

Submission to the Parliamentary Portfolio Committee on Correctional Services on the Draft White Paper on Corrections in South Africa, December 2003

From the Centre for the Study of Violence and Reconciliation (CSVR).

Oral submission to Parliament
3 February 2004

We would like to thank the Portfolio Committee for the opportunity to make this submission. However we would like to raise our concern that there was very little time available for us to make a full and comprehensive response to the document. We are very concerned that the invitation to make a submission was made late in December while all our staff were on leave, and the closing date was in fact before several of our staff had returned from December leave. We learned of the public hearings only on the 19th of January 2004, and although we are grateful that we have been given until 21 January to make submissions, we are concerned that it is an inadequate timeframe in which to do justice to the task. Thus, we hope to cover the main issues of concern to us in this submission, and are hopeful that we will have the opportunity to elaborate or to make further comments should we be invited to make oral submissions in February. We are grateful that you have extended the due date for submissions.

Introduction

The White Paper presents a 20-year vision. We strongly support the need for a vision which promotes reintegration and human development of all prisoners and the creation of an environment that is conducive to this aim; we commend the hard work and thought put into drafting this document. If the prisons of South Africa do resemble the vision presented in the White Paper in 20 years time the Department will have done extraordinarily well. Our primary concern though is that the White Paper does not show convincingly how the Department will get there, but reveals its own doubts as to whether it can achieve these aims.

At one level the White Paper is a commendably honest document. It makes no bones about the conditions that the current administration has inherited and is currently operating under. It acknowledges the reputation of prisons as "universities of crime" and the severe constraints overcrowding places on constitutional imperatives. It also refers to corruption and to the problematic and violent prison culture. That the White Paper spells out critical problems so unabashedly is impressive.

In 20 years time the Department envisages a prison environment in which each prisoner has an adequate sphere of privacy; the opportunity to educate him or herself and to work; has reflected substantively on his or her crime; and upon release is given the necessary support to attempt to live a law-abiding life. The Department also recognises the important need to maintain links with the family and community while in prison and to help reintegrate on release.

The Department openly acknowledges that two of the greatest obstacles to attaining this vision are overcrowding and staffing problems. Of deep concern however, is that the Department does not convincingly show that the overcrowding problem in particular, can be tackled. The graveness of this concern cannot be overestimated. The Department itself acknowledges that solving overcrowding is a necessary precondition to the success of all of its plans.

Although the White Paper outlines several recent measures adopted by the DCS in cooperation with partners in the JCPS to deal with overcrowding, the department makes several other substantive proposals. It asks to be relieved of responsibility for awaiting trial prisoners; it proposes building more prisons; and recommends greater use of alternative sentencing. The first proposed solution is the Department's wish rather than a reality. It does not know whether it will ever be relieved of this responsibility or what other opportunities might exist. The second proposed solution is obviously expensive and long-term. The prisons are currently 63.2% overcrowded (during 2002/3 year: DCS Annual Report). The Department has not shown that it will be given the budget to build itself out of this crisis. Given that the daily average prison population is increasing at about 5% per annum, the department would have to build fairly

extensively just to remain at 63.2% overcrowding. In relation to alternative sentencing, more detailed and convincing proposals are needed to indicate how they could work and how it would convince the judiciary of their effectiveness.

If the entire vision is based on a scenario which is unlikely to materialize, a range of perverse consequences follow. For instance, staff will be trained to be rehabilitators first and foremost on the assumption that the prisons are not overcrowded and that they have the necessary resources to implement rehabilitative programmes. Yet the reality of their jobs in an overcrowded prison dictate that their primary function is inevitably the rudimentary one of attempting to maintain control over daily life in the prison. As the disjuncture between head office policy and the reality of prison life grows, so warders gradually sidestep policy and do their work according to the dictates of their own informal 'rules' – 'rules' that involve both violence and corruption. The result is that the White Paper's complaint about the poor quality of staff could become a self-fulfilling prophecy. Moreover, the best rehabilitation programmes in the world will be ineffectual and meaningless if the moral and physical fabric of prison life is at odds with the values and precepts of rehabilitation.

We hope that our worries are exaggerated and that the Department (in conjunction with the rest of the JCPS) is indeed confident that it can solve, among others, but most urgently, the overcrowding problem. However we are convinced that as it stands the White Paper does not demonstrate that the Department has confidence that it can fulfill the most rudimentary precondition of its vision.

We would be far less concerned if the White Paper did one of three things. Either show much more convincingly that the Department can fulfill this rudimentary pre-condition. Or if it can not (in other words if it acknowledges, for instance, that prisons are likely to remain overcrowded and under resourced for the foreseeable future) that it adjusts its vision in line with the realities of the conditions of prison life. Thirdly, if the White Paper represents a medium to long term vision, then the Department must indicate what it plans to do in the short term to improve living conditions, reduce violence, and increase the developmental opportunities of prisoners and those under community corrections.

This may sound overly modest and less ambitious, but modest goals can be crucial in changing institutions and the lives of those touched by these institutions. Vivien Stern, a world authority on prison policy, has argued that although prisons should aim to rehabilitate, a more urgent goal is to reduce the damage prisons inflict (Stern, 1998:22). Given the profound psychological and physical stress experienced by inmates because of current conditions the goal of reducing the damage caused by prison can't be overemphasized.

Nor can the difficulty of even this goal be overemphasized. For instance, substantial portions of the Correctional Services Act 111 of 1998, which provides a framework which recognises the basic minimum rights of prisoners and provides for recognition of human dignity and promotion of social responsibility and human development of all persons under the care of the Department, have not yet been brought into effect five years after its promulgation. Ensuring the protection and promotion of basic human rights in prisons remains an enormous challenge for the Department. The greatest part of the Department's strategic visioning should be on providing a safe and secure and respectful environment, recognising human dignity, and providing opportunities for personal growth for staff and people under corrections.

Despite the enormity of this task, the White Paper takes this much further, stating that the primary responsibility of the DCS is " first and foremost to correct the offending behaviour, in a secure, safe and humane environment, in order to facilitate the achievement of rehabilitation, and avoidance of recidivism" (para 4.12). We certainly endorse the sentiment that all prisons should aim to rehabilitate; however for this to be the first and foremost aim might be misguided. We believe that at this stage it might be more prudent for the Department to focus its energies on the creation of a secure, safe and humane environment. Given current conditions, even this, more modest, goal would be a valuable achievement over a twenty year period.

Assuming that the Department is able to deal with the issues of overcrowding we have some

specific comments to make on the White Paper. However, it should also be noted that the absence of any implementation plans, targets and dates for implementation make it extremely difficult to engage with the practical side of the White paper.

SPECIFIC COMMENTS

1. The concepts of rehabilitation, correction, development and restoration

The White Paper introduces relatively new concepts and terminology into the South African correctional environment. It is not clear whether the meaning and application of these are broadly agreed upon by stakeholders. We would want to see civil society being engaged on debate around these concepts.

The White Paper distinguishes between the concept of ‘correction’ and ‘development’. The former refers to developing a sentence plan that targets all elements of the offending behaviour. ‘Development’, on the other hand, refers to the development of competencies, social development and vocational and technical skills training, sports and recreation. This distinction is somewhat artificial and it is not clear why this distinction is necessary or how it would affect the division of resources and staff. It also assumes that the factors contributing to crime are easily identifiable and can be isolated. For instance, it talks of correcting specific types of offending behaviour. While this may be appropriate for certain types of offences, eg. sexual crime, it is not clear that the factors underlying other types of offending behaviour are so easily definable. The White Paper does acknowledge this as well as the socio-economic factors which influence crime. What seems to be lacking is a defined theoretical basis for its approach to rehabilitation.

One possible theoretical framework is offered by the Social Exclusion Unit (SEU), a unit established by the UK Prime Minister. It adopts the concepts of social inclusion and exclusion. According to the Social Exclusion Unit, "social exclusion is a shorthand term for what can happen when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, bad health and family breakdown." (SEU, 2003). According to the SEU there are several factors that influence re-offending. They have identified nine factors that need to be addressed:

- Education
- employment
- drug and alcohol misuse
- mental and physical health
- attitudes and self-control
- institutionalization and life skills
- housing
- financial support and debt management
- family networks.

The SEU has identified how imprisonment can make these issues worse, and identified how the prison system can assist in reducing the impact of these factors.

Factor	Prison sentence can help	Prison sentence can worsen
Education	Education and training programmes can give prisoners the skills needed to gain employment.	Existing skills can be eroded or become outdated during the sentence. Can reinforce existing negative views of education. Can disrupt education in the community.
Employment	Opportunity to gain valuable	Loss of existing employment.

practical experience of paid work. Opportunity to make contact with employers prior to release.

Work in prison can reinforce the view of work as mundane and low paid, with little connection to real opportunities. Existing work skills can be eroded or become outdated.

Drugs and alcohol

Prison can be an effective place to get drug treatment, helping many who have had no help before. Can make valuable links to community treatment.

Drugs are available in prison – some prisoners may start to use, others will entrench an addiction. Without proper aftercare, released prisoners can return to a level of usage that is especially dangerous.

Mental and physical health

Access to proper diagnosis and treatment, often for the first time. Ensuring that ex-prisoners able to take up opportunities such as employment and training on release.

Lack of provision and patchy co-ordination; the experience of imprisonment and subsequent inactivity can exacerbate existing mental illness. Prisoners released to chaotic lifestyles, without proper follow up support.

Attitudes and self-control

Opportunity to take part in programmes to improve thinking skills, anger management. Opportunity to learn from past experiences, separated from some peer pressures.

Other prisoners can reinforce negative attitudes towards crimes and victims.

Institutionalisation and life skills

Prison can provide a safe place for offenders to develop positive life skills.

Can reinforce an institutionalised background, such as previous experience in care. Heavily structured regimes, and lack of activity, can damage prisoners' abilities to think and act for themselves, with knock-on effects in areas such as employment and housing.

Housing

Opportunity to save tenancies, reduce Housing Benefit, mortgage and rent arrears. Repaying rent arrears, assessing housing needs and beginning a move to stable, supported accommodation. Opportunity to gain skills in managing tenancies.

Housing can be lost on entry, rent arrears can build up, leading to barring from housing. May increase the chance of an offender being homeless. Lack of housing can lead to further problems, such as accessing children in care, health services and benefits.

Benefits and debt	Prison can provide access to debt advice and can improve the chances of accessing financial support on release via the setting up of benefits interviews. Offers the chance of earning and saving money.	Debts can worsen during a prison sentence. Prison can break the link between offenders and legitimate means of support. Prisoners are released without sufficient financial means to cover the period before benefit payments are made.
Families	Prison can give prisoners' families the opportunity to have an input into a prisoner's rehabilitation needs. It can separate offenders from a criminal background, or give a family respite from a difficult or dangerous family member.	Prison can damage the positive links between a prisoner and their family – breaking stable relationships with partners and children. Can lead to financial, emotional and health problems among family members.

(SEU, 2003)

From the above it is clear that a sentence plan should both try to restrict the damage that occurs through imprisonment, as well as try to enhance the prisoner's skills through developmental initiatives. In addition, in the South African prison environment, the strong gang culture, violence, and the living conditions also have a severe impact on the prisoner and likely negatively impact on positive learning experiences.

While we support the idea of rehabilitation programmes being implemented in prison we would like greater clarity on what these are, and that those selected are supported by evidence that they are effective.

We are also concerned that in expressing a commitment to rehabilitate offenders and to prevent recidivism, the Department is setting very high expectations for the public that it may not be able to meet. Criminologist Robert Martinson expressed the pessimistic view in the 1970's that 'nothing works' in prison, and that people can't be expected to be rehabilitated. Yet subsequent studies have shown some success, although very few, if any have managed a zero percent recidivism rate. At best, they can expect that fewer people who attend programmes will be likely to return to crime. This, in itself is a reason to make programmes available in prison, but one should be cautious about expecting a miraculous impact on recidivism. It should also not be assumed that one type of programme would work in all contexts. Programmes need to be adapted for different context and different groups of people. Careful selection, implementation and evaluation of programmes is needed. Examples of best practice must also be found

2. Problem with conceptualizing rehabilitation as 'reason' for sentencing

As discussed above we support the concept of rehabilitation in prisons. However, as stated in paragraph 4.4.1, the White Paper says that "Rehabilitation needs to be understood in the courts, by those sentenced and by the correctional officials as the key reason for sentencing. As such it should be approached as the sine qua non of any sentence". The purpose of sentencing should not be conceptualized in this way and doing so is potentially dangerous. It could lead to the situation where the courts sentence more people to imprisonment (even those convicted of relatively minor offences) in the possibly erroneous belief that they will be rehabilitated. This would further exacerbate the severe challenges faced by the correctional services caused by overcrowding. Thus imprisonment should only be used as a last resort. This point is better stated in para 6.1.3.

3. Implementation plans and budget

The White Paper presents a very broad outline of what is intended. However there is little explanation of how its goals would be achieved operationally. No indication is given of resourcing required and financial implications.

The Department has indicated that Cabinet now requires that it draft an implementation plan and budget. It has also indicated that the White paper will not be implemented in the next Medium term expenditure framework, and it is clear from the budget vote for 2003/4 year that the DCS will be unable to do so.

The Department has allocated approximately one fifth of its budget to its Facility Management and Capital Works programme (which has grown by 22,3 percent annually since 1999. The Department aims to build 4 new generation prisons to cater for an additional 12 000 prisoners, thereby increasing prison capacity to 122 874 in the 2005/06 year. However, already, the DCS is anticipating that the prisoner numbers will increase to 209 400 prisoners in 2003/4 year and possibly more in the following year. It is clear that the DCS will not even manage to 'catch up' on prison places at this rate and the overcrowding rate will not be reduced. At the same time, the budget allocation to 'rehabilitation' increases at the minimal rate of 8.3% over the same period (a rise only similar to the inflation rate) (Correctional Services Budget Vote 21, 2003). This is clearly inadequate to meet the rehabilitation objectives established by the White Paper.

One should examine the DCS capacity to deliver in terms of rehabilitation and development by its own projected ability to meet these targets. The DCS current targets in relation to work, and developmental services is low. During the 2003/04 year, the DCS aims to provide work opportunities to approximately 13% of prisoners; education programmes for 7%; training to 5%; social work to 17%; and psychological sessions to 5% of prisoners. It is only when interventions are targeted at large numbers of prisoners at the same time that interventions reach higher proportions, eg. in relation to religious interventions the DCS aims to target 72% (Correctional Services Budget Vote 21, 2003).

An evaluation of the effectiveness of current services is needed in order to determine how these contribute to the DCS plans, as well as to inform the development of new strategies. If the DCS aims to increase these targets in order to achieve its primary aim of 'rehabilitation' then it would have to significantly increase its professional staff – social workers, psychologists and teachers- in order to render an increased amount of services.

The DCS needs to address how it will increase its budget and staff to adequately implement its objectives.

Balancing the delivery of programmes for different categories of prisoners

The White paper suggests that a sentence plan should be developed for each prisoner. It is important that in this process the needs of both long-term prisoners and short-term prisoners are dealt with. Long-term or life-sentence prisoners are often excluded because they are not expected to be rehabilitated and reintegrated into the community. However, one still has to recognise the need for their own human development. On the other hand, short term prisoners are often not in the system long enough to participate in a full range of programmes, yet they are there long enough to experience the damaging effects of imprisonment.

4. Restoration

The Department sets out a much more substantial definition of what is meant by a restorative approach in prisons in the White Paper. However, like with other aspects of this White Paper, an implementation plan is needed to fully engage with how it could work in prisons.

5. Unit management

We support the initiative to implement the unit management system in all prisons. However, this

needs to be supported by an evaluation of how it has been functioning thus far. Particularly, what are the implications of a unit management approach in the larger overcrowded prisons? What resources, staff and training are required to implement this?

6. Staffing

There is a recognition that ordinary staff will need careful selection and re-training. However, the White Paper does not mention how it will use and increase its professional staff so as to be able to provide the services envisaged by the vision. For example, the DCS is currently extremely short of psychologists and social workers, and these numbers appear to be decreasing. Attention needs to be paid to equitable remuneration of professional staff in order to attract more people into the Correctional Services.

7. Building an appropriate organisational culture

Again, the White Paper outlines an exemplary vision. We applaud the recognition of the importance of the frontline employees. The key question is how is this going to be achieved and, importantly, measured.

With regard to dealing with corruption and maladministration we would suggest that provision also need to be made for receiving and acting on complaints and information received from prisoners (Para 8C.5).

8. Military culture

The White Paper commits the Department to a non-militaristic culture citing that it is inappropriate for a rehabilitation-centered system. However, the uniforms and insignia recently adopted by the Department are very militaristic even if the intention is to move away from this.

9. Awaiting trial prisoners

The White Paper proposes shifting the responsibility of awaiting trial prisoners to the Department of Justice or another Department. While this may alleviate some of the problems faced by the DCS, it proposes no solution to dealing with the problems experienced by those awaiting trial. It is widely acknowledged that the conditions in these facilities are the most overcrowded and impose the most restrictions on human dignity. In addition, these prisoners are not provided with the basic services of social workers, psychologist, or the opportunity for study. In our view the DCS should urgently devote time and resources, in conjunction with other government departments, to developing a solution to this situation.

10. Illegal immigrants

We agree that illegal immigrants should not be held in correctional centres and propose that this be dealt with.

11. Sentence plan

The 1998 Act makes provision for treatment, development and support services, and the White Paper elaborates on this through the proposals of a needs-based sentence plan for each prisoner. We endorse this thinking, and would like to see a move towards this implementation. Again we are concerned that the impact of such a plan will be minimal if attempted under current conditions.

12. The Safety and Health of Inmates

An important ingredient to making a safe environment is ensuring that the daily living conditions (inter alia meeting the hygiene, nutrition and exercise requirements) of inmates complies with local and international standards. Presently, the conditions in prison frequently fall below these standards. The Department must demonstrate how it intends to improve these daily living

conditions for all inmates.

The White Paper only deals with the issue of health very superficially although it is clear that health represents a huge challenge for the Department and requires further elaboration on health policy. There is no indication of the department's strategy with regard to the treatment and prevention of transmission of HIV/AIDS and other sexually transmitted diseases.

13. Prison Gangs and Safety of Inmates

The White Paper emphasizes the need to provide a safe environment for inmates. It talks of proper security classification and accommodation of inmates according to this framework. A strategy needs to be developed to create a safe living environment for prisoners, that will protect them from threats, violence and other coercive behaviour from their co-inmates - especially in their cells after lock up time when they are more vulnerable to these problems. The White Paper talks of a sound disciplinary structure that respects the principles of natural justice. However, it is important that staff are trained to implement this properly and consistently. Prisoners who are threatened with or who are victims of violence are often afraid to report it to the authorities because they fear that their case will not be dealt with properly and they will be subject to further reprisals from the perpetrator. Prisoners who are alleged, or who have been found to pose a risk to the safety or health of other inmates must be separated from the general prison population, and vulnerable groups of prisoners protected.

The issues of prison violence and gangsterism are crucial ingredients in current prison realities. But while the document repeatedly refers to the importance of a 'safe and secure' environment, these issues require far greater engagement. Indeed, if rehabilitation programmes are to have any impact, these issues will have to be tackled more extensively. We are disappointed that these issues are barely dealt with in the White Paper. Certainly we also acknowledge that central to these challenges are an improvement in conditions and better relations between staff and inmates as well as better prison management.

14. Release of prisoners

The White Paper recognises that it is the reintegration of released prisoners that is one of the most crucial determining factors in preventing recidivism. Imprisonment results in disruption of family relationships, employment, education programmes, and also may result in a person losing their place of residence. It is thus crucial that prisoners are assisted to establish these before they are released. The Department sees a role for itself in assisting prisoners in this task. However, again it should be noted that the DCS would have to massively improve its capacity to assist prisoners by employing more and dedicated staff to facilitate reintegration. The extent of this task cannot be underestimated, particularly in South Africa where unemployment is high, where often it is difficult to trace family members, and adequate accommodation in the community is scarce.

15. Detained Offenders Who are Foreign Nationals.

While we consider this an issue requiring further investigation, we are concerned by the Department's suggestion that foreign nationals be extradited in order to serve their sentences in their country of origin. Although such prisoners may be held in facilities closer to their families, there is no guarantee that they would have opportunities for their rehabilitation and development as is stated in the White Paper. We are concerned that this could lead to further discrimination of foreign nationals.

16. Public-Private Partnerships

The Department contains a framework for how Public-Private Partnerships should operate but this is largely a reflection of the current policy and legislation. Given the recent attention given to the issue by the Department, the portfolio committee and government more generally, it is disappointing that the paper does not outline its future intentions in this regard. Indeed, the Draft Green Paper suggested that private prisons are too costly for the African context and that further contracts should not be entered into. We would support this view under the current

circumstances. We would like to suggest that this issue be opened for public debate.

17. External Partnerships

The framework outlined on external partnerships is very positive and we hope that this paves the way for good working relationships. However, two issues should be borne in mind: the Department needs to make allocation for the funding of services provided by outsiders in prison as the external environment will not continue to provide for this in the long-term. Secondly, bearing in mind the security requirements and necessary quality controls, the Department needs to be more flexible and efficient in its approach and dealings with outsiders.

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