¹ and the Minister⁵² are respectively responsible for a decision to release in terms of the Act.

The management, safe custody and well-being of remand detainees,⁵³ who constitute approximately 30% of the prison population, have recently been the subject of legislative amendment. The amendments provide for substantive minimum rights, and Heads of Centre are now duty-bound to identify those who have been in remand for two or more years. The statutory enactment codifies the protocols that existed amongst the role-players in the criminal justice cluster, namely the SAPS, the NPA and Legal Aid South Africa. The objective, in the context of the burgeoning numbers dealt with by our lower courts in particular, serves to underscore the principle that the bail regime in our law requires of a presiding officer to adopt an inquisitorial approach and be an active role-player in assessing the interests of justice when considering bail.⁵⁴

The process is not static and requires that all role-players play an active part in fostering the constitutional principles applicable to those who are arrested and await trial. In this regard presiding officers must be placed with up-to-date information by the SAPS and prosecutors so that at each successive postponement they are able to re-assess the granting of bail or reduction of the initial amount fixed. The requirement for reconsideration of bail which requires evidence of new facts will be enhanced by such co-operation.

As at 31st March 2013, the DCS within its 46 management areas operated 242 centres, of which 11 were temporarily closed for renovation.⁵⁵

⁴⁶ Section 36 Correctional Services Act 111 of 1998, as amended and Chapter IV generally "Sentenced Offenders"

⁴⁷ Section 42 Correctional Services Act 111 of 1998, as amended

⁴⁸ Sections 74 and 75 Correctional Services Act 111 of 1998, as amended

⁴⁹ Sections 76 and 77 Correctional Services Act 111 of 1998, as amended

⁵⁰ Section 83 and 84 Correctional Services Act 111 of 1998, as amended

⁵¹ Section 79 Correctional Services Act 111 of 1998, as amended

⁵² Section 78 Correctional Services Act 111 of 1998, as amended

⁵³ See Act 5 Of 2011

⁵⁴ See the Criminal Procedure Act, no. 51 of 1977

⁵⁵ Port Elizabeth (EC), Mqanduli (EC), Kgosi Mampuru II Maximum (GP), Zastron (FS/NC), Matatiele (KZN), Escourt (KZN), Eshowe (KZN), Swellendam (WC), Van Rhynsdorp (WC), Rustenberg Medium B (LMN) and Geluk (LMN)

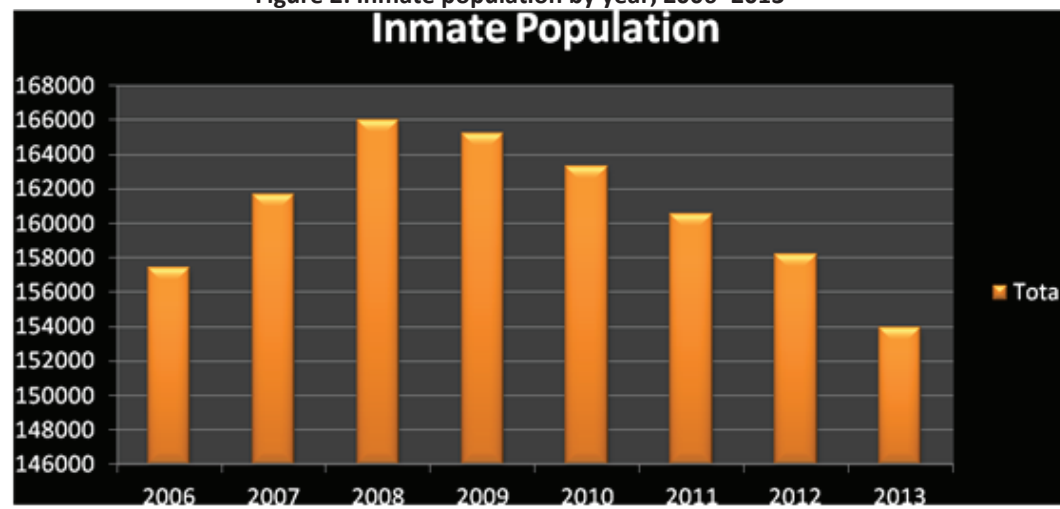
Table 6: Correctional centres as per DCS management region

REGION	MANAGEMENT AREAS	NUMBER OF CORRECTIONAL CENTRES		
		Temporarily closed	Active centres	Total
EC	6	2	43	45
GP	8	1	25	26
FS/NC	7	1	47	48
KZN	7	3	39	42
WC	10	2	40	42
LMN	8	2	37	39
Total	46	11	231	242

2.1 Inmate population

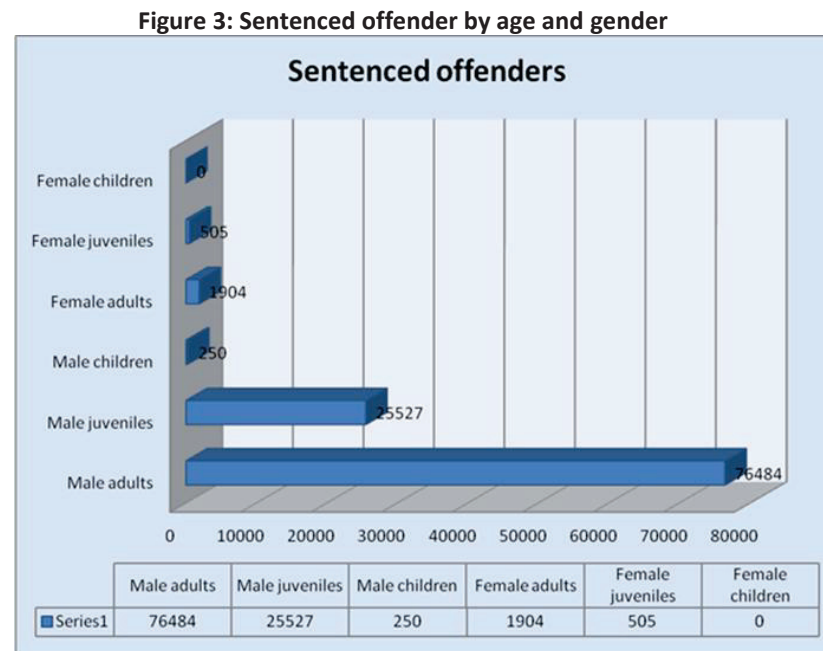
From a peak in 2008 the total inmate population continues to show a welcome downward trend. The ideal number of inmates in relation to our current accommodation should be reduced by at least 25%, as illustrated in Figure 2.

Figure 2: Inmate population by year, 2006–2013

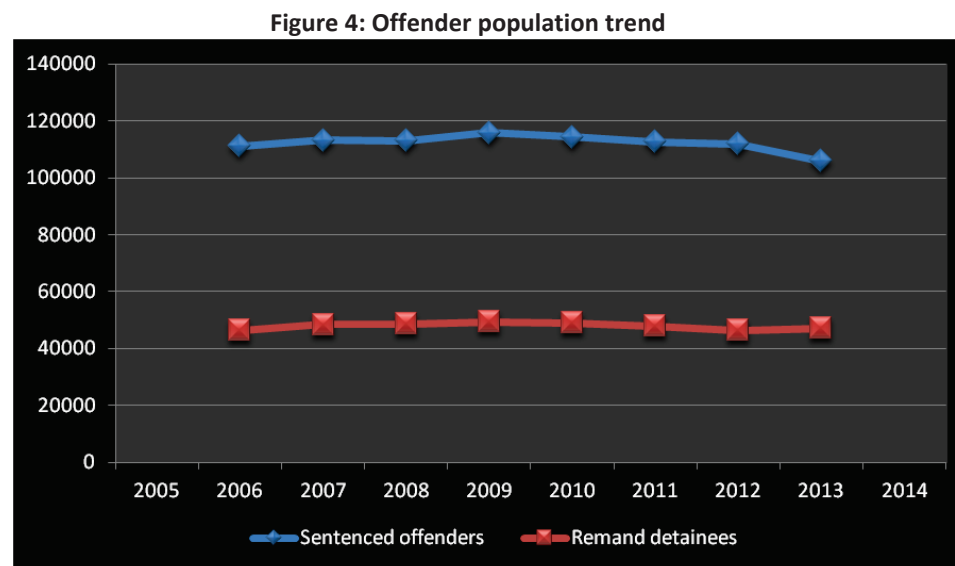


With stringent management, the DCS can prepare inmates, who fall entirely within the jurisdiction of the Department during their incarceration, for early release at a greater pace if supported by both government and the private sector in creating and allocating employment opportunities for parolees and probationers, many

of whom rejoin society without any meaningful work opportunities. Figure 3 provides an overview of the age⁵⁶ and gender of sentenced offenders.



The comparison between sentenced offenders and remand detainees for the 2012/2013 period is illustrated below. It is disconcerting to note the rise by 2 028 of those on remand, illustrated in the diagram below.



⁵⁶ Children: aged below 18 years; Juveniles: aged 18 and 21; Adults: aged over 21

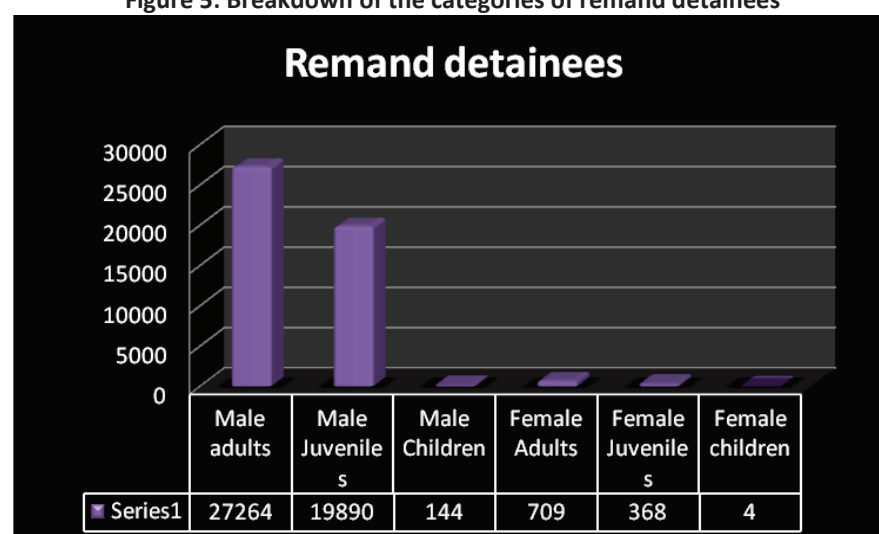
With regard to remand detainees, continued and concerted effort is required amongst the criminal justice cluster to address unnecessary or premature arrests by the police. Thorough police dockets and investigations should be undertaken with consideration, in the first instance, whether an arrest is obligatory, placing the courts in a position where: cases do not have to be postponed for the provision of evidence, courts to fix bail with or without conditions more regularly, courts to consider the provisions of section 62 of the Criminal Procedure Act 51 of 1997 more regularly and the DCS to improve their ability to monitor remand detainees in terms of subsection (f) etc.

It is premature to make any assessment on whether the recent statutory amendments and remand detention branch in the Department will have the intended effect. Much cost has gone into establishing this branch and the measure of its value can only be assessed after a reasonable lapse of time.

The Department has over the past number of years been amenable to using an electronic monitoring device as a means to reduce the inmate population and has been testing its efficacy. The Minister in his 2013/2014 budget speech re-iterated the Department's support, not only for sentenced offenders but also remand detainees. Extensive use of such a device will greatly assist in reducing the inmate population. In the Minister's budget speech he estimated that 15–20% of remand detainees were detained with bail amounts fixed but not paid (i.e. unaffordable bail amounts). This statement was made in the context of using electronic monitoring.⁵⁷

The illustration below provides a breakdown of the categories of remand detainees.

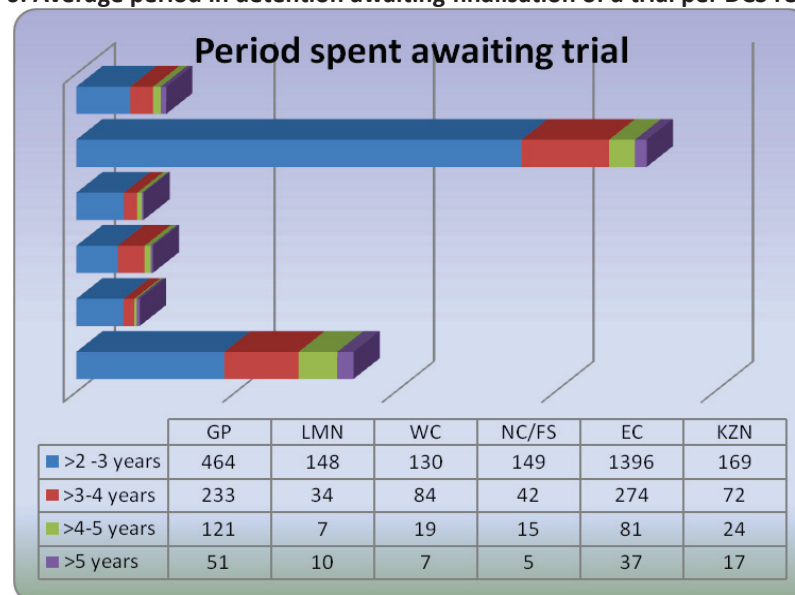
Figure 5: Breakdown of the categories of remand detainees



⁵⁷ The cost of which is approximately R3,000

At the cost of approximately R9, 000 per month per inmate, the problem is grave and has a serious impact on other budget allocations, to the detriment of providing for socio-economic needs. Lengthy periods in detention, it is accepted, are not always the fault of the state but also that of an accused and/or his legal representative. Well managed courts shorten the time period from first appearance to finalisation; the net result would be advantageous to the administration of justice. However, courts are dependent on the police, prosecutors and defence. Our criminal procedure permits a plea and sentence agreements,⁵⁸ (“plea-bargaining”) which is dependent on the prosecutor, and by extension the police, to provide the accused with details of the case against him/her to make an informed decision to tender a plea of guilty. The figure below shows the average period in detention awaiting finalisation of a trial per departmental region.

Figure 6: Average period in detention awaiting finalisation of a trial per DCS region



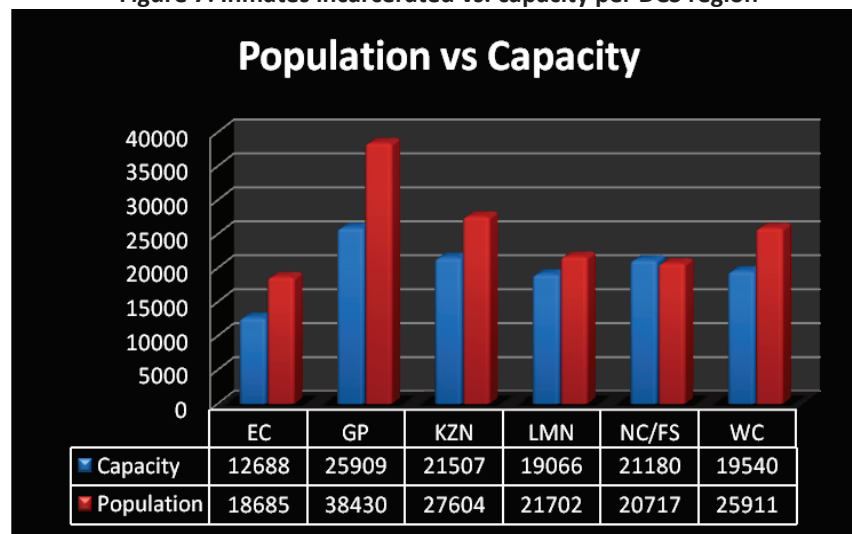
2.2 Overcrowding

As indicated earlier, the phenomenon of overcrowding by and of itself is unhelpful at a decentralized level. During inspections, Heads of Centres often raised the twin complaints of overcrowding and inadequate staffing. When questioned about the impact of these factors on the rights of inmates and whether their management strategies could not be improved to ameliorate the situation, in many instances the answer was somewhat tempered and they accepted our contention. The Inspectorate re-emphasizes its view that, whilst an overpopulated centre is undesirable, the distribution of inmates at different localities and within centres can be managed more efficiently as a component of addressing the problem. In this regard the regular repair of

⁵⁸ Section 105 A of the Criminal Procedure Act, no. 51 of 1997

infrastructure, a firm grip on absenteeism and improved relationships with and services to inmates can contribute to a more stable situation. For example, in complaints related to transfers it was found that poor communication between centres unnecessarily delayed a valid request for a transfer nearer the inmate’s family. In other instances inmates were transferred and re-transferred without proper justification but rather as a means of punishment. The continuation of educational programmes and health treatment was then disrupted. The following figure shows the global distribution of inmates to available accommodation per DCS regions.

Figure 7: Inmates incarcerated vs. capacity per DCS region



3. Inspections and Investigations

The Inspections and Investigations Unit accomplished much in the period under review. Upon the contractual appointments of three regional inspectors, only the fourth on the fixed establishment, this Unit conducted 93 inspections (an increase of 29%) and 39 *in loco* investigations. Figures 8 and 9 provide a breakdown of inspections and investigations according to DCS regions.

Figure 8: Inspections by DCS region

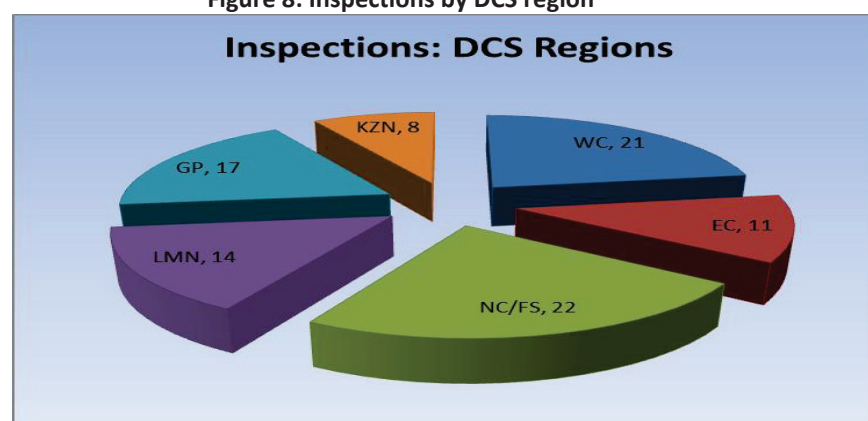
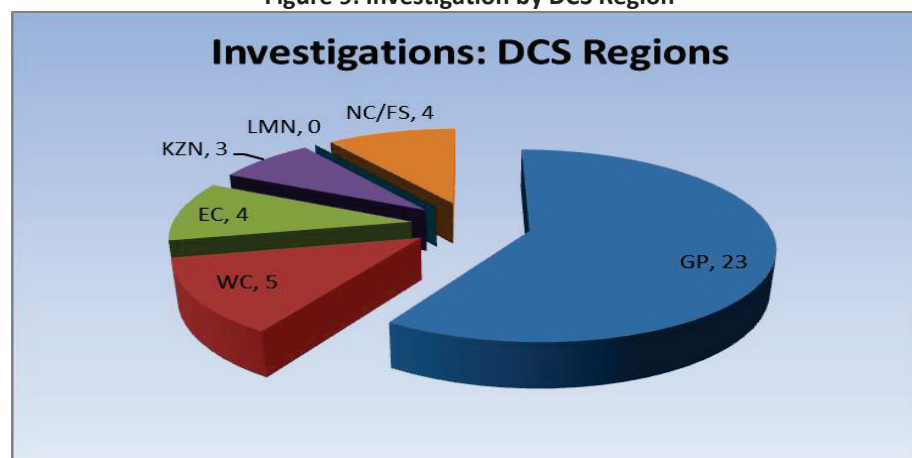


Figure 9: Investigation by DCS Region



Our national inspection plan envisages a more evenly spread of inspections to cover the entire country and supplement those areas we have not been able to visit. The locality of an investigation is determined by assessment of the need and may arise from a complaint, death or evidence received in respect of a serious or urgent matter. In the majority of cases investigations are undertaken where there is an element of violence to either an inmate or official and/or destruction to property is involved.

Training was provided to the new appointees, two of whom were previously contracted as ICCVs. The Inspecting Judge and the CEO, as well as senior managers who are tasked with their own portfolios were also deployed to visit and inspect correctional and remand centres. The Inspectorate adopted this approach in line with cost-effective travel and upskilling of all personnel, the benefit of which is development of staff and a broad contextual approach to complement their respective tasks.

3.1. Inspections

An inspection follows a systemised approach guided by a pro-forma report. The pro-forma report makes provision for: (a) structured interview with Head of Centre reflecting on matters such as inmate population, staffing, health care, nutritional standards, infrastructure and rehabilitation programmes, efficacy of the complaints procedure, and compliance with mandatory reporting obligations, their working relationship with ICCVs and the justice cluster; (b) site visit to communal cells, special care unit, hospital/clinic, kitchen and admission centre; (c) pursuing official registers such as complaints and request register, injury register, death register; (d) interview inmates to determine the visibility and effectiveness of the ICCV (e) follow up on all outstanding complaints registered by organs of state, VCs, inmates, family members of inmate; and (f) follow up on previous inspection findings. The following two tables illustrate some of the key findings and views that originated from the 93 inspections undertaken.

Table 7: Views reported by Heads of Centres and corroborated by site visit

	Findings	Total
1	Infrastructure inadequate	46
2	Professional staff inadequate	31
3	Rehabilitation / Education inadequate	15
4	Custodial / Security staff vacancies	46
5	IT system inadequate	8
6	Emergency & evacuation plan inadequate i.r.o. of possible fire	6

Other general findings related to officials were: (a) high rate of absenteeism; (b) dereliction of duties; (c) unhappiness with the shift system; (d) assault official on inmate and inmate on official; (e) the SAPS showed a dilatory response to thoroughly investigating charges against officials and poor and incomplete investigative work led to prosecutors not pursuing criminal charges.

Table 8: Views reported by Heads of Centres and corroborated by registers

	Finding	Total	GP	WC	LMN	FS/NC	KZN	EC
1	Disciplinary action against the number of officials	181	87	41	26	9	7	11
2	Criminal charges against the number of officials	55	13	17	12	9	8	4
3	Number of centres that have measures in place to prevent corrupt activities	74	13	17	12	14	8	10
4	Centres where inmates have access to							
	• Medical practitioner	75	16	19	10	16	8	6
	• Psychologists	37	13	18	1	0	4	1
	• Dentists	49	14	19	5	1	8	2
5	Trends identified by -							
	(a) Injury register							
	➤ Inmate on inmate assault	33	9	6	5	3	6	4
	➤ Official on inmate	17	4	1	1	1	7	1
	(b) Death register							
	➤ Natural deaths	32	7	8	5	4	6	2
	➤ Unnatural deaths	3	2	0	0	0	1	0
6	Number of mentally ill inmates	522	102	157	14	0	244	5

In terms of professional staff the following were concluded: (a) medical practitioners are employed on contractual basis who occasionally visit the centre; (b) psychologists and dentists are rare commodities; (c) the ratios between inmate population and nurses as well as social workers are imbalanced; and (d) there are centres with no educationalists.

In all cases the required registers are in place. However, the injury register will show that an injury related to an assault by an official on inmate was recorded but might not have been investigated. In the case of the complaints and request registers it reflects “no complaints or requests” for continuous days.

Upon completion of an inspection the Head of Centre is provided with a copy of the inspection report, including recommendations. The Inspection and Investigation Unit liaise with the Heads of Centres regarding implementation of the recommendations.

3.2 Investigations

The inspectors have undergone training and it is envisaged that they will undergo more in-depth training in the ensuing financial year, including on modules such as conduct of crime scene investigations, forensic investigations and report writing.

The methodology used for investigations entails the generally accepted practices which are adapted to suit particular allegations. In the first instance the investigator immediately deploys the ICCV, appointed at that particular centre, to the scene. The task of the ICCV is to ensure, *inter alia*, that where injury to an inmate has occurred, immediate medical attention is provided and that witnesses are not intimidated, transferred and so on. The investigator then performs an *in loco* study of the location, identifies and interviews witnesses, both officials and inmates, requests video footage and peruses the medical and other registers. The ICCV continues to assist the investigator with the view to following up on any issues that may arise.

A total number of 39 investigations were conducted. Of the 39 investigations, 21 centres were investigated due to serious violations of human rights allegations⁵⁹ Modderbee in Gauteng was the subject of five investigations, which included assaults, gang-related violence and suicides. The widely published incidents of violence at St Albans, Groenpunt and Pollsmoor also received our immediate attention. Each investigation with its findings and recommendations is recorded in our quarterly report,⁶⁰ which is tabled in Parliament. In respect of the allegations of violence we have found that officials acted beyond the scope of their authority and lacked the necessary judgement and characteristics when trying to quell inmate uprising and gang-related activity. The table below indicates the reason for investigation per centre and DCS region.

⁵⁹ Assault, emergency medical care, unnatural death, unjustifiable use of force or mechanical restraint etc.

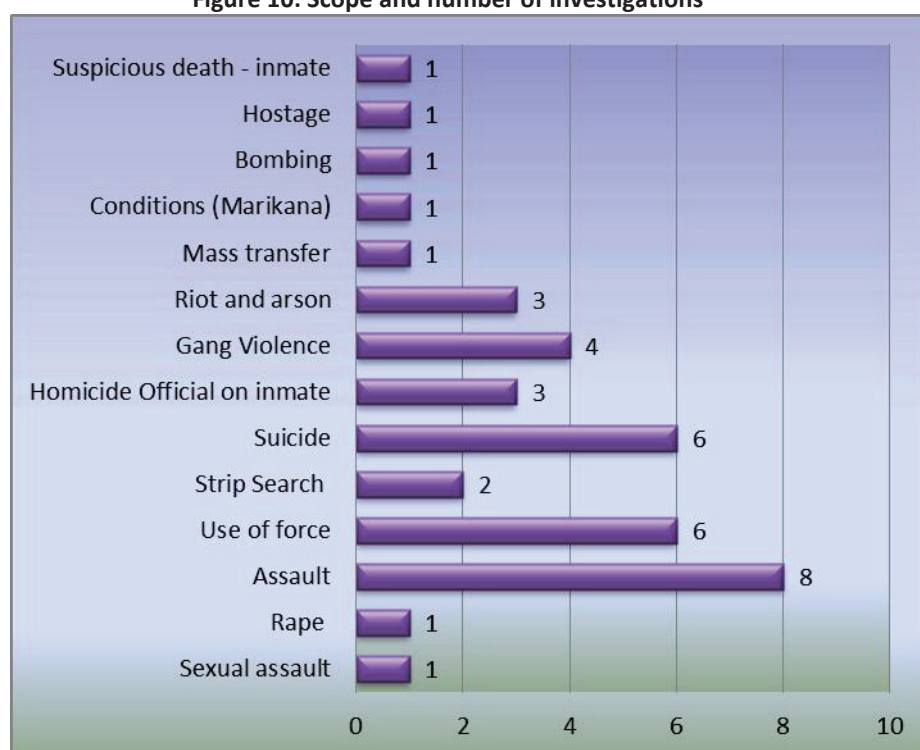
⁶⁰ www.judicialinsp.pwv.gov.za

Table 9: Scope of investigations per correctional centre

#	Centre	Region	Scope of investigation
1	Pollsmoor Medium B	WC	<ul style="list-style-type: none"> Sexual assault intra-inmate Sexual assault and attempted suicide
2	Boksburg Med A	GP	<ul style="list-style-type: none"> Hunger strike and use of force
3	Waterval Med B	KZN	<ul style="list-style-type: none"> Mass assault by officials
4	Modderbee	GP	<ul style="list-style-type: none"> Assault by official Suicide Suicide Gang violence and assault Gang violence and assault
5	Emthonjeni	GP	<ul style="list-style-type: none"> Use of force / assault
6	Malmesbury Medium B	WC	<ul style="list-style-type: none"> Strip search
7	Helderstroom Medium	WC	<ul style="list-style-type: none"> Mass assault and use of dogs by officials
8	Kgosi Mampuru II Central	GP	<ul style="list-style-type: none"> Assault official on inmate Use of force / assault
9	Durban Med A	KZN	<ul style="list-style-type: none"> Homicide; official on inmate Homicide; officials on inmate
10	Boksburg	GP	<ul style="list-style-type: none"> Suicide Suicide
11	Kgosi Mampuru II Local	GP	<ul style="list-style-type: none"> Marikana miners, conditions of detention
12	Mthata Med	EC	<ul style="list-style-type: none"> Assault by official on inmate Assault by official on inmate
13	King Williams Town	EC	<ul style="list-style-type: none"> Death unknown cause at the time
14	Johannesburg Med A	GP	<ul style="list-style-type: none"> Death of remand detainee in a bombing incident Use of force / assault Assault by officials on inmates during searching Suicide
15	Mangaung	FS/NC	<ul style="list-style-type: none"> Hostage, inmates on DCS officials
16	Boksburg Med A	GP	<ul style="list-style-type: none"> Hunger strike and riots
17	Leeuwkop Med C	GP	<ul style="list-style-type: none"> Use of force / assault
18	Kgosi Mampuru II Female	GP	<ul style="list-style-type: none"> Strip search
19	Leeuwkop Max		<ul style="list-style-type: none"> Use of force / assault
20	Johannesburg Med C	GP	<ul style="list-style-type: none"> Use of force / assault
21	Groenpunt Max	FS/NC	<ul style="list-style-type: none"> Arson and riots Homicide; officials on inmate
22	Kgosi Mampuru II Female	GP	<ul style="list-style-type: none"> Mass transfer of inmates
23	St Albans Med	EC	<ul style="list-style-type: none"> Gang violence and homicide
24	Nigel male	GP	<ul style="list-style-type: none"> Riot , arson and assault
25	Pollsmoor Med A	WC	<ul style="list-style-type: none"> Gang violence
26	Grootvlei	FS/NC	<ul style="list-style-type: none"> Suicide

Upon receipt of an allegation of serious violations of human rights, an investigator is deployed. Figure 10 shows the scope and number of investigations (full details of which appear in the Inspectorate's quarterly reports).

Figure 10: Scope and number of investigations



The Inspectorate faces a challenge in finalising investigations within a reasonable timeframe. In order to finalise an investigation the *audi patriam* rule applies, meaning that the Department is obliged to provide their investigation report with supporting documents, such as post mortem in the case of death. In most cases the departmental response to the Inspectorate’s request for their investigations report for review purposes is dilatory. This bad practice has been “well deserved” heavily criticised by the Portfolio Committee on Correctional Services when making representation on the Inspectorate’s quarterly reports.

4. The Scope of Inmates’ Complaints and Requests

The right of every inmate to lodge a complaint or request and the process entailed is statutorily set out in section 21 of the CSA. The provision places a peremptory obligation on the Head of Centre to permit, on a daily basis, any inmate to lodge, have recorded and have promptly dealt with, any complaint or request. The inmate is then entitled to be informed of the decision regarding his/her complaint or request and the reasons therefore, and if dissatisfied seek that the matter is referred to the National Commissioner⁶¹ for decision and conveyance thereof. If not satisfied, the inmate may refer the matter to the ICCV who must deal with the matter in terms of

⁶¹ Or his delegate the Area Commissioner

the procedures laid down in section 93 of the Act. The aforementioned provisions are buttressed by the powers, functions and duties of the Inspecting Judge provided for in section 90(2) of the Act.

The Inspectorate comprises a Complaints Unit whose main task it is to receive and deal with inmates' complaints and requests that are not resolved at centre or management area level. Importantly, a proviso to section 90(2) allows for the Inspecting Judge to exercise discretion and on his own volition to deal with any complaint. The Inspectorate has adopted a model which, in the main, enjoins the ICCV to ensure that the Department deals adequately with complaints and requests.

These complaints and requests do not ordinarily involve serious infringement of rights and are appropriately dealt with by means of a system akin to arbitration in which the ICCV liaises between inmate and official to find a satisfactory solution. The ICCV system of resolution of complaints is complemented by a robust and inquisitorial process in respect of unresolved matters and those involving serious infringements of rights.

The approach is legalistic, requiring the Department to comply with both the procedural and substantive rights of inmates in line with principles and rules applicable to just administrative actions. The support rendered to the ICCVs, who are not legally trained, by the staff in the Complaints Unit is of paramount importance to ensure a standardised level of services.

It is common cause that the Department must maintain an efficient and responsive complaints and requests mechanism which allows inmates the opportunity to air their grievances and have them adjudicated in a transparent and fair manner as envisaged by the just administrative action⁶² provision in the Bill of Rights. The powers of the Inspectorate are circumscribed by the Act, which does not explicitly or by implication allow it to make a final and binding decision. In these circumstances the decisions of the Complaints Unit are recommendatory and require the amenability of the Department to implement its decisions.

Since the legislature has proscribed the Inspectorate's powers its effectiveness depends largely on its persuasive powers or on an inmate approaching the courts to enforce his/her rights. It is trite that the cost of litigation in South Africa is prohibitively expensive for the average citizen and more so in respect of inmates. In this context the Inspectorate plays an extremely important oversight role in ensuring the rights of inmates to proper treatment and humane conditions of detention.

4.1 The Independent Correctional Centre Visitors System

The ICCVs are contractually bound to minimum standards of services delivery⁶³ in respect of dealing with complaints and requests. They are appointed at correctional centres throughout the country and in the context

⁶² Section 33 of the Constitution read with the Promotion of Administrative Justice Act, no. 3 of 2000

⁶³ See Chapter 3, Sections 2.3 and 2.4 of this report

of our large inmate population deal with thousands of complaints and requests. The table below provides an overview of the nature and number of complaints dealt with over the past two years.

Table 10: Overview of complaints dealt with by ICCVs

Complaints	2011/2012	2012/2013	Change	% Change
Corruption	1,544	1,460	-0,084	-5%
Assault (Inmate on Inmate)	3,928	6,127	2,199	56%
Rehabilitation Programmes	21,582	29,311	7,729	36%
Assault (official on inmate)	1,945	3,370	1,425	73%
Health Care	34,202	39,380	5,178	15%
Bail	29,066	45,572	16,506	57%
Parole	17,434	23,492	6,058	35%
Food	13,611	18,478	4,867	36%
Medical release	851	2316	1,465	172%
Appeal	21,527	28,014	6,487	30%
Transfers	44,202	52,560	8,358	19%
Other	102,851	119,117	16,266	16%
Legal representation	33,866	41,420	7,554	22%
Communication with families	55,995	59,347	3,352	6%
Confiscation of possessions	4,123	5,809	1,686	41%
Inhumane treatment	7,188	9,581	2,393	33%
Conversion of sentences	3,637	6,161	2,524	69%
Conditions	25,419	32,012	6,593	26%
Remission	1,746	6,656	4,910	281%
TOTAL	424,717	530,183	105,466	25%

The exponential increase in complaints and requests recorded by the ICCVs in the categories of *remission of sentence* and *conversion of sentence* may be attributed to the presidential amnesty announced on 27th April 2012. On being informed of the decision to remit parts of their sentence, prisoners naturally wished to be advised of the revised dates for their release on parole or correctional supervision. Similarly, with regard to *medical parole* the amendment to the CSA regarding the wider grounds for release, from the previous threshold of being in the final phase of a terminal illness to taking into account physical incapacity as a result of injury, disease or illness so as to severely limit daily activity or self-care, resulted in numerous enquiries. The incidences of *assaults official on inmate* as well as *assaults inmate on inmate* are alarmingly high. This occurrence can be attributed to the ill-discipline of officials and or inmates which militate against the safe custody to which inmates are entitled. It furthermore infringes upon the spirit of rehabilitation which is one of the core functions of the DCS.

These statistics bear testimony to the presence of and the extent of the work of the ICCVs whose daily monitoring of correctional centres serves to bring into the open activities within a centre and act as a deterrent to further unlawful acts. It must be emphasised that the onus does not lay with ICCVs or the Inspecting Judge to make final determinations and that the obligation lies fully with the Department to ensure that its officials are managed, monitored and held accountable for infringements of inmate rights.

4.2 The Complaints Unit

The Inspectorate uses an electronic reporting system to receive and deal with inmate complaints and requests. A file is opened for each individual complaint and request and a reference number is generated by the electronic system. Each matter is dealt with individually and the allegations are put to all parties concerned.⁶⁴ The ICCV is informed by way of an electronic message referred to as a bulletin, which includes the nature and merit of the inmate complaint/request.

In order for evidence to be adjudicated and a decision or recommendations made by the Inspectorate, the *audi partem* rule applies. This means that the Department (Head of Centre) and ICCVs need to submit a written response. The implementation of the Inspectorate's decision or recommendations depends on the Department and ICCVs are obligated to monitor compliance. One of the Inspectorate's goals is to monitor more vigorously the implementations of recommendations made to the Department.

The Unit received and dealt with 999 complaints or requests for the period under review. A broad distinction is made between those received from external bodies and those arising from within the correctional environment. Inmates and/or their families made up a substantial proportion of complaints (451) with those from ICCVs totalling 327. Fraternal organisations referred 221 matters. The two tables that follow provide an overview of the source and nature of the complaint/request.

⁶⁴ Such as ICCV, Head of Centre, medical practitioner, social worker etc

It is evident from the data in Tables 11 and 12 that the trend identified in previous years still prevails. The trend is a high rate of complaints/requests registered under categories (1) assault official on inmate; (2) health care; (3) parole; and (4) transfers. What is of great concern to the Inspectorate is the fact that this trend is identified in both complaints/requests received from the correctional environment and fraternal organisations. The Inspectorate classified these four complaints as “prevalent complaints”. Even though the Inspectorate has been reporting this phenomenon for the past few years, we have yet to see a decline in the number of complaints.

Table 11: Complaints emanating from correctional environment

Categories	INMATE	FAMILY	ICCV	TOTAL
Appeal	36		10	46
Assault (inmate on inmate)	3		14	17
Assault (official on inmate)	23	3	39	65
Assault (sexual)	1			1
Bail	1		7	8
Communication with families	1		7	8
Conditions	9		18	27
Confiscation of Possessions	10	2	11	23
Conversion of sentences	8			8
Corruption	1		3	4
Food	5		3	8
Health Care	16	9	18	43
Inhumane Treatment	9	4	11	24
Legal Representation	16		7	23
Medical Release	2	2	4	8
Parole	68	31	42	141
Re-classification	2			2
Rehabilitation Programmes	3	1	5	9
Remission	4	1	2	7
Transfers	93	18	80	191
Other	54	15	46	115
Total	365	86	327	778

Table 12: Complaints emanating from fraternal organisations

Categories	SAHRC	PP	PC	Media / Public	PSC	Judge	Attorney	NGO	Ministry	DCS	NICRO	Anonymous	Total
Appeal	4	1											5
Assault (inmate on inmate)				1						30			31
Assault (official on inmate)	2	6	9	1	3	1	2			9		1	34
Communication with families			1							1			2
Conditions	1	1	3					1			1		6
Conversion of sentences	1						1						2
Corruption		1										1	2
Food	2	1											3
Health Care	7	5	4	1				1		1			19
Inhumane Treatment	1	4	4			1				2	1		13
Legal Representation		1	5						1				7
Medical Release			2										2
Parole	4	3	12										19
Rehabilitation Programmes			3										3
Remission	1												1
Transfers	14	6	24				1						45
Other	3	4	6			1	1		1	11			27
Total	40	34	73	2	3	3	4	2	2	54	2	2	221

The Inspectorate conducted a survey on “transfer of inmates”⁶⁵ during the 2010/2011 financial year and a survey on “health care”⁶⁶ during the 2011/2012 financial year. For the financial year under review the Inspectorate conducted a survey focusing on “parole”, the preliminary finding of which can be found in Chapter 4 of this report. The Inspectorate has already reported in its 2012/2013 quarterly reports on the prevalent complaint: “assault member on inmate”; it envisages conducting a survey during the 2013/2014 financial year and will subsequently report its findings. The purpose of these surveys is to obtain a holistic overview on the complexity of prevalent complaints with the intent to assist the Department in understanding underlying issues in order to address these amicably.

⁶⁵ The Judicial Inspectorate for Correctional Services Annual Report 2010/2011 pp 16–20

⁶⁶ The Judicial Inspectorate for Correctional Services Annual report 2011/2012 pp 43–48

4.3 Prevalent complaints

Transfers remain the most frequent category with 236 complaints. Most of these relate to the inmate's desire to be located closest to his/her home. Whilst the CSA provides for a sentenced offender to be housed closest to the place where release would occur, the *caveat* to the provision is often not factored in by an inmate. The factors of availability of accommodation and facilities to meet security classification requirements and programmes are necessary conditions before a transfer can be effected. The concomitant problem of overpopulated facilities and poor management has exacerbated the problem. The general modus of officials is to transfer large groups of inmates to the detriment of individualising the merits or demerits and timing of a transfer, an aspect which causes much consternation to inmates.

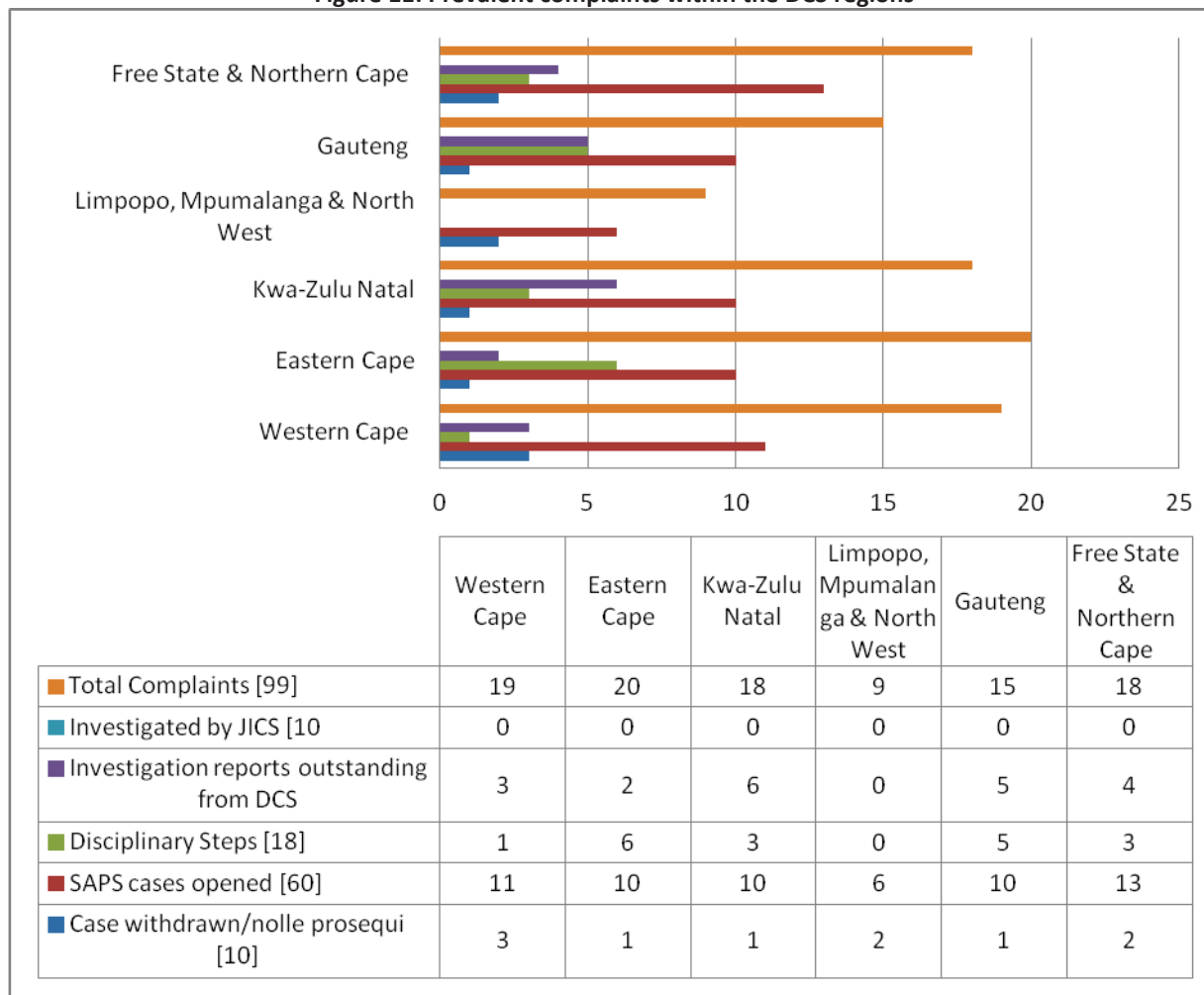
The survey conducted on **health care** during the 2011/2012 financial year revealed that 38% of inmates were apparently not examined within 24 hours of admission, 29% were not informed of their right to health care and 54% did not receive immediate treatment, constituting a breach of the Department's policy. It is the view of the Inspectorate that the Department has not taken the findings and recommendations of said report into account.

Parole remained a prevalent complaint dealt with by the Inspectorate. In the year under review the Inspectorate particularly identified the plight of inmates sentenced to life incarceration. It appears that these inmates have to wait months to hear responses on their eligibility for parole, leaving them frustrated. The Inspectorate has yet to engage the National Council for Correctional Services on its response regarding these complaints. A total number of 160 complaints of this nature were received in the year under review.

The Inspectorate focused particularly on allegations of **assault: official on inmate** during the current year under review. Ninety-nine such cases were enquired into, with 34 received from fraternal organisations, and 26 from the correctional environment with the majority referred by ICCVs. The circumstances surrounding these assaults vary widely. In approximately 80% of these cases there is merit in the allegations of inmates. In this instance the Inspectorate ensures that the inmate is afforded the opportunity to lay a criminal charge against the offending official. The Inspectorate also engages with the Department on their internal disciplinary steps against offending officials. From the Department's response in investigating these complaints, officials who are found guilty internally merely receive final written warnings and, in the worst case scenario, a month's suspension with or without remuneration. The Department ought to adopt a zero-tolerance attitude to this type of misconduct. The Inspectorate does not have the mandate to institute disciplinary action against officials as this is the prerogative of the Department. The SAPS investigation process is thus imperative to successful prosecution and ensuring deterrence amongst offending officials. Another important aspect of these types of complaints is the injuries that inmates sustain. The Act provides that inmates must be afforded medical

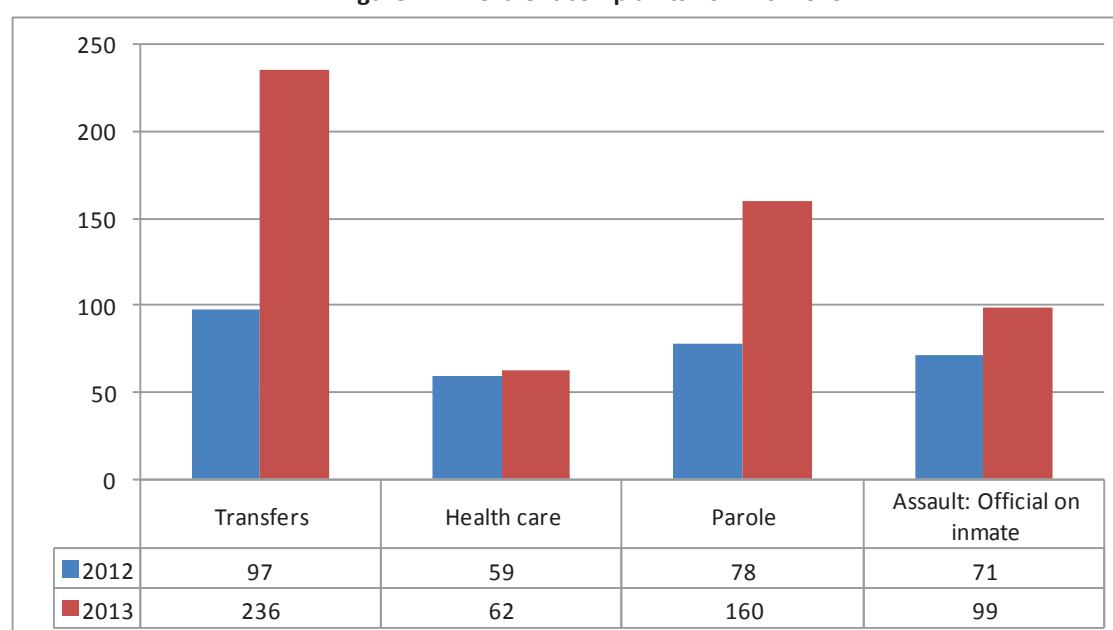
treatment once they lodge complaints of assaults. The Inspectorate found that by the time said complaint had reached it; the inmate would still not have been afforded such treatment. This means that the important 'J88' doctor's medical report for criminal prosecution would not have been generated. This, together with the unresponsiveness of witnesses, is a large contributor in the number of assault cases lodged by inmates that are *nolle prosequi* by the Department of Public Prosecution. This undermines confidence in the system among inmates who are victims of such an assault at the hands of an official. The Inspectorate found that inmates later decide to withdraw their complaints with the view that some other understanding was reached with the offending official and/or general fear of further victimisation. The following figures are self-explanatory and provide more information on prevalent complaints within the DCS regions.

Figure 11: Prevalent complaints within the DCS regions



In conclusion, prevalent complaints constitute 56% of all complaints received from the correctional environment and fraternal organisations as opposed to general⁶⁷ complaints which constitute 44%. The Inspectorate began to report on prevalent complaints since the previous financial year, and an increase in all four categories of prevalent complaints has been observed since.

Figure 12: Prevalent complaints 2012 vs. 2013

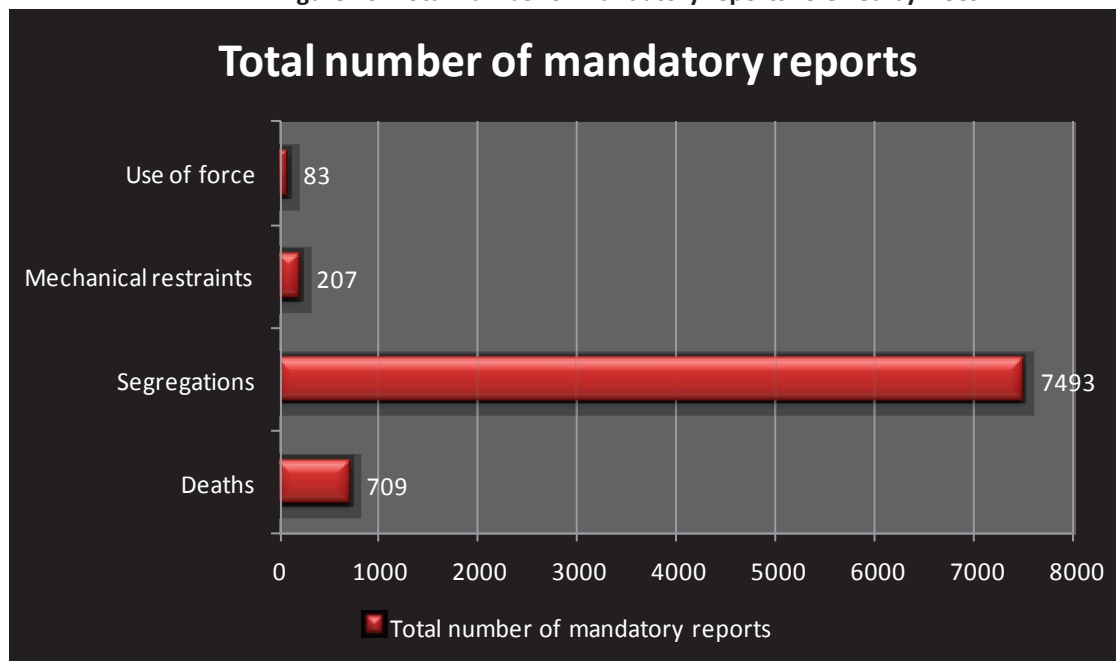


5. Mandatory Reports

In terms of the CSA, the Department Head of Correctional Centres (HCCs) are mandated to report the following actions and/or occurrences: all deaths of inmates (section 15), segregation of inmates (section 30), uses of mechanical restraints (section 31), and use of force (section 32). If HCCs fail to report to the Inspectorate they are in violation of the Act. The Inspectorate has defined the above mentioned four reports as “Mandatory Report.” The mandatory reports are reported by the HCCs on the Inspectorate’s electronic system. This allows the Inspectorate to monitor and to keep records of all the matters reported. The objectives of the Mandatory Unit are to: (a) ensure that proper data is kept of all reports by HCCs; (b) to monitor and check timeous and accurate reporting and compliance by HCCs; and (c) to ensure that reporting is not merely an administrative function, and that data is used to analyze trends and investigate when required. During the year under review, the HCCs reported the actions and/or occurrences detailed in the following sections.

⁶⁷ General complaints: bail, legal representation, food, special remission, appeal, etc

Figure 13: Total number of mandatory reports referred by HCCs



5.1 Deaths

During the 2012/2013 financial year, the HCCs reported 709 deaths; 57 were classified as “unnatural” and 652 as “natural” deaths. The overall number of deaths reported has decreased from 852 reported in the 2011/2012 Annual Report. However, for the same period the number of unnatural deaths reported has increased from 48 to 57, which is of great concern to the Inspectorate.

The Inspectorate has a standardized policy and procedure manual in dealing with deaths at correctional centres to ensure that the DCS and HCCs comply with the CSA, Regulations and its own policies and guidelines. When a death is reported, the death is confirmed by the completion of a record of confirmation (known as an RoC), which is completed by ICCVs at the respective correctional centres. In cases of “natural” deaths the RoC will be supplemented by a death certificate, BI1663 form and G-362 form.⁶⁸ In cases of unnatural deaths, the ICCV conducts what is referred to as a preliminary enquiry, which involves interviewing official/s and inmate/s, conducting an inspection of the place where the death occurred, and perusing the files⁶⁹ of the deceased, and a written report is then submitted to the Mandatory Unit containing his/her independent findings. Based on the findings of the ICCVs RoC and on the discretion of the Mandatory Unit, certain unnatural deaths are referred to the Investigation Unit for an *in loco* investigation.

⁶⁸ BI1663 / G-362: notification of death form completed by medical practitioner

⁶⁹ Medical file, admission file, CMC file

5.1.1 Unnatural deaths

An unnatural death is defined in accordance with Wikipedia: The Free Encyclopedia⁷⁰ as “a death resulting from an external cause, such as intentional injury, homicide or suicide; or unintentional injury such as in an accident”. The Regulations Regarding the Rendering of Forensic Pathology drafted in terms of section 90(1) of the National Health Act, No. 61 of 2003, states that:

*“for the purposes of the medico-legal investigation of death, the following shall be deemed to be deaths due to **unnatural causes**: (a) any death due to physical or chemical influence, direct or indirect, or related complications; (b) any death, including those deaths which would normally be considered to be a death due to natural causes, which in the opinion of a medical practitioner, has been the result of an act of commission or omission which may be criminal in nature; or (c) Where the death is sudden and unexpected or unexplained, or where the cause of death is not apparent.”*

Furthermore, unnatural deaths can be regarded as deaths due to violence and the consequences of the injuries that result in death. This includes cases of homicide (murder or culpable homicide), suicide or accidents (including motor vehicle accidents) and any death, including deaths that would otherwise be classified as being "natural" where it is suspected that the death was due to an act of neglect by any person including medical staff.

The Regulations Regarding the Rendering of Forensic Pathology under regulation 34 deals with the death of detained people. Regulation 34 states that:

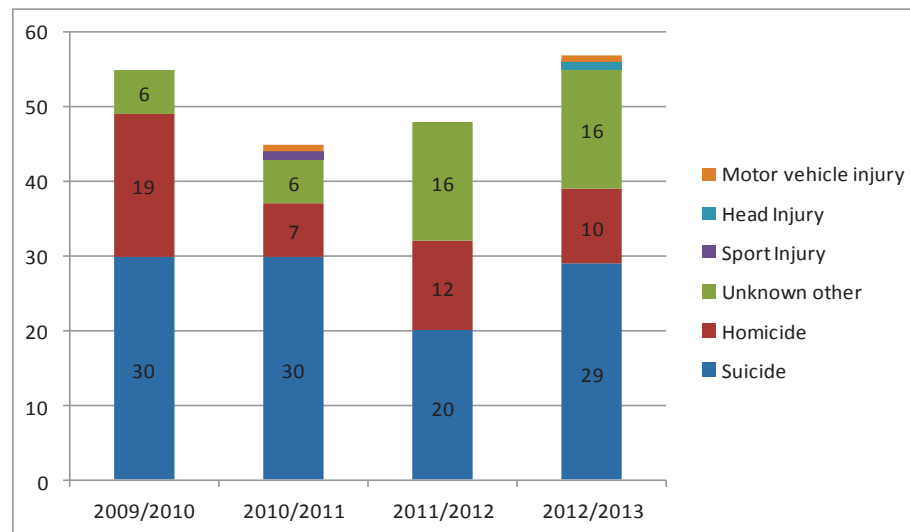
“The provincial head of the Service must be immediately notified when a facility is requested to admit a body of a person who died of unnatural causes whilst detained by the South African Police Service or the Department of Correctional Services as an awaiting-trial or convicted prisoner.”

Regulation 35 of the said regulations states that:

“...when necessary, a post mortem examination to determine the cause of death of an awaiting trial or convicted prisoner, may only be performed: (a) by an authorized person specifically appointed by the provincial head of the Service; (b) in case of death whilst detained by the South African Police Service, after the Independent Complaints Directorate has been informed of such post mortem examination; and (c) in case of death whilst detained by the Department of Correctional Services as a sentenced inmate, after the Inspecting Judge referred to in the Correctional Services Act, 1998 (Act No. 111 of 1998), has been informed of such post mortem examination.”

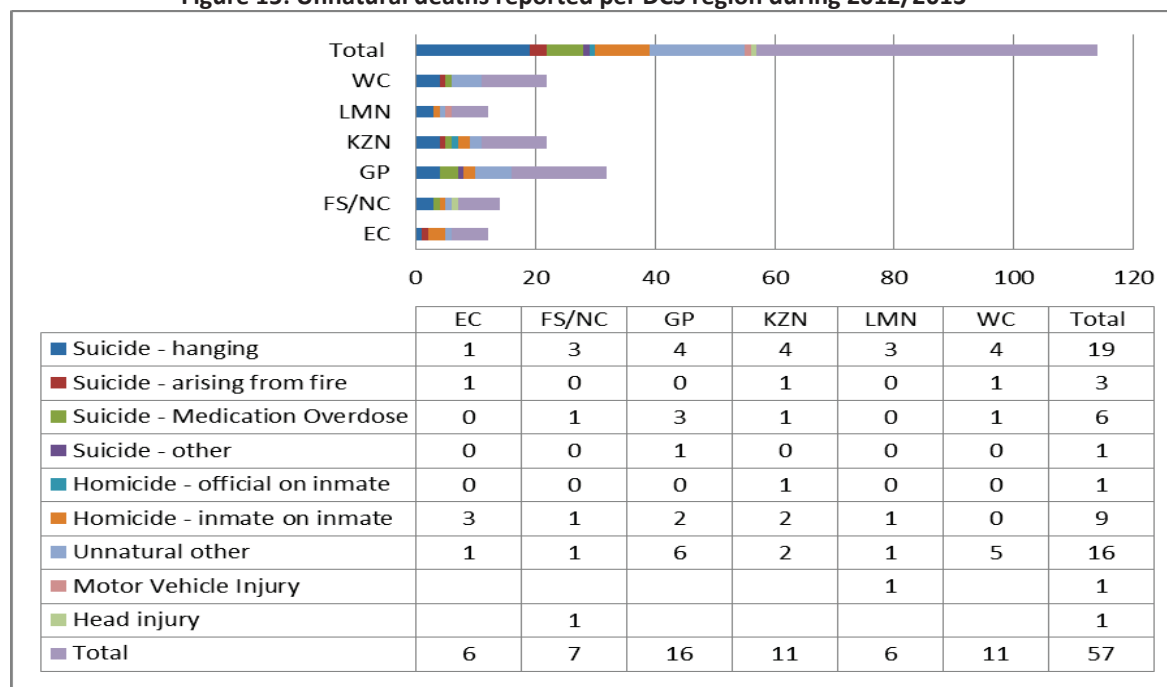
⁷⁰ http://en.wikipedia.org/wiki/Unnatural_death

Figure 14: Unnatural deaths with the cause of the death reported, 2009–2013



Fifty-seven deaths were reported during the 2012/2013 financial year, of which sixteen were reported as unnatural other or natural unknown deaths. At the time of reporting these matters, HCCs are of the view that it cannot be classified a natural death until autopsy/post-mortem results has been provided. The post mortem is conducted by the Department of Health and such reports are delayed indefinitely. Due to this obstacle the Department as well as the Inspectorate cannot finalize the investigation into the death. These delays in the submission of post-mortem results differ from province to province and take up to one year and longer.

Figure 15: Unnatural deaths reported per DCS region during 2012/2013



The following is a summary of the causes of unnatural deaths indicated in these figures:

Suicide committed by inmates remains a grave concern. In the Inspectorate’s 2012/2013 Annual Report it was reported that 20 inmates had either committed suicide by hanging, electrocuting themselves, setting their cells alight or drug overdose. In the current year suicides have increased to 29. There has been an increase in the number of suicides by hanging from 10 (2011/2012) to 19 (2012/2013). Furthermore, 6 suicides by medication overdose were reported. One of the questions the Inspectorate is considering is whether there is a connection between this phenomenon and challenges with the health care system. The following figure illustrates the number of suicides per DSC region.

Figure 16: Number of suicides per DCS region

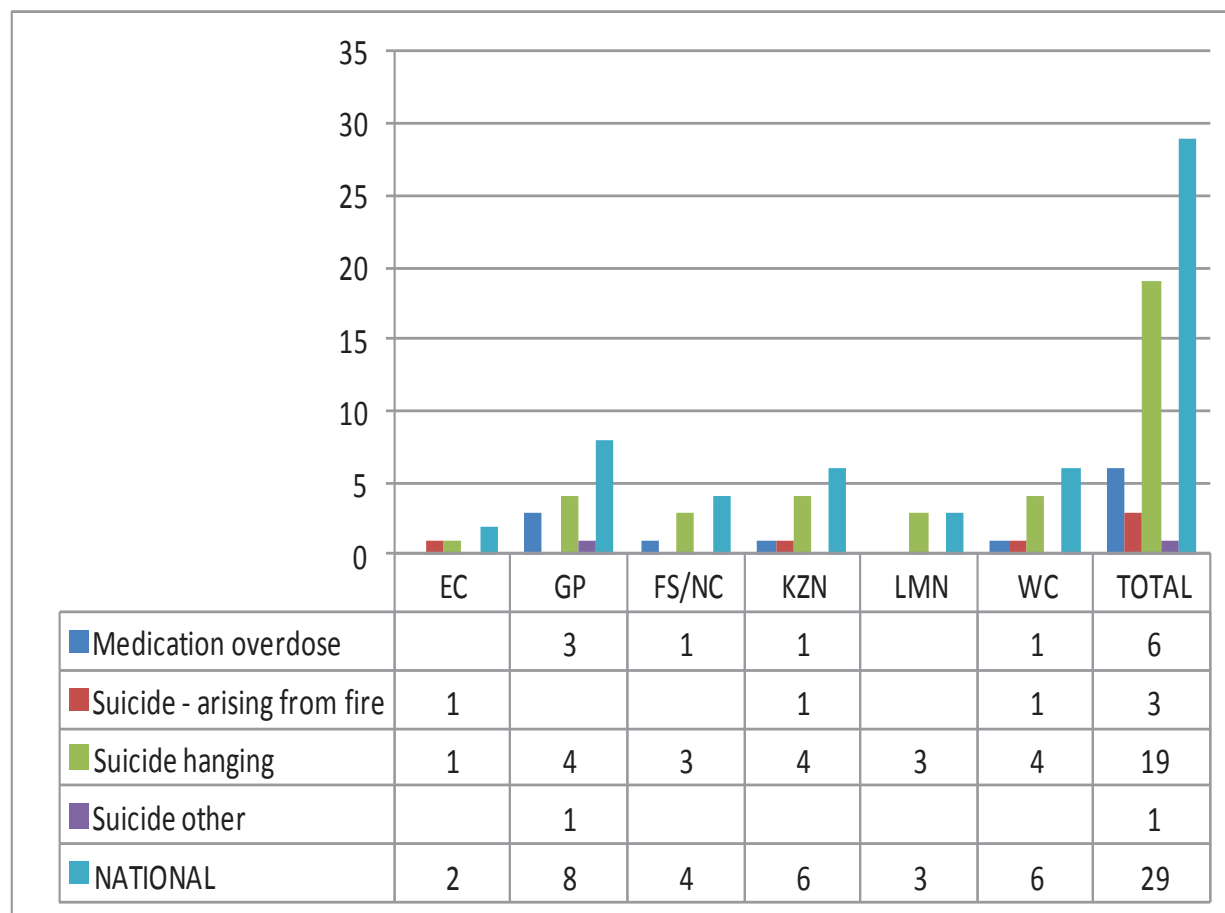


Table 13: Overview of suicides per DCS region

EC	GP	FS/NC	KZN	LMN	WC
2	8	4	6	3	6
The EC region reported 2 suicides, 1 by hanging inmate was found hanging in the morning by a fellow inmate and 1 by smoke inhalation inmate burned his cell in the special care unit.	The GP Region reported 8 suicides; 3 medication overdoses; 4 hangings and 1 classified as other. The high number of overdose is a grave concern; the management of medicine for inmates needs to be reviewed. Suicide by hangings is the same as in the case of KZN	The FS/NC Region reported 4 suicides; 1 by medication overdose and 3 by hanging. The suicide by hangings is the same as in the case of KZN and GP	The KZN Region reported 6 suicides; 1 by burn wounds, 1 medication overdose and 4 by hanging. The suicide took place in single cells and/or in the bathroom or communal cells where inmates used bed sheets and shoe laces to hang themselves. In all cases this was only discovered in the morning during unlocking	The LMN region reported 3 suicides by hanging. The suicide by hangings is the same as in the case of KZN,GP and FS/NC	The WC Region reported 6 suicides from medication overdose, burn wounds and hanging. Three suicides occurred in the morning after members had unlocked the cells and it may indicate that there was no monitoring of the cells by officials. The hangings took place in single cells. One medication overdose by an inmate was reported

Homicide – in 2011/2012, 12 cases of **homicide** were reported as opposed to 10 in the current year. Violence by officials on inmates decreased from 4 reports to 1 for the current year, occurring in the Kwazulu/Natal DCS Region as in the previous year.

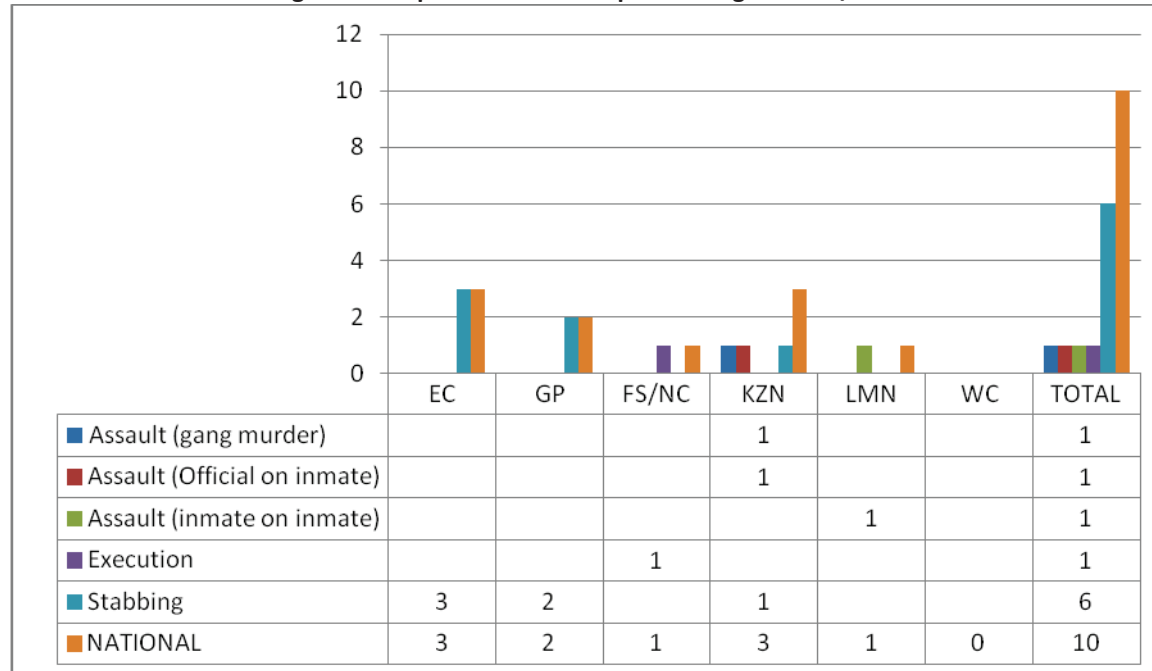
Table 14: Overview of homicides per DCS region

EC	GP	FS/NC	KZN	LMN
3	2	1	3	1
The EC Region reported 3 cases of homicide. These incidences were gang related where inmates stabbed fellow inmates	The GP Region reported 2 cases. In both cases inmates stabbed each other	The FS/NC Region reported 1 case classified as other	The KZN Region reported 3 cases. These deaths relates to official on inmate assault/ use of force. There is a systemic trend of this nature in this region as reported in previous Annual Reports. <i>See the notes below***</i>	The LMN Region reported 1 case. An inmate stabbed a fellow inmate

***** KZN: homicide from 2009 to date. (Durban Management Area)**

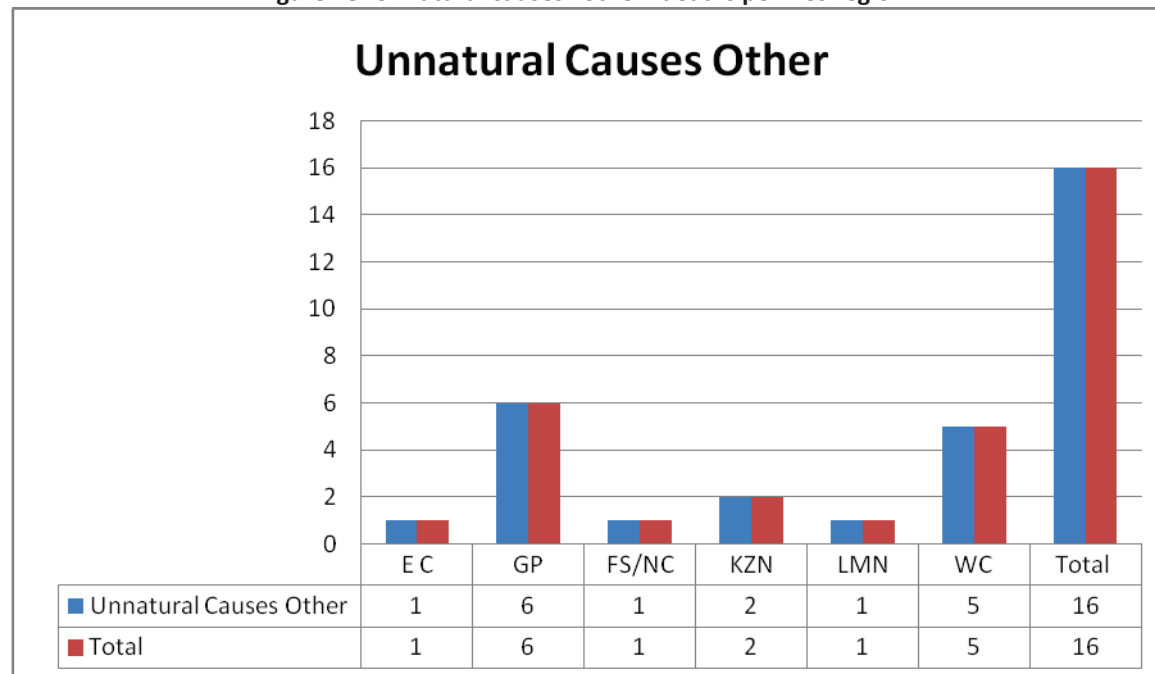
Since 2009 to date 11 homicides have been reported from the Durban Management Area. The Inspectorate’s enquiry into these cases revealed that 7 homicides were the result of officials on inmate and 4 inmates on inmate. All these deaths were reported to the SAPS. However, it seems as if SAPS is reluctant to investigate DCS officials who have been identified and implicated. Furthermore, it was noted that the NPA finalised 2 of the 11 cases. Both cases involved homicides related to inmate on inmate in which the perpetrators were sentenced. The NPA refused to prosecute 4 cases related to official on inmates. Three cases were still to be referred to the courts for inquest and the remaining 2 are *sub judice*.

Figure 17: Reported homicides per DCS region 2012/2013



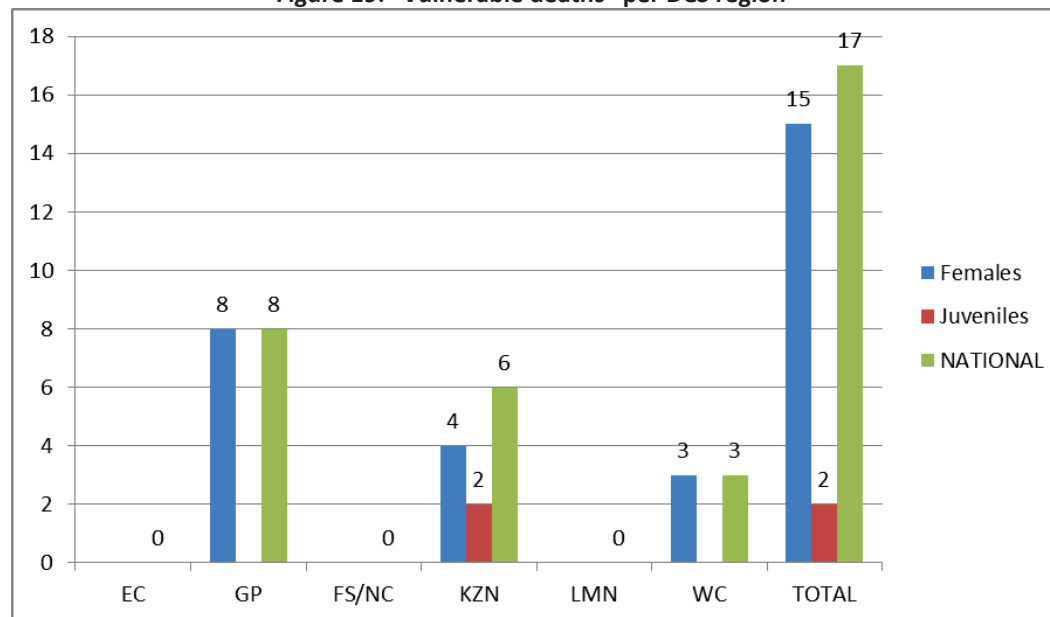
“Unnatural other” deaths: In the 2011/2012 year there were 16 *unnatural other* deaths reported, the same figure as in the year under review (see start of this section for a definition of “unnatural deaths other”).

Figure 18: Unnatural causes “other” deaths per DCS region



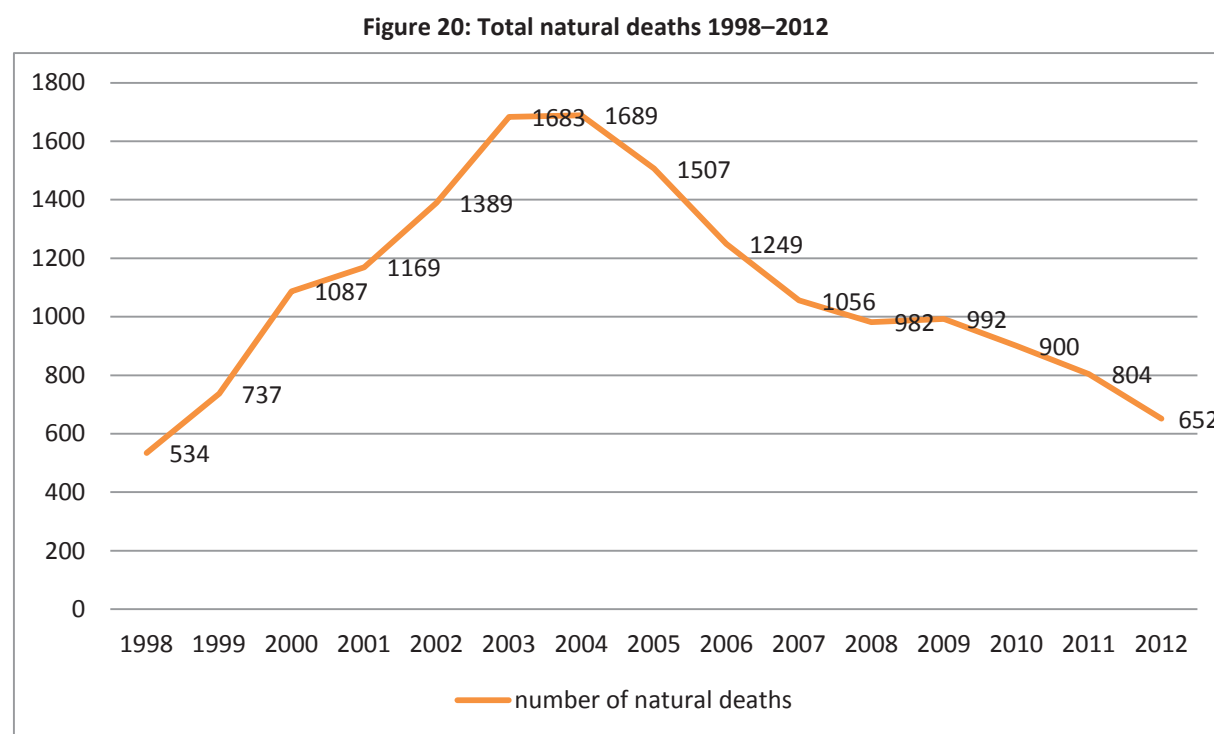
“Vulnerable deaths”: The Inspectorate took it upon itself to monitor deaths that it termed *vulnerable deaths*; these include deaths of females, juveniles, children and babies. The figure below illustrates where these deaths occurred.

Figure 19: “Vulnerable deaths” per DCS region



5.1.2 Natural deaths

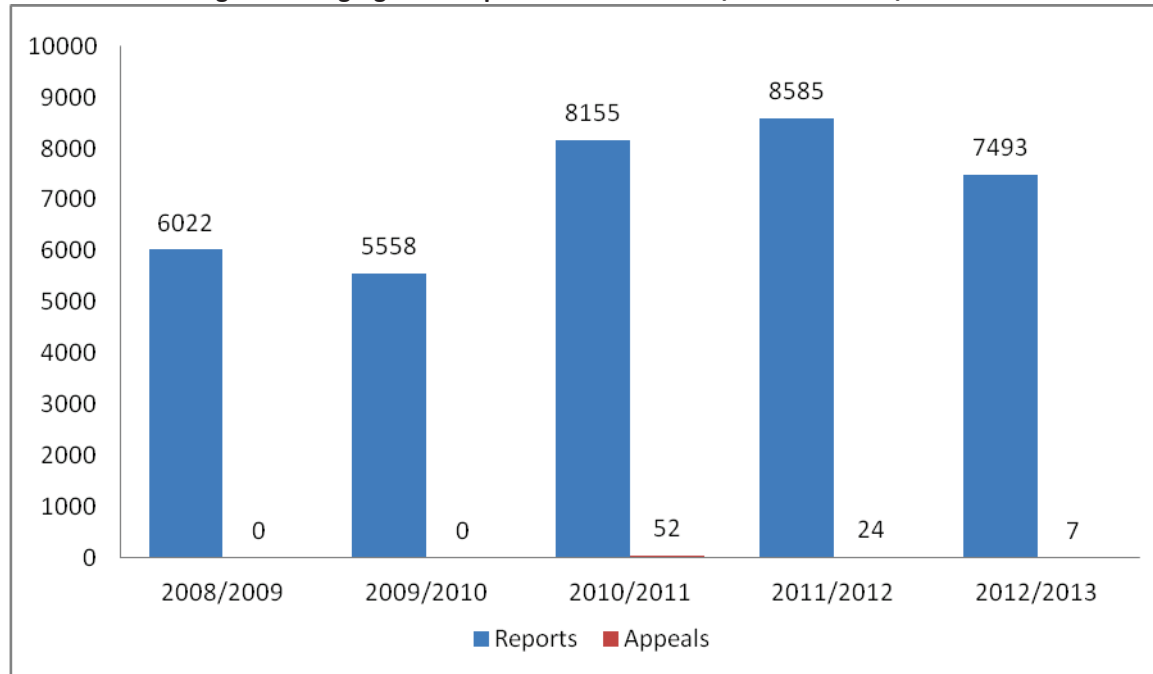
During 2012/2013, the Inspectorate received 652 natural death reports, showing a slight decrease in the number of natural deaths reported, as depicted in the following figure. Reports by HCCs on natural deaths show a systemic trend: (a) most deaths are the cause of cancer, cardiac related, pneumonia and TB related; (b) most of the inmates were previously treated at a hospital and or a public hospital; (c) the highest number of deaths was from sentenced inmates; (c) the average period in custody ranged between one day and 21 years; and (d) inmates' ages ranged from 22 to 74 years.



5.2 Segregation

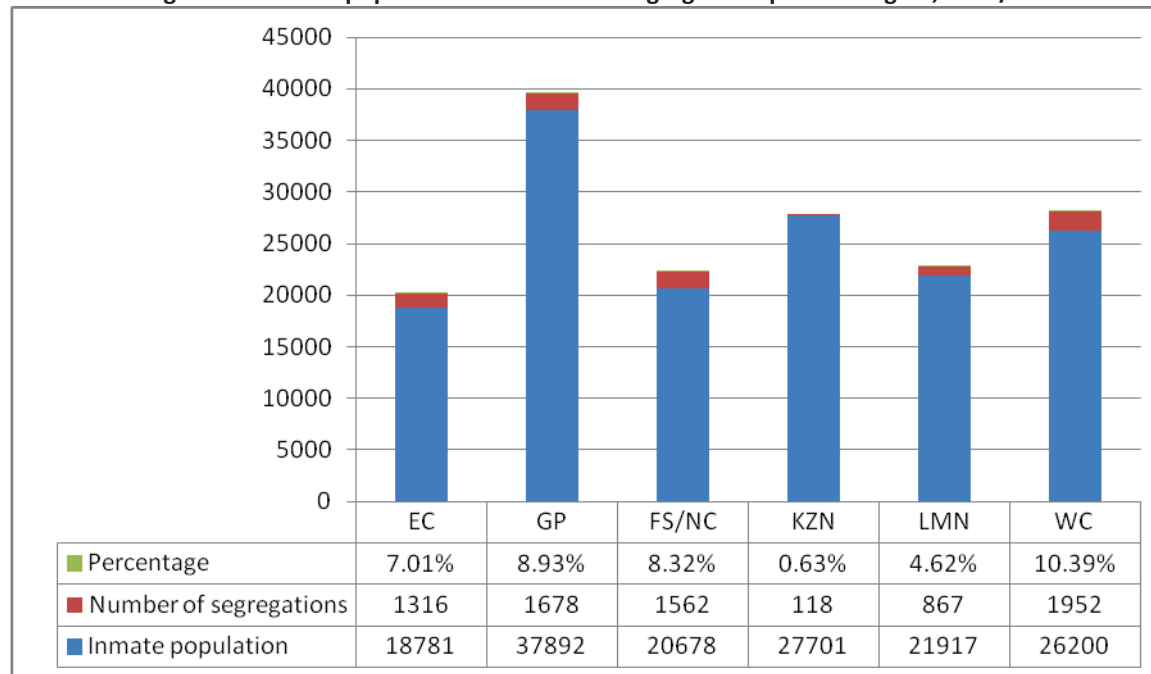
There is a welcome decline in the number of segregations reported by HCCs – from 8 585 in the previous year to 7 493 in the year under review. Section 30(7) of the CSA states: *“inmates can appeal to the Inspecting Judge who has 72 hours to decide on the validity of the segregation.”* There has been a decline of appeals, from 24 in the previous year to 7 in the year under review. The Inspectorate does not have evidence to substantiate the reason for this decline. It is however envisaged to educate inmates on their right to appeal as well as to request ICCVs to monitor if inmates are given the opportunity to appeal by HCCs.

Figure 21: Segregations reported between 2008/2009 and 2012/2013



The Inspectorate noted that the Kwazulu/Natal region reported substantially less segregation in terms of percentage per inmate population in relation to other regions, as illustrated in the figure below.

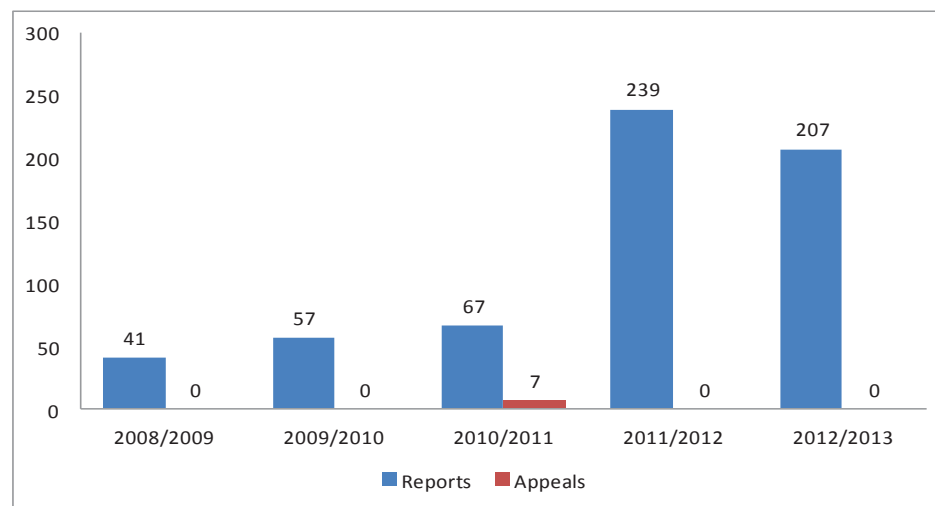
Figure 22: Inmate population in relation to segregations per DCS region, 2012/2013



5.3 Mechanical restraints

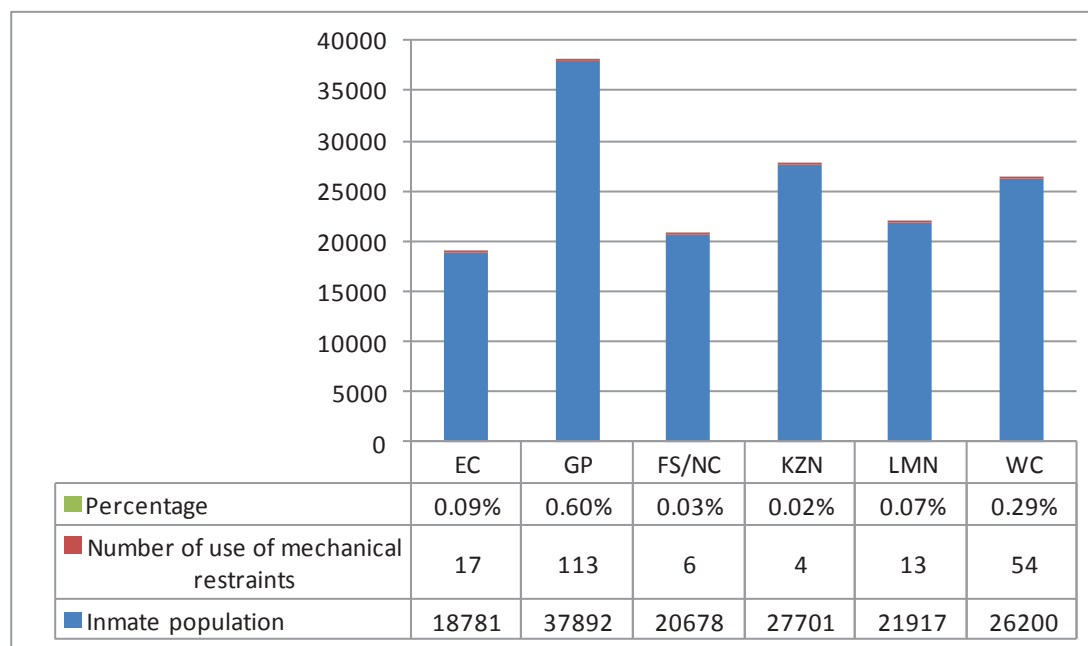
In the current year the Inspectorate received 207 reports of the use of mechanical restraints from HCCs, as opposed to 239 in the previous year. The graph below indicates the use of mechanical restraints that were reported between 2008/2009 and 2012/2013.

Figure 23: Mechanical restraints reported between 2008/2009 and 2012/2013



In terms of section 31(5) of the Act the inmate has a right to appeal against the use of mechanical restraints to the Inspecting Judge who has 72 hours to make his decision. For 2012/2013, no appeals against the use of mechanical restraints were received by the Inspectorate. The figure below illustrates the use of mechanical restraints reported by HCCs in relation to inmate population by region.

Figure 24: Mechanical restraints reported by HCCs vs. inmate population per region



HCCs reported that mechanical restraints were used for the following reasons: (a) on the request by courts; (b) for the safety of the inmate; (c) to prevent inmates from damaging state property; and (d) where there was suspicion of an attempted escape.

The following information was also determined: (a) the most common restrains used were leg irons, handcuffs and belly chains; (b) inmates on whom mechanical restraints were utilized were also segregated; (c) in some cases mechanical restraints were utilized for up to 7 days. The table below illustrates at which centres mechanical restraints were used.

Table 15: Predominant correctional centres where mechanical restraints were used

Region	Centres
GP	<ul style="list-style-type: none"> • Kgosi Mampuru II Central • Modderbee • Emthonjeni Juvenile • Johannesburg Med A
KZN	<ul style="list-style-type: none"> • Ebongweni Max
WC	<ul style="list-style-type: none"> • Brandvlei Juvenile

5.4 Use of force

The Inspectorate received 83 reports of the use of force in the 2012/2013 financial year. There was a substantial increase of reports since 3rd January 2013, which can be attributed to the Inspectorate creating a wizard on its existing electronic system whereby HCCs can report such matters.

In terms of section 32 of the Act, lawful force by an official may be used only in four instances, namely: (a) self defense; (b) defense of any other person; (c) preventing escape; or (d) protection of property. The Act also states that the force used must be minimal and proportionate to the action and/or objective.

Figure 25: Reported use of force 2009/10–2012/13

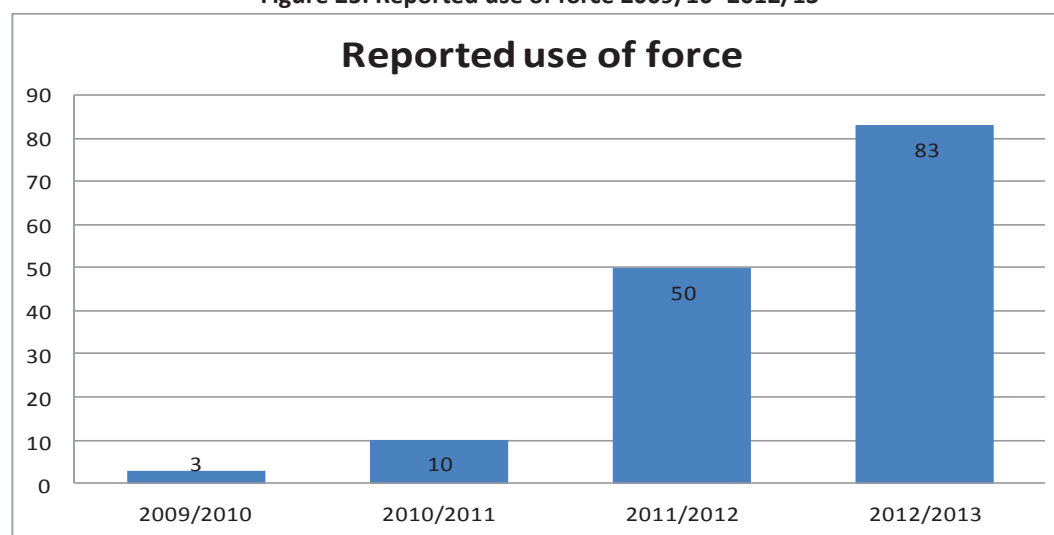
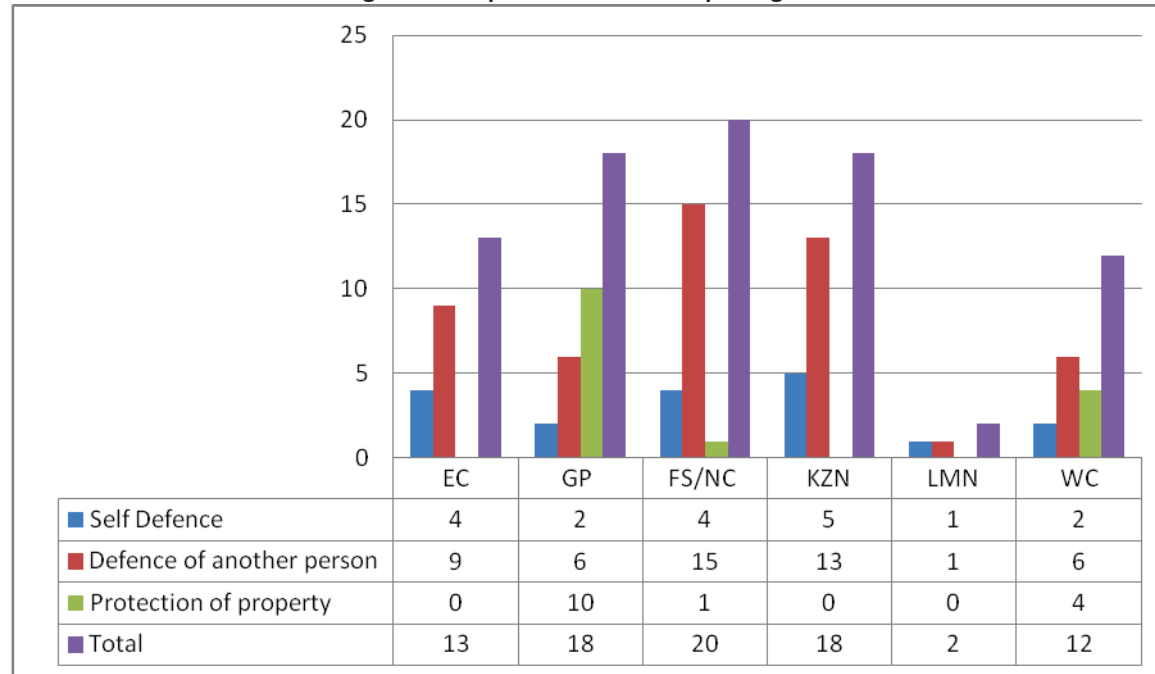


Figure 26: Reported use of force per region



HCCs reported that devices used by the officials when applying use of force were mainly tonfas. The table below provides a summary from the reports by HCCs on the use of mechanical restraints.

Table 16: Predominant correctional centres where use of force was applied

Region	Centres
EC	<ul style="list-style-type: none"> St Albans management area
GP	<ul style="list-style-type: none"> Nigel Male
FS/NC	<ul style="list-style-type: none"> Manguang
KZN	<ul style="list-style-type: none"> Port Shepstone Ebongweni Sevontein
LMN	<ul style="list-style-type: none"> Barberton Management Area
WC	<ul style="list-style-type: none"> Brandvlei Juv

CHAPTER 3: COMMUNITY OVERSIGHT AND STAKEHOLDER ENGAGEMENT

1. Introduction

Community involvement and stakeholder engagement is an important function in the Inspectorate's operations. The CSA provides for the appointment of Independent Correctional Centre Visitors (ICCVs) "*...after publicly calling for nominations and consulting with community organisations...*"⁷¹ Their powers, functions and duties are enshrined in the CSA.⁷²

ICCVs are nominated by community organisations and are ordinary lay citizens with a passion for people and an interest in correctional matters. ICCVs form the backbone of the Inspectorate as they exercise a very crucial role in monitoring and reporting to the Inspecting Judge on the treatment and conditions of inmates in correctional centres.

The CSA further provides for the Inspecting Judge to establish a Visitors' Committee (VC) for a particular geographical area consisting of ICCVs appointed to correctional centres in the area.⁷³ One of the functions of the VCs is to extend and promote the community's interest and involvement in correctional matters.⁷⁴ The inference is that the ICCVs serve as nexus between the community and correctional services.

The Directorate: Management Regions mandate stems from Section 92 to 94 of the CSA. These sections deal with the appointment of ICCVs,⁷⁵ the powers, functions and duties of ICCVs,⁷⁶ and Visitor's Committee (VC).⁷⁷ The core function of the Directorate is to manage the Inspectorate's regional offices, the ICCV post establishment; VCs, training and development of ICCVs; and assist in promotion of community involvement in correctional matters.

The Inspectorate's post structure signed off by the Honourable Minister J. Sibusiso Ndebele makes provision for the appointment of a Director for the Directorate: Management Regions. The CEO in consultation with the Inspecting Judge appointed Mr. Michael Masondo to the post on 1st October 2012. Since his appointment there has been a major improvement in the core functions of the Directorate.

The Directorate consists of four Management Regions, namely: (1) Northern Management Region with its office in Centurion overseeing the Gauteng, Limpopo and Mpumalanga Provinces; (2) Central Management

⁷¹ Section 92 Correctional Services Act 111 of 1998, as amended

⁷² Section 93 Correctional Services Act 111 of 1998, as amended

⁷³ Section 94 Correctional Services Act 111 of 1998, as amended

⁷⁴ Section 94(3)(d) Correctional Services Act 111 of 1998, as amended

⁷⁵ Section 92 Correctional Services Act 111 of 1998, as amended

⁷⁶ Section 93 Correctional Services Act 111 of 1998, as amended

⁷⁷ Section 94 Correctional Services Act 111 of 1998, as amended

Region with its office in Bloemfontein overseeing the Free State, Northern Cape and North West provinces; (3) Southern Management Region with its office in George overseeing the Western Cape and southern part of the Eastern Cape provinces; and (4) Eastern Management Region with its office in Durban, overseeing the KwaZulu-Natal and northern part of the Eastern Cape provinces.

The Inspectorate's Management Regions are not aligned to the DCS six Regional Offices, which are: (1) Gauteng Region; (2) KwaZulu-Natal Region; (3) Western Cape Region; (4) Eastern Cape Region; (5) Free State/Northern Cape; and (6) Limpopo, Mpumalanga and North West (LMN) Region. It is the vision of the Inspectorate to align its Management Regions to those of the DCS. The establishment of an additional two regions will assist the Inspectorate in respect of the following:

- Improved communication between the Inspectorate and the DCS;
- Visitors Committee Co-ordinators (VCCO) will travel reasonable distances per month;
- The services of the Inspectorate will be closer to inmates and their families;
- Create more visibility and awareness of the Inspectorate in the communities; and
- Improved management of the ICCV system.

2. Independent Correctional Centre Visitors (ICCVs)

The Inspectorate has a statutory obligation to appoint ICCVs.⁷⁸ ICCVs placed at each correctional centre in the country are pivotal to ensuring that inmates' complaints are monitored. The Inspectorate requires potential ICCV candidates to undergo training as a prerequisite for appointment to ensure the candidate meets the required threshold.

2.1 Post establishment: ICCVs

The Directorate set as one of its priorities the filling of vacant ICCV posts. There has been a significant decrease in the vacancy rate of ICCV posts since appointment of the Director. As at 1st October 2012, 71% of the ICCV post establishment were filled. As on 31 March 2013, the ICCV post establishment were 94 % filled. The diagram below provides an overview of the ICCV post establishment.

⁷⁸ Section 92 (1) Correctional Services Act 111 of 1998, as amended

Table 17: ICCV post establishment as at 31 March 2013

ICCV POST ESTABLISHMENT AS ON 31 MARCH 2013						
POSTS	SMR	NMR	EMR	CMR	TOTAL	%
Filled posts	57	76	72	78	283	94%
Vacant posts	9	2	2	4	17	6%
Total no. posts	66	78	4	82	300	100%
Filled posts	94%					
Vacant posts	6%					
<i>CC under construction</i>	<i>8</i>					

2.2 Training of ICCVs

In terms of the Inspectorate's policy, it is mandatory that all candidates selected for appointment as ICCVs undergo basic or introductory training covering the following:

- Powers, functions and duties of ICCVs;
- Correctional centres: Security measures and legal implications;
- Protocols and procedures in dealing with inmate complaints;
- Functions of the VC; and
- The Inspectorate's operational reporting system.

Since November 2011, the Inspectorate has introduced follow-up training for ICCVs referred to as paralegal training, which deals with the following:

- Section 35(2)(e) of the Constitution of the RSA (Act 108 of 1996);
- The Correctional Services Act, the DCS B Orders; and
- The Directorate Legal Services Operational Manual.

2.3 Performance audits of ICCVs

ICCVs are independent contractors. They submit a monthly report or invoice for services rendered depending on the number of hours they visit at the correctional centre. ICCVs work without direct supervision by an official of the Inspectorate. The Inspectorate therefore introduced a policy which subjects ICCVs to a biannual performance audit by our Visitors Committee Coordinators (VCCO). Performance audits are conducted

in order to give effect to the Public Finance Management Act No. 1 of 1999 (PFMA).⁷⁹ To ensure compliance with the PFMA, the Inspectorate must ensure that it has and maintains effective, efficient and transparent systems of financial and risk management. The objective of the ICCV performance audit is to:

- determine if the ICCV is following correct procedures;
- record and verify statistics recorded by the ICCV in his/her monthly report;
- ensure financial accountability by verifying the time claimed;
- determine the working relationship between ICCV and HCC;
- determine the accessibility of the ICCV to inmates,
- assess performance in relation to the Minimum Standards Of Service Delivery; and
- serve as a developmental tool to advise the ICCV on corrective measures.

During the financial year a total number of 353 performance audits were conducted. Emanating from the performance audits, 11 ICCVs were sensitised on minor non-compliance, 5 had their services suspended and non-compliance was investigated, and 1 contract was terminated.

2.4 Minimum Standards of Service Delivery (MSSD)

As ICCVs are independent contractors, they are required to render a specific service. Their specific functions and or standard operational procedure are referred to as the “Minimum Standard of Service Delivery” (MSSD).

Figure 28 provides an overview of the specific functions/tasks ICCVs are required to perform.

In terms of the MSSDs for ICCVs, the following functions and duties are to be performed:

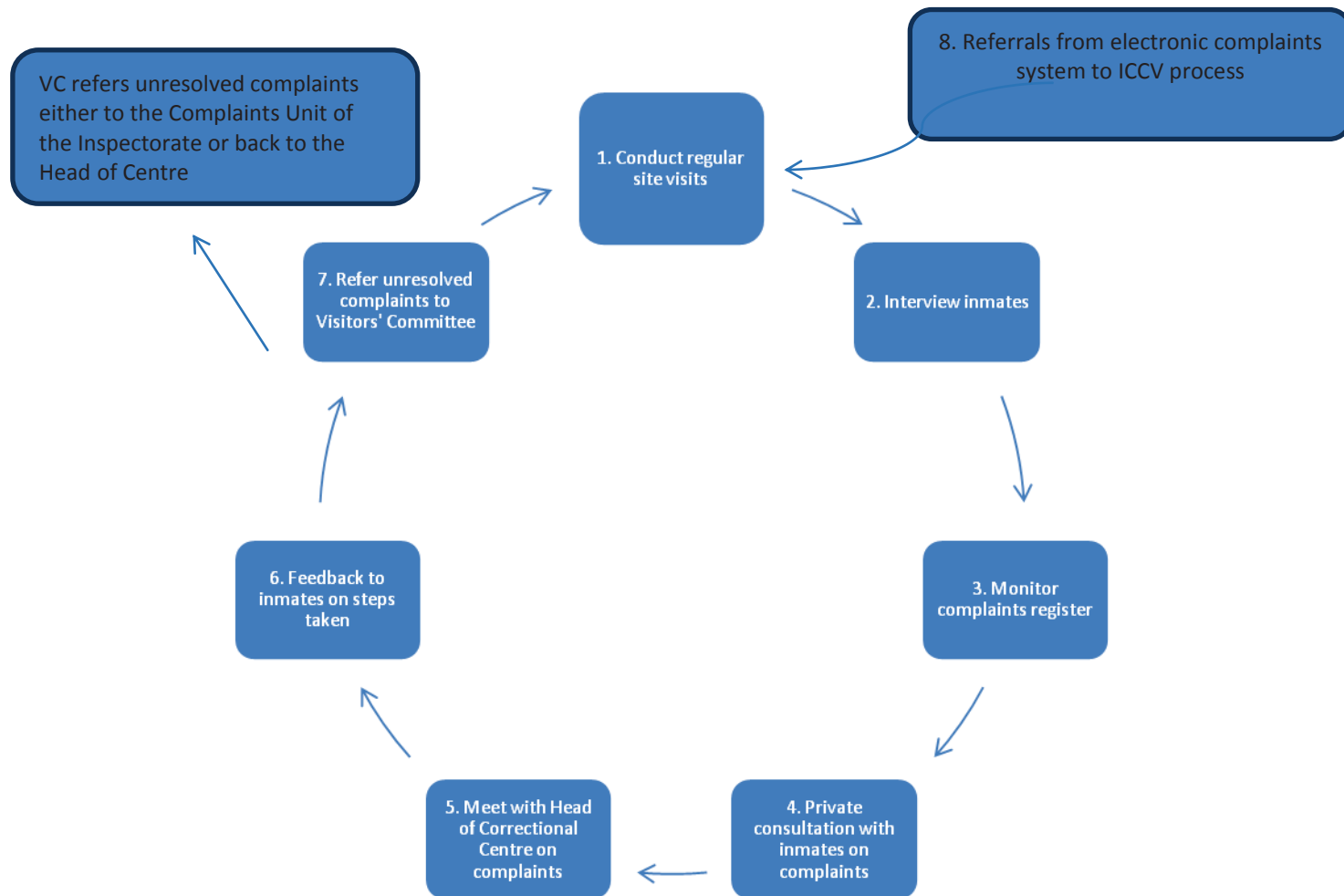
- **Site visits:** For which a monthly mini-inspection report must be submitted. These reports are sent to the Directorate: Legal Services, Complaints Unit. The Unit has the responsibility to follow up matters referred to in these reports, which may warrant inspections or investigations.
- **Interviews:** During the financial year under review the ICCVs conducted a total of 304 944 interviews. During the interview process, inmates may register complaints and/or requests. The ICCV records these complaints and/or requests in an “Index of Interview” register.

Monitor G 365: All complaints recorded in the Index of Interview register are also recorded by DCS officials in the Department’s official complaints register, referred to as the G 365. During the financial year under review, a total number of 106 769 complaints deriving from ICCV interviews were recorded in the G 365. One of the functions of the ICCV is to monitor the G 365 register to determine whether the complaints/requests were resolved.

⁷⁹ Sections 38-40 Public Finance Management Act No. 1 of 1999

- Private consultations:** The ICCV furthermore conducts private consultations with inmates to address complaints registered in the G 365 that have not been adequately resolved. During the year under review, the ICCVs conducted 62 816 private consultations with inmates. The ICCV records these private consultations in a Record of Consultation register. These registers are referred on to HCCs or delegates. The ICCV also facilitates resolution of these complaints between the HCCs and inmates.
- Visitors Committee meetings:** ICCVs attend and participate in monthly VC meetings.

Figure 27: ICCVs standard operating procedure



3. Visitors' Committees

The objective of a Visitors' Committee (VC) is to deal with complaints not resolved at correctional centre level and to promote community involvement in correctional matters. Complaints that cannot be resolved at VCs are referred to the Directorate: Legal Services. HCC and or delegates of the DCS are requested to attend VC meetings to participate in the resolution of inmate's complaints. During the year under review 1 352 complaints were referred to and discussed at VC meetings, and 327 of these complaints were forwarded to the Directorate: Legal Services.

In the 2011/2012 Annual Report,⁸⁰ ICCVs not referring unresolved complaints to the Office of the Inspecting Judge was reported as one of the challenges within the Inspectorate. The figures for 2012/2013 show an immense improvement in the total number of unresolved complaints submitted by VCs to the Directorate: Legal Services, indicating that the Inspectorate has addressed this challenge.

Table 18: The Inspectorate's Visitors' Committee demarcation

VISITORS' COMMITTEE DEMARCATION			
CMR	EMR	NMR	SMR
Rustenburg	Durban Med B	Boksburg	St Albans A
Rooigrond	Durban Med A	Modderbee	St Albans B
Klerkdorp	Qalakabusha	Leeuwkop	George
Groenpunt	Ncome	Barberton	Goodwood
Vereening	Eshowe	Bethal	Pollsmoor
Kroonstad	Glencoe	Witbank	Voorberg
Bethlehem	Umtata	Pretoria Local	Drakenstein
Brandfort	Butterworth	Zonderwater	Brandvlei
Middleburg	East London	Pretoria Central	Helderstroom
Goedemoed	Kokstad	Kutama – Sinthumule	Beaufort West
Kimberley	Pietermaritzburg	Johannesburg medium A	King Williamstown
Grootvlei	Lusikisiki	Johannesburg Medium B	Queenstown
Odendaalsrust			
Gordonia			

The Inspectorate has 50 VCs within the four management regions. VCs are supervised by Visitors Committee Co-ordinators (VCCO). The VC is constituted by ICCVs according to geographically demarcated areas. ICCVS elect a Chairperson and secretary amongst themselves annually. Chairpersons and Secretaries are required to attend office bearer training facilitated by the Inspectorate. One of the functions of the Regional Managers is to visit all of their VCs during a financial year. The purpose for Regional Managers visiting VCs is to conduct an audit on the effectiveness of the VCs.

⁸⁰ The Judicial Inspectorate for Correctional Services Annual Report, 2011/2012, See pages 39 and 67.

Table 19: Stakeholder participation per Inspectorate region

SOUTHERN MANAGEMENT REGION	NORTHERN MANAGEMENT REGION	EASTERN MANAGEMENT REGION	CENTRAL MANAGEMENT REGION
Legal Aid South Africa ✓ George ✓ Uitenhage ✓ Oudtshoorn ✓ Worcester. ✓ Western Cape ✓ Wellington Bonteheuwel Youth Network on Corrections	Legal Aid South Africa ✓ KutamaSinthumule ✓ Pretoria ✓ Bethal ✓ Standerton ✓ Nelspruit ✓ Leeuwkop South African Police Service ✓ Krugersdorp ✓ Modderbee ✓ Leeuwkop Community Police Forum ✓ Krugersdorp ✓ Nelspruit NICRO Barberton Ratanda Development Centre Heidelberg	Legal Aid South Africa: ✓ Pinetown ✓ Verulum ✓ Empangeni ✓ Pietermaritzburg ✓ Durban ✓ New Castle. ✓ Ncome ✓ Qalakabusha ✓ Port Shepstone. ✓ Umtata ✓ Butterworth ✓ East London ✓ Waterval ✓ Glencoe ✓ Vryheid ✓ Mdantsane ✓ Ngcobo ✓ Willowvale ✓ Stanger ✓ Kranskop. ✓ Greytown. ✓ Osizweni. ✓ Mqanduli ✓ Tabankulu South African Police Service ✓ Kokstad ✓ New Castle ✓ East London ✓ Idutywa ✓ Butterworth ✓ Umtata KSD Municipality NDPP Pietermaritzburg NPA Umtata KZN Premier Office	Legal Aid South Africa: ✓ Phuthadichaba ✓ Justice Centre Bethlehem ✓ Odendaalrus ✓ Goedemoed ✓ Grootvlei ✓ Qwaqwa ✓ Bethlehem. ✓ Kroonstad ✓ Rooigrond ✓ Rustenburg ✓ Klerksdorp Community Police Forum- Bethlehem Department of Home Affairs- Odendaalsrus. Lesotho Consulate Khayelethu Youth Organization DPP/ NPA- Odendaalsrus NPA Public Protector South Africa Love Life Youth Empowerment Community Advice Bureau Free State on Violence Against Women Child Justice Forum. Ikhayaletu. South African Police Service – Douglas Child line Revival Church

There has been an increase in participation by Legal Aid South Africa at VC Meetings. Attendance of the Legal Aid representatives at VC meetings is important as many complaints received by ICCVs concern the right to legal representation.

4. Stakeholder engagement

Stakeholder engagement for the Inspectorate takes place through public calls for nomination meetings, direct stakeholder networking with other organisations having an interest in correctional matters and through

employees conducting community outreach. The Directorate Management Regions ensures that it engage stakeholders on a continuous basis.

4.1 Public Calling for Nominations Meetings

It is a statutory obligation for Inspectorate to involve communities in the appointment of ICCV process.⁸¹ The Inspectorate conducted 44 public calling for nomination meetings and consultative meetings with community organisations for the appointment of ICCVs. As a result, a total number of 1 760 nomination forms were received nationally.

4.2 Direct Stakeholder Engagement

The table below reflects the stakeholder engagements attended by the Directorate Management Regions per regional management area.

Table 20: Stakeholder engagement per regional management area

MANAGEMENT REGIONS	NAME OF NGO / STATE ORGANS
Northern Management	Khulisa at Rustenburg WITS Justice Project (WJP) DCS Renaming of Kgosi Mampuru Centre Youth day celebration at Emthonjeni Juvenile Centre
Southern Management	Temba Lobomi (Feb and March) CDW George Municipality DCS IMBIZO(Community Corrections) DCS Ministerial Imbizo. George CPF Department of Justice – George
Central Management	Victim Offender Dialogue at Grootvlei Victim Offender Dialogue at Kroonstad Victim Offender Dialogue at Kimberley Thoafalo Advice and Development Centre Ke Barona Disability and Old Age Provincial Stakeholders meeting
Eastern Management	DCS Opening of Youth Centre at Durban Westville Victim Offender Dialogue –Durban Correctional Centre Victim Offender Dialogue in Umzinto (hosted twice) (twice) Correctional Centre Department of Constitutional Development and Justice

⁸¹ Section 92 Correctional Services Act 111 of 1998, as amended

CHAPTER FOUR: SPECIAL PROJECTS, RESEARCH AND STAKEHOLDER ENGAGEMENT

1. Introduction

The importance of fostering good stakeholder relations and projects and carrying out empirical research pertaining to the correctional system in South Africa is of utmost importance to the Inspectorate. The Inspecting Judge's Special Project was previously reported under Community Oversight and Stakeholder Engagements, and an overview of empirical research was highlighted under Inspections, Investigations, Complaints and Mandatory Reporting. The Inspecting Judge's Special Projects, Research and Stakeholder Relations are incorporated into one chapter due to the fact that these areas are interrelated. Thus, this chapter provides an overview of the new and existing special projects "*Children and juveniles in conflict with the law*" of Inspecting Judge VEM Tshabalala. It also provides an overview of the research undertaken by the Inspectorate for the 2012 year, which systematically flows from and is chiefly influenced by the prevalent complaints emanating from the Directorate Legal Services. Stakeholders play important roles as advocates, sponsors, partners and agents of change. Stakeholder engagement plays an important role in the functioning of the Inspectorate and is a common practice across all units. Chapter 4 deals specifically with those stakeholders with whom the Inspectorate fostered a collaborative working relation in supportive areas that would ensure capacity building for the Inspectorate, and bring about radical change to the organisation in the progressive realization of its mandate. Annually, the Inspectorate intends reporting on existing and newly established stakeholder relations.

2. Special Projects of the Inspecting Judge

In continuing the legacy of his predecessors and adopting specific themes or areas on corrections, the Inspecting Judge adopted a key focus on children and youth in conflict with the law during his tenure. The Inspecting Judge and CEO endorse the projects identified and the CEO spearheads the various projects, with the assistance of his component, to ensure that the objectives are achieved. The following sections provide an overview of newly endorsed projects and an update on existing projects.

2.1 The Emthonjeni Youth Correctional Centre

The Emthonjeni Youth Correctional Centre was endorsed as a special project by the Inspecting Judge and CEO at an official visit to the centre on 18th October 2012. At the time, the centre was under renovation due to its bad condition. The Inspecting Judge was motivated by the potential the centre had in terms of fulfilling the goal of rehabilitation of youth offenders, hence the reason for choosing the centre as part of the special project. Subsequent to the visit, recommendations were made to the Area Commissioner and HCC in support of the

notion of holistic rehabilitation. The recommendations proposed baseline targets the correctional centre had to meet in order to ensure the objective of rehabilitation of youth. The Inspectorate will conduct quarterly follow-up inspections to determine compliance with the baselines. The recommendations are not intended to be prescriptive and the Inspectorate will in no way become involved in management of the centre. The recommendations merely seek to share ideas on how to impact the lives of youth and juveniles positively during incarceration.

Since the first quarterly follow-up visit by the CEO, there has been major improvement. In the Inspectorate's ensuing 2013/2014 Annual Report, the Inspectorate, in collaboration with the Regional Commissioner of the DCS, will provide a more comprehensive report on the project. The Inspectorate trusts that the project will ultimately serve as a model and benchmark against which other youth centres can measure their success.

2.2 Update on the Children's Legislative Monitoring Tool

In the 2011/2012 Annual Report, a partnership with the Civil Society Prison Reform Initiative (CSPRI) to create a children's legislative monitoring tool for use by ICCVs in correctional centres and to publish a report entitled "*Children and juveniles in conflict with the law*" was reported on extensively.⁸² The Inspectorate is pleased to announce that the children's legislative compliance monitoring tools have been created. There were substantial consultations between the partners during the year under review. Pilot projects were conducted at Durban Westville and Brandvlei Correctional Centres in order to determine the suitability and flexibility of the monitoring tools.

Subsequently, the monitoring tools were amended accordingly and endorsed by the office of the CEO as the final monitoring tools for use by ICCVs in correctional centres. The Inspectorate intends to start measuring compliance officially with the tools and collecting data for the report in the ensuing year.

⁸² The Judicial Inspectorate for Correctional Services Annual Report 2011/2012

3. Research: Parole Survey

3.1 Background

The CSA contains various legislative provisions relating to the rights of inmates for release on parole and correctional supervision.⁸³ One of the purposes of the correctional system is promoting the social responsibility and human development of all sentenced offenders.⁸⁴ In recent years the Inspectorate received a number of complaints regarding parole of inmates. In our 2011/2012 Annual Report it was reported that about 50% of parole complaints received relate to the poor functioning of Case Management Committees (CMCs).⁸⁵ The CSA states that each Correctional Centre must have one or more CMCs composed of correctional officials.⁸⁶ The CMC is responsible for ensuring that each sentenced inmate is assessed, has a sentence plan, and is interviewed regularly with a view to review or amend the sentenced plan if there is any progress.⁸⁷ This function was created in order for the CMC to make preliminary arrangements for the recommendation of possible placement of inmates under community corrections to the Correctional Supervision and Parole Board (CSPB),⁸⁸ which makes the final decision.

According to the Inspectorate's 2011/2012 Annual Report, inmates complain that they are not considered for parole even after serving their minimum incarceration period as indicated on their warrants of committal and that the CMCs do not prepare their profiles for timeous submission to the CSPB.⁸⁹ In light of the above observations a survey on parole was conducted to gain a deeper understanding of the state of parole and the issues around parole. The preliminary findings and observation of the survey are outlined below.

3.2 The Survey Process

Three questionnaires were drafted for the survey. Questionnaire 1 deals substantially with the issue to be investigated as it is applicable to the CMC (Chairperson). Questionnaires 2 and 3 required interviews to be conducted with the CSPB (Chairperson) and inmates respectively. One hundred and forty three correctional centre CMC chairpersons were surveyed across all six DCS management regions. The survey questions were partly restricted to the 2012 calendar year and current position on staffing and capacity. Notably, of the 143

⁸³ Chapters VI and VII Correctional Services Act 111 of 1998, as amended

⁸⁴ Section 2(c) Correctional Services Act 111 of 1998, as amended

⁸⁵ The Judicial Inspectorate for Correctional Services 2011/2012 Annual Report, p 39

⁸⁶ Section 42(1) Correctional Services Act 111 of 1998, as amended

⁸⁷ Section 42(2)(a)(b) Correctional Services Act 111 of 1998, as amended

⁸⁸ Section 42 (2)(c)(d) Correctional Services Act 111 of 1998, as amended

⁸⁹ The Judicial Inspectorate for Correctional Services 2011/2012 Annual Report, p 40

correctional centres, 43% (62) exceeded their capacity population (see diagrams below). Fifty three CSPB Chairpersons and 1 767 inmates were surveyed.

Figure 28: Correctional Centres surveyed

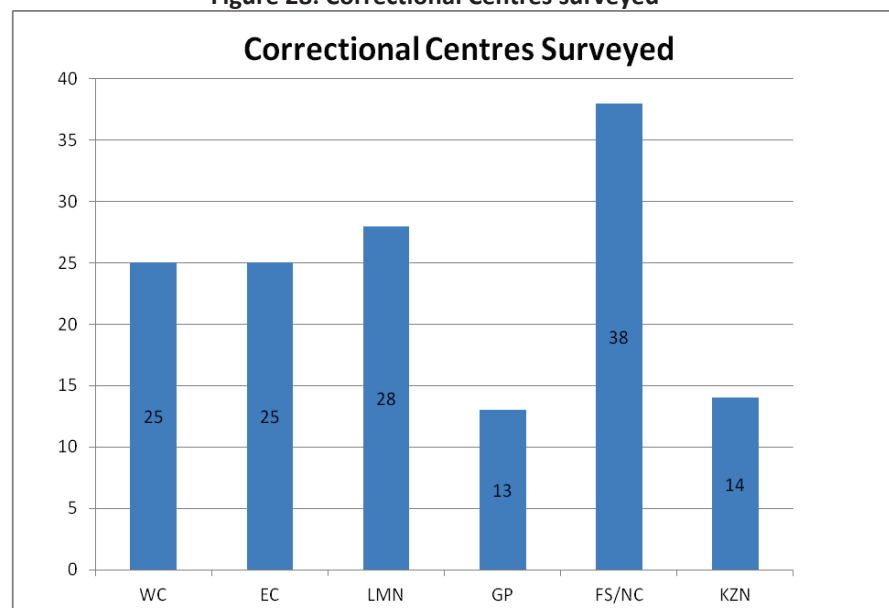
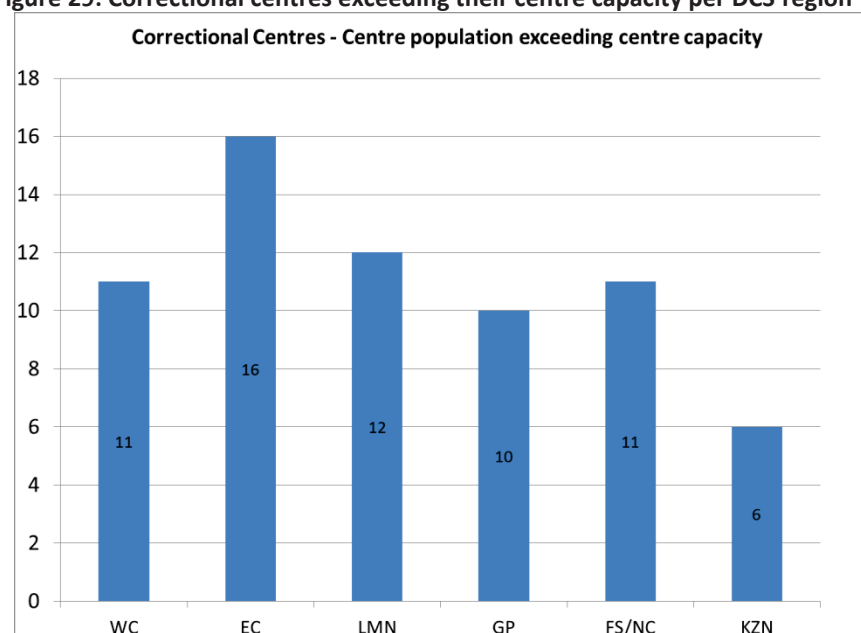


Figure 29: Correctional centres exceeding their centre capacity per DCS region



3.3 Provisions relating to parole and correctional supervision

The implementation of a sentence of incarceration has the objective of enabling the sentenced offender to lead a socially responsible and crime-free life in the future.⁹⁰ The CSA places a statutory obligation on all sentenced inmates to participate in the assessment process and the design and implementation of any development plan or programme aimed at achieving this objective.⁹¹

In order to give effect to this statutory obligation, the CSA states that: *“The Department must, as far as it is possible, apply a management regime which consists of— (a) good communication between correctional officials and inmates, which is understood by everyone; (b) team work; (c) direct, interactive supervision of inmates; (d) assessment of sentenced offenders; (e) needs-driven programmes for sentenced offenders in a structured day and correctional sentence plan; (f) the provision of multi-skilled staff in an enabling and resourced environment; (g) a restorative, developmental and human rights approach to sentenced offenders; and (h) delegated authority with clear lines of accountability.”*⁹²

The CSA further provides that as soon as possible after admission as a sentenced offender; inmates must be assessed to determine their various needs and requirements.⁹³

The CMC is required to compile a correctional sentence plan of persons sentenced to incarceration of over 24 months as soon as possible after the assessment.⁹⁴ The sentence plan is important as it addresses various needs for the inmate.⁹⁵

Furthermore, the CSA provides for treatment, development and support services.⁹⁶ Sentenced offenders have the right to take part in needs-based programmes and activities (educational and training), social and

⁹⁰ Section 36 Correctional Services Act 111 of 1998, as amended

⁹¹ Section 37 (1) (a) Correctional Services Act 111 of 1998, as amended

⁹² Section 37 (1A) Correctional Services Act 111 of 1998, as amended

⁹³ Section 38 (1) Correctional Services Act 111 of 1998, as amended: As soon as possible after admission as a sentenced offender, such offender must be assessed to determine his/her: (a) security classification for purposes of safe custody; (b) health needs; (c) educational needs; (d) social and psychological needs; (e) religious needs; (f) specific development programme needs; (g) work allocation; (h) allocation to a specific correctional centre; (i) needs regarding reintegration into the community; (j) restorative justice requirements; and (k) vulnerability to sexual violence and exploitation.

⁹⁴ Section 38 (1A)(a) Correctional Services Act 111 of 1998, as amended

⁹⁵ Section 38 (1A) (b) Correctional Services Act 111 of 1998, as amended. The correctional sentence plan must address each of the matters and needs referred to in subsection (1) and must, in particular: (i) contain the proposed intervention aimed at addressing the risks and needs of the sentenced offender as identified during an in-depth risk assessment to correct the offending behaviour; (ii) spell out what services and programmes are required to target offending behaviour and to help the sentenced offender develop skills to handle the socio-economic conditions that led to criminality; (iii) spell out services and programmes needed to enhance the sentenced offender’s social functioning; and (iv) set time frames and specify responsibilities to ensure that the intended services and programmes are offered to the sentenced offender.

⁹⁶ Section 41 Correctional Services Act 111 of 1998, as amended

psychological services and development and support programmes which meet their specific needs.⁹⁷ The CMC has a major responsibility in terms of ensuring the aforementioned.⁹⁸ Section 42 (2) of the CSA states that the CMC must—

- (a) ensure that each sentenced offender has been assessed, and that for sentenced offenders serving more than 24 months there is a plan specified in section 38 (1A);
- (b) interview, at regular intervals, each sentenced offender sentenced to more than 24 months, review the plan for such offenders and the progress made and, if necessary, amend such plan;
- (c) make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of a sentenced offender under community corrections;
- (d) submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding—
 - (i) the offence or offences for which the sentenced offender is serving a term of incarceration together with the judgment on the merits and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department;
 - (ii) the previous criminal record of such offender;
 - (iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such offender;
 - (iv) the likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;
 - (v) the assessment results and the progress with regard to the correctional sentence plan contemplated in section 38;
 - (vi) the possible placement of an offender under correctional supervision in terms of a sentence provided for in section 276 (1) (i) or 287 (4) (a) of the Criminal Procedure Act, or in terms of the conversion of such an offender's sentence into correctional supervision under section 276A (3) (e) (ii) or 287 (4) (b) of the said Act, and the conditions for such placement;
 - (vii) the possible placement of such sentenced offender on day parole, parole or medical parole, and the conditions for such placement;
 - (viii) a certified copy of the offender's identity document and, in the case of a foreign national, a report from the Department of Home Affairs on the residential status of such offender;
 - (ix) the possible placement under correctional supervision or release of an offender who has been declared a dangerous criminal, in terms of section 286B (4) (b) of the Criminal Procedure Act; and
 - (x) such other matters as the Correctional Supervision and Parole Board may request.
- (e) submit a report as contemplated in paragraph (d) to the National Commissioner in respect of any sentenced offender sentenced to incarceration of 24 months or less.

There is also an obligation to inform sentenced offenders of the contents of the report submitted by the CMC to the CSPB or the National Commissioner and they must be afforded the opportunity to submit written representations to the CSPB or National Commissioner.⁹⁹

⁹⁷ Section 41(5) Correctional Services Act 111 of 1998, as amended

⁹⁸ Section 42 Correctional Services Act 111 of 1998, as amended

⁹⁹ Section 42 (3) Correctional Services Act 111 of 1998, as amended

3.4 Preliminary findings of the interviews held with the CMC

The CMCs consist of various role players in ensuring that inmates' files are prepared for submission to the CSPB, including Unit Managers, Social Workers, Case Assessment Officers, and most importantly, the CMC Chairperson who gets inmates' files ready and recommends them for parole or correctional supervision. The focus for the purposes of the survey was to interview the CMC Chairperson and Head Social Workers at correctional centres.

OPERATIONAL CMC, CSPB AND OTHER ROLE-PLAYERS

Correctional officials were consulted to determine whether the correctional centre has an operational CMC, CSPB, dedicated Case Assessment Officer, Social Worker, Psychologist and Psychiatrist. The table below reflects the responses received.

Table 21: Operational CMC, CSPB and other role-players

QUESTION	ANSWER: NO	ANSWER: YES
Operational CMC	1.43%	98.57 %
Operational CSPB	26.67 %	90.23%
Availability of dedicated Case Officers	9.77%	90.23%
Availability of Social Workers	19.15%	80.85%
Availability of Psychologist	67.39%	32.61 %
Availability of Psychiatrist	92.75%	7.25%

It must be borne in mind that although an indication is issued in terms of the availability (and not sufficiency) of the above role players, pivotal to the facilitation of parole administration and rehabilitation of inmates, anything less than 100% complement of the above role-players compromises the profiling of inmates for rehabilitation and consideration for parole. This situation has a negative impact on the inmates being considered for parole or correctional supervision.

INTERVIEW WITH SOCIAL WORKER

Social Workers were interviewed to gain an understanding as to whether there are sufficient social workers and associated professionals at the correctional centre to ensure that all inmates complete their rehabilitation

programmes in time to be recommended for parole. Social workers were also requested to identify their biggest challenges and obstacles.

Insufficient social workers and associated professionals

Of the responses received, 79.60% (109) of Social Workers responded that there are not enough Social Workers and associated professionals to ensure that all inmates complete their rehabilitation programmes in time in order to be recommended for parole. Social workers indicated that the ratios of Social Workers and associated professional to the amount of inmates in the correctional centres are unrealistic. Social Workers are also responsible for remand detainees and associated support and not specifically for rehabilitation. Others mentioned that they have to “loan” Social Workers from other centres.

Obstacles and challenges of social workers

When asked to identify their biggest challenges and obstacles in ensuring that inmates undergo various rehabilitation programmes, 64% (78) related to shortages in staff and associated professionals (majority mentioned Social Workers) to perform rehabilitation programmes and shortages in skills and rehabilitation programmes and CMC Chairpersons. Other staff shortages included correctional personnel staff as security when rendering private or group rehabilitation sessions. Twenty-eight per cent (33) identified shortages of resources and infrastructure, and a majority raised a lack of workable computers and inadequate venues or in some cases no venues, to conduct group programmes and interviews.

INTERVIEW WITH THE CHAIRPERSON OF THE CMC

Current composition of CMC staff

The CMC Chairperson was asked to provide an overview on CMC staffing as staff shortages have a negative impact on effective parole administration. The table below provides an overview on the response received when asked whether they had a Chairperson, Secretary and Clerk.

Table 22: Composition of CMC staff

QUESTION	ANSWER: YES	ANSWER: NO
Chairperson	89.29%	10.71%
Secretary	91.37%	8.63%
Clerks	91.03%	7.97%

It should be borne in mind that the above does not provide an indication of the sufficiency of staff members to assist with the parole administration of all inmates in a specific correctional centre.

Enough staff to prepare inmates' files?

Chairpersons were asked whether they had enough staff to administer inmates' files for parole and correctional supervision. 47.06% (64) indicated that there were not enough staff members to fulfil this function.

Enough professional personnel at the correctional centre?

One hundred and ten Chairpersons (82.09%) indicated that there was not enough professional staff to assist with rehabilitation programmes at correctional centres.

The CMC Chairperson was also asked the following specific questions pertaining to the assessment of inmates, interviews with inmates, assessment plans of inmates and overall accessibility to the CMC.

How soon after admission to the correctional centre are Inmates assessed?

Of those that responded, 24% said that inmates were assessed within 3 days of admission to the centre; 41.5% said that they were assessed within 7 days; 28% said that they were assessed within a month; and 2% in excess of a month. The responses "Other" resulted in 4.5 % of the analysis.

How often are inmates interviewed by the CMC?

The majority of Chairpersons noted that interviews with inmates take place every 3–6 months, with only one centre reporting a longer period.

Inmates informed of rehabilitation programmes?

Most Chairpersons (98.54% or 135) indicated that inmates are informed of the rehabilitation programmes they are required to undergo.

Report contents provided to the inmate?

Most Chairpersons (71.01% or 98) indicated that they did not provide a copy of the contents of inmates' reports before submission to the CSPB.

Allow written submissions to the CSPB?

Asked whether or not they allowed an inmate to make written submissions to the CSPB, 86.23% (119) said that they do and 13.77% (19) do not.

Inmates ever been overlooked for parole?

Asked whether they have ever overlooked inmates for parole or correctional supervision, the majority (95.62%) indicated that this had never happened and 4.38% (6) indicated that it had.

Training on parole system?

44.72% (55) of the CMC Chairpersons who responded indicated that they had no training on the parole system.

Three biggest challenges of the CMC

The Chairpersons of the CMC were requested to provide an overview of their three biggest challenges or difficulties working with parole and correctional supervision.

Staff shortages across all spheres were highlighted most prominently (53% out of 121 responses), with the lack of professional staff (22), particularly Social Workers (14), being most prevalent. Roaming Chairpersons (14) were highlighted as a challenge, and Psychologists and all other staff members such as security staff. The lack of Social Workers is also associated with the lack of reports vital to consideration for parole of inmates.

The second biggest challenges cited were the lack of resources, mostly computers and space to conduct group sessions with inmates. Others included inconvenient shift patterns and security personnel/challenges linked to capacity issues; training on CMC; difficulties in getting SAPS 69/62. Outstanding SAPS reports are also associated with reports of inmates for consideration on parole.

The CMC Chairpersons were asked the following questions pertaining to parole administration in 2012

Staff shortages?

The CMC Chairperson was asked whether there were any staff shortages in 2012. Of 136 responses received, 34.56% (47) indicated a shortage of staff and 65.44% (89) did not.

Backlog of cases?

When asked about a backlog in cases in 2012, 26.47% (36) CMC Chairs indicated a backlog in cases.

Lack of required reports?

Of the responses received in relation to the lack of/delays in the above-mentioned reports, 39.71% (54) indicated a lack in Social Worker reports, 32.09% (43) indicated a lack of Psychologist/Psychiatrist reports, 23.31% (31) indicated a lack in Case Officers/ Unit Manager's reports, and 25.38% (33) indicated a lack in Criminologist reports.

Eligibility for parole and correctional supervision vs. files referred to the CSPB?

For those inmates sentenced in excess of 24 months, the data indicates that there is a disparity between the number of inmates eligible for parole in 2012 as opposed to the number of files referred by the CMC to the CSPB for consideration. Of those that responded (87), the data shows that in 15% (13) of the correctional centres surveyed the eligibility of inmates for parole was higher than the amount of files submitted in that year.

Likewise, in 24.10% (21) the eligibility of inmates for parole was lower but the number of files referred to the CSPB was considerably higher. Both these instances create an impression of inefficiency within the CMC and in particular a backlog in cases.

Reasons for postponement of parole for further profiling

When the CMC Chairpersons were asked to identify the most common reasons for postponement of parole for further profiling by CSPB, the following were provided:

- Delay in Social Work/professional reports/programmes
- No support by victims' families – negative address
- SAPS reports
- Lack of victim participation
- Further charges
- Pending disciplinary hearing.

3.5 Preliminary findings of the interview with the CSPB

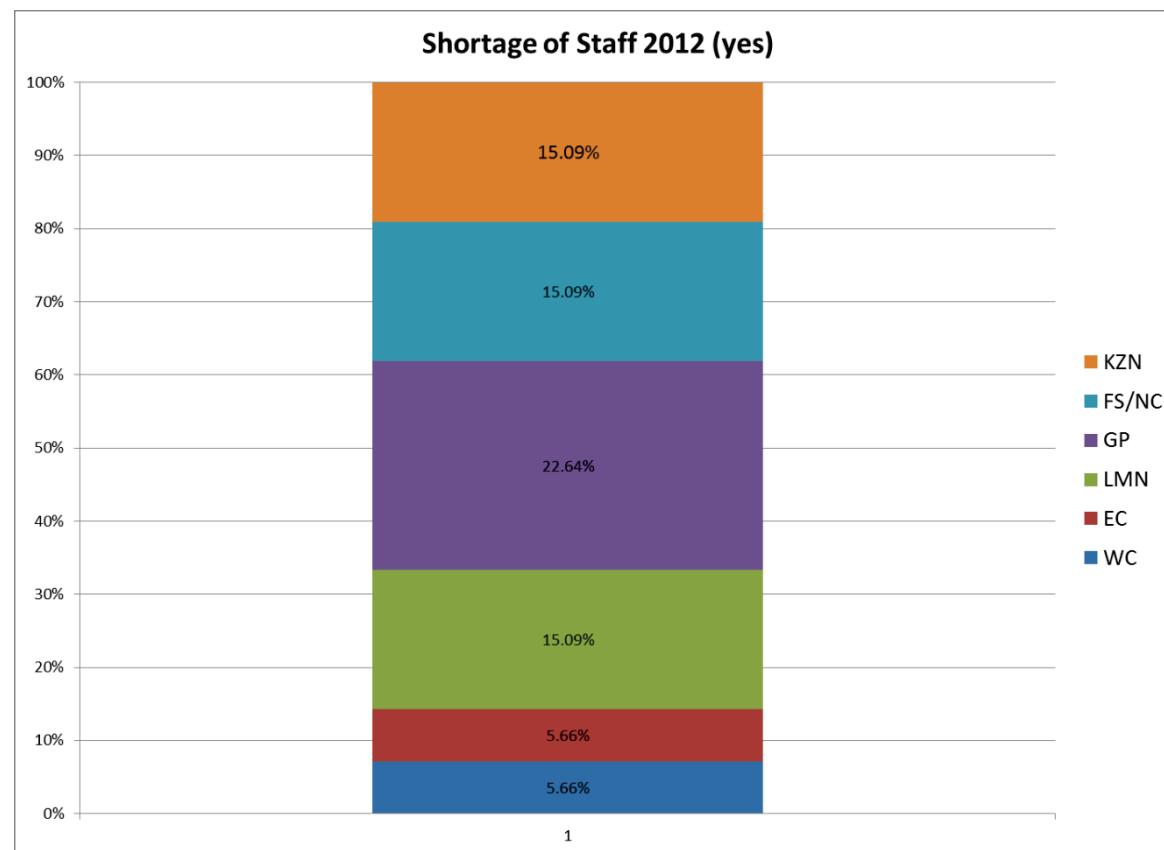
CSPB ADEQUATELY CAPACITATED

CSPB Chairpersons were asked whether or not they felt that they had adequate capacity to deal with their function. 33.96 % (18) of the CSPB Chairpersons indicated that they were not adequately capacitated.

SHORTAGE OF STAFF AT THE CSPB IN 2012

The majority (79.25% or 42) of the CSPB Chairpersons surveyed indicated a staff shortage in 2012, as illustrated in the diagram below.

Figure 30: Shortage of staff 2012

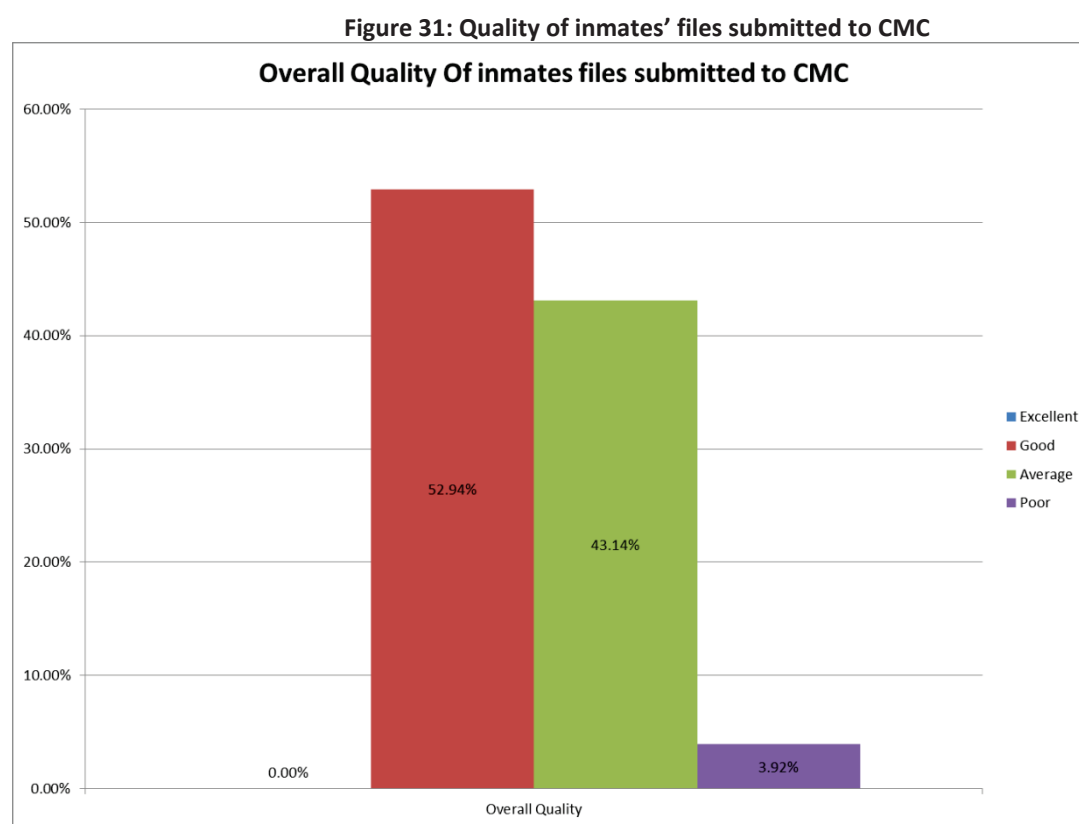


BACKLOG OF 2012 CASES WHERE INMATES MUST STILL APPEAR BEFORE CSPB

Chairpersons of the CSPB were asked whether or not there were a backlog of 2012 files referred where inmates still had to appear before the CSPB for consideration of parole or correctional supervision. Only 11.76% (6) indicated that there were such cases despite the fact that 79.25% (42) of the CSPBs indicated a shortage in staff in 2012.

OVERALL QUALITY OF INMATES' FILES SUBMITTED TO THE CMC

The diagram below illustrates the responses received from Chairpersons with regard to the overall quality of inmates' files/profiles submitted to the CSPB by the CMC.



COMMON REASONS FOR FURTHER PROFILING

CSPB Chairpersons were requested to provide an indication of the most common reasons why cases are postponed for further profiling.

- Most (44) mentioned outstanding Social Worker reports or associated professional's reports, lack of therapy programmes or insufficient rehabilitation programmes.
- 34 mentioned a lack or negative support system from inmates' families or that they still need to obtain verification of the inmate's support feedback.
- 16 indicated the lack of participation of victims or difficulties in tracing victims for participation.
- 11 cited further charges or disciplinary action.
- 9 indicated that SAPS reports were not available.

COMMON CHALLENGES FACED BY THE CSPB

The CSPB Chairperson was requested to provide an overview of the difficulties and challenges they encountered on a daily basis. Amongst the most common were, once again, the items mentioned above relating to further profiling of inmates: the lack of Social Worker and Psychologist reports, shortage of staff, lack of rehabilitation programmes, difficulties in getting victims to participate, inmates facing further disciplinary hearings in the correctional centre, no positive support systems from inmates families, difficulties in getting the SAPS 62/69 and sentence remarks of the Magistrate.

3.6 Preliminary findings of interviews with inmates

Interviews were conducted with 1 767 inmates across all DCS management regions. The table below provides an overview of the responses to some of the survey questions in the survey.

Table 23: Preliminary findings of interviews with inmates

QUESTION:	Answer: NO	Answer: YES
Was sentence plan explained to inmate?	35,36%	64,64%
Did inmate have an opportunity to participate in rehabilitation programmes?	22,48%	77,52%
Does inmate know when he/she is eligible for parole?	45,78%	54,22%
Does inmate know the reason for appearing to CMC?	33,23%	66,77%
Inmate aware that they can make written submissions to CSPB?	71,07%	28,93%
Contents of inmate's files explained to him/her?	45,14%	54,86%
Opportunity to ask questions to the CMC Chairperson?	37,44%	62,56%
Contents of inmate's files shown to him/her?	63,86%	36,14%
Has inmate received a date to appear before CSPB?	59,89%	40,11%

Towards the end inmates were given an opportunity to highlight their difficulties or experiences in accessing rehabilitation programs; the CMC or having their parole or correctional supervision facilitated. Of those that

responded to the question on difficulties accessing rehabilitation programmes, 46.50 % indicated the inaccessibility thereof. 9.30% was not informed about the programmes they should attend. 19.90% indicated that there are no programmes available to them and 3.10% said that limited resources results in difficulties in accessing programmes. 14.15 % said there is a shortage of staff. 7.10% of the inmates indicated that they are in the process of attending rehabilitation programmes. With regards to accessing CMC, 70% indicated that the CMC is not accessible. 14% indicated that they do not know about the CMC. 1.40% is in process of seeing the CMC. 14.70% indicated that the inaccessibility is as a result of the shortage of CMC staff, more likely the Chairperson of the CMC.

3.7 Conclusions and recommendations

The survey sought to investigate problems or issues with the functioning of CMCs in fulfilling their duties in terms of section 42 of the CSA. The findings seek to understand complaints received by the Inspectorate relating to the functioning of the CMC to the effect that inmates are not considered for placement on parole after serving minimum incarceration period as indicated on their warrants of committal and that the CMC do not prepare their profiles for submission to the CSPB in good time.

The Inspectorate intends to finalise the report in which it intends to investigate all other issues raised and possible breaches of DCS policy, statutory and constitutional obligations. Furthermore, the Inspectorate invites the DCS to engage with the report, discuss major challenges highlighted therein and determine whether there are mechanisms or strategies to address these issues.

4. Stakeholder Engagement

The importance of stakeholder relations has and continues to be strengthened in all areas within the Inspectorate. The Inspectorate strives to build good relations with organisations that have a direct bearing on its mandate and have expertise in the area of corrections in South Africa. More importantly, the Inspectorate identifies those organisations that have as a primary agenda, the idea of changing the lives of inmates and the correctional system for the better. Such organisations are not seen as ancillary but have been classified by the Inspectorate as primary stakeholders.

The dynamics of a good stakeholder relation that has an impact on the lives of inmates and the efficacy and effectiveness of the Inspectorate's complaints mechanisms cannot be overemphasized before classification of primary. The Inspectorate could rely heavily on the capacity building of organisations or key stakeholders in the area of corrections in South Africa. The link between stakeholder relations and the quality of work would show a beneficial relation/influence in bringing about operational and systematic change for the well-being of inmates

in correctional centres. The Inspectorate and Sonke Gender Justice Network (Sonke) have fostered such a relationship. The Inspectorate and Sonke have signed a Memorandum of Understanding detailing future collaborative efforts which will enhance the work of both institutions, as outlined in Table 24. Sonke intends to strengthen the work of the Inspectorate by providing various support and assistance. Ms. Emily Kheen, the Policy, Advocacy and Research Specialist at Sonke, has been liaising with the Inspectorate on an ongoing basis in this regard. There have been major developments in the short period since the Memorandum was signed.

Table 24: Overview of support and collaboration between Inspectorate and Sonke

KEY AREA	OVERVIEW OF SUPPORT AND COLLABORATION
Nominating ICCVs	The CSA requires community involvement and consultation with community organisations in the appointment of ICCV's. ¹⁰⁰ Sonke intends to participate actively in the nomination process of ICCVs.
Sensitising ICCVs	The Inspectorate's training curriculum section on HIV and AIDS are outdated and lack information on sexual abuse. Sonke will review the training content on HIV and AIDS and create content on sexual abuse. Sonke intends to tailor its training materials to suit ICCVs, and will make its staff available to conduct a set number of trainings for ICCVs as part of the standard paralegal training.
Partnership on research	Sonke and the Inspectorate intend to conduct joint research and thereby share capacity. Research areas might cover inmates' experiences with sexual abuse or with seeking HIV and AIDS services.
VC Meetings	Sonke intends to participate at VC meetings and will engage with its partners to encourage their participation.
Complaint templates	Sonke intends to work with the Inspectorate and create a specialized template for recording complaints, particularly regarding HIV and AIDS and sexual abuse.
Media outreach	Sonke and other stakeholders will publicize issues that are documented in the quarterly and annual reports, highlighting key issues.
Editorial services	Sonke's editors will assist the Inspectorate with editorial services and reports.

Sonke has assisted with the nomination of ICCV candidates and referred organisations with potentially good candidates to the Inspectorate. Sonke has started conducting "train the trainer" sessions with the Inspectorate's Regional Trainers and VC, and conducted a five-day training workshop in Bloemfontein at their own expense. Ms. Kheen has met with the Inspectorate's Researcher to look into possible areas for future collaboration on empirical research for the next year. Ms. Kheen also met with the entire Directorate Legal Services to assist with

¹⁰⁰ Section 92 Correctional Services Act 111 of 1998, as amended

review of the complaints template and provided input. This collaborative effort resulted in a draft template for piloting at VC meetings. Sonke has already provided editorial services for the Inspectorate's reports and has done a great job in drawing in other stakeholders to the Inspectorate's various VC meetings.

The Inspectorate is thankful for the capacity building efforts of Sonke and, more particularly, would like to thank Ms. Kheen for her continuous efforts to foster collaboration and the encouraging developments in respect of the above areas.

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION

1. Introduction

In carrying out the vision “to embody independent oversight of correctional centres for the advancement of human rights for all inmates” the Inspectorate is particularly mindful of the rights enshrined in the Bill of Rights of South Africa’s Constitution and the CSA, from Chapters IX and X of which it draws its primary mandate. After reflection on the administrative and operational aspects highlighted in this report, the Inspectorate wishes to conclude the 2012/2013 Annual Report by making the following recommendations.

2. Recommendations

With due regard to the issues highlighted in the chapters of the report, it is recommended that:

- i. The management of the DCS continues to assist the Inspectorate in concluding the restructuring process. This involves ensuring that the Inspectorate secures sufficient budget allocation to make provision for additional posts and other budgetary items associated with additional staffing.¹⁰¹
- ii. The management of the DCS assists the Inspectorate with creation of posts on the PERSAL system.¹⁰²
- iii. The Department of Public works finalises procurement of suitable office space for all three offices and conclusion of lease agreements to ensure proper operational functioning.¹⁰³
- iv. Debate on the independence of the Inspectorate must be strengthened and the measures identified in this report must be implemented to address structural concerns relating to independence and the strengthening of the Inspectorate’s mandate.¹⁰⁴
- v. DCS assist with upgrading the Inspectorate’s website and the creation of a distinct domain email address for the Inspectorate.¹⁰⁵
- vi. DCS ensure that its Regional Commissioners engage with the Inspectorate’s monthly and quarterly reports and monitor and comply with requests to Heads of Centres and Area Commissioners for reports, explanations or queries in respect of all matters reported therein.¹⁰⁶
- vii. DCS ensures the attendance of its staff, more particularly the Heads of Centres or their delegates, at monthly Visitors’ Committee meetings.¹⁰⁷

¹⁰¹ See Chapter 1, Section 1.6

¹⁰² See Chapter 1, Section 1.6

¹⁰³ See Chapter 1, Section 1.6

¹⁰⁴ See Chapter 1, Section 1.7.3

¹⁰⁵ See Chapter 1, Section 4.2

¹⁰⁶ See Chapter 2, Section 3.1

- viii. Since the children’s legislative monitoring tools are complete, it is recommended that DCS assists the Inspectorate in creating a wizard on our webpage through which Heads of Centres or ICCVs can report essential information on children and juveniles in correctional centres.¹⁰⁸
- ix. With regard to the preliminary findings in the parole survey noted in detail in Chapter 4, it is anticipated that the final report will not deviate much from the findings highlighted herein. However, the final report will aim to be more specific in terms of data that was investigated. The Inspectorate intends releasing the final report to the Department to afford an opportunity to engage with it. The Inspectorate intends to meet with the Chief Operating Officer and the relevant Chief Deputy Commissioners to discuss the issues highlighted in the report.¹⁰⁹
- x. The Inspectorate is grateful for the Department’s assistance in allowing the Emthonjeni Correctional Centre to participate in the Inspecting Judge’s Special Project and recommends more collaborative efforts between the two institutions towards the common goal of holistic rehabilitation of youth and children in correctional centres.

3. Conclusion

In conclusion, this report provides an extensive overview of the work and mandate of the Inspectorate in line with the spirit of the CSA. With regard to challenges and shortcomings identified around structural issues and independence, the Inspectorate remains committed to addressing these and fulfilling the core mandate to ensure that the constitutional rights of inmates in correctional centres are upheld to the fullest realm of the law. Despite these challenges the Inspectorate continues to put in place measures to minimize and manage risks. The Inspectorate continues to strive to report timeously and in detail on its core functions on a monthly, quarterly and annual basis. The Inspectorate invites thorough and vigorous scrutiny of all reports and welcomes both criticisms and recommendations.

¹⁰⁷ See Chapter 3, Section 3

¹⁰⁸ See Chapter 4, Section 4.2.2

¹⁰⁹ See Chapter 4, Section 4.2