

COMMENTS ON THE CORRECTIONAL SERVICES AMENDMENT BILL

These comments are restricted to the proposed amendments to the Correctional Services Act, 1998, insofar as they affect the office of the Judicial Inspectorate.

Supplementary comments on the apparent revision of the provisions of the Bill relating to the Judicial Inspectorate are also enclosed.

As recently as February 2005 the White Paper on Corrections in South Africa commented as follows on the Judicial Inspectorate:

“14.4 Roles and responsibilities of the Judicial Inspectorate:

14.4.1 The correctional system in South Africa should be subject to independent inspection. The Judicial Inspectorate facilitates the inspection of prisons to ensure that offenders' rights are respected and reports on any corrupt or dishonest practices in correctional centres.

14.4.2 Section 85 of the Correctional Services Act, 1998 states that the:

- Judicial Inspectorate of prisons is an independent office under the control of the Inspecting Judge.*
- The objective of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of offenders in prisons and on conditions and any corrupt or dishonest practices in prisons.*

14.4.3 The Inspecting Judge must have at his/her disposal a number of fulltime Inspectors. The main responsibility of the Inspectors is to conduct independent inspections at various prisons focussing specifically on emphasis on the treatment of the offenders and the conditions in prisons. Their findings are reported to the Inspecting Judge who is obliged to report to the relevant Minister responsible for Correctional Services”

The importance of the independence of the Judicial Inspectorate and its function as provided for in the Correctional Services Act and the White Paper appears not to be in dispute.

The Jali Report emphasises how critical it is that the Judicial Inspectorate remain independent and effective.

The memorandum on the objects of the Correctional Services Amendment Bill states that the objects of the Bill are to amend the Correctional Services Act in order “**to align it with the White Paper on Correctional Services.....**”

It is accordingly disconcerting to read the proposed amendments to paragraphs 85 – 95 of the Act as set out in paragraphs 68 – 78 of the Bill which appear to undermine the role of the Inspectorate as described in the White Paper.

At the Portfolio Committee hearing an official of DCS stated that there was no intention to interfere with the independence of the Judicial Inspectorate but that the proposed amendments had been motivated by concern over the separation of powers as articulated in the Heath case about the Special Investigations Unit (SIU).

It is submitted that the Judicial inspectorate is clearly distinguishable conceptually, historically and in practice from the SIU and that the only possible cause for concern regarding the Judicial Inspectorate is the indefinite tenure of the Inspecting Judge.

In any event, it is unclear how concern over the separation of powers is remedied by proposing amendments that would have the effect of reducing the independence and curtailing the powers of the Judicial Inspectorate.

It is respectfully submitted that the provisions of the Bill affecting the Judicial Inspectorate even as modified by the subsequent amendments, constitute a retrograde and anomalous move at a time when all concerned parties should be promoting the independence and greater capacity of the Judicial Inspectorate.

It is noted with relief that there is no longer a provision that a legal practitioner rather than a Judge be appointed.

However, whatever decision is made in respect of Section 89 of the Act, the Inspecting Judge should retain the authority to appoint his or her staff (including the Chief Executive Officer if this post is approved) and there should be no requirement that such persons be seconded from the Public Service. Similarly it is submitted that if necessary the Inspecting Judge should have staff to which he or she can delegate functions to ensure continued independence. Serious consideration should be given to ensuring complete financial independence of the Judicial Inspectorate from the Department of Correctional Services.

There can be no good reason for the deletion of the provisions relating to **reporting** on corrupt or dishonest practices in correctional centres.

It is submitted that the proposed changes are incompatible with the State's commitment to accountability, responsiveness and openness in the Constitution and are not reconcilable with the emphasis on the independence of the office as set out in the 1998 Act, the 2005 White Paper and the still more recent Jali report.

This Honourable Committee is respectfully urged to protect and if possible advance the independence and capacity of the Judicial Inspectorate.

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