

We need to revisit our sentencing regime

By **James Selfe MP** - DA Shadow Minister of Correctional Services

Before addressing the state of the Department, I want to talk about the elephant in the room, or should I say, the ex-spy in Poyntons Building. Mr Fraser was transferred from the State Security Agency to the Department of Correctional Services in April 2018. There are many serious allegations against Mr Fraser relating to his tenure at the SSA – including misappropriation of funds, establishing an illegal parallel intelligence agency and the improper award of tenders and contracts. Mr Fraser has been the subject of several internal investigations, including by the Inspector General of Intelligence, and several witnesses have testified about these allegations at the Zondo Commission. The High-Level Review Panel, chaired by Sydney Mufamadi, recommended that PAN be investigated. This recommendation was made after Mr Fraser's transfer to the DCS.

We do not think that his appointment was appropriate, for the same reasons that Adv Simelane was found by the Constitutional Court not to be an appropriate NDPP. Thus, it is perplexing that the Minister has not advised the President to suspend Mr Fraser while the investigations recommended by the High Level Panel occur. Minister, would you please elaborate why not?

The Minister should also commit himself to the independence of the Judicial Inspectorate of Correctional Services. As he knows, Sonke Gender Justice succeeded in an application to the Constitutional Court that JICS should be independent of the DCS. Yet the Minister of Finance has objected to JICS being a Government Entity, which would give it this independence and allow it to operate without fear or favour. The Minister of Finance wants JICS to be absorbed into the Human Rights Commission. This would be a profound mistake, and all of us who work with prisons know that to be a fact. So, Minister, pin you colours to the mast!

The Department made a presentation to the Committee the other day concerning the haphazard release on parole of some 14 000 offenders to relieve overcrowding in the light of the Covid pandemic. There were two notable features of this: first, 126 of the offenders that were paroled were readmitted for offences ranging from murder, assault, assault GBH, housebreaking and robbery. This is always a risk, and highlights the need for

the social reintegration branch to have the professional skills to determine which offenders can safely be released.

But secondly, the presentation acknowledged the need to move to community corrections and alternative sentencing. The current incarceration rate is unsustainable, and it will worsen with current high rates of unemployment and poverty, and tightening of budgets. But judicial officers are reluctant to hand down sentences of community service, because they have little faith in community corrections to monitor such people, and to ensure that the terms of the sentence are adhered to.

Thus, the approved Social Reintegration Framework is to be welcomed. It talks about the promotion of alternative sentences and the provision of appropriate rehabilitation and reintegration programmes that address reoffending. But most significantly, it commits to the professionalism of the social integration branch.

This is exactly what is required to relieve prison overcrowding safely and responsibly, by imposing appropriate community service sentences in place of imprisonment. But then two things must happen. First, the DCS budget must be realigned to reflect this. At the moment the Social Integration Branch is allocated less than 5% of the appropriation, and little change is to be seen over the METF. If the branch is to be professionalised, it needs the resources to become so - vehicles, premises, resources (like electronic monitoring devices) and skilled staff. It must no longer be the step-child of the Department. At the moment, the Branch is not supervising parolees and probationers remotely effectively.

Secondly, we need to revisit our sentencing regime. We were encouraged by the Minister's comments in July last year, in which he was quoted as saying that -

“government was also carefully examining the criminal justice system in relation to incarceration for low-risk crimes so that it does not become the only option for such crimes.”

This is correct, because it means that the prisons will be less overcrowded if non-violent, petty, first-time and young offenders (in particular) are given non-custodial sentences, and less overcrowding means the ability to provide more useful correctional programmes for serious offenders. But then the Ministry

needs to give careful consideration to alternative sentences that are sufficiently deterrent, easily administered and accompanied with really effective rehabilitative programmes.

At the same time, we need to give greater discretion to judicial officers when it comes to sentencing. Only they can strike the right balance between the seriousness of a crime and the interests of society. Yet Parliament adds more and more mandatory minimum sentences, so much so that there are now some 16 800 lifers clogging up the system, and constituting a major driver of overcrowding.

We live in a very violent, crime-ridden society. The DCS must play a vital role in breaking the chain of offending and reoffending, and making South Africa a safer place. It cannot be business as usual, as it has for the last 17 years that I have participated in these debates. The Department needs to reimagine its purpose and do so rapidly.