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JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES

STAKEHOLDER'S SUBMISSION DOCUMENT ON THE DEPARTMENT OF CORRECTIONAL SERVICES 2013 / 2014 ANNUAL REPORT

PRESENTED TO THE PORTFOLIO COMMITTEE ON JUSTICE & CORRECTIONAL SERVICES

INTRODUCTION

The Judicial Inspectorate for Correctional Services (the Inspectorate) is grateful to the Portfolio Committee for inviting us to comment on the Department of Correctional Services (DCS) Annual Report 2013 /2014. The premise behind the Constitution (Act 108 of 1996) authorizing Parliament to maintain oversight of any organ of state is intrinsic to its role to hold, in this case the DCS, accountable for the budget allocations and commensurate performance to it.

The Inspectorate, whilst a distinct organ from that of DCS, at least in respect of its reporting and accountability to Parliament, is however umbilically linked to the DCS. Our comments below are therefore directed to the DCS Annual Report in the main and with reference to our own Annual Report 2013 /2014 as they ought in material aspects to be synergies between the treatment and conditions of inmates in correctional facilities by DCS and the findings of the Inspectorate in achieving this mandate.

COMMENTS PER DCS PROGRAMME

ADMINISTRATION

The Inspectorate falls within the programme administration. This programmes strategic objectives and sub-programmes speak, inter alia, *to organizational capacity for enhanced service delivery and to improve human resource capacity and management to enable the department to fulfill its mandate.*

As we indicated in our introduction the Inspectorate is entirely dependent on its budget and human resource capacity. Whilst not vigilant to government not being able to provide resources without planning and budget analysis linked to outcomes set the Inspectorate has found itself in the invidious position that our requirements appear not to be ring-fenced, at least within the DCS. The result is that our proposal regarding capacity has been, in our experience, to be conflated with funded available posts, in competition with the

programme. If DCS reports on the Inspectorate requirements separately to Parliament the task of the latter when considering and approving budget allocations is better placed to measure more scientifically the Inspectorate. For e.g. the key question for the Inspectorate when requesting funded posts will be able to meaningfully assess under the sub-programme Corporate Services that reports on the percentage of financed posts that are filled and un-filled. The under-achievement of 40.1 % equating to 961 posts not filled is indeed startling. When compared to our request it seems inconceivable that the Inspectorate over the preceding 2 years still has to keep approximately 32 core staffers on contract.

Parliament is humbly requested to apply its mind to the consequence of this Programme not including a report on the Inspectorate.

INCARCERATION

"Provide appropriate services and a well maintained physical infrastructure that supports safe and secure conditions of detention consistent with human dignity of inmates, personnel and the public, as well as the profiling of inmates and the compilation of needs-based correctional sentence plans, administration and interventions."

In respect of the targets set for the programme incarceration and in particular the sub-category security operations the Inspectorate is particularly concerned about the instances of assaults, gang related violence and unnatural deaths. This is further elaborated on below.

Assaults

The Inspectorate is concerned about the number of assaults reported over the years. Since the DCS set its target in 2010/2011 for a reduction in assaults, it had constantly increased in this arena. In the 2013/2014 financial year, the DCS reports that it had deviated from its 2% target and its actual achievement was 4.67% for the financial year and comments that its deviations was because its target was based on inaccurate historical baseline information. In 2011/2012 3.30% assault rate achieved and in 2012/2013 4.5% with a deviation/increase of 98.7 % of its 2.2 target set – this time noting reasons for its deviations being that the reporting included "alleged assaults." The Inspectorate has focused on the category official-on-inmate over the last 3 years. Our reporting system indicates that official-on-inmate assaults had increased over the 3 reporting years (77, 99 and 109). This is worrisome. The number of assault cases involving the EST amounts to 30 of the 109 reported for last financial year. In our annual report 2013/2014 we also reported that of the 99 cases of official on inmate assault cases for 2012/2013, the Inspectorate received 97 investigation reports and made 46 adverse findings against the DCS.

The DCS does not categorize its assaults at all. Sexual assault, torture and those involving officials and inmates inter se are vitally important as they guide resources to the areas most needed. The Inspectorate has disaggregated this category. It is important that the distinction be made and also to report specifically on disciplinary action taken against DCS officials where they are implicated in the assault of an inmate. A meaningful measure can then be made.

Gang related violence

The issue of gang related violence has increased over the few years and it is clear that the strategy the DCS has to curb gang violence in correctional centres is ineffective. Once again the DCS reports an increase in gang related violence also noting inaccurate historical baseline information. Despite their target to reduce by 10 %, incidences of gang violence, there was a 55.38 % increase in gang related violence in 2012/2013 and an 63.3 % increase in 2013/2014 from the target. More needs to be done about these issues. In trying to address the issue of gang violence in prisons, the annual report makes mention of gang education programmes that are being taught to inmates. In this respect, DCS should also measure the efficiency of the current gang related programmes that are being taught to inmates. During our investigations and inspections we are informed of and shown large quantities of weapons and contraband which are seized. However, whilst complimentary of such seizures it begs the question as to the regularity and thoroughness of searches and what appears to be porous entry and exit related security in some centres.

In balance the Inspectorate must record its compliments to the correctional centres that maintain a low level of gang-related violence and stringent security.

Unnatural deaths

A major concern is the unnatural deaths in correctional centres reported by the DCS and that their target had not been met in this regard owing to security related incidents (violence/assaults) which resulted in unnatural deaths. Looking at the target of 42 set for 2013 /2014 61 unnatural deaths occurred. These we are happy to report did not involve any official. Violence amongst inmates in some centres is inevitable but officials must maintain better vigilance especially during morning unlock and feeding and during periods where maximum movement takes place. The dining areas are also places where inter-inmate violence takes place. At times insufficient numbers of officials are on duty and/or female officials are on duty in male centres. *Prima facie* it may appear discriminatory to cite gender as a factor but this must be measured against the probability and forseeablity of violence occurring and appropriate deployment take place, whether male or female.

We are also concerned about the increase in the incidents of suicides. These are security related problems and early detection and appropriate placement and monitoring of inmates who are prone must occur, including pro-active intelligence sharing amongst all staff from custodial to medical to social workers and indeed fellow inmates.

In 2012/2013 the DCS noted that suicides remain a major cause of unnatural deaths amongst inmates and even despite this they noted the strategies (they noted in 2012/2013) to deal with unnatural deaths which include: regional analysis of security breaches and alignment of strategies and action plans, review/develop suicide risk profiling tool and procedures and awareness programmes for security officials. Unfortunately, this has been unsuccessful and more needs to be done about this.

The DCS should consider making a distinction between suicides and attempted suicides. Also, to be noted is also the deviation in statistics reported on suicides to Inspectorate (DCS reports 21 and the Inspectorate reports 25).

Facilities /Bed space

Providing infrastructure that supports safe custody, humane conditions and provision of correctional and development programmes is vital to the humane detention of inmates. Despite the decrease in inmate population, overcrowding still exists in some correctional centres. Urgent intervention is required which requires a synergy between various governmental departments (DPW) to ensure that they assist the DCS in ensuring the creation of their planned bed space targets.

REHABILITATION

"Provides offenders with needs based programmes and interventions to facilitate their rehabilitation, social responsibility, human development and enable social reintegration."

As the name of the Department indicates correcting offenders is the seminal task. An inmate's journey commences at the moment of admission and at every interaction during incarceration. The Case Management Committee is statutorily created and specifically obligated; such is the importance of the programme – Rehabilitation. In respect of inmates with correctional sentence plans who completed correctional programmes, the percentage achievement for this period is 64 %; 4 % higher than projected which is complimentary. However it constitutes 23 % less than the actual achievement in 2012 /2013. This appears anomalous and should be explained.

Of concern is the lack of historical data in respect of educational programmes as stipulated in sentence plans. It begs the question that since the completion of a sentence programme

is dependent on the educational component how an inmate's readiness for release is determined or affected and whether this delays possible release. A 9.4 % deviation is large.

We turn to our own views arising from inspections in which we found of 91 inspections 16 correctional centres lacked a degree of appropriate rehabilitation services.

CARE

"Provides needs-based care services aimed at maintaining the well-being of inmates in the department's custody"

Health services in our view comprises more that the chosen indicators related to HIV/Aids and related illnesses. We are of the opinion that measurable should include mental health, chronic diseases and so forth. We would like to see performance indicators in a wider range of services.

- Health status on admission to measure early detection
- Causes of natural deaths
- Suicides and previous health status

SOCIAL INTEGRATION

"Provide services focused on offenders preparation for release, effective supervision of offenders placed under the system of community corrections and facilitation of social integration into their communities."

Successful social integration is dependent the CMC being fully capacitated as well as the CSPB. A backlog or build up of inmates not re-classified to be considered by the CMC and actual CMC backlogs are recipes for inmate dissatisfaction as has been seen recently.

In terms of the sub-category parole administration, we note the under-performance in respect of the percentage of cases submitted by CMC and considered by the parole board. (Achievement in 2012/2013 70.25 %, achieved 84.83 % in 2013/2014 yet target is 90%). The DCS noted that their deviation from their target was due to insufficient capacity due to the CSPB vacancies. This situation has a negative impact on inmate's readiness to be released on parole.

GENERAL COMMENTS

Over the previous years the DCS report made no mention of the Inspectorate and his omission is partly remedied by its brief comments at pages 62 and 63. It is common cause that the Inspectorate is entirely reliant, as we have repeatedly report to the Committee, on DCS for its budget, human resource allocations, compliance with DPSA / Treasury regulations regarding structure, staffing and administrative assistance. We are of the view that the DCS reports in the future should constitute a separate programme in which it reports on our budget allocation, human resource assistance and the like. Currently Parliament, in the present form of reporting are not apprised of where the Inspectorate is located within DCS; on our understanding we form part of the programme – Administration.

We welcome the opening of the debate by DCS on the much discussed topic of the independence and effectiveness of the Inspectorate on page 62 and 63 of the DCS Annual Report. During the previous Parliament the debate commenced but petered out without any conclusion and we are mindful of the Legacy Report by the previous Committee on areas it suggests that the current Parliament address.

We comment on specific submissions made on pages 62 and 63 of the DCS Annual Report:

1. The Inspectorate agrees that its financial and operational independence is crucial and that our often repeated structural proposals be implemented, including that of legislative changes.
2. In respect of our access to correctional centres the Inspectorate has no material problems; DCS permits our ICCV's and officials unfettered access.
3. In terms of our current reporting mechanisms, we report annual and quarterly. Our quarterly reports provide must detail on each inspection, investigation, complaint and mandatory report which in our view provides a highly transparent insight and measureable of our work. In respect of our findings, mindful of previous debates regarding its publication, we report extensively in our Annual Report for 2013 /2014 on, inter alia, assaults, operations involving the EST and suicides for the 2 previous reporting periods. The suggestions regarding regulating the publication of our findings within particular time-frames and so-forth are acceptable and welcomed.
4. Insofar as the suggestion that the complaints oversight mechanism being managed by a "separate entity" we disagree. The current complaints oversight mechanism is acknowledged as requiring strengthening, in particular at the centre level where the ICCV's monitor these. If the suggestion is that the Inspectorate is dismembered from the complaints system the consequence will be that a disjuncture will result in dealing with complaints in a longitudinal manner, i.e. currently where a complaint is not resolved at centre level (noting that ICCV's minimum requirements are matric and the majority have rudimentary legal and administrative skills notwithstanding their training). We agree that the system can be reviewed and better managed, but the debate not be couched where requests or complaints are couched as "frivolous"

or unimportant – the Inspectorate view is firm that every inmate is entitled to regard his /her request /complaint as important as an individual. Further clarity in this area by the Committee and DCS is welcomed and the Inspectorate is appreciative of any opportunity to share its views.

5. At page 63 the view expressed on the Inspectorate's financial structure not addressing its effectiveness and no evidence that our proposed organizational structure did not speak to our independence appears not to take into account the very specific proposals made in our Annual Reports previously where the entity we propose would address the question of independence directly, i.e. de-linked from the DCS as a department and linked to the Ministry itself. Insofar as the view that our investigations, inspections and complaints resolution we take note. Necessary to add is that bar the current critique, the Inspectorate has not in any material manner been countenanced on our findings on the merits, legal findings and logic of its decisions by DCS during the past or previous years. Whilst as an organization we are mindful of improvement the most feasible measure of our competence would be a specific written critique speaking to a particular case. To this end our proposal is to unreservedly accept critique but request specificity.

CONCLUDING REMARKS

It is worthy to note the efforts the DCS is making towards reducing the average length in time for remand detainees despite having no control over the courts decisions. This should bear fruits over a few years if their focus and monitoring remains on ensuring this. We note their overachievement of the partnership with external FET Colleges and for the implementation of the National Certificate Vocational programme as well as the phasing in of N- Courses by the Department of Higher Education and Training. We commend the DCS for the implementation of the electronic monitoring system to inmates serving correctional supervision. We await the full implementation thereof as per targets set. We believe that the consideration and/extension of an electronic monitoring system to remand detainees with bail will reduce overcrowding (the number of remand detainees in custody) and will also assist the DCS in ensuring that their efforts can deployed in the effective rehabilitation of sentenced offenders.

Submitted by: The Judicial Inspectorate for Correctional Services

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