



**REPUBLIC OF SOUTH AFRICA**  
**JUDICIAL INSPECTORATE**  
FOR CORRECTIONAL SERVICES  
**2011/2012 ANNUAL REPORT**

Treatment of inmates and conditions in Correctional Centres

# **JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES**

## **ANNUAL REPORT FOR THE PERIOD 1 APRIL 2011 TO 31 MARCH 2012**

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**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 Ramathodi**

**Deputy Minister of Correctional Services**

**by**

**The Inspecting Judge**

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**(in compliance with section 90 (4) of the *Correctional Services Act 111 of 1998*)**

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## Table of Contents

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Foreword .....	5
<b>CHAPTER ONE: ADMINISTRATION .....</b>	<b>8</b>
<b>1. INTRODUCTION.....</b>	<b>8</b>
1.1 Statutory mandate.....	8
1.2 Bill of Rights.....	9
1.3 Legislation .....	9
1.4 Vision, mission and values.....	10
1.5 Corporate image.....	11
1.6 Organisational restructuring .....	11
1.7 Quarterly Reporting to Parliament.....	13
1.8 Independence of the Inspectorate .....	13
<b>2. MANAGEMENT OF THE INSPECTORATE .....</b>	<b>14</b>
2.1 Office of the Inspecting Judge .....	14
2.2. Office of the Chief Executive Officer.....	15
<b>3. HUMAN RESOURCES AND DEVELOPMENT .....</b>	<b>16</b>
3.1 Post establishment .....	16
3.2 Demographic composition .....	17
3.3 Disciplinary matters .....	17
3.4 Staff development .....	17
3.5 Restructuring and job evaluation .....	17
3.6 Performance Management and Development System (PMDS) .....	18
3.7 Absenteeism.....	18
3.8 Human resource policy development.....	18
<b>4. FINANCIAL MANAGEMENT AND SUPPLY CHAIN MANAGEMENT .....</b>	<b>18</b>
4.1 Budget and expenditure .....	18
4.2 Information technology .....	20
4.3 Internal audits and financial policies and procedures .....	20
4.4 Supply chain .....	21
<b>5. RECOMMENDATIONS .....</b>	<b>21</b>
<b>6. CONCLUSION .....</b>	<b>21</b>
<b>CHAPTER TWO: INSPECTIONS, INVESTIGATIONS, COMPLAINTS &amp; MANDATORY REPORTING .....</b>	<b>22</b>
<b>1. INTRODUCTION .....</b>	<b>22</b>
<b>2.STATE OF CORRECTIONAL CENTRES.....</b>	<b>24</b>
2.1 Inmate composition.....	25
2.2 Remand detainees .....	27

2.3	Overcrowding .....	29
<b>3.</b>	<b>INSPECTIONS AND INVESTIGATIONS.....</b>	<b>32</b>
3.1	Inspections .....	32
3.2	Investigations .....	35
<b>4.</b>	<b>COMPLAINTS .....</b>	<b>36</b>
4.1	Complaints – Transfers .....	38
4.2	Complaints – Parole .....	39
4.3	Complaints – Assaults by officials on inmates.....	40
4.4	ICCV complaints system .....	42
<b>5.</b>	<b>HEALTH CARE .....</b>	<b>43</b>
5.1	Findings of interviews with Heads of correctional centres or heads of hospitals.....	44
5.2	Findings of interviews with inmates .....	47
5.3	Observation findings.....	48
5.4	Conclusion and recommendations on the health survey .....	50
<b>6.</b>	<b>MANDATORY REPORTS .....</b>	<b>50</b>
6.1	Deaths .....	50
6.2	Segregations .....	55
6.3	Mechanical Restraints.....	56
6.4	Use of Force.....	59
6.5	Concluding observations on mandatory reporting.....	61
<b>7.</b>	<b>RECOMMENDATIONS .....</b>	<b>61</b>
<b>8.</b>	<b>CONCLUSION .....</b>	<b>61</b>
<b>CHAPTER THREE: COMMUNITY OVERSIGHT AND STAKEHOLDER ENGAGEMENT .....</b>		<b>62</b>
<b>1.</b>	<b>INTRODUCTION .....</b>	<b>62</b>
<b>2.</b>	<b>INDEPENDENT CORRECTIONAL CENTRE VISITORS.....</b>	<b>63</b>
2.1	Independent Correctional Centre Visitor Post Establishment .....	63
2.2	Independent Correctional Centre Visitor Training .....	65
2.3	Standard ICCV operational procedure for inmate complaints .....	66
2.4	ICCV Performance Audits .....	67
<b>3.</b>	<b>VISITORS’ COMMITTEES .....</b>	<b>68</b>
<b>4.</b>	<b>STAKEHOLDER ENGAGEMENT .....</b>	<b>69</b>
4.1	Nomination meetings .....	69
4.2	Direct stakeholder engagement .....	70
4.3	Community outreach .....	71
<b>5.</b>	<b>SPECIAL PROJECT ON CHILDREN .....</b>	<b>71</b>
<b>6.</b>	<b>RECOMMENDATIONS .....</b>	<b>74</b>
<b>7.</b>	<b>CONCLUSION .....</b>	<b>75</b>

## FIGURES

Figure 1: Former Structure of the Judicial Inspectorate .....	12
Figure 2: New Structure of the Judicial Inspectorate .....	12
Figure 3: The Inspectorate's staff complement as on 31 March 2012 .....	16
Figure 4: Total inmate population 1995-2011 .....	25
Figure 5: Inmates by age and sentencing status as at 31 March 2012 .....	25
Figure 6: Composition of inmates by Department crime classification as at 31 March 2012 .....	26
Figure 7: Remand detainees by length of detention as at 31 March 2012, per DCS region .....	28
Figure 8: Correctional centre percentage occupancy rates at March 31, per region .....	29
Figure 9: Number of inmates per correctional centre on average, per region, as at 31 March ...	30
Figure 10: Correctional centre approved inmate capacity per 100 000 population .....	31
Figure 11: Correctional centres inspected and not inspected, by province 2011/2012 .....	34
Figure 12: Problems noted during inspections .....	34
Figure 13: Sources of complaints .....	37
Figure 14: Content of complaint received .....	38
Figure 15: Complaints processing: assault by staff member on inmate.....	41
Figure 16: Head of centres' rating of medical services rendered at correctional centres .....	45
Figure 17: Natural deaths in correctional centres .....	45
Figure 18: Heads' rating of communication with management on serious health concerns .....	46
Figure 19: Inmates' responses regarding medical care process and need for medical care .....	48
Figure 20: Reported unnatural deaths with cause of death, per year .....	51
Figure 21: Reported unnatural deaths by manner of death and province .....	52
Figure 22: Number of natural deaths 1998 – 2011 .....	53
Figure 23: The relationship between inmate population and rate of natural death .....	54
Figure 24: Numbers of natural deaths by different causes, per region .....	54
Figure 25: Reported segregations 2008/9 – 2011/12 .....	55
Figure 26: Reports of and appeals against the use of mechanical restraints, per year .....	57
Figure 27: Number of reported uses of mechanical restraints, per region .....	58
Figure 28: Rate of reported use of mechanical restraints per 10 000 inmates, per region.....	58
Figure 29: Reports of use of force, per year .....	59
Figure 30: Number of reported uses of force, per region .....	60
Figure 31: Rate of reported use of force per 100 000 inmates, per region .....	60
Figure 32: Number of ICCV posts per province .....	64
Figure 33: Number of inmates served on average by one ICCV, per management region .....	64
Figure 34: Standard ICCV operating procedures .....	66
Figure 35: ICCV Nominations and posts .....	70

## TABLES

Table 1: Staff Development 2011/2012 .....	17
Table 2: Budget of the Judicial Inspectorate 2008/9 – 2011/12 .....	19
Table 3: Investigations conducted during the year under review .....	36
Table 4: Nature and number of complaints to ICCVs .....	43
Table 5: ICCV posts and Visitors' Committees per Management Region .....	63
Table 6: ICCV Training 2011/2012 .....	65
Table 7: Visitors' Committee Demarcation .....	68
Table 8: Nominations received for ICCVs 2011/12.....	69

## MAP

Map 1: Location of correctional centres inspected during 2011/2012 .....	34
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## Foreword



It is with great pleasure that I introduce the first Annual Report of my tenure as Inspecting Judge, covering the period 1 April 2011 to 31 March 2012. This Report covers the first six months of my tenure, which commenced in November 2011. The Report also covers the last six months of the tenure of my predecessor, Judge Deon Hurter Van Zyl.

I wish to express the honour and appreciation I feel for the faith which has been placed in me by the former Minister of Correctional Services, the Honourable Nosiviwe Mapisa-Nqakula, who recommended my appointment, as well as the President, the Honourable Jacob G. Zuma for appointing me as Inspecting Judge. The position of Inspecting Judge is a crucial component in the protection of constitutional rights in the correctional setting. Having served as a Judge for some 15 years and as Judge President of the KwaZulu-Natal Provincial Division of the High Court of South Africa, I am well aware that the rights of those in correctional settings are vulnerable. Holding a magnifying glass to the treatment of inmates and the conditions of their detention is an important method of guarding against unjustifiable limitations of rights. I hope to justify the faith placed in me by building on the proud tradition of judges who have gone before me as Inspecting Judge.

I further wish to express my appreciation for the manner in which the staff of the Judicial Inspectorate has ensured a seamless transition to my tenure. This is a particular achievement because of the far-ranging transformation the Inspectorate had engaged in immediately prior to the commencement of my tenure. I endorse this transformation, which is covered in detail in Chapter 1 of this report, wholeheartedly, as it seeks to expand and systematise the work of the Inspectorate and of the Independent Correctional Centre Visitors. The overall aim of this transformation is to strengthen the quality and frequency of service which the Inspectorate delivers. In particular the expansion in the number of regional management offices to incorporate additional offices in Durban, Bloemfontein and George is gratifying to me, particularly as my office will be located in Durban, by arrangement with the Minister.

I also endorse the organisational division into three Directorates of the Inspectorate, that is, the separation of support services from the core functions of the Inspectorate, and the creation of an additional Directorate to manage the Independent Correctional Centre Visitor system in the regions. The core functions of the Inspectorate involve inspecting correctional centres, resolving inmate complaints, associated investigations, and monitoring of compliance by the Department with mandatory reporting of deaths, of the use of force, of the use of mechanical restraints, and the segregation of inmates. Reports on these core functions are now presented every quarter to the Ministry, the Department, and the Portfolio Committee on Correctional Services, in addition to the Annual Report.

The strengthening of the Legal Services Directorate has improved the quantity, quality and precision of information available on these matters, which is apparent from a perusal of Chapter 2 of this Report. For example, I have noted with concern trends related to mandatory reporting emanating from KwaZulu-Natal, in particular the occurrence of homicides involving correctional officials on inmates and the absence of any reports of the use of mechanical restraints in the province.

I further wish to continue the practice of the Inspectorate of undertaking in-depth research on topics of importance in correctional centres. In the year under review a health survey was carried out, which is also reported on in Chapter 2. Important insights were obtained, for example, the wide range in the frequency of visits by doctors to correctional centres.

The Independent Correctional Centre Visitors form the bedrock of the Inspectorate and their role cannot be underestimated in ensuring that inmates are treated appropriately and that the conditions they experience during their incarceration are adequate. Each Independent Correctional Centre Visitor is duty-bound to be of service to inmates at correctional centres level. Equally important is their duty to maintain the link between communities from which inmates come so that during their incarceration the familial and societal chain is not broken. The expansion in the number of Independent Correctional Centre Visitors and the number of Visitors' Committees, covered in detail in Chapter 3, will expand their ability to receive and resolve inmates' complaints and requests, and improve their public visibility and engagement with communities and stakeholders.

It is an important tradition of this office to adopt a particular focus area. Judge Fagan focused on overcrowding, while Judge Van Zyl focused on deaths in correctional centres. I have adopted for my term of office the key focus area of the treatment of children and the conditions under which they are held. To this end the Inspectorate has entered into an agreement with the Civil Society Prison Reform Initiative (CSPRI) who previously conducted research into children in custody with the assistance of the Independent Correctional Centre Visitors. This is covered in more detail in Chapter 3. The agreement includes collaborating on joint projects, training of staff and of Independent Correctional Centre Visitors with the objective of monitoring compliance with the legal obligations relating to the detention of children. I envisage that a comprehensive report on children will be published during my term of office and interim reports will be issued as and when issues are identified.

Each chapter considers a component of the Inspectorate's work and reflects specific recommendations to the Department. As Inspecting Judge I deem the implementation of these recommendations to be significant and will monitor and evaluate the Department's response to the recommendations.

Finally I wish to record that, in addition to the Public Protector, Legal Aid South Africa, and the South African Human Rights Commission, I have met with the Minister, Deputy Minister, and National

Commissioner and discussed my office's role in relation to the Ministry and the Department. They have all re-affirmed the requirement that all officials of the Department cooperate with Inspectorate staff and with Independent Correctional Centre Visitors, and the obligation of the Department to rectify and remedy areas of concern identified by my office.

I thank the staff of the Inspectorate for their work over the previous year, and I look forward to continuing the work of my office in the coming year.



## CHAPTER ONE: ADMINISTRATION

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### 1. INTRODUCTION

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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

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The Inspectorate draws its primary mandate from the Correctional Services Act, 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.<sup>1</sup>

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.<sup>2</sup>

Chapter IX goes on to provide for the appointment of the Inspecting Judge<sup>3</sup> and his or her powers, duties and functions<sup>4</sup>; the appointment of Chief Executive Officer (CEO), who is responsible for all administrative, financial and clerical functions of the Inspectorate<sup>5</sup>, and the appointment of staff and assistants.<sup>6</sup>

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

ICCVs must deal with complaints of inmates through regular visits, interviewing inmates in private, and must both record complaints in an official diary and discuss them with the Head of the Correctional Centre.<sup>9</sup>

An ICCV must report all unresolved complaints to a Visitors Committee, if one has been established at the ICCV's centre, or to the Inspecting Judge.<sup>10</sup> The Inspecting Judge may make rules concerning the

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<sup>1</sup> Section 85(1) Correctional Services Act 111 of 1998, as amended

<sup>2</sup> Section 85(2) Correctional Services Act 111 of 1998, as amended

<sup>3</sup> Section 86 Correctional Services Act 111 of 1998, as amended

<sup>4</sup> Section 90 Correctional Services Act 111 of 1998, as amended

<sup>5</sup> Section 88A Correctional Services Act 111 of 1998, as amended

<sup>6</sup> Section 89 Correctional Services Act 111 of 1998, as amended

<sup>7</sup> Section 92 Correctional Services Act 111 of 1998, as amended

<sup>8</sup> Section 93(2) Correctional Services Act 111 of 1998, as amended

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

appointment of Independent Correctional Centre Visitors, may specify the number of visits to be made to the correctional centre over a stated period of time and the minimum duration of a visit, and may make rules regarding any other aspect of the work of an Independent Correctional Centre Visitor.<sup>11</sup>

## 1.2 Bill of Rights

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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

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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

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<sup>10</sup> Section 93(5) Correctional Services Act 111 of 1998, as amended

<sup>11</sup> 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

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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 Independent Correctional Centre Visitors and external stakeholders and;
- promote transparency regarding the activities of the Judicial 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 Corporate image

The Inspectorate wishes to introduce its corporate image. The colours of the Inspectorate are those of the uniforms worn by inmates: burnt orange, maroon, royal blue and yellow.

The slogan of the Inspectorate is “We are also human”. This slogan seeks to emphasize that inmates are human beings whose treatment and conditions of detention must comply with the Bill of Rights of South Africa’s Constitution.

### Logo of the Inspectorate



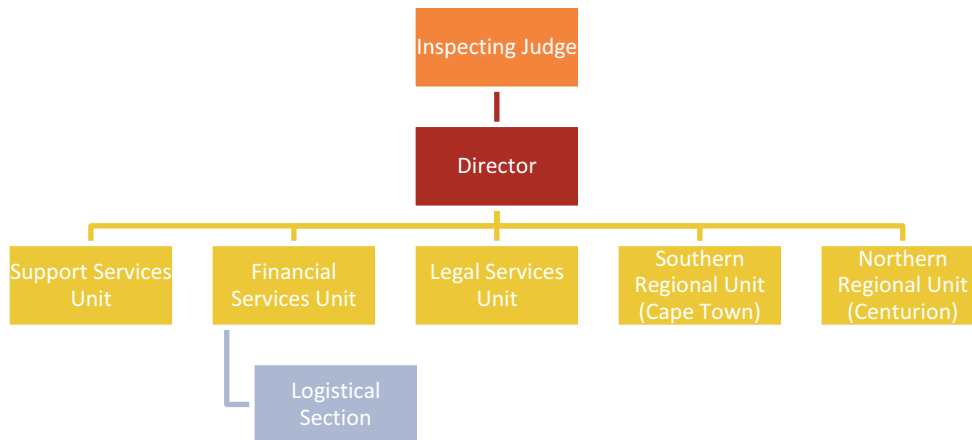
The logo of the Inspectorate incorporates a magnifying glass to convey the Inspectorate’s oversight function. The symbols under the magnifying glass stand for the various rights to which inmates are entitled and access to which the Inspectorate seeks to monitor.

## 1.6 Organisational restructuring

A strategic session held in June 2011 culminated in a detailed restructuring of the Inspectorate. Previously the Inspectorate was structured as illustrated in Figure 1 below. The Inspectorate comprised one Directorate with five Units: the Support Services Unit, the Financial Services Unit (which included a

logistical section), the Legal Services Unit, a Southern Regional Unit based at the head office and a Northern Regional Unit based in Centurion.

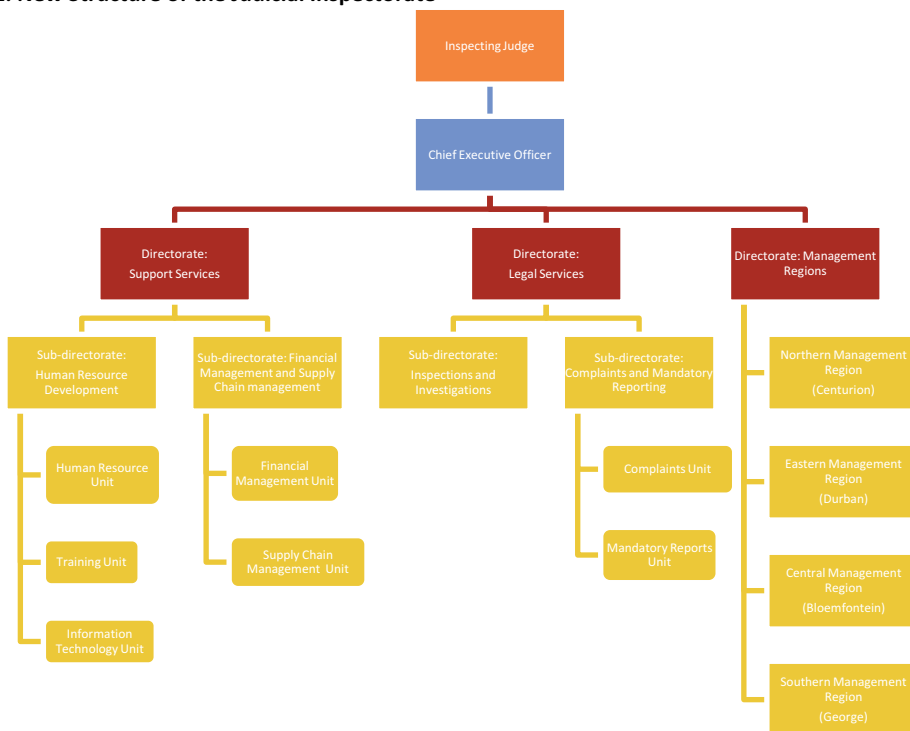
**Figure 1: Former Structure of the Judicial Inspectorate**



A restructuring process commenced in June 2011, whilst Judge van Zyl was still in office, which aimed at increasing the Inspectorate’s efficiency and effectiveness. The process was endorsed by Judge Tshabalala after his appointment. In addition, a Chief Executive Officer as administrative head of the Inspectorate was appointed. The Office of the Chief Executive Officer has units for policy and research, monitoring and evaluation, and internal auditing.

The Judicial Inspectorate has been further restructured into three Directorates viz. Support Services, Legal Services and Management Regions (see Figure 2 below).

**Figure 2: New Structure of the Judicial Inspectorate**



The Directorate: Support Services has two sub-directorates: Human Resource and Development, which itself has a Human Resource Unit, a Training Unit and an Information Technology Unit; and Financial Management and Supply Chain Management, which has a Financial Management Unit and a Supply Chain Management Unit.

The Directorate: Legal Services also has two sub-directorates: Inspections and Investigations; and Complaints and Mandatory Reporting, which in turn has a Complaints Unit and a Mandatory Report Unit. This Directorate is responsible for the core content of the work of the Inspectorate.

Finally there is the Directorate: Management Regions which has four sub-directorates corresponding to four management regions viz. Northern Management Region based in Centurion; Central Management Region based in Bloemfontein; Southern Management Region based in George; Eastern Management Region based in Durban. All of these regional sub-directorates have an Independent Correctional Centre Unit, and a Community Liaison component.

## **1.7 Quarterly Reporting to Parliament**

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During the tabling of the Inspectorate's 2010/2011 Annual Report in Parliament, the Portfolio Committee on Correctional Services indicated that the Inspectorate should submit quarterly reports, in tandem with the Department of Correctional Services. The Inspectorate produced and submitted its first quarterly report for the period 1 October 2011 to 31 December 2011. This report and the report for the fourth quarter of 2011/2012 exhibited three shortcomings which were subsequently addressed: 1) the format and quality of quarterly reports, 2) impact on the working relationship with the Department in terms of the Department's response to the Inspectorate's report, and 3) the Independent Correctional Centre Visitors' complaints system.

## **1.8 Independence of the Inspectorate**

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Discussion on the independence of the Inspectorate has been reflected on in previous Annual Reports. The 2009/10 Annual Report noted in particular, comments from the Portfolio Committee on Correctional Services. The Portfolio Committee suggested that, because of the Inspectorate's functional and operational independence, the feasibility of an independent budget and audit of the Inspectorate's financial management should be explored. The same Annual Report noted that an independent budget and audit would require drastic changes to the structure, functioning and operation of the Inspectorate. These changes may however be necessitated by future ratification by South Africa of the Optional Protocol to the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment.<sup>12</sup>

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<sup>12</sup>Annual Report of the Inspecting Judge, 2010/2011 p45.

The Portfolio Committee on Correctional Services subsequently asked both the Department and the Inspectorate to refine the nature of the independence of the Judicial Inspectorate. One of the recommendations from the Portfolio Committee was for the Inspectorate to engage with the Independent Complaints Directorate (ICD) (now the Independent Police Investigative Directorate (IPID)), a similar statutory body. This engagement would be to clarify various requirements for independence.

Subsequently, the Inspectorate held two meetings with the Chief Executive Officer of the IPID. The Inspectorate also deliberated on this matter during its strategic session in June 2011. During the strategic session, a number of challenges, in terms of government policy and regulations, to the Inspectorate becoming organisationally independent of the Department became apparent, such as:

- The need to implement formalised equity plans, workplace skills and risk management plans, and fraud prevention plans without sufficient resources to do so;
- Compilation of a Judicial Inspectorate of Correctional Services (JICS) Management Information System (MIS) (the current system is outdated);
- Formalization and implementation of policies and procedures for donations, sponsorships and gifts, disciplinary actions and delegations of power, as well as special leave and basic terms and conditions of employment policies and procedures; and
- Establishment of institutional, budget and planning committees as well as specification committees; evaluation committees and adjudication committees.

If the Judicial Inspectorate through legislative amendments were to become an entity independent of the Department “overnight” various additional challenges would exist, including the absence of an internal audit function.

The Inspectorate has made contact with the Department of Public Service and Administration (DPSA) and will embark on further engagement with DPSA during the ensuing financial year to explore the issue.

## **2. MANAGEMENT OF THE INSPECTORATE**

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### **2.1 Office of the Inspecting Judge**

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Judge Deon Hurter van Zyl’s term of office as Inspecting Judge came to an end on 31 October 2011, six months into the year under review. Judge van Zyl’s transformational agenda saw the growth of the Inspectorate, with emphasis placed on effective and efficient service delivery to inmates in South Africa. This has paved the way for a systematic and pragmatic approach to the oversight functions of the Inspectorate for which the Inspectorate is indebted. In order to give effect to such ideals, the Inspecting

Judge's activities have been structured to place the Office of the Inspecting Judge at the core of all the Inspectorate's functioning.

Judge Vuka Eliakim Maswazi Tshabalala began his term of office from 1 November 2011 with the determination to build on the foundation laid by previous judges, by incorporating their aims such as reducing overcrowding, preventing deaths in correctional centres and the restructuring and expansion of the Office of the Inspecting Judge. The core activities of Judge Tshabalala have been fruitful in developing and enhancing current relationships and partnerships with the Department of Correctional Services. Since his appointment, the Judge has met with all six Regional Commissioners of the Department. The purpose of these meetings is to strengthen the working relationship between the Inspectorate and the Department and to convey the details of the newly implemented complaints procedure of the Inspectorate.

The Inspecting Judge's ongoing visits to correctional centres create a sense of visibility and increase public interest. Both of these are critical to maintaining independent oversight. The Judge has visited 13 correctional centres since his appointment in November 2011. As a priority, a substantial portion of the current year under review was focused on establishing a physical location for the Office of the Inspecting Judge in Durban, KwaZulu-Natal, where he is currently based.

The previous Minister of Correctional Services, Ms. Nosiviwe Mapisa-Nqakula, appreciating the independent oversight role of the Inspecting Judge, invited the Judge to various Departmental projects such as: the Gallows Museum inauguration ceremony at Pretoria C-Max, the Department's National Excellence Awards, the launch of Halfway House Project and opening of Victory House, and the National Offenders' Choir Competition. The Judge attended all of these events.

## **2.2. Office of the Chief Executive Officer**

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The Chief Executive Officer, Mr Adam Carelse, has since his appointment focused on the strategic direction of the Inspectorate, in consultation with the Inspecting Judge. In the year under review the CEO has prioritised addressing the challenges identified during the strategic session, on establishing the additional regional offices, on the restructuring process and on assisting the Inspecting Judge with the setup of his office in Durban. The CEO also visited 11 correctional centres in addition to the 13 correctional centres visited while accompanying the Judge on his inaugural visits. The visits provided the CEO with further insight into the current treatment of inmates and conditions in correctional centres as well the challenges faced by the Inspectorate in reporting on conditions and treatment at centres.



The Policy and Research Unit was established within the Office of the CEO, in order to 1) manage internal reporting compliance through a monitoring and evaluation system, 2) centralise reporting systems within the Inspectorate, and 3) provide supportive research to the Office of the Inspecting Judge.

The Portfolio Committee on Correctional Services has positively influenced the level of accountability and service delivery by the Inspectorate through meaningful engagement on correctional matters. Of particular significance, the Inspectorate now reports on a quarterly basis to the Portfolio Committee, and has established a formal system of managing the inmates' complaints that get referred to the Portfolio Committee. Further engagement with the Portfolio Committee has included submissions on the Department's Regulations, on the Department's Annual Report, on Torture in South African Correctional Centres, and on the Department's budget and strategic plan.

### 3. HUMAN RESOURCES AND DEVELOPMENT

The Sub-directorate: Human Resources and Development manages the approved and funded post establishment and contract workers. It also manages the development of all employees.

#### 3.1 Post establishment

The Inspectorate currently has 44 approved and funded posts on the fixed establishment. In addition, the Inspectorate has an average of 15 staff on fixed contract. It is envisaged that these posts will be added to the fixed establishment after the restructuring process is finalised. The number of staff in 2010/2011 comprised 35 funded posts and 9 staff on fixed contract, so the current year sees an overall increase of 34% in staffing.

**Figure 3: The Inspectorate's staff complement as on 31 March 2012**

Post level	Posts	Salary	Vacant
Inspecting Judge	1	-	-
Deputy Commissioner (CEO)	1	14	0
Director	1	13	1
Deputy Director	3	11	0
Assistant Director	8	9	0
Managers	9	8	0
Administrative support staff	22	2 to 7	0
Vacancy rate	-	-	2%
Staff on fixed term contract	15	5 and 6	-
<b>TOTAL</b>	<b>59</b>		

During the period under review, five appointments were made on the fixed establishment, two resignations were tendered, and one staff member was transferred to the Department of Correctional Services.

### 3.2 Demographic composition

The racial composition of the Inspectorate is 79% black African, 18% Coloured, 2% white and 1% Indian. At 49%, just less than half of the staff component is female.

### 3.3 Disciplinary matters

One staff member was suspended on leave without pay, and two written warnings were issued. There were no formal labour disputes registered during the period 1 April 2011 and 31 March 2012.

### 3.4 Staff development

The development of staff skills remains a priority for the Inspectorate. The aim of staff development is to enhance effectiveness and efficiency of the Inspectorate. During the financial year, staff of the Inspectorate attended the programmes, courses and workshops reflected in the table below.

Table 1: Staff Development 2011/2012

Course on the Public Finance Management Act	Management
Asset Management for Asset Clerks	1
Adjasa <sup>13</sup> Workshop	1
LOGIS User Workshop	2
BAS Orientation in Finance	2
LOGIS MODULE 1	1
BAS Orientation in Finance	1
LOGIS: Financial year-end work session	1

### 3.5 Restructuring and job evaluation

The Inspectorate requested that the Department assist with the restructuring and job evaluation process. The Human Resources and Development Sub-directorate has been working with the CEO in this regard. This process was not concluded as of 31 March 2012.

<sup>13</sup> Administrative Justice Association of South Africa

### **3.6 Performance Management and Development System (PMDS)**

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The Inspectorate requested that the Department assist the Inspectorate with the implementation of the Performance Management and Development System. Although this process had already been introduced to the Inspectorate, it was only implemented during the financial year under review.

### **3.7 Absenteeism**

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Total absenteeism for the period 1 April 2011 - 31 March 2012:

- Sick leave: 199 days
- Vacation leave: 987 days
- Study leave: 175 days
- Family responsibility leave: 31 days
- Sport leave: 13 days

### **3.8 Human resource policy development**

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Two new policies that are Public Service and Administration requirements were created, both identified as necessary during the June 2011 strategic session. The remainder identified during the strategic session will be developed during the next financial year.

## **4. FINANCIAL MANAGEMENT AND SUPPLY CHAIN MANAGEMENT**

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The Sub-directorate: Financial Management and Supply Chain Management, manages the budget and the expenditure, logistical support, internal audit and property management of the Inspectorate. The Department is responsible for all expenditure incurred by the Inspectorate, in terms of section 91 of the Act. Funds are made available to the Judicial Inspectorate under the programme "Operational Management" in the budget of the Department of Correctional Services. The Judicial Inspectorate is dependent on the co-operation of the Department of Correctional Services for the payment of all its expenses.

### **4.1 Budget and expenditure**

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The Department's budget vote for 2011/12 was R17 732 188 000 (approximately R18 billion).<sup>14</sup>The Inspectorate was originally allocated a budget of R19 312 000 (approximately R19 million) for the 2011/2012 financial year, which represents 0.1% of the Department's total budget vote.

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<sup>14</sup>National Budget 2012, *Estimates of National Expenditure*, Vote 21, Correctional Services accessed at <<http://www.treasury.gov.za/documents/national%20budget/2012/enebooklets/Vote%2021%20Correctional%20Services.pdf>>

In August 2011 the allocated budget was increased to R20 784 000, later to R21 284 000 and finally adjusted to R21 291 000. At the end of the financial year, the Inspectorate's expenditure was R24 174 206 (approximately R24 million).

During the 2010/2011 financial year the expenditure was R20 262 780 (approximately R20 million). The expenditure in the current year represents an overall increase of approximately 19% from the previous financial year. This follows a reduction of 3% from 2009/10 to 2010/11, which in turn followed a 27% increase from 2008/09. Since 2008/09 "Compensation of Employees" has increased 54% in line with the increase in staffing of the Inspectorate.

For administrative purposes the remuneration of Independent Correctional Centre Visitors (ICCVs) reflects as "Salaries" under the item "Compensation of Employees"; however, ICCVs perform their function as independent contractors and are paid an hourly rate.

**Table 2: Budget of the Judicial Inspectorate 2008/9 – 2011/12**

	2008/2009	2009/2010	2010/2011	2011/2012
<b>COMPENSATION OF EMPLOYEES</b>	<b>R 13,184,434.45</b>	<b>R 17,025,620.72</b>	<b>R 18,350,039.26</b>	<b>R 20,368,250.63</b>
SALARIES: PERMANENT STAFF	R 7,686,442.93	R 9,508,532.30	R 9,067,002.04	R 10,097,816.21
SALARIES: ICCV'S & CONTRACT STAFF	R 5,497,991.52	R 7,517,088.42	R 9,283,037.22	R 10,270,434.42
<b>GOODS &amp; SERVICES</b>	<b>R 1,946,623.37</b>	<b>R 2,081,109.36</b>	<b>R 1,912,741.23</b>	<b>R 3,805,955.63</b>
COMMUNICATION	R 524,869.27	R 399,320.87	R 362,041.72	R 398,344.52
TRAVEL & SUBSISTENCE	R 906,875.48	R 1,241,390.35	R 1,082,903.46	R 1,986,269.80
LEASES: DOMESTIC EQUIPMENT	R 14,352.32	R 23,698.27	R 22,622.90	R 29,591.04
STATIONARY & PRINTING	R 70,758.49	R 139,832.19	R 188,927.81	R 333,354.37
VENUES & FACILITIES	R 331,717.98	R 164,306.55	R 123,151.45	R 165,766.80
OTHER	R 98,049.83	R 117,561.13	R 133,093.89	R 892,629.10
<b>TOTAL EXPENDITURE</b>	<b>R 15,037,107.65</b>	<b>R 19,106,730.08</b>	<b>R 18,483,133.15</b>	<b>R 24,174,206.26</b>

In previous financial years, fuel costs were reflected and recorded in the Annual Report as part of Travel & Subsistence. At the beginning of the 2011/12 financial year the Department indicated that fuel costs should henceforth be reflected under fuels, oil and lubricants, which forms part of the "other" line item in Table 2.<sup>15</sup> Both "Travel & Subsistence" and "Other" have increased markedly compared to previous years in line with the Inspectorate's increased inspections programme (see Programme 2 below).

<sup>15</sup>A further breakdown on the line item "other" to the amount of R892 629.10 for the year under review is as follows:

RESETTLEMENT COST	R 194,028.94
FUEL, OILS & LUBRICANTS	R 328,627.94
ADVERT: RECRUITMENT	R 175,586.63
BURSARIES (EMPLOYEES)	R 82,295.00
TRAINING & STAFF DEVELOPMENT	R 44,700.00
OTHER	R 95,893.44

## 4.2 Information technology

Information technology (IT) remains one of the Inspectorate major challenges, because the Inspectorate must rely on the Department's regional offices for IT support.<sup>16</sup> This challenge will be addressed once a new post in the new organisational structure is approved. A further challenge faced by the Inspectorate is the need to upgrade to Inspectorate's website, which was last upgraded *circa* 2002. The Inspectorate has also requested the Department's assistance with the creation of an independent domain email address for the Inspectorate, distinct from that of the Department's, to enhance the perceived independence of the Inspectorate.

## 4.3 Internal audits and financial policies and procedures

The Inspectorate has, with the support of the Sub-directorate: Financial Management and Supply Chain Management, embarked on strengthening its internal financial processes by conducting internal audits. The Inspectorate does not have an Internal Auditor post. The CEO of the Inspectorate discussed the need to conduct formal internal audits with the Department's Chief Audit Executive, and it was agreed that the Department will assist with this function in the ensuing financial year. During the strategic session held in 2011, a decision was taken to review, amend and create policies, procedures and guidelines regarding financial and logistical matters where necessary. In the financial year under review, twelve such policies were reviewed, amended or created.

<sup>16</sup> The DCS head office and Western Cape region supports the Inspectorate's head office; DCS Gauteng region supports the Inspectorate's Centurion regional office; DCS Western Cape region supports the Inspectorate's George regional office, and DCS KwaZulu-Natal region supports the Inspectorate's Durban regional office as well as the Office of the Inspecting Judge.

#### **4.4 Supply chain**

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The Department of Correctional Services together with the Department of Public Works have assisted the Inspectorate in establishing a temporary office for the Inspecting Judge in Durban, while the Inspectorate procures its own offices. The supply chain unit has been working with the CEO in this regard.

### **5. RECOMMENDATIONS**

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It is recommended that –

- 5.1. The Management of the Department continues to assist the Inspectorate in concluding the restructuring process;
- 5.2. The Department includes the Inspectorate's website in the project to upgrade the Department's website and is expanded to ensure the creation of a distinct domain email address for the Inspectorate.

### **6. CONCLUSION**

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The information in this chapter illustrates the strengths and the shortcomings of the Inspectorate. Sound administration forms the basis of any organization and with this in mind the Inspectorate endeavours to evaluate and strengthen its systems continuously, and to address those aspects which require improvement. This includes the necessity of building in mechanisms to minimize and manage risks as well as to build in capacity where necessary.

The Inspectorate wishes to express its appreciation of the Minister of Correctional Services, Mr. Sibusiso Ndebele, who has been in office since 12 June 2012; the former Minister of Correctional Services, Ms. Nosiviwe Mapisa-Nqakula; the Deputy Minister of Correctional Services, Dr. Ngoako Ramatlhodi; the National Commissioner of Correctional Services Mr. Tom S. Moyane and the Department in its entirety for their support to the Inspecting Judge and the Judicial Inspectorate.

The Inspectorate wishes to place on record the magnificent manner in which the Chairperson of the Portfolio Committee, Mr. Vincent Smith, and the Members of the Portfolio Committee oversee the services which the Inspectorate renders to inmates. Your guidance and support is appreciated.

## CHAPTER TWO: INSPECTIONS, INVESTIGATIONS, COMPLAINTS AND MANDATORY REPORTING

### 1. INTRODUCTION

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A new 'Legal Services' directorate was created within the Judicial Inspectorate in June 2011. This section of the Annual Report deals with the work of the Legal Services directorate.

The objective of the Directorate is to ensure regular, standardised inspections and thorough investigations, to deal with complaints, and to monitor the submission of the Department's mandatory statutory reports. To bring the new Directorate into being, the former Legal Services Unit's functions were increased and its staffing enhanced at senior level so that it comprises legally trained and experienced personnel. The complaints and mandatory reports units within the new Directorate, which commenced work in September 2011, are currently sufficiently staffed; however the inspections unit is limited to a manager at the head office in Cape Town and an acting inspector at the Pretoria satellite office. The Directorate is envisaged to be fully staffed in the next financial year.

Baseline statistics and key indicators are being finalised in line with the staffing expansion. These will permit the Inspectorate to better measure the rate of change and compliance by the Department in respect of the Inspectorate's findings and recommendations. In spite of staffing limitations the Directorate has carried out a significant amount of work.

The Inspectorate has the statutory obligation to inspect and report on the treatment of prisoners in correctional centres, conditions in correctional centres, and any corrupt or dishonest practices in correctional centres.<sup>17</sup> During 2011/2012, 72 inspections were conducted across the country, covering just under a third of all correctional centres. These included inspections carried out by the Inspecting Judge himself, the Chief Executive Officer, Judges of the High Court and also by senior personnel of the Inspectorate.

The Inspectorate is statutorily empowered to receive and deal with complaints submitted by the National Council, the Minister, the National Commissioner, and Visitors' Committees. The Inspectorate may also deal with any complaints of its own volition. During the current year 599 complaints were received by referral from other sources including complaints of its own volition.

In cases of urgency, an Independent Correctional Centre Visitor (ICCV) may deal with any complaint.<sup>18</sup> In addition, if an inmate is dissatisfied with the response of the National Commissioner to a complaint, he

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<sup>17</sup>Section 90(1) Correctional Services Act 111 of 1998 as amended.

<sup>18</sup>Section 90(2) Correctional Services Act 111 of 1998 as amended.

or she may refer the matter to an ICCV<sup>19</sup> who must deal with the matter in terms of his or her powers, functions and duties. Unresolved issues must be referred to the Inspectorate.<sup>20</sup>

The Department is statutorily obliged to report to the Inspectorate all deaths occurring in a correctional centre<sup>21</sup>, all instances of the use of segregation of inmates (including segregation in a single cell)<sup>22</sup>, all use of mechanical restraints<sup>23</sup> and all authorised or unauthorised instances of the use of force against an inmate<sup>24</sup>.

During the current year special attention was given to assaults by officials on inmates. Fifty (50) reports of the use of force were received. A schedule, comprising a sample of cases where officials of the Department were implicated in the death or injury of an inmate, is appended to this report.

Forty-seven (47) deaths arising from unnatural causes and 799 natural deaths were reported over the period.

If the average correctional centre population is around 160 000 this implies a death rate of approximately 529 deaths per 100 000 inmates. Combining 2009 male population data<sup>25</sup> with 2009 male death data for males 15-60<sup>26</sup>, a crude death rate of around 900 per 100 000 can be calculated for South African men aged 15-60. This suggests that the crude death rate in correctional centres is *lower* than for South Africa as a whole. The number of unnatural deaths reported indicates an unnatural death rate of only 30 per 100 000 in correctional centres, compared to a similarly calculated South Africa crude rate of 195 per 100 000 unnatural deaths for men aged 15-60.<sup>27</sup> In previous Annual Reports concern was expressed around the possible misclassification of deaths in correctional centres as 'natural' rather than 'unnatural'. This concern remains.

The Inspectorate extended an enquiry into the natural deaths of women (12 deaths), children under 18 (5 deaths) and infants of inmate mothers (2 deaths). This implies a female inmate death rate of 319 per 100 000 compared to a 728 per 100 000 crude death rate for women aged 15-60 in South Africa<sup>28</sup>,

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<sup>19</sup>Section 21(5) Correctional Services Act 111 of 1998 as amended.

<sup>20</sup> Contained in section 93 of the Correctional Services Act 111 of 1998 as amended.

<sup>21</sup>Section 15(2) Correctional Services Act 111 of 1998 as amended.

<sup>22</sup>Section 30(6) Correctional Services Act 111 of 1998 as amended.

<sup>23</sup> Section 31(3)(d) Correctional Services Act 111 of 1998 as amended

<sup>24</sup>Section 32(6) Correctional Services Act 111 of 1998 as amended.

<sup>25</sup> 14 512 500 males aged 15-60 in South Africa as per Statistics South Africa *Mid-year population estimates 2009, 27 July 2009*

<sup>26</sup> 132 388 deaths of men aged 15-60 due to all causes during 2009 as per *Mortality and causes of death in South Africa, 2009: Findings from death notification* 30 November 2011.

<sup>27</sup> 14 512 500 males aged 15-60 in South Africa, as per Statistics South Africa *Mid-year population estimates 2009, 27 July 2009* and 28 440 unnatural deaths among men aged 15-60 as per Statistics South Africa *Mortality and causes of death in South Africa, 2009: Findings from death notification* 30 November 2011.

<sup>28</sup> 16 327 600 females aged 15-60 in South Africa, as per Statistics South Africa *Mid-year population estimates 2009, 27 July 2009* and 118 932 deaths among women aged 15-60 as per Statistics South Africa *Mortality and causes of death in South Africa, 2009: Findings from death notification* 30 November 2011.



and an inmate child under 18 death rate of 845 per 100 000, compared to a South Africa rate for children 0-15 of 381 per 100 000.<sup>29</sup>

The Inspectorate adjudicated 24 appeals from inmates regarding their segregation.

In previous Annual Reports it was noted that complaints relating to health care were high. A broad-based survey into health care was conducted over 2011-2012 with the assistance of ICCVs, the findings of which are included in this report. A more detailed study into the nature and extent of health care provision to inmates will take place over the next few years.

It is pleasing to note that for the most part, the Department has co-operated with the Inspectorate. The work of the Inspectorate is dependent on Heads of Centres, Area Commissioners and Regional Commissioners providing timeous and substantive reports so that the Inspectorate may in turn evaluate and transmit findings and recommendations to ensure the treatment of inmates and the conditions under which they are kept are consonant with the provisions of the Constitution and statute.

However it has become necessary, on occasion, to report those whose response time is unreasonably long to Area Commissioners and Regional Commissioners. The Inspectorate respectfully suggests that the Department at regional level put in place a strictly regulated policy enjoining Heads and Area Commissioners to provide feedback within minimum time periods. This will improve communication, service delivery, and ultimately the treatment of inmates and the conditions under which they are held.

## **2. STATE OF CORRECTIONAL CENTRES**

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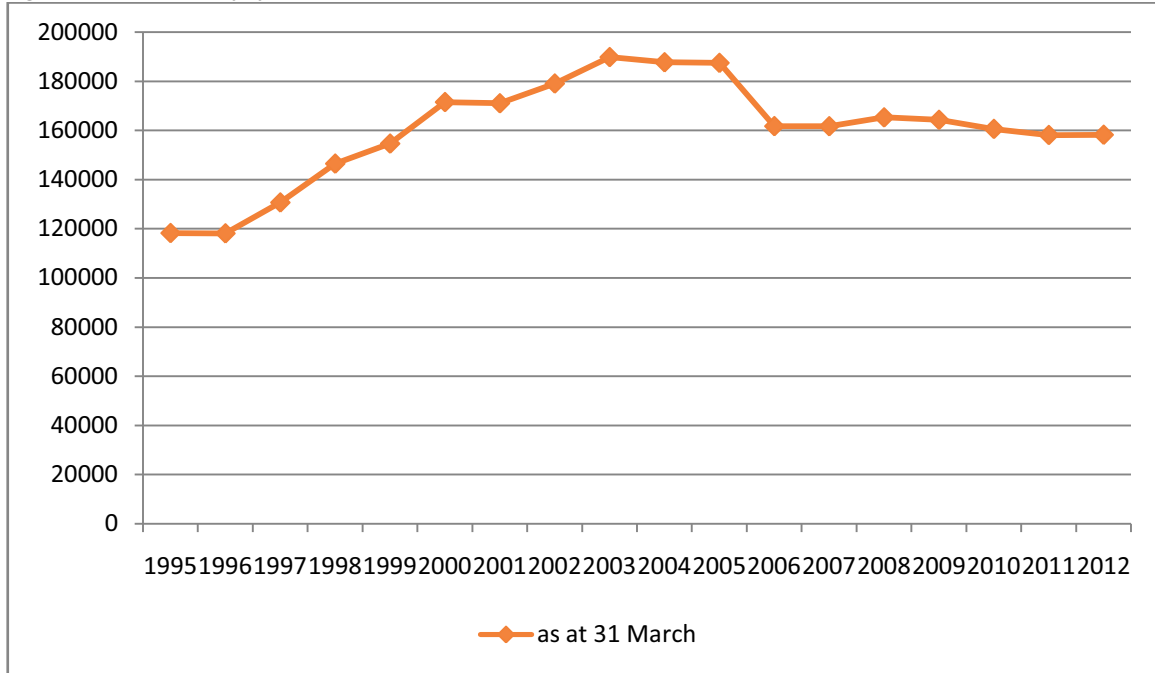
The number of active correctional centres in South Africa on 31 March 2012 was 236, housing 158 165 inmates (an average of 670 per correctional centre). This compares to 237 in 2011/12, housing 158 064 inmates (an average of 655 per prison). The change in number of correctional centres is as a result of the temporary closure of correctional centres.

The change in the total correctional centre inmate population since 1995 is shown below. The Inspectorate notes the stabilising of the total population at approximately 160 000.

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<sup>29</sup> 15 500 700 children aged under 15 in South Africa as per Statistics South Africa *Mid-year population estimates 2009*, 27 July 2009 and 59 181 deaths among children under 15 as per Statistics South Africa *Mortality and causes of death in South Africa, 2009: Findings from death notification*. 30 November 2011.

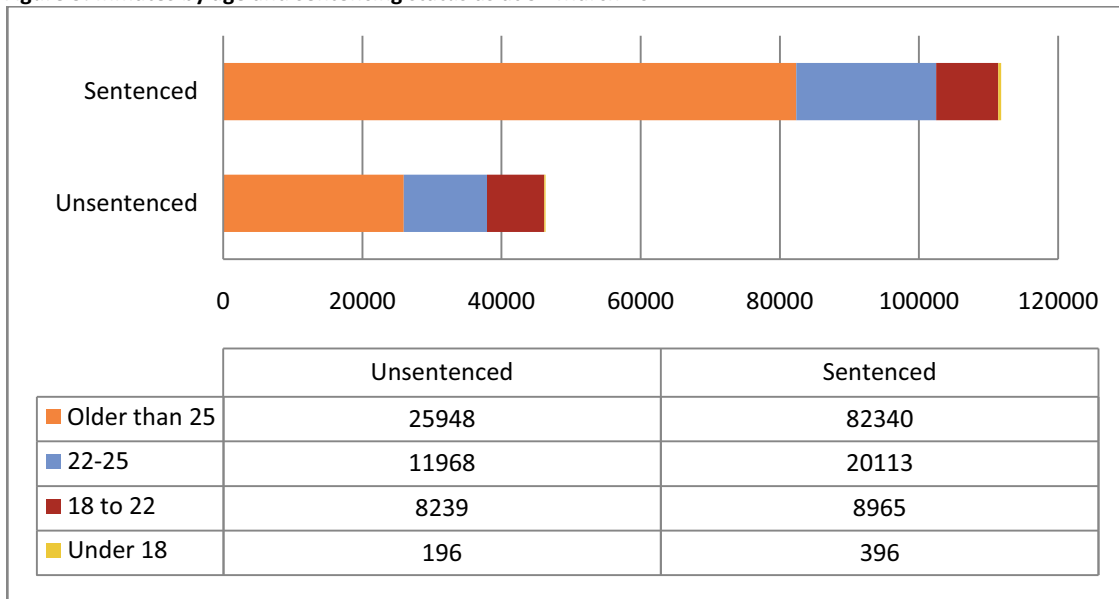
**Figure 4: Total inmate population 1995-2011**



## 2.1 Inmate composition

A breakdown of age categories shows that 32% of all inmates were under the age of 25 as at 31 March 2012 (see Figure 5). This compares to 34% of all people in our correctional centres being under the age of 25 reported in the 2010/2011 Annual Report<sup>30</sup>, indicating a two percentage point reduction. In South Africa, 32% of the male population aged 15-60 is under the age of 25.

**Figure 5: Inmates by age and sentencing status as at 31 March 2012**



<sup>30</sup>Judicial Inspectorate for Correctional Services, Annual Report 2010/2011, p12.

International and South African law stipulates that children under the age of 18 should only be imprisoned as a last resort<sup>31</sup>. According to the Department records, as at 31 March 2012, there were 592 children held in correctional centres, 33% of whom were unsentenced. None of these children were under the age of 13, while 11% were 14 or 15 years old, 28% were 16 years old and 61% were 17 years old.

Most (51%) unsentenced children (remand detainees) were held in relation to charges for crimes which the Department classifies as “aggressive”. This compares to 48% of sentenced children held in relation to “aggressive” crimes. As many as 27% of unsentenced children are held in relation to “economic” crimes while 23% of sentenced children are held in relation to “economic” crimes.

**Figure 6: Composition of inmates by Department crime classification as at 31 March 2012**

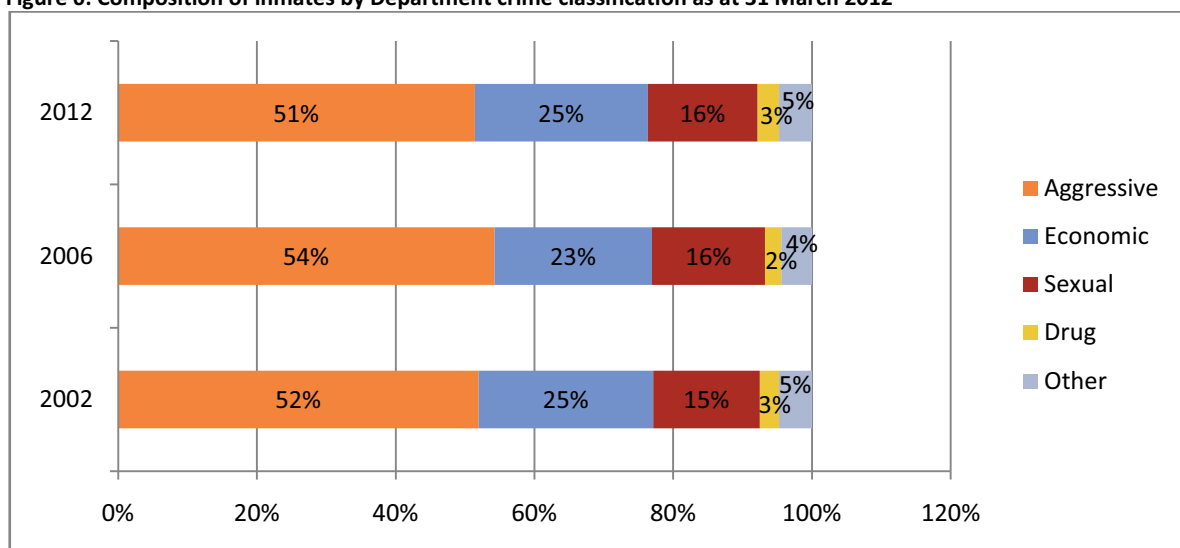


Figure 6 above shows the inmate composition by Department crime type classification in the years 2002, 2006 and 2012. The figure shows that inmates held in relation to crimes of a violent or aggressive nature (sentenced and unsentenced) consistently account for more than half of the inmate population. This has important implications for correctional centre management and security classification of inmates. Indeed 25% of all sentenced inmates are classified “maximum” in terms of security classification. Inmates held in relation to crimes of a sexual nature consistently account around 16% of the inmate population. Around 1 in 4 inmates is held in relation to crimes of a purely economic nature while 1 in 33 is held in relation to drug crimes.

<sup>31</sup> Article 37(b) United Nations Convention on the Rights of the Child; Section 28(1)(b) Child Justice Act 75 of 2008.

## 2.2 Remand detainees

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The remand population consists of persons who have not yet been either convicted or sentenced. 30.06% of inmates as on 31 March 2012 were in this category.

The Inspectorate is pleased to note that the Correctional Matters Amendment Act 5 of 2011 provides for the incarceration of “remand detainees” in a “remand detention facility” in contradistinction to sentenced “offenders”. The Act provides that remand detainees may be subjected only to those restrictions necessary for the maintenance of security and good order in the remand detention facility and must, where practicable, be allowed all the amenities to which they could have access outside the remand detention facility.<sup>32</sup> The amenities available to remand detainees may however be restricted for disciplinary purposes, and may be prescribed by regulation.<sup>33</sup> Special provisions in the Act now apply to pregnant, disabled, mentally ill, terminally ill or incapacitated, and aged remand detainees.

The Act provides that if there is no correctional centre or remand detention facility in a district an inmate may be detained in a police cell but not for a period longer than seven days. Further, no remand detainee may be surrendered to the South African Police Service for the purpose of further investigation without authorisation by the National Commissioner.<sup>34</sup>

The Act further contains provisions regarding the time periods for which remand detainees may be held, which although enacted, have not yet been promulgated.<sup>35</sup> Once promulgated these will limit pre-trial incarceration to two years after initial admission, “without such matter having been brought before the attention of the court.”<sup>36</sup> South African remand detention facilities will be required to notify the National Prosecuting Authority (NPA) twice a year of cases involving remand detainees who have been held for successive six-month periods. It is envisaged that the Act will enhance a greater interface between the Department and the NPA and address the problem of possible unnecessary lengthy periods of pre-trial detention, the courts however the final arbiter.

Indeed as at 31 March 2012, there were 2470 remand detainees in all correctional centres in South Africa who had already been held for more than two years, according to the Department. This means that 1 in 20 of all unsentenced inmates as at 31 March 2012 had already been held for more than two years. Once the legislation is promulgated all of these detainees’ cases will have to be referred to court for review. Similarly as many as 23 546 or 33% of all unsentenced inmates as at 31 March 2012 had

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<sup>32</sup> Section 9 Correctional Matters Amendment Act 5 of 2011, which amends s46 of the Principal Act

<sup>33</sup> Section 9 Correctional Matters Amendment Act 5 of 2011, which amends s46 of the Principal Act

<sup>34</sup> Section 9 Correctional Matters Amendment Act 5 of 2011, which amends s49F of the Principal Act

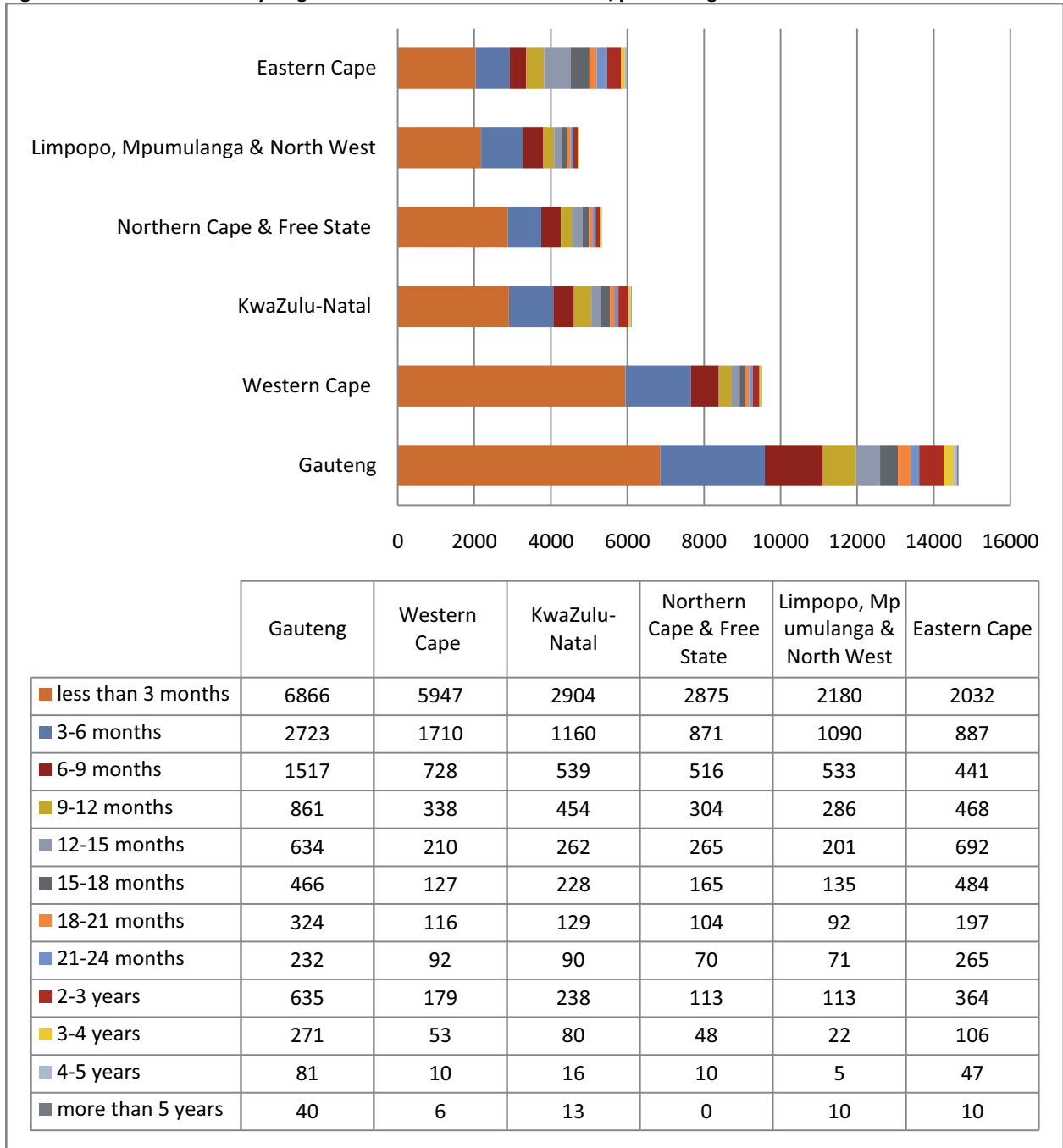
<sup>35</sup> Regulation Gazette No 35093 of 01-March-2012, Volume 561 No 9698, which determines 1 March 2012 as the date on which the Correctional Matters Amendment Act 5 of 2011 comes into operation, except for section which only comes into operation in respect of the amendments made to sections 46,47,49,49A,49B,49C, 49D and 49F of the Principal Act.

<sup>36</sup> Section 9 Correctional Services Amendment Act 5 of 2011, which amends s49G of the Principal Act

already been held for six months or more, according to the Department. This illustrates the extent to which remand detention facilities will be required to bring matters to the attention of the National Prosecuting Authority, once the relevant sections are promulgated.

Figure 7 below shows the trends by administrative region, with some regions (Eastern Cape, Gauteng) clearly comprising proportionally more inmates held for more than three months on remand.

**Figure 7: Remand detainees by length of detention as at 31 March 2012, per DCS region**



The legislative obligations crystallise the various protocols and agreements between the Department and South African Police and National Prosecuting Authority to continuously enquire into the reasons for delays in the finalising of a trial or reconsideration of the necessity of remanding a detainee in custody after a significant lapse of time.

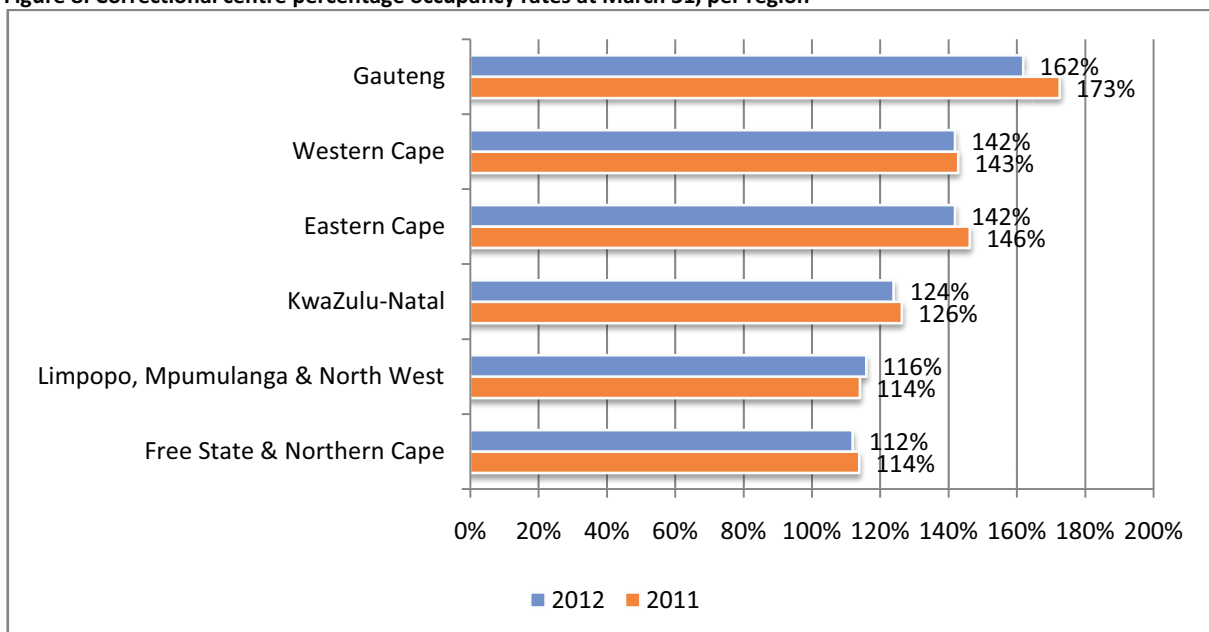
### 2.3 Overcrowding

The problem of chronic overcrowding and its deleterious effects on inmates in some correctional centres has resulted in the treatment of inmates and conditions of detention falling short of desired levels. The average rate of occupancy of correctional centres continues to exceed capacity, despite the incremental addition of additional capacity.

For administrative purposes the Department has organised its active correctional centres into six regions, namely Gauteng (25 correctional centres), Limpopo, Northwest & Mpumalanga (38 correctional centres) KwaZulu-Natal (41 correctional centres), Eastern Cape (42 correctional centres), Western Cape (42 correctional centres) and Northern Cape & Free State (48 correctional centres).

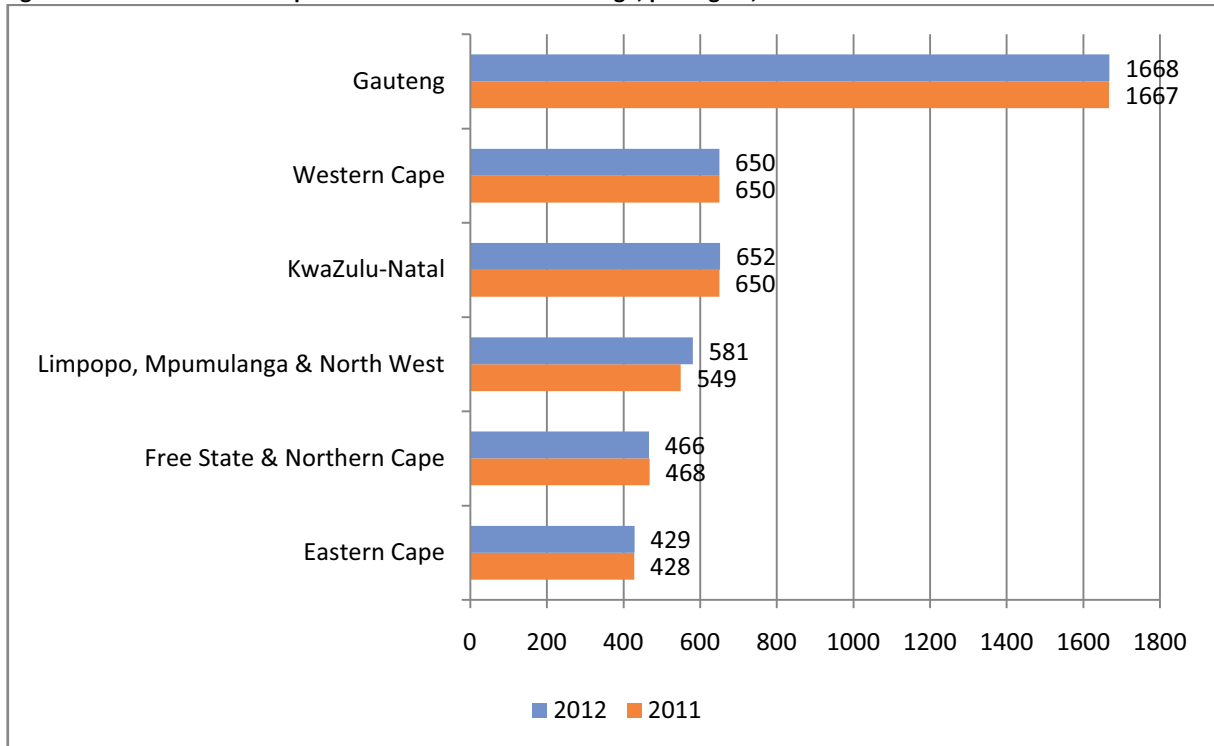
The occupancy trends for the Department’s administrative regions appear in Figure 8 below, from which it is apparent that Gauteng has the highest occupancy rate (162%, down from 173% last year) as well as the highest average number of inmates per correctional centre (1668) of all the regions<sup>37</sup> (see Figures 8 and 9 below). All administrative regions except Limpopo, Mpumalanga & North West show a reduction in occupancy rate since 2010/2011; the country as a whole is at 133% occupancy.

**Figure 8: Correctional centre percentage occupancy rates at March 31, per region**



<sup>37</sup> The figures supplied by the Department and published in the 2010/2011 Judicial Inspectorate Annual Report were used in these calculations.

**Figure 9: Number of inmates per correctional centre on average, per region, as at 31 March**



By contrast all administrative regions except Free State & Northern Cape show an increase in the number of inmates per correctional centre. This suggests the slight reduction in occupancy rates has been achieved by increasing the capacity of correctional centres, rather than increasing the number of correctional centres. Indeed the number of operational correctional centres has reduced to 236 in 2011/12 from 241 in 2010/2011.

High capacity correctional centres present a range of logistical challenges, for example, around food preparation. These are exacerbated when accompanied by overcrowding, which appears to be present in all regions but is worse in Gauteng and the Eastern Cape.

This raises the question of the geographical distribution of correctional centre capacity. Figure 10 below shows correctional centre inmate capacity per 100 000 people, in terms of the 2011 mid-year provincial population estimates published by Statistics South Africa. This measure indicates how many inmate spaces are available per 100 000 people in the relevant region.

Figure 10: Correctional centre approved inmate capacity per 100 000 population as 31 March 2012

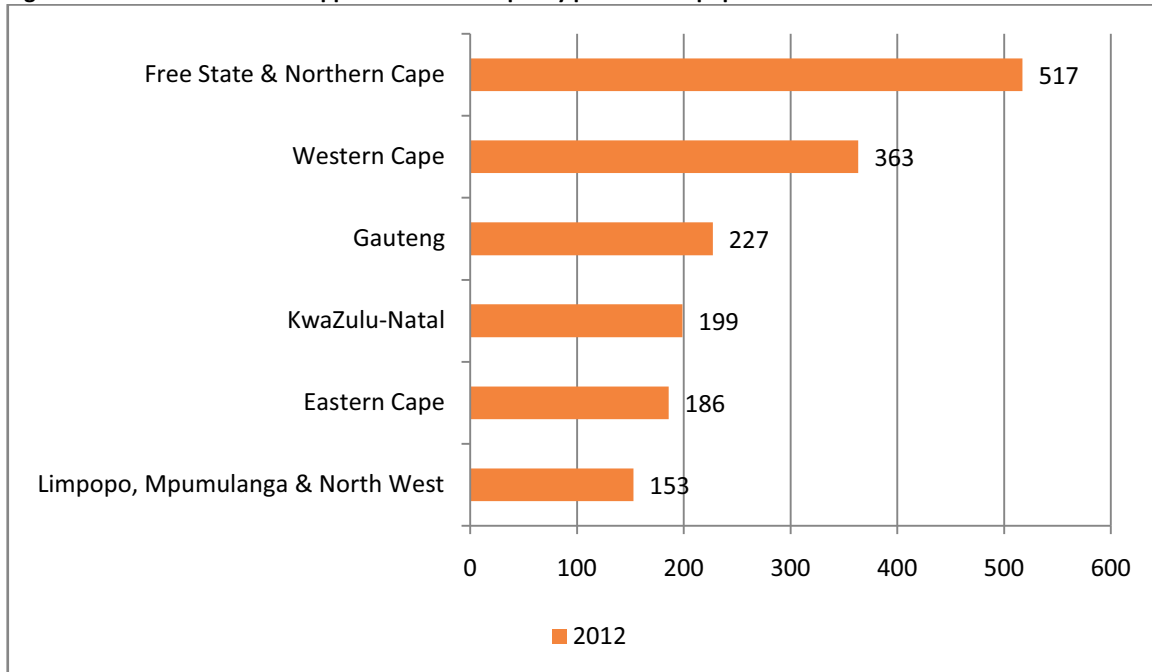


Figure 10 shows that the Free State & Northern Cape, and Western Cape regions have the highest incarceration capacity per 100 000 population, while KwaZulu-Natal, Eastern Cape and the three Northern provinces have the lowest capacity per 100 000 people. This suggests that under-capacitation in relation to regional population size is not the only cause of overcrowding, as overcrowding also occurs in the regions with the greatest capacity (Western Cape in particular). However in Gauteng, lack of capacity appears to be part of the problem as Gauteng has a lower capacity than the average for South Africa.

As mentioned in previous annual reports, although overcrowding on a national level is reflected in an occupancy level of currently 133%, there is a vast difference between overcrowding in individual centres, with some centres extremely overcrowded and others operating below capacity. The White Paper on Corrections requires in principle that inmates be housed in the centre nearest to their families to facilitate visits and rehabilitation. Correctional centres in highly populated areas are therefore more likely to be overcrowded, such as centres in Johannesburg, Durban and Cape Town. Some centres in rural areas, such as Mount Frere with 42 beds, are also occasionally extremely overcrowded due to the limited space available.

Simply transferring inmates from overcrowded centres to other centres is not always a viable option as, besides inmates not receiving visits, the Inspectorate found during its inspections that smaller centres often experience shortages of specialist staff such as nurses, social workers and educators. This hampers the rehabilitation of inmates.



The problem of overcrowding has been a perennial one and is unlikely to change in the foreseeable future. While part of the impact of a dedicated capacity to manage remand detention should be shorter periods of remand detention and hence less overcrowding, the strategic motivation for the Remand Detention Branch lies in the recognition that remand detention is a distinct function, bound by different international and Constitutional instruments from management of sentenced offenders and that South Africa needed to move in the direction of capacitating with the appropriate resources and regulatory framework this distinct function. Hence there is dedicated branch to give effect to Constitutional and international obligations in the management of remand detention not to manage overcrowding.

A generalised explanation that it is overcrowding which results in the “unintended consequences” of inadequate treatment or undignified conditions of detention is not tenable. The Inspectorate has required and will continue to require rational and justifiable reasons evidencing that all reasonable alternatives were considered before accepting a limitation of the rights of inmates.

In an important judgment of the Supreme Court of Appeal in *Minister of Correctional Services and others v Kwakwa and another*<sup>38</sup>, concerning the “privilege system” applicable to then “unsentenced prisoners,” the court decided that, while recognising the problem of crime in the country and that “prisons” are overflowing, South Africa’s constitutional values and rights still apply to inmates and remand detainees.

In the Inspectorate’s view, this requires that responsibilities are not delegated to junior personnel, and that Heads of Centres, Area Commissioners and Regional Commissioners implement a system of checks and balances to raise the standards of liability. Good governance, accountability and responsiveness are required from decision-makers to achieve constitutionally sound standards of detention.

### **3. INSPECTIONS AND INVESTIGATIONS**

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#### **3.1 Inspections**

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Inspections follow pre-determined guidelines, and traverse a range of areas and activities within a correctional centre. Inspections include interviews with Heads of Centres as well as inmates. The Head is asked to provide statistics on inmate population and staffing. Substantive questions posed to the Head relate to challenges faced including the incidence of corruption, disciplinary matters, the nature of the healthcare facilities, and the type of medical staff available, nutritional provision, the functioning of the

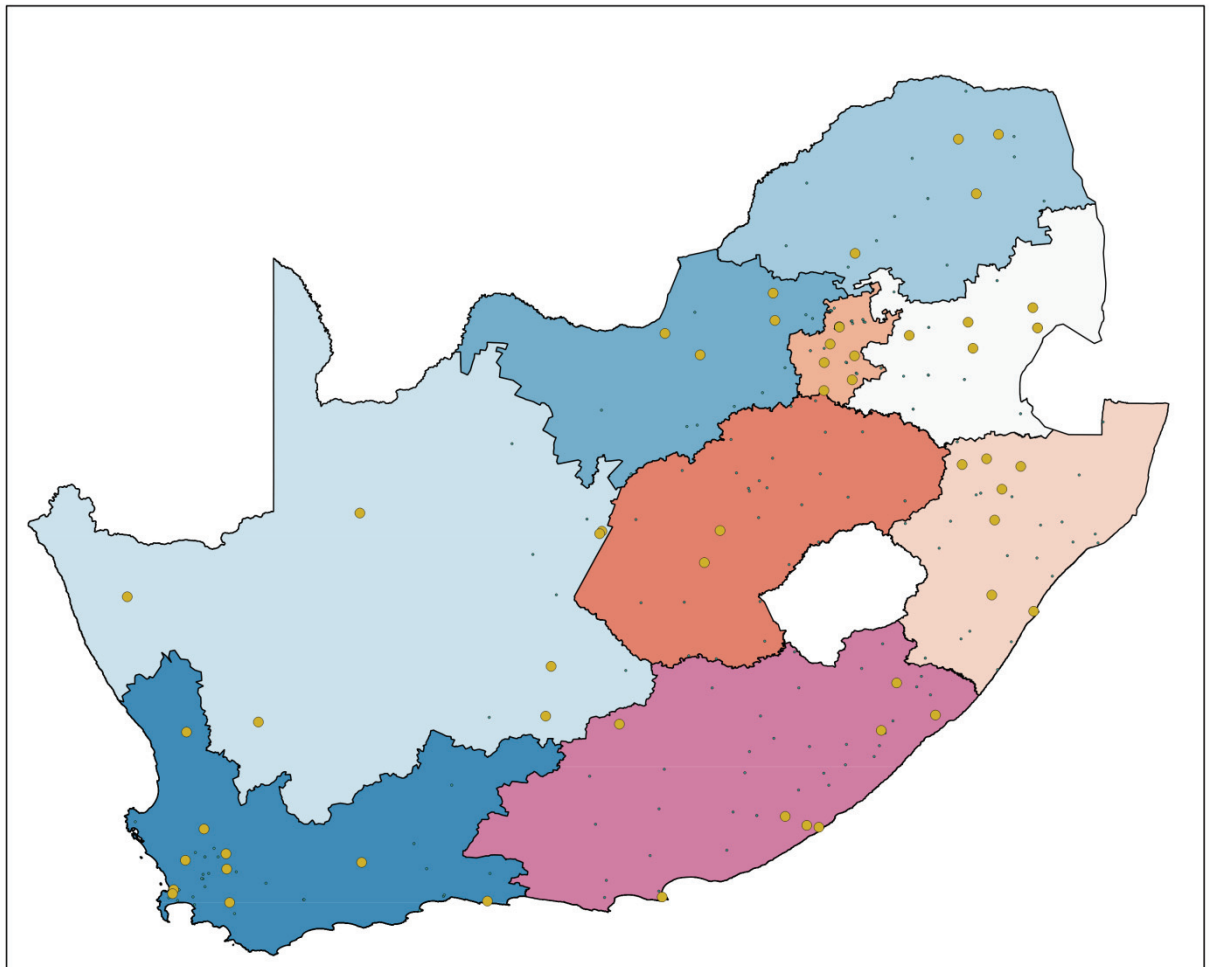
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<sup>38</sup> Minister of Correctional Services and Others v Kwakwa and Another (60/2000) [2002] ZASCA 17; [2002] 3 All SA 242 (A) (27 March 2002)

complaints system and the nature and extent of rehabilitation programmes. Lastly, an enquiry is made regarding the condition of the infrastructure including emergency maintenance.

Inspectors record their own observations in the same areas to verify and corroborate submissions made by the Head. The facilities available to inmates with disabilities, children and inmate-mothers with infants are examined. The inspection concludes with interviews with inmates regarding their accessibility to the complaints system and their immediate and grave concerns. The objective is to inspect each centre over a three year period. In the period under review, 72 inspections were carried out across the country.

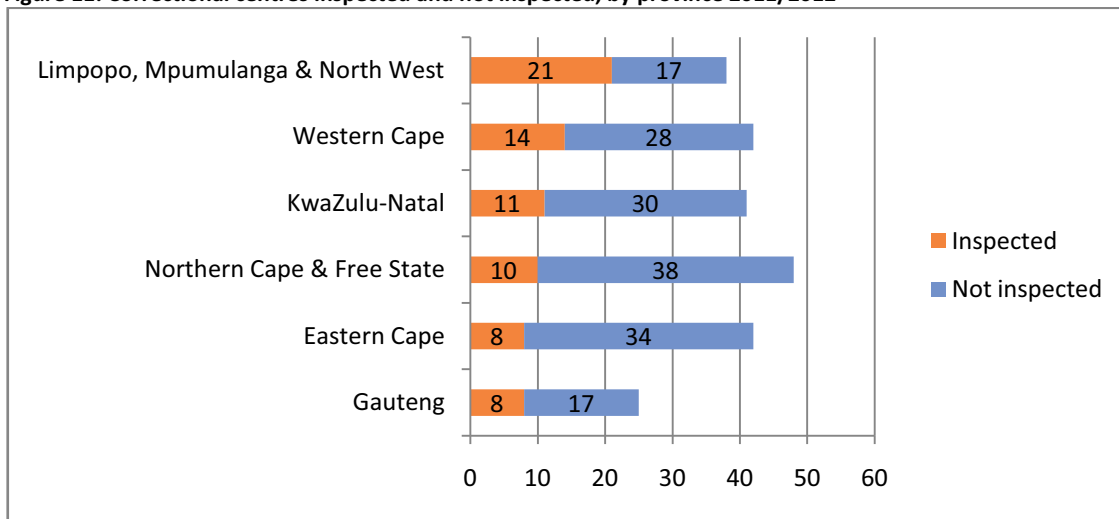
**Map 1: Location of correctional centres inspected during 2011/2012**



Map 1 shows the location of inspected centres (large yellow dot) and centres not inspected (small blue dot).<sup>39</sup>

<sup>39</sup>**Eastern Cape:** Mthatha Max, Mdantsane (twice), St Albans Med B, King Williams Town, East London Med B, East London Female (Med C), Mthatha Remand. **Free State & Northern Cape:** De Aar, Kimberley, Tswelopele, Mangaung, Grootvlei CC Med A, Groenpunt Med, Upington, Springbok, Richmond Brandfort. **Gauteng:** Heidelberg, Johannesburg Med C, Pretoria Central, Johannesburg Med A (twice), Leeuwkop Med C, Modderbee (twice). **Kwazulu-Natal:** Ebongweni (Juvenile), Ncome Med A, Durban Female, Durban Juvenile, Ncome Med B, Waterval Med A, Newcastle, Ladysmith, Pomeroy, Pietermaritzburg Med A, Vryheid CC. **Limpopo, Mpumalanga & North**

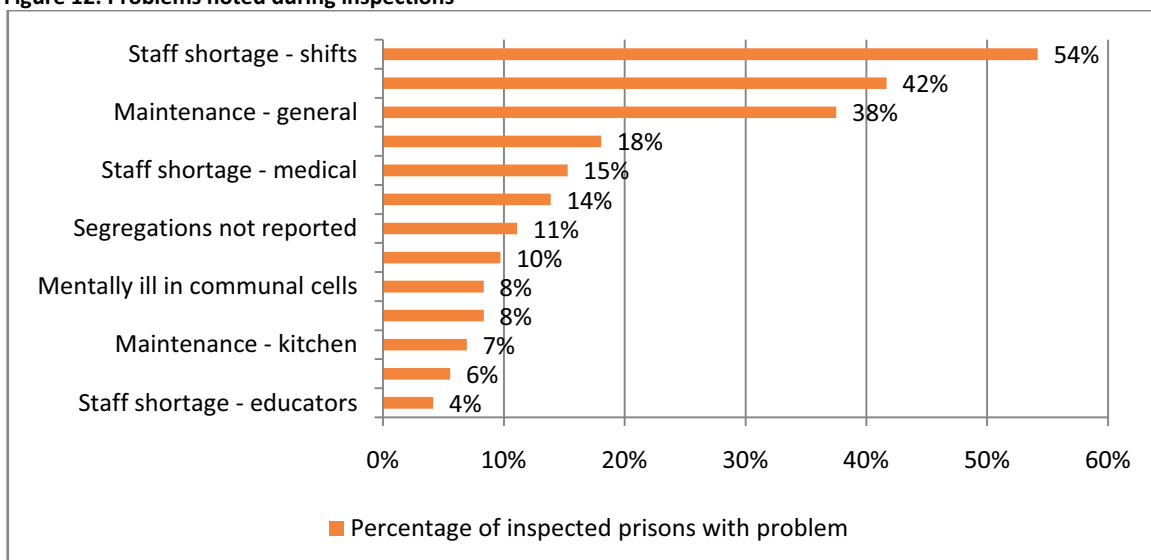
**Figure 11: Correctional centres inspected and not inspected, by province 2011/2012**



Each inspection report is provided to the Head of Centre with our findings and a request to rectify shortcomings. These are then monitored for compliance. The Inspections Unit was established as recently as September 2011 and has improved its fact-gathering skills. The Inspectorate is proud of the progress being made in a short period of time, and with few staff. The Inspectorate’s quarterly reports reflect in greater detail the success of work and the compliance by the Department with recommendations.

The main problems encountered during the 72 inspections made thus far appear in the figure below.

**Figure 12: Problems noted during inspections**



**West:** Middleburg, Rustenburg Juvenile, Barberton Town, Mafikeng (twice), Barberton Med B (twice), Belfast, Mogwase, Carolina, Lichtenburg, Lydenburg (twice), Barberton Med A, Nelspruit, Rustenburg, Tzaneen, Thohoyandou Female, Witbank, Mahkadu, Modimolle. **Western Cape:** Goodwood, Brandvlei Med, Knysna, Warmbokveld, Brandvlei Max (twice), Helderstroom Max, Pollsmoor Max (twice), Voorberg Med A, Van Rhynsdorp, Calvinia, Malmesbury Med A, Malmesbury Med B.

The most frequently noted problems encountered in the inspections conducted thus far relate to shortage of staff - especially shift staff; overcrowding; and maintenance. More than half of the centres inspected had shift staff shortages, and almost half (42%) were also overcrowded. Some 11% were not complying with the mandatory reporting of segregations while 6% did not have a death register to ensure the reporting of deaths. Some 8% did not have sufficient fire-fighting equipment.

The issue of overcrowding has been dealt with in some detail above. A related problem prevalent among the centres inspected is the shortage of personnel. Professionals in the medical, social and educational fields are not at optimal levels, resulting in many inmates not being adequately assessed on their admission, or only receiving treatment and services on their request after a significant time in detention. In these cases, the benefits of early detection are lost and problems may be exacerbated.

Heads of Centres are again, as has been noted in previous reports, of the view that the ratio between officials per inmates are contributing factors to the lack of sufficient custodial personnel, particularly on weekends. With only skeleton staff, inmates are only cursorily monitored. Furthermore, should a riot occur or a fire take place or a medical emergency, the shortage of staff may increase the risk factor. A case in point was an incident at Krugersdorp Correctional Centre where only one official was on duty in the unit when three juveniles<sup>40</sup> died in the single cell in which they were locked. They burned the cell in which they were locked and the official was unable to open the door, which was alight. There were no other officials to assist. The official raised the alarm but by the time the inmates were brought out of the cell, it was too late. It could not reasonably be expected from a single official to patrol the unit, guard the gate, answer the telephone, and do administration at the same time. This happened during daytime when inmates were supposed to take part in education and rehabilitation programmes. Instead they were locked up and left to their own devices according to an investigation report of the Department.

The third kind of problem frequently cited was the slow progress made in the maintenance of centres. Despite repairs being identified it often takes months before these are undertaken. The claim was made that despite RAMP (repair and maintenance project), unreasonable delays are occasioned by the Department of Public Works; furthermore, where work is contracted out, and the quality of the contractors' repairs is frequently alleged to be of a poor standard.

### **3.2 Investigations**

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Investigations may be conducted on a referral from either the Mandatory Reports Unit or Complaints Unit. On occasion, investigations are conducted on the instructions of the Inspecting Judge or other organs of state. Investigations are usually conducted where there are allegations of gross human rights

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<sup>40</sup> A juvenile is an adult 18 or older but younger than 21, in terms of regulations to the Correctional Services Act Regulation 3(2)(h).

violations. These are also reported to Parliament. Eleven investigations were carried out in the following ten correctional centres during the year under review:

**Table 3: Investigations conducted during the year under review**

<b>Number</b>	<b>Correctional Centre</b>	<b>Region</b>
1	Barberton Town Juvenile CC	Mpumalanga
2	Odi CC	North West
3	Krugersdorp CC	Gauteng
4	Leeuwkop Max CC	Gauteng
5	Pretoria Female CC (two investigations)	Gauteng
6	Boksburg CC	Gauteng
7	Grootvlei Max CC	Free State
8	Tswelopele CC	Free State
9	Helderstroom Med CC	Western Cape
10	Goodwood CC	Western Cape

Investigations were conducted for the following reasons:

- 1) allegations of assaults of officials on inmate,
- 2) arson and subsequent death of three inmates,
- 3) arson and riots,
- 4) allegations of rape and torture of inmates by officials, and
- 5) an unnatural death.

These matters were reported to the Inspectorate by: 1) ICCVs, 2) inmates and/or family members of inmates, 3) civil society, and 4) the Portfolio Committee.

## **4. COMPLAINTS**

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One of the strategic objectives of the Judicial Inspectorate is to maintain an independent complaints system. This objective emanates directly from section 90(2) of the Act which empowers the Inspecting Judge to receive and deal with inmates' complaints. It interacts with section 21 of the Act which requires the Department to deal with inmates' complaints and requests.

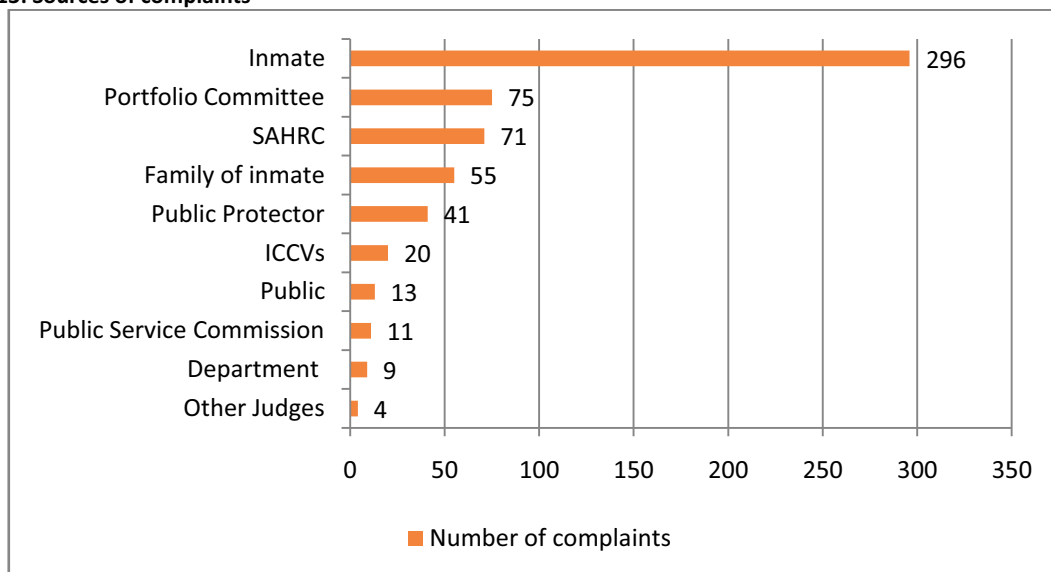
The Inspectorate ensures that the Department meets its responsibilities as laid out in section 21. This is done not only through the Independent Correctional Centre Visitors (ICCVs) and Visitor Committees (VCs), but also through a dedicated Complaints Unit within the Directorate: Legal. This Unit has been fully operational since 15 September 2011. At national level the staff complement of the Complaints Unit consists of a complaints manager, a senior case officer and two administrative officers who administer all complaints received.

The Unit prioritises complaints regarding assaults by officials on inmates, but not to the exclusion of other complaints received. The Inspectorate hopes to extend its staff capacity to deal more effectively with inmates' complaints.

The Inspectorate embraces the process of dealing with complaints in section 21 and aims to give effect to the responsibilities of key role-players in this process, i.e. the Head of a Correctional Centre, the Area Commissioner, Regional Commissioner and the Independent Correctional Centre Visitor. In practice the complaints procedure is challenging due to numerous factors, including but not limited to overcrowding in correctional centres and a lack of human resources in the Inspectorate.

In addition to the complaints procedure set out in Section 21 of the Act, inmates may also resort to lodging complaints with external bodies such as the Portfolio Committee on Correctional Services, Parliament and other statutory bodies, such as the South African Human Rights Commission, the Public Protector, and the Public Services Commission, in terms of Section 90(2) of the Act.<sup>41</sup> In turn, these external bodies refer a number of complaints from inmates to the Inspectorate. This is largely because of the good relationship established with the Inspecting Judge.

**Figure 13: Sources of complaints**



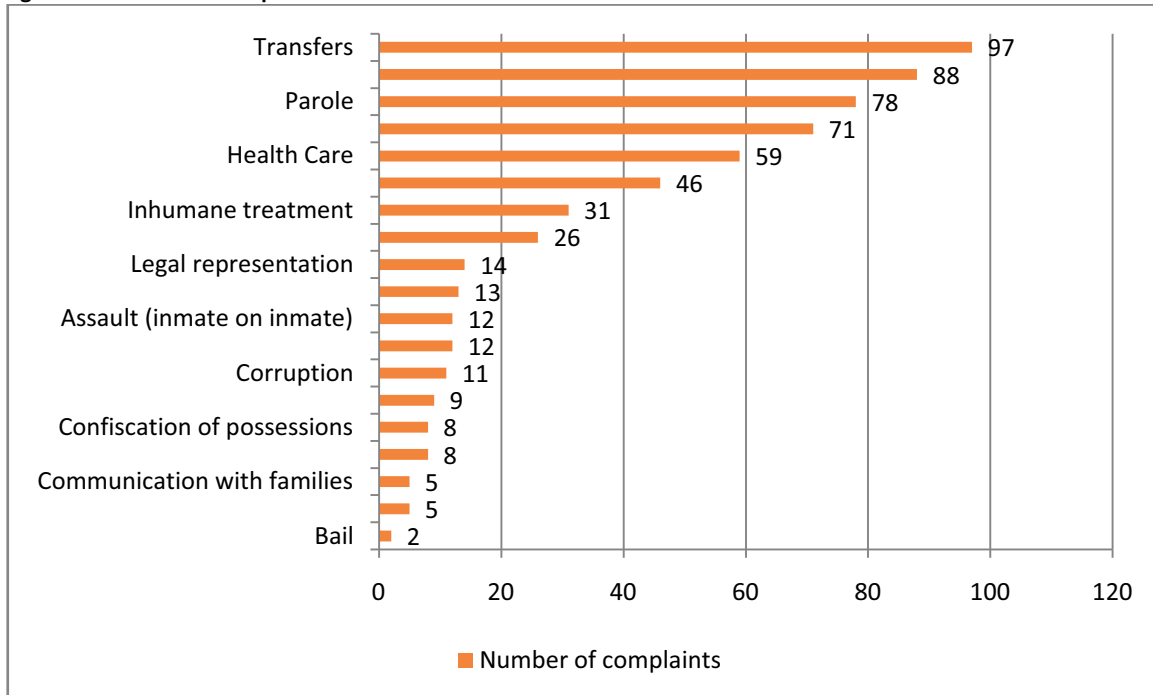
All complaints referred to the Inspecting Judge are recorded and dealt with individually. The Judicial Inspectorate received a total of 595 complaints of which 224 were referrals from external sources, and 371 came directly from inmates, their families, or through the ICCV complaints systems<sup>42</sup>.

From all complaints received, 71 (12%) were complaints arising from an assault by an official on an inmate.

<sup>41</sup> Section 90(2) Correctional Services Act 111 of 1998 (as amended): "The Inspecting Judge may only receive and deal with complaints submitted by the National Council, the Minister, the National Commissioner, a Visitors' Committee, and, in cases of urgency, an Independent Correctional Centre Visitor man of his or her own volition deal with any complaint."

<sup>42</sup> Ibid. viz. "The Inspecting Judge ... may of his or her own volition deal with any complaint."

**Figure 14: Content of complaint received**



#### 4.1 Complaints – Transfers

The most frequent complaint related to transfers. The Inspectorate has in its previous Annual Reports<sup>43</sup> addressed the concerns relating to complaints and requests regarding transfers. It appears that the situation has not been resolved as transfer issues are still the most frequent of inmates’ complaints and requests.

The survey on transfers in the 2010/2011 Annual Report showed that the majority of inmates were transferred for reasons other than their own request. By comparison to complaints, of the 97 complaints regarding transfers received, 60% were due to inmates requesting to be closer to their families, 20% related to unwanted transfers by inmates and the remainder related to requests, registered as complaints at the Inspectorate, for transfer to another centre due to no education facilities, rehabilitation programmes, unfair treatment or poor conditions of detention at a centre. The most common unwanted transfers were to the Voorberg (10km outside Porterville) and Mangaung (Bloemfontein) Correctional Centres. Voorberg is a centre of excellence and Mangaung is a private maximum security centre. The Inspectorate has not investigated the underlying cause of these trends and has been dealing with these matters on a case-by-case basis.

The Inspectorate also found that a number of inmates complained of the failure of the Department to facilitate their transfer request. It appears that these tended to be cases where the Department

<sup>43</sup>2008/2009 (p36), 2009/2010 (p37) and 2010/2011 (pp16-21)

refused to grant a transfer request, with or without reasons. The Department should provide inmates with adequate reasons if their request is denied.

Though the Inspectorate has not come to a factual finding that the Department is not complying with section 21, the data on complaints received by the Inspectorate suggest that practice does not always conform to the requirements of the section. Especially in larger centres, the Head of a correctional centre is frequently not actively involved in the complaints process and has delegated the task to officials on a lower level. In such instances, abuse of the process cannot be ruled out. Consequently, it is not surprising that inmates approach external parties to resolve their complaints. In smaller correctional centres, the section 21 complaints process tends to be more effective as the Head of Centre can be approached from the outset and this may result in the more effective resolution of a complaint.

ICCVs are trained to encourage inmates to follow the process as laid out in section 21, i.e. to register complaints in the complaints register (also termed the G365 register). When a complaint is laid in the register the designated official is obliged to deal with the complaint. The Head of Centre must periodically inspect the register and evaluate the manner in which inmates' complaints are dealt with and intervene where these are unresolved. If an inmate is unsatisfied with the resolution of the complaint or request, it can be referred to the National Commissioner for a decision. Should the inmate be unsatisfied with the decision of the National Commissioner, it can be referred to the ICCV who will deal with it in terms of section 93, which requires ICCVs to refer all unresolved complaints to a Visitors' Committee or, in cases of urgency, to the Inspecting Judge.

One challenge for the Judicial Inspectorate is to merge unresolved complaints from ICCVs and those dealt with directly by the Complaints Unit. This is a process that was not utilised to its full extent in the past due to various factors (see previous Annual Reports). It was always realized that extensive ICCV training would be necessary to make this process effective. Since the establishment of the Complaints Unit, there has been systematic paralegal training of the ICCVs. The objective of the training is to equip ICCVs with a better understanding of the legislative requirements of the Department and to work with these in mind, in the day-to-day business at correctional centres. The main aim is to increase ICCVs' ability to facilitate the resolution of inmates' complaints.

## **4.2 Complaints – Parole**

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About 50% of the parole complaints received relate to the poor functioning of Case Management Committees (CMCs). The complaints relate to the way the CMCs assess programmes in which inmates are obliged to participate before their profiles (G326) are ready for submission to the Correctional Supervision and Parole Board (CSPB). The CSPB decides whether to grant parole or not. Some inmates



discover only at the CSPB hearing that there are some programmes which they were required to complete before they may be granted parole.

Inmates also complain that they are not considered for placement on parole even after serving their minimum incarceration period as indicated on their warrants of committal. They further complain that CMCs do not ready their profiles for submission to the CSPB in good time.

Inmates sentenced to life imprisonment prior to 2004 are, in terms of the Van Vuuren<sup>44</sup> decision, eligible for parole as many have served the required period applicable to them. Because parole for these lifers is the prerogative of the Minister, the Inspectorate cannot give much input on the matter. Most lifers' parole processes seem to be postponed for a further profile so that the inmates may consult with a psychologist, psychiatrist, or a criminologist.

Given that most correctional centres are not adequately capacitated with professional staff - such as social workers, psychiatrists, psychologists and criminologists - inmates, irrespective of category, tend to have their parole processes postponed for further profiling. Those professionals must also submit a report each time an inmate appears before the CSPB, further drawing out the process.

The Inspectorate envisages conducting a survey during the ensuing year on parole-related complaints in order to gain a deeper understanding of the issues around parole.

### **4.3 Complaints – Assaults by officials on inmates**

The Inspectorate has made it an objective to target serious human rights abuses. Consequently it has strategically identified assaults by officials on inmates as a priority. Assaults on inmates by officials can involve abuse of power and may qualify as torture.

The Inspectorate received 71 complaints of in this category. The allegations, prima-facie, in the matters at Tswelopele (Kimberley), Pretoria Local, Pretoria Central, Pretoria Female, Johannesburg, Barberton Town, Fauresmith, and Brandvlei (Worcester) amounted to acts of torture as defined in the Prevention and Combating of Torture of Persons Bill.<sup>45</sup>

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<sup>44</sup>*Van Vuuren v Minister of Correctional Services and Others* (CCT 07/10) [2010] ZACC 17. The Constitutional Court held that in order for the provisions of the Correctional Services Act to be constitutional it must be interpreted as stating that inmates sentenced to life before 1 October 2004 must be considered for placement on parole in accordance with the legislative provisions and policies applicable on the date of sentencing (in Van Vuuren's case this implied a minimum period of 15 years rather than the 20 years introduced by the Act). This meant that the 20 year minimum sentence could not be applied blankly as a requirement for placement on parole for all inmates sentenced to life before 1 of October 2004. On 31 March 2011, the Court further held that the National Council for Correctional Services (NCCS) is excluded from the process of parole consideration of inmates sentenced during the period 1 August 1987 and 1 March 1994. This means that the Minister of Correctional Services must consider the placement of lifers falling within this category without the involvement of the NCCS.

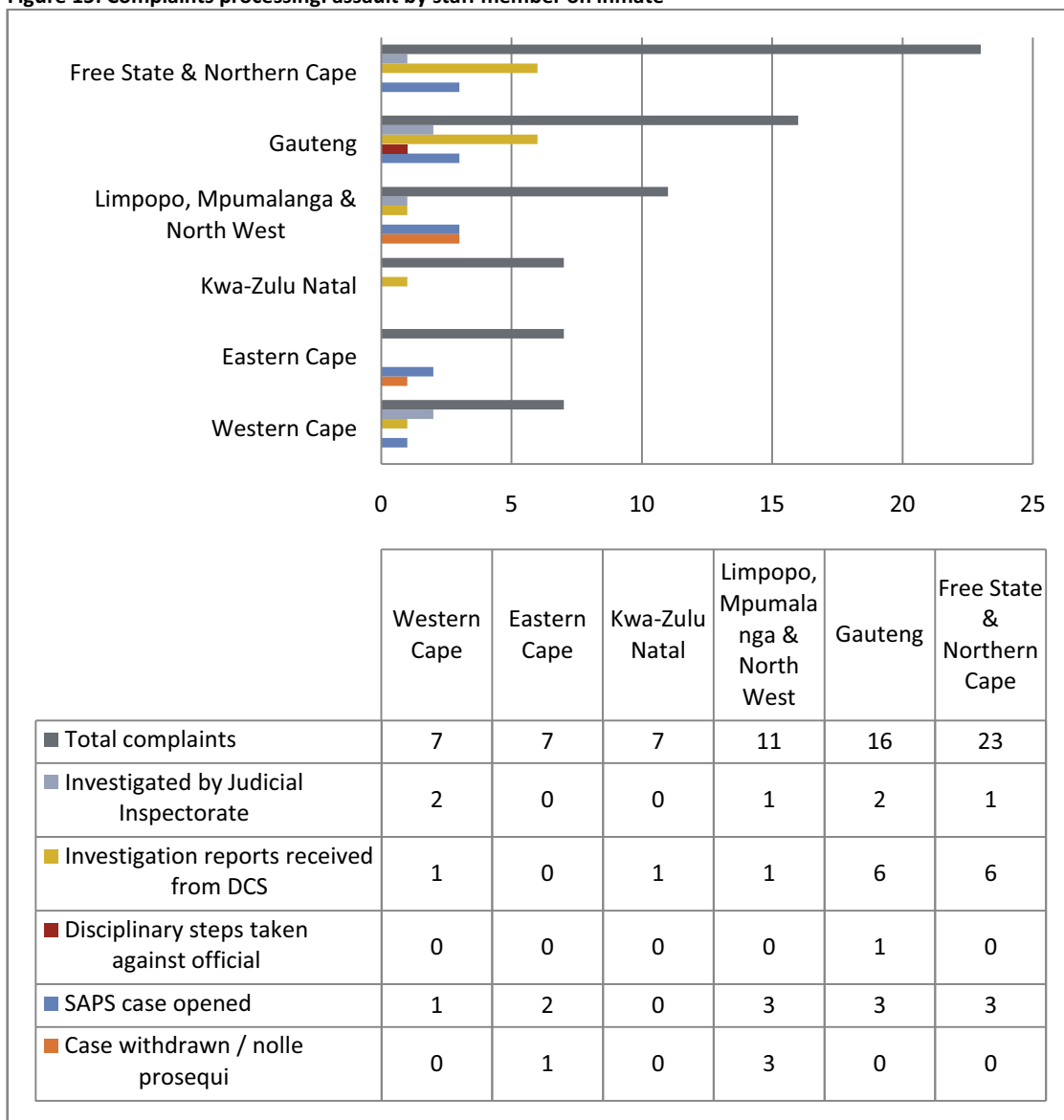
<sup>45</sup>*B21-2012*

Inmates, for example, were assaulted with batons or shock-shields used in conjunction with water. Some are placed in single cells for days without food or basic amenities, and some are transferred subsequently to avoid these cases coming under scrutiny of the SAPS.

Official on inmate assaults tends to occur as a response to inmates committing internal offences. In some instances the Department has indicated that the assault amounted to necessary force. In the Inspectorate’s view this is difficult to fathom, as inmates tend to be assaulted after the need for force arises. The facts in most cases indicate that alternative means other than force could have been used to control or secure the safety of inmates.

Figure 15 below gives an overall depiction on the prevalence of these complaints per region, as well as how various role-players have engaged with these incidents.

**Figure 15: Complaints processing: assault by staff member on inmate**



The data suggest that the Department is slow in taking disciplinary action against officials in these matters. Only one incident has led to disciplinary action. The Inspectorate has found that the failure to take action is usually due to insufficient evidence to support inmates' claims. In some instances the inmate did not receive medical treatment subsequent to the assault; in consequence, there is no medical report to corroborate that a particular assault took place. The success of such a case then depends on the availability of witnesses. In a correctional centre such witnesses are seldom available.

The Inspectorate, in most instances, relies on the reports investigated by the Department. Though six cases were investigated, the Inspectorate has in each instance used the ICCV to review these complaints in order to provide the inspectorate with insight on whether further investigation is necessary. The Inspectorate is moving towards a strategy to have all such assaults investigated.

#### **4.4 ICCV complaints system**

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Inmate complaints are, as mentioned previously, dealt with by ICCVs through regular visits to correctional centres, interviewing inmates, recording complaints in an official interview register and requesting officials to record these in the complaints and requests register of the Department. These complaints are then monitored to establish whether they have been properly dealt with. If they have not been dealt with adequately they are discussed with the relevant Head of Centre with a view to resolving them internally. If they are still not resolved, they are referred, in terms of section 93(5) of the Act, to a Visitors' Committee established in terms of section 94(1) of the Act. In urgent matters, or in cases where there is no Visitors' Committee, the unresolved complaint may be referred directly to the Inspecting Judge.

ICCVs appointed to centres in an area where a Visitors' Committee is established, are, in terms of section 94(1), themselves members of such Committee which is required, in terms of section 94(2), to meet at least quarterly for purposes of considering unresolved complaints and submitting to the Inspecting Judge those complaints it is unable to resolve.

The table below records a summary of the number and nature of complaints received during the current year, totalling 424 717, an 11% increase on previous years. Given that there are only 309 ICCVs this suggests that each ICCV recorded on average 1374 complaints, or 26 per week.

**Table 4: Nature and number of complaints to ICCVs**

<b>Complaints</b>	<b>2010/2011</b>	<b>2011/2012</b>	<b>Change</b>	<b>% Change</b>
Corruption	2,646	1,544	-1,102	-42%
Assault (Inmate on Inmate)	5,138	3,928	-1,210	-24%
Rehabilitation programmes	25,831	21,582	-4,249	-16%
Assault (Member on Inmate)	2,276	1,945	-331	-15%
Health Care	39,868	34,202	-5,666	-14%
Bail	33,022	29,066	-3,956	-12%
Parole	18,344	17,434	-910	-5%
Food	13,719	13,611	-108	-1%
Medical Release	822	851	29	4%
Appeal	20,670	21,527	857	4%
Transfers	42,185	44,202	2,017	5%
Other	91,551	102,851	11,300	12%
Legal representation	28,804	33,866	5,062	18%
Communication with Families	45,994	55,995	10,001	22%
Confiscation of Possessions	3,366	4,123	757	22%
Inhuman Treatment	5,841	7,188	1,347	23%
Conversion of sentences	2,671	3,637	966	36%
Conditions	15,736	25,419	9,683	62%
Remission	784	1,746	962	123%
<b>TOTAL</b>	<b>381,924</b>	<b>424,717</b>	<b>42,793</b>	<b>11%</b>

The largest percentage reductions in complaints comparing 2011 with 2012, related to corruption (-42%), assault (inmate on inmate) (-24%), rehabilitation programmes (-16%) and assault (official on inmate) (-15%). The reduction in the number of assault complaints relating to officials can be ascribed to various factors, including the direct role the Inspectorate is playing in curbing this problem. The largest percentage increases in complaints relate to remission (+123%), conditions (+62%), conversion of sentences (+36%), and inhuman treatment (+23%).

With the establishment of a dedicated Complaints Unit, which also deals with unresolved complaints from ICCVs, a number of challenges have become apparent. Among these was that, of the 424 717 complaints registered, only 20 were referred to the Inspecting Judge. Various strategies have been put in place to address this anomaly. The Inspectorate is of the view that further improvement in the complaints system is required. In particular there is a need to further categorise complaints as the “other” category comprises almost a quarter of complaints.

## **5. HEALTH CARE**

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The number of complaints received by the Judicial Inspectorate through the ICCVs regarding health care increased dramatically by 255% over 2007-2010, from 11 227 in 2007 to 39 868 in 2010.<sup>46</sup> (In the

<sup>46</sup><http://www.judicialinsp.dcs.gov.za>. Judicial Inspectorate for Correctional Services Management Reporting

current year the figure was 34 202). As a result, the Inspectorate undertook a health survey during 2011/2012 in all 236 correctional centres, to develop an understanding of the adequacy of health care services provided to inmates, as well as the Department of Correctional Services' adherence to minimum standards of health care.

The Department must provide, within its available resources, adequate health care services based on the principles of primary health care, in order to allow every inmate to lead a healthy life.<sup>47</sup>

A survey questionnaire was developed for each ICCV to administer. The survey comprised interviews with Heads of correctional centres or heads of hospitals, interviews with inmates, and observations regarding health care standards. Preliminary results from these interviews are provided in this Annual Report. A more detailed analysis of the data, to be published in a separate publication is planned for the forthcoming year.

## **5.1 Findings of interviews with Heads of correctional centres or heads of hospitals**

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Interviews were held with 201 Heads of correctional centres or heads of hospitals. The results in this section report on information or opinions provided by Heads of correctional centres or heads of hospitals.

### *Ratings of medical services rendered*

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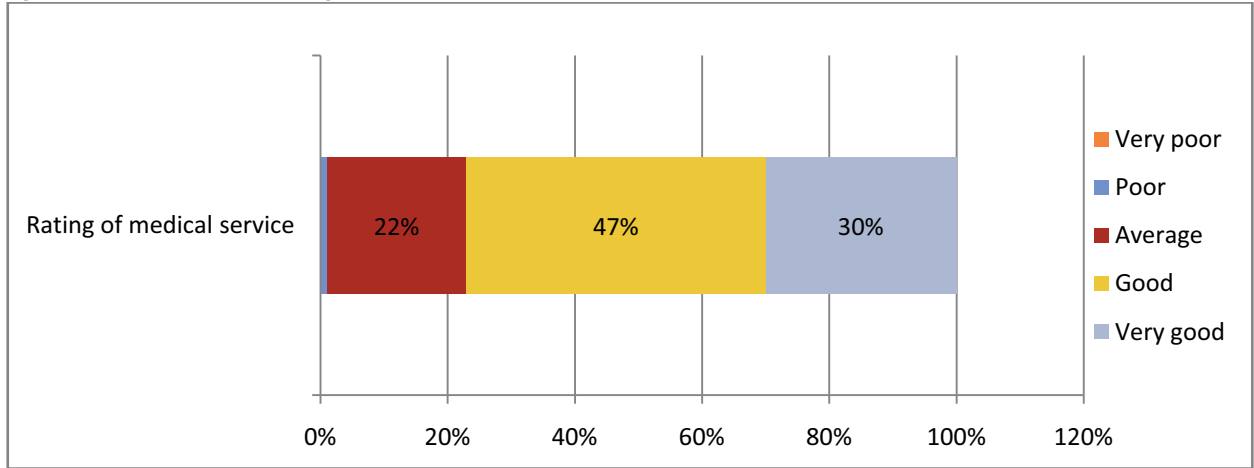
Heads of correctional centres were asked how they would rate the medical service rendered to inmates at their correctional centre. Only 1% said the medical service was poor. The reasons given among those who said the medical service was poor was an absence of medical facilities or no nurse or doctor at these correctional centres. The most common response was "good" (47%). Almost a third (30%) said "very good". Almost a quarter (22%) said "average". Among those who said the medical service was average, reasons cited included challenges experienced in receiving medication and a shortage of medical personnel.

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System. Retrieved 14/06/2011

<sup>47</sup> Section 12(1) Correctional Services Act 111 of 1998

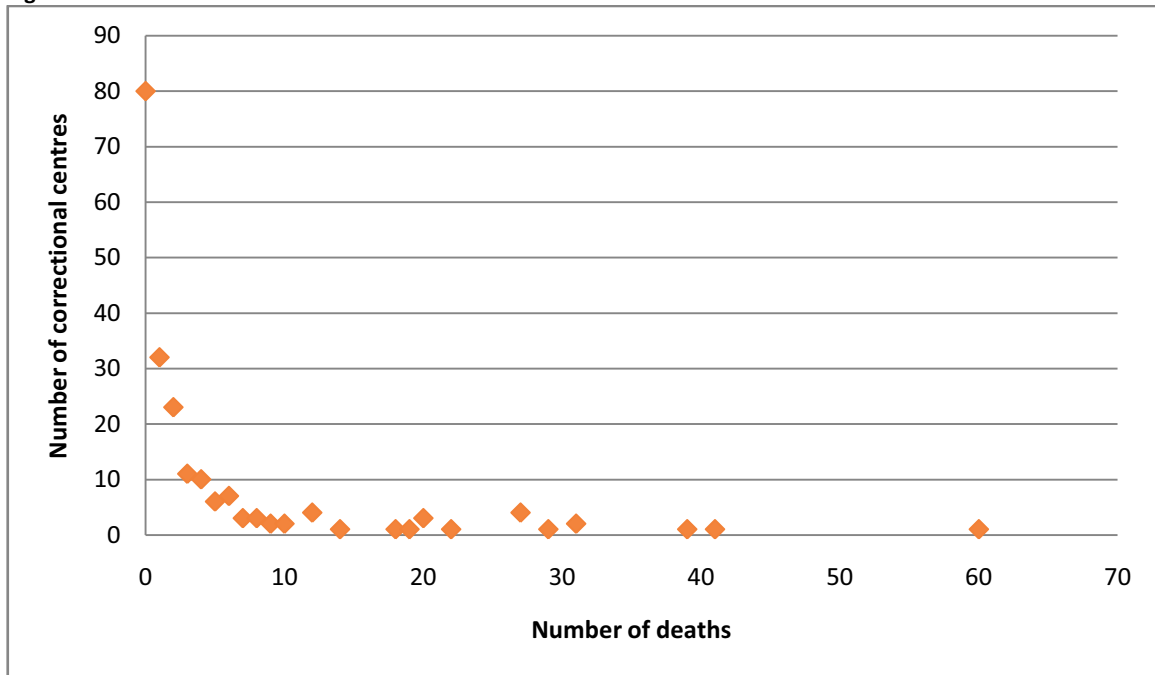
Figure 16: Head of centres' rating of medical services rendered at correctional centres



### Natural deaths

Heads of centres were asked to provide the number of natural deaths in their centre in the last twelve months. From the centres which provided information, a total of 387 deaths was listed. Two fifths (80) of correctional centres said they had had no natural deaths. The highest number of natural deaths listed from a single centre was 60, which was recorded at Durban Medium B.

Figure 17: Natural deaths in correctional centres



The median number of deaths per correctional centre was one, and the average number of deaths per correctional centre was four. However, 10% experienced ten or more deaths each. Among those who experienced ten or more deaths, the most common causes of death were HIV/AIDS, TB and meningitis.

### Challenges to medical provision

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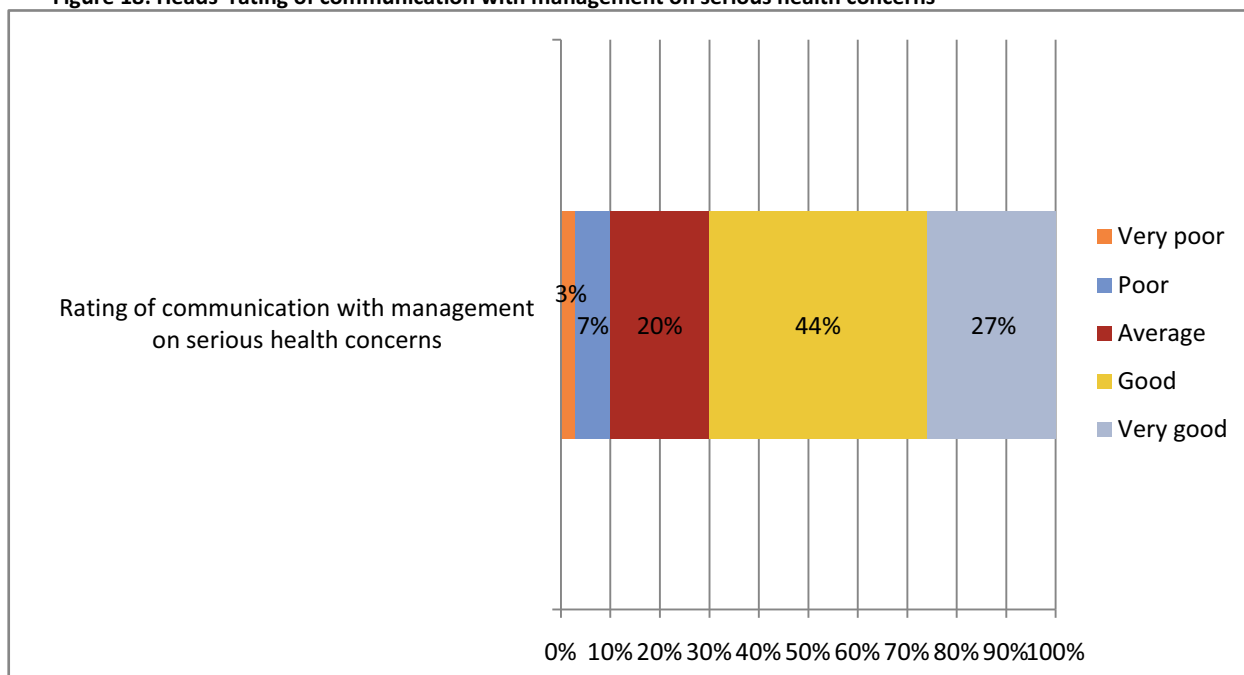
Heads of centres were asked about the most commonly experienced challenges to the provision of medical services. The most common response was a shortage of medical personnel.

### Communication with management

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Heads of centres were asked to rate the communication with management in relation to serious health concerns. Some 10% said this was poor or very poor. The majority (71%) said it was good or very good.

Figure 18: Heads' rating of communication with management on serious health concerns



### Complaints

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Most (61%) said there was a complaints register at the hospital. This suggests that at 39% there is no complaints register. Most (70%) said complaints were taken daily, and 58% said these complaints were monitored daily.

### Medical emergencies

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With regard to medical emergencies, 32% said there were no medical personnel on stand-by duty who lived on the premises, while 36% said there was only one person, and 16% said there were two people. The remainder (16%) said there were two or more. Just over one third (35%) said the centre had an ambulance.

### *Health programmes*

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The vast majority (88%) said they had health-related programmes for inmates. Most commonly cited (35%) were HIV/AIDS programmes.

### *Medical parole*

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Some 19% of Heads of correctional centres said there were requests for medical parole in the last twelve months. Of those inmates who were the subject of requests, for 26% parole had already been refused, and 5% died before a decision was made.

### *Mechanical restraints*

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Responses regarding the use, reporting and recording of the use of mechanical restraints suggest mechanical restraints appear not to be used in the majority of medical settings and as a consequence their use is not recorded.

### *Segregations*

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Inmates were segregated on medical grounds in 40% of correctional centres and this was mostly due to MDR (multiple drug resistant) or XDR (extreme drug resistant) tuberculosis.

### *Compliance certificates*

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Some 35% said these were not applicable to their centre or that they had not ever been issued with a compliance certificate.

### *Mental health*

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The number of unsentenced inmates referred to psychiatric hospital for observation in the past 12 months ranged from 0 (65% of centres) to the maximum of 138, which occurred at Pollsmoor Medium A.

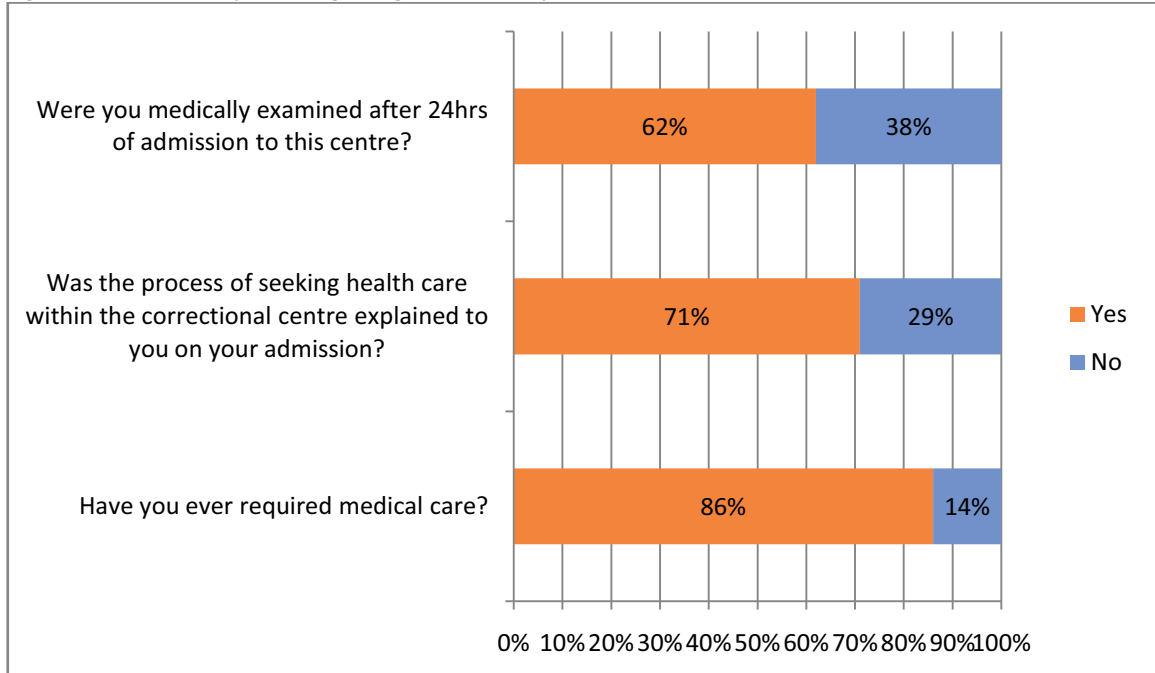
## **5.2 Findings of interviews with inmates**

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Interviews with 2 181 inmates were undertaken at 228 of the 241 correctional centres (95%) in February and March 2012. The majority (96%) of interviewees were male, 4% were female and 0.01% was intersex. 81% of the inmates interviewed were sentenced while 19% were unsentenced. 29% of the inmates interviewed were currently in hospital.



**Figure 19: Inmates' responses regarding medical care process and need for medical care**



Almost two-thirds of inmates said they were medically examined after admission. 71% said the process of seeking health care had been explained to them. As many as 86% said they needed health care at some point; among those not currently in hospital, the figure was 83%. Among those who said they needed medical care, 90% said they were treated. However only 46% said they received the treatment immediately.

### 5.3 Observation findings

#### *Doctor's visits (G366)*

The ICCVs were asked to check the G366 and count how many times a doctor visited the centre in the prior three months. The information was obtained for 186 correctional centres. The range in visits over the period was 0 to 120, with the average number of times being 15 in the last three months - slightly more often than once a week. The median value was 12 times in the last three months - once a week. This means that half of all correctional centres had a doctor visit once or more times a week, while the other half had a doctor visiting once or fewer times a week.

Of concern is that in 17 of the 186 correctional centres, or 9% of those from which the information was obtained, according to the information in the G366, no doctor had visited at all in the last three months.<sup>48</sup>

<sup>48</sup> Bethulie, Burgersdorp, Colesburg, De Aar, Dordrecht, Graaff-Reinet, Jansenville, Kranskop, Lindley, Losperfontein, Ngqeleni, Odendaalsrus, Queenstown, Sada, Upington, Victoria, Wolmaransstad.

### *Complaints relating to health care (G365)*

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The ICCVs checked the G365 which relates to the hospital and counted how many complaints (related to health care) had been recorded in the prior three months. This information was obtained for 168 correctional centres. The range in the number of complaints was from 0 to 6 676, with the average number of complaints per correctional centre in the last three months being 105, which works out to slightly more than one a day on average. The median was 11 complaints in the last three months related to health care. This means half of all correctional centres had 11 or fewer complaints while half had 11 or more.

Of concern is that 8% of correctional centres had 260 or more complaints related to health care in three months<sup>49</sup>. While some of these centres have very large populations, which may account for the high number of complaints, others are not large centres.

### *Dysfunctional medical equipment*

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The ICCVs were asked to observe whether there was any malfunctioning or dysfunctional medical equipment. The information was obtained for 200 correctional centres. 43% provided detail on dysfunctional medical equipment, while 19% said “no”, 11% said “not applicable” and 38% said “none”. It was unclear whether the latter two responses referred to the absence of any equipment at all or whether the responses indicated equipment was in order.

### *Expired medications*

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The ICCVs were asked to check on two medicines at random, and comment on the expiry date of the medicine. None of the 197 ICCVs who answered the question said the medicines they saw had expired.

### *Condom availability*

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The ICCVs were asked to observe whether condoms were available throughout the centre. The information was obtained for 210 correctional centres. For 81% of these correctional centres, the ICCVs observed that condoms were available throughout the centre. For 19%, or 40 correctional centres, condoms were not available throughout the centre.<sup>50</sup>

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<sup>49</sup> Allandale, Barkley West, Bavianspoort Maximum, Bavianspoort Medium, Belfast, Bergville, Calvinia, Carolina, Drakenstein, East London Medium B, East London Medium C, East London Maximum, Ekuseni, Elliotdale, Emothenjani, Fort Beaufort, Glencoe, Goedemoed, Greytown, Grootvlei, Heidelberg, Heilbron, Ixopo Johannesburg Female, Johannesburg Maximum C, Kirkwood, Krugersdorp, Melmoth, Mount Fletcher, Ncome, New Hanover, New, Kimberley, Pietermaritzburg, Pollsmoor, Pollsmoor Medium A, Pomeroy, Port Shepstone, Pretoria Central, Prince Albert, Senekal, Sevontein, St Albans Maximum, Sterkspruit, Tzaneen, Utrecht, Voorberg, Warmbokveld, Waterval Medium A, Waterval Medium B, Wolmaransstad, Worcester Males, Worcester Females, Zastron.

<sup>50</sup> Bavianspoort Maximum, Bergville, Bethal, Burgersdorp, Calvinia, Dundee, Durban Female, Engcobo, Ermelo

## 5.4 Conclusion and recommendations on the health survey

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Every inmate, on his or her admission, is entitled to receive information on all aspects of incarceration to enable him or her to understand his or her rights and obligations.<sup>51</sup> The Department, furthermore, is peremptorily obliged to require an inmate to undergo a health status examination.

The finding that 38% of inmates were apparently not examined within 24 hours of admission and 29% were not informed of their rights to health care and 54% did not receive immediate treatment constitutes a breach of the Department's policy. A strong recommendation is made by the Inspectorate that the management and monitoring of health care services by senior management is required with regular reports to be submitted to the Inspectorate.

A further recommendation is that either the Department fills medical vacancies or manages more closely the frequency of doctors' visits.

## 6. MANDATORY REPORTS

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One of the main objectives of the Inspectorate is the prevention of the violation of human rights of inmates. In terms of the Correctional Services Act, Heads of Centres are compelled by law to report occurrences that may constitute or suggest evidence of such violations. This is referred to as mandatory reporting. All instances of death at correctional centres (section 15); segregation of inmates (section 30); use of mechanical restraints (section 31) and use of force (section 32) must be reported to the Inspecting Judge. Failure by Heads of Centres to report any of these is a violation of law and such Heads may be subject to disciplinary hearing.

### 6.1 Deaths

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During the 2011/2012 financial year, the Inspectorate received 852 death notifications, of which 48 were classified as unnatural deaths and the remaining 804 as natural deaths. The Inspectorate confirms deaths reported to it by completing a Record of Confirmation (ROC). The confirmation is conducted by ICCVs, who visit the centre and fill out the relevant ROC document. The process also includes receiving various documents from the centre, which include death certificates and BI-1663 or G362 forms.

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Hawequa, Klerksdorp, Lady Frere, Leeuwkop Maximum C, Lindley, Middelburg, Mogwase, New Hanover, Ngqeleni, Nqamakwe, ODI, Pollsmoor Maximum, Polokwane, Pomeroy, Port Shepstone, Pretoria Central, Pretoria Local, Prince Albert, Qalabusha, Riebeeck West, Rooigrond Medium B, Rustenburg, St Albans Medium A, Standerton Medium A, Stanger, Sterkspruit, Thohoyandou Medium B, Tzaneen, Virginia, Waterval Medium A.

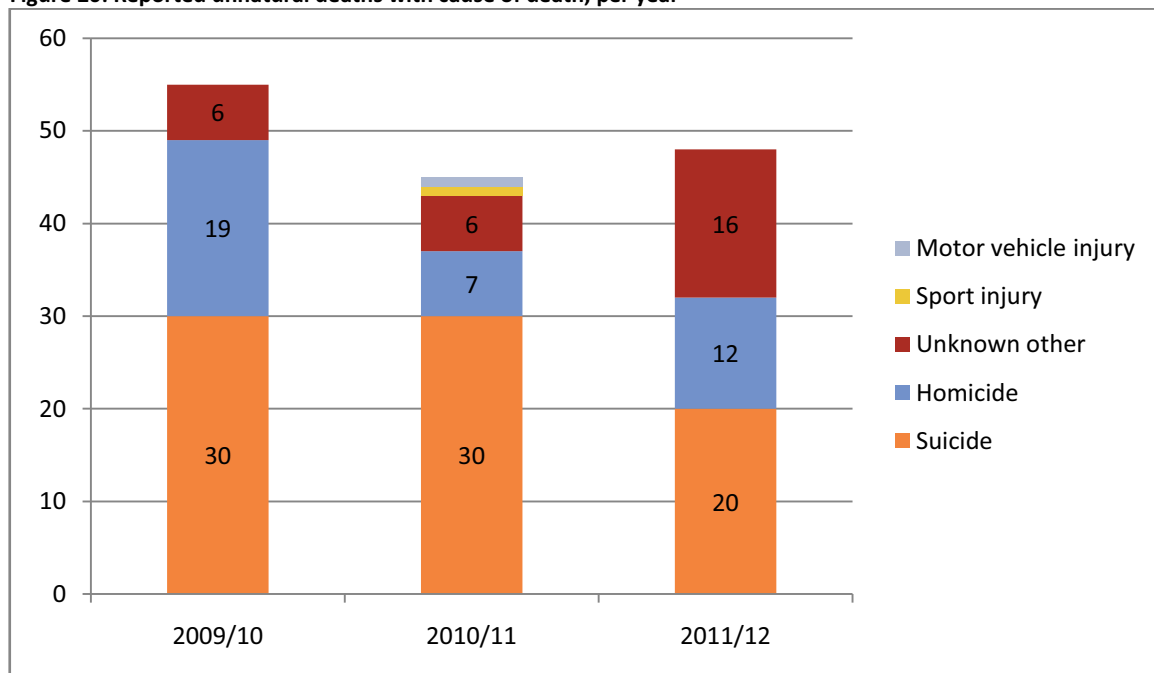
<sup>51</sup> Section 6(4)(a)-(c) Correctional Services Act 111 of 1998 as amended.

## Unnatural deaths

An unnatural death is a death which cannot be attributed to natural causes. Unnatural death is usually the result of injury arising from accident, homicide or suicide. Any unnatural death in a correctional centre is cause for concern.

Forty-seven unnatural deaths were reported during the financial year 2011/2012, of which there were 16 to which the Inspectorate could not attribute a cause. According to the Department, this is due to the Department not being provided with the medico-legal post-mortem report. Post-mortems fall under the jurisdiction of provincial Departments of Health, who reportedly have a backlog of work. Delays are exacerbated when the pathologist requires laboratory tests before being able to finalise an opinion. The Inspectorate continuously communicates with the Department to ensure receipt of post-mortem reports.

Figure 20: Reported unnatural deaths with cause of death, per year



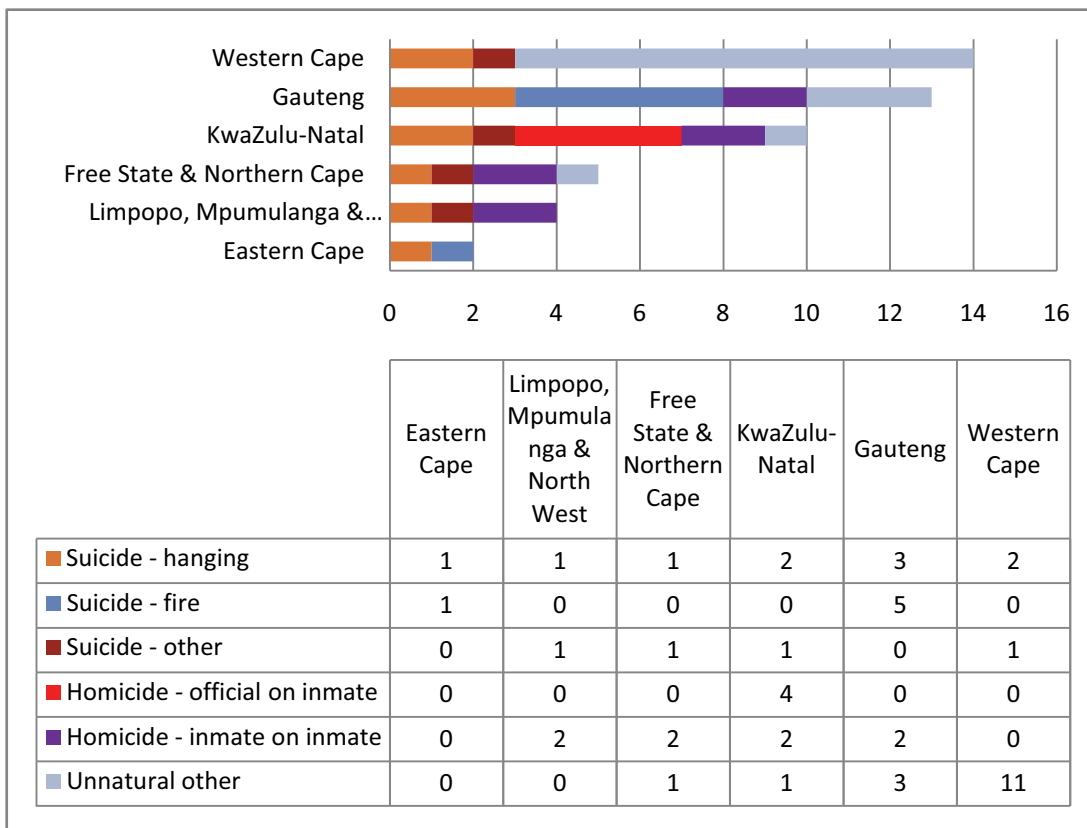
### Suicides

In all years the most frequently reported unnatural death is suicide, comprising more than half of all reported unnatural deaths in correctional centres (see Figure 20 above). In the current year, 20 inmates committed suicide either by hanging themselves, setting their cells alight, electrocuting themselves or drug overdose. In previous Annual Reports it was noted that the most common cause of unnatural deaths were suicides by hanging. There was a decline in the number of suicides by hanging, from 26 in 2010/2011 to ten such suicides in the current period. However, the current year has been accompanied by an increase in the number of “unknown other” unnatural deaths.

The Inspectorate notes with concern that eight of the ten suicides by hanging occurred in single cells or in special care units. It is not clear when the deaths took place; however, the inmates were discovered in the morning by officials during unlocking. It is further not clear how often the officials patrol the special care unit and whether or not the officials have been trained to monitor inmates who display suicidal signs.

Although there was a decline in the number of suicides by hanging, the number of unnatural deaths as a result from inmates burning their cells has increased. In 2010/2011 there were two deaths arising from inmates burning their cells. In the current year the Department reported six cases where inmates died as a result of them burning their cells. More alarming is that three of those deaths took place in single cells during the day.

**Figure 21: Reported unnatural deaths by manner of death and province**



### Homicides

In the current year, twelve cases of homicide were reported. Four of these, or one third, occurred from violence by an official on an inmate, all of which happened in KwaZulu-Natal (see Figure 13 above). KwaZulu-Natal also recorded the highest incidence of such cases in the 2009/2010 and 2010/2011 Annual Reports.

Fourteen officials from Waterval Medium B, seven from Waterval Medium A and six from Durban Medium A have been subjected to be disciplinary hearings as a consequence of these four deaths.

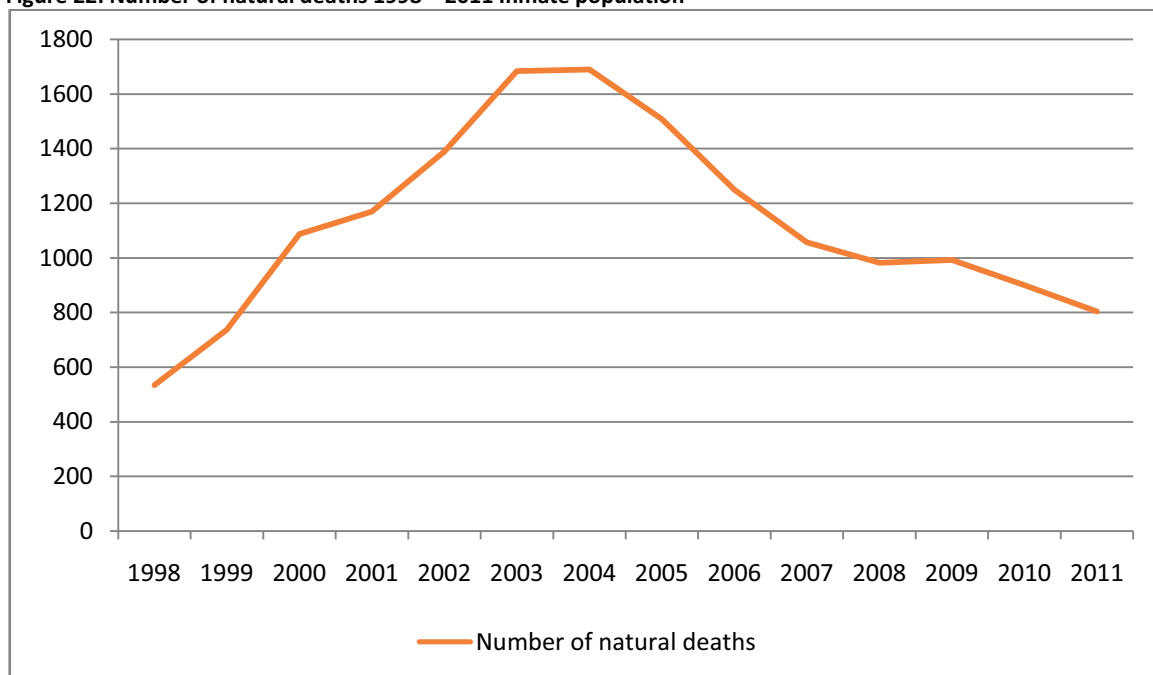
There were also reports of inmate on inmate homicide. The majority of these deaths occurred during gang-related fights, with inmates stabbing each other with self-made knives.

In respect of criminal investigations and disciplinary proceedings, the 2010/2011 Annual Report indicated that a number of homicide cases that year had not yet been finalised. The Inspectorate followed up on these cases. SAPS closed the files in the majority of those cases, and where matters were referred to the National Prosecuting Authority (NPA) for prosecution, the NPA returned a *nolle prosequi* i.e. they declined to prosecute.

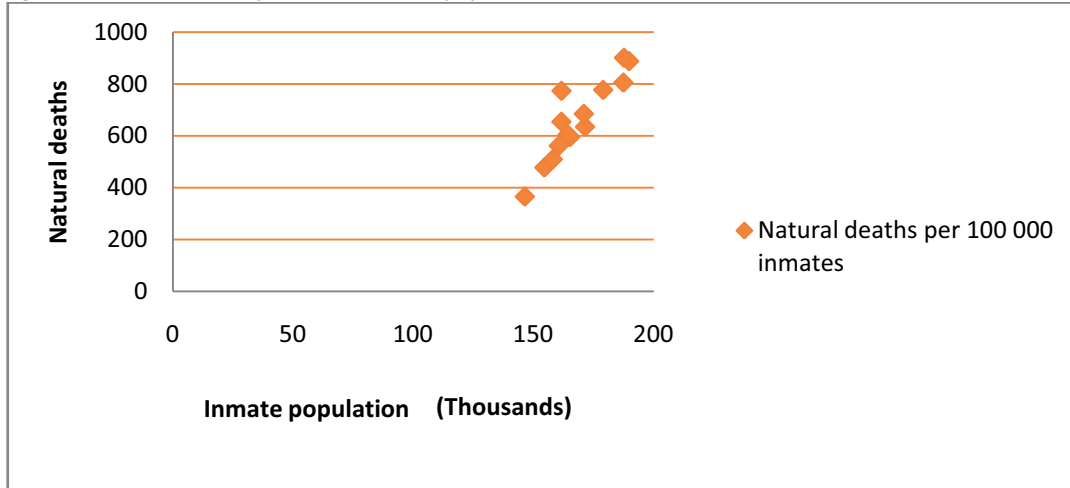
### Natural deaths

During the 2011/2012 year, 804 natural deaths were recorded. The trend in the number of natural deaths shows a peak in raw numbers over the period 2001-2006. This corresponds with the increase in the correctional centre population which occurred over that time period.

Figure 22: Number of natural deaths 1998 – 2011 Inmate population

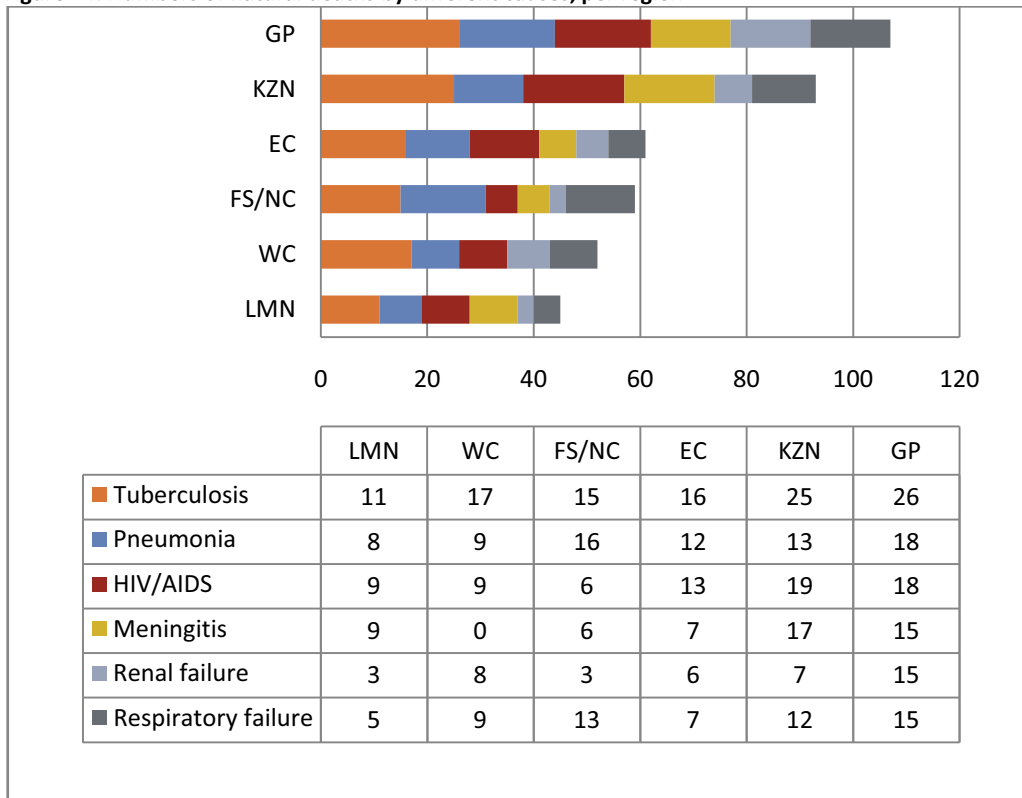


**Figure 23: The relationship between inmate population and rate of natural death**



However it is not simply the case that the *number* of deaths increases in tandem with an increasing population. Plotting the rate of natural deaths against total population shows an increase also in the *rate* of natural death with increasing inmate population. This is because all the inmate population values point to overcrowding. Figure 23 shows that for a total average inmate population of under 150 000, some 360 natural deaths for every 100 000 inmates were reported in a year. However, at a total average population of closer to 190 000, some 900 reported natural deaths for every 100 000 inmates occurred. In other words the rate of natural death increased 250% with a 25% increase in total population. This illustrates the serious consequences of inmate population size exceeding approved occupancy.

**Figure 24: Numbers of natural deaths by different causes, per region**



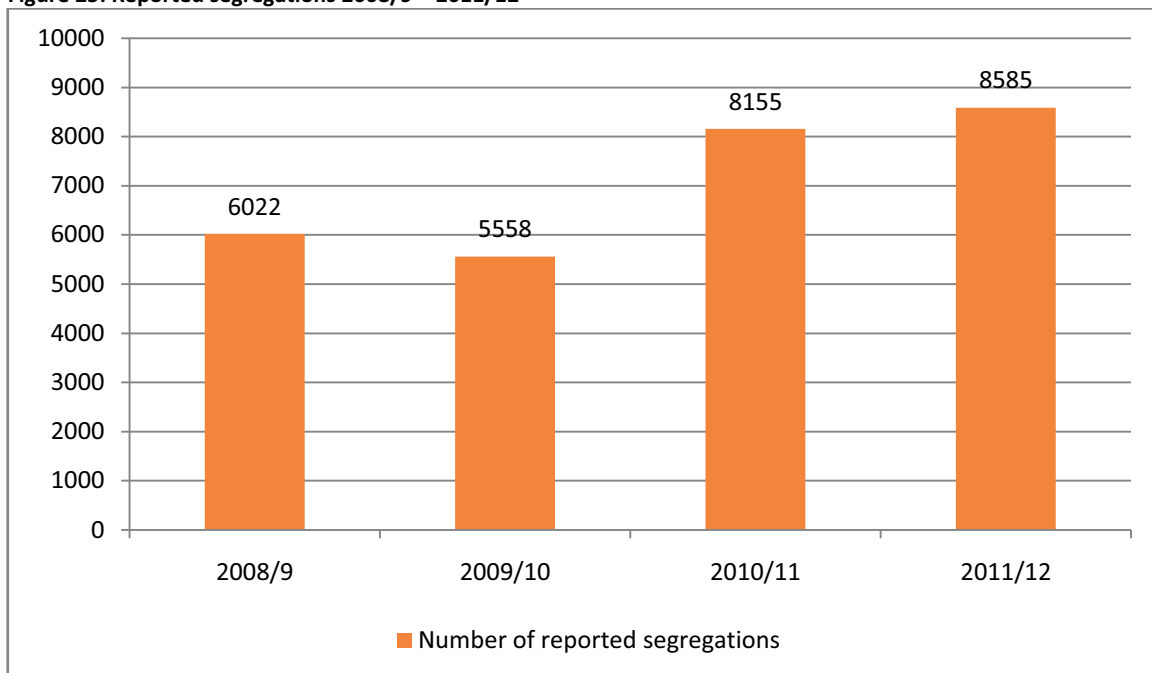
The Inspectorate disaggregated the most common causes of natural death per region. The data provided by the Department appears in Figure 24 above. Tuberculosis, pneumonia and AIDS were the most common causes of natural death overall. Tuberculosis is highly treatable and preventable with appropriate management and health care. However it is extremely difficult to manage in situations of overcrowding. Pneumonia too is treatable but also more likely to transmit in overcrowded spaces.

The statistics for renal failure and respiratory failure provide food for thought because, while they indicate the direct cause of death, the statistics provide no insight to the underlying cause of death. Respiratory failure, for example, may be caused by chronic obstructive pulmonary disease, or by spinal cord injuries, which in turn may be caused by a range of factors including physical injury. The prominence of renal failure among the cases of natural death is cause for concern. Chronic renal failure often indicates an underlying condition such as diabetes, which can be managed. Acute renal failure usually occurs as the result of a toxic overload of the kidneys, or through a sudden interruption in the blood supply to the kidney. The latter may occur as a result of physical assault.

## 6.2 Segregations

The Inspectorate in the current year received 8 585 of cases of segregation. There has been a recent upward trend in the total number of segregations reported by Heads of Centres, which is apparent from Figure 25. It is unclear whether this is due to improved reporting or more frequent use of segregations.

Figure 25: Reported segregations 2008/9 – 2011/12





Among the segregations reported, the Inspectorate received 24 referrals or appeals from inmates in terms of section 30(7), which provides that the Inspecting Judge must decide on the issue within 72 hours of receipt of the appeal. This compares to only 52 referrals reported on in the 2010/2011 Annual Report. (There were no referrals in 2008/9 and 2009/10). The highest number of referrals arose from Mangaung Correctional Centre in Bloemfontein, a private correctional centre. Indeed, in 2010/2011, the Annual Report indicated that 32 of the 52 referrals (62%) arose from private correctional centres.

In the 2011/12 period, the Inspectorate embarked on a monitoring process focusing on segregations reported in terms of section 30(1)(b), which provides that “Segregation is permissible ... to give effect to the penalty of restriction of amenities ...”. However, most appeals or referrals result from inmates being segregated in terms of section 31(1)(b). Due to the small number of referrals received, little insight was obtained regarding the imposition of segregation as a penalty.

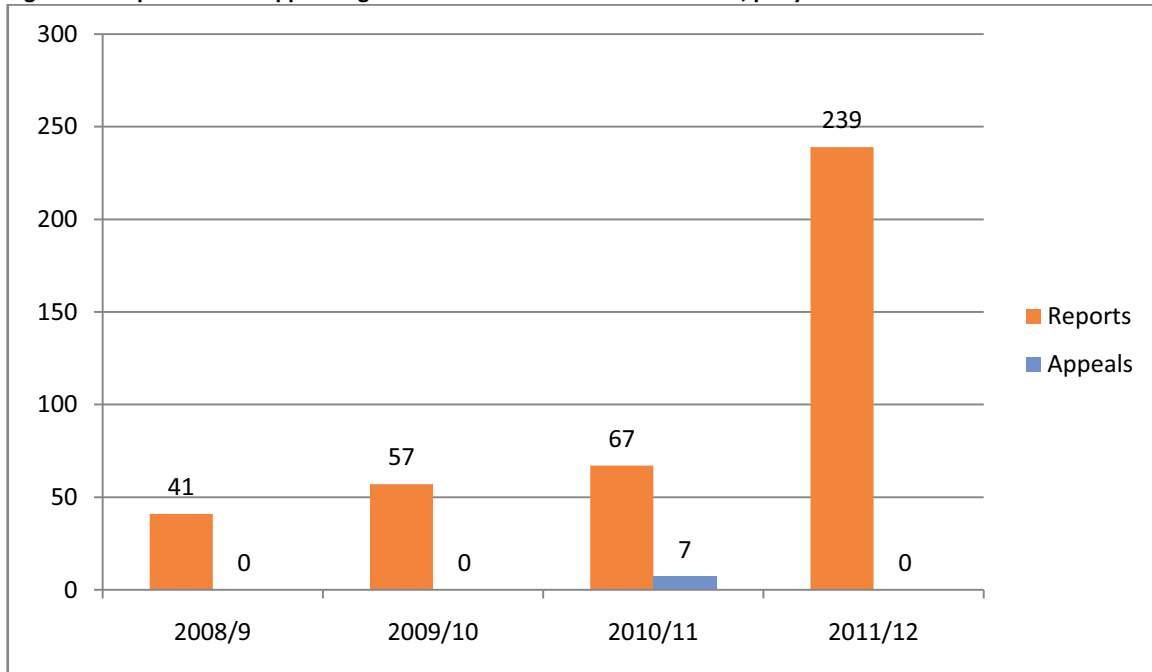
The Inspectorate has observed that some correctional centres do not properly identify segregations in terms of Section 30 (permissible segregations, including in single cells, outside of normal accommodation) versus section 7 of the Act (which deals with normal accommodation and which provides for the separate accommodation of sentenced and un-sentenced inmates, male and female inmates, child and adult inmates, and various security risk categories). For example, the ICCV at Brandvlei Maximum reported to the Inspectorate that some inmates were being kept in single cells due to their involvement in gang activities or being found with drugs, yet this was reported as “normal accommodation”.

### **6.3 Mechanical Restraints**

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In the current year the Inspectorate received 239 reports of the use of mechanical restraints from Heads of Centres, compared to only 67 reported in 2010/11. In terms of section 31(5) of the Act, an inmate may appeal against the decision of the Head of Centre to use mechanical restraints to the Inspecting Judge, who thereafter must make his decision with 72 hours of receipt of the appeal. The Inspectorate notes with concern that no appeals or referrals from inmates were received in 2011/12.

Figure 26: Reports of and appeals against the use of mechanical restraints, per year



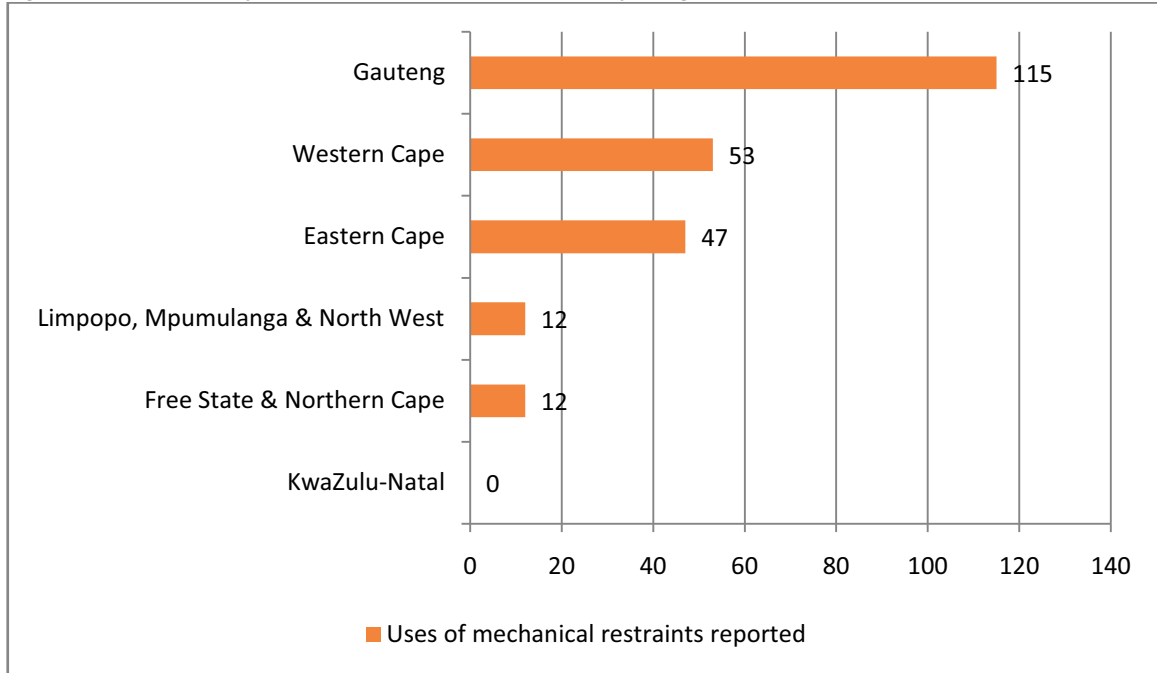
In the absence of appeals from inmates and the implausibly low number of mechanical restraints reported over the last four years, the Inspectorate conducted an enquiry. The Inspectorate found that most inmates had been informed of their right to appeal and then chose to waive that right; that some correctional centres were reporting segregations as mechanical restraints; and that the most common restraints utilized are handcuffs and “short steps” (leg cuffs).

The Inspectorate observed that Burgersdorp Correctional Centre reported a high number of uses of mechanical restraints and enquired as to the reason for the high number. The Inspectorate was informed that Department policy requires officials to cuff all inmates while in transit to other locations such as courts and hospitals.

In terms of section 31(1) of the Correctional Services Act, a correctional official may restrain an inmate by mechanical restraints in the following circumstances: if it is necessary for the safety of an inmate or any other person; for the prevention of damage to any property; if a reasonable suspicion exists that an inmate may escape; or if requested by a court. The question is whether “reasonable suspicion” may be said to apply in all instances where inmates are being transported? If not, surely the Department is in violation of the act by restraining all inmates in transit?

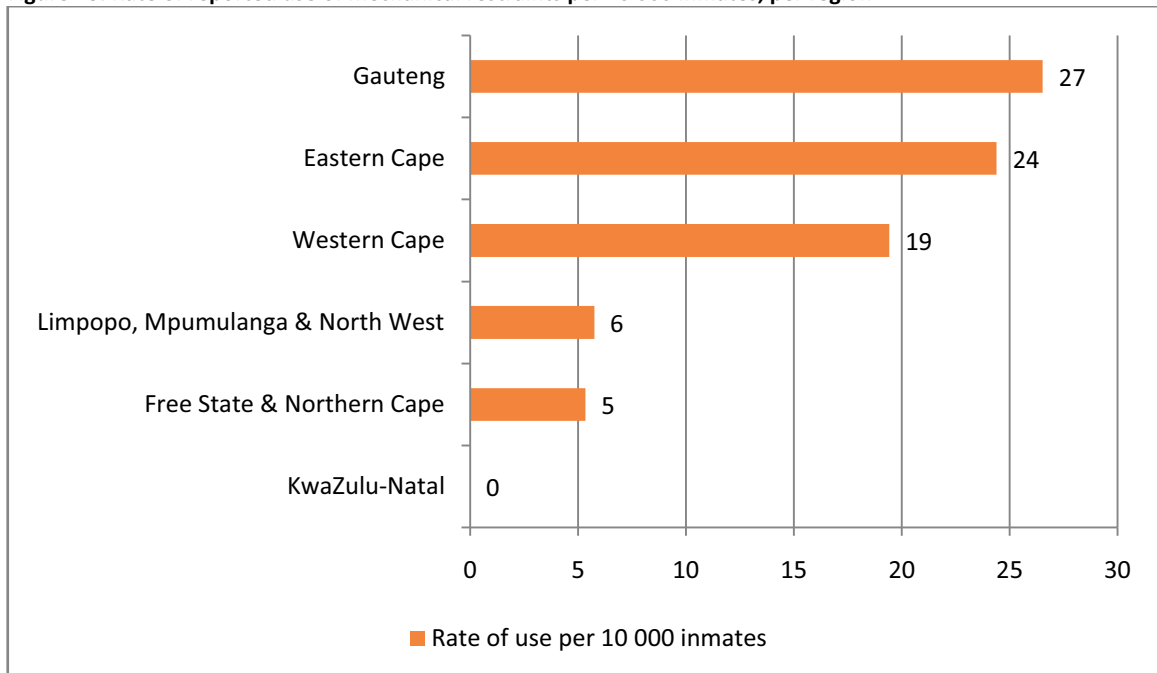
The Inspectorate notes that no (0) reports were received from KwaZulu-Natal. This is highly likely due to a failure to report rather than the lack of use of mechanical restraints. This suggests that the region is in violation of the law.

**Figure 27: Number of reported uses of mechanical restraints, per region**



Gauteng has the highest number of reports. However, the high number is not solely due to Gauteng having the largest inmate population. Figure 28 shows the rate of the use of mechanical restraints per 10 000 inmates. Gauteng has the highest reported rate of use followed by the Eastern Cape and Western Cape. It is unclear to what extent these trends are due to: different reporting rates or different rates of use of mechanical restraints.

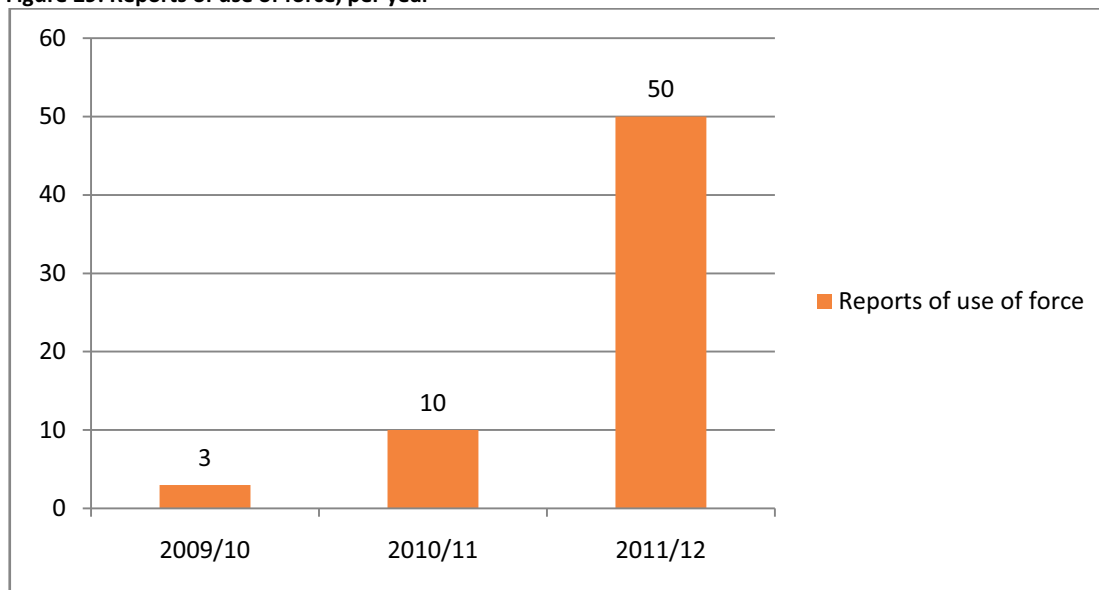
**Figure 28: Rate of reported use of mechanical restraints per 10 000 inmates, per region**



## 6.4 Use of Force

In 2011/2012 the Inspectorate received 50 reports of the use of force, compared to only ten in the previous year and only three in the year before that. The Inspectorate is still unable to properly monitor the use of force, as the electronic “wizard” to enable Heads of Centres to report electronically has not yet been created. The Heads of Centres, who do report on the use of force, do so via email or facsimile.

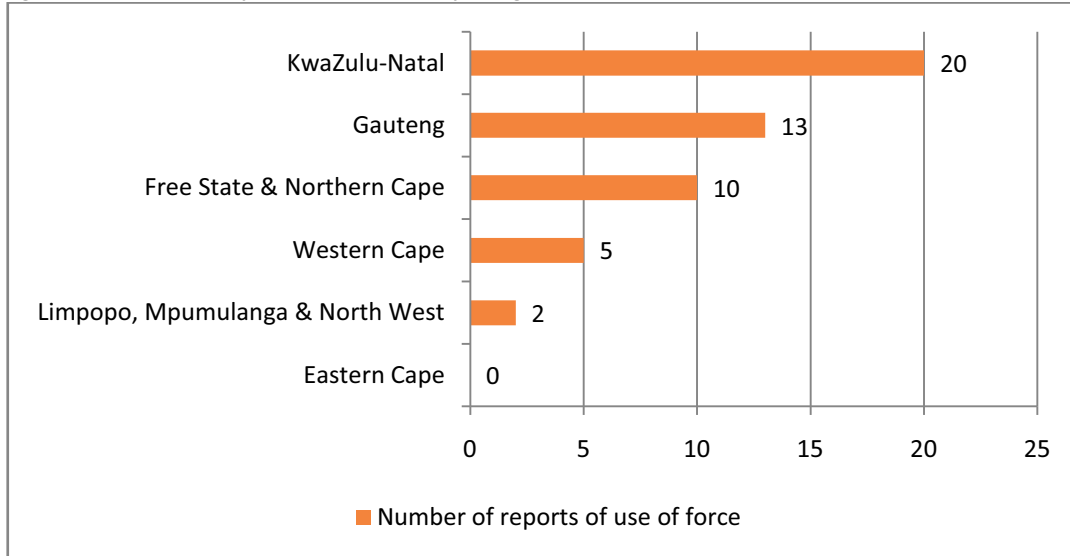
Figure 29: Reports of use of force, per year



In almost all the reported cases (49 out of 50); officials used force to intervene in inmate fighting. The one other instance of force used was when inmates were damaging state property. There were no reports of the use of force for self-defence or in order to prevent an escape.

The most common injuries sustained by inmates were bruises, lacerations and swelling of arms and legs. The most common weapons used by officials in these cases were tonfas and hands used for pushing inmates.

**Figure 30: Number of reported uses of force, per region**

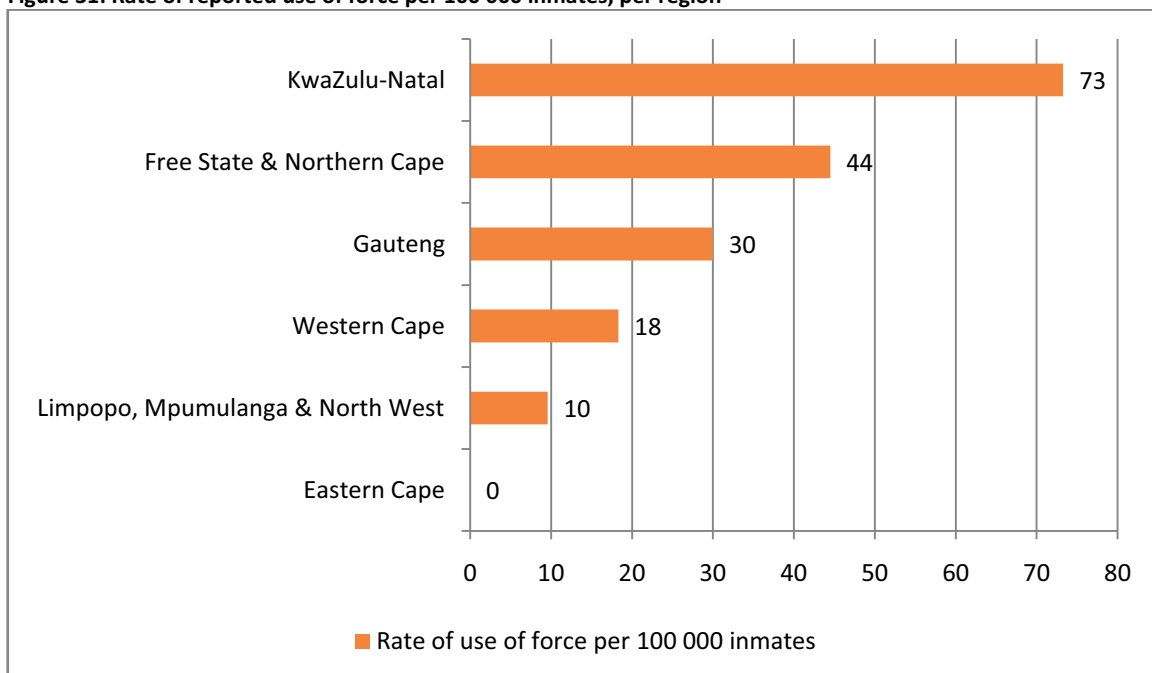


Eastern Cape reported no (0) instances of the use of force. This is highly likely due to a failure to report rather than the lack of use of force. This suggests that the region is in violation of the law.

The largest number of reports of use of force came from KwaZulu-Natal, which was also the region with the highest number of official on inmate homicides (see ‘Deaths’ above). High numbers came from Ebongweni Maximum, Seventein Correctional Centre and Mangaung.

When considering the rate of use of force, KwaZulu-Natal again has the highest rate. Again it is unclear to what extent these trends are due to different reporting rates or to different rates of use of force.

**Figure 31: Rate of reported use of force per 100 000 inmates, per region**



## **6.5 Concluding observations on mandatory reporting**

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The obligatory reporting of the death, segregation, mechanical restraint of and use of force against any inmate was intended by the legislature to hold the Department accountable for each inmate's safe custody and to prevent the unjustifiable limitation of rights, such as dignity, safety and security of the person. Whilst the Inspectorate receives these reports, the obligation remains with the Department to provide a report immediately on an incident's occurrence and then provide sufficient information to ensure the Inspectorate is in a position to consider the merits of that report.

During the past financial year the Department has largely complied within reasonable time; however, it appears that many centres continue to view the reporting of these incidents as a merely administrative task, and often provide reports with scant accompanying information. The solution to this problem is the Department being required to provide core minimum information. The Inspectorate has raised the issue with various Heads of Centre. We respectfully submit that the objective behind such obligation be further regulated and monitored by the Department's Management on an ongoing basis.

## **7. RECOMMENDATIONS**

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It is recommended that –

- 7.1. The Management of the Department assists the Inspectorate in finalizing the “wizard” on the Inspectorate's webpage so that Heads of Centres can report on use of force electronically.
- 7.2. The Regional Commissioners monitor and scrutinise more closely the requests made by the Inspectorate to Heads of Centres and Area Commissioners, for reports, explanations or enquiries made in respect of all matters, to enable the Inspectorate to express its opinions sooner.

## **8. CONCLUSION**

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The data, analysis and recommendations in this chapter reflect the tremendous effort by the Inspectorate in focusing on its core mandate. The vision for the ensuing year entails the continued consolidation of work in progress, with an additional focus on juveniles and children. Where the Inspectorate identifies weaknesses or these have been identified by others, including the Portfolio Committee, civil society and others in respect of the depth of our investigations, the Inspectorate has put in place measures to rectify the situation. In conclusion, the Inspectorate welcomes a thorough and vigorous scrutiny of our reports with both criticisms and recommendations.

## CHAPTER THREE: COMMUNITY OVERSIGHT AND STAKEHOLDER ENGAGEMENT

### 1. INTRODUCTION

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The Correctional Services Act provides that, “At the request of and in consultation with the Inspecting Judge, the Chief Executive Officer must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an Independent Correctional Centre Visitor (ICCV) for each correctional centre.”<sup>52</sup>

Through this provision, ordinary citizens with a passion and an interest for correctional matters are given an opportunity to assist the Inspecting Judge and the Inspectorate in their oversight of the treatment of inmates and conditions in correctional centres. Potential ICCVs must first be nominated by a community organisation. They are then subject to a selection process, and, if successful, are appointed.

The Act further provides for Visitors’ Committees: “Where appropriate, the Inspecting Judge may establish a Visitors’ Committee (VC) for a particular area consisting of the Independent Correctional Centre Visitors appointed to correctional centres in that area.”<sup>53</sup> One of the functions of the VC is to “extend and promote the community’s interest and involvement in correctional matters.” The interpretation of these provisions is that ICCVs serve as a conduit between the community and the correctional services system.

During the strategic session held in June 2011, the structure of the ICCV system within the Inspectorate was evaluated and found to fall short on delivery. The first step in improving the ICCV system decided upon was to increase the number of management regions (see *Organisational Restructuring* above).

Since it would be ideal to have management regions which correspond with the Department’s six administrative regions, the current strategy is to incrementally increase the capacity of the Inspectorate towards that goal. The strategic focus of the Management Regions Directorate is to ensure that at regional levels, the following strategic objectives are met:

- Implementation of the ICCV Contract Management and Visitors’ Committee systems;
- Monitoring and reporting of the complaints systems at the regional level;
- Strengthening community oversight and partnerships with external stakeholders.

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<sup>52</sup> Section 92 Correctional Service Act 111 of 1998, as amended

<sup>53</sup> Section 94 Correctional Services Act 111 of 1998, as amended

## 2. INDEPENDENT CORRECTIONAL CENTRE VISITORS

The Inspectorate has four regional offices. The office for the Central Management Region is located in Bloemfontein; the Southern Management Region in George; the Eastern Management Region in Durban and the office for the Northern Management Region is located in Centurion.

### 2.1 Independent Correctional Centre Visitor Post Establishment

In addition to the establishment of more regional offices, a greater number of Independent Correctional Centre Visitor (ICCV) posts were created in the ICCV post establishment in the year under review.

The Visitors' Committees' (VC) demarcations were also revised by creating smaller VCs in terms of number of ICCVs per VC. This is in the hope that more communities are exposed to VCs and that community involvement correctional matters will increase.

The time allocation for ICCVs in relation to the correctional centre approved population has also been revised. The table shows a summary of the revised ICCV post establishment and VC demarcation as at 31 March 2012. The table shows the current post establishment that ensures there is on average more than one ICCV per correctional centre in all the management regions.

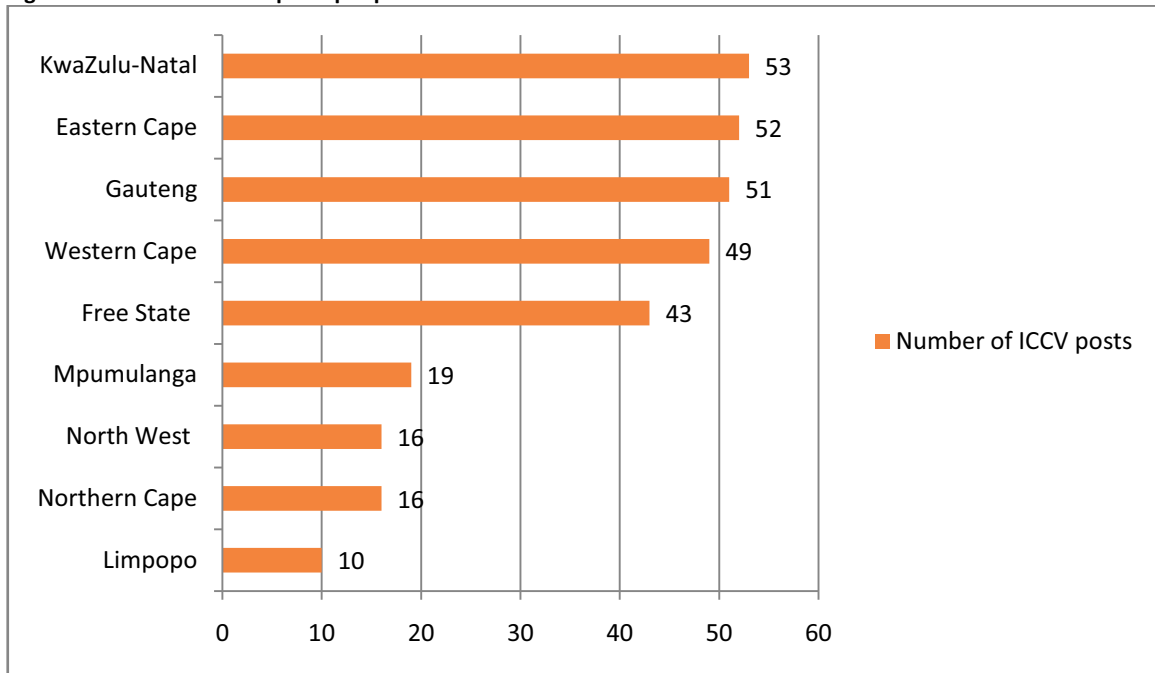
**Table 5: ICCV posts and Visitors' Committees per Management Region**

<b>Management region</b>	<b>ICCV Posts on the post establishment</b>	<b>Correctional Centres</b>	<b>ICCV posts per Correctional Centre</b>	<b>Visitors' Committees</b>
Southern (WC/EC)	72	55	1.3	12
Eastern (KZN/EC)	77	62	1.2	12
Central (FS/NC/NW)	77	72	1.1	14
Northern (LP/MP/GP)	78	47	1.7	12
<b>TOTAL</b>	<b>304</b>	<b>236</b>	<b>1.3</b>	<b>50</b>



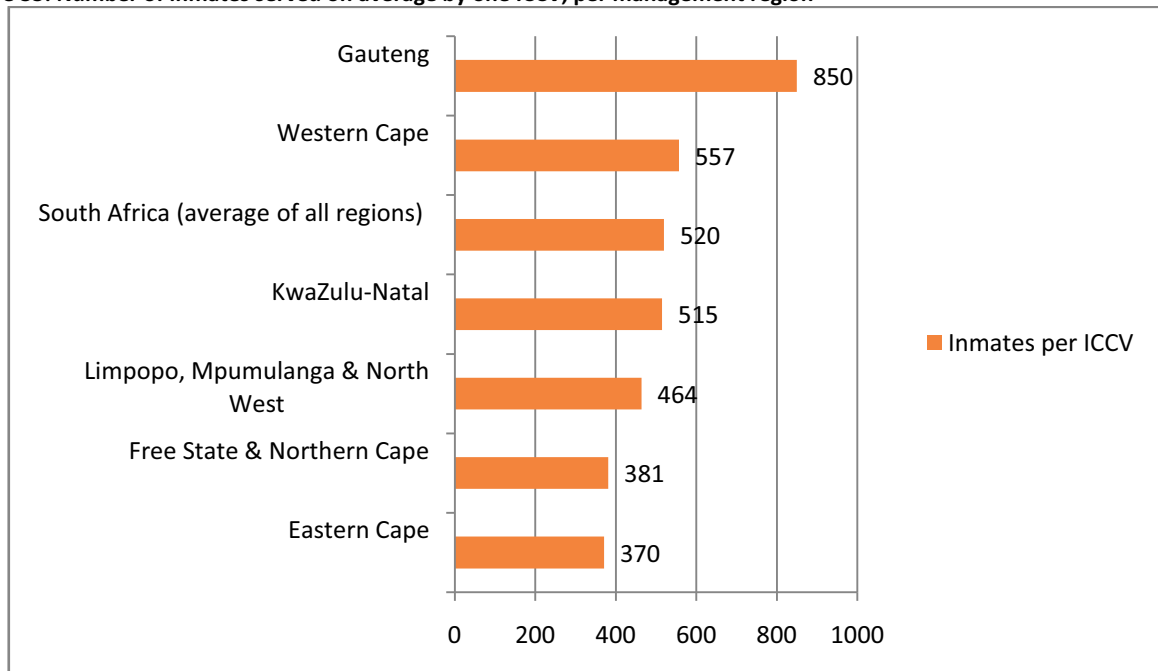
The provincial distribution of ICCV posts appears in the figure below.

**Figure 32: Number of ICCV posts per province**



The figure below shows the number of inmates served by each ICCV on average, using the administrative regions employed by the Department and the corresponding correctional centre populations. This shows that ICCVs in Gauteng and Western Cape serve a larger number of inmates on average.

**Figure 33: Number of inmates served on average by one ICCV, per management region**



During the year under review the Inspectorate also produced a Management Regions’ Policy Manual for staff and ICCVs, with clear regulations, rules and procedures to guide them in the performance of their respective functions and duties.

## 2.2 Independent Correctional Centre Visitor Training

Previously ICCVs were subjected only to an introductory training programme. This programme deals mainly with ICCVs’ powers, functions and duties, the ICCV complaints system, and on security and safety measures in correctional centres. From November 2011 all newly appointed ICCVs now attend a second training programme, three months after they have been inducted. This training programme, referred to as “paralegal training” focuses on:

- The rights of inmates, in particular, Section 35(2)(e) of the Constitution – “Rights of arrested, detained and accused persons”;
- Sections 15; 21; 30; 31; 32; 90(2) of the Correctional Services Act – Complaints and reporting system with reference to inmates;
- The White Paper on Corrections in South Africa; and
- The Department’s “B-Orders”.

Lastly, the office bearers of VCs, namely the Chairpersons and Secretaries, are also trained, as is usually done. The Office Bearers’ training programme is aimed at supporting the office bearers in the execution of their functions and duties. It is also aimed at strengthening leaders in the communities, because ICCVs represent their community organizations and the community at large. All VC chairpersons and VC secretaries, with no exceptions, attended the Office Bearers’ training programme.

**Table 6: ICCV Training 2011/2012**

	<b>Number of training programs</b>	<b>Number of candidates</b>
Introductory	10	82
Paralegal training	4	38

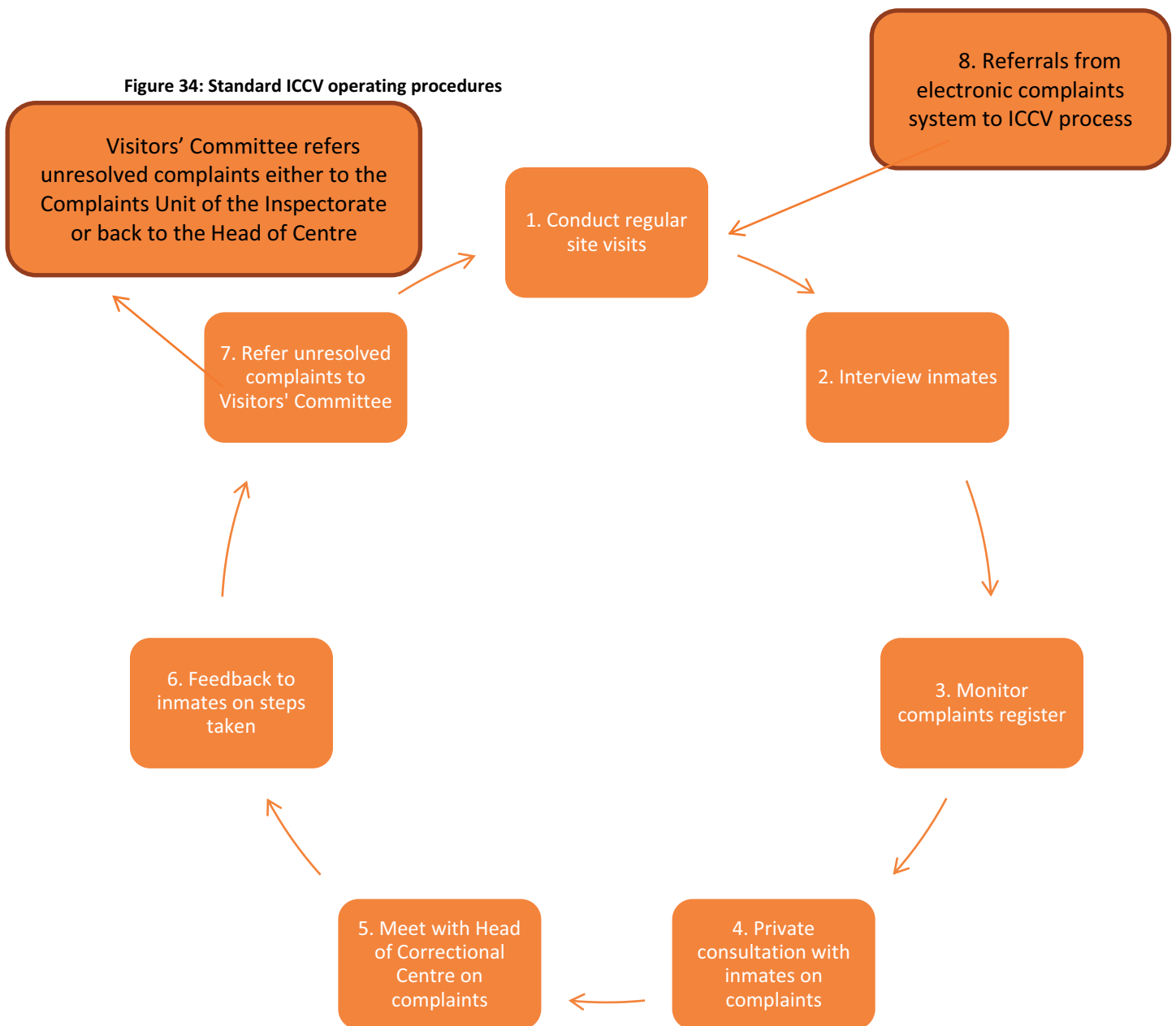
Since 1 April 2011, the Inspectorate has been in discussion with various institutions with a view to empower existing ICCV trainers to become accredited trainers, and to develop a South African Qualification Authority (SAQA) accredited course for ICCVs that will incorporate the current training programmes. Discussions have been held with the Department’s colleges in Kroonstad and Zonderwater; the Department’s Human Resource and Development Directorate located at the Pretoria head office; various universities; and the Safety and Security Sector Education Training Authority (SASSETA).

All newly appointed ICCVs are, in terms of the Management Regions Operational Manual Policy, subject to an induction process that is an extension of the Introductory Training programme. During the induction a copy of the ICCV’s appointment letter is handed over to the Head of Centre. The Visitors’

Committee Coordinator, who conducts the induction, must confirm that the ICCV has a valid Judicial Inspectorate identification card.

### 2.3 Standard ICCV operational procedure for inmate complaints

The ICCV contract requires that ICCVs must follow a standard operational procedure in performing their functions, duties and responsibilities. This standard operational procedure is referred to as the ICCV “Minimum Standard of Service Delivery” (MSSD). The ICCV MSSD sets out a number of distinct tasks which are linked to the resolution of complaints, and which are represented in Figure 34 below.



- **Step 1: Conduct regular site visits.** On a monthly basis compile a mini-inspection report on the treatment of inmates and conditions in correctional centres.
- **Step 2: Interview inmates.** An ICCV must interview 25% of the population as stipulated on his or her time allocation and record all complaints registered by inmates in an official Index of Interview register.
- **Step 3: Monitor registers.** In terms of section 21 and section 90(2) of the Act, the Department must transfer all the complaints from the Index of Interview register and record them in the Department's official complaints register, which is referred to as the G365 register. The ICCV must then monitor the G365 register to ensure that inmates' complaints are addressed adequately. In addition to the G365 register the ICCV must monitor the Injury Register and Death Register.
- **Step 4: Conduct private consultations with inmates.** The ICCV must consult in private with all inmates whose complaints or requests have not been dealt with adequately and record the consultation in a Record of Consultation.
- **Step 5: Meet with the Head of the Correctional Centre (HCC) or her or his delegate.** The ICCV must submit the Record of Consultation to the HCC and discuss the complaint in an attempt to explore alternative internal measures to resolve the complaints or requests of inmates.
- **Step 6: Give feedback to inmates.** ICCVs are expected to give feedback to inmates after the HCC has recorded the steps taken to resolve the complaints or requests of inmates.
- **Step 7: Visitors' Committee referral.** All unresolved complaints or requests are referred to the VC meetings for discussions and recommendations. The VC then decides if the complaint must be referred back to the HCC or forwarded to the Complaints Unit of the Inspectorate for further handling.
- **Step 8: Referrals from electronic system.** All complaints referred to the Inspectorate by organs of state or any other source are referred to the ICCV who must follow the process as set out above in this regard.

The Inspectorate identified poor functioning in the ICCV complaints system at Step 7 (Visitors' Committee). This has been addressed and mechanisms have been put in place to address it, *inter alia*, through the demarcation of additional VCs.

## 2.4 ICCV Performance Audits

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ICCVs perform their function as independent contractors. The contract determines the allocated hours that an ICCV must visit the correctional centre to which he or she is appointed. The allocated hours

are determined by the correctional centre population. The hours are based on a sliding scale on a ratio of 1 to 1000, meaning that one ICCV renders a service to a 1000 inmates. ICCVs, like all other visitors to a correctional centre, must sign the official visitors register, referred to as the G366 register and record his or her time in and out of the centre.

ICCVs are supervised by Visitors' Committee Coordinators, who audit the performances of ICCVs at least twice a year. A total number of 229 ICCV performance audits were conducted during the reporting period. As a result of these performance audits, 13 ICCVs' contracts were terminated after disciplinary processes, due to 1) deliberate acts of dishonesty by claiming for hours visited at the correctional centre that could not be verified, 2) deliberate acts of dishonesty by claiming for inmate interviews and inmate private consultations that could not be verified, 3) consistently being absent from the VC meeting without apology, 4) entering into a relationship with an inmate and breaching security, and 5) breaching security by offering assistance to inmates by bringing in unauthorized objects.

### 3. VISITORS' COMMITTEES

The number of Visitors' Committees has increased from 28 to 50 as from 1 April 2012. This was motivated by the need to promote community involvement in correctional matters in community meetings and engage more effectively with stakeholders such as the Department, which attends these meetings.

**Table 7: Visitors' Committee Demarcation**

No	Central Management Region	Eastern Management Region	Northern Management Region	Southern Management Region
1	Rustenburg VC	Durban Med B VC	Boksburg VC	St Albans A VC
2	Rooigrond VC	Durban Med A VC	Modderbee VC	St Albans B VC
3	Klerkdorp VC	Qalakabusha VC	Leeuwkop VC	George VC
4	Groenpunt VC	Ncome VC	Barberton VC	Goodwood VC
5	Vereeniging VC	Eshowe VC	Bethal VC	Pollsmoor VC
6	Kroonstad VC	Glencoe VC	Witbank VC	Voorberg VC
7	Bethlehem VC	Umtata VC	Pretoria Local VC	Drakenstein VC
8	Brandfort VC	Butterworth VC	Zonderwater VC	Brandvlei VC
9	Middelburg VC	East London VC	Pretoria Cental VC	Helderstroom VC
10	Goedemoed VC	Kokstad VC	Kutama-Sinthumule VC	Beaufort West VC
11	Kimberley VC	Pietermaritzburg VC	Johannesburg B VC	King Williamstown VC
12	Grootvlei VC	Lusikisiki VC	Johannesburg A VC	Queenstown VC
13	Odendaalsrus VC			
14	Gordonia VC			

Visitors' Committees have five functions in terms of the Correctional Services Act<sup>54</sup>. Community involvement has been dealt with elsewhere in this report. There are two administrative functions viz. 1) considering unresolved complaints with a view to resolve them, and 2) submitting to the Inspecting Judge those complaints which the Committee cannot resolve. The data suggest that these administrative functions were not being carried out effectively. ICCVs in the period under review dealt with 424 717 complaints of which only 20 were referred to the Inspecting Judge as unresolved. Furthermore, the Inspectorate was unable to account for the number of complaints referred to VCs by ICCVs. This suggests that the ICCV complaints process was breaking down at the point of referral to the VCs. The Inspectorate has put mechanisms in place to address the problem.

## 4. STAKEHOLDER ENGAGEMENT

The Inspectorate engages with stakeholders in a number of ways: through public ICCV nomination meetings; through direct stakeholder engagement; and through community outreach. In addition, in the forthcoming year the Inspectorate will co-operate with civil society to pursue a special project on children in detention. Children are to be the focus of the Inspecting Judge's tenure.

### 4.1 Nomination meetings

The Inspectorate conducted 47 Public Calling for Nomination Meetings in terms of section 92 of the Act. A total number of 1223 nominations for ICCVs were received across all nine provinces. The table below shows detail regarding the nominations received.

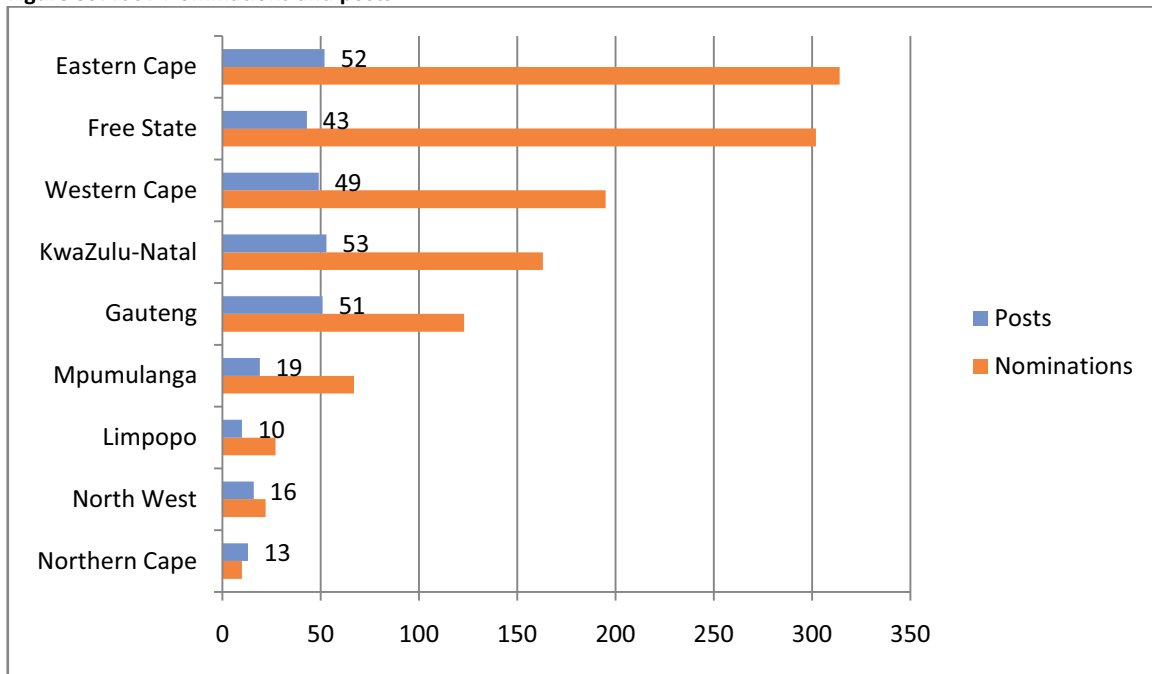
Table 8: Nominations received for ICCVs 2011/12

APPLICATION PERIOD	EC	FS	GP	KZN	LP	MP	NW	NC	WC	TOTAL
Apr-11	136	5	0	4	1	25	1	0	7	179
May-11	34	1	7	43	0	6	2	0	16	109
Jun-11	10	2	9	13	0	3	0	0	59	96
Jul-11	1	143	14	11	0	15	1	1	40	226
Aug-11	1	87	11	12	0	2	2	1	17	133
Sep-11	4	25	21	3	0	2	3	3	9	70
Oct-11	31	9	17	13	2	4	2	1	12	91
Nov-11	26	13	4	10	3	2	4	0	5	67
Dec-11	11	4	5	40	1	3	3	0	14	81
Jan-12	9	0	1	2	0	1	1	0	0	14
Feb-12	42	9	26	8	0	2	0	2	7	96
Mar-12	9	4	8	4	20	2	3	2	9	61
<b>TOTAL</b>	<b>314</b>	<b>302</b>	<b>123</b>	<b>163</b>	<b>27</b>	<b>67</b>	<b>22</b>	<b>10</b>	<b>195</b>	<b>1223</b>

<sup>54</sup> Section 94, Correctional Services Act 111 of 1998

The Inspectorate regards the number of nominations received as an indication of the extent to which there is community awareness of ICCVs and Visitors’ Committees. Figure 35 shows the number of nominations received in comparison to the number of posts in each province.

**Figure 35: ICCV Nominations and posts**



## 4.2 Direct stakeholder engagement

One of the functions of Visitors’ Committees is “to extend and promote the community's interest and involvement in correctional matters”.<sup>55</sup> Visitors’ Committees have over the years built very strong and collaborative relationships with various stakeholders who have shown interest in attending some of the VC Meetings. These include the Department itself; Legal Aid South Africa; the National Prosecuting Authority; the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO); Human Rights Commission; and various community NGOs, FBOs and CBOs.

The Inspectorate has also collaborated with statutory and civil society stakeholders such as the National Prosecution Authority; the Public Protector; the Independent Complaints Directorate; the Civil Society Prison Reform Initiative; Sonke Gender Justice Network; Just Detention International; the Open Society Foundation for South Africa; the South African Law Society; the President’s Awards; Omega Research Foundation; Khulisa; and various local universities and academic associations with their own specialized units. The Inspectorate has also collaborated in inter-departmental consultation on OPCAT.

<sup>55</sup> Section 94 (d), Correctional Services Act 111 of 1998

### 4.3 Community outreach

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The Inspectorate was involved in a variety of community outreach projects over the reporting period.

The Inspectorate received 4 000 books from a Rotary club and facilitated a process for the books to be delivered to the Stellenbosch Correctional Centre. On 18 July 2011, Mandela Day, the Inspectorate provided a meal to children at the Vuselela Primary School in Khayelitsha. Also on 18 July, staff members arranged with the Department of Home Affairs to assist the public in completing various documents at the Pretoria office. On Human Rights Day, 21 March 2012, staff members and Independent Correctional Centre Visitors distributed pamphlets entitled “Inmates have Rights” in various communities and correctional centres in all nine provinces.

## 5. SPECIAL PROJECT ON CHILDREN

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In the foreword to this report, the Inspecting Judge indicates that it is his vision to continue with the legacy established by previous Inspecting Judges of bringing a special focus to their tenures. Judge Fagan focused on overcrowding and Judge van Zyl on death in correctional centres. Judge Tshabalala’s focus is “Children and juveniles in conflict with the law”.

Judge’s Tshabalala’s vision is to reduce recidivism among children and juveniles; to influence the way the Department deals with the vulnerability of children and juveniles; to contribute to the development of children and young people; and to contribute to a safer environment in the broader society.

To accomplish the goals of this special project, the Inspectorate has formed a partnership with the Civil Society Prison Reform Initiative (CSPRI) who launched a report in 2012, entitled, “Report on Children in Prison in South Africa”<sup>56</sup>. As part of the research for the report, the ICCVs collated data from a survey that was developed jointly by CSPRI and the Inspectorate.

The report notes that while some improvements have been made in the Department in relation to the treatment of children, overall there remain material areas of non-compliance with the Correctional Services Act and other legislation. The Correctional Services Act makes special mention of children in relation to:

- Accessing appropriate and required education, religious, recreational, psychological and welfare services;
- Remaining in contact with their families through additional visits and by other means, if practicable; and,

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<sup>56</sup>Muntingh, L & Ballard, C. (2012). *Report on Children in Prison in South Africa*. Bellville: Community Law Centre



- Performing work for the purposes of training aimed at obtaining skills for his or her development and not for any other purpose.

The Child Justice Act<sup>57</sup> has limited the use of detention for children, both for remand detention and sentencing. No child under the age of 14 years may be detained or sentenced to imprisonment. Various sentencing principles, intended to limit the use of imprisonment of children and the period of time for which children remain incarcerated, have also been established.

The Inspectorate has embarked on three-year project with CSPRI, to monitor legislative compliance of the DCS regarding the treatment and conditions of detention of children and young people in correctional centres. The project will make recommendations for improvement and promoting legislative compliance. The resulting information will ultimately be published in the Inspectorate's Annual Reports.

For the purposes of this project a child is considered to be under the age of 18 years and a juvenile a person between the ages of 18 and 21 years.<sup>58</sup> The following provisions in the South African Constitution are of particular relevance to the project, viz. Section 12: Freedom and security of the person; Section 28: Children's Rights; Section 35: The rights of arrested, detained and accused persons. In addition, international legal instruments are also of relevance to the project.<sup>59</sup>

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<sup>57</sup>The Child Justice Act 75 of 2008.

<sup>58</sup>Regulations to the Correctional Services Act Regulation 3(2)(h).

<sup>59</sup> The following international instruments are relevant to the project:

- African Charter on Human and Peoples' Rights, adopted by the Organisation of African Unity (since replaced by the African Union) on 25 June 1981 and entering into force on 21 October 1986.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988.
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975.
- Guidelines for Action on Children in the Criminal Justice System, Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997.
- Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly resolution 37/194 of 18 December 1982.
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000.
- UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.
- UN Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985.

Six themes have been identified for the purposes of the project, and are understood as follows.

Conditions of incarceration: These refer to the physical conditions under which inmates are incarcerated, as well as the daily regimes enforced in correctional centres. Monitoring will reflect on both qualitative and quantitative aspects of inmates' environment. The Act, which gives expression to the provisions of Section 35 of the Constitution, describes the required standards of custody in Chapter 3A primarily and in further detail in Chapter 2 of the Regulations. Monitoring the conditions of detention will also reflect on the applicable international instruments, especially those that have binding power such as the Convention on the Rights of the Child and the UN Convention against Torture.

Protection of human rights: Protecting, respecting and fulfilling the rights of inmates are understood to be reflected in the proactive and reactive measures described in the legislation and guaranteed in the Constitution. As such the Act requires the Minister "to ensure safe custody whilst ensuring their human dignity". Section 4(2) of the Act is clear in defining the duties of care of the National Commissioner of Correctional Services to ensure that minimum standards articulated in the Act are adhered to. The protection of human rights would therefore firstly focus on measures taken by the DCS to meet the minimum standards, and secondly on reactive and corrective measures applied to address shortcomings. The roles of the Judicial Inspectorate and Independent Correctional Centre Visitors would thus be of significance.

Correctional centre management: This project would take a broad view on correctional centre management and assess it from a broader governance perspective. Tapscott articulates this approach as follows:

*Good prison governance is to a large extent determined by the existence of an enabling policy framework, necessary resources and the extent to which prison management has the ability to implement these policies on a day-to-day basis in a transparent, accountable and ethical manner. In the context of this research, however, the notion of governance is understood to encompass not only issues of administrative efficiency and probity, but also the extent to which the basic human/constitutional rights of offenders are recognised and respected. This relates both to the manner in which offenders are treated in the prison system and the opportunities which they are afforded to re-orientate their lives towards a more constructive future in society.*<sup>60</sup>

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- UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990.
  - UN Standard Minimum Rule for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
  - UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987.

<sup>60</sup>Tapscott, C. (2005) A Study of Best Practice in Prison Governance, CSPRI Research paper No. 9, p. 3.

Health care: Firstly, health care is central to nearly all other rights of inmates. The high mortality rate and numerous health care complaints recorded by the Judicial Inspectorate indicate that a more focused approach is necessary. The theme dealing with the monitoring of health care should contribute to the development of greater awareness and knowledge on correctional health care issues.

Rehabilitation and reintegration: Rehabilitation is one of the three objectives of the Department. Indeed, the White Paper on Corrections in South Africa goes to great lengths to define this as the core business of the Department. Promoting social responsibility and human development is the third objective of the correctional system, as noted in Chapters 4 and 6 of the Act. These chapters will give particular expression to this purpose by creating an appropriate legislative framework for the Department to apply its resources to reduce the risk of re-offending upon release.

Pre-trial detention: The detention of children awaiting trial in correctional centres should be avoided as far as possible, as indeed required by the Child Justice Act. Nonetheless it remains the situation that a large proportion of children and juveniles incarcerated in South Africa are unsentenced and that they can, and do, often remain in custody for long periods of time. As of February 2011 there were 6 838 pre-trial detainees between the ages of 18 and 21 years in custody. This category requires further investigation to enable accurate monitoring.

One of the tools suggested in assisting the Inspecting Judge in achieving his vision is to create a wizard on the Inspectorates' webpage: “

First admission of a child or juvenile.” The purpose of the wizard would be to collect data for further analysis as well as to give direction to ICCVs in monitoring the goals set by the Inspectorate in relation to children and juveniles.

## **6. RECOMMENDATIONS**

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It is recommended that –

6.1. The Heads of Centres or their delegates be encouraged to attend the monthly Visitors' Committee meetings, and that Area Commissioners monitor this request on Management Area level.

6.2. The Department assists the Inspectorate in creating a wizard on its webpage through which Heads of Centres can report essential information on children and juveniles.

## **7. CONCLUSION**

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The Inspectorate has committed itself to act in response to the “spirit of the Act” which promotes the involvement of the community in correctional matters. During the year under review, the seed was planted to expand community involvement, by creating additional regions, increasing the number of ICCV posts, increasing the number of Visitor’s Committees, creating Community Liaison posts on regional level and engaging with organs of state and civil society. These changes need to be monitored to ensure increase in service delivery to inmates, who are ultimately the clients of the Inspectorate.

The Inspectorate’s special project on children, which is the vision of the Inspecting Judge, will receive its rightful attention in the ensuing year.

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