

## CHAPTER 12

### RIGHT OF PRISONERS

#### 1. INTRODUCTION

This chapter seeks to critically examine whether the government, through the Department of Correctional Services (DCS), has complied with both its constitutional and international obligations to respect, protect, promote and fulfil prisoners' rights as stipulated in section 7(2) of the Constitution and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.<sup>1</sup> The discussion focuses on the right of prisoners as guaranteed by section 35(2)(e) it touches on the right of prisoners to adequate housing, the prisoners right to health and then education. The critique will consider the loopholes identified in the measures adopted by the government to give effect to these rights, and followed by recommendations.

Section 35(2)(e) of the Constitution makes provision for the conditions under which the prisoners are to be detained. It provides:

Every prisoner who is detained, including every sentenced prisoner, has a right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.

The binding principle at an international level is that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of a human person."<sup>2</sup> In particular, that prisoners will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment.<sup>3</sup> According to Article 10 the United Nations Human Rights Committee on International Covenant on Civil and Political Rights, the State party has a positive obligation towards those persons who are particularly vulnerable because of their status as persons deprived of their liberty.<sup>4</sup> The Committee considers the treatment of all persons deprived of their liberty with humanity and dignity a fundamental and universally applicable rule, the application of which, as a minimum, does not depend on the material resources available within a State party.<sup>5</sup> All the State parties are obligated to apply the UN standards relevant to the treatment of prisoners.<sup>6</sup> The UN Committee, in its general comments indicated,

---

<sup>1</sup> *Economic, Social and Cultural Rights, A Compilation of Essential Documents*, Maastricht Guidelines on Violations of Economic, Social and Cultural Right, International Commission of Jurists, 1997, Para 6 provides:

"Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any of these three obligations constitutes a violation of such rights."

<sup>2</sup> International Covenant on Civil and Political Rights, 1966, Article 10(1). This is also reiterated by Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1979, and Article 2 of the Code of Conduct for Law Enforcement Officials, 1979.

<sup>3</sup> Article 7 of the International Covenant on Civil and Political Rights.

<sup>4</sup> General Comments No. 21, UN Human Rights Committee on Civil and Political Rights, 1992, para 3.

<sup>5</sup> *Ibid*, para 4.

<sup>6</sup> The relevant United Nations standards applicable to the treatment of prisoners are: the Standard Minimum Rules for the Treatment of Prisoners (1957); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); the Code of Conduct for Law

*inter alia*, the following factors as being relevant to its consideration whether the conditions of detention in any country are humane as required by the Covenant. First, whether the Standard Minimum Rules for the Treatment of Prisoners and other UN standards are being implemented.<sup>7</sup> Second, details about prisoners' diet, in terms of both quality and quantity; prison sanitation; over-crowding, that is, the average number of prisoners per cell; and health care.<sup>8</sup>

The Constitutional Court in the Government of the *RSA and Others v Grootboom and Others*<sup>9</sup> affirmed that human dignity, freedom and equality are the foundational values of our society and that those without food, clothing or shelter are denied these rights. Affording people these socio-economic rights enables them to enjoy the other rights enshrined in the Bill of Rights.<sup>10</sup> More pertinent to this discussion is the UN Standard Minimum Rules for the Treatment of Prisoners<sup>11</sup> that describes in detail what is "generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions."<sup>12</sup> It stipulates in detail, amongst others, the type of accommodation,<sup>13</sup> food,<sup>14</sup> education<sup>15</sup> and medical services<sup>16</sup> that should be afforded to prisoners.

The Human Rights Committee emphasised in its general comments, that penitentiary system should essentially seek the reformation and social rehabilitation of the prisoner, and not only retributory.<sup>17</sup> This was underscored by Dr. W Jonas AM Aboriginal and Torres Strait Islander Social Justice Commissioner, in his keynote presentation at the Prisoners as Citizens Workshop in Sydney, when he pointed out that:

the right to humane detention which aims for individual rehabilitation and social reintegration is not vague or abstract aspiration but a concrete obligation to be implemented by a set of detailed measures. Failure to do so is a violation of the prisoner's rights which should be capable of an effective remedy.<sup>18</sup>

---

Enforcement Officials, 1979; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982; The African Charter on Human and Peoples' Rights and the Kampala Declaration on Prison Conditions in Africa, 1996.

<sup>7</sup> General Comment No. 21, *op.cit.*, para 5 also lists other UN standards.

<sup>8</sup> Paul R Williams, *Treatment of Detainees: Examination of Issues Relevant to Detention by the United Nations*.

<sup>9</sup> 2001 (1) SA 46, para 23.

<sup>10</sup> *Ibid*, para 23.

<sup>11</sup> The Standard Minimum Rules for the Treatment of Prisoners, was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and was subsequently approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>12</sup> *Ibid*, Preamble, para 1.

<sup>13</sup> *Ibid*, Rule 9.

<sup>14</sup> *Ibid*, Rule 20.

<sup>15</sup> *Ibid*, Rule 40 and 77,

<sup>16</sup> *Ibid*, Rule 22.

<sup>17</sup> General Comment No. 21, *op. cit.*, para 10.

<sup>18</sup> "Citizens Inside" Keynote presentation by Dr W Jonas AM Aboriginal and Torres Strait Islander Social Justice Commissioner, at the "*Prisoners as Citizens*" Workshop, Sydney, 27 November 2000.

Criticising Australia's failure to provide effective remedies in the event of violations of Covenant rights, the Human Rights Committee, in June 2000 held that:

In the absence of a constitutional Bill of Rights, or a constitutional provision giving effect to the Covenant rights in the Australian legal system. There are still areas in which the domestic legal system does not provide an effective remedy to persons whose rights under the Covenant have been violated.<sup>19</sup>

The Committee urged the Australian government "to take measures to give effect to all Covenant rights and freedoms and to ensure that all persons whose Covenant rights and freedoms have been violated shall have an effective remedy."<sup>20</sup>

In *Grootboom*, the Constitutional Court stressed that the Constitution obliges the State to give effect to the rights enshrined in the Bill of Rights and that Courts must in appropriate circumstances enforce such an obligation.<sup>21</sup> Recently the *Minister of Health and Others v Treatment Action Campaign and Others (1) (TAC)*<sup>22</sup> also acknowledged that "a dispute concerning socio-economic rights is . . . likely to require a court to evaluate State policy and to give judgment on whether or not it is consistent with the Constitution. If it finds that policy is inconsistent with the Constitution it is obliged in terms of section 172(1)(a) [and (b) to either] make a declaration to that effect"<sup>23</sup> or grant an order that is just and equitable.<sup>24</sup> This judgment was giving effect to the provisions of section 38 of the Constitution, which contemplates a court to grant an appropriate relief where it is established that a right in the Bill of Rights has been infringed.

As the watchdog of the Constitution, the Constitutional Court on previous occasions played a significant role with regard to the protection of inmates. In line with the International Covenant on Economic, Social and Cultural Rights which recognises the inherent dignity of every person irrespective of their status. The Constitutional court in *S v Makwanyane and others*;<sup>25</sup> *S v Williams and others*;<sup>26</sup> *August and another v Electoral Commission and others*,<sup>27</sup> affirmed the role and willingness of the of the Court to protect and enforce prisoners' rights by granting appropriate remedies.

---

<sup>19</sup> The Committee's findings and recommendations at [www.hreoc.gov.au/human\\_rights/un\\_committee](http://www.hreoc.gov.au/human_rights/un_committee).

<sup>20</sup> *Ibid*.

<sup>21</sup> , *Grootboom*, *op. cit.*, para 24 and *Minister of Health and Others v Treatment Action Campaign and Others (1) (TAC)* 2002 (10) BCLR 1033 (CC) para, 24.

<sup>22</sup> 2000 (10) BCLR 1033 (CC).

<sup>23</sup> *Ibid*, para 102.

<sup>24</sup> *Ibid*, para 101-2.

<sup>25</sup> 1995 (6) BCLR 665 (CC). In this case the Constitutional Court had to decide whether the use of the death penalty was constitutional or not. The court unanimously found that it was not constitutional. The Court held that the death penalty was a cruel and inhumane punishment, and an invasion of human dignity.

<sup>26</sup> 1995 (3) SA 632 (CC). The Constitutional Court was faced with the question whether corporal punishment by organs of state was constitutional or not. The court unanimously found that it was not.

<sup>27</sup> 1999 (4) BCLR 363 (CC). The Constitutional Court found that both sentenced and awaiting trial South African prisoners were entitled to the right to vote in the general and local elections. Apposite is Justice Sachs' remarks at page 372 where he held that "universal adult suffrage on a common voters roll is one of the foundational values of our entire constitutional order . . . The vote of each and every citizen is a badge of dignity and of personhood."

## **2. POLICY MEASURES AND PROGRAMMES**

### **Adequate Accommodation**

The DCS submits that it acknowledges and respects the rights and legitimate expectations of prisoners regarding accommodation and incarceration conditions consistent with human dignity. The DCS contends that it strives to provide adequate prison accommodation that complies with accepted standards. According to the department, the provision of items such as floor space, cubic content of air, ventilation, natural and artificial light, ablution and sanitary facilities in prison institutions are in accordance with the Standard Minimum Rules.<sup>28</sup>

It is further submitted that for the period under review, the department had instituted a policy on the Monitoring of the Mother and Child units. This programme addresses the specific needs of infants with their mothers in prison, including pregnant women. The programme caters for young children up to five years of age that are admitted in prison with their mothers. Achievements to date include the implementation of the programme in the eight female prisons countrywide.

According to the department, prisoners' right to adequate accommodation is a prerequisite to the building of prisoners self respect as well as an encouragement to positive participation in their rehabilitation and training. The DCS contends that it is striving to provide adequate prison accommodation that complies with acceptable standards. Its complaint is that it is on the receiving end of the Criminal Justice System with very little control over the numbers of prisoners referred to prisons either as sentenced prisoners or prisoners awaiting trial or sentence. The department is, therefore, faced with overcrowding in most of its prisons, a situation tantamount to blatant violation of the rights of prisoners to adequate accommodation and humane incarceration conditions. According to the DCS, overcrowding in South African prisons have been found to be:

- Be a contributory factor to health risks of prisoners;
- Impacts on the rendering of effective developmental and rehabilitative programmes;
- Impacting on the effective safe custody services;
- Resulting in inhumane incarceration conditions;
- Creating unsafe working conditions for DCS officials;
- Resulting in abnormally high maintenance of prison facilities;
- Adversely affecting the normal prison management; and
- Results in high levels of frustration amongst prisoners and custodial officials.

---

<sup>28</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, 1957, para 9(2).

To address the challenges presented by overcrowding, the DCS indicated that it is currently involved in a number of interdepartmental projects developed within the Crime Prevention, Justice and Safety Cluster which enabled (the DCS) to formulate and embark on the following strategies to combat overcrowding in prisons:

- The established of multi-sectoral teams to identify blockages and devise solutions to the awaiting trial prisoner problem which resulted in the Awaiting Trial Prisoner projects; and the setting up of Inmate Tracking and Saturday Courts;
- The release of offenders that have committed less serious crimes, once they have serving set minimum period of their sentences;
- Alternative imprisonment that involves offenders doing community service, under supervision;
- The establishment electronic monitoring system with the ability to strengthen and enhance community corrections;
- The establishment partnerships with the private sector for the provision of additional accommodation. through the Capital Works Programme;
- The provision of assistance to prisoners that cannot afford to pay bail or fines;
- The provision of a support system for all prisoners that are due to be paroled or released under correctional supervision;
- The acceleration of the rate at which prisoners with fines are placed on correctional supervision; and
- The strengthening of the rehabilitation programmes for prisoners to prevent re-offending, by focusing on education and training, and social development programmes.

## Vulnerable and Marginalised Groups

### *Female Prisoners with Children*

The DCS allows mothers with infants to keep their babies in the Mother and Child Unit until they are two years old. Mothers in these units are allowed to keep the baby up to the age of five years only in exceptional circumstances. According to the department, the surroundings and facilities in these units are conducive to sound physical, social and mental care and development of children. The standard of care provided by the DCS in these units are regularly upgraded to correspond with the international norms and standards. The conditions provide the mother with the opportunity to exercise and develop her parental duties, responsibilities, and skills. Childcare facilities are also provided to maximise the potential for the child's proper development. The policy emphasises that the mother be helped to learn good childcare practices to the benefit of the child as well as boost her self-esteem and confidence.

### *Prisoners with Disabilities*

The diversity of the general population in prisons, has led the DCS to establish a sub-directorate on special categories of prisoners. This special category sub-directorate was established because of the need to provide humane custody within a human rights culture. The prisoners in the special category are treated in a manner befitting their condition.

For example, before the building of new buildings, the category of prisoners with disabilities was not given special consideration. To cater for the needs of prisoners with disabilities, the DCS prepared a Draft Policy for Prisoners with Disabilities. This policy referred to as Mvelaphanda, is a departmental strategy specifically designed to address the removal of structural barriers that restrict reasonable access for people with disabilities in prisons. This strategy identifies areas that are not accessible and then approach the departmental Management Board to make funds available. Emergency evacuation exits that are disability-friendly are being developed. Personnel are also being trained on disability issues, and partnerships have also been formed with locals and individuals that deal with people with disabilities.

### *Child Offenders*

Child offenders are accommodated separately from adult offenders. There are currently 13 Youth Centres countrywide that accommodate only sentenced males under the age of 21 years. Pollsmoor Prison accommodates mainly unsentenced male youths. The Kroonstad prison accommodates sentenced male children under 18 years of age. Female prisoners are accommodated in separate sections of prisons.

### *Racial Groups Disadvantaged by Past Discriminatory Laws and Practices*

The DCS does not separate prisoners in terms of racial preferences, however care is taken that those with irreconcilable cultures or opposing factions are not housed together.

### *Prisoners Infected and Affected by HIV/AIDS*

Prisoners are not separated based on their HIV status, only when the prisoner is sick with full-blown AIDS and depending on his/her medical condition, is she/he isolated in a single hospital cell. The same applies to prisoners infected with Tuberculosis (TB), who are also accommodated separately only when they are in the active phase of TB.

### *Refugees and Asylum Seekers*

DCS in South Africa has no line function responsibility towards this category of persons. However, if such persons enter the Criminal Justice System as a result of committing and being sentenced for a crime, they receive the same treatment as any other prisoner with regard to access to accommodation, nutrition, education, reading material and medical treatment. They also have access to Consular Representatives.

### Separate Accommodation for Offenders

The Correctional Services Act 111 of 1998 is being implemented by the DCS, and regulations to support the Act are in the process of being drafted. In terms of section 7(2) of the Act:

- Sentenced offenders must be kept separate from unsentenced offenders.
- Male and female offenders must be kept separately.
- Children must be kept separately from adult offenders, and in accommodation appropriate for their age.
- A female offender is allowed to have a child with her until that child is five years of age, and the department is responsible for food, clothing, health care and facilities for sound development of the child whilst in prison. Where feasible, the Commissioner must ensure that a mother and child unit is available for the accommodation for female offenders and the children whom they may be permitted to have with them.

### *Youth and Children*

As already pointed out, the DCS presently has 13 Youth Correctional/Development Centres where some young offenders are accommodated separately from adult prisoners. In these centres, development programmes and services are rendered to children and the youth. The aim of the programmes is to provide treatment and rehabilitation to sentenced children in order to enhance their personal and social functioning. A team of social workers; psychologists; chaplains; educators; correctional service officials; and others (external community) offer the programme. The DCS has special protection measures in place to manage the detention of awaiting trial children, pending the outcome of the Child Justice Bill.

## **3. BUDGETARY MEASURES**

**Table 1** Accommodation of Prisoners

| <b>Year</b> | <b>Total allocation in Rand(s)</b> | <b>Projected expenditure in Rand(s)</b> | <b>Actual expenditure in Rand(s)</b> |
|-------------|------------------------------------|---|--------------------------------------|
| 2000/2001   | 351 059 000                        | 351 059 000                             | -                                    |
| 2001/2002   | 743 384 000                        | 743 384 000                             | 706 053 816                          |

The dash (-) in all the Tables denotes that the information requested was not made available to the Commission.

### *Vulnerable and Marginalised Groups*

The Capital Works budget is used for building new prisons and related infrastructure, including the renovations, maintenance and upgrading of existing prisons and related infrastructure. Although the repair and maintenance does not result in increased accommodation capacity, it nevertheless, improves the quality of the existing accommodation.

### *Budget Adequacy*

Since the budget allocation for accommodation was insufficient, the DCS requested R1, 279 billion from National Treasury for the 2002/2003 financial year, but only R739, 9 million was allocated for accommodation. The DCS had to prioritise its needs to ensure that the most crucial needs are addressed within the allocated budget. Other options being explored include the alleviation of overcrowding and the building of new prisons.

### *Under-spending*

The budget is allocated within a three-year Medium Term Expenditure Framework cycle, and because of the project being apital-intensive, it is under certain circumstances acceptable to roll over funds to the following financial years. To ensure that under spending does not occur in future, the DCS established forums to monitor progress on capital projects on a monthly basis.

### **Challenges Confronting the DCS**

The DCS submits that its biggest challenge is to reduce the number of people incarcerated to a level, which does not pose serious health risks to inmates. The DCS states that other challenges facing the Department as a result of overcrowding is the effective rendering of development and rehabilitative programmes. Overcrowding has also increased the cost of maintenance of prison facilities, and this has had an adverse effect on normal prison management.

The DCS indicated that it has introduced measures to prevent and deal with the problem of overcrowding, such as:

- the employment of prison management teams;
- the enhancement of community corrections;
- the release of prisoners with bail less than R1 000;
- Saturday Courts, which is an ongoing initiative of the Department of Justice has resulted in a 12 percent reduction in the number of awaiting trial prisoners during the period February 2001 to October 2001. Saturday Courts resumed during January 2002 and are expected to continue until October 2002.

**Table 2 Indicator - Prisoner population by 31 January 2002**

| Category                        | Total   | % of Total | Female | Child-prisoners |
|---------------------------------|---------|------------|--------|-----------------|
| Prisoner population             | 177 701 | -          | 4 315  | 4 148           |
| Convicted prisoners             | 120 635 | 67.89%     | 2 949  | 1 765           |
| Prisoners awaiting trial        | 57 066  | 32.11%     | 1 366  | 2 383           |
| Prisoners above 60 years of age | 786     | 0.44%      | 29     | N/A             |
| Disabled prisoners              | 371     | 0.21%      | 8      | -               |



**Table 3 Indicators: Accommodation**

| Prisoners                         | Total  | Female | Male *2 | Child – Prisoners *3 |
|-----------------------------------|--------|--------|---------|----------------------|
| Number of prisoners per cell      | -      | -      | -       | -                    |
| Number of prisoners per ward      | -      | -      | -       | -                    |
| Number of overcrowded prisons     | 206    | 7      | 192     | 7                    |
| Percentage of overcrowded prisons | 91.15% | 87.55% | 93.66%  | 53.85%               |

\*1 The size and capacity of cells/wards varies from single cells for one prisoner to communal cells/wards for up to 32 prisoners. The level of overcrowding in the different cells determines the occupancy levels of cells.

\*2 The number of male prisons includes those in prisons that accommodate both male and female as well as children/juveniles.

\*3 This includes all youth facilities that cater for offenders younger than 21 years of age.

The table below shows how accommodation capacity of prisons increased in each of the following years:

**Table 4 Accommodation capacity of prisoners**

| Month           | Male Prison  | Male Hospital | Female Prison | Female Hospital | Total        |
|-----------------|--------------|---------------|---------------|-----------------|--------------|
| 1 April 1999    | 91.151       | 3.204         | 4.295         | 273             | 98.923       |
| 31 March 2000   | 92 541       | 3 225         | 4 098         | 266             | 10 0130      |
| <b>Change</b>   | <b>1 390</b> | <b>21</b>     | <b>-197</b>   | <b>-7</b>       | <b>1 207</b> |
| 1 April 2000    | 92 541       | 3 225         | 4 098         | 266             | 10 0131      |
| 31 March 2001   | 94 365       | 3 316         | 4 101         | 266             | 10 2048      |
| <b>Change</b>   | <b>1 824</b> | <b>91</b>     | <b>3</b>      | <b>-</b>        | <b>1918</b>  |
| 1 April 2001    | 94 365       | 3 316         | 4 101         | 266             | 10 2048      |
| 31 January 2002 | 98 663       | 3 353         | 3 822         | 244             | 10 6048      |
| <b>Change</b>   | <b>4 298</b> | <b>37</b>     | <b>-279</b>   | <b>-22</b>      | <b>4 034</b> |

The utilisation of available accommodation capacity and occupancy levels of prisons over the past two years was as follows:

**Table 5 Utilisation of accommodation capacity**

| Gender | 31/01/2000      |           |            | 31/01/2001      |           |            | 31/01/2002      |           |            |
|--------|-----------------|-----------|------------|-----------------|-----------|------------|-----------------|-----------|------------|
|        | Accom. Capacity | Prisoners | Occupation | Accom. Capacity | Prisoners | Occupation | Accom. Capacity | Prisoners | Occupation |
| Female | 4 454           | 4 180     | 93.85%     | 4 367           | 4 157     | 95.19%     | 4 066           | 4 315     | 106.12 %   |
| Male   | 9 5380          | 16 2243   | 170.10 %   | 9 7646          | 16 3612   | 167.56 %   | 10 2024         | 17 3386   | 169.95 %   |
|        | 9 9834          | 16 6423   | 166.70 %   | 10 2013         | 16 7769   | 164.46 %   | 10 6090         | 17 7701   | 167.50 %   |

## PRISONERS' RIGHT TO HEALTH CARE

### 4. POLICY MEASURES AND PROGRAMMES

The DCS reported no new measures during this reporting period, but stated that it is in the process of reviewing and amending the existing ones based on the Correctional Services Act 111 of 1998, to ensure that they comply with the Constitution of the RSA, the UN Standard Minimum Rules for the Treatment of Prisoners, the requirements of the National Department of Health, the World Health Organisation and International law relating to prisoners. The policies under review were:

- The Health Policy
- The HIV/AIDS Policy
- A Draft Policy for Prisoners with Disabilities<sup>29</sup>

The Health Policy was reviewed to comply with National Guidelines for the delivery of quality care. Protocols and procedure manuals were developed to improve the health care services for prisoners, children and babies born in prison. Programmes to train nurses were instituted in the areas of Primary Health Care, Occupational Care and the Management of HIV/AIDS and TB. The DCS reported that medical, dental and emergency services were now available to all prisoners on a 24-hour basis.

The existing HIV/AIDS Policy was reviewed so as to conform to the prescripts of the HIV/AIDS Strategic Plan 2000-2005.<sup>30</sup> An HIV/AIDS co-ordinating body was established for the effective management of AIDS in the prison population including children and babies born in prison.

### **Vulnerable and Marginalised Groups**

The DCS catered for the following vulnerable groups: female prisoners; female prisoners with children; prisoners with disabilities; child offenders; racial groups disadvantaged by past discriminatory laws and practices; prisoners awaiting trial; prisoners infected with and affected by HIV/AIDS; prisoners infected with TB; and refugees and asylum seekers.

The department did not identify any new policy measures but reiterated that the above-mentioned policies had been reviewed to comply with the Constitution of the RSA and international law. The department, reiterated that because of the diversity of the prison population, it had established, a sub-directorate on special categories of prisoners in prison. The sub-categories include mothers with babies, young children, prisoners with disabilities and elderly prisoners. The reason for these categories was to establish more humane conditions based on human rights.

In response to the question of how policy and programmatic measures catered for vulnerable groups, the department gave the following response:

---

<sup>29</sup> This draft policy has been developed which *inter alia* provides for catering to their special needs. As already pointed out, these include removal of structural barriers that restrict reasonable access for people with disabilities, emergency evacuation, training of personnel to deal with disabilities and create partnerships with local organisations and individuals that deal with disabilities.

<sup>30</sup> The HIV/AIDS and STD Strategic Plan for South Africa, 2000-2005, was developed in 1999 through a participatory consultative process managed by the Ministry of Health. The plan emphasises the following four broad areas to address HIV/AIDS: Prevention; Treatment, Care and Support; Human and legal rights; and Research, monitoring, and surveillance. The Plan targets youth as a priority population group, especially for prevention efforts, and the impact of HIV/AIDS on individuals, families, and communities.

### *Female Prisoners*

The DCS indicated that in compliance with the non-discrimination clause of the Constitution,<sup>31</sup> it had implemented the revised dietary scale for female prisoners, who are now receiving larger portions to meet their energy needs.

### *Pregnant Prisoners*

The DCS submits that its Reproductive Health Policy makes provision for pregnant prisoners and covers ante-natal, delivery and post-natal care as well as family planning services. A pregnant prisoner is required to attend an antenatal clinic at least once every month. During the last four weeks of pregnancy, she is examined by a medical doctor at least once a week. Access to services outside the prison is also ensured where necessary.

### *Female Prisoners with Children*

An immunisation programme is followed to prevent infectious childhood diseases and the information and guidance is provided to the mother for the continuation of the programme after being released from prison. When an infant is HIV positive, the National Department of Health's (NDH's) guideline on management of these children is followed.

The policy on infants stipulated that a medical practitioner may prescribe required food on medical grounds. Heating and cooking facilities are accessible at all times for preparing infant feeds.

### *Prisoners with Disabilities*

The needs of the elderly and prisoners with different disabilities are currently being investigated with a view of creating a database. It is envisaged that categories of prisoners with special needs will be catered for. Presently, devices prescribed by a medical practitioner are provided.

### *Other Groups*

Child Offenders,<sup>32</sup> awaiting trial prisoners, racial groups disadvantaged by past discriminatory laws and practices, and refugees and asylum seekers are provided the same medical care as other prisoners. The latter group also has access to consular representation.

### *Prisoners Infected with HIV/AIDS*

---

<sup>31</sup> Section 9(3) provides:

"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. "

<sup>32</sup> The Department of Correctional services indicated that the category of child offenders includes all youth up to the age of 21.

Guidelines on the management of the HIV/AIDS have been developed and distributed in all prisons. Psychologists, social workers and nurses have been trained as part of an education and awareness campaign regarding the epidemic. Offenders are also trained as peer educators. Programmes include provision of condoms, access to Voluntary Training and Counselling.

## 5. BUDGETARY MEASURES.

The DCS provided the following budget for medical treatment:

**Table 6 Medical Care budget**

| Year      | Total revenue in Rand(s) | Total allocation in Rand(s) | Allocation as a % of the department's total revenue | Per capita allocation in Rand(s) after inflation adjustment | Actual expenditure |
|-----------|--------------------------|-----------------------------|---|---|--------------------|
| 2000/2001 | 5 320 553 000            | 149 000 700                 | 2.8   | 860   | 143 301 960        |
| 2001/2002 | 6 581 454 000            | 158 574 100                 | 2.4   | 916   | 15 7 5 7 4181      |

### *Vulnerable and Marginalised Groups*

The Departments reported that the medical care budget made provisions for all categories of offenders and for all general medical conditions.

**Table 7 Medical Care Indicators**

|   | Total                          | Female   | Male    | Child-prisoners |
|---|--------------------------------|--|---------|-----------------|
| Number of health care officials within the prison             | Nurses: 562<br>Pharmacists: 12 | -  | -       | -               |
| Health care worker/prisoner ratio                             | 1:306                          | -  | -       | -               |
| Number of prisons with separate cells for ill prisoners       | 146                            | 7  | 132     | 7               |
| Average number of clinics/treatment rooms within the prison   | 2                              | -  | -       | -               |
| Number of prisons with clinics with access to essential drugs | 226                            | -  | -       | -               |
| Number of prisoners with HIV/AIDS                             | 110 336                        | 5 618  | 104 718 | -               |
| Percentage of prisoners with HIV/AIDS                         | 2.03                           | 0.11   | 1.92    | -               |
| Percentage of prisoners with STDs                             | 0.01                           | 0  | 0.01    | -               |
| Percentage of prisoners with TB                               | 1.2                            | Information not centrally available on the Management Information System |         |                 |
| Percentage of prisoners with Hepatitis                        | 0                              | 0  | 0       | 0               |
| Number of prisoners suffering from malnutrition               | 24                             | 1  | 21      | 2               |
| Number of prisoners suffering from iron deficiency            | 43                             | 4  | 39      | 0               |

## **PRISONERS' RIGHT TO EDUCATION**

### **6. POLICY MEASURES AND PROGRAMMES**

The DCS reported that unlike in the past, its focus now extends to rehabilitation. To this end, all development programmes are aimed at providing treatment and rehabilitation for sentenced prisoners in order to enhance their personal and social functioning. A multi-disciplinary team consisting of social workers, psychologists, chaplains, educators, correctional officials and other stakeholders from communities are addressing the basic needs of the sentenced prisoners through a variety of programmes and services.

The DCS further stated it did not have a rehabilitation policy at the time of reporting. However, this lack of policy on rehabilitation necessitated a revision by the department of its policy guidelines and activities on the following:

- Education of offenders
- Training of offenders
- Social Work services
- Psychological services
- Religious Care
- Library services

According to the department, policy changes on the above addressed a number of themes, including:

- Re-skilling
- Learning a trade
- Oral and spiritual enlightenment
- Personal development and preparation for release

**Table 8 Educational Programmes/Projects for Offenders**

| <b>Programme/Project</b>   | <b>Policy on which programme/project is based</b>   | <b>Objectives</b>   | <b>Beneficiaries</b> | <b>Achievements or goals attained</b>  |
|--|---|---|----------------------|--|
| Revision of Services Orders:<br>Education<br>Training<br>Social Work             | The Constitution of the Republic of South Africa, 1996.<br><br>Correctional Services Act 111, 1998. | To align policies and directives with national legislation and international instrument   |                      | Implementation of new policy directives according to the needs of prisoners and in line with government policy objectives.             |
| Combating illiteracy amongst prisoners in partnership with external role-players | The Constitution of the Republic of South Africa, 1996<br><br>Correctional Services Act 111, 1998.  | To provide programmes addressing the needs of prisoners.<br><br>To assess prisoners in order to identify the level of intervention and needs.<br><br>Implementation of Adult Basic Education and Training(ABET) in all prisons. |                      | Entered into a two year tender contract with external providers for the provisioning of ABET levels 1 to 4 Learning Support Materials. |
| Establishment of 14 Training Centers at identified prisons                       |   | To provide basic technical skills combined with business skills.<br><br>To equip prisoners with market-related skills to be applied after release.<br><br>To provide accredited training by the DCS's officials.                |                      | 12 Training Centers have already been completed and in use with two of these in the process of being finalised.                        |

The DCS reported that it has committed itself to a new paradigm as it has moved from a punitive approach to a rehabilitative one. It also reported that emphasis is placed on balancing safe custody, humane detention and rehabilitation. Reference was also made to section 2 of the Correctional Services Act 111 of 1998 in this regard. The purpose of the correctional services system is to contribute to maintaining and protecting a just, peaceful and safe society by:

- Enforcing sentences of the courts in the manner prescribed by this Act;
- Detaining all prisoners in safe custody whilst ensuring their human dignity; and
- Promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

#### *Vulnerable and Marginalised Groups*

Regarding the vulnerable groups, the DCS reported that the provision of rehabilitation programmes incorporates all sentenced prisoners, males, females, youth, persons with disabilities and the aged and does not differentiate between the various sexes and groups. The response further said that services are provided according to available capacities, which meet the basic needs of all prisoners and assist them to develop their full potential to live an acceptable law-abiding lifestyle.

The DCS states that it is in addition, making professional services available to all prisoners through the use of psychologists, social workers, religious workers and educators. The DCS ensures the availability of such services by offering:

- Individual/Group therapy
- Family therapy
- Religious/spiritual services
- Education and training

## **7. LEGISLATIVE AND RELATED MEASURES**

There were no legislative developments related to education that took place during the reporting period. However, the DCS indicated that the development programmes that the it had designed were based on the White Paper on Education of 1995 and Skills Development Act of 1998.

### **Administrative Measures**

The DCS reported overcrowding in most prisons, which was said to be violating the right of prisoners to adequate accommodation and human incarceration conditions. The department has, therefore, found the situation to have implications for the effective development and rehabilitation programmes, amongst other things. To address this problem the department suggested a number of possible solutions, including the following:

- Provincial Prison Management Teams would be actively involved in the management of overcrowding in prisons to ensure the effective utilisation of available cell accommodation.

- High-level discussions between the DCS Executive, Inspecting Judge, National Treasury, South African Police Services and Department of Justice would be arranged on the responsibilities regarding awaiting prisoners.
- Community Corrections would be enhanced as an effective and suitable community-based sentencing option.
- The blue print for planning and low-cost design construction of New Generation prisons would be fast-tracked.

These measures have been effective as about 8 262 low-risk prisoners awaiting trial on bail of less than R1000 were released. In addition, parole dates of 8 978 selected sentenced prisoners were advanced. The introduction of Saturday Courts had reduced the number of awaiting trial prisoners to 12 percent during the period February 2001 to October 2001 thus alleviating overcrowding. The Saturday Courts resumed again in January 2002 and are expected to continue to October 2003.

**Table 9 Budgetary Measures**

| Year      | Total allocation in Rand(s)<br>R'000 | Allocation as a % of GDP | Per capita allocation in Rand(s) after inflation adjustment | Projected expenditure<br>R'000 | Actual expenditure<br>R'000 |
|-----------|--------------------------------------|--------------------------|---|--------------------------------|-----------------------------|
| 2000/2001 | 5 474 924                            | 0.60                     | 81. 92  | 5 474 924                      | 5 190 345                   |
| 2001/2002 | 6 581 454                            | 0.67                     | 100. 92   | 6 539 829                      | 6 581 454                   |

*Accounting for Variances between the Financial Years in the table*

The DCS only accounted for the period 2001/2002, during which the department reported that the capital budget was expropriated from the Department of Public Works to the benefit of the DCS's budget vote.

*Budget Adequacy*

The DCS reported that its budget allocation was inadequate due to a need for additional prison accommodation owing to the dramatic increase in the prison population. For that reason, the DCS made a presentation to the National Treasury motivating for more funds. It indicated that it delayed some of its building projects, but reported that it had attended to other priorities.



**Table 10**                    **General Education and Training**

| <b>Year</b> | <b>Total revenue in Rand(s)</b> | <b>Total allocation on Rand(s)</b> | <b>Allocation as a % of the Department's total revenue</b> | <b>Per capita allocation in Rand(s) after inflation adjustment</b> | <b>Projected expenditure</b> | <b>Actual expenditure</b> |
|-------------|---------------------------------|------------------------------------|--|--|------------------------------|---------------------------|
| 2000/2001   | 5 320 553                       | 52 138 800                         | 0. 98  | 402. 23  | -                            | 49 545 654                |
| 2001/2002   | 6 581 454                       | 54 342 000                         | 0. 83  | 500. 96  | -                            | 53 896 285                |

*Accounting for the Variances in the table*

The DCS ascribed the nominal increase in the budget allocation to the increase of the total number of educators from 1999/2002. However, much as the Department noted that the budget was increasing in nominal terms, they also noted that the percent share allocated to education and training programmes was decreasing between 1999/2000 and 2002/2003. This concerned the Department as the number of prisoners in need of these services was increasing.

*Budget Adequacy*

The DCS reported that the budget was inadequate such that only 2 percent of the total budget was allocated to development and rehabilitation programmes for prisoners. This was shared between Psychological services, Social work services, Religious Care, and Education and Training. According to the department, an average of 0. 97 percent was allocated to education during 1999/2000 and 2000/2001. Due to budgetary constraints as well as lack of human resources in the form of educators, only 13 percent of the total prison population was involved in formal education and training programmes during the 2001 academic year.

To address the budget inadequacy, the department took the following steps:

- Submitted the business plans for their various programmes, which, amongst others, include “Combating of illiteracy” and “Development of needs-based rehabilitation programmes”;
- Mobilised donor funding which is received on an ad hoc basis; and
- Liased with the Directorate Human Resources Maintenance for the filling of all vacant posts and financing of approved establishment in order to address the question of under-capacity within the DCSt.

**Table 12 Vocational and Occupational Skills Training**

| Year      | Total revenue in Rand(s) | Total allocation on Rand(s) | Allocation as a % of the Department's total revenue | Per capita allocation in Rand(s) after inflation adjustment | Projected expenditure | Actual expenditure |
|-----------|--------------------------|-----------------------------|---|---|-----------------------|--------------------|
| 2000/2001 | 5 320 553                | 10 420 000                  | 0. 2  | 310. 57   | -                     | 8 990 392          |
| 2001/2002 | 6 581 454                | 10 162 100                  | 0. 15   | 511. 21   | -                     | 99 356 676         |

*Accounting for the Variances in the table*

The DCS reported that there was not any major change in the budget allocation for training purposes. However, the percent share of the total budget for the department allocated to education and training between 1999/2000 and 2002/2003 decreased. As a result, in the decline of the percent share of the budget allocated to education and training programmes, the number of prisoners participating in these programmes also declined.

*Budget Adequacy*

The DCS reported that the budget was inadequate such that only 2. 9 percent of the total DCS budget was allocated to rehabilitation programmes. According to the department, during 1999/2000 and 2002/2003 an average of 0. 19 percent of the total DCS budget was allocated for the training of prisoners in various vocational and occupational fields. The situation compelled the DCS to negotiate with the Department of Labour for the provisioning of occupational skills training.

The department reported under-spending of about 14 percent of the funds allocated to the programme. However, the Department ascribed the under-spending to delays in the tender procurement processes for the requisitioning of equipment for training centres. According to the DCS the delay in the procurement processes led to some of the projects not taking place in the envisaged financial year. The department, however, did not report on any steps it had taken in order to expedite the procurement processes. The tender procedure was, however, reported to have been successful the following year.

**Table 13 Indicators: Prisoner Population (31 January 2002)**

|                                 | Total   | Percentage of total      | Female | Child-prisoners |
|---------------------------------|---------|--------------------------|--------|-----------------|
| Prisoner population             | 177 701 | Statistics not available | 4 315  | 4 148           |
| Convicted prisoners             | 120 635 | 67. 89                   | 2 949  | 1 765           |
| Prisoners awaiting trial        | 57 066  | 32. 11                   | 1 366  | 2 383           |
| Prisoners above 60 years of age | 786     | 0. 44                    | 29     | -               |
| Disabled prisoners              | 371     | 0. 21                    | 8      | -               |

**Table 14 Indicators: Education**

|  | Total | Female | Male | Child-prisoners |
|--|-------|--------|------|-----------------|
|--|-------|--------|------|-----------------|

|  |  |       |        |       |
|--|--|-------|--------|-------|
| What is the literacy rate (as a percentage of prisoner population)   | This information is not available because the DCS has not yet developed a mechanism to monitor the literacy rate of prisoners other than verbal information received from prisoners. This will be attended to. |       |        |       |
| Number of prisoners enrolled for Basic Education including Adult Basic Education (as a percentage of prisoner population)        | 3.7  | 0.1   | 2.4    | 1.2   |
| Number of prisoners enrolled for Further Education (as a percentage of prisoner population)                                      | 3.5  | 0.1   | 2.8    | 0.6   |
| Number of prisoners enrolled for Vocational Education (as a percentage of prisoner population), occupational skills not included | 0.9  | 0.05  | 0.7    | 0.1   |
| Provide learner/teacher ratio the prison   | 73: 1  | -     | -      | -     |
| Provide the number of learners   | 23 174   | 1 166 | 17 111 | 4 897 |
| Provide the number of teachers (excluding Head Office and Provincial personnel)  | 317  | -     | -      | -     |
| Provide number of prisons with education facilities  | 120 prisons were qualified educationists render services   | -     | -      | -     |

## 8. CRITIQUE

Although shortcomings have been identified in the measures instituted by the DCS towards the protection and safety custody of prisoners, the government should, however, be commended for its efforts in complying with some of the provisions of the SMR such as:

- The establishment of Mother and Child Units in prisons,<sup>33</sup> and
- Separating different category of prisoners,<sup>34</sup> by keeping them in separate institutions or separate sections of the prison.<sup>35</sup>

As it is evident from the report, the DCS had indeed adopted and implemented some measures in an endeavour to fulfil its constitutional and international obligations. According to *Grootboom*, the question that must now be addressed is whether the measures taken by the state to realise the right afforded to prisoners by section 35(2)(e) are reasonable or not.<sup>36</sup>

### *Overcrowding*

The DCS has indicated in its report that it is complying with Rule 10 of SMR<sup>37</sup> which stipulates all the requirement for the prisoners' sleeping accommodation specifically

---

<sup>33</sup> Section 23 provides:

" (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers."

<sup>34</sup> *Op.cit.*, Rule 85 and 86 respectively provides:

"85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate." Section 7(2) of the Correctional Services Act 111 of 1998, also makes provision for sentenced and unsentenced offenders, male and female offenders and children and adult offenders to be kept separate, as well as the creation of sub-categories of prisoners in order to cater for the special needs of the diverse prison population such as babies, young children, prisoners with disabilities and elderly prisoners

<sup>35</sup> *Ibid.* According to Rule 8:

" The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults. Accommodation."

<sup>36</sup> *Grootboom, op. cit.*, para 33.

<sup>37</sup> In terms of 10:

"All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic

designed to meet the prisoners' health needs with regard to cubic content of air, minimum floor space, lighting, heating and ventilation, and adequate sanitary and bathing facilities as provided by Rule 12<sup>38</sup> and 13<sup>39</sup> respectively. This is, however, doubtful, as overcrowding in prison remains the biggest challenge to the department. The DCS itself conceded that its biggest challenge is to reduce the number of people incarcerated to an acceptable level that does not pose serious health risks to inmates. As will be demonstrated below, overcrowding causes a variety of problems and also leads to an infringement of a number of constitutional rights, which are inextricably linked to prisoners' right to adequate accommodation. For example, the Kampala Declaration<sup>40</sup> considers the level of overcrowding in prisons, inhuman as it results in the lack of hygiene; insufficient or poor food; difficulty in accessing medical care; a lack of physical activities or education; as well as the inability to maintain family ties.<sup>41</sup> This point serves to confirm that all socio-economic rights are indivisible and interdependent. A fact underscored by the Constitutional court in the *Grootboom* case when it held that:

Our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supportive. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in chapter 2.<sup>42</sup>

One of the challenges that flows directly from overcrowding is the difficulty in rendering an effective development and rehabilitation programme for prisoners due to shortage of resources. As already pointed out, overcrowding affects normal prison management due to the increase in the cost of maintenance of prison facilities. The inevitable consequences of the difficulty in prison management is the inability to maintain good order within prisons, and the creation of tension among inmates. A fact emphasised by the [UN] Economic and Social Council in its Resolution on International Cooperation for the Improvement of Prison Conditions, when it urged Member States to be "Mindful of the fact that the physical and social conditions associated with prison overcrowding may result in outbreaks of violence in prisons

---

conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

<sup>38</sup> *Op. cit.*, Rule 12 provides:

"The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner."

<sup>39</sup> *Ibid*, Rule 13 states that :

"Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate."

<sup>40</sup> The Kampala Declaration was adopted at the closure of the conference, which was held between 19-21 September 1996 in Kampala, Uganda, attended by about 133 delegates who came together to address prison conditions in Africa.

<sup>41</sup> *Op.cit.*, The Preamble of the Kampala Declaration on Prison Conditions in Africa.

<sup>42</sup> *Grootboom op. cit.*, para 23

and that this could pose a grave threat to law and order.”<sup>43</sup> Making it hard for prison staff to administer rehabilitation programmes effectively in order to prepare inmates for reintegration into the society.

### *HIV/AIDS*

It is common cause that homosexuality is rife amongst inmates, with stronger prisoners practising sodomy towards weaker inmates. Lack of order in prison due to overcrowding creates a conducive atmosphere for the spread of sexually transmitted diseases such as HIV/AIDS.<sup>44</sup>

### *Nutrition and Sanitation*

The preamble of the Kampala Declaration on Prison Conditions in Africa states categorically that the universal norms on human rights places an absolute prohibition on torture of any description. According to Amanda Dissel, “how and where a person eats, sleeps and uses the toilet have enormous effect on a person’s mental and physical well being.

Overcrowding in prison will automatically affect the quality and quantity of the food given to the prisoners, and prison sanitation. One of the issues highlighted in the report is the difficulty by the DCS to implement the three meals per day policy for the prisoners due to shortage of personnel to manage this system within the department's current personnel establishment. The department, however, submits that it is in the process of compiling a personnel-provisioning plan for approval, for acquiring additional funds from the National Treasury for the appointment of personnel, which will address the problems experienced with providing three meals per day. The report unfortunately, is silent on the short- term measures adopted by the DCS to alleviate the difficulty of providing prisoners with three meals per day while waiting for the response of the National Treasury with regard to additional funds.

In addition to violating a person’s dignity, poor nutrition and sanitary conditions may constitute cruel, inhuman or degrading treatment and also affect the health of prisoners. The Constitution lists the right to dignity as one of the non-derogable rights. It is crucial to note that prisoners are deprived of their liberty as a punishment and not for punishment. The Kampala Declaration recommends that the detrimental effects of imprisonment should be minimised so that prisoners do not lose their respect.

---

<sup>43</sup> The Preamble of the International Cooperation for the Improvement of Prison Conditions, Economic and Social Council Resolution 1997/36.

<sup>44</sup> Recently the Jali Commission, which was set up in 2001 to look into the allegations of prison corruption around the country, heard how HIV-positive prisoners rape prison inmates when they refuse to join a gang. They say they give the victim a 'slow puncture', meaning he will die over a period of time," See, [http://www.samedical.org/current\\_affairs/article\\_archive.asp?sitesection=8](http://www.samedical.org/current_affairs/article_archive.asp?sitesection=8). The Commission also heard evidence on sexual assaults of juveniles by both prison warders and older inmates, <http://www.q.co.za/2001/2002/07/18-prison.html>

According to *Grootboom*, a program will only be considered to be reasonable if ever it is "balanced and flexible and make appropriate provision for short, medium and long-term needs."<sup>45</sup> The failure to take steps to address the difficulty of providing three meals per day to the prisoners, renders the measures adopted by the DCS, short of both its international and constitutional obligations.

### *Education*

The infringement of the right to education is one of the challenges that flows directly from overcrowding due to shortage of personnel and educational materials as the prisoners exceed the resources.

The second shortfall of the report with regard to the right to education is its failure to indicate the figures or the type of education afforded to child offenders and children of female offenders. This contrary to the provisions of Rule 77<sup>46</sup> of the SMR which specifically deals with education and recreation. In terms of Rule 77, education for both the illiterates and young prisoners is compulsory. Prison administration is urged to pay special attention to the prisoners right to education.

### *Reading Material*

Contrary to Rule 40 of the SMR which provides that:

[e]very institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

There is nothing in the report, which indicates whether prison institutions, have got libraries or not. This is so despite the fact that regulation 13(2) of the Correctional Services Regulation which also makes provision for the establishment in every prison of a properly organised library containing literature of constructive and educational value.

### *Refugees and Asylum Seekers*

The DCS contends that refugees and asylum seekers are not discriminated against in that they are given the same type of treatment like any prisoner. It is crucial to note that it is not sufficient to give refugees and asylum seekers the same treatment as any other prisoner and disregard their legal, cultural, social, linguistic and health needs.

---

<sup>45</sup> *Grootboom, op. cit.*, para 43.

<sup>46</sup> *Op. cit.*, Rule 77 (1) states:

"(1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty. 78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical."

Despite that treating refugees and asylum seekers like any other prisoner could have serious detrimental and humiliating effect on them, it is in fact a violation of South Africa's international obligation under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol to the Convention.<sup>47</sup>

### *Budget Allocation*

The DCS seems to be concerned with the decrease in the budget allocated to education and training programmes between 2000/2001 and 2001/2002. For example, the DCS indicated that during the period under review, only 2percent of the total budget was allocated to development and rehabilitation programmes and 0.9percent to education. According to the Department, these could only cover 13percent of the total prison population. Only 0.19percent was said to have been allocated for vocational and occupational fields. The DCS indicated that this budget inadequacy made the programme to suffer in that it only benefited a limited number of prisoners. This is contrary to the general comments of the Human Rights Committee, which puts more emphasis on teaching, education and re-education, vocational guidance and training and work programmes for prisoners inside the penitentiary establishment as well as outside.<sup>48</sup> To ensure that once released, they may fit well in their societies and not go back to doing crime.

### *Under expenditure*

Although the figures in table 1 indicate under-expenditure for both reporting fiscal years, the department provided no explanation for this in spite of their complaint of the inadequate budget allocation owing to the daily dramatic increase in the average prison population and the impact the treatment of HIV/AIDS and related diseases had on the health budget. An under-spending of 14percent, for vocational and occupational fields, which was attributed to delays in the tender procurement processes, was also reported.

## **9. RECOMMENDATIONS**

As already pointed out in the introduction, the State enjoys a margin of appreciation in selecting means for implementing their human rights obligations.<sup>49</sup> The burden will, however, be on the State to justify the measures it had adopted to give effect to section 35(2)(e) to demonstrate that it is making measurable progress towards the full realisation of the rights of prisoners. As stated in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, the fact that the full realisation of

---

<sup>47</sup> A good example would be the case of *Franklin v District of Columbia*, 960 F. Supp. 394 (D.D.C.) 1997, where a Federal District judge held that the correctional department's failure to provide interpreters for the Spanish-speaking prisoners in health care and other situations was unconstitutional. The judge specifically cited the department's inability to provide adequate HIV counselling and care, diagnosis and treatment of illness, and mental health services for Latin American inmates. "It is difficult to conceive of an example of [a] medical care system that can be more deliberately indifferent than one in which illnesses are diagnosed and medication is prescribed based upon the patient pointing to a region of his or her body and saying the Spanish word for pain, "dolor." . . . For medical care to be adequate, a doctor and patient must be able to understand each other."

<sup>48</sup> General Comments No. 21, *op. cit.*, para 11.

<sup>49</sup> *Grootboom, op. cit.*, para 38.



most economic, social and cultural rights can only be achieved progressively, does not alter the nature of the legal obligation of States which requires that certain steps be taken either immediately or as soon as possible.<sup>50</sup> Although the rights to adequate accommodation, nutrition, reading material and medical treatment were not designed to be achieved immediately, the DCS is nevertheless obliged to adopt appropriate progressive measures in order to realise the rights guaranteed by section 35(2)(e). As already pointed out above, the Committee on International Covenant on Civil and Political Rights considers the treatment of all persons deprived of their liberty with humanity and dignity a fundamental and universally applicable rule, and that the application of this rule, as a "minimum" does not depend on the material resources available within a State party. The minimum has been defined as including "at least the minimum decencies of life consistent with human dignity."<sup>51</sup>

### *Vulnerable and Marginalised Groups*

#### *HIV/AIDS*

The DCS should adopt appropriate measures to prevent the spread of HIV infection amongst inmates. HIV/AIDS policies and programmes in prison should put more emphasis on education, training and awareness among inmates on HIV infection so that they may be informed of the risks, and the best possible methods for prevention. For example the minimisation of unprotected anal penetration. Education and training of prison staff should similarly be emphasised, as education and training are crucial factors in minimising the spread of HIV/AIDS infection. The policies should outline the responsibilities of inmates to one another regarding the prevention of the spread of HIV/AIDS. This will not only benefit the inmates, but the health of the communities they are returning to as well. Community based HIV/AIDS organisation should be encouraged to get involved.

#### *Asylum Seekers and Refugees*

It is crucial that the incarcerated refugees and asylum seekers' legal, cultural, social, linguistic and health be taken into consideration. In *Grootboom*, the Constitutional Court stressed that the Constitution requires that "everyone" be treated with "care and concern".<sup>52</sup> Because a programme that excludes a significant segment of the society cannot be said to be reasonable.<sup>53</sup> This is underscored by the language of section 35 of the Constitution. It guarantees to "everyone" the rights set forth in section 35 without distinction of any kind, such as race; language; sex; colour; ethnic origin; national or social origin; birth or other status. The DCS should, therefore, come up with comprehensive measures which will adopt a holistic approach towards refugees and asylum seekers. Note that in both *Soobramoney* and *Grootboom*, the Constitutional Court interpreted the economic and social rights and the corresponding obligations of the State in their social and historical context.<sup>54</sup> This was also reiterated in the *Treatment Action Campaign* case.<sup>55</sup> In giving effect to economic and

---

<sup>50</sup>Maastricht Guidelines, *op. cit.*, para 8.

<sup>51</sup>*TAC, op. cit.*, para 28.

<sup>52</sup>*Grootboom, op. cit.*, para 44.

<sup>53</sup>*Ibid*, para 43.

<sup>54</sup>*Soobramoney*, para 11; *Ibid*, para 25.

<sup>55</sup>*TAC, op. cit.*, para 24.

social rights, the department has to take into consideration the individual prisoner right to cultural, social, linguistic rights.

### *Overcrowding*

The DCS should put more focus on and resources for the rehabilitation of prisoners, more especially child prisoners. The department should also develop a long-term prison development plan and stop upgrading the prison facilities in a piecemeal fashion as these outdated old designs are the main source of obstruction in implementing an effective policy directed towards the rehabilitation of prisoners in order to facilitate the prisoners social reintegration, and the application of the SMRs for the Treatment of Offenders and the Basic Principles on the Treatment of Prisoners as urged by the United Nations Economic and Social Council.<sup>56</sup>

### *Nutrition and Sanitation*

Although it is the responsibility of prison management to develop a policy that will ensure adequate sanitation and that each prisoner is provided on regular hours, with a well-balanced diet which will accommodate different types of therapeutic and medical diets for prisoners, the national government bears the responsibility to provide the DCS with financial resources in order to fulfil its constitutional obligations.<sup>57</sup>

### *Education*

Education for prisoners should be considered a priority for a variety of reasons. The Kampala Declaration on Prison Conditions in Africa recommends that “prisoners should be given access to education and skills training in order to provide them with a chance to a better reintegration into society after their release. The government should introduce legislation that will correspond with international declarations to which it is a signatory. It should develop and implement a comprehensive prison education programme designed to maximise social integration after the release of the prisoner.

### *Under-spending*

The government should have a mechanism to ensure that its policies and programmes are fully implemented and the allocated resources effectively utilised. Checks and balances should be put in place for this purpose.

### *Budget Allocation*

According to *Grootboom*, an "effective implementation requires at least adequate budgetary support by national government."<sup>58</sup> To facilitate the realisation of a right the State should provide sufficient material and financial resources.

---

<sup>56</sup> Resolution 1997/36 of the United Nations Economic and Social Council, International Cooperation for the improvement of prison conditions.

<sup>57</sup> *Grootboom, op. cit.*, para 40.

<sup>58</sup> *Grootboom, op. cit.*, para 68.

## **10. CONCLUSION**

As demonstrated above, the government still has much to do in order to realise the rights of prisoners as guaranteed by section 35(2)(e). Overcrowding, education and medical treatment remain the biggest challenge to the department. Although maladministration and corruption were not really highlighted in the report, the recent inquiry into the South African prisons by the Jali Commission whose findings will probably be discussed at length in the next economic and social report reveals the daunting task that is still facing the government with regard to the treatment of prisoners.

## **ABBREVIATIONS**

|            |  |
|------------|--|
| <b>DCS</b> | Department of Correctional Service                                   |
| <b>NDH</b> | National Department of Health  |
| <b>SMR</b> | The Standard Minimum Rules for the Treatment of Prisoners            |
| <b>TAC</b> | Minister of Health and Others v Treatment Action Campaign and Others |
| <b>TB</b>  | Tuberculosis   |