Annual Report for the period 1 April 2009 to 31 March 2010

Submitted to Mr Jacob Gedleyihlekisa Zuma,

President of the Republic of South Africa

and

Ms Nosiviwe Mapisa-Nqakula, Minister of Correctional Services

and

Ms Hlengiwe Mkhize, Deputy Minister of Correctional Services

by

The Inspecting Judge

Judge Deon Hurter van Zyl

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

JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES
Private Bag X9177
CAPE TOWN
8000
Tel: (021) 421-1012/3/4/5
Fax: (021) 418-1069
Web Site: http://judicialinsp.pwv.gov.za

9th Floor, LG Building
1 Thibault Square
c/o Long and Hans
Strijdom Streets
CAPE TOWN
8001

REGIONAL OFFICE: GAUTENG
Private Bag X153
CENTURION
0046
Tel: (012) 663-7521
Fax: (012) 663-7510

Momentum Tuinhof
Karee (West Block)
265 West Lane
CENTURION
0157

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FOREWORD BY THE INSPECTING JUDGE

This report covers the second year (1 April 2009 until 31 March 2010) of my term of office as Inspecting Judge appointed to this position by the President in compliance with section 86 of the *Correctional Services Act* 111 of 1998, as amended (the Act). The report provides an overview of the conditions prevailing in our 239 currently operational correctional centres, including the treatment meted out to the approximately 164 000 persons detained in such centres.

JUDGE DEON H VAN ZYL

Before commencing my report on these important issues, I wish to reflect briefly on my experience as Inspecting Judge with regard to the mandate of the Judicial Inspectorate for Correctional Services (the Inspectorate) and the manner in which it operates. This, I believe, will assist the reader to understand the report in its appropriate context.

The legislation which initiated the establishment of the Inspectorate was contained in the predecessor of the current Act, namely the *Prisons Act* 8 of 1959, and more particularly the *Correctional Services Amendment Act* 102 of 1997, by which it was finally amended before the Act of 1998 was promulgated. This amending legislation was largely based on similar legislation in the United Kingdom governing the functions of Her Majesty's Chief Inspector of Prisons. Subsequent amendments to the legislative mandate of the South African Inspectorate, however, have resulted in a model for prison oversight and monitoring which is quite unique.

The uniqueness of the South African model is found in a combination of oversight roles which the Inspectorate exercises, most notably, in the first place, that of an Ombudsman or Public Protector who deals with complaints received from inmates, secondly the

traditional role of an inspecting and monitoring prison inspectorate and, thirdly, the role of a lay-visitors' complaints-system which provides for "independent visitors" to be appointed from the ranks of the community with a view to overseeing and reporting on the treatment of inmates and on the conditions existing in correctional centres situated in that particular community.

Of particular significance is that the Inspectorate is wholly independent of the Ministry and Department of Correctional Services in that it stands under the control of the Inspecting Judge, being a Judge of the High Court in active service and seconded to such position, or a retired Judge who has been discharged from active service in terms of section 3 of the *Judges' Remuneration and Conditions of Employment Act* 88 of 1989. The powers, functions and duties of the Inspecting Judge include the right to exercise certain decision-making powers which, although limited, are directed at protecting the human rights of correctional centre detainees.

The majority (about 82%) of the staff of the Inspectorate is made up of so-called Independent Correctional Centre Visitors, to whom I shall refer as "Independent Visitors", who are generally appointed from the ranks of the community where the correctional centre, to which they are appointed, is situated. Their appointments are as independent contractors rather than as employees of the Inspectorate and hence of the State. This serves to strengthen further still the functional independence of the Inspectorate.

The powers of the Inspectorate have been further bolstered by the introduction of an innovative system of so-called mandatory reporting, which has contributed significantly to the effectiveness of its particular oversight role and function in that it places heads of correctional centres under a statutory obligation to report certain events and occurrences to the Inspecting Judge. I refer here to deaths (natural or unnatural) in correctional centres, the segregation of inmates for whatever reason and the use of force or mechanical restraints to confine or control them.

It is uncontroverted that, in the execution of its statutory mandate, the Inspectorate has made valuable contributions to the transformation of correctional centres from erstwhile

“warehouses”, in which detainees were “locked up and forgotten”, to places consistent with the constitutional requirement of humane treatment of detainees under humane conditions of detention. The Inspectorate has made significant headway in transparently exposing, and informing public opinion regarding, the conditions pertaining in our correctional centres. In the process it has collected wide-ranging data and established important information systems relating to deaths in prisons and to the number and nature of complaints and other relevant information received by Independent Visitors from detainees. It has also succeeded in providing increasing levels of protection to inmates against human rights violations by means of its already tried and tested independent complaints-procedure, coupled with regular visits by Independent Visitors to correctional centres and reports by the Inspecting Judge to the Minister of Correctional Services and to the Parliamentary Portfolio Committee on Correctional Services

Particularly remarkable in this regard is the relatively inexpensive functioning of the Inspectorate. Its effectiveness has been considerably enhanced and strengthened by the fact that its total budget is less than 0,2% than that of the Department of Correctional Services. This is dealt with in more detail in chapter seven of the report.

Despite the aforesaid successes hitherto enjoyed by the Inspectorate, various weaknesses have, at least during my term of office as Inspecting Judge, come to the fore as seriously undermining the effectiveness of its functioning and, indeed, even calling its sustainability into question. Most notable in this regard is the apparent disregard by the Department of a substantial number of the Inspectorate’s reports, which are seemingly being disposed of with little or no consideration of the issues dealt with or the findings or recommendations made therein. This is exacerbated by the fact that the mandate of the Inspectorate does not give it the power to enforce any of its findings or recommendations. As a result the good standing of the Inspectorate and its staff, and more particularly that of the community members deployed as Independent Visitors, is constantly being eroded. Serious cases involving assaults, deaths, suicides and similar events or activities occurring regularly in centres are not adequately investigated or otherwise addressed, with the result that the level of despondency amongst role players is on the increase.

Various amendments aimed at strengthening the powers of the Inspectorate were introduced by Parliament on 1 October 2009, when the *Correctional Services Amendment Act 25* of 2008 was proclaimed. Not only was the *status quo* with regard to a Judge heading the Inspectorate retained, but an important requirement was introduced that all reports of the Inspectorate must be submitted to the Minister and the Parliamentary Portfolio Committee on Correctional Services. This has added great value to the work performed by the Inspectorate. Unfortunately such amendments have not adequately addressed the issue of enforceability of its findings and recommendations. I believe that further debate and possible legislative amendments may be required to deal with this challenge. The "quick-fix" solution may entail simply extending the powers of the Inspecting Judge to enforce the findings of the Inspectorate. Any decision to extend the powers of the Inspectorate should, however, be taken with due consideration to issues such as capacity, international conventions, best practices, costs and, most importantly, the current nature of the Inspectorate as an independent monitoring and reporting body and not simply an extension of the Department of Correctional Services.

Turning now to my report on the nature of the treatment currently received by inmates in custody and to the conditions prevailing in our correctional centres, I wish to reflect briefly on some of the successes observed by the Inspectorate during the 2009/2010 financial year. These successes include the continued reduction in the levels of overcrowding experienced in many of our correctional centres. The average level of overcrowding experienced in correctional centres has decreased from 170% in 2000 to its current level of 138%. More particularly the number of women and children in custody has been significantly reduced. More detailed information on this topic is provided in chapter one of the report.

The implementation of the seven-day work week and the so-called Occupation Specific Dispensation (OSD) are also showing early signs of success, the most notable being the voluntary migration of experienced correctional officials from administrative positions to posts in which they work directly with inmates – commonly referred to as centre-based positions. Special care should, however, be taken to ensure that this migration of staff is not simply denoted as an administrative function on PERSAL but that the members of staff in question actually take up their designated positions at the various prisons.

The implementation of the two-shift system for members of staff has been less successful in that it has given rise to critical staff shortages at most correctional centres. This has impacted directly on the treatment received by detainees, and hence on the conditions in centres, mainly as a result of the inevitable suspension of programmes on offer to detainees as a result of the unavailability of staff. Our inspections and observations further confirm that the majority of the approximately 114 000 sentenced detainees are not yet involved in any rehabilitation or work programmes but continue to be detained in often overcrowded cells for up to 23 hours per day. A full audit of all programmes on offer to inmates was recently conducted by the Inspectorate, the results of which are reflected in chapter two of this report.

Chapter three provides a detailed analysis of the number and nature of deaths recorded in correctional centres for the 2009 calendar year. The efforts of the Inspectorate in terms of section 15(2) of the Act have resulted in the improvement of its data integrity relating to deaths and identified at least three systemic problems existing within our correctional centres in regard to the manner in which deaths are dealt with.

The first of these problems relates to the manner in which deaths are recorded by heads of correctional centres as “natural” or “unnatural”. Only where a medical practitioner is unable, in terms of section 15(1) of the Act, to certify that a death was due to “natural causes”, will a head of centre be required, in terms of section 2 of the *Inquests Act* 58 of 1959, to report such death. The difficulty arises where there are indeed ostensibly “natural causes” present and the death is accordingly certified as a “natural death”. In such cases no provision is made for an inquest or *post mortem* examination. Yet the circumstances of the death are frequently suspect and may in fact justify further investigation. In this regard we have found that, in a number of cases, the deaths were “incorrectly” classified as natural deaths under circumstances which indeed warranted an independent inquest. We therefore hold the view that section 15 of the Act should be amended to provide that all deaths in correctional centres, regardless of whether or not they are certified as “natural” or “unnatural”, are subjected to a *post mortem* examination and independent investigation in terms of the *Inquests Act*.

The second problem identified relates to the unsatisfactory quality of records of deaths maintained by some heads of correctional centres. This has often given rise to lengthy delays in our investigations because basic information such as death certificates could not be produced when required. In certain cases it would appear that detainees had been transferred to so-called outside hospitals where they subsequently died. Yet months later the head of the centre has been unable to produce any record verifying such death or the causes thereof.

The third problem relates to the seeming reluctance with which heads of centres act against members of staff allegedly implicated in the deaths of inmates as a result of inadequate care or by their negligence or intentional acts of violence. In the process they expose themselves and the Department to possible criminal and civil liability.

Chapter four of the report contains a discussion of the role of Independent Visitors in investigating and dealing with the complaints of detainees, while chapter five deals with our continued efforts to improve the level of community involvement in the activities of the Inspectorate at correctional centres throughout the country. In this regard we have successfully communicated positively with a number of local and international role-players. Additional hereto the possible ratification by government of the *Optional Protocol on the Convention on Torture* (OPCAT) may have significant implications for the work performed by the Inspectorate. For this reason we have done a detailed gap-analysis of the requirements of OPCAT against the background of the current mandate of the Inspectorate with a view to the pro-active identification of possible problem areas. This analysis is contained in the discussion of the impact of OPCAT on the Inspectorate in chapter six of this report.

Chapter seven of the report provides an overview of the mandate, strategic priorities, staffing and cost of the Inspectorate. It is noteworthy to mention that the number of Independent Visitors has increased from 101 in May 2009 to its current level of 213. This is due mainly to the implementation of the amended section 92(1) of the Act, which now requires the appointment of an Independent Visitor for each correctional centre.

In conclusion reference may be made to the recent publication by the Human Sciences Research Council entitled "Human Rights in African Prisons",[1] which has highlighted the many challenges faced in correctional centres within South Africa and elsewhere in Africa. Significantly similar challenges exist even in so-called developed states such as the United States of America and the United Kingdom. This confirms the viewpoint that challenges such as prison overcrowding, the existence and activities of prison gangs, prison violence (of detainee on detainee, detainee on official and official on detainee), lack of funding and the like, constitute systemic problems that exist in prison systems throughout the world, including that of South Africa. This is in accordance with the international view currently held that correctional systems in most countries are experiencing serious challenges and hence require a total review and restructuring of their correctional and criminal justice systems as a whole. We are acutely aware of the fact that the complexities surrounding this subject are of such a nature that they cannot be dealt with at any length in a document such as the present. It is, however, important that we remain mindful of the strong links that exist within the criminal justice and correctional systems when consideration is given to the burdensome challenges faced by the Department of Correctional Services.

DEON H VAN ZYL
Inspecting Judge

[1] Jeremy Sarkin (ed) *Human Rights in African Prisons* Cape Town and Athens (Ohio) 2008.

CHAPTER ONE: THE STATE OF OUR CORRECTIONAL CENTRES

OVERVIEW

As on 31 March 2010, being the date on which the 2009/2010 financial year and the term covered by the present report ended, there were 239 operational correctional centres in South Africa. These correctional centres collectively provide for the accommodation of 118 158 inmates. This is slightly higher (3%) than the previous year (114 822 inmates) due mainly to the opening of the new Kimberley Correctional Centre and the renovation of other centres.

The level of occupation at these centres varies from as low as 22% at Barkly West to as high as 247% at King William's Town. The national average occupation level was 139%, as on 31 March 2010. This is considerably lower than the 170% occupation measured in April 2003, when the total inmate population peaked at 190 180 persons. These figures reflect the success achieved by the combined efforts of government and other stakeholders to address the crisis of overcrowded centres and resulting in South Africa becoming one of few countries which have, during the past decade, succeeded in reducing the total number of people in custody. South Africa, however, remains the country with the highest incarceration rate within Africa, at 3.5 per 1000, and, indeed, has one of the highest incarceration rates in the world.

Of particular concern are the 19 centres which recorded occupational levels of 200% and higher. At these centres the conditions under which inmates are detained are shockingly inhumane and do not remotely comply with the requirements set forth in section 35(2)(e) of the *Constitution*, namely "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". In addition the utility of existing infrastructure, such as kitchens, hospitals and water reticulation, is extended substantially beyond its capacity.

A comparison of occupation levels which were recorded in previous years clearly indicates that little, if any, progress has been made since 2004 to ensure a more equitable distribution of inmates among all correctional centres. Whilst 19 centres are critically overcrowded 49 other centres are occupied at levels of less than 100%. Table one below lists the centres that are critically overcrowded. At such centres a total of 33 749 people are, on average, detained of whom 17 458 are awaiting-trial detainees and 16 291 are sentenced inmates. The general conditions at these centres are totally unacceptable and require urgent attention.

Table 1: Most overcrowded correctional centres as on 31 March 2010

Correctional Centre	Capacity	Unsentenced	Sentenced	Total	% Occupation
GROOTVLEI MAX.	890	1152	635	1787	200.79%
UMTATA MAX.	720	34	1416	1450	201.39%
GEORGE	514	379	657	1036	201.56%
ELLIOTDALE	53	0	108	108	203.77%
ALLANDALE	342	460	237	697	203.80%
GRAHAMSTOWN	309	298	344	642	207.77%
PRETORIA FEMALE	166	78	271	349	210.24%
DURBAN MED. B	1853	0	3926	3926	211.87%
MDANTSANE	582	0	1248	1248	214.43%
BOKSBURG	2012	2297	2075	4372	217.30%
LEEUWKOP MAX.	763	0	1671	1671	219.00%
UMTATA MED.	580	1204	69	1273	219.48%
POLLSMOOR MAX.	1872	3984	140	4124	220.30%
MOUNT FRERE	42	0	96	96	228.57%
MALMESBURY MED. B	197	423	36	459	232.99%
BIZANA	57	99	39	138	242.11%
JOHANNESBURG MED. B	1300	0	3148	3148	242.15%
JOHANNESBURG MED. A	2630	6335	145	6480	246.39%
KING WILLIAM'S TOWN	301	715	30	745	247.51%

TREND ANALYSIS OF INMATE POPULATION

The inmate population is made up of two main categories of detainees, namely the so-called awaiting-trial detainees and the sentenced offenders. These two categories of inmates are further separated, in compliance with section 7(2)(b) and (c) of the Act, according to gender and age, children under the age of 18 years being kept apart from adult inmates over such age.

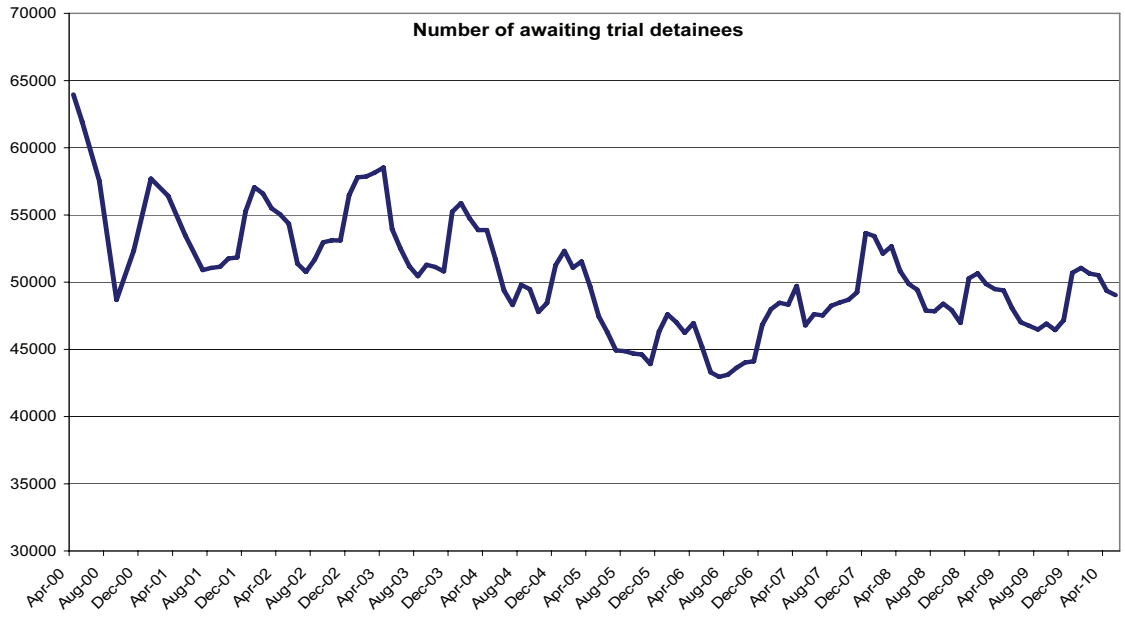
When regard is had to awaiting-trial detainees, it is evident that their numbers have declined by a considerable margin since April 2000, when they totalled 63 964, as compared with May 2010, when they totalled 49 030, a reduction of some 23%. Of the 49 030 awaiting-trial detainees, 963 are females and 48 067 are males. The reduction in the number of female awaiting-trial detainees over the period 2003-2010 is considerably higher, at 30%, than that of males at 16%. This may be indicative of the priority currently given to reducing the number of females in custody. The most notable progress made in the reduction of awaiting-trial detainees, however, is that recorded in the category of children. Their numbers were reduced by 80% over the same period of time, bringing the national figure down to 504 children.

The progress made in reducing the number of awaiting-trial detainees must be assessed in the context of the fact that they still constitute some 30% of the total inmate population. They furthermore make up the bulk (52%) of those inmates detained in centres which have reached a critical level (over 200%) of overcrowding. This category of inmates is generally excluded from all rehabilitation and work programmes, most of them being incarcerated in overcrowded cells for up to 23 hours per day, wasting away their lives. The fact that awaiting-trial detainees, who have not yet been convicted by a court of law on the charges against them but are nevertheless detained under such inhumane conditions, creates a serious ethical dilemma which warrants urgent attention.

FLUCTUATING NUMBERS OF AWAITING-TRIAL DETAINEES

Of particular concern in regard to awaiting-trial detainees remains the issue of fluctuation in their average number during different periods of the year. As illustrated in the behaviour-over-time graph, *figure 1* below, it appears that every year around October the number of awaiting-trial detainees rises sharply until around February the following year, when the numbers start declining again. This annual cycle creates "peak periods" in the inmate population, placing additional strain on the already limited resources and infrastructure available in correctional centres and frequently exacerbating the poor conditions and inhumane treatment suffered especially by this category of inmates.

Figure 1: Awaiting trial detainees: April 2000 to April 2010



SENTENCED INMATES

The second category of detainees, namely sentenced offenders, has demonstrated a downward trend similar to that of awaiting-trial detainees. The number of sentenced inmates in custody peaked in November 2004, when it totalled 137 601, but has since declined by about 17% (23 319 inmates), bringing the total to 114 282 as on 31 March 2010. The rate at which the number of sentenced inmates declined is similar for all categories, namely males, females and children.

A matter of particular concern is the fact that the number of inmates serving long sentences has, in stark contrast with the previously reported general trend of declining inmate numbers, increased dramatically. Thus the average number of inmates serving a sentence of life imprisonment increased from 1 436 in 2000 to 9 651 in 2010 - an increase of 572%. Similarly the number of inmates serving a sentence in excess of ten years increased by almost 128% during the same period of time, namely from 23 702 to 53 944. It can only be speculated what effect such long sentences will have on the inmate population, the treatment of detainees and the conditions prevailing in correctional centres. This requires detailed research into the effect of long sentences on costs, overcrowding and the activities of prison gangs. It likewise requires intensive monitoring of the rehabilitation of sentenced detainees and of their reintegration into the community.

CALCULATING CAPACITY

Whilst the poor conditions that exist at many correctional centres are acknowledged, it must be pointed out that the level of occupation is not the only indicator of the conditions prevailing in correctional centres or of the treatment received by inmates. Our many visits to correctional centres throughout the country have highlighted the fact that most of the negative effects caused by overcrowded cells may be effectively mitigated by the particular approach adopted by the head of the centre in question. Thus in some centres inmates are allowed to spend a substantial part of the day outside the confines of their cells, performing various kinds of work or engaging in any number of rehabilitative or recreational activities. At these centres the conditions may generally be described as good, despite the existence of varying degrees of overcrowding. At other centres, however, inmates are, for the most part, obliged to spend up to 23 hours per day locked up in their cells. This inevitably exacerbates the effects of even relatively slight, if not minimal, levels of overcrowding.

A further concern remains the discrepancies that exist between the different measures of calculating the capacity of correctional centres. At most centres the “floor space norm” of 3.5m^2 per inmate is used, but at other centres, such as the new centre in Vanrhynsdorp, the norm applied is only 2.5m^2 per inmate. At some centres the actual number of beds is reportedly used to determine such capacity. This means that the so-called “approved

capacity" of the 239 operational centres, which currently stands at 114 822 inmates, could in fact be significantly higher or lower. In this regard it bears mention that the current space norm of 3.5m^2 was determined more than twenty years ago at a time when most inmates still slept on the floors of cells, before beds were introduced.

For these reasons the Inspectorate deems it necessary that the space norms applicable to establishing the approved capacity of cells in correctional centres be revisited and recalculated in accordance with more recent norms.

REDUCING NUMBERS

Good progress has clearly been made, since the turn of the century, in reducing the overall inmate population. Despite this favourable trend, however, South Africa has one of the highest *per capita* inmate populations in the world, namely 3,5 per 1000 members of the population. This is a strong indication that there are still too many inmates in custody. In addition statistical evidence of the increased length of sentences is set to impact negatively, over the next few years, on the number of inmates in custody and on the expense associated with maintaining the correctional system.

The building of additional prisons is not, in our respectful view, a financially viable option, as demonstrated by the recent erection of the new Kimberley Correctional Centre at an estimated final cost of R820 million for the provision of detention facilities for only some 3000 inmates. The development of acceptable alternatives for direct imprisonment has therefore become imperative and attention must, we believe, be directed to means by which a sustainable reduction in inmate numbers may be achieved. In what follows we attempt to put forward a number of suggestions or recommendations in this regard.

The stage of arrest and early detention

- Far too many people are arrested by members of the South African Police Force (SAPF) on insufficiently justifiable grounds. They are then held in police cells and subsequently detained in correctional centres to await the finalisation of their criminal trials. The period of detention is, on average, some 3 months, on expiry of which the charges against them are frequently withdrawn and they are

released for want of sufficient evidence to sustain a conviction. In a majority of the remaining cases which do indeed proceed to trial, they are held to be not guilty on the preferred charges for lack of sustainable evidence and are accordingly acquitted by the presiding judicial officers.

- The SAPF should, we believe, make greater use of section 56 of the *Criminal Procedure Act* 51 of 1977 by issuing a written notice, rather than a summons in terms of section 54, in order to secure the attendance of an accused person in a magistrate's court.

- In the case of minor or relatively trivial offences more use should be made of the procedure of admission of guilt and payment of a fine without the need for an accused to appear in court as provided in section 57.

- By the same token more frequent use should be made of the procedure of admission of guilt and payment of a fine after an accused person has appeared in court, as provided in section 57A.

- In cases where an accused person is detained pending further investigation of the case against him or her, the primary task of the SAPF investigating officer should be to establish whether there is sufficient evidence to sustain a conviction. Should the investigation not make substantial progress in this regard, the investigator should inform the prosecutor of the lack of progress and the prosecutor in turn should inform the court. If the prosecutor or the court is not persuaded that further investigation is justified, the charges should be withdrawn and the accused released. Alternatively the accused should be released pending further investigation. The further detention of an accused pending what may turn out to be a "fishing expedition" is in direct conflict with his or her right to freedom of movement in terms of section 21 of the Constitution.

The stage of prosecution and trial

- The prosecutor becomes involved at the time the police docket is handed to him or her for purposes of conducting a prosecution. From that moment on there rests a heavy responsibility on the prosecutor to ensure that a fair trial is conducted in terms of section 35(3) of the Constitution and that the rights of an

accused person brought before a criminal court are respected. Only if there is a sufficiently strong case against the accused can the breach of his or her right to freedom of movement be justified.

- Prosecutors should make far more use than currently of the procedure of plea and sentence agreements (also known as "plea-bargaining") in terms of section 105A of the *Criminal Procedure Act*. This should be prosecutor-driven and aimed particularly at the speedy resolution of less serious or "petty" offences. The provisions of the said section are, however, unwieldy and complicated, discouraging prosecutors and courts from making use of this procedure. Such provisions can, for the most part, be included in regulations which, in turn, should be clear and concise with a view to encouraging the use of "plea bargaining".

- We are aware of the fact that prosecutors are usually burdened with an excessive number of cases, making it difficult for them to master the contents of every file they bring to court. We are respectfully of the view, however, that they should be trained to distinguish *prima facie* weak cases from stronger ones and to decline to prosecute (*nolle prosequi*) in the former. Even in ostensibly strong cases the prosecutor should prevail on the court to refuse the further remand of a case where the accused has been awaiting trial for an unreasonably long period of time. This is, of course, always subject to the right of the prosecution to reopen the case at a later stage should further (sustainable) evidence come to the fore.

- Even if a remand should be justified, consideration could, and should, be given to non-custodial alternatives to further detention when an accused appears on the remand date.

- Should an accused not be in a position to pay or to guarantee payment of bail and release on warning is inappropriate, it is respectfully suggested that increased use could, and should, be made of placement under supervision of a probation officer or correctional official in accordance with the provisions of section 62(f) of the *Criminal Procedure Act*.

- A procedure which, sadly, is rarely used is that contained in the provisions of section 63A of the said Act, namely release or amendment of bail conditions of an accused on account of prison conditions. This is probably attributable to the

fact that the provisions of this section, like those of section 105A of the Act discussed above, are lengthy and excessively complicated. It is understandable that heads of centres are reluctant to make use of this procedure even should they, in terms of section 63A(1), be satisfied that the population of the centre "is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused".

- It is our respectful view that courts, when considering an appropriate sentence for a convicted accused, should, in suitable cases, make greater use of alternative, non-custodial sentences such as those contained in section 276(1)(*h*) and (*i*), read with the provisions of section 276A, of the *Criminal Procedure Act*. This provides for the imposition of correctional supervision or the conversion of imprisonment into correctional supervision. A sentence may also be supplemented by ordering the offender to pay compensation to the victim or victims of the offence.

- There is little doubt that minimum-sentence legislation has played a significant role in increasing the number of long-term offenders detained in correctional centres. At the same time it has made serious inroads into the discretion of judicial officers in considering the imposition of an appropriate sentence. We respectfully believe that the time has come for such legislation to be removed from the statute books.

The stage of detention

- Consideration must, we respectfully contend, be given to a more equitable distribution of inmate numbers over all correctional centres by diverting inmates from the most overcrowded centres to other centres which are not overcrowded or are significantly less overcrowded.

- The impact of overcrowding can be mitigated further by limiting the time inmates have to spend in their cells and allowing them to be outside while performing work or rehabilitation activities. No offender should be locked up in a cell for 23 hours per day and deprived of exercise and fresh air.

- Attempts should be made to resolve or alleviate the crises that exist in certain correctional centres by arranging for the allocation of additional resources, human and otherwise, by planning specific interventions to reduce inmate numbers, and the like.
- The efficiency of Parole Boards should be improved and enhanced.
- The current distribution of staff between those performing administrative tasks and those working directly with inmates in correctional centres (centre-based staff) should be revisited.

CONCLUSION

The acceptance and implementation of these suggestions and recommendations should, in our respectful view, result in a further reduction in the number of inmates held in custody, especially those awaiting trial. A reduced inmate population should achieve improved conditions of detention and treatment of inmates whilst bringing down the cost to the taxpayer of maintaining our financially burdened correctional system.

CHAPTER TWO: AUDIT OF CORRECTIONAL PROGRAMMES

INTRODUCTION

Section 36 of the Act describes the objective of the implementation of a sentence of incarceration thus:

With due regard to the fact that the deprivation of liberty serves the purposes of punishment, the implementation of a sentence of incarceration has the objective of enabling the sentenced offender to lead a socially responsible and crime-free life in the future.

For this purpose section 37(1)(a) of the Act provides that every sentenced offender must participate in the relevant assessment process and in the design and implementation of any development plan directed at the achievement of such objective. In addition the offender must, in terms of section 37(1)(b), perform any labour related to a development programme or to one which is generally "designed to foster habits of industry", unless the offender is certified to be physically or mentally unfit to do so.

With a view to enabling offenders to comply with these obligations, section 37(1A) requires that the Department apply a "management regime" consisting of: (a) good and intelligible communication between officials and offenders; (b) team work; (c) direct and interactive supervision of offenders; (d) assessment of offenders; (e) needs-driven programmes contained "in a structured day and correctional sentence plan"; (f) multi-skilled staff deployed in an enabling and resourced environment; (g) a restorative, developmental and human rights approach to offenders; and (h) "delegated authority with clear lines of accountability". In addition section 37(2) requires the regime to meet the "the minimum requirements" of the Act and to "seek to provide amenities which will create an environment in which sentenced offenders will be able to live with dignity and develop the ability to lead a socially responsible and crime-free life".

Section 37(3) envisages that the provision of such amenities may not be feasible in all centres but should nevertheless be introduced partially and on a non-discriminatory

basis. The disciplinary system should, in terms of section 37(4), aim particularly at "promoting self-respect and responsibility" on the part of the offenders concerned.

The nature of the assessment in which sentenced offenders are required to participate is set forth in section 38 of the Act. Section 38(1) provides that they must be assessed as soon as possible after their admission as sentenced offenders in order to determine their security classification for purposes of safe custody and to establish their health, educational, social, psychological, religious and "specific development programme" needs. The work to be allocated to them and their allocation to a specific correctional centre must likewise be determined in considering their "needs regarding reintegration into the community".

As soon as possible after this assessment the case management committee of the centre in question is required, in terms of section 38(1A), to compile a "correctional sentence plan" relating to the future of offenders sentenced to incarceration in excess of two years. This plan must contain the proposed intervention aimed at addressing the risk and needs of the offender with a view to correcting his or her offensive behaviour. It must also spell out the services and programmes required to "target" such behaviour and to help the offender to develop skills "to handle the socio-economic conditions that led to criminality". Similarly it must provide for services and programmes directed at enhancing the social functioning of the offender. In doing so it must set time frames and specify responsibilities to ensure that the intended services and programmes are indeed offered to such offender.

The work or labour envisaged by the aforesaid provisions is dealt with in more detail in section 40 of the Act. In terms of section 40(1)(a) the Department is required, as far as practicable, to provide sufficient work to keep offenders active for a normal working day on the basis that the offender may be compelled to do such work. Section 40(1)(b) requires that the work must, as far as practicable, be directed at furnishing the offender with skills which will enable him or her to be gainfully employed in society after release. In this regard section 40(3)(a) provides that the offender may elect the type of work he or she prefers to perform, provided such choice is practicable and in accordance with an

appropriate vocational programme. Section 40(4) provides for the payment of a gratuity for labour in accordance with conditions prescribed by regulation and in an amount determined by the National Commissioner with the concurrence of the Minister of Finance. It is clearly stipulated in section 40(5) that an offender "may never be instructed or compelled to work as a form of punishment or disciplinary measure".

From the above, it is clearly the intention of the Legislature to involve all sentenced inmates in rehabilitation and work programmes. For this reason, and in fulfilment of its statutory objective, namely to report on conditions in correctional centres and on the treatment of offenders, the Inspectorate conducted an audit of the programmes currently being offered to inmates at various correctional centres throughout South Africa. This chapter provides a comprehensive report on our findings.

AUDIT METHODOLOGY

During the period November 2009 to February 2010 staff of the Inspectorate visited a total of 178 correctional centres, which constituted 74% of all correctional centres. During these visits they performed three tasks, the first being a structured interview conducted with all heads of correctional centres or their delegates, aimed at gathering information about the nature, number and frequency of programmes on offer to inmates. Their second task entailed a physical inspection of infrastructure available at the particular centre for purposes of rehabilitation or work, such as classrooms, workshops, vegetable gardens and the like. Lastly, they conducted unannounced visits at different times of the day, during which visits they physically inspected classrooms, workshops and other facilities, and recorded the programmes on offer at the time and the number of inmates involved in such programmes. Written reports were submitted to the Inspecting Judge after every visit. These reports were analysed using methods of quantitative and qualitative analysis.

SUMMARY OF FINDINGS

Inmates involved in programmes

The findings confirm that on average only between 10% and 15% of sentenced inmates were involved in regular work or rehabilitation programmes. Some correctional centres

performed much better, especially the so-called Public Private Partnership Centres and Youth Centres, where schooling was offered to most inmates.

Of particular concern were the low levels of “production” recorded at most of the prison workshops, which averaged about 30%. Similarly, much of the farming production capacity was under-utilised.

It should be mentioned that the results recorded were affected by the introduction of the so-called two-shift system shortly before the audit was conducted. This system impacted on the availability of staff members in many correctional centres and resulted in the suspension of many programmes offered to inmates until critical staffing needs could be addressed. We have since received reports suggesting that this situation might have improved to some extent.

Resources and infrastructure available

Infrastructure, in the form of classrooms, workshops, sports fields and the like, exist at most of the correctional centres in the country. The quality and quantity thereof, however, varies significantly, with some centres boasting fully equipped schools, gymnasiums, sports fields and production workshops while others have to make do with areas (normally storerooms or cells) converted into classrooms. This lack of uniform infrastructure is problematic, causing serious discrepancies in the quality of programmes available to inmates. Clearly no consistent standards exist.

In this regard it was generally found that existing infrastructure was under-utilised. Many of the workshops and classrooms stood empty whilst expensive equipment depreciated in value without being used. We were told by many of the heads of correctional centres that this was attributable to the so-called “belt-tightening” policy at the time, during which the operational budgets of these workshops were “cut-back” to the point where they could no longer buy even the most basic material to keep the workshops running. The result was a situation where the trainers, inmates and equipment were idle, with no work or training being done.

Another general finding was the reported shortage of human resources in the form of staff required to facilitate programmes and provide training. Major discrepancies were identified in staffing levels from one correctional centre to another. We were also concerned with the manner in which the available human resources were deployed. For example, many of the correctional centres had one or two educationists at their disposal but they were unable to offer schooling on any level higher than Adult Basic Education and Training (ABET) programmes, simply because the schooling curriculum at levels of grade 10 or higher requires more educationists to offer specialised subjects such as mathematics, science and so forth. The pool of available educationists in correctional services is seemingly so diluted that many of them have become ineffective. It would appear more feasible to focus on available resources at certain centres where the necessary infrastructure exists, and then to transfer inmates in need of formal schooling to such centres, as opposed to scattering available educationists throughout the country to the point of their becoming ineffective.

Involvement of Non-Governmental Organisations (NGOs) and Other Role-Players

At 82% of the correctional centres visited we found that various NGOs and other organisations, such as Rotary, NICRO and the like, were involved in training and rehabilitation programmes on offer to inmates. Once again, however, no norms or standards apparently existed for the involvement of these organisations and in most cases their involvement was determined by requests to become involved and by the particular policy or approach followed by the head of the centre concerned. The Inspectorate is in full support of such programmes and the interaction between NGOs and inmates and believes that it forms an integral part of their effective re-integration into society.

CONCLUSION

The Inspectorate plans to conduct a follow-up audit of programmes once the staffing situation in correctional centres has normalised. We are, however, confident that our above-mentioned findings are correct and hold the view that much more should be done by the Department to ensure that all inmates are involved, on a daily basis, in meaningful work, rehabilitation and recreational programmes.

CHAPTER THREE: PREVENTION OF HUMAN RIGHTS VIOLATIONS

INTRODUCTION

One of the primary strategic objectives of the Judicial Inspectorate is the prevention of possible human rights violations directed at detainees held in correctional centres. The means by which this is sought to be achieved is, firstly, by the development of an effective system of "mandatory reporting", in the sense of a statutory obligation resting on the heads of correctional centres to report on all deaths of detainees in correctional centres and on cases of segregation, the use of mechanical restraints and the use of force in regard to detainees. In the second place strong reliance is placed on regular visits to correctional centres by the Inspecting Judge, staff members and Independent Visitors with a view to inspecting the conditions in correctional centres and dealing with the treatment and complaints of detainees, as discussed more fully in chapter four below.

In this chapter the focus will be on the mandatory reporting, in terms of section 15(2) of the Act, of any death occurring in a correctional centre. This has been a major focus area of the Inspectorate during the past two years and will continue to be so until the issues which have arisen in this regard have been satisfactorily addressed. For present purposes the discussion is directed particularly at unnatural deaths which have been a cause of some concern to the Inspectorate in that a number of cases have come to the fore in which there are strong indications that the death might have been preventable had appropriate steps been taken by the correctional officials concerned. This may in fact also be applicable to so-called "natural deaths", which will constitute a separate field of research in the near future.

CLASSIFICATION OF DEATHS AND CONCOMITANT PROCEDURES

In our *Annual Report* of 2008/2009 we expressed the view that the simple classification of a death as arising from "natural" or "unnatural" causes falls short of the constitutional test that prisoners must receive health care which is "adequate" to their circumstances. Immediately on admission to a correctional centre an inmate is obliged to undergo a health assessment which may include testing for contagious and communicable

diseases, both from the perspectives of the individualised treatment required and to prevent the possible spread of contagious airborne disease.

The Inspectorate has found that in a large number of cases awaiting-trial detainees are not assessed on their admission or, in many cases, at any time thereafter, unless they specifically complain of an illness. Although the failure to make the relevant health assessment has generally been excused by the authorities as arising from the "shortage of staff", it not only constitutes a breach of the provisions of section 6(5)(b) of the Act, but creates the obvious risk of the spread of contagious diseases, including varieties of tuberculosis and HIV/AIDS, which our overcrowded centres will inevitably foster in view of the frequently unhygienic conditions that prevail in such centres.

The Department's reporting forms require a certifying medical officer to record the cause of death of a detainee and also any underlying or contributory factors or any pre-existing illnesses suffered by such detainee. Our study of the Department's reporting forms reveals that medical officers certifying a death often fail to complete these forms substantively, be it in respect of any underlying cause of death or any pre-existing medical condition related thereto.

In our respectful view the Department should undertake an audit to ensure that all inmates are assessed on their admission and regularly monitored thereafter. Heads of centres who report deaths to the Inspectorate should also ensure that the designated certifying forms "G362" and "BI-1663", the latter being in support of an application to the Department of Home Affairs for the issue of a death certificate, are fully and properly completed. The information requested on these forms not only records the incident of the death but contains seminal demographic information vital to the Department's internal service evaluation, policy and budgeting processes.

Our proposal that all custodial deaths be subjected to a full medico-legal investigation[2] will enhance an enquiry into a death, thereby providing the Department with valuable information regarding the deceased's medical history, including any possible underlying causes of death. In this way the adequacy of the health care an inmate has received will

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[2] "Medico-legal investigation of death", as defined in Regulation 1 of the regulations promulgated under the *National Health Act* 61 of 2003 (No. R. 636, 20 July 2007), "means the investigation into the circumstances and possible cause of death which is or may have been due to unnatural causes, and includes but which are [sic] not limited to: a) the obtaining of relevant information at the scene of an accident where necessary; b) the performance of a post mortem examination, which may include an autopsy; c) the requesting and performance of special investigations; or d) the liaison with other relevant parties to facilitate the administration of justice;

be addressed and may indeed provide important data which could assist the Department in planning its general health care obligations. It may be useful if a proposal of this nature were tabled by the National Forensic Pathology Service Committee, a body the National Minister of Health is enjoined to establish in terms of section 91(1) of the *National Health Act* 61 of 2003.

Concomitant with our call for medico-legal examinations, the confidence in the Department and general administration of justice, viewed holistically, will be equally enhanced if the *Inquests Act* 58 of 1959 should be amended to include deaths certified as arising from natural causes, where such deaths occur in our correctional centres. A judicial officer holding an inquest, preferably in public, will allow the deceased's family and other parties with a substantial and peculiar interest in the death of the deceased to make representations and participate in such a hearing so that a full ventilation of the relevant evidence can ensue. This will not only be in the interests of justice and public health in general, but will also serve to benefit the family and next-of-kin of the deceased.

REPORTING OF DEATHS – NOT JUST AN ADMINISTRATIVE TASK

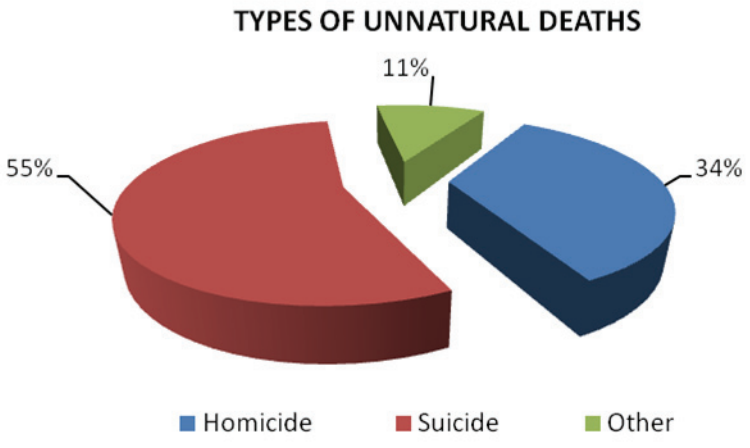
The provisions of section 15(2) of the Act require a head of centre not only to report the incident relating to the death of an inmate, but to classify or categorise it, to provide adequate medical reasons for it and to comment on the facts and circumstances surrounding it. For the Inspecting Judge to decide whether or not to conduct an enquiry into such death, or to instruct the National Commissioner to do so, it is incumbent on the heads of centre in question to provide, for such purpose, sufficient information regarding the death. The practice hitherto has been the production of reports which seldom provide even a *prima facie* view of the relevant facts and circumstances. It would appear that heads of centres generally delegate this task to administrative staff with little or no experience in or insight into the investigation of such deaths, and who treat the investigation and report as a purely administrative function. In this regard the Inspectorate has requested heads of centre to furnish, at the very least, sufficient information for purposes of an appropriate enquiry. It is suggested that the Department instruct its heads of centre to treat the initial reporting of a death in the centre under their control as vital and essential for purposes of an exhaustive enquiry.

UNNATURAL DEATHS

With a view to facilitating the discussion of "unnatural" deaths we have tabulated (see appendix) all deaths which in our view would better be classified as "homicides" or "suicides" or, where undetermined or undeterminable by a pathologist, as "unnatural" or "unknown". Fifty-five such deaths occurred in the period 1 January 2009 to 31 December 2009. Early in 2010 the Inspectorate provided the Department with a schedule of all deaths reported by the Department as "unnatural". During the process of reconciliation the Department confirmed the Inspectorate's record after it had appeared that there were discrepancies between the statistics of the Department and those of heads of centres as reported to the Inspectorate. This might have been attributable to poor communication among the relevant components of the Department and suggests that the Department should strengthen its internal audit and service evaluation processes. The statistical information preserved on the Inspectorate's data-base, in our view, represents a fair and accurate reflection of the number and nature of, and circumstances pertaining to, all unnatural deaths occurring in correctional centres during 2009. Our strategic objective, to collect accurate, reliable and up-to-date information regarding the conditions in correctional centres and the treatment of detainees, has been incrementally advanced during this period and we plan to place still greater emphasis on such objective in the immediate future.

TYPES OF UNNATURAL DEATHS

The graphics below show that the majority of "unnatural deaths" were occasioned by inmate suicides (30), followed by homicides (19) and unknown and/or other causes (6).



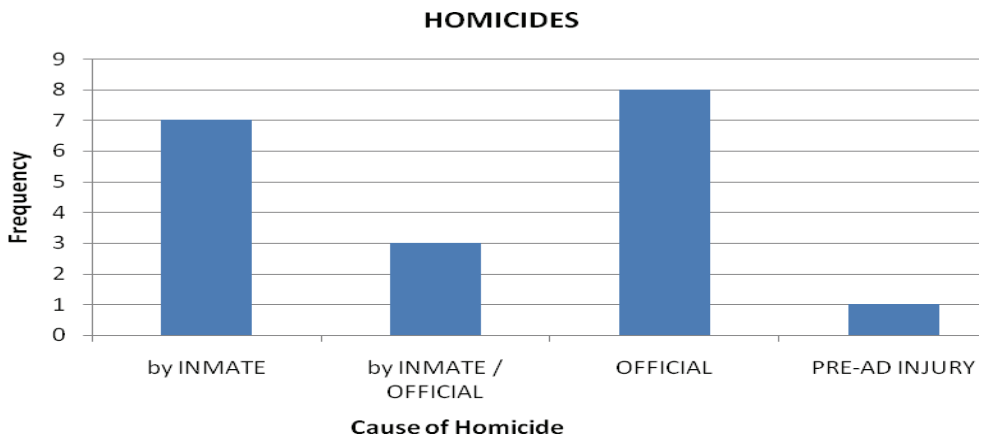
SUICIDES

Of the 30 suicides the majority (21) were occasioned by an inmate hanging him- or herself. Of particular concern are the cases where the inmates chose to hang themselves during the period between evening lock-up and morning un-lock. In some cases inmates had previous histories of attempts to take their own lives and in others the duty of vigilance by officials appeared to be lacking. Custody officials appeared to approach their shifts with little, if any, pre-briefing on inmates who were potentially suicidal or required particular attention.

Those cases in which inmates committed suicide by hanging, taking an overdose of drugs or setting their cells alight attests to the fact that closer supervision of inmates at risk is called for, particularly when they are segregated in single cells.

HOMICIDES

The incidence of officials involved in the deaths of inmates raises serious concerns. Officials appear to have been involved in acts of violence against inmates who are alleged to have assaulted an official or other inmates. Preliminary reports indicate that these actions often constitute a form of revenge in response to an attack on an official. This might be the result of a lack of effective disciplinary measures at the disposal of correctional officials to maintain security and good order, as required by section 4(2)(b) of the Act. Swift criminal prosecution should, in appropriate cases, ensue, particularly where the level of violence constitutes cruel and inhuman treatment of inmates, if not acts of torture. Our reading of the reports, however, indicates recalcitrance on the part of authorities to take decisive action against correctional officials involved in such cases. Unless this is done the confidence of stakeholders in the Department's ability to reduce acts of violence and to protect the most vulnerable under their care, will remain at a low ebb. The creation of a culture of impunity must be avoided at all costs.



NATURAL DEATHS

In addition to the 55 “unnatural deaths” reported to the Inspectorate, another 992 reports of so-called “natural” deaths were received. These reports are dealt with at the outset by requesting the Independent Visitor deployed at the correctional centre in question to visit such centre and gather such information as may be required to confirm the facts of and circumstances surrounding the death as reflected in the initial report received from the head of the centre. Independent Visitors are additionally required to acquire a copy of the relevant death certificate and to interview fellow-inmates of the deceased with a view to exposing any further relevant aspects concerning the death and recording any suspicions of possible foul play. Once this has been done the Independent Visitor compiles a report, supported by a copy of the death certificate and the relevant G362 form, and forwards it to the Legal Services Unit of the Inspectorate. These reports are then perused by appropriately qualified persons who report to the Inspecting Judge and recommend, as the case may be, that the case be closed or that further investigation take place. This will occur, for example, when there is a *prima facie* indication that the death should be reclassified as “unnatural”, in which event the case is then subjected to a full investigation. Finally, all relevant information concerning incidents of death in correctional centres are filed and electronically recorded on a data-base created for this purpose. In this way the Inspectorate ensures that proper records are kept.

Unfortunately, mainly due to the fact that many death certificates and supporting documentation relating to “natural” deaths in 2009 have not yet been received by the Inspectorate, we are unable, at this point in time, to make a final assessment of the circumstances under which these deaths have occurred. With a view to addressing this situation, however, we have taken steps to enhance and considerably improve our internal administrative procedures in order to ensure that a full analysis of all deaths, natural and unnatural, will be possible for the current year.

SOLITARY CONFINEMENTS

Section 25 of the Act, which provided for the placement of inmates in solitary confinement, has been repealed by the *Correctional Services Amendment Act* 25 of 2008 (the Amendment Act), thereby doing away with the concept of solitary confinement in South African correctional centres as from 1 October 2009, when the amendment came into effect. For the period 1 January 2009 to 1 October 2009 the Inspectorate

received a total of 103 reports from heads of centres regarding solitary confinement. Another 62 reports were received after the repeal of section 25, indicating that those heads of centres were, at the time, not yet aware of the amendment in question.

SEGREGATIONS

Although solitary confinement as a penalty no longer exists, the segregation of inmates in terms of section 30 of the Act remains under circumstances which include "to give effect to the penalty of the restriction of amenities imposed in terms of section 24(3)(c), (5)(c) or 5(d) to the extent necessary to achieve this objective". The inmate who has thus been segregated still has the right, in terms of section 30(7), to refer the matter to the Inspecting Judge who is required to make a decision, confirming or setting aside the segregation, within 72 hours. .

During the year 2009, a total of 5558 reports on segregation were received from heads of centres. Our reading of these reports indicates that in most cases the segregations were at own request of the inmates, followed by segregations of inmates who displayed violence or were threatened with violence.

Of some concern in this regard was the generally poor level of compliance with the provisions of section 30(6) of the Act, which requires that the head of centre must report all cases of segregation and extended segregation to the Inspecting Judge. A further concern is that, in many cases, segregated inmates do not have their health assessed by a registered nurse, psychologist or correctional medical practitioner at least once a day, as required by section 30(2)(a)(ii) of the Act. There appears to be similar non-compliance with such section, and with the provisions of section 30(5) of the Act, when the period of segregation is extended without reporting it to the Inspecting Judge and without a correctional medical practitioner or psychologist certifying that such extension would not be harmful to the health of the inmate.

MECHANICAL RESTRAINTS

In terms of section 31(3)(d) of the Act all cases of the use of mechanical restraints, such as handcuffs and leg-irons directed at limiting or preventing the inmate's freedom of physical movement, must be reported immediately by the head of the correctional centre to the Inspecting Judge.

During the year 2009 only 57 reports were received from heads of centres on the use of mechanical restraints, which is an indication of the general disregard by many heads of centres of their statutory responsibility in this regard. As a result the Inspectorate is unable to provide any meaningful report about the use of mechanical restraints by the Department. Suffice it to say that we are deeply disturbed by media reports of sick inmates, some terminally ill, who are allegedly cuffed to their beds simply because they pose a security risk.

USE OF FORCE

Section 32 of the Act which governs the lawful use of force by correctional officials in detaining inmates in safe custody was amended by the insertion of subsection (6). This requires that all instances of the use of force in terms of subsections (2) and (3) be reported immediately to the Inspecting Judge. Subsection (2) allows the use of force only when it is authorised by the head of centre, unless a correctional official reasonably believes that the head of centre would so authorise and the delay in obtaining such authorisation would defeat the object. If an official has, in terms of subsection (3), unsuccessfully solicited authorisation and used force without prior permission, such official must report the action taken to the head of centre as soon as reasonably possible.

Despite the fact that instances of the unlawful use of force by correctional officials appear to be common practice within many of our correctional centres, only three reports relating thereto were received by our Office during 2009. The Inspectorate simply does not have the resources to monitor and enforce compliance with such statutory obligations and urgently appeals to the Department to ensure that there is such compliance. .

CHAPTER FOUR: DEALING WITH INMATE COMPLAINTS

INTRODUCTION

The Judicial Inspectorate has been mandated by the Legislature to deal with complaints of inmates. Section 90 deals generally with the powers, functions and duties of the Inspecting Judge and section 90(2) provides specifically that he or she may receive and deal only with complaints submitted by the National Council, the Minister, the National Commissioner, a Visitor's Committee and, "in cases of emergency", an Independent Visitor. Alternatively the Inspecting Judge "may of his or her own volition deal with any complaint".

The major role players in executing the complaints-procedure in correctional centres are the Independent Visitors, who are currently still appointed by the Inspecting Judge. Their powers, functions and duties are set forth in section 93 of the Act. Section 93(1) requires them to deal with the complaints of inmates by making regular visits to correctional centres, interviewing inmates privately, recording their complaints in an official diary, monitoring the manner in which the complaints have been dealt with and discussing such complaints with the head of the correctional centre or the relevant subordinate correctional official with a view to resolving the relevant issues internally.

Both sections 90(2) and 93(1) refer to the power of the Inspecting Judge and Independent Visitors respectively to deal with the complaints of inmates, thereby placing a clear responsibility on the Inspectorate to carry out this function. The Act does not, however, define or elaborate on the meaning of "dealing with complaints" and it has, thus far, been common cause amongst all role players that the Inspectorate is a reporting body only with no disciplinary powers in respect of any correctional officials or inmates. In dealing with complaints it has, therefore, limited its involvement to ensuring: (a) that every inmate is afforded the opportunity to voice complaints of any nature; (b) that each such complaint is duly recorded in the relevant official complaint registers; and (c) that reasonable steps are taken by the Department to resolve such complaint internally. If the complaint remains unresolved it is referred to the Visitors' Committee with a view to considering its resolution in terms of section 94(3)(a). If it cannot be

resolved it is then reported to the Inspecting Judge who generally refers the matter to higher authority within the Department for purposes of eliciting support or intervention to resolve the complaint.

This method of dealing with complaints has had some good results, most notably the increased recording of complaints in official registers and hence the creation of better and more complete records relating to the nature and number of complaints received. It has also given rise to increased levels of community involvement in the oversight and monitoring function of Independent Visitors when executing their function to ensure that inmate complaints are dealt with.

On the negative side this method has added little value to the efforts of the Inspectorate to reduce the number of human rights violations regularly occurring in correctional centres and to act against the perpetrators of such violations. It has likewise not reduced the number of successful cases brought against the Department for the alleged breach of the rights of inmates or detainees. In many cases it has simply created a bureaucratic procedure of "recycling" complaints. This has been exacerbated by the recent amendment of the provisions of section 21 of the Act relating to complaints and requests. The fact that inmates approach Independent Visitors on an almost daily basis with complaints, often of a serious nature, only to find that many of these complaints remain unresolved, is seriously eroding the standing and legitimacy that Independent Visitors enjoy amongst inmates.

It is against this background that the Inspectorate recommends that its power to deal with complaints of inmates be revised and that clarity be provided on the manner in which it should dispose of such complaints.

ROLE OF INDEPENDENT VISITORS

Section 92(1) of the Act, as amended by section 66 of the Amendment Act 25 of 2008, came into operation on 1 October 2009 and provides that the Chief Executive Officer (CEO) must, at the request of and in consultation with the Inspecting Judge, appoint an Independent Visitor for each correctional centre. This must be done "as soon as

practicable, after publicly calling for nominations and consulting with community organisations". Inasmuch as the creation of the post of CEO has not yet been finalised and no appointment has hitherto been made, the Inspecting Judge has continued to appoint Independent Visitors. The requirement that an Independent Visitor must be appointed for each (as opposed to "any") correctional centre, has had the effect that the number of Independent Visitors has increased substantially, bringing the total number of posts to 280 and the current number of incumbents to 220, deployed as per table 2.

Table 2: ICCV Posts

Province	Number of ICCV's
Eastern Cape	32
Gauteng	36
Kwazulu – Natal	39
Mpumalanga	13
Limpopo	10
North West	19
Northern Cape	8
Free State	30
Western Cape	33
TOTAL:	**220**

Each Independent Visitor is required, upon appointment, to sign a service agreement stipulating, *inter alia*, the number and duration of visits to be made to a particular correctional centre and the minimum number of inmates to be interviewed. The work of every Independent Visitor is subjected to a full performance audit at least once per quarter. During the year 2009 the Independent Visitors collectively recorded 8 346 visits to the 239 operational correctional centres, during which visits they collectively conducted private consultations with 78 883 inmates. All visits are recorded in the "official visitor's registers" (G366) which are kept at every correctional centre and are verified on a monthly basis. Independent Visitors submit monthly reports to the Inspecting Judge, listing the number and duration of visits, the number of inmates interviewed and the number and nature of inmate complaints received. Table 3 provides a breakdown of the number and nature of complaints received from inmates for the year 2009.

Consistently with the two previous years, the main category of complaints received from inmates during 2009 remained transfers from one correctional centre to another. This was followed, as in previous years, by complaints regarding communication with families and problems experienced with bail, health care and legal representation. This continued trend in the nature of recorded complaints is indicative of the lack of progress made in adequately addressing the underlying issues. In the 2008/2009 *Annual Report* (p 36) it was reported that many inmates are apparently transferred to correctional centres away from their families as a form of punishment for alleged transgressions. Regrettably this remained a major complaint during 2009.

Table 3: Number and nature of inmate complaints received.

COMPLAINTS	2009
Appeal	**15,057**
Assault (Inmate on Inmate)	**3,756**
Assault (Member on Inmate)	**2,189**
Bail	**25,828**
Communication with Families	**29,931**
Conditions	**11,402**
Confiscation of Possessions	**1,884**
Conversion of sentences	**2,216**
Corruption	**691**
Food	**9,015**
Health Care	**22,053**
Inhumane Treatment	**4,929**
Legal representation	**20,234**
Medical Release	**748**
Parole	**15,912**
Rehabilitation programmes	**17,762**
Remission of sentence	**477**
Transfers	**33,224**
Other	**59,328**
All Complaints	**276,636**

INSPECTIONS OF CORRECTIONAL CENTRES BY THE INSPECTING JUDGE

In addition to the inspections conducted by Independent Visitors and other members of staff of the Inspectorate, the Inspecting Judge also during 2009 visited a number of correctional centres for the purpose of conducting inspections into the treatment of inmates and the conditions prevailing at such centres. They included the Rustenburg Juvenile Centre of Excellence, Kutama-Sinthumule (Public-Private-Partnership Centre), Makhado, Thohoyandou (Male and Female Centres), Tzaneen, Brandvlei Maximum and Juvenile Centres, Grootvlei, Pollsmoor, Baviaanspoort Maximum and Juvenile Centres, Leeuwkop Juvenile Centre, Kimberley New Centre.

During these visits the Inspecting Judge met with the local management of the respective centres, during which he was briefed in some detail regarding the conditions pertaining at such centres and the treatment of inmates. He also visited the kitchens, hospitals, workshops, school facilities (if provided for) and the communal and single cell accommodation at each of these centres. Table 4 below lists some of the findings and recommendations made subsequent to these visits.

Table 4: Findings and recommendations made by the Inspecting Judge.

Findings	**Recommendations**
1) The implementation of the so-called two shift system has had a negative effect on staffing at operational levels within most correctional centres which in turn has affected the treatment of inmates in that recreational and rehabilitative programmes have been suspended.	The shift system and a far more equitable distribution of members of staff involved in administration *versus* direct supervision of inmates should be reconsidered.
2) Detention of unsentenced girls (aged 18 to 21) in a “converted” storeroom at Thohoyando was found to be inhumane especially given the tropical climate in the area.	An application for the release of those with bail (in terms of section 63A of the CPA) and the finding of more suitable alternative accommodation.
3) The corrugated cells in use at Makhado Correctional Centre were found to be in a poor state of repair and infected with cockroaches. These conditions pose a health and security risk and are inhumane.	The immediate closure of the corrugated cell accommodation and the speedy replacement thereof with permanent cell accommodation.

4) The periodic unavailability of fresh water at the correctional centres at Makhado, Kutama Sinthumule and Thohoyando causes a health risk to inmates.	Means should be investigated on ways to secure a sustainable supply of water.
5) The transfer of children, due to overcrowding at the adult centre, from the so-called B5 section at Pollsmoor to the G section caused various disruptions to the programmes offered to the children and various complaints were received from stakeholders about the negative effect this had on the children.	That the children be moved back to B5 section.
6) The detention of inmates who require specialised medical treatment for mental disorders at correctional centres which were unable to provide such treatment.	Alternative arrangements for treatment should be made in respect of such inmates
7) The emergency repair or replacement of the "boiler" system providing the Rustenburg Correctional Centre with steam for cooking and hot water for washing. The system had been broken for some 18 months.	The immediate repair of the boilers.
8) Children being kept at the Rustenburg Correctional Centre for adults whilst ample space is available to keep them in the Youth Centre only a short distance away.	The immediate transfer of the children to the youth centre and a moratorium being placed on the admission of children at the adult centre.
9) The ablution block at the Rustenburg Youth Centre was in a poor state of repair and necessitated urgent repairs and improved supervision.	The urgent repair of the ablutions block.
10) The assault of inmates, some physically disabled, at Pollsmoor on 4 January 2009 by correctional officials and the unilateral transfer of some of these inmates to areas far from their families and other support structures.	The matter should be investigated and the affected inmates transferred back to Pollsmoor until the investigation is finalised.
11) The under-utilisation of training and production workshops at Rustenburg, Boksburg and Thohoyandou Correctional Centres reportedly due to a lack of funds to purchase raw materials.	Steps to be taken to maximise the use of such workshops.
12) Inmates at Leeuwkop Correctional Centre on hunger strikes arising from the uncertainty that exists regarding the manner in which parole dates are determined and in particular	Certainty about this is required and such information must be placed at the disposal of all inmates.

the discrepancies that exist as a result of the "old" and "new" qualifying criteria	
13) The unavailability of pharmaceutical services at the Brandvlei Correctional Centre has caused regular delays in the issue of medication to inmates, many of whom suffer from chronic conditions.	Such pharmaceutical services should be made available.
14) The detention of a large number of foreign nationals at the Leeuwkop Correctional Centre prior to their being transferred to the "Lindelela holding facility" under the control of the Department of Home Affairs. The centre is poorly equipped to deal with such foreign nationals	Alternative arrangements should be made.
15) At the Leeuwkop Youth Centre necessary kitchen equipment such as frying ovens were not used because it had not been connected to the power supply, despite the fact that such equipment had been procured and delivered some months before.	The equipment should be connected to the power source and put to use without delay.
16) At the Baviaanspoort Youth Centre the automated doors and security equipment were not operational due to a lack of maintenance. Furthermore the "state of the art" hospital facilities which had been built at considerable expense to the taxpayer were not being used.	Repairs should be carried out urgently and the equipment properly maintained. The hospital facilities should be put to use without delay.
17) Intercoms at various visitation areas were broken and caused much frustration to inmates and their visitors.	The necessary repairs should be done.

All these problems were reported on in compliance with section 90(3) of the Act shortly after the said visits.

CHAPTER FIVE: COMMUNITY INVOLVEMENT

INTRODUCTION

The Judicial Inspectorate promotes, as one of its strategic objectives, "the community's interest and involvement in correctional matters". This is achieved by means of: (a) the appointment of Independent Visitors from the ranks of the communities; (b) the establishment of Visitors' Committees in all areas; and (c) the regular involvement of the Inspecting Judge and staff at various forums, conferences, workshops and the like.

INDEPENDENT VISITORS

The appointment of Independent Visitors in terms of section 92(1) of the Act is preceded by a process aimed at publicly calling for nominations and consultation with community organisations. So-called stakeholders' and nomination meetings are held to which Non-Governmental Organisations (NGOs), Community-Based Organisations (CBOs) and religious organisations or individuals who perform community work in that particular area or at that particular correctional centre are invited. The powers, functions and duties of Independent Visitors are then explained to the persons attending the meeting and nomination forms are made available with a view to their nominating persons as Independent Visitors. A proven track record of community involvement is a strong recommendation when nominations of potential Independent Visitors are considered, in that it ensures continued community involvement by the successful candidates.

In this regard way reference may be made to the Inspectorate's recently revised Policy Directive pertaining to the process of "Calling for Nominations", where it is stated that the Inspectorate "wishes to promote greater community involvement in the process of appointing Independent Visitors" with a view to providing "prison oversight for the community by the community". This has attracted a diverse group of interested persons, including social workers, lawyers, educationists, religious leaders and even persons with a criminal record. With their passion, skills and experience they have proved to be great assets to the Inspectorate, which is particularly dependent on a strong team of Independent Visitors drawn from the community to assist in its oversight functions.

It is also important to note that Independent Visitors are not appointed as employees as defined in section 213 of the *Labour Relations Act* 66 of 1995 (as amended). They are in fact appointed as "independent contractors" and therefore function differently from and independently of correctional service employees. They are encouraged to continue with community activities or projects conducted by their community organisations for the duration of their term of office as Independent Visitors. Chapters four and seven of this report provide further information on the number of Independent Visitors, their deployment and their performance during the 2009/2010 financial year.

VISITORS' COMMITTEES

Section 94(1) of the Act provides that the Inspecting Judge may, where appropriate, establish a Visitors' Committee for a particular area consisting of the Independent Visitors appointed to correctional centres in such area. There are presently 28 Visitors' Committees which have been established as per table 5 below;

Southern Region	Northern Region
Goedemoed/ Aliwal North	Groenpunt/ Vereeniging
Umtata	Boksburg/ Modderbee
Cape Peninsula	Krugersdorp/ Leeuwkop
Boland	Makado/ Thoyandou
Breede Valley	Pietermaritzburg
Kimberley	Nelspruit
Kroonstad	Waterval/ Ncome
Grootvlei	Johannesburg
Middelburg (Eastern Cape)	Ermelo
East London	Pretoria
Port Elizabeth	Rooigrond
Bethlehem	Empangeni
Kokstad	Durban
Southern Cape	Rustenburg

The Chairpersons of the Visitors' Committees are elected by the members of that committee and hold office for 12 months, on the expiry of which they may be re-elected for one consecutive term. During their term of office chairpersons are required to chair all meetings, to verify payments to Independent Visitors, to coordinate the efforts of

Independent Visitors aimed at resolving outstanding inmate complaints and to submit monthly status reports to the Inspecting Judge. As a stimulus for their continued community involvement they are also encouraged to attend and participate in local Community Police Forum Meetings. Currently 16 of the 28 Chairpersons (57%) are indeed members of their respective Community Police Forums.

The functions of a Visitors' Committee are set forth in section 94(3) of the Act, namely: (a) to consider unresolved complaints with a view to their resolution; (b) to submit to the Inspecting Judge those complaints which the Committee cannot resolve; (c) to organise a schedule of visits; (d) to extend and promote the community's involvement in correctional matters; and (e) to submit minutes of meetings to the Inspecting Judge. All such meetings are attended by staff of the Judicial Inspectorate and usually also by a representative of the Area Commissioner of Correctional Services appointed for the area in question. Record is kept at the Judicial Inspectorate of the minutes of all Visitors' Committee Meetings.

PARTNERSHIP WITH OTHER ROLE PLAYERS

It is generally accepted that the challenges faced by correctional services today are caused by events and circumstances which fall beyond the scope of their statutory powers. The impact of poverty, unemployment, lack of education and crime are but some examples. Inasmuch as many of these challenges cannot be addressed in isolation the Judicial Inspectorate remains actively involved with as many as possible role players with a view to effecting and influencing changes wherever possible.

The Judicial Inspectorate has, during the 2009/2010 financial year, continued with its involvement in the forums, seminars, conferences, meetings and other forms of interaction initiated or presented by the following role-players:

- Parliamentary Portfolio Committee on Correctional Services
- National Prosecuting Authority: Provincial Stakeholders
- Provincial Integrated Case Flow Management
- National Initiative/ Forum to Address Overcrowding

- South African Human Rights Commission's Section 5 Committee on the implementation of the Optional Protocol on the Prevention of Torture (OPCAT)
- Provincial Lower Court Case Flow Management
- National Institute for Crime Prevention and the Reintegration of Offenders (NICRO)
- Civil Society Prison Reform Initiative (CSPRI)
- Institute for Security Studies (ISS)
- Open Society Foundation for South Africa (OSF-SA)
- Centre for the Study of Violence and Reconciliation (CSVR)
- Child Justice Forum
- Khulisa
- Helen Suzman Foundation
- President's Awards
- International Penal and Penitentiary Foundation (IPPF)
- International Corrections and Prisons Association (ICPA)
- Just Detention International (JDI)
- Association for the Prevention of Torture (APT)
- International Centre for Prison Studies (ICPS)
- International Commission for Catholic Prison Pastoral Care (ICCPPC)
- Various universities and academic institutions, both local and International

Our interaction with these organisations over a considerable period of time has left us with the unmistakable impression that they serve as major role players and stakeholders in the world of correctional services. We have much to share with them and even more to learn from them.

THE JUDICIARY AS A ROLE PLAYER

Visits by Judges of the Superior Courts to correctional centres throughout the country continue to add considerable value to the work of the Inspectorate. They also contribute to a better understanding amongst members of the Judiciary regarding the running of correctional centres and the problems and challenges faced by heads of correctional centres on an almost daily basis. Although tempted to single out those Judges who visit correctional centres regularly and who kindly furnish their reports to the Inspectorate, I believe it will suffice to mention that the number of reports received from Judges during the financial year under consideration has substantially increased. This indicates a greater interest and involvement in correctional matters by members of the Judiciary and has been of immeasurable assistance in identifying the root causes of systemic problems within our correctional centres. We once again express our sincere appreciation to those members of the Judiciary who have become proactively involved in the correctional environment and have favoured us with their insights and recommendations. By the same token we call upon other members of the Judiciary, both from the Superior and Lower Courts, to exercise their right of access to correctional centres in terms of sections 99(1) and (2) of the Act and, if possible, to furnish us with their reports or copies thereof.

THE PARLIAMENTARY PORTFOLIO COMMITTEE ON CORRECTIONAL SERVICES

May we finally convey our sincere gratitude to those members of the Parliamentary Portfolio Committee on Correctional Services who have once again demonstrated their total commitment to correctional and community matters by paying regular visits to correctional centres and by referring matters for investigation to this Office. Your oversight and monitoring skills have proved to be of great value to the Inspectorate and have served to inform and guide it in the execution of its frequently complex functions.

CHAPTER SIX: THE IMPACT OF OPCAT

INTRODUCTION

The South African government signed the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) during October 2008. The Department of Justice is reportedly in the process of preparing the necessary submissions to Parliament for the ratification of such international protocol. Ratification will undoubtedly impact on the work performed by the Judicial Inspectorate in that OPCAT obliges the State to set up so-called national preventive mechanisms which will be required to visit all places of detention, including correctional centres. This constitutes a direct overlap with or duplication of the work currently performed by the Judicial Inspectorate and will inevitably raise questions concerning cost-effectiveness, cooperation and a possible conflict of mandates.

The present chapter focuses on the impact that the ratification of OPCAT may have on correctional centres and more specifically on the work currently performed by the Inspectorate. This is important because the vast majority of detainees in South Africa affected thereby are detained in correctional centres. This includes awaiting-trial detainees and those detained in privately operated correctional centres.

The Inspectorate is mindful of the fact that the decision to ratify OPCAT remains a political decision. In an attempt, however, to contribute to the knowledge-base and current debates on the subject, it has made an analysis directed, firstly, at the obligations of States Parties as stipulated in OPCAT[3] and, secondly, at a comparison of such obligations with those contained in current legislation and practices already existing within the South African correctional system.

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[3] Places of detention are broadly defined by OPCAT and should include: police stations; security force stations, all pre-trial centres; remand prisons; prisons for sentenced persons; centres for juveniles; immigration centres; transit zones at international ports; centres for detained asylum seekers; psychiatric institutions and places of administrative detention.

OBJECTIVES OF OPCAT

After reaffirming, in its preamble, that torture and other cruel, inhuman or degrading treatment or punishment are prohibited in that they constitute serious violations of human rights and require effective measures to achieve the purposes of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), Part I of OPCAT sets out four key objectives in a series of general principles contained in articles 1 to 4 thereof, namely:

- The establishment of a system of regular visits undertaken by independent international and national bodies to places of detention, where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment[4].

- The creation of a new international body, known as the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture[5] (Subcommittee on Prevention), which is required to carry out the functions set forth in OPCAT within the framework of the Charter of the United Nations and guided by its purposes, principles and norms, including the principles of confidentiality, impartiality, non-selectivity, universality and objectivity; this body is required to cooperate with States Parties in the implementation of OPCAT.

- The establishment, designation and maintenance by each State Party, at domestic level, of a national preventive mechanism in the form of one or more visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.[6]

- Execution by each State Party of the obligation to allow visits, in accordance with OPCAT and by means of the mechanisms referred to above, to all places of detention under its jurisdiction and control, be it by virtue of an order given by, or

[4] OPCAT, Article 1.

[5] OPCAT, Article 2.

[6] OPCAT, Article 3.

at the instigation of, a public authority, or with its consent or acquiescence; such visits are required to be undertaken with a view to strengthening, if necessary, the protection of detainees against torture and other cruel, inhuman or degrading treatment or punishment.

OBJECTIVES OF THE JUDICIAL INSPECTORATE

The Judicial Inspectorate was established in terms of the provisions of section 85 of the *Correctional Services Act* 111 of 1998 (as amended) (the Act), which provides:

(1) The Judicial Inspectorate for Correctional Services is an independent office under the control of the Inspecting Judge.

(2) The object of the Judicial Inspectorate for Correctional Services 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.

From its statutory mandate three aspects need to be emphasised. In the first place, the Inspectorate is an independent statutory body and not an extension or arm of the Department of Correctional Services. Secondly, the Inspectorate is an investigating and reporting authority which does not have any judicial power to enforce any of its findings or recommendations and likewise does not have disciplinary powers in respect of correctional officials or inmates. In the third place, the area of jurisdiction of the Inspectorate is confined to correctional centres and does not extend to any other places of detention such as police stations, court cells or immigration centres.

The establishment of the Inspectorate must furthermore be viewed against the background of the Act as a whole, which provides for the introduction of radical and far-reaching changes in our correctional system and seeks to give effect to the Bill of Rights in the Constitution, Act 108 of 1996, in particular those provisions dealing with the rights of or otherwise pertaining to detainees[7]. For example, in Chapter III of the Act provision is made for the custody of all inmates under conditions of human dignity, while Chapter

[7] Inaugural Annual Report: Judicial Inspectorate of Prisons: 31 March 2000

IV provides for an enlightened policy of implementation of sentences of incarceration with the objective of enabling sentenced offenders to lead socially responsible and crime-free lives in the future.

The work of the Inspectorate is supported by a system of Independent Visitors, who are currently appointed by the Inspecting Judge after following a process of publicly calling for nominations and consulting with community organisations. The work of Independent Visitors is primarily to deal with complaints of inmates by regular visits to correctional centres and by interviewing inmates[8].

The legislative establishment of the Inspectorate confirms the acceptance by the South African Parliament of the fact that a system of visits by an independent body to places of detention is an effective method of preventing torture and other cruel, inhuman or degrading treatment or punishment. Its continued existence after more than twelve years indicates that it has been successful in carrying out this function and, indeed, any number of other functions entrusted to it. .

THE CONSEQUENCES OF RATIFYING OPCAT

Within one year of ratifying OPCAT each State Party, will be obliged to maintain, designate or establish one or more national preventive mechanisms for the prevention of torture at domestic level[9]. This obligation should not pose any problem for South Africa since a number of preventive mechanisms are already well-established and in place, such as the Judicial Inspectorate, the South African Human Rights Commission, the Public Protector and the Independent Complaints Directorate.

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[8] Sections 92 and 93 of the Act.

[9] OPCAT, Article 17. On the obligations specifically listed in this regard see the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention (Inter-American Institute of Human Rights 2004).

Each State Party is required to guarantee "the functional independence" of the national preventive mechanisms as well as the independence of their personnel. Experts appointed to such mechanisms must have the "required capabilities and professional knowledge" to function adequately. In addition the mechanisms must be gender-balanced and representative of ethnic and minority groups. In establishing such mechanisms the State Party must give due consideration to the principles relating to the status of national institutions for the promotion and protection of human rights and is required to make available the necessary resources for the proper functioning thereof.[10]

The mechanisms must have the power to make regular visits to places of detention with a view to investigating the treatment of detainees and, if necessary, strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. In this regard they must have the power to make recommendations in this regard with a view to improving the treatment and conditions of detainees[11]

The relevant State Party is obliged to empower the national preventive mechanisms to fulfil their mandate by granting them access to all information concerning the identity and number of detainees and the location of their places of detention. They must be given access to all such places of detention and also to their facilities and installations. They must likewise be given access to information regarding the treatment of detainees and the conditions of their detention. This includes the opportunity to have private interviews with detainees or any other person whom they believe may supply relevant information.[12]

These rights and powers are significantly similar to those of the Judicial Inspectorate and its Independent Visitors, who are obliged to visit correctional centres regularly and to conduct private interviews with detainees with a view to establishing whether they have

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[10] OPCAT, Article 18.

[11] OPCAT, Articles 1 and 19.

[12] OPCAT, Article 20.

any complaints relating to their treatment and the conditions of their detention[13]. During the year 2009, the average number of Independent Visitors appointed in South Africa was 220. Collectively, they recorded 8 346 visits to the 239 operational correctional centres during which visits they conducted private consultations with 78 883 detainees and recorded a total of 276 636 complaints. It is also significant that the Inspectorate has a similar approach to the appointment of staff, who are particularly well balanced gender-wise and representative of ethnic and minority groups in the country. When it is necessary to appoint a special assistant for purposes of an investigation or research, such person must be an expert with the required capabilities and professional knowledge.[14]

In terms of section 90(3) of the Act, the Inspecting Judge must submit a report on each inspection to the Minister and to the relevant Parliamentary Committees on Correctional Services. These reports may, depending on the circumstances and the nature of the report, contain recommendations on how to improve the conditions in prisons and the treatment of prisoners in prison. Section 90(4) provides that the Inspecting Judge must also submit an Annual Report to the President and the Minister, which Report must be tabled in Parliament.

In this regard it must be mentioned that the work of the Inspectorate is limited to correctional centres and that, although the majority of persons in detention are held in such centres, totaling 163 349, many more are held in police cells, immigration centres, juvenile places of safety, psychiatric institutions and the like. Accurate figures of the number of people held in such places of detention were not readily available, particularly when it is borne in mind that there are 1112 operational police stations in South Africa.[15] Should such places of detention be brought within the jurisdiction of the Inspectorate the magnitude of the additional work would be beyond its current capacity.

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[13] Section 85 read with section 93 of the Act.

[14] Section 89(4) of the Act.

[15] www.saps.gov.za

The "functional independence" of national preventative mechanisms as opposed to the independence of the Judicial Inspectorate.

As mentioned above Article 18 of OPCAT provides that States Parties "shall guarantee the functional independence of the national preventative mechanisms as well as the independence of their personnel." What exactly is meant by "functional independence" or how it should be attained is not clear from OPCAT. In our own experience this constitutes a difficult objective given the complexity of the allocation of public funds, accountability, the right of freedom of association of personnel (to join Labour Unions) and the like. Any statutory body derives its funds from Parliament and is hence, at least to some extent, accountable to Parliament.

The independence of the Judicial Inspectorate is vested mainly in the position of the Inspecting Judge as the head of the organisation and in the nature of its contracts with Independent Visitors. In the main Judges are, by their nature and experience, fiercely independent, their independence from the State being protected by the Constitution and other legislation. Other personnel of the Inspectorate are currently appointed by the Inspecting Judge and fall under his or her control and authority.[16] This ensures, to some extent, that such personnel will act independently and without fear of interference by government officials.

Independent Visitors are appointed as "independent contractors", as opposed to "employees" as defined in section 213 of the *Labour Relations Act* 66 of 1995 (as amended). They are appointed for a fixed term, namely a non-renewable period of three years, in order to prevent them from becoming institutionalised.

Only Parliament can, through the process of amending the current legislation, effect changes to the mandate and composition of the Judicial Inspectorate as a statutory body. In terms of section 91 of the Act, however, the Department of Correctional Services is responsible for the expenses of the Inspectorate. During the 2009/2010 financial year its total expenditure amounted to R19.2 million, R7.5 million of which was

[16] Section 89 of the Act.

paid to Independent Visitors. Its budget made up less than 0.2% of the total budget allocated to the Department of Correctional Services.

CONCLUSION

The Judicial Inspectorate is of the view that, should government decide to ratify OPCAT, the obligation to establish or maintain the national preventive mechanisms can be dealt with by means of either expanding the current statutory mandate of the Inspectorate to include other places of detention or by duplicating the mandate and operational systems of the Inspectorate to other existing bodies which may then monitor police stations, immigration centres and similar places of detention.

CHAPTER SEVEN: JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES

INTRODUCTION

This chapter contains information about the Judicial Inspectorate with regard to its statutory mandate, vision, objectives, staffing and expenditure in compliance with the requirements of the *Public Service Regulations*, 1999 as published in the *Government Gazette* No. 6544 on 1 July 1999, more particularly part III, chapter J thereof.

STATUTORY MANDATE

Chapter IX of the Act provides for the establishment of the Judicial Inspectorate. Section 85 states that:

(1) The Judicial Inspectorate for Correctional Services is an independent office under the control of the Inspecting Judge.

(2) The object of the Judicial Inspectorate for Correctional Services 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.

VISION

The vision of the Judicial Inspectorate is to ensure that all inmates are detained under humane conditions, treated with human dignity and prepared for a dignified reintegration into the community.

STRATEGIC OBJECTIVES

Having given due consideration to the needs that exist for the services of the Judicial Inspectorate, its statutory mandate, its available resources and the various business models available, the following strategic objectives have been determined:

- to establish and maintain an independent complaints procedure for all inmates;
- to collect accurate, reliable and up-to-date information about the conditions in correctional centres and the treatment of inmates;

- to inform public opinion about the conditions in correctional centres and the treatment of inmates;
- to ensure and maintain the highest standards of good governance;
- to prevent possible human rights violations through a system of mandatory reporting and visits to correctional centres;
- to promote and facilitate community involvement in correctional matters.

STAFFING AND STRUCTURE

The *Correctional Services Amendment Act* 25 of 2008, which came into operation on 1 October 2009, introduced various amendments to the staffing and the structure of the Judicial Inspectorate. These include the appointment of a Chief Executive Officer (CEO) in terms of section 88A(1) of the *Correctional Services Act* of 1998, which reads:

(1) The Inspecting Judge must identify a suitably qualified and experienced person as Chief Executive Officer, who –
  (a) is responsible for all administrative, financial and clerical functions of the Judicial Inspectorate;
  (b) is accountable to the National Commissioner for all the monies received by the Judicial Inspectorate; and
  (c) is under the control of the Inspecting Judge.
(2) The person contemplated in subsection (1) must be appointed by the National Commissioner.
(3) The appointment and other conditions of service, including salary and allowances of the Chief Executive Officer are regulated by the Public Service Act.
(4) Any matters relating to misconduct and incapacity of the Chief Executive Officer must be referred to the National Commissioner by the Inspecting Judge.

Section 89(1) read with section 92(1) of the Act moves the responsibility for appointment of members of staff and Independent Visitors from the Inspecting Judge to the CEO. We have been given to understand that, at the time of writing this report, the post for the CEO has not yet been created or financed on the fixed staff establishment of the Judicial Inspectorate, with the result that the CEO has not yet been appointed.

Of some significance is that, as a result of the scrapping of section 89(3) of the Act, the staff component of the Inspectorate are no longer “deemed for administrative purposes to be correctional officials seconded to the Judicial Inspectorate … under the control and authority of the Inspecting Judge”, but are, in terms of the amended section 89(2), “established in accordance with the Public Service Act”. Their conditions of service,

including salaries and allowances, are accordingly, in terms of the amended section 89(3), regulated by the *Public Service Act* 103 of 1994. As a result members of staff have migrated, or are in the process of migrating, to the general public service staff. As at 31 March 2010, the staff complement of the Judicial Inspectorate was constituted as set forth in the table below:

Post level	**Number of posts**	**Salary level**
Directors	1	Level 13
Deputy Directors	3	Levels 11 – 12
Assistant Directors	5	Levels 9 – 10
Inspectors and Supervisors	10	Level 8
Administrative staff	24	Levels 5 to 7
Staff on fixed term contracts	7	Levels 5 and 6*

*A 37% allowance is paid to all contract employees in compliance with resolution 1 of 2007.
**One post on level 9, two posts on level 8 and two posts on level 6 were vacant.

The National Head Office of the Judicial Inspectorate is based in Cape Town with a Regional Office in Centurion.

52% of all members of staff are female and 93% fall within the “designated groups” as defined in the *Employment Equity Act* of1998. The total *per capita* cost per employee (at an average of 50 employees, including contract workers, at any given stage) amounts to R201 853.07 *per annum*. For Independent Visitors (at an average of 174) the *per capita* cost per person, at the rate of R61.55 per hour, amounts to R 39 844.64.

Arising from the amendment of section 92 of the Act, which requires that an Independent Visitor be appointed at every correctional centre in the country, a considerable number of additional Independent Visitors have been appointed, bringing their total number to 220. Of this number 120 are female (55%) and 99% fall within the “designated group” as defined in the *Employment Equity Act* of 1998.

During the course of the year the contracts of six Independent Visitors were terminated as a result of misconduct, while another five contracts were terminated on the grounds of

poor performance and two on the grounds of poor health. Every Independent Visitor is subjected to monthly evaluations, during which their performance is measured against agreed "Minimum Standards of Service Delivery". They are also subjected to a full performance audit, at least once per quarter, at the various correctional centres where they are deployed. In the case of members of staff the following disciplinary steps were taken: ten written warnings were issued, including two final written warnings, and one member of staff was suspended for a month without salary due to misconduct.

The status of the Independent Visitors as "independent contractors" and not "employees", as provided in section 213 of the *Labour Relations Act* 66 of 1995, was confirmed in the following cases:

- Case WE 27035 before the CCMA: the Commissioner ruled that it had no jurisdiction to hear the application*;*
- Case PSGA 3189 before the GPSSBC: the Panelist ruled that the GPSSBC lacked jurisdiction to hear the matter in that the applicant was not an employee as defined in section 123 of the Act*,* but an independent contractor;
- Case PSGA 761-06/07 before the GPSSBC: the Panelist ruled that the applicant was not an employee in terms or the *Labour Relations Act* and the GPSSBC accordingly lacked jurisdiction to entertain the dispute.

EXPENDITURE

Section 91 of the Act provides that the Department is responsible for all expenses of the Judicial Inspectorate. The total expenditure of the Judicial Inspectorate for the 2009/2010 financial year, as set out in the table below, amounted to R 19,111,730.08.

COMPENSATION OF EMPLOYEES	**R 17,025,620.72**
SALARIES: PERMANENT STAFF	R 9,508,532.30
SALARIES: INDEPENDENT VISITORS	R 7,517,088.42
GOODS & SERVICES	**R 2,081,109.36**
COMMUNICATION	R 399,320.87
TRAVEL & SUBSISTENCE	R 1,241,390.35
LEASES DOMESTIC EQUIPMENT	R 23, 698.27
STATIONERY & PRINTING	R 139,832.19

VENUES & FACILITIES	R 164,306.55
OTHER	R 117,561.13
TOTAL EXPENDITURE	**R 19,111,730.08**

Although the remuneration of Independent Visitors is "administered" under the item "compensation of employees" they perform their functions as independent contractors and are remunerated at a fixed rate of R61.55 per hour.

The Judicial Inspectorate is not a Department or Constitutional Institution as defined in Chapter 5 of the *Public Finance Management Act* 1 of 1999, nor is it listed as yet as a Public Entity in terms of Chapter 6. Its expenses are hence audited as part of that of the Department of Correctional Services. We are of the respectful view that this may distort the state of financial management within the Inspectorate and suggest that such expenditure should be audited by the Office of the Auditor General as a separate entity.

UNNATURAL DEATHS FOR THE PERIOD 1 JANUARY 2009 TO 31 DECEMBER 2009

	Deceased / Registration number	Date of death	Centre	(S) / (U) [17]	Age	Period in custody months [18]	Classification[19] / persons implicated[20] / alleged circumstances[21]	DCS corrective / disciplinary decision[22]	SAPS / NPA / Courts[23]
1.	GN 208013452 D – 02 - 2009	01/01/09	Emthonjeni Juvenile	S	20	23	**Homicide – inmate.** Deceased stabbed by fellow inmate in single cell detained with one other. Appears perpetrator known Satanist and treated. Inter-disciplinary treatment communications appear lacking.	None.	Kameeldrift CAS 04/01/2009

[17] (S) sentenced (U) unsentenced

[18] Approximate – where an inmate has not completed a month in incarceration it is recorded a 0

[19] The classifications homicide and suicide is preferred by the Inspectorate

[20] In some instances of homicide inmates as well as officials were allegedly perpetrators of an assault on the deceased. We've cited the party last involved in such assault.

[21] The circumstances are recorded from the Department's investigation reports.

[22] The decision to prefer corrective and/or corrective action is recorded from the Department's investigation report. The responses by the Department are as at 15 September 2010.

[23] The responses by the Department are as at 15 September 2010.

2.	MM 205325334 D-18-2009	04/01/09	East London Med A	S	35	42	**Suicide – self mutilation.** Deceased cut his throat with razor blade in communal cell. History of HIV/Aids related illness. Appears not seen by medical practitioner despite recommendation.	None. DCS report incomplete Requests for supplementation not forthcoming. .	Fleet Street CAS 117/01/2009 No indication of criminal prosecution or inquest.
3.	CT 201212424 D-35-2009	08/01/09	George	S	37	88	**Homicide – officials.** Officials assaulted deceased (and others) after he assaulted and official. Mass assault of inmates by officials. Deceased denied adequate and timeous medical treatment and segregated. Batons, teargas used in the assault	Various officials charged for various breaches. 1 guilty and dismissed. 28 official's cases in progress. 4 – charges withdrawn.	George CAS 221/01/2009 Advised SAPS investigation not finalised.
4.	WC 206608196 D-100-2009	21/01/09	Ncome Med B	S	28	29	**Homicide – inmates / officials**. Inmate involved in gang related fracas where-after officials subjected deceased to continuous assault even when no threat posed. Post-mortem records cause of deaths as blunt force	Various charges against various officials, including assault and dereliction of duty. Due to commence on 9 September 2010. Previous chairperson	Emondlo CAS 81/01/2009 Docket to prosecutor on 10 August 2010 for decision.

							soft tissue injury and notes multiple injuries.	replaced.	
5.	SB 201192438 D-102-2009	20/01/09	Ncome Med B	S	32	79	**Homicide – inmates / officials.** See above – same incident.	See above – same incident.	See above – same incident.
6.	ES 207777070 D - 143 -2009	16/02/09	Umzinto	U	25	18	**Suicide – hanging.** Found hanged in cell during morning unlock. History of mental illness for which treatment received. No previous suicide attempts or indication.	Officials charged for alterations of register, shift hand-over breach and failure to visit units regularly. Officials issued written warnings.	Umzinto CAS 138/02/2009
7.	RN 208743985 D-157-2009	21/02/09	Thohoyandou Med A	S	27	6	**Suicide – hanging.** Found hanged at unlock for supper. No previous suicide attempts or indication.	None	Thohoyandou CAS 877/02/2009 No indication of criminal prosecution or inquest.
8.	MS 208138138 D-206-2009	13/03/09	Bizana	S	27	8	**Homicide – officials.** Deceased attempted to escape during transfer and transportation. Inmate assaulted by bystanders and officials even when no threat and over a period of time. Multiple injuries	Various officials charged. 5 officials received 1 month's suspension without pay. 2 officials received final written warnings ,2 written warnings. 1 demoted. 2 acquitted.	Bizana CAS 60/03/09 No indication of criminal prosecution or inquest.

9.	LP 209625704 D-209-2009	16/03/09	Pretoria Local	U	36	2	**Suicide – hanging.** Found hanged in single cell at 20H30 after monitoring. Depression treated by psychiatrist. No previous suicide attempts or indication.	None	Pretoria CAS 51/656/2009 Magistrate unable to locate the inquest docket.
10.	NQ 208603357 D -210-2009	15/03/09	Port Elizabeth	S	23	8	**Suicide – hanging.** Deceased HIV/Aids related illness. Discharged from public hospital. Aggressive on return – not communicated by officials. No record of psychological / social intervention for long standing illness.	2 officials warned for breaches of security procedure.	Port Elizabeth CAS 533/03/2009 Matter referred for inquest – decision not provided.
11.	PD 208132491 D-221 -2009	22/03/09	Durban Med A	U	36	3	**Homicide – inmates/officials.** Deceased with 5 fellow gang members used "isijumbane" **(**slings made from sheets filled with heavy objects, including, broken floor tiles, bone and a radio transformer) to assault non-gang members. Officials then used excessive "force to	3 officials found guilty of excessive use of force and each received a penalty of one month without pay.	Westville CAS 246/03/2009 SAPS docket opened, outcome of criminal charges not provided.

							subdue the attackers. Post mortem records cause of death as blunt force soft tissue injury from extensive injuries.		
12.	LC 204101509 D-228-2009	26/03/09	Durban Med A	S	29	54	**Homicide**[24] **– inmate.** Deceased stabbed by fellow inmates in reception area with knives. Control of and searching procedures by officials' deficient during visitation period.	None.	Westville CAS 242/03/2009 SAPS docket opened, outcome of criminal charges not provided.
13.	MG 98335367 D-232-2009	27/03/09	Mthatha Max	S	33	124	**Homicide – officials.** Deceased assaulted by officials after assault on officials. Multiple injuries. Medical treatment delayed.	Various officials (11) charged with various offences, including, misconduct, disregarding security rules, excessive force, negligence, falsifying registers and altering the crime scene 9 acquitted, 2 received final written warnings.	Mthatha CAS 738/03/09 SAPS docket opened, outcome of criminal charges not provided.

[24] This matter was reported as a "natural" death

14.	SM 202740410 D-241-2010	31/03/09	Durban Med B	S	45	83	**Suicide – hanging**. Found hanged in single cell during morning unlock. No previous suicide attempts or indication. Official designated to perform night duty absent – another official tasked to patrol 2 areas.	None.	SAPS CAS not provided. SAPS docket opened, outcome of criminal charges or inquest not provided.
15.	GM 209743351 D-250-2009	31/03/09	Belfast	S	28	1	**Suicide – hanging.** Found hanged in single cell**.** No previous suicide attempts or indication.	None.	SAPS CAS not provided SAPS docket opened, outcome of criminal charges or inquest not provided.
16.	SN 209719061 D-253-2009	05/04/09	St Albans Med B	S	20	3	**Suicide –** set cell alight. Deceased segregated for own safety – sexual orientation. Set cell alight.	None.	Kabega Park CAS 59/04/2009. SAPS docket opened, outcome of criminal charges or inquest not provide
17.	X M 207033451 D-258-2009	06/04/09	St Albans Max	S	27	14	**Suicide – hanging.** Found hanged on gate in passage during recreation period. Shortage of weekend	None.	SAPS CAS not provided. SAPS docket opened, outcome of

							staff blamed. No previous history of suicide or intention.		criminal charges or inquest not provided
18.	Z D 208769681 D-277-2009	12/04/09	Mthatha Med	U	35	7	**Homicide – officials.** Attempted escape by inmates re-arrested and assaulted by officials. .	Regional report does not recommend disciplinary action. Departmental Investigation Unit enquiry. Findings not provided by region.	Mthatha CAS 330/04/2009 SAPS docket opened, outcome of criminal charges or inquest not provided
19.	LvdW 99529897 D-317-2009	03/05/09	Pollsmoor Med B	S	40	22	**Suicide – hanging.** Found hanged **in** single cell**.** Previous history of attempted suicide**.** Refused psychiatric treatment	None.	Kirstenhoff CAS 15/05/2009 SAPS docket opened, outcome of criminal charges or inquest not provide
20.	SM 209918103 D-337-2009	05/05/09	Johannesburg Med A	U	19	13	**Homicide – officials.** Official assaulted deceased with a baton on his head. Denied by official alleging an alibi. Post-mortem records cause of death intracranial haemorrhage. Cerebral contusion.	Official charged and acquitted.	Mondeor CAS 143/05/2009 Criminal prosecution not finalised.

21.	SQ 208227074 D-339-2009	05/05/09	Grootvlei	S	29	7	**Suicide – hanging.** Found hanged in single cell in during morning unlock**.** Familial problems**.** Letter to family indicating intention but apparently not within officials' knowledge. Lights in cell not working.	None.	Bloemspruit CAS 329/05/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
22.	MN 201460394 D-368-2009	16/05/09	Durban Med B	S	31	60	**Suicide**[25] **– hanging.** Found hanged **in** communal cell by fellow inmate. No previous suicide attempts or indication.	None.	Westville CAS 152/05/2009 SAPS docket opened, outcome of criminal charges or inquest not finalised.
23.	RS 207352280 D-443-2009	29/05/09	Leeuwkop Max	S	38	10	**Suicide – hanging.** Found hanged in single cell during morning unlock. Known psychiatric patient. Treated previously for overdose of psychiatric drugs. Appears monitoring inadequate.	None.	Sandton CAS 1235/05/09 SAPS investigation in progress – awaiting blood/alcohol test results.
24.	MN	24/06/09	Pietermaritzburg	S	46	74	**Homicide – officials.**	3 officials	Prestbury CAS

[25] This matter was reported as a "natural" death

	98171742 D-509-2010						Officials assaulted deceased after he stabbed a fellow inmate. Officials used batons, crutches and an electric-shield even when mechanically restrained and the deceased knife was broken. Officials claim that deceased had to be disarmed and restrained. Medical report records multiple injuries, including, to his back. limbs and chest.	implicated. Disciplinary process pending.	56/06/2009 SAPS docket opened, outcome of criminal charges not provided.
25.	ZT 207437806 D-585-2009	11/07/09	Modderbee	S	29	19	**Suicide – drug overdose.** Deceased took overdose of medication. History of psychological problems and attempt at suicide. Post-mortem report (toxicology) not available. Department's investigation not finalised.	Department's investigation not finalised.	Benoni CAS 361/07/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
26.	AS 208181603	22/07/09	Middledrift	S	24	11	**Unnatural / unknown –** Deceased found by inmate in cell. Certified dead. Toxicology and	None.	SAPS CAS not provided SAPS docket

	D-599-2009						histology results waited. Post mortem records acute congestion consistent with hypoxia/increased venous pressure. Smothering excluded.		opened, outcome of criminal charges or inquest not provided.
27.	BM 209924722 D-600-2009	22/07/09	Johannesburg Med A	U	53	0	**Homicide – pre-admission injury.** Deceased died from complications of gunshot injury to leg.	None.	Sandton CAS 795/09/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
28.	PN 206169388 D-623-2009	29/07/09	Ermelo	S	24	35	**Suicide – hanging.** Deceased complained to official upon segregation after heated altercation with fellow inmate. Found hanged in single cell. No previous suicide attempts or indication. Letter apologising.	None.	Ermelo CAS 452/07/2009 NPA refused to charge – *nolle prosequi*
29.	NM 209356172 D -632-2009	03/08/09	Krugersdorp	U	23	0	**Suicide – hanging.** Found hanged in shower area of cell in hospital section where he was detained following allegations of	Nurses charged for failing to examine deceased i.r.o rape – acquitted. Official failing to arrange transport	Krugersdorp CAS 94/08/2009 SAPS docket opened, outcome of criminal charges or

							being a victim of or witnessing a rape. Delay in transfer to rape centre allegedly no transport available. Post-mortem confirms cause of death consistent with hanging – physical signs of rape allegations unable to be determined.	to rape centre – final written warning. HCC – ordering detention in communal cell in hospital – acquitted.	inquest not provided.
30.	SM 203306790 D-666-2009	06/08/09	Johannesburg Female	S	29	73	**Unnatural / unknown** - post-mortem toxicology awaited allegations of poisoning	None.	Mondeor CAS 287/08/2009 SAPS docket opened.
31.	SP 208538692 D-669-2009	10/08/09	Pietermaritzburg	S	24	18	**Homicide – inmate.** Deceased attacked by mentally ill re-arrested parolee in communal cell. One official on duty.	Hearings against various officials i.r.o. charges related to appropriateness of centre for attackers detention, not transferred to mental clinic and failure to share vital information not initiated or finalised.	Prestbury CAS 38/08/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
32.	RT	09/08/09	Ebongweni Kokstad	S	59	117	**Homicide – officials.**	Various charges	Kokstad CAS

	104409 D-678-2009						Deceased brutally assaulted by officials with batons, electric shields and booted feet and then failed to provide adequate and timeous medical attention. Independent pathologist found death consistent with smothering, i.e. obstruction of mouth and nose.	against various officials not finalised.	175/08/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
33.	GdM 209356555 D-692-2009	14/08/09	Krugersdorp	U	36	0	**Suicide – Drug overdose.** Deceased on admission ill. Appears that he ingested drugs and was seen by fellow inmate with a sachet of drugs. Deceased not adequately searched or medically assessed on admission. Delay in treatment and transfer to public hospital. Toxicology results not available.	Stand-by official given a verbal warning for failing to respond to emergency calls.	Krugersdorp CAS 209/355/318 SAPS docket opened, outcome of criminal charges or inquest unknown. Toxicology results could take years (5 to 10) per investigating officer.
34.	SC 2091382	25/08/09	Durban Med B	S	24	6	**Suicide – hanging.** Found hanged in single cell at 17H30 by official.	None.	SAPS CAS not provided SAPS docket

	D-711-2009								opened, outcome of criminal charges or inquest not provided.
35.	CL 208401296 D-726-2009	27/08/09	Drakenstein Max	S	25	13	**Suicide – hanging.** Deceased found hanged in cell. Under psychologist treatment and known suicide risk.	Officials charged for not reporting deceased mental state. Acquitted.	Paarl CAS 993/08/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
36.	DR 209743992 D-733-2009	30/08/09	Thohoyandou Med A	S	46	0	**Suicide – hanging.** Deceased found hanged during morning unlock. No previous history or intentions.	None.	Thohoyandou CAS 904/08/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
37.	MM 207566635 D-752-2009	01/09/09	Pollsmoor Maximum	U	33	23	**Unnatural / unknown -** Post mortem inconclusive – toxicology and histology tests waited. Appears deceased had no medical file.	None.	Kirstenhoff CAS 11/09/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
38.	JM 208025336	02/09/09	Pretoria Central	S	45	14	**Unnatural** – neurosurgery. Appears deceased admitted with	None.	SAPS CAS not provided

	D-757-2009						previous history of motor vehicle accident. Died after neuro-surgery.		SAPS docket opened, outcome of criminal charges or inquest not provided.
39.	DS 204185828 D-767-2009	25/08/09	Mthatha Max	S	37	57	**Suicide – drug overdose.** Deceased treated for hypertension and psychiatric disorder. Toxicology results not finalised.	None.	Mthatha CAS 763/08/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
40.	ES 207049935 D-177-2010	04/09/09	Boksburg	U	28	20	**Suicide – hanging.** Found hanging in toilet section of communal cell. No indication that deceased was screened on admission. Standby officials did not report for duty for lack of 2-way radios.	None.	Dawnpark CAS 130/09/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
41.	TLM 202518438 D-787-2009	09/09/09	Krugersdorp	S	26	70	**Homicide inmates– cell set alight.** Deceased shared cell with 2 others. Surviving inmates blame one another. No officials on duty at section apparently shortage of staff.	None.	Krugersdorp CAS 460/09/2009 SAPS docket opened. Not finalised per investigating officer.

42.	TM 209032662 D-787-2010	12/09/09	Edenberg	S	50	0	**Homicide – inmates.** Former correctional official. Conduct violent towards himself. Mentally ill sedated by nurse. Assaulted by fellow inmates.	Acting HCC guilty of dereliction of various duties and negligence (communal detention, failure to endorse reported incidents, failure to refer inmate to medical practitioner, failure to respond to telephone calls. Suspension without pay 1 month.	Edenburg CAS 18/09/2009 SAPS docket opened no decision by NPA provided.
43.	TM 206138824 D-805-2010	15/09/09	Glencoe	S	25	30	**Homicide – officials.** Deceased and another inmate attacked another inmate with a knife. Officials intervened to disarm to the deceased, allegedly using 'necessary force'. Witnesses aver that officials attacked deceased even when disarmed or no threat with batons and kicking him.	Recommendation to charge officials with assault. Decision to charge or findings not provided.	Glencoe CAS 43/09/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
44.	TT	29/09/09	Bethal	S	20	0	**Suicide – hanging.**	None.	Bethal CAS

	209025771 D-845-2009						Deceased found hanged in communal cell. Familial and mental health problems. Referred by social worker to doctor but hanged himself in the intervening period.		142/09/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
45.	RT Z 209371267 D-854-2009	01/10/09	Ladysmith	S	49	1	**Suicide – drug overdose.** Deceased ingested prescribed diabetic medication. Emergency assistance by chief nurse not provided nor internal reporting of death. Post mortem (toxicology) not provided.	Nurse given final written warning. Custody official given a written warning for not reporting the emergency to the Head.	Ladysmith CAS 07/10/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
46.	PM 209900535 D-860-2009	03/10/09	Odendalsrus[26]	U	34	1	**Unnatural –** suffered epileptic fit and fell on his face. Post mortem confirms fracture of frontal fossa of skull.	None.	Odendalsrus CAS 50/10/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
47.	TK 99595279	04/10/09	St Albans Max	S	32	1	**Suicide – set cell alight.** Segregated for assault	None.	SAPS CAS not provided.

[26] Reported as natural – Pulmunory TB

	D-861-2009						on official. Showed strange behaviour when officials removed his bed and belt. Apparently searched and monitored.		SAPS docket opened, outcome of criminal charges or inquest not provided.
48.	SE N 209169506 D-968-2009	16/11/09	Ermelo	S	31	0	**Suicide – hanging.** Deceased found hanged in shower of communal cell after breakfast (shower still running. Previous history of attempts at suicide. Detained communally as a suicide preventative measure.	None.	Ermelo CAS 330/11/2009 SAPS docket to NPA pending decision.
49.	BS 209292428 D-982-2009	22/11/09	Johannesburg Med B	S	26	4	**Unnatural –fell off bunker bed.**	None	SAPS CAS not provided.
50.	MDB 209294989 D-1006-2009	02/12/09	Johannesburg Med A	S	20	0	**Suicide - drug overdose.** Deceased ingested poison. Post-mortem (toxicology results awaited). Delay in treating deceased from 1st report.	Decision to charge official to attend to emergency. Outcome not provided.	Mondeor CAS 44/12/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
51.	EB 207627105	09/12/09	Leeuwkop Juvenile	S	20	34	**Suicide – hanging.** Deceased found hanged in	None.	Sandton CAS 459/12/2009

	D-1025-2009						toilet section of communal cell. Indicated his intention but did in jest. Not reported to officials.		SAPS docket opened, outcome of criminal charges or inquest not provided.
52.	OS 208384269 D-1033-2009	12/12/09	Makhado	U	27	23	**Suicide – hanging.** Deceased found hanged in single cell after segregated for threatening behaviour.	None.	Makhado CAS 242/12/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
53.	LL 204690078 D-1041-2009	16/12/09	St Albans Med B	S	22	69	**Suicide – set cell alight.** Segregated (not reported to IJ) for inappropriate behaviour after taking medication. Inmates reported fire. History of self inflicted injury. No record of referral to psychologist.	None.	SAPS CAS not provided SAPS docket opened, outcome of criminal charges or inquest not provided.
54.	AF 205293008 D-1042-2009	04/12/09	Boksburg	S	20	48	**Homicide – inmate.** Deceased stabbed **by** fellow inmate during exercise period. Inmate poorly supervised.	Decision to charge various officials for lack of supervision, handing over, failing to report for duty and Unit Manager for failing to execute tasks.	Dawnpark CAS 33/12/2009 SAPS docket opened, outcome of criminal charges or inquest not provided.
55.	SN D-1052-2009	22/12/09	East London Med B	U	26	3	**Homicide – inmate.** Assaulted by fellow inmate – gang related**.** Monitoring by officials deficient.	Official received written warning for failing to monitor as required. Outcome of further not provided.	East London CAS 297/12/2009. Trial set for 25 August 2009.