Civilian oversight and South African prisons: An examination of the Independent Visitor System

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1 INTRODUCTION

This article is based on a report on the Independent Prison Visitor system commissioned by the Civil Society Prison Reform Initiative (CSPRI) during 2003/2004 and forms part of a larger study into civilian oversight of the correctional system.

Oversight of public functions, duties and institutions can take many forms. In South Africa, the executive branch of government wields considerable power which must be held in check in order to make it accountable to the citizens of the country. Our Constitution[2] provides a clear mandate to Parliament, specifically the National Assembly, to oversee the functioning of the executive. There are also other bodies that play an oversight and monitoring function, namely the so-called Chapter 9 institutions such as the South African Human Rights Commission and the Gender Commission. In addition, civil society can play an important role in monitoring the actions of the executive and the legislature and in holding both organs of state accountable.

There have been some important attempts to ensure accountability and transparency through the introduction of oversight mechanisms in certain government departments. In the Department of Safety and Security, for example, community policing forums have been established. These initially emphasised oversight of the police as well as liaison, communication and co-operation with the community. Also, the Independent Complaints Directorate has been set up to provide independent civilian oversight over police actions.[3]

1 BA LLB LLM (Cape Town). This article was made possible through the financial support of CSPRI and the Ford Foundation.

2 Act 108 of 1996.

3 Lue-Dugmore M 'South Africa: An examination of institutional models and mechanisms responsible for: the administration of justice and policing, the promotion of accountability and oversight; and a review of transformation strategies and initiatives developed in relation to the administration of justice and safety and security' (2003) paper commissioned by the *Committee on the Administration of Justice, Northern Ireland, Institute of Criminology, University of Cape Town* at 44.

South Africa's correctional services system has been plagued by various problems over the years, which problems were specifically highlighted by the recent Jali Commission.[4] As stated by Pope, corruption (which is one of the focuses of the Jali Commission) undermines democratic development and inhibits the performance of public institutions and optimal use of resources.[5] Accordingly, the promotion of national integrity is critical to any process of sustainable reform.

In 1998, the Correctional Services Act[6] (the Act) provided for the establishment of the Office of Judicial Inspectorate of Prisons, the object of which is to facilitate the inspection of prisons in order to report on issues such as the treatment of prisoners, prison conditions and any dishonest or corrupt practices in prisons. This office and its functions fall in line with the purposes of the correctional system in South Africa, as set out in the Act.[7]

The powers, functions and duties of the Inspecting Judge of Prisons in South Africa include arranging for and inspecting prisons in order to report on the aforementioned objectives of the Office.[8] In accordance with this, the Inspecting Judge can appoint Independent Prison Visitors (IPVs) to deal with the complaints of prisoners and allow for community involvement in the correctional system.[9] This allows for an independent mechanism through which the treatment of prisoners can be monitored and promoted.

This initiative follows similar attempts abroad. Like South Africa, the United Kingdom has an independent prisons inspectorate whose functions and powers are set out in section 5A of the Prison Act 1952 as amended by section 57 of the Criminal Justice Act.[10] These functions include the inspections of prisons in order to report on the treatment of prisoners and conditions in prisons.

Somewhat akin to our IPV system are the Independent Monitoring Boards for Prisons and Immigration Removal Centres. These Boards provide a monitoring function in order to ensure lay and independent oversight on behalf of ministers and the general public. Until 8 April 2003, Independent Monitoring Boards were referred to as Boards of Visitors (in Prisons) and Visiting Committees (in Immigration Centres). They were established under the Prison Rules 1964, Young Offender Rules 1968 and the Immigration and Asylum Act 1999 as well as the Detention Centre Rules 2001.

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4 See also Sloth-Nielsen J 'Overview of policy developments in South African Correctional Services 1994–2002' (2003) *CSPRI Research Paper Series* 1.

5 Pope J 'The national integrity system' *Confronting corruption – The elements of a national integrity system* TI Sourcebook, Transparency International, available at http://transparency.org/sourcebook/index.html, accessed 01/05/2004.

6 Act 111 of 1998. While initially only certain parts of the Act were promulgated, including the provisions relating to the Office of the Inspecting Judge of Prisons, the whole Act was finally promulgated in 2004.

7 Ss 2 and 4.

8 S 90.

9 S 92.

10 Information obtained from http://www.homeoffice.gov.uk/justice/prisons/inspprisons/index.html, accessed May 2004.

As with our IPV system, board members can access the establishments to which they are attached at any time. While board members are appointed to monitor the concerns of inmates or detainees, unlike their South African counterparts, their function is also to talk to staff and check up on their working conditions. Again, unlike the position in South Africa, board members can visit establishments unannounced and do not have to schedule their visits.

Board members are volunteers and no special qualifications are needed for one to become a member. Instead, there is a focus on individual qualities such as fairness, commitment to human rights and the ability to communicate effectively with people. Although the functions and aims of this system are similar to those of the IPV system, there are significant differences. These include the fact that IPVs are employed in terms of a contract of employment, time spent monitoring by IPVs is longer than that undertaken by board members, the training received by IPVs (three days) is considerably less than that received by board members, and the appointment criteria and procedure differ significantly.

As a major component of the oversight function played by the Office of the Inspecting Judge, it is important to ensure that the system of IPVs functions in accordance with its purpose and mandate as set out in the Act. This can only be achieved by evaluating the functions, interaction and effectiveness of the IPV system. This research may be seen as a mechanism for co-operation between government and civil society in order to ensure that the constitutional principles that underpin the Act are adhered to and that the minimum standards that Correctional Services strives to achieve are examined and assessed.

The research into the IPV system had the goal of evaluating, *inter alia*, the following:

- the interpretation and execution of the establishment of the IPV system by the Judicial Inspectorate of Prisons;
- the performance of the IPVs measured against the procedures and policies as described in the IPV manual;
- the effectiveness and efficiency of the IPVs in resolving complaints;
- the co-operation between IPVs, institutional committees and the Heads of Prisons;
- the efficiency and effectiveness of Visitors' Committees;
- interaction between IPVs and prisoners who have lodged complaints; and
- obstacles and impediments that IPVs encounter.

It should be noted that the purpose of the research was not to evaluate individual IPVs or the performance of IPVs at a particular prison, but rather to evaluate the IPV system generally. In this respect, the study was limited as it did not extend to all prisons and did not involve all IPVs. However, it is hoped that the sample of participants to the study is wide enough to ensure that the results could be applied generally across South Africa.

This article will not deal with all the findings obtained through the original study but will seek to highlight some of the most notable findings which informed the subsequent recommendations made to the Office of the Inspecting Judge of Prisons for further action.

2 METHODOLOGY

Initial meetings with senior staff of the Office of the Inspecting Judge of Prisons were held in order to explain the research methodology and incorporate any requests from the Office. A research proposal and draft questionnaires were then compiled and forwarded to the Research Ethics Committee of the Department of Correctional Services in order to obtain permission to conduct the research in selected prisons.[11] The research then involved the administration of the questionnaires, through personal interviews with the staff of the Office of the Inspecting Judge of Prisons, prison staff (including Heads of Prisons), IPVs, prisoners and civil society organisations; obtaining information and statistical information from the electronic reporting systems of the Office of the Inspecting Judge of Prisons; an analysis of the information obtained through the records, interviews and completed questionnaires, using, amongst others, the Correctional Services Act; the User Manual for IPVs and the IPV Manual as control documents.

2.1 Profile of the participants to the study

A total of 97 individuals participated in the study. In order to maintain confidentiality, any references to specific prisons that may reveal the identity of IPVs and prison staff have been removed and only the areas and generic prisons in which they operate are indicated.

2.1.1 *IPVs*

Most IPVs were selected on the basis of their work at prisons identified for the purposes of the research. Others were sourced by random requests to various IPVs to complete the questionnaire.

A total of 20 IPVs, made up as follows, were interviewed:

- Western Cape – 2 IPVs, including one from Pollsmoor Prison
- Gauteng – 17 IPVs from Johannesburg Prison, Pretoria Prison, Baviaanspoort Prison, Modderbee Prison and Krugersdorp Prison
- Free State – 1 IPV from Groenpunt Prison.

The IPVs who were interviewed were selected from a range of prisons, including maximum, medium, juvenile and female prisons. Two Regional Co-ordinators were interviewed and one chairperson of a Visitors' Committee. Two former IPVs were also interviewed about their experiences and perceptions of the system.

11 This permission was granted in October 2003.

2.1.2 *Prison staff*

Prison officials were sourced by requesting the heads at the relevant prisons identified for research purposes to make available staff from senior and middle management levels as well as correctional officers working in the cells on a daily basis. These were, therefore, also random selections based on the officials' availability on the days that the research was undertaken at the various sites.

A total of 32 prison staff members, made up as follows, were interviewed:

- Gauteng – 22 members from Pretoria Prison, Baviaanspoort Prison and Leeuwkop Prison
- KwaZulu-Natal – 10 members from the Pietermaritzburg and Durban-Westville Prisons.

Prison staff were stationed at a range of prisons including maximum, medium, juvenile and female prisons. In addition, the members interviewed included a Head of Prison, Assistant Head of Prisons, Centre Co-ordinators, Section Heads and Unit Managers, Senior Correctional Officers, Section Supervisors and correctional officers. All staff members were informed of the purpose of the research and participated of their own volition.

2.1.3 *Prisoners*

A total of 35 prisoners were interviewed. They were selected by requesting the Office of the Inspecting Judge to select randomly names of prisoners from the identified research prison who had lodged complaints that were either pending or that had been resolved. These lists were then forwarded to the heads of those prisons, who were requested to allow these prisoners to meet with the researcher to determine whether the selected prisoners would participate in the research. If a particular prisoner was no longer at the prison, the IPV at that prison was asked to suggest alternative prisoners. All prisoners were informed of the purpose of the research and participated of their own volition.

Prisoners were selected from the following prisons:

- Gauteng – 4 prisoners from Pretoria C Maximum Prison, 6 prisoners from Leeuwkop Maximum Prison, 8 prisoners from Pretoria Central Prison and 7 from Baviaanspoort Medium Prison
- KwaZulu-Natal – 3 prisoners from Durban-Westville Female Prison, 6 prisoners from Durban-Westville Medium B Prison and 4 from Pietermaritzburg Medium B Prison.

All of the prisoners who were interviewed had been sentenced. It was originally intended that some awaiting-trial prisoners would be interviewed; however, most had been released, moved or sentenced by the time the interviews were conducted. An attempt was made to interview one awaiting-trial prisoner from Durban-Westville Medium A Prison, but he first wanted to obtain permission from his legal representative and, therefore, it was decided to terminate the interview.

2.1.4 *Civil society members*

A total of 5 members of civil society were interviewed. One was interviewed personally and the remainder completed a self-administered questionnaire. The participants were constituted as follows:

- Western Cape – 2 participants from different NGOs
- Gauteng – 1 participant from an NGO
- Eastern Cape – 2 participants from the same NGO.

All of the participants were from organisations that have some knowledge of or connection to prisons or the Department of Correctional Services. Likewise, a further 28 individuals from NGOs, CBOs or Chapter 9 institutions that had knowledge of or a connection to prisons or the Department of Correctional Services were sent the self-administered questionnaire, but no responses were forthcoming.

2.1.5 *Office of the Inspecting Judge of Prisons*

Three officials from the Office of the Inspecting Judge of Prisons, who have a detailed knowledge of the IPV system, were interviewed.

3 THE INTERPRETATION AND EXECUTION OF THE ESTABLISHMENT OF THE IPV SYSTEM BY THE OFFICE OF THE INSPECTING JUDGE OF PRISONS

Section 92 of the Correctional Services Act makes provision for the appointment of IPVs. This provision has resulted in the Office of the Inspecting Judge's (OIJ's) adopting a vision regarding who they consider appropriate for appointment to these posts, namely public-spirited persons of integrity who are interested in the promotion of the social responsibility of human development of prisoners.[12] The IPV system, as it operates today, has evolved through continuous planning, implementation and revision.

In 1999, a pilot project for IPVs was introduced.[13] This project involved the appointment of 15 IPVs at selected prisons in the Western Cape for a period of three months. The objectives of the project were to establish a uniform system and rules of procedure relating to various aspects of the IPV system. Since then, the development of the system has been ongoing. The IPV system is now electronically automated, a customised nomination form for IPVs has been developed, former IPVs have been appointed as case managers in the legal unit, special assistants have been appointed as IPVs,[14]

12 Briefing document of the OIJ, undated (a copy can be obtained from the author).
13 'Pilot Project: Appointment of Independent Prison Visitors: Judicial Inspectorate' JI 3/3.
14 Special assistants are persons who have been appointed for a particular purpose. For example, a dentist was appointed who then provided orthodontic services in a particular prison.

public meetings are arranged regarding calls for nominations for IPVs and eight Regional Co-ordinators have been appointed.[15]

The Regional Co-ordinators' work was initially performed by the Judicial Inspectors; however, there was no ongoing support for the IPVs as the Judicial Inspectors were performing two functions and could not provide the necessary assistance to IPVs. This problem was identified from a survey conducted with IPVs, which revealed this need to the Office of the Inspecting Judge of Prisons. As a result, former IPVs were appointed as Regional Co-ordinators on a full-time contractual basis. Their purpose is to provide logistical support, attend Visitor Committee (VC) meetings as representatives of the Office of the Inspecting Judge of Prisons, and to capture on the electronic system all outstanding and unresolved complaints flowing from the VC meeting.

IPVs are appointed for two years on a contractual basis. The reasoning behind this is that the Office of the Inspecting Judge of Prisons does not envisage an IPV's appointment as being a career choice, because of the need to ensure the independent nature of the position – the Office of the Inspecting Judge of Prisons does not want an IPV to become too 'entrenched' in the system as this may ultimately compromise his or her independence. The appointment is seen as a learnership programme during which individuals are taught skills with which they can contribute further to civil society.[16]

The 2002/2003 Annual Report of the Office of the Inspecting Judge of Prisons indicated that 186 IPVs were appointed countrywide, with 8 Regional Co-ordinators and 36 VCs. During 2002, IPVs paid 7 147 visits to prisons, interviewed 58 907 prisoners, and recorded 190 167 complaints. An additional 4 992 written complaints from prisoners were received directly by the Office of the Inspecting Judge of Prisons.[17] These include complaints of assault by fellow prisoners or prison officials, denial of access to family members, complaints about dietary requirements and the lack of availability of writing materials. One of the most common complaints concerns the refusal of a request for transfer to a different prison.

4 THE PERFORMANCE OF THE IPVs MEASURED AGAINST THE PROCEDURE AND POLICIES AS DESCRIBED IN THE IPV MANUAL

The Office of the Inspecting Judge has a performance evaluation system that is aimed at evaluating the performance of the individual IPVs on actual work done. The research study, on the other hand, concentrated on

15 Information obtained from interviews with three senior officials at the Office of the Inspecting Judge of Prisons on 25 August 2003.

16 Interview with senior official from the Office of the Inspecting Judge of Prisons on 30 April 2003.

17 The 2004/2005 Annual Report of the Office of the Inspecting Judge of Prisons reveals that 221 IPVs had been appointed countrywide, that they had made 9 948 visits to prisons and interviewed a total of 573 941 prisoners, and that 350 611 complaints had been recorded.

the performance of IPVs in general, as measured against the procedures and policies of the IPV Manual. This inquiry, therefore, involved questioning IPVs and prison staff on aspects of the IPVs' work in relation to resolving different types of prisoner complaints.

4.1 Powers, functions and duties of IPVs

According to the IPV Manual, the primary function of the IPVs is to deal with prisoners' complaints, and their duties in this regard are set out in section 93(1) of the Act. Furthermore, the IPV Manual sets out the underlying purpose, of dealing with complaints. This involves:

- serving as a mechanism to promote the humane treatment of prisoners;
- monitoring the manner in which the Head of Prison (HOP) deals with prisoners' complaints in order to resolve them;
- promoting a peaceful prison environment; and
- reporting unresolved or urgent complaints to the Inspecting Judge.

The IPVs were asked directly what their powers, functions and duties are. The majority of the responses indicated a clear understanding of their mandate in terms of the Act and the Manual. Most knew their duties as set out in section 93 of the Act and specified them. However, none of the IPVs showed an insight into the underlying purpose of dealing with complaints, though some identified the monitoring of prisoners' living conditions and treatment as the rationale behind their task. Out of the 20 IPVs interviewed, only 2 mentioned this aspect of their work. However, a number did stress their monitoring function. No mention was made of the promotion of a peaceful prison environment. However, judging from their overall responses to the study, the researcher concluded that IPVs have a general understanding of the purpose of their work.

4.2 Prisoners' right to lodge complaints

The responses of the IPVs unanimously indicated a clear understanding of what prisoners' rights are concerning the lodging of complaints. This included the understanding that prisoners have the right to lodge a complaint at any time and that these complaints must be investigated according to proper procedures.

However, the above finding needs to be contrasted with the responses of the prison staff to the question as to whether they know what prisoners' rights to lodge complaints entail. Of the 32 DCS members interviewed, 15 stated that they knew what prisoners' rights are, but failed to elaborate despite being asked for details. One DCS member indicated that he was unaware what prisoners' rights are and 16 stated that they knew, and provided details of their understanding of prisoners' right to lodge complaints. While some of these answers indicated a rudimentary knowledge of prisoners' right to complain, a number indicated a severe lack of insight and understanding on the part of DCS members. This indicates an inherent and institutional failure on the part of some DCS members to appreciate the need to adhere to certain minimum standards concerning

the treatment of prisoners. It is in this environment that the IPVs have to operate and perform their functions and duties. It is, therefore, not surprising to note some of the difficulties that IPVs encounter, as discussed below.

4.3 Capacity of IPVs

Only a minority of the IPVs who were interviewed were of the opinion that the work hours allocated to them were sufficient. All the respondents indicated that the hours allocated did not correspond to the amount of work to be done in their prisons. One of the IPVs indicated that the time allocation was sufficient for the available work in a small prison with relatively few prisoners.

It is, therefore, perhaps opportune to review the hour allocation according to the size of the prison assigned to a particular IPV. In conducting the interviews with IPVs, it became apparent that many work extra hours for which they receive no remuneration. There does not appear to be any negativity about this on the part of the IPVs. However, it is suggested that a balance be struck between limiting the hours that an IPV should be spending in the prison (so as to prevent unnecessary generation of work) and allocating sufficient time for the actual amount of work that needs to be attended to.

5 THE EFFECTIVENESS AND EFFICIENCY OF THE IPVs IN RESOLVING COMPLAINTS

The main function of IPVs is to resolve complaints, but there are various factors and issues affecting their ability to perform this mandate. These include the procedures set by the Office of the Inspecting Judge of Prisons, their interaction with prisoners and with the Office of the Inspecting Judge of Prisons. This section will outline the functioning and efficiency of the IPVs according to their own assessment of their work and according to the impressions and experiences of prison staff and prisoners.

5.1 Site visits

According to the IPV Manual, IPVs must undertake a full site visit to the prison at least twice a month, during which time the IPV must visit all the cells where the prisoners are incarcerated. Judging from the participants' responses to the questionnaires, it would appear that approximately half of the IPVs interviewed take this guideline literally and only conduct full site visits twice a month – usually at the beginning and end of a month. The remaining participants to the study indicated that they conducted site visits at least twice a month, three times a month, and as many as four times a month.

These differing practices seem to correspond with prisoners' experiences. While a good number of prisoners stated that the IPVs visit them either once or twice a month, the majority stated that they were visited once a month. A small number indicated a bi-monthly visit and three prisoners stated that they only see the IPV when they request a meeting.

This seems to indicate that the general practice of IPVs is to undertake regular site visits. Irregular and infrequent visits should be identified by the performance management system of the Office of the Inspecting Judge of Prisons and dealt with. If the performance management system fails to do so, this aspect of it needs to be reviewed so that the Office of the Inspecting Judge of Prisons can assess more effectively whether IPVs are complying with their duties.

Most of the IPVs indicated that site visits entailed visiting each cell in the prison and that a member of the DCS would accompany them. They made mention of the fact that the prison official is in view during the visit but out of earshot. Some reported that they carry out their visits unaccompanied. Two IPVs stated that, during their site visits, they spoke to each and every prisoner to determine whether any had complaints. This, however, does not appear to be standard practice and could depend on the size of the prison they serve.

It is encouraging that the majority of the prisoners interviewed were aware of the IPV system. Their knowledge of it stems from various sources, including pamphlets, radio and visits from IPVs themselves. It should be noted, however, that a number of the prisoners interviewed had been transferred to the prison they were currently in from other prisons and that three of the prisoner respondents had not had any contact with an IPV since being moved. The fact that an IPV has not had contact with all the prisoners in his or her prison is contrary to the specific duties set out in the IPV Manual and the information obtained from the IPVs, all of whom maintained that they have had access to all of the prisoners in the respective prisons.

A potential explanation for this is that the prisoners in question had laid their complaints at their previous prisons and had received no feedback since their transfer to their current prison. This seems to indicate a breakdown in communication between the Office of the Inspecting Judge of Prisons and the IPVs.

It is also encouraging to note that, of the 32 prison staff members interviewed, only one indicated that he was not aware of the IPV system.

5.2 Recording of prisoner complaints

Several questions were aimed at eliciting information on how the IPVs interpreted their independence and how they gained the prisoners' confidence. As far as their independence was concerned, most IPVs stated that they ensured this by not taking sides with either prisoners or prison staff, by being impartial and neutral. However, one IPV referred to the inherent tension between having a function requiring one to deal independently with prisoners' complaints while working in an environment that necessarily requires the co-operation of the prison staff.

In response to a question put to prisoners as to whether they regard IPVs as being independent, 18 were of the opinion that they were independent, 16 were of the opinion that they were not independent and one respondent was undecided.

This is particularly worrisome, as trust in the IPVs' independence goes to the very heart of the establishment of the system. For such a large portion of the research sample to be of the opinion that IPVs are not independent indicates that the IPVs and Office of the Inspecting Judge of Prisons must develop further strategies and techniques to enhance and demonstrate their independence to prisoners.

Of the five civil society organisations that were consulted, four considered IPVs to be independent from prison staff. The fifth respondent was undecided and could not commit to an answer either way. It is noteworthy that this respondent belonged to the only organisation consulted that did no direct work in prisons, whereas respondents from other organisations had knowledge of the correctional system and had worked in that sector. The civil society organisations were also asked whether, in their opinion, IPVs were considered independent in the eyes of the prison population. In this regard, all five were of the opinion that prisoners regarded them as independent.

As far as gaining a prisoner's trust is concerned, the IPV Manual does not give much guidance and the IPVs have to use their discretion. Most IPVs mention the fact that they explain their functions regarding the recording of complaints and make the point that they are independent of prison staff. However, in general, all seem to have developed their own manner of building a relationship with prisoners. An example of a comment received reveals this:[18]

> Your approach must be calm and reassuring. You can't be aggressive or rude. The trust you develop between you and him, and you must be calm and collected. You must also show them you are trying to help. Don't give them the impression you are a friend with DCS, but explain that you need information from them.

Likewise, comments received from some of the prisoners indicate the initiative and skills used by the IPVs in gaining the prisoners' confidence:

> 'She introduced herself and outlined the nature of her job and knowing she is sent by the Judge made me feel comfortable.'
>
> 'She was so kindly to me, whereby I take her like our heroine for solving our problems.'
>
> 'They manage the three "C"s: calm, cool and collected. Very understanding and listening and comfortable to be with and makes it possible that your complain is attended to as to even come into consensus, compromise.'
>
> 'She talked to me like she was my mother. Asked me what was in my heart. I must talk about what I am doing right or wrong like my mother.'

These comments indicate that the manner in which an IPV addresses a prisoner can earn him or her that prisoner's trust and respect. The respondents also seem to imply that the way in which IPVs treat prisoners is different to the treatment received by prisoners at the hands of members of the DCS.

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18 The quotes that appear in this article have been transcribed with grammatical and spelling errors intact.

However, the prisoners' responses in relation to the issue of confidentiality are a matter of concern. While some stated that their consultations took place in private without the presence of a DCS member or other prisoners, others confirmed that a DCS member was usually present and, in the opinion of the prisoner, able to hear the content of the consultation. Most of those who were interviewed in the presence of prison staff stated that they were uncomfortable during the interview precisely because of the presence of a member of the DCS. Judging from the responses received, it would appear that the fact that it is necessary for a member of the DCS to be present because of safety concerns has either not been explained properly to prisoners or not been explained at all. It is recommended that steps be taken to address the issue of striking a balance between the safety of the IPV and the confidentiality of the consultation.

5.3 Interaction between IPVs and prisoners who have lodged complaints

The most important aspect of the interaction between IPVs and prisoners who have lodged complaints relates to the feedback such prisoners receive in respect of their complaints. Based on the responses to the questionnaires, it appears that the IPVs use a range of different means to provide feedback. Two IPVs stated that their only manner of providing feedback involved printing out the electronic response from the Office of the Inspecting Judge of Prisons and furnishing this response to the prisoner. It is the researcher's opinion that this is not the most optimal means of providing feedback. Another IPV stated that the usual method was to provide written confirmation of the outcome but that this was also sometimes done verbally. This IPV indicated that the nature of the complaint dictated the manner used to provide feedback.

A number of IPVs arrange for a private consultation with the prisoner who has lodged a complaint and then inform him or her face-to-face of the outcome of the complaint. According to some of the replies received, it would appear that a member of the DCS is present for purposes of security – even during such a private consultation.

However, the prisoners' responses paint a different picture. Thirteen out of the 35 prisoners who were interviewed stated that they had received no feedback whatsoever regarding their complaints. The remainder of the prisoners indicated that they had received feedback. This seems to be at odds with what is reported by the IPVs. These different responses can be interpreted to mean that the IPVs are not performing as they are mandated to do or that they are providing feedback but not in a manner that is understandable to the prisoners. This aspect, therefore, needs to be addressed either by carrying out an assessment of the performance management system to ensure that IPVs' feedback is understood or by improving the training given to IPVs.

A further consideration that needs to be taken into account is the quality of feedback that is provided to prisoners. Of those prisoners who stated that they had received feedback, nine were not satisfied with the feedback they had received. This dissatisfaction could stem from the

simple reason that the feedback was not to their liking and did not accord with what they had expected the outcome of their complaint to be. However, the following statements made by dissatisfied prisoners provide reasons for concern:

> 'The power of the IPV is too restrict and there are always cover ups from DCS side and excuses.'
>
> 'Dit vat baie lank vir terugvoering. Ek sê dit weer dit is 'n gemors. Hier is nie samewerking met die IPV en lede van DK dienste.' [It takes very long to get feedback. I say it again, it is a mess. There is no co-operation between the IPV and members of DCS.]

Although these statements came from a small number of people in the sample, they indicate that there is a perception that IPVs are ineffectual and are unable to attend capably to prisoners' complaints. This could ultimately have a negative impact on the work being done in prisons by IPVs and may affect their credibility amongst the prison population. It is suggested that, in order to counter this, training that specifically equips IPVs with the skills needed to communicate difficult decisions to prisoners is needed. This would possibly help avoid having a prisoner feel that the IPV is not performing his or her mandate efficiently.

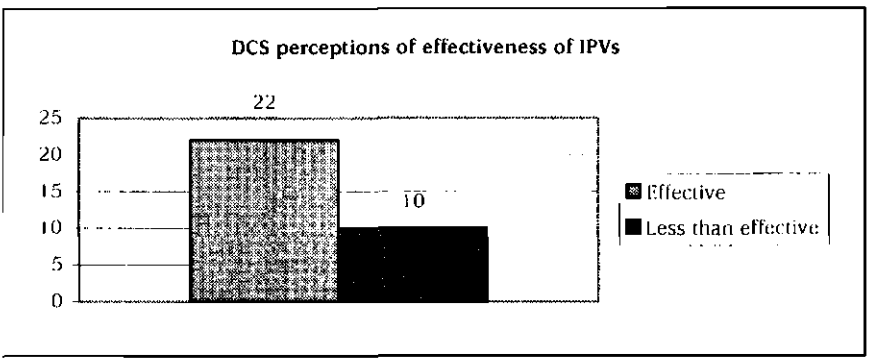
5.4 The impact of IPVs in resolving complaints at prisons

As far as the impact of IPVs is concerned, 18 prisoners felt that the IPVs were dealing with complaints effectively, 16 felt that they were not and one indicated that he did not know whether they were or not. The reasons given by the prisoners who felt that IPVs were not attending to complaints included:

> 'Firstly the book goes to the wardens and secondly IPVs are local people – so they are used by wardens because they are from the same area.'
>
> 'Because they do not make a follow up – they always take complaints and nothing happens after.'
>
> 'Hulle word rond gedonder deur die lede van DK Dienste.' [They are messed around especially by members of the DCS.]

These responses indicate two main problems. First, there is a perception that the IPVs are not performing their functions correctly. This needs to be addressed through the performance management system, there should be greater control from the Regional Co-ordinators, and there must be ongoing communication with the Office of the Inspecting Judge. Secondly, there is the usual suspicion and distrust of members of the DCS, with IPVs' not being regarded as being independent of prison staff. This is difficult to solve, as IPVs have to operate within the constraints of the DCS system. A potential solution is that more careful communication is developed between IPVs and prisoners relating to issues of independence.

Prison staff were also questioned about their perceptions regarding the effectiveness of the IPVs' abilities to resolve complaints. Of the 32 members of the DCS who were interviewed, 22 believed that the IPVs are effective. The remainder expressed varying opinions on this issue.



Some stated that their effectiveness was 'average', 'poor' or '20%'. However, some of the more telling comments were:

> 'Very poor in that they normally do not consult with the section members when registering complaints from prisoners. Sometimes a resolved problem is registered again with them.'
>
> 'IPVs need someone like a strong supervisor who can monitor them not to do as they like. They come for duty in the morning, sign the book G365 to report that they are on duty and they disappear.'
>
> 'The system is useless as she does not solve any problems but refer all the list to unit managers. She also jots down stupid complaints.'

Some of these observations indicate that officials of the DCS fail to understand the nature of the work performed by the IPVs. However, others suggest rather serious problems with the performance and management of the IPV system that need to be addressed.

Furthermore, some general comments on the IPV system that were elicited from the prisoners ought to be taken into account in the development of future training programmes and guidelines for the operating of prisons. There should also be some combined efforts between the OIJ and DCS to inform members of the DCS about the function and purpose of IPVs. These comments include the following:

> 'Die IPV se hande is afgekap. Die lede hulle maak IPVs dom/stupid. IPVs is beperk op sekere goed. Daar is nie plek waar ons kan praat en lede luister en maak gek van ons. Hulle moet hulle weg vat. Staat mors geld. Bewaarders lag hulle uit oor IPVs.' [The IPVs' hands are tied. The members they make IPVs stupid. IPVs are limited with certain things. There is nowhere that we can talk and members listen and make fun of us. They must take them away. State is wasting money. Warders have a good laugh over IPVs.]
>
> 'The IPV hasn't got enough power, because when you laid a complain, the member will do as they are co-operating but in the end there will be no progress. The big problem is within the member of DCS not with the IPV because the member are not scared of the IPV.'
>
> 'In my understanding the IPV's in prison has brought transparency and are in the edge of developing the justice system while DCS are still reluctant in giving their side of such development and that no DCS directorate is responsible for a serious attendance into the unresolved matters directed to DCS and that the DCS's feel threatened by the independence of the Inspector of Prison Visitors (IPV). It's my submission that the IPV be employed with more power in resolving

conflicts and complains as [. . .] DCS bodies are conservative to the rights of the Department. Correctional clients are not given an alternative avenue for other bodies in dealing with complaints.'

6 THE CO-OPERATION BETWEEN IPVs, INSTITUTIONAL COMMITTEES AND THE HEADS OF PRISONS

Several aspects of the work of IPVs provide insight into the co-operation between them and DCS officials. This section will examine the question of security, in addition to the perceptions of the parties concerned regarding their relationship.

6.1 Security arrangements

The IPV Manual states that it is the responsibility of the Head of the Prison to provide security for IPVs during their site visits. In discussing this aspect of their work, less than half of the IPVs interviewed indicated that they had no problems with security arrangements. Therefore, it would appear that security fears are commonly experienced by IPVs.

Some of the experiences of the IPVs who have had difficulties in this regard include:

- members of the DCS not allowing IPVs access to the cells by not unlocking the doors;
- members of the DCS leaving the cells in order to escort prisoners to other areas such as the hospital whilst a visit is taking place;
- members of the DCS 'disappearing' whilst IPVs are still busy recording prisoners' complaints. One of the IPVs explained that this is a problem because, if the IPV leaves the cell once he or she realises that he or she is alone, it creates the impression that he or she distrusts the prisoners. This dilutes her or his credibility with the prisoners;
- being locked in cells with awaiting-trial prisoners; and
- unwillingness on the part of members of the DCS to escort IPVs to single cells.

Two IPVs suggested a reason for the problems with security arrangements, namely the shortage of prison staff occasioned by the overcrowding in prisons. This is perhaps a good point; nevertheless, IPVs are entitled to feel secure, and failing to ensure this has a negative impact on the relationship between IPVs and prison staff. It creates the impression that prison staff do not hold the work undertaken by IPVs in high regard.

Of the prison staff interviewed, most were of the opinion that the security of IPVs is the responsibility of, amongst others, the members in charge of internal security, the section supervisors or the centre co-ordinators (operational). This would require that the Head of Prison delegate this function to those officials. They also mentioned that the main aspect of security arrangements entails escorting the IPVs into the cells and units.

6.2 The relationship between IPVs and prison staff

The study revealed polarised opinions on the part of IPVs in relation to this issue. Those IPVs who were of the opinion that they have a good relationship with prison staff used terms such as 'professional', 'satisfactory', 'co-operative' and 'helpful' to describe it. The comments of IPVs who have experienced problems with the relationship are more telling, however. These comments are generally self-explanatory and include:

> 'Less satisfactory, members feel IPVs are in prisons to spy on them.'
>
> 'Prison staff still has a misinterpretation of my presence in prison. They think I am there for witchhunting. They might loose their jobs. They have a problem of trusting any role as an IPV.'

Of the prison staff interviewed, 28 participants stated that they had good and professional working relationships with IPVs. One stated that they were 'friends' and that they got on like 'bread and butter'. This latter statement tends to cause concern, as it would appear that the IPV in question might be identified as having compromised some or all of his or her independence. This indicates the difficulties faced by IPVs who work in close proximity to officials of the DCS, while at the same time being mandated to monitor them to an extent through the recording and resolving of prisoners' complaints.

Four members of the DCS indicated that there were problems in the relationship between IPVs and prison staff. These included observations that the prison staff were not happy with them, they were not trusted and that their relationship was limited just to greeting one another.

The relationship between the DCS and IPVs seems to be a problem that needs immediate attention from both the DCS and the Office of the Inspecting Judge. It would appear that both IPVs and members of DCS need to be sensitised with regard to their respective functions and work. Both parties need to be prepared to acknowledge one another's duties and responsibilities and both must recognise the value of the other's obligations.

One of the questions put to the IPVs was whether their relationship with prison staff affects their relationship with the prisoners. Some of their answers include the following:

> 'The prisoners have trust in me as an IPV because my relationship with the DCS is purely professional and does not raise any sceptics from the prisoners.'
>
> 'The relations must not be more than work relationship because the prisoners will start losing faith in IPVs.'

These few responses show insight on the part of some IPVs into the fact that they must be seen to be independent and able to balance their reliance on the DCS with their monitoring and complaints-resolution function. However, many IPVs did not respond to this question. This raises the concern that, despite their training and general acknowledgement of their independent function in prisons, their day-to-day experiences may detract from this.

7 TRAINING

The performance of the IPVs initially depends on the training they receive from the Office of the Inspecting Judge. It is, therefore, important to determine the effectiveness of this training in preparing IPVs for their work in prisons.

Of the IPVs that commented on the training, only three felt it was helpful and sufficient. The most common comments related to the fact that the training provided was too short and intensive, that it was not practical enough, and that it did not provide enough information about the day-to-day duties of IPVs. Two former IPVs who were interviewed also expressed dissatisfaction over their training. They noted that training provided an idea of what happens in prison but that the reality was totally different. One observation is that the procedures devised for IPVs are not completely compatible with prison administration and operation.

8 THE EFFICIENCY AND EFFECTIVENESS OF VISITORS' COMMITTEES

Visitors' Committees were established in terms of section 94(1) of the Correctional Services Act 111 of 1998, which provides that the Inspecting Judge may establish a Visitors' Committee for a particular area. A Visitors' Committee comprises all the IPVs appointed in that area and meets monthly to discuss matters contained in the IPV Manual. The functions of the Visitors' Committee include:

- considering unresolved complaints;
- submitting those complaints that the Visitors' Committee is unable to resolve to the Office of the Inspecting Judge;
- organising a schedule of visits;
- extending and promoting the community's interest and involvement in correctional matters; and
- submitting minutes of its meetings to the Inspecting Judge.

Only one of the IPVs interviewed expressed any dissatisfaction with the operation of the Visitors' Committee, and then did not elaborate further. The remaining comments all indicated that the IPVs were of the opinion that the Visitors' Committee is an excellent means of sharing information and discussing unresolved complaints.

As far as prison staff were concerned, of those who had some form of interaction with the Visitors' Committee, no problems were noted and their effectiveness was rated as between average and good, with one respondent saying that the Visitors' Committee is 'excellent'.

According to the IPV Manual, an important function of the Visitors Committee is to encourage community participation in prisons by extending invitations to community leaders and representatives as well as other departmental stakeholders to attend meetings. The study revealed that the Visitors' Committees are carrying out this function and receiving good co-operation from their communities. Three separate Visitors' Committees indicated that they held meetings and enjoyed excellent attendance by

representatives from Legal Aid, area managers from the office of the Inspecting Judge, the Commissioner of the Parole Board, DCS officials including Heads of Prisons, religious leaders, taxi associations, legal representatives and other community organisations.

An example of the initiative shown by Visitors' Committees is that of Pretoria. They have invited representatives from a secondary school to visit a juvenile prison and have invited members of the legal profession to Pretoria Local Prison. In addition, a Women's Day breakfast was organised at Pretoria Female Prison which women who had been identified as being active in their communities were invited to attend. The breakfast was held in the prison and a tour of the prison was organised as well as a gathering with the female prisoners for discussions. As a result of this initiative, one of the guests at the breakfast was appointed as an IPV.

It would appear that the VC is an important and beneficial aspect of the IPV system that receives support from the community, other departments and IPVs themselves.

9 COST-EFFECTIVENESS OF IPVs

For the 2004/2005 financial year, the total expenditure of the Inspectorate amounted to R14,2 million.[19] Of this amount, R6 884 264 was for payment of IPVs. They cost the OIJ on average R2 596,00 per month per IPV. This includes all costs, including travelling and administrative costs, as well as their actual remuneration. Based on these figures, it appears that the IPV system is extremely cost-effective. This is motivated by the fact that, for this amount of money, there is an independent community observer to monitor the human-rights conditions of prisoners at almost every prison in South Africa. However, as was noted in the original research report and in the earlier recommendations to the Office of the Inspecting Judge, perhaps some of the problems that have been encountered can be addressed by increasing expenditure for the system. Suggestions in this regard include allocating more hours for IPVs to undertake their work, allowing for additional appointments, and increasing the regional management system of IPVs.

10 RECOMMENDATIONS

At the outset, it must be stated that the IPV system is one that appears to be an overwhelming success. First, a monitoring presence has been established in prisons, which contributes to the more efficient management of complaints. Second, increased community involvement has been achieved in an environment that has traditionally been 'closed'. Overall, it is argued that the IPV system has made a positive impact in respect of the human rights of people held in prisons in South Africa. However, this does not mean that human-rights problems in prisons are over. There are

19 Annual Report 'Prisoners and prisons' (2004/2005) *Judicial Inspectorate of Prisons. Office of the Inspecting Judge.*

certain improvements that need to be explored and these are discussed below. In providing civilian oversight of correctional practice and policy, the IPV system has particularly highlighted the inadequacies in the DCS system of dealing with prisoners' complaints.

This section will highlight some of the recommendations that were formulated as a result of the research study.

10.1 Performance management system

Some of the comments received from prisoners and prison staff indicate that there should be some monitoring of IPVs in prisons that goes beyond the existing performance management system operated by the Office of the Inspecting Judge through the Regional Co-ordinators. Furthermore, the scope of management at regional level may be too wide which may result in not enough attention's being paid to certain aspects of the IPVs' work. The Office of the Inspecting Judge ought to implement further monitoring mechanisms which should entail more substantive checks and balances.

10.2 Feedback to prisoners

As indicated by the responses from prisoners regarding this issue, a more effective system for providing feedback to prisoners concerning the progress and outcome of their complaints needs to be developed. There are two aspects that need to be addressed in this regard. First, the length of time that it takes for a complaint to be resolved. A regular report-back period needs to be added to the IPVs' duties to ensure ongoing feedback is provided, even when it takes a while to resolve a complaint. This would also require that the Office of the Inspecting Judge give IPVs ongoing feedback when this Office is charged with resolving a particular complaint. In addition, IPVs need to be aware of the need to explain properly what has led to the delays in resolving a complaint.

Secondly, it would appear that some prisoners do not understand why their complaint was finalised or the delay in its resolution. This implies that certain IPVs are not able to communicate this effectively to the prisoners. Effective communication skills could be incorporated into a training component for IPVs.

10.3 Training of IPVs

It would appear that the training required for IPVs should be revised. Such training could draw on the experiences of previous IPVs, prison staff and some prisoners. The training should also provide a practical component and could perhaps rely on case studies. Furthermore, it would be useful to include the subject of inter-personal skills in the training programme, as IPVs seem to have to maintain a balance between two sets of competing interests.

Training, however, is not only recommended for IPVs. It would appear that a large effort must be made to increase awareness within the DCS of the IPV system, its operation, the obligations of IPVs and the ethos behind

the system. This could go a long way towards improving relations between staff of the DCS and IPVs, as well as preventing the misunderstandings that seem to occur from time to time.

10.4 Interaction between IPVs and DCS officials

It would seem that, in this regard, there are certain issues that need to be addressed. As stated above, there ought to be greater awareness amongst prison staff regarding the IPV system. This would go a long way towards preventing some of the hostility and suspicion that is evident on the part of members of the DCS towards IPVs. Although this is not a general problem in all prisons, a sizeable portion of the DCS sample of respondents indicated wariness of, even outright distrust of, the system. This must be addressed by strategies that reach the majority of prison staff (and not just senior officials).

Secondly, the relationship between prison staff and IPVs needs to be clearly defined and translated into practice to ensure that prisoners are more confident about the independence of IPVs. The single factor that seems to negate their independence is the way that IPVs are provided with security measures by the DCS. While it is essential that IPVs' safety be ensured, a more effective method of escorting IPVs on site visits and in interviews must be formulated so as to remove any indication that officials of the DCS are able to hear discussions.

10.5 Additional IPVs or the allocation of more time

It is clear from some of the responses received that some of the IPVs are overworked and spending more than their allotted time on resolving complaints. The Office of the Inspecting Judge should review this situation, especially in view of problems with overcrowded prisons. Time-sheets should be examined with a view to increasing the time allocation for certain prisons or with the intention of appointing additional IPVs.

10.6 Interaction with prisoners and work outside mandated duties

While there is some need for each IPV to be a confidant in order to gain a prisoner's trust, some of the comments received indicate that, on occasion, they adopt the role of counsellor, lay therapist or social worker. One IPV noted that she saw herself acting as a psychologist or social worker, at times. This raises serious questions regarding the ability of the IPVs to remain independent, because assuming these roles may create the impression that an IPV is overly sympathetic to a particular prisoner's cause. It could also create the impression that they are mandated to ensure that the prisoner's complaint is resolved to his or her satisfaction, which is not their role or function. This issue has to be addressed through the training provided to IPVs, which must offer guidance as to how they should set boundaries and limit their therapeutic interaction with prisoners.

Finally, the importance of effective communication systems and skills is a common thread in this study. These must be developed and implemented at local, regional and national level in order to improve the efficiency and credibility of the IPV system.

11 CONCLUSION

This research has shown that the IPVs' presence has contributed to the more efficient treatment of prisoner complaints and that the introduction of the IPV system has led to a vast improvement in the complaints procedure operated in South African prisons by DCS. In addition, the work of the IPVs has resulted in greater transparency and accountability – this ultimately reinforces the State's objective of ensuring that a human-rights culture permeates through all levels of government. The achievements of the IPV system must not be obscured by some of the findings in this report. Overall, the system functions very well and it is only certain aspects that require revisiting and revision.

The IPV system has created a measurable inroad into the traditionally 'closed' arena of South African prisons. While, no doubt, many governance issues and challenges abound in relation to the correctional system in South Africa, IPVs are testament to the fact that civilian oversight has now attained an actual presence in prisons that is ongoing and consistent as opposed to *ad hoc* and reactionary. Their mere presence lends credibility to the DCS's claim of greater transparency in South African corrections. This impetus must be sustained in order to ensure that further confidence in the correctional system is achieved and maintained.

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