

**Report of**

**The National Prisons Project**  
**of the**  
**South African**  
**Human Rights Commission**



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## PREFACE

From its inception in October 1995, the South African Human Rights Commission has received large numbers of complaints from prisoners. At first, the Commission was not in a position to respond to these adequately for want of policy and staff. However, disturbances in prisons meant that we were called upon early on to attend to the breakdown that regularly manifested itself in the prison system. There were reports of violence, escapes from prisons, arson and strikes by prisoners. Commissioners visited wherever there was trouble in prisons.

The Commission also held several meetings with the Minister and senior management in the national Correctional Services Department. These meetings were designed to work out a system of cooperation in the promotion of a lawful, efficient and humane correctional regime for South Africa. Through such meetings there developed a good relationship between the Commission and Correctional Services Department. It therefore, became possible for the Commission to be regularly consulted and to participate in the human rights training programmes of the department. A protocol of prison visits by commissioners was agreed. Since then the Commission has held meetings with provincial commissioners of Correctional Services and has been making on-the-spot unannounced visits to prisons around the country. We believe that this relationship of openness has contributed to the development of a rights-based prison regime in South Africa.

Alongside our contacts with the Correctional Services authorities, the Commission has developed links with NGOs like SAPOHR which promote the rights of prisoners and NICRO, with its objective of promoting the rehabilitation of offenders. We have also worked with other community structures concerned about crime and offenders. We have done so in pursuit of our mandate of promoting and protecting human rights.

Recognising that the Commission could be inundated with complaints from prisoners and wishing to move away from a re-active mode, the Commission resolved that our approach to preventing human rights violations and protecting human rights, would not be exclusively complaints driven. We decided to take pro-active steps and develop a systematic approach to human rights violations. In 1996, we decided to carry out a national inquiry into human rights in the prisons. We had not even formally started the inquiry when a crisis occurred at Leeuwkop Prison, Sandton. In December, we conducted Hearings into the disturbances at Leeuwkop Maximum Prison. The report on that investigation was published in March 1997. It did not, sadly, receive much publicity. We were later called to other trouble spots where we conducted investigations. Among these were Pollsmoor, Helderstoom, Voorberg and Worcester prisons. We have attached these special reports in order to demonstrate the extent of the Commission's involvement in the issue.

Questions have been asked as to why the Commission seems to have prioritised prisons. Criticism has been levelled at the Commission on the basis that there was not likely to be anything new that would come out of any inquiry the Commission might undertake. We decided to undertake the inquiry for the following reasons:

The prison population in South Africa was so disproportionately high that the maintenance of prison services was a major drain on national resources; Something needed to be done to address the culture of crime in prisons and the excessive recidivism which characterises our prison system.

The history of South Africa was such that the people most affected by a dysfunctional and malfunctioning prison system were those who had also been victims of apartheid. It was important both to take account of the legacy of apartheid that is responsible for our swelling prison population and to take steps to develop a different calibre of prison system that would be consistent with our new Constitution and with international norms and standards.

We believe that a humane and compassionate prison system is ultimately not only consistent with our Constitution but will ensure the preservation of human dignity to many who have lost all hope in humanity and have violated the rights and humanity of others.

The Correctional Services Bill now being piloted through parliament will go a long way towards affirming the principles we have set out above. More significantly, the Bill incorporates the all-important *Standard Minimum Rules for the Treatment of Prisoners*<sup>1</sup>. There are three essential principles covered by the Standard Minimum Rules:

- all prisoners shall be treated with respect due to their inherent dignity and value as human beings;
- there shall be no discrimination on the grounds of, *inter alia*, race, sex, religion, ethnic origin; and
- the prison system is afflictive by the very fact of the removal of one's liberty and should not, therefore, result in any further derogation of one's rights except those essential for the achievement of a lawful purpose.

In 1996, a conference attended by delegates from 40 African states adopted the Kampala Declaration on Prison Conditions in Africa.<sup>2</sup> The Declaration is supported by the Kampala Plan of Action. These documents have to be read in light of the African Charter on Human & Peoples' Rights (1981), to which South Africa is a party. The Kampala Declaration makes the following affirmations of principle:

- That the human rights of prisoners should be safeguarded at all times ...;
- That prisoners should retain all rights which are not expressly taken away by the fact of their detention; and
- That prisoners should have living conditions which are compatible with human dignity.

The Commission subscribes to the principle enunciated in the Kampala Plan of Action that "the success of a prison system is measured by the security it offers society and the degree to which the treatment it provides rehabilitates offenders..." We believe that a system based on human rights is the ultimate guarantor of the safety and security of citizens. That means that a prison system has to be firm, fair and just. Prisoners and prison officers must also know their rights and the limits the law places on their actions and there must be a system of application of the law that is applied with consistency and in a non-discriminatory manner.

We hope that this report will show the extent of the challenge that must be faced in the management of our prison system. We believe that prisons need not be hidden places and prison policy must be the subject of informed debate in society. We trust that this report will contribute to that debate.

N Barney Pityana  
CHAIRPERSON

29 August 1998.

<sup>1</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by ECOSOC, 13 May 1977.

<sup>2</sup> Vide *PRISON CONDITIONS IN AFRICA; Report of a Pan African Seminar, Kampala, Uganda, 19-21 September 1996; Paris: Penal Reform International, 1997.*

# **REPORT ON THE NATIONAL PRISONS PROJECT OF THE HUMAN RIGHTS COMMISSION**

## **Section 1**

### **INTRODUCTION**

Almost as soon as it was established, the Human Rights Commission began receiving complaints from hundreds of individuals, all alleging a violation of various rights enshrined in the Bill of Rights. An initial analysis of these complaints revealed that a substantial number of them emanated from prisoners and that there was a substantial duplication with respect to complaints received. With the resources available at our disposal, it would have been practically impossible to investigate each individual complaint while attempting to prioritise complaints in terms of their seriousness. To try and deal with only those that were considered serious proved equally difficult. After considering the matter the Plenary Meeting of the Commission resolved to undertake a National Prisons Project that would seek to investigate the conditions in South African Prisons from a human rights perspective and report to Parliament on its findings and recommendations.

Thus, rather than deal with prisoners complaints in a piece-meal and reactive fashion, the Project approach was designed to be proactive and to deal with prison issues comprehensively, while at the same time attempting a systematic approach to deal with the substance of the many complaints that reached us.

#### **Design of the Project and Methodology**

Prison visits, inspections and communications from prisoners and staff were the primary tools used in the Project as well as the primary source of information used in compiling this report. Other reports including Annual Reports of the Department of Correctional Services, Reports from NGOs and the media were also used as research and information material. Information from these sources used in the compilation of the report is duly acknowledged.

The National and the Provincial Commissioners were informed of the intention of the Commission to visit the prison and general details were provided about the project and how the visit was to be structured. At the commencement of each visit a briefing meeting was held with the management of the prison. In some instances, area managers and Provincial Commissioners were present at the meetings. The briefing meeting was used to discuss the project, what we sought to achieve and to allay fears that the Commission had come to identify perpetrators of human rights violations and to deal with them. It was also impressed upon members of Correctional Services that they were invited to make submissions and lodge complaints to the Commission.

An inspection of the premises then followed and included all the available facilities, including medical and hospital, kitchen, education and recreation facilities, accommodation, etc. Prisoners were addressed in groups, informing them of the project and inviting them to bring matters to our attention through the ballot boxes that we had deposited at the prisons. We assured them of the confidentiality of their communications and were able to speak to few individual prisoners during this exercise. It was however, not possible to speak to everyone that sought to speak to the Commission, due to time constraints.

Each visiting team was headed by a Commissioner and supported by one or more members of staff. The visiting teams compiled written reports on each visit based on their observations, discussions and consultations. At the same time, the letters and submissions received from prisoners and staff were analysed and categorised in terms of various aspects of the prison regime and these were then

incorporated into the written reports prepared by the visiting team. The report accordingly reflects a combination of the 'on site' visits and the submissions received. It was not possible to investigate or verify the allegations in letters received through the ballot boxes – what we sought to do however, was to pick up trends in respect of complaints or unsatisfactory features of the penal system.

### ***Special Investigations***

Included in the Report are a number of case studies/special investigations into prisons. These occurred as a result of complaints received from prisoners that had been followed-up by a Commissioner, or as in the case of Leeuwkop Prison, a panel of investigators. There is also a table depicting the type of complaints received from prisoners.

### ***Random selection of prisons from the various provinces***

Given that it was not possible to visit all the prisons in South Africa, a cross-section of prisons was selected using the following criteria:

- Geographical location: rural/urban
- Men's prisons
- Women's prisons
- Awaiting trial facilities
- Juvenile prisons

### **WESTERN CAPE: Commissioner R Kadalie**

Pollsmoor Women's Prison  
George Prison  
Malmesbury Prison  
Brandvlei Maximum Prison  
Pollsmoor Maximum Prison

### **MPUMALANGA PROVINCE: Commissioner J Kollapen**

Witbank Prison  
Bethal Prison  
Barberton Prison  
Standerton Prison

### **NORTHERN PROVINCE: Commissioner J Kollapen**

Pietersburg Prison  
Thohoyandou Prison  
Nylstroom Prison

**NORTH WEST PROVINCE: Commissioner P Tlakula**

Brits Prison  
Rustenburg Prison  
Klerksdorp Prison  
Potchefstroom Prison  
Christiana Prison  
Central Prison (Mafikeng)

**EASTERN CAPE PROVINCE: Commissioner A Routier**

St Alban's Prison  
Northend Prison  
Mdatsane Prison  
Fort Glamorgan Medium A  
Fort Glamorgan Medium C

**GAUTENG PROVINCE: Commissioner H Suzman**

Pretoria Prison  
Johannesburg Prison  
Baviaanspoort Prison  
Boksburg Prison  
Heidelberg Prison  
Vereeniging Prison  
Zonderwater Prison

**KWA-ZULU NATAL: Commissioner S Mabusela**

Newcastle Prison  
Newcastle Youth Development Centre/Ekuseni Prison  
Durban-Westville Prison  
Empangeni Prison  
Etherebyshowe Prison

**FREE STATE PROVINCE: Commissioner J Nkeli**

Senekal Prison  
Brandfort Prison  
Grootvlei Prison  
Sasolburg Prison

*Special Investigations/Case Studies*

(A selection of these reports are appended and the recommendations that appear in them have been carried forward to the summary of recommendations in this report.)

**Western Cape province:**

Helderstroom Maximum Prison  
Voorberg Medium B Prison  
Worcester Prison  
Upington Prison  
Victor Verster Maximum Prison

**Gauteng province**

Leeuwkop Prison



## Section 2

### OBSERVATIONS FROM PRISONS VISITED

#### a) THE PHYSICAL ENVIRONMENT

##### *Buildings and grounds*

##### **Bill of Rights, S35 (2) (e) Arrested, detained and accused persons**

Everyone who is arrested for allegedly committing an offence has the right - to conditions of detention that are consistent with human dignity, including at least exercise and the provision at state expense, of adequate accommodation....

##### **Overview**

The buildings and grounds of prisons visited range from 'clean and well-kept' to those that were in a serious state of disrepair. Prisons such as Mdantsane, Rustenburg, Christiana, Mafikeng and Klerksdorp were considered health hazards with poor or no lighting, leaking pipes, blocked drains and toilets, cracked and mouldy walls and poor fencing. Special mention must be made of Thohoyandou Prison in the Northern Province, as it is the prison that requires the most attention and where there are more violations of the rights of prisoners than in any other institution visited in the province.

The Christiana prison had serious structural problems at the time of the inquiry. We subsequently learnt that a new prison building is underway and it is hoped that the Department of Correctional Services will take advantage of the new premises and address the serious problems that besieged the old prison.

Barberton Prison has a serious problem with inadequate fencing around the prison. This facilitates the smuggling of dagga and alcohol into the prison as well as endangering members on night patrol.

Malmesbury Prison is seriously overcrowded. However, in August 1997, construction of a new prison commenced in Malmesbury, to accommodate 900 prisoners. Meanwhile it appears that this has resulted in the under-resourcing of the existing prison, as no allocations have been made for improvements in the facilities.

**The following tables profile prison composition, classifications and percentage increases of prisoners and illustrate how serious overcrowding contributes to the problems being encountered within the prison system.**

##### **The prison population**

**Table 1: The composition of the prison population as at 31 December 1997**

	<b>Adults</b>		<b>Juveniles</b>		
	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Sentenced	85 996	2 212	12 570	197	100 975
Unsentenced	31 327	973	8 933	202	41 435
<i>Total</i>	117 323	3 185	21 503	399	142 410
Percentage	82.38	2.24	15.10	0.28	100

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 2: The percentage increase in the prison population for the period 1996 to 1997**

	Total as at 31 December		% increase
	1996	1997	
Unsentenced male prisoners	32 547	40 260	23.07
Sentenced male prisoners	90 236	98 566	9.23
Unsentenced female prisoners	877	1 175	33.98
Sentenced female prisoners	2 090	2 409	15.26
<i>Total</i>	125 750	142 410	13.25

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 3: Daily average of sentenced and unsentenced prisoners for the period 1993 to 1997**

Year	Male	Female	Total
1993	108 284	3 514	111 798
1994	108 066	2 867	110 933
1995	107 539	2 530	110 069
1996	115 857	2 874	118 731
1997	130 731	3 471	134 202

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 4: Distribution of sentences of prisoners admitted from 1993 to 1997, expressed as percentages**

	1993	1994	1995	1996	1997
Long-term prisoners, i.e. with sentences longer than two years	20.86	26.34	27.29	26.5	25.7
Sentences of longer than six months but less than two years	15.29	17.13	17.66	18.2	18.6
Sentences of six months and less	62.99	56.34	54.11	54.8	55.1
Other categories	0.86	0.19	0.94	0.5	0.6
<i>Total</i>	100	100	100	100	100

*Department of Correctional Services Statistics: 1997 Annual Report*

### Classification of prisoners

**Table 5: Custodial classification of prisoners as at 31 December 1997**

Custodial classification	Number of prisoners	Percentage
Minimum	3 717	2.61
Medium	72 560	50.95
Maximum	12 179	8.55
Not yet classified	518	0.36
Unsentenced prisoners and those serving sentences of less than two years	53 436	37.53
<i>Total</i>	142 410	100

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 6: Privilege classification of prisoners as at 31 December 1997**

<b>Privilege classification</b>	<b>Percentage</b>
Group A (highest)	67.06
Group B	17.39
Group C	14.15
Group D (lowest)	1.40

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 7: Cell accommodation and utilisation as at 31 December 1997  
indicating the overpopulation percentage**

<b>Year</b>	<b>Availability</b>	<b>Utilisation</b>	<b>Overpopulation %</b>
1996	96 329	125 750	30.5
1997	99 407	142 410	43.3

### **Prison-warder ratio**

The prisoner-warder ratio is 1:5 (or 1:9 if management and administrative personnel are excluded). This figure should be 1:3 if it is in accordance with international standards.

#### *Accommodation*

##### **SMR. [P.1]: Accommodation:**

- Dormitory facilities are to be supervised at night, and should be occupied by carefully selected groups.
- Cells and prison dormitories should provide adequate space, ventilation, lighting and sanitary facilities and are to be kept clean at all times.

##### **SMR. [P.1]: Personal hygiene**

- Prisoners shall be provided with adequate water and toilet articles and required to keep themselves clean.

##### **SMR. [P.1]: Clothing and bedding**

- Prisoners who are not allowed to wear their own clothing are to be provided with an adequate and suitable outfit, with provision for laundry and changes of clothes.
- Prisoners outside an institution for an authorised purpose are to be allowed to wear their own clothing.
- Every prisoner shall be provided with a separate bed and clean, separate and sufficient bedding.

##### **SMR. [P.1]: Medical Services**

- The medical officer is to report to the director on prisoners whose health is jeopardised by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners.

##### **SMR. [P.2]: Guiding principles**

- The prison system must not aggravate unnecessarily the suffering inherent in a prisoner's loss of self-determination and liberty

## Overview

When considering the statistics of prison populations, it is clear that there is a very serious overcrowding problem and concomitantly a breakdown of law, order and standards within the prison system. This is most evident in the makeshift arrangements to accommodate the large number of prisoners crowded into the cells. Where serious overcrowding exists, it follows that there is a lack of basic necessities such as toiletries, towels, blankets and sheets. In instances where provision is made, it is insufficient. At Rustenburg and Thohoyandou Prisons, due to overcrowding and the lack of accommodation, some prisoners sleep on cement floors. At Durban Westville, there are serious complaints of cell blankets being dirty, wet and lice-ridden.

It is of particular concern that of the prisons visited, in most instances, there is no provision of hot water, electricity or ventilation. At Newcastle and Eshowe Prisons for example, it was reported that there was no privacy in the toilets and showers, no hot water and no heaters. Many cells were dirty and smelt unclean, with some toilets not working, not working properly or leaking.

Some cells, especially in the male-sections had poor-to-no lighting. The overcrowding rate of most prisons is so high that the situation is more than likely to deteriorate.

Another issue of concern is that toilets as part of the cell are the norm in most prisons. When the toilets malfunction, there is an overall unpleasant effect on the entire cell. This lack of hygiene is a health threat and inmates do not have the necessary privacy for intimate functions.

During our visits, we found that the majority of prisons suffered from conditions such as these, for example:

At George Prison the excessive number of prisoners resulted in serious overcrowding to the extent that prisoners complained of insufficient oxygen in the cells. Prisoners in communal cells have to make use of one shower and one toilet that are in very close proximity to the beds. However, parts of the prison were recently upgraded and the new communal cells are an improvement as the toilets have been separated from the sleeping areas.

The Mdantsane Prison is mouldy and cracking from water seepage. It was also infested with green flies because the municipality had placed its garbage dump 100 metres from the prison. The Commission intervened in this case and had the dump removed. Mdantsane Prison also has no beds for 323 prisoners who sleep on mats on the damp floors. In fact, during the inquiry it was found that the Eastern Cape Province had a shortage of over 1,800 beds for prisoners who are thus forced to sleep on mats on the floor.

Pretoria, Vereeniging and Brits Prisons, in comparison, were considered to be relatively clean with little overcrowding. Most of the cells had television sets belonging to individuals and one big set for the common area.

St Alban's Prison in East London and Bethal Prison in Mpumalanga were described as overcrowded, but mainly clean and adequate.

Grootvlei Prison, a maximum prison, was reported to be very neat but had little physical space for prisoners. No overcrowding was noted even though the maximum prison houses 1 500 prisoners, the medium prison 295 and the female section 21 prisoners.

## **Analysis**

Although the Constitution guarantees every sentenced prisoner the right to conditions of detention that are consistent with human dignity, including the provision, at state expense, of adequate accommodation, the conditions at the majority of prisons would, in our view, fall short of this constitutional obligation.

The majority of prisons are so overcrowded and in such a serious state of disrepair that they not only pose a health hazard but also contribute to the high rate of escapes. The repair of prisons, like other government buildings, is the responsibility of the Department of Public Works, which, we were informed, often take a long time to respond to requests for repairs.

In our opinion, the inhuman conditions in which prisoners are accommodated contribute, to a very large extent, to the criminality found in the majority of prisons.

## **Recommendations**

While capital expenditure is limited and infrastructure development expensive and time-consuming to effect, we believe that as a minimum the DCS should ensure that all prisons have hot water, electricity and sufficient ablution and washing facilities. Beds should ideally be provided, but where this is not possible immediately, sleeping mats and sufficient blankets should be available. Toilets and showers should be sufficiently removed from the sleeping quarters both for reasons of hygiene and to provide inmates with a sense of privacy.

With regard to overcrowding, we believe the greater use of non-custodial sentences must be encouraged. In particular, the efficacy of imposing short sentences when other more effective measures are available needs to be brought home to judicial officers. The DCS can play a role in this regard in informing and educating judicial officers.

The large number of awaiting trialists concerns us; in particular those who have been granted bail but have not paid it. There is the need to review their matters either with a view to reducing bail or effecting their release on warning. We must emphasise that here we are not dealing with persons who are dangerous or violent, but rather persons in respect of whom the Courts have already taken a decision to release by the granting of bail.

## **b) PRISON CONDITIONS**

### *Kitchens and Food*

#### **Bill of Rights, S35 (2) (e) Arrested, detained and accused persons:**

- Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity including.... adequate nutrition.

#### **SMR. [P.1]: Food**

- Wholesome, well-prepared food is to be provided prisoners at usual hours.  
Drinking water shall be available whenever needed.

#### **SMR. [P.1]: Medical Services**

- The medical officer is to report to the director on prisoners whose health is jeopardised by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners.

**Table 8: A comparison between the unit costs per offender per day (per capital cost) in respect of the humane detention and treatment of prisoners for the 1996/97 and 1997/98 financial years respectively (rands).**

	<b>1997/98</b>	<b>1996/97</b>
Cost in respect of nutrition	3.8	3.47
Medical Costs	1.67	1.62
Costs in respect of clothing, hygiene, equipping of cells and guarding	1.75	1.68
Gratuity	0.10	0.12
Total per capita cost per day in respect of the humane detention and treatment of prisoners	7.35	6.89

*Department of Correctional Services Statistics: 1997 Annual Report*

### **Overview**

There appears to be no standard prison policy for dietary requirements. Differing dietary policies were the norm for each prison. The most common complaints received from prisoners were:

- not enough food
- no provision for those who do not eat pork
- dinner is served at 14h00 and no provision is made for evenings by which time everyone is hungry again
- food ranges from poorly prepared or inedible, to too little or rotten

Our inspections found examples of both good and bad practice in respect of the diet of prisoners, as the examples below illustrate.

At Durban Westville, prisoners complained that the food was inadequate, half-cooked, rotten, unhygienic and sometimes contained lice. An in-house shop is available to buy food but it is expensive. It was alleged that prisoners working in the kitchen sell meat and other foodstuffs to prisoners, thereby improving their financial situation.

This is also an accusation levelled against members. As a result of the sale of foodstuffs, some juveniles resort to prostitution in order to secure themselves food privileges.

At Baviaanspoort Prison, the prisoners grow their own vegetables and lucerne. They also keep pigs that are sold in exchange for eggs and chickens. Vereeniging, Brits Bethal and Zonderwater kitchen facilities were considered to be clean with relatively good food. At St Alban's, there is a staff/visitors canteen where prisoners prepare excellent food and are trained for future catering jobs.

In some instances, due to serious overcrowding in prison, (such as in Klerksdorp, Newcastle and Empangeni Prisons), there are no dining hall facilities for prisoners. At Potchefstroom Prison, meals are served at different times for different categories of prisoners. Because of serious overcrowding, the process of feeding prisoners takes up to six hours to be completed.

Where children are incarcerated, bread handed out at 15h00 hours, which is intended for supper, is frequently stolen by older, and especially larger children, who bully the younger ones.

## **Analysis**

The majority of prisons are supplied with nutritious food such as vegetables, meat and bread. In many instances, however, the food was so badly prepared that it was hardly edible. Because of overcrowding and lack of facilities such as dining halls, the serving of meals on each day is a nightmare for prison officials who usually have to look after prisoners for up to six hours each day while they queue for food. Prisoners complain of inadequacy of food of the irregular timing of their meals.

Black prisoners complained of differential treatment between them and white prisoners who may be allowed food from their visitors. The statement which was made by the Minister of Correctional Services on national television, to the effect that all prisoners would be allowed to receive food from their visitors or relatives, added to the confusion as to whether or not this was permissible. There has been, to our knowledge, no official communication in that regard by the Minister of CS to prison officials.

The department also has to look into the issue of provision of special diets for prisoners who belong to certain religious groups e.g. Muslims, some of whom have complained that their dietary requests were not allowed.

## **Recommendations**

Some mechanisms for food quality control are needed, as well as greater supervision over the food preparation process. These interventions would help to render the provision of more adequate and nutritious meals.

In addition, consideration should be given to rescheduling meal times so that the last meal of the day is served as late as possible under the circumstances. Consideration should also be given to using private contractors in the supply and preparation of meals if this will avoid the theft and corruption associated with food provisioning and if it was cost effective. The use of courtyards and collapsible furniture should be investigated as a substitute for dining halls to ensure that meals can be enjoyed in dignity.

### *Communications and visitation rights*

#### **Bill of Rights, S35 (2) (f) Arrested, detained and accused persons:**

- Everyone who is detained, including every sentenced prisoner, has the right – to communicate with, and be visited by, that person's (i) spouse or partner; (ii) next of kin; (iii) chosen religious counsellor; and (iv) chosen medical practitioner.

#### **SMR. Contact with the outside world**

- Prisoners are allowed regular contact with family and friends, by both correspondence and personal visits.

Visitation rights are generally adhered to but in most cases the regulations vary from prison to prison. General complaints received were:

- telephone calls are inhibited
- visits are too short and too few
- lack of contact visits
- suspicion that members do not post letters to their families
- Lack of adequate visiting facilities in some prisons
- Censoring of letters in and out of prison
- Different treatment for black and white prisoners, with the latter often allowed contact visits.

## **Analysis**

The issue of unfair discrimination between black and white prisoners' visitation rights, particularly in rural prisons, has to be addressed by the department. Trust is lacking between prisoners and members on who is getting privileges and why. The issue of censorship is a difficult one, because, although censorship is a violation of the right to privacy, security in prisons must be maintained. Prisoners need to understand that the same principles are being followed for all prisoners.

## **Recommendations**

The DCS must consistently ensure that policy and rules are applied equally. While we understand this to be the policy of the DCS, we encountered complaints of differential treatment based on race in this area as well as other areas of prison life. It is, in our view, a matter that requires close monitoring by the department. Firm action needs to be taken against those who contravene the right to equality through inappropriate policy formulations and implementation.

The censoring of letters by way of reading them is an unfortunate consequence of prison life. Letters have to be subject to security checks to curtail smuggling or the making of arrangements for other forms of illegal transactions. We cannot therefore recommend that there be no censorship of prison correspondence, provided that such censorship does not extend to a violation of the privacy of the communication in question.

## **c) PRISON FACILITIES**

### *Hospital and medical services*

#### **Bill of Rights, S35 (2)(e) Arrested, detained and accused persons:**

- Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity including.... medical treatment.

#### **SMR. [P.1]: Medical Services**

- A medical officer with some knowledge of psychiatry is to be available to every institution.
- Prisoners requiring specialised treatment are to be transferred to a civil hospital or appropriate facility.
- A qualified dental officer shall be available to every prisoner.
- Every prisoner shall be examined by the medical officer shortly after admission: prisoners suspected of contagious diseases are to be segregated.
- The medical officer shall see all sick prisoners daily, along with those who complaint of illness or are referred to his attention.
- The medical officer is to report to the director on prisoners whose health is jeopardised by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners.
- The medical officer is to decide what use will be made of drugs or medicine a prisoner brings with him.



## Overview

While most prisons had the necessary provisions for medical care, there is no standard procedure for the administration of health care or provision of medical personnel. For example, the Brits Prison medical facilities are reported to be clean and staffed by an auxiliary nurse with visits from the district surgeon twice a week. At the other end of the spectrum, Mafikeng prisoners complain that they receive no proper medical examination or treatment and that the doctor visits the prison hospital once a month. Klerksdorp and Potchefstroom prisoners allege that the doctor only visits the prison once a week and when they are treated, they are given medicines that have passed the expiry date.

Boksburg prison has a hospital for sentenced prisoners and a small hospital for awaiting trial prisoners. However, prisoners complained that there is a short supply of medicines and trained staff. Prisoners are often “dumped” in hospital to get well on their own.

Heidelberg has both male and female sections in the hospital. Sick parades are held daily during the morning and afternoons but when a prisoner is sick and there is no sick parade, she/he has right of access to the hospital. Doctors visit the prison every Tuesday afternoon and there is access to a doctor 24 hours a day. A dentist at Boksburg Correctional Services renders dental care every second week.

The Vereeniging Prison report noted that the prison hospital was clean and well looked after and that doctors visited once a week but could be summoned at any time. The pharmacy is well equipped with medicines. Other prisons, such as Eshowe and Empangeni, complained of insufficient medicine and irregular medical check-ups.

There were a number of complaints of prisoners being denied access to private doctors or that access to doctors and medical treatment were withheld as punishment. Prisoners also complained that preferential treatment was given to white prisoners.

Bethal Prison was found to have adequate medical provisions. There were two registered nurses and an auxiliary nurse. The doctor visited twice a week and the dentist once a week.

Mdantsane prisoners alleged that staff were selling medicines to prisoners.

Witbank prisoners complained that they do not have direct access to the doctor but have to go through the section head and thereafter the nursing sister. While there may be some practical reasons for having such an arrangement, it must be ensured that such an arrangement does not lead to a situation where effective access to medical care is blocked.

At Thohoyandou Prison, it would appear that the stench in the cells has an adverse effect on prisoners' health, while other prisoners complain that the lack of adequate resources mean that only those who are seriously ill are given permission to seek medical attention.

George Prison – all prisoners complained of inadequate medical treatment. They claim that the doctor who visits once a week does not take their complaints seriously.

Pollsmoor Maximum Prison - the hospital staff reported that their statistics revealed that, on average, approximately 12 patients sustained injuries as a result of assaults inflicted by fellow prisoners. An additional 3 people allegedly sustained injuries as a result of assaults inflicted by members, while there were allegedly 20 people per month who arrived at the prison with assaults allegedly inflicted while in SAPS custody. These statistics cannot, however, be regarded as reliable as discrepancies were identified

during the visit. For example, one prisoner who sustained injuries allegedly inflicted by a member had the cause of the injury recorded as 'self-inflicted'.

### **Prisoners requiring special treatment**

#### **HIV/AIDS**

**Table 9: Known cases of prisoners diagnosed as HIV positive and those treated for full-blown AIDS during 1996 and 1997**

	<b>1996</b>	<b>1997</b>		
	<b>HIV</b>	<b>AIDS</b>	<b>HIV</b>	<b>AIDS</b>
January	638	16	864	27
February	665	17	862	37
March	675	23	887	37
April	691	18	914	34
May	690	19	931	37
June	722	20	1 026	39
July	698	29	1 051	43
August	704	31	1 093	47
September	673	24	1 145	48
October	756	20	1 149	50
November	810	21	1 225	55
December	840	27	1 258	51

*Department of Correctional Services Statistics: 1997 Annual Report*

NB: The statistics reflect only those cases that have been diagnosed and reported. HIV testing is not compulsory within the Department. It may therefore be speculated that the actual incidence is higher than that which is reported. [*Department of Correctional Services Statistics: 1997 Annual Report, P.20.*]

### **Overview**

There is a Correctional Services policy on HIV/AIDS and most prisons reported having prisoners with HIV/AIDS. However, the policy is not always effectively managed or understood. Generally speaking, prisoners are informed that they may request HIV testing. If they do so, they should be referred to a social worker for pre-test counselling. If the test result is HIV/AIDS positive, there should be post-test counselling. There were no reported cases of complaints of HIV positive prisoners being separated from the rest of the prison population.

Durban-Westville reported that most prisoners have not been tested, but those who have been tested are reportedly not happy with their treatment. Counselling was available, but through an outside organisation.

East London Central Prison reported prisoners are not tested without their consent and then only if symptoms are suspected. HIV prisoners are counselled but other inmates are not told of their condition. On admission, prisoners receive information on HIV; how it is transmitted; its effects; and advice on living with HIV/AIDS.

While most prisons have a policy regarding condoms and these are freely available in prison, Klerksdorp Prison noted that, although condoms are freely available to prisoners subject to them receiving counselling, most prisoners do not collect them for fear of being identified as being engaged in sodomy.

Members also believe that handing out condoms is tantamount to encouraging and permitting sodomy between prisoners.

Barberton Prisoners complained about the attitude of the prison doctor who treated them in ‘an inhuman fashion’ as well as the adequacy of the treatment provided. There was a request that traditional healers be allowed to operate within the prison.

At Pollsmoor Women’s Prison, educational programmes on HIV are organised by the Health Department. HIV prisoners are not isolated and will only be granted the right to a single cell if a claim is justified in terms of a need for separation and security from other prisoners.

At Pollsmoor Maximum Prison, there is no AIDS education and no distribution of condoms.

### **Tuberculosis**

**Table 10: Number of tuberculosis cases within the department during 1996 and 1997**

	<b>1996</b>		<b>1997</b>	
	<b>New cases</b>	<b>Total</b>	<b>New cases</b>	<b>Total</b>
January	137	839	104	955
February	102	867	122	878
March	102	876	114	919
April	109	895	121	907
May	106	916	133	1 041
June	86	866	121	1 052
July	74	823	146	977
August	103	779	164	1 120
September	96	765	164	1 193
October	117	795	138	1 224
November	118	824	144	1 207
December	107	805	135	1 145

*Department of Correctional Services Statistics: 1997 Annual Report*

### **Deaths in prison**

**Table 11: Deaths of prisoners for the period 1 January 1997 to 31 December 1997**

<b>Cause of death</b>	<b>Unsentenced prisoners</b>	<b>Sentenced prisoners</b>
Natural causes	86	241
Suicide	9	15
Assault by fellow-prisoners	6	19
Drowning	0	1
Shooting incidents	1	1
Other causes	9	14
<i>Total</i>	111	291

*Department of Correctional Services Statistics: 1997 Annual Report*

## **Analysis**

The majority of prisons have basic medical facilities that are largely sufficient for taking care of the medical needs of prisons. In prisons where there is a proper hospital, this is often used or misused by prisoners and prison officials alike, particularly with respect to isolation purposes. This practice puts a strain on the availability of space, particularly for prisoners who have a genuine need for hospitalisation.

Although prisoners living with HIV/AIDS are not isolated and in some prisons receive counselling, there is no uniformity regarding the application of DCS policy. The provision of condoms and availability or quality of treatment for prisoners living with HIV/AIDS varies according to the prison investigated.

## **Recommendations**

The policy applicable to prisoners living with HIV/AIDS has to be re-examined and standardised. The sharp increase over the past year in the number of inmates who are HIV positive suffering from AIDS and or tuberculosis will inevitably place a heavy strain on the already burdened resources of the department. Given the relationship between AIDS and tuberculosis there is a need for more public health education and perhaps greater involvement in such provision by the Department of Health.

Numerous complaints and requests were received regarding access of prisoners to traditional healers. This is an important aspect and we recommend that the DCS agree in principle to allow prisoners to have access to traditional healers. The logistics of access and other related matters, such as medication allowable, consequences of treatment etc., could be the subject of discussions between the DCS and the Council of Traditional Healers.

We also note that there are a large number of approved but vacant positions for nursing staff. We would recommend that steps be taken to fill these posts so that the DCS can operate on its full complement of nursing staff. This step, we hope, would help to deal with the increased pressure that will invariably come with the increase in the number of prisoners overall, as well as the rapid increase we have observed with regard to HIV and tuberculosis cases.

### *Educational facilities*

#### **Bill of Rights, S35 (2)(e) Arrested, detained and accused persons:**

- Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity including.... reading material.

#### **SMR. [P.1]: Books**

- Every institution shall maintain for the use of prisoners a library with recreational and instructional books.

#### **SMR. [P.2]: Education and recreation**

- The ongoing education of prisoners is to be facilitated, and schooling of illiterates and youthful prisoners is to be considered compulsory.

**Table 12: Participation in formal education programmes in 1997**

	Educational programmes			Correspondence courses
	Literacy	Primary	Secondary	
Number of students	4 735	2 151	4 030	2 097

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 13: Number of prisoner involved in informal educational programmes during 1997**

Informal educational programmes	Number of prisoners involved
Recreational-educational programmes	51 107
Specially organised sporting events	27 568
Library educational programmes: number of readers	29 647
Participation in the national prisoner choir competition 97/98	5 200

*Department of Correctional Services Statistics: 1997 Annual Report*

### Overview

Provision for education is almost non-existent within the prison services. Complaints include criticisms of insufficient library material, lack of educational facilities, lack of study materials and too few qualified teachers. There are, however, a few notable exceptions, such as Northend Prison where juveniles and adults who wish to study do so through Damelin College and, at Brits Prison, adult literacy classes are conducted by a person who is qualified as an ABET teacher. At Mafikeng Prison there is an education coordinator organising education programmes for juveniles. Teaching lessons are conducted for these juveniles by one of the members who is a qualified ABET teacher.

The students of the University of the North-West also conduct “street law” programmes for Mafikeng prisoners but, conversely, prisoners complain that there are no facilities for adult prisoners wanting to further their studies, nor is there a library. The prison member who is responsible for adult basic literacy is reportedly reluctant to offer his assistance.

Prisoners who study through correspondence have problems with posting their assignments because of their lack of trust in prison education officers.

The report from Potchefstroom Women’s section noted that adult basic education is offered and those who study do so privately under the supervision of a tutor and also write tests. However, teachers are often unqualified and are often volunteer prisoners. There is no reading or writing material and no facilities for further education.

At Witbank Prison, there is an impressive training centre recently completed with financial assistance from the Department of Labour. Despite such a wide choice of training available, the training centre was under-utilised. The reason for this appears to be that inmates prefer working in the factories on the premises where they receive payment rather than attend the training centre where, even though they have the opportunity to acquire some skills, they do not receive any payment. In the context of prison life, the payment received is important since it has a direct impact on the ultimate quality of life within the institution.

Bethal Prison has a vibrant school within the prison and inmates have been recruited into providing instruction. There is also a well-stocked library for use by all inmates.

There are no educational, library or school facilities at either Malmesbury and Senekal Prisons.

At Brandfort Prison there are literacy classes run by ABET, but there are no library facilities.

Grootvlei Prison School has 250 registered students. There is one library and ABET classes are conducted in 3 classrooms. The prison also runs literacy classes.

At Sasolburg Prison there are no educational facilities at all.

## **Analysis**

Educational facilities in the majority of prisons are very poor and in some instances non-existent. In some prisons, there are no educational facilities even for juveniles, for whom education is compulsory under the SMR rules. Overcrowding makes it difficult for those who are studying to concentrate on their studies and complete their assignments. Prisoners perceive members to be unsupportive of their studies.

Prison authorities could be more innovative in finding reading material for prisoners, for example by affiliating with libraries situated near the prison and organising library visits to the prisons. Further, lack of space in most prisons makes it difficult for officials to set aside the much needed space for educational purposes. It is not unusual for a room to be used for multiple purposes within the prison environment.

Most prisons have also ignored basic human rights education for prisoners. Even the Bill of Rights posters that the Commission (SAHRC) supplied to different prisons were not prominently displayed so prisoners could have easy access to them. In one prison, we found the poster displayed behind a steel cabinet.

## **Recommendations**

The educational aspects of prison life require urgent attention given that they are so centrally linked to rehabilitation and the prisoners' ability to cope after release. The role that private contractors, NGOs or volunteers from the community could play needs to be considered in order to improve access to educational opportunities. We would also recommend that national and provincial education departments are approached in order to ascertain what assistance and support may be available from them.

We are also concerned by the under-utilisation of opportunities in centres where they do exist, for example in Witbank, due to the fact that they compete with paid work opportunities. This matter needs to be addressed by ensuring that prisoners who choose to study do not lose out on work opportunities and that prisoners have guaranteed access to basics such as food, soap, toothpaste and other necessary items. Finally, we would urge the DCS to fill all vacant but approved educator posts.

SMRs are The Standard Minimum Rules for Conditions in Prisons. They were adopted by the United Nations in 1960. Prisoners are afforded privileges from entry level D. Institutional Committees do assessments based on conduct. A prisoner may be then moved up a grade, with the attendant improvement in his or her access to benefits. These include study privileges, single cells, places of work etc.

#### **d) PRISON LABOUR AND INDUSTRY**

##### **SMR. [P.2]: Work**

- All prisoners under sentence shall be required to work, unless determined to be physically or medically unfit.
- So far as possible, the work should be of a full-time nature, conducive to vocational training and aligned with the choice of prisoners.
- The interests and vocational training of prisoners are of greater importance than making a financial profit from their labour.
- Institutional labour preferable will be directed by prison administrators rather than private contractors. When prisoners are employed in work not controlled by the administration, they should be under the supervision of the institution's personnel and the administration should be paid the normal wages for such work, unless the contractor is another government agency.
- Precautions laid down to protect the safety and health of free workmen shall likewise be respected for prison labourers.
- Maximum days and hours of work shall be fixed by law or regulation, taking into account local rules or customs regarding the employment of free workmen and to leave one rest day a week and sufficient time for education and treatment.
- Prison labour must not be of an afflictive nature.
- Prisoners are to be remunerated equitably, allowed to spend part of their earnings on approved articles for their own use, send a part to their families and set aside some in a savings fund.

**Table 14: Number of prisoners involved in vocational training programmes during 1997**

<b>Type of vocational training</b>	<b>Number of prisoners involved</b>
Building training	764
Hairdressing training	70
Workshop training	436
<i>Total</i>	1270

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 15: Number of prisoners involved in career-directed skills training programmes during 1997**

<b>Career-directed skills-training</b>	<b>Prisoners involved</b>	<b>Courses completed</b>
External courses in career-directed skills-training	1 777	1 581
External courses in agricultural training	605	595
Internal courses in career-directed skills-training	2040	2040
In-service training	1727	1727
Entrepreneurial skills	959	959
<i>Total</i>	7108	6902

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 16: Average number of work opportunities provided to prisoners per day**

<b>Skills / workshop provided</b>	<b>Number of prisoners</b>	
	<b>1996</b>	<b>1997</b>
Building and maintenance services	979	1 227
Agricultural services	5 048	6 674
Production workshops	2 359	2 077
Maintenance workshops	509	727
<i>Total</i>	8 895	10 750

*Department of Correctional Services Statistics: 1997 Annual Report*

### **Overview**

While a serious effort is made to provide skills to prisoners in some instances, this is not the general trend within the prison system, nor is it compulsory for prisoners to work in prison. In the instances cited below, some prisoners have made use of the facilities offered and attempted to learn some new skills to equip them for life outside prison. Most prisoners complain of being idle because of the predominant lack of skills training or work opportunities. It is believed that these factors are largely responsible for the high levels of gangsterism and drug dealing in prisons.

Boksburg Prison has an in-house education unit and an impressive educational programme including technical education. The prison manufactures metal goods, such as bins and filing cabinets. It manufactured, for example, the 95,000 ballot boxes that were used in the 1994 general elections. At Johannesburg Medium A Prison, about 125 prisoners are trained as waiters within the prison complex.

At Baviaanspoort Prison prisoners are hired out to work at places such as school premises. Although the work is voluntary, prisoners are paid with articles such as tobacco. In some instances, they can earn up to R100 per month. This is put in their personal account and the money used to buy basic necessities at the prison shop.

Some male prisoners at St Alban's are taught woodwork and bricklaying as well as participating in fieldwork. However they claim that the training facilities are totally inadequate in terms of preparing people for earning a living once they leave the prison system.

At Northend Prison, female prisoners are taught sewing and hair styling. Women are shown how to run a vegetable business and may train in catering. Men are given opportunities for training in building, plastering and welding. Many prisoners work outside the prison, as they are parolees.

East London Central's female prisoners work in the laundry. There is also a clothing factory with electric sewing machines. Cooking lessons are given and knitting is taught. Goods are sold and the proceeds go to the recreation club. Men make educational toys with the carpentry equipment available.

Most of the prisoners from Brits work outside of the prison, while at Potchefstroom Prison, there is a prison factory which makes clothes for the whole prison. A few prisoners work in this factory which is well stocked with industrial sewing machines.

All the opportunities offered by Witbank Prison in terms of the acquisition of skills and paid labour were impressive. One of the main drawbacks however is that the work opportunities are available only to prisoners from the Old Prison, the reason being the geographic location of the Old Prison vis-à-vis the factories.



At Bethal Prison, there are opportunities for inmates to acquire skills in welding, woodwork and mechanical work. The women's section has classes in sewing, gardening and art.

Barberton Prisoners complained that while there is work in the prison, the safety conditions in the workplace are not adequate.

A complaint received from a number of prisoners at Standerton Prison was that it was not possible to learn any trade at all while in prison.

At Nylstroom and Senekal Prisons there are no opportunities for work and prisoners are idle for most of the day. This applies to the juveniles as well.

At Brandfort Prison prisoners are trained in leatherwork and a handful of prisoners work outside the prison.

At Sasolburg Prison prisoners classed as "A" group do gardening work in the yard while others work as waiters and cooks in the members' restaurant.

At George Prison the prison school has classes up to standard five and has eight computers which are used to teach the prisoners basic computer literacy.

### **Analysis**

The acquisition of adequate skills very often is the key to successful rehabilitation. The problem of recidivism in the S.A. prison system is exacerbated by the reality that our prisons have simply been unable to prepare prisoners meaningfully for release or to cope in the outside world. The available statistics show a negligible proportion of the prison population as beneficiaries of training.

### **Recommendations**

There are simply not enough work opportunities created in terms of existing prison industry to generate meaningful skills-transfer to a sufficiently large number of prisoners. Prison industry, if properly utilised, cannot only play a positive role in rehabilitation, but can also contribute to the long-term financial wellbeing of the institution. It can also provide prisoners with an opportunity of accumulating money through work that may assist them upon their release. Mindful of the concerns of trade unions and other groupings, we are of the view that this is a matter that requires immediate attention. We would suggest that the DCS, Labour Department, Trade and Industry and the trade unions engage in discussion on the matter.

Lack of resources to create prison industry is a definite problem. But we have observed with great admiration how in many instances, the initiative of the prisons head, the area manager or the Provincial Manager has led to the procurement of resources from outside sources, including the private sector, other government departments and NGOs. We would recommend that this approach be followed where possible across the system.

## e) RECREATION

### **S35 (2) (e) Arrested, detained and accused persons:**

- Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity including.....exercise.

### **SMR. [P.1]: Books**

- Every institution shall maintain for the use of prisoners a library with recreational and instructional books.

### **SMR. [P.1]: Medical services**

- The medical officer is to report to the director on prisoners whose health is jeopardised by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners.x

### **SMR. [P.2]: Education and recreation**

- Recreational and cultural activities are to be made available.

## **Overview**

Few of the prisons visited have recreational facilities. There are some exceptions, such as Heidelberg Prison, which has a recreational committee consisting of eight members. There is a Prison Choir and a cultural dance group that raises funds for recreational activities. The prison shop also donates 5% of its profits to the recreational fund. There are also sporting activities such as soccer, boxing and some indoor games. But in most prisons the shortage of work and recreational opportunities threaten the operational effectiveness of the institution as prisoners are largely idle. As a result, prisoners turn to gangsterism and drug dealing for social interaction. The report on Barberton Prison, however, noted that while there are recreation officers that oversee recreation activity, prisoners are not interested and would rather be involved in gang and other illegal activities.

Physical fitness and exercise should be encouraged in all prisons, both for men and women. Medical research has demonstrated that positive impact exercise leads to a sense of positivism, wellbeing and increased energy levels. This could then be channelled into study, work or recreational activities.

At East London Central a television set is provided and there are exercise yards with lawn and flowers. There is also a recreational club for women, equipped with table tennis. Men do boxing, weight lifting and play billiards. There are sports fields for sentenced prisoners but not for unsentenced prisoners.

Brits Prison has a sports day every Wednesday when soccer, volleyball is offered and an annual open day for prisoners and their families. Brits prisoners are members of the Lopersfontein Command Area Choir and the local business community also offer skills training courses on driving a tractor, fencing, knitting and sewing.

At Klerksdorp although there is a workshop which is in fairly good condition, prisoners complained of a lack of equipment in the workshop and of training programmes. Female prisoners do sewing and embroidery and are trained by an outside tutor who visits the prison twice a week for lessons. Funds raised from selling their work are used to purchase indoor equipment such as playing cards. There are no sporting facilities for female prisoners due to lack of space.

Mafikeng and Klerksdorp Prisons have soccer and volleyball fields.

Witbank Prison has outdoor sports such as soccer. Television is available within most sections.

Senekal Prison – there are no recreational facilities, except for one TV in the women’s section and two in the men’s section. Brandfort Prison also has no recreational facilities other than TV sets.

Grootvlei prisoners complained that there are no recreational facilities, not enough TVs and not enough books for the library.

At Sasolburg Prison there are no formal sporting activities prescribed by the authorities.

At Pollsmoor Women’s Prison a correctional officer is specifically in charge of recreation. Some inmates are part of a choir; netball is allowed; and on occasion public holidays are celebrated with specific programmes drawn up by inmates in co-operation with social workers and interns from University of Western Cape. Psychology and Social Work students from various universities run practical internship programmes with the prison, giving scope to recreational activities. The community is involved in some of the prison projects.

At Pollsmoor Maximum Prison there are insufficient rehabilitation programmes for prisoners. In some sections, prisoners allegedly get exercise only one to two days per month. By arrangement with the prison authorities this has now been increased to ten days per month, but is still insufficient. Members reported to the Commission that lack of exercise by the prisoners means they are extremely idle. This allegedly leads to gang activity with its associated consequences.

### **Analysis**

While noting the enthusiasm and creativity of some prisons, there is a serious lack of recreation facilities in the majority. Prison authorities are encouraged to be innovative and think of various forms of recreational and cultural activities, particularly for juveniles. The trend in most prisons, is to provide television sets for prisoners; whilst this is welcomed, it should be complemented with other forms of recreation.

### **Recommendations**

There is an urgent need to make more resources available for recreation and we think this is possible both in terms of outside support as well as in terms of existing budgets. Without wishing to compare or suggest that members and prisoners be treated alike, we note that in 1997 the DCS was able to send a delegation of 62 people to the World Police and Fire Games in Calgary and a delegation of 140 to the Swaziland Games. We would suggest that some funds for recreation be allocated to purchase relatively low cost recreation equipment such as soccer balls and similar, for the physical health and fitness of prisoners.

## f) COUNSELLING AND REHABILITATION SERVICES

### S35 (2) (e) Arrested, detained and accused persons:

- Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity.

### SMR. [P.2]: Social relations and after-care.

- Special attention shall be paid to maintaining and improving relations between a prisoner and his family.
- The prisoner should be encouraged and assisted in cultivating relations with persons or extra-institutional agencies conducive to his rehabilitation and best interests after release.
- Upon release, prisoners shall be provided with appropriate documents and identification papers, be suitably clothed and have sufficient means to reach their immediate destinations. They are to be assisted by services or agencies in locating suitable homes and work.
- Representatives of such agencies shall have access to prisoners during their term of incarceration and be taken into consultation as to the future of each prisoner from the beginning of his sentence.

### Overview

There seems to unanimous agreement that rehabilitation is a grave problem within Correctional Services and that little or nothing is done to prepare the prisoner for re-entry into normal life or indeed, to make a living. Prisoners from the majority of prisons visited complained that there were no rehabilitation programmes in place, although some social services were available to prisoners in certain prisons.

### Prison social work services range from:

- orientating the prisoners with regard to sentencing;
- motivation with regard to treatment programmes;
- helping prisoners to accept responsibility for themselves and their dependants;
- assisting with sensitive problems and crises such as death of a family member or when a summons for divorce is received; and
- talks on sexually transmitted diseases, family planning services and health.

At Northend Prison there are pre-release projects for women on how to handle finances and housing problems. There are also empowerment courses for women on how to handle themselves within society and in business run by the Small Business Development Corporation. Lectures on drug abuse and Aids are also available. Plastering, welding and building classes are provided for men.

At Brandvlei Maximum Prison Prisoners complained that there were little or no rehabilitation sessions or programmes available at the prison, nor did they get an opportunity to work or learn skills.

Table 17: Community Correction population for 1997 based on daily averages.

	Under supervision		Absconding, being sought		Total
	Male	Female	Male	Female	
Probationers	10 916	1 688	3 995	333	16 932
Parolees	22 652	862	16 090	321	39 925
<i>Total</i>	33 568	2 550	20 085	645	56 857

*Department of Correctional Services Statistics: 1997 Annual Report*

	Under supervision		Absconding, being sought			
	Male	Female	Youths	Male	Female	Total
Probationers	10 105	1 614	840	4 232	360	17 151
Parolees	23 139	844	232	16 687	366	41 238
<i>Total</i>	33 244	2 458	1 072	20 919	696	58 389

*Department of Correctional Services Statistics: 1997 Annual Report*

### Analysis

Few prisons offer assistance to prisoners with their reintegration into society. This again contributes to the high rate of criminal activity in prison. Rehabilitation programmes are non-existent in almost all the prisons in the country. This explains the high rate of criminal activities such as gangsterism, availability of weapons, drugs and other illegal substances.

### Recommendations

Rehabilitation is a voluntary process, but it represents the best possible chance of avoiding recidivism. There is, therefore, a need for greater emphasis to be placed on this aspect of imprisonment. We further believe that the private sector can play a constructive role in supporting rehabilitation programmes by providing resources for training and skills development, by offering job opportunities upon release and by supporting initiatives on prison industry. We again urge the DCS to take steps to fill the existing vacancies for social workers and to encourage all prison heads to show initiative and creativity in dealing with access to rehabilitation services.

### g) JUVENILES

#### **Bill of Rights, S28 (g) (h) - Children**

- Children have the right not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under S.12 and S.35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
  - (i) kept separately from detained persons over the age of 18 years; and
  - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
  - (h) to have a legal practitioner assigned to the child by the state and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.

#### **S35 (2) (e) Arrested, detained and accused persons:**

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

#### **SMR. [P.1]: Medical Services**

- The medical officer is to report to the director on prisoners whose health is jeopardised by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners.

#### **SMR. [P.1]: Separation of categories**

- Men and women in detention are to be held in separate facilities; likewise, untried and convicted prisoners, those imprisoned for civil offences and criminal offenders, and youths and adults shall be housed separately.

### **SMR. [P.2]: Guiding principles**

- The prison system must not aggravate unnecessarily the suffering inherent in a prisoner's loss of self-determination and liberty.

### **Overview**

In most instances, juvenile prisoners are accommodated in separate, overcrowded cells within the prison compound. At the time of inspection, construction was underway at Baviaanspoort Prison for a modern juvenile detention centre to house 600 juvenile prisoners. Currently, some of the juveniles are detained in makeshift cells. Juvenile prisoners are allowed to attend classes up to Standard 10.

Zonderwater Prison had 23 juveniles in the prison complex, all of which were awaiting trial. Some had been sent by neighbouring SAPS offices who did not have juvenile facilities.

At Newcastle Prison both sentenced and unsentenced prisoners are allowed to mix freely but are separated at night.

Juvenile prisoners at Northend prison have school every day and monthly lectures from the "Stepping Stones" programme, which is a departmental initiative.

At Mdantsane sentenced and unsentenced juveniles are kept separately but no special facilities are provided for them.

At East London Central there are schools for juveniles attended by both sentenced and unsentenced juveniles.

There is a juvenile section in Potchefstroom Prison, although juveniles are often scattered throughout the prison and mixed with adults because of shortage of accommodation. However, the section seems to be well managed and study facilities and assistance are provided. The Boskop Training Centre conducts skills training workshops in upholstery and paving for juveniles.

The Juvenile Prison at Rustenburg has a formal school registered with the North-West Department of Education, with classrooms and a well-equipped library. The school offers lessons from grade 1 to standard 8 and qualified teachers teach the inmates. Prisoners who have registered for matric study privately. However, the Juvenile section of the prison is badly overcrowded with 3 inmates occupying a single cell.

Sentenced juveniles at Witbank Prison are held for very short periods pending their transfer to other prisons within the province. The section in which they were held was clean and well maintained, but there were no recreational facilities. In most cases juveniles spend their day watching videos in their section.

There were approximately 500 sentenced juveniles at Barberton Prison. They received a wide variety of educational and developmental opportunities even though these need improvement. A major concern is that many juveniles who have received lengthy sentences are transferred to the adult section once they come of age. The opportunities there for ongoing learning are very limited and in such instances, the learning process is discontinued.

At Thohoyandou Prison there is severe overcrowding in the juvenile section. Youths have to share small dirty mattresses, the cell floors are dirty, there is a lack of running water and sometimes no hot water. Many were not properly clothed while others had no shoes at all.

No special facilities exist for juveniles at Brandfort Prison. They are kept in their own cells, only being integrated with the other prisoners when they are not locked up.

At Pollsmoor Women's Prison attempts are being made to rehabilitate juveniles through co-operation with NICRO pre-release programmes and the President Awards programme. These projects are specifically oriented to the rehabilitation of the youth.

At Pollsmoor Maximum Prison those detained in the juvenile section had many complaints; their cells were infested with lice and flees; they receive no exercise; they are not allowed any sport; they do not have access to a telephone as there were no working telephones in their section. The juveniles seemed very unhappy and also complained of medical neglect. Many said that when they complain they either get beaten up or sent to a single cell with broken windows, an allegation denied by members.

At St Alban's Prison and Inkosolweni, 166 juveniles were interviewed, 14 of which were unsentenced. They had no special facilities and no schooling was provided. They were locked up for up to 18 hours per day. Some had been remanded for up to 3 months, in contravention of S29 of the Bill of Rights. The Eastern Cape has only one Place of Safety – Inkosolweni, which cannot house the number children requiring such a facility.

### **Analysis**

The conditions under which juveniles are kept in most prisons do not create the basis for their rehabilitation. Due to the problem of overcrowding, the requirement for separation from adult prisoners is not always adhered to.

Although we found that educational facilities or even schools are available for juveniles in the majority of prisons, overcrowding makes it difficult for them to concentrate on their studies. The majority of juveniles in the prisons we visited appeared to be well behaved and disciplined and prison authorities expressed satisfaction with their behaviour. This should be nurtured by providing adequate rehabilitation programmes for them.

### **Recommendations**

With regard to sentenced juveniles there clearly is the need, having regard to their age and constitutional requirements, to ensure that there are proper programmes, educational and otherwise, that can contribute to their rehabilitation. We were concerned that even the model 'Ekusini' juvenile centre, fell far short of the required standards in terms of poor management, a lack of discipline and inadequately trained personnel.

We would recommend that specially recruited and trained personnel be allocated to juvenile prisons. We would strongly support and encourage the development of specialist facilities to hold sentenced juveniles rather than attempting to accommodate them within the structure of an ordinary prison. This strategy is simply not workable as demonstrated by the examples outlined above.

We had hoped that by the time this report was finalised there would be no juveniles awaiting trial held in prison. It seems that this will not be the case and Section 29 of the Correctional Services Act will remain on the statute books for a while longer. We recommend that the DCS, in conjunction with the Department of Welfare, take steps to effect the removal of juveniles from prison and to relocate them in secure places of safety.

We also recommend that magistrates display greater flexibility and sensitivity in applying the provisions of Section 29. In our view, particularly with regard to juveniles awaiting trial in respect of non-scheduled

offences, there are many juveniles in the penal system for whom alternative, rehabilitative treatment would be more suitable, such as placements in community service for example.

## **h) AWAITING TRIALISTS**

### **Bill of Rights, S35 Arrested, detained and accused persons**

- Everyone who is arrested for allegedly committing an offence has the right
  - (a) to remain silent;
  - (b) to be informed promptly –
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;
  - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (d) to be brought before a court as soon as reasonably possible, but not later than
    - (i) 48 hours after the arrest; or
    - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
  - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason or the detention to continue, or to be released; and
  - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

### **SMR. [P.2]: Prisoners under arrest or awaiting trial**

- Unconvicted prisoners are presumed to be innocent and shall be treated as such.
- They shall be held separately from convicted prisoners, and the young kept separate from adults.
- They may have food procured at their own expense; otherwise, the administration shall provide food.
- An untried prisoner shall be allowed to wear his own clothing if clean and suitable; if he wears prison dress, it is to be different from that of convicted prisoners.
- An untried prisoner may procure at his own expense or that of a third party books, publications and writing materials.
- Treatment of an untried prisoner's own doctor or dentist is to be allowed under reasonable grounds, and if the prisoner is willing to pay for the expenses incurred.
- An untried prisoner shall be allowed to inform his family of his detention immediately after arrest and communicate with and receive visits from family and friends.
- He shall be allowed to apply for free legal aid where such aid is available, and to consult with his legal adviser regarding his defence. Such interviews may be within sight but not within the hearing of a police or institution official.
- Prisoners awaiting trial are to sleep singly in separate rooms.

## **Overview**

There were numerous and repeated complaints from awaiting trial prisoners of spending up to 24 months or more in detention, of serious overcrowding and little or no provision for recreational facilities.

An increase in the number of awaiting trialists has led to overcrowding in many cases. Complaints from Witbank Prison related to lengthy waiting periods in custody and a lack of legal representation when they appear in Court.



The management at Empangeni Prison complained that cases are not speedily dealt with by the courts and with crime being so rampant, the unsentenced prisoners now outnumber sentenced prisoners in the prison. At Mafikeng Prison, juveniles and adult awaiting trial prisoners are mixed together in an over-crowded and dirty section and there are no recreational facilities for these prisoners.

Klerksdorp awaiting trial prisoners complained that their section was overcrowded, dark and dirty. Because there was a shortage of beds some prisoners slept on the floor, including, in one instance, a 13 year old boy. There is serious overcrowding in the awaiting trial section, which is 225% full. Juveniles awaiting trial are mixed with adults, some of these juveniles have been awaiting trial since May 1996.

In Bethal Prison there were four juveniles awaiting trial held in a small but neat section, with access to books and other reading material.

With the ever increasing number of awaiting trialists at Thohoyandou Prison, conditions steadily deteriorate. Detainees are crammed into cells with nothing to do for the day. There are also many juveniles who live in equally unacceptable conditions. The rate of overcrowding amongst unsentenced prisoners is close to 200% and increasing. Trial postponements and the setting of high bail that many cannot afford, contribute to the large numbers of awaiting trialists. Some claim that their parents are not even aware that they are in custody.

At Brandfort Prison there are no special facilities for awaiting trialists as they are mixed in one section with sentenced prisoners.

At the time of inspection there were 130 unsentenced prisoners in Sasolburg Prison, two of whom have been in custody for more than 12 months.

### **Analysis**

The awaiting trial period for juveniles remains one of the biggest problems within our criminal justice system. We came across many juveniles who were awaiting trial for up to four months for minor offences. The department of Correctional Services does not provide any facilities, other than accommodation to these prisoners, who are primarily the responsibility of the department of Justice.

### **Recommendations**

The department of Justice, Police Services and Correctional Services are encouraged to find strategies for dealing with the increasing number of awaiting trialists who are putting a strain on the already scarce resources of the department of Correctional Services.

A major concern is the numbers of inmates who have been granted bail but have been unable to pay it. We recommend that the department of justice look into possible mechanisms to resolve this problem, as it is not the responsibility of the DCS. We think, that in appropriate cases, release on warning, or a reduction in the amount of bail fixed, may well contribute to easing the situation while not undermining the administration of justice.

We also recommend that a speedier system of investigation and trial be considered, with a view to reducing the time spent awaiting trial. We are aware that the department of justice is investigating these matters, but must caution that the situation has already reached crisis point.

## **i) WOMEN PRISONERS AND WOMEN PRISONERS WITH CHILDREN**

### **Bill of Rights, S.9.(1) Equality:**

- Everyone is equal before the law and has the rights to equal protection and benefit of the law.

### **S28 (g) Children**

- Children have the right to be-
  - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
  - (2) A child's best interests are of paramount importance in every matter concerning the child.

### **SMR. [P.1]: Clothing and bedding**

- Prisoners not allowed to wear their own clothing are to be provided with an adequate and suitable outfit, with provision for laundry and changes of clothes.
- Prisoners outside an institution for an authorised purpose are to be allowed to wear their own clothing
- Every prisoner shall be provided with a separate bed and clean, separate and sufficient bedding.

### **SMR. [P.1]: Medical Services**

- The medical officer is to report to the director on prisoners whose health is jeopardised by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners.

### **SMR. [P.1]: Separation of categories**

- Men and women in detention are to be held in separate facilities; likewise, untried and convicted prisoners, those imprisoned for civil offences and criminal offenders, and youths and adults shall be housed separately.

### **SMR. [P.2]: Guiding principles**

- The prison system must not aggravate unnecessarily the suffering inherent in a prisoner's loss of self-determination and liberty.

## **Overview**

As with the men's prisons, there were considerable differences in the living conditions and facilities on offer in the women's prisons. Notably, most prisons for women lack special facilities for those women prisoners confined with their babies. Many such women have to share communal facilities, such as in Rustenburg Prison, where there was a 4-year-old child who was sharing a communal cell with her mother.

The East London Central report highlighted the lack of recreation facilities in the women's section, and also focused on the issue of when the child is removed from his or her mother, in accordance with prison regulations. One mother was in a condition of extreme distress by her forced and imminent separation from her baby. Counselling is urgently needed in such cases.

At Pietersburg Prison there is a creche for the children equipped with toys and cots. There were 7 children living with their mothers. Their medical requirements are attended to at the prison clinic.

At Thohoyandou there were about 64 sentenced women and 11 had children with them. Day-care facilities were available for the children. The women were dressed in old ragged clothes, as they had not been provided with any decent dresses or shoes. There is a clinic service available for the children and the doctor who visits the prison also attends the children when required.

Senekal women prisoners complained that the members are very racist and that they are often verbally assaulted. They also allege that when they lodge a complaint they are denied food. Members also request them to clean their houses and do their washing without any form of compensation.

At Pollsmoor Women's Prison the prisoners reported their dislike of communal cells and cited reasons for the in-fighting characterising relationships within the prison. It was alleged that up to 90% of the prison's conflicts relate to widespread lesbianism and that the accompanying sexual rivalries lead to jealousy and abusive and aggressive behaviour. Occasionally members are also assaulted.

Several women prisoners at Pollsmoor complained that members favour certain babies above others and that medical care in the prison is "absolutely hopeless". Inmates also resent early lock-up for the night and having to do the laundry of private officers. Prisoners also resent the censoring of their letters.

### **Analysis**

The conduct of female prisoners in the women's prisons or sections we visited was generally impressive with little, if any, criminal activity taking place. Conflicts could be induced by anxieties, stress or be intimacy-related. Even in prisons where there are no recreation educational or rehabilitation activities, women prisoners tend to make the best out of their circumstances. Unfortunately, because female prisoners tend to be less demanding than their male counterparts, prison authorities have a tendency to discriminate against them. For example, in some prisons, women are not even provided with one television set, when there were several in male sections.

In almost every women's prison visited, there were no facilities for the children of prisoners, who must sit idle with their mothers the whole day. This is obviously detrimental to their educational, social and psychological development.

### **Recommendations**

The relatively small female prison population in South Africa has generally meant better facilities in these prisons. However there are still issues of concern. Labour opportunities seem to be either very limited to traditional 'feminine' areas of work, or concentrated into domestic labour, free of charge, for members. It is important that gender bias in prison industry is addressed, so that at least those women who would like the opportunity to learn skills such as bricklaying or electronics may be allowed to do so. Similarly, there may be male prisoners who may like to have the opportunity to learn dressmaking or hairdressing. All labour opportunity should be regulated for both fair remuneration and as much equal opportunity as would be feasible within the prison labour system.

There seems to be some confusion over prison law with respect to the age a child is supposed to be removed from his or her mother. Clear information is needed, which will help mothers prepare themselves for the time this separation is going to take place.

The stated problem areas of adequate medical care and clothing need to be investigated further by prison officials, who must seek to uphold the conditions of care internationally agreed through the SMR guidelines and the Bill of Rights.

Sexual rivalry is unlikely to be resolved, as consenting adults may pursue these sexual relationships if they choose. We would recommend more official focus on rehabilitation, education and recreation, which may alleviate the boredom that gives rise to gang-related activity, of which sexual rivalries form a part.

## **(j) GANGS, ILLEGAL SUBSTANCES AND VIOLENCE**

### **Overview**

Gangsterism is a problem in most prisons and is especially so in maximum security sections. While attempts have been made to separate gangs from non-gang members within the prison system, this has not always been successful. Prison gangs are involved in the dealing of alcohol, dagga, drugs and home made weapons. Sodomy is also a particular feature of gang activity in prison and the use of “wyfies” is common practice among gang members. Both juveniles as well as other prisoners complain of enforced sodomy as well as the practise of using food and other commodities as a way of inducing consent. As in the case of Barberton prison, the involvement of members in both acts of sodomy with prisoners as well as facilitating such conduct, has been raised as a cause for serious concern.

Allegations were repeatedly raised to the commission throughout the duration of the prisons’ project, of liquor being smuggled in by members and sold to prisoners. Trade unions at Potchefstroom Prison have taken action against their members and have given management permission to search personnel every time they enter or leave the prison.

The allegation of member complicity in gang related violence has been noted before. Letters received from prisoners simply confirm this and there are allegations of inmates being forcibly recruited into gangs and made to participate in gang activity on pain of death or serious injury.

Mafikeng Prison reported that gangsterism is prevalent in the prison and is blamed for the incidents of violence and sexual assaults in the prison. Drugs, weapons and alcohol are freely available and smuggled into prison by members. Many inmates are also coerced into performing sexual acts and if they try to refuse they are forcefully sodomised.

Gangsters control prison life at Klerksdorp Prison and allegedly, have the support of prison officials. The use of dagga and sodomy is widespread and prisoners, especially juveniles, are frequently forced into unwanted sexual activity, including being sodomised.

Besides the sale of illegal weapons and dagga at Rustenberg Prison, it is reported that prisoners brew and sell home-made alcohol in the cells and members are said to turn a blind eye to this.

In the Eastern Cape prison’s report it was noted that most juveniles belong to gangs because they feel gang membership offers them protection from intimidation. However, sodomy is almost unknown among adults here, as there is a preference for non-penetrative sexual foreplay among prisoners in the area.

The head of Witbank prison noted that there were problems with gangs in the past but at the present time, the position was quiet. He ascribed this to the fact that with a well run training centre as well as the factories that employ a large number of inmates, most inmates are occupied and accordingly gang activity does not flourish under such circumstances.

At Barberton Prison there were serious allegations of member complicity in gang related violence.

Homemade weapons in prison, in most instances, are made out of metal plates and ears of mugs are found regularly during spot checks. These are hidden in various places in cells including drainpipes. Visitors also bring weapons into the prison, even though they are regularly searched. Members are also accused of smuggling weapons into the prison and in most instances, are not searched. Some authorities are now converting to soft plastic and rubber equipment in order to solve the problem. Brits Prison have already made the transition to plastic utensils.

## **Analysis**

There are repeated allegations of complacency of prison officials in so far as smuggling of arms, dagga and other illegal substances into prison is concerned. Legal action is rarely initiated against members who are suspected of being involved in illegal activities. Incidents of male rape or enforced sodomy are also largely ignored.

It appears that gangsterism is an accepted way of life in prison. Prisoners and prison authorities both acknowledge this. The impression we gained during our visits to different prisons is that gangsters are actually given recognition by the prison authorities and their presence is thereby tacitly affirmed. Senior prison officials appear to be turning a blind eye to much of the gang-related activity, and research is needed on the reasons for this state of affairs.

## **Recommendations**

It is our opinion that mechanisms to marginalise and punish gangsters who break the law or intimidate, are urgently needed if disciplined regimes are to be promoted within prisons. The reasons for the ease with which gangsterism flourishes in prisons should be more thoroughly investigated through targeted research and active interventions. As the level and extent of gangsterism in our prisons would not be possible without some degree of warden collusion we think that the corruption unit within the department should initially conduct enquiries into this aspect.

It is clear that tightened security measures are needed. Camera surveillance equipment needs to be installed to help identify those attempting to smuggle weapons and drugs.

Victims of gang violence do not generally feel safe in coming forward. Witness protection schemes, including relocation, should be urgently investigated. A successful prosecution could send a clear message to the gangster community and break the cycle of impunity. Other measures that could be immediately taken against those instrumental in gang activities, include transfers, internal and external. With respect to internal weapons production, it is proposed that the Department of Correctional Services investigates the possibility of introducing plastic utensils to prevent prisoners adapting metal utensils for makeshift weaponry.

It is proposed that other prisons should follow the example of Potchefstroom prison, where an agreement was entered into between prison officials and members of different trade unions in terms of which all members were searched every time they entered and left the prison. We were informed that the rate of smuggling decreased drastically after this agreement was entered into.

We believe that the approach to combating gangsterism must be decisive and uncompromising. The current approach is largely one of defeatist compromise in the face of the enormity of the gangsterism problem.

## k) PERSONNEL MANAGEMENT

### SMR. [P.1]: Institutional personnel

- The administration shall carefully select every grade of personnel and maintain in their minds and the public's the important social service they provide.
- To these ends, pay, conditions and benefits shall be suitable to professional and exacting service.
- Personnel are to be sufficiently educated, and to receive ongoing courses and training.
- As far as possible, personnel should include psychiatric, social work and education professionals.
- The director shall be a qualified administrator, retained on a full-time basis and residing on the premises or in the immediate vicinity.

### Overview

**Table 19: Results of recruiting actions launched during March 1997 and August 1997**

	White		Black		Coloured		Asian		Female
	Male	Female	Male	Female	Male	Female	Male	Female	
Discipline	255	52	765	244	281	108	40		10
Closed	18	18	15	6	18	12	0		0
Occupational Classes									
<i>Total</i>	273	70	780	250	299	120	40		10

*Department of Correctional Services Statistics: 1997 Annual Report*

	White		Asian		Coloured		Black		TOTAL
	Male	Female	Male	Female	Male	Female	Male	Female	
Chief Deputy Commissioner	2				1				3
Deputy Commissioner				1	1		2		4
Director	7				5		16	7	35
Deputy Director	12		2		20	1	48	5	88
Assistant Director	22	6	4	3	60	8	118	20	241
Senior Correctional Officer	383	72	20		248	18	532	46	1 319
Correctional Officer Grade III to I	62	34	5		65	19	98	30	313
<i>Total</i>	488	112	31	4	400	46	814	108	2 003

*Department of Correctional Services Statistics: 1997 Annual Report*

**Table 20: Distribution of severance packages per occupational class granted during 1997**

<i>Occupational class and rank</i>	<b>Total</b>
<b><i>Management cadre</i></b>	
Commissioner	1
Chief Deputy Commissioner	2
Deputy Commissioner	4
Director	26
<i>Total</i>	33
<b><i>Disciplinary personnel</i></b>	
Deputy Director	57
Assistant Director	165
Other	319
<i>Total</i>	541
<b><i>Specialised occupational classes</i></b>	
Chaplain	3
Social Worker	5
Musician 2	
Industrial Technician	6
Educationist	2
State Accountant	8
Nurse	16
Provisioning Administration Official	18
Work Study Official	1
Facility Controller	1
<i>Total</i>	62
<b><i>Other occupational classes</i></b>	
Telkom Operator	5
Typist	12
<i>Total</i>	17
<b>GRAND TOTAL</b>	<b>653</b>

**Table 21: Number of termination of service, excluding severance packages, during 1997**

Resignations and dismissals	513
Medical retirement	384
Deaths	111
Retirement	5
<i>Total</i>	1 013

## **Management Issues:**

A number of senior officials in prisons have taken retrenchment packages and as a result of this there were interim management teams in place. Affirmative action had led to most top posts being in black hands and this has caused great insecurity amongst white members, many of whom are seeking early retirement.

There is also a general feeling that the old-style apartheid ideology still manifests itself in the prisons despite the prisons being largely now under black management.

Another major concern that was articulated is that most of the problems relating to management have to do with their lack of transparency and their negotiations with the various unions.

In almost all prisons visited, there were serious concerns that because members were still waiting for the implementation of the new management policy, nothing much had changed within the prison system. It was also felt that affirmative action was not implemented in an agreed and procedural manner. Some anomalies remain, for example, at Nylstroom Prison, apart from the head of prison, white persons held virtually all top management positions. The head of prison is also the only Venda among the black staff members, which apparently caused further internal problems. Because of the lack of support at national level (either real or perceived), there is unlikely to be any innovative or proactive measures taken to address some of these issues and to assist the prison develop along more equitable and more progressive lines.

## **Analysis**

At the time of our visits to many of the prisons, the relationship between black and white officials had largely broken down. Black members felt that the department was paying lip-service to affirmative action since there was no visible change whilst white members felt threatened by the application of affirmative action and had opted for voluntary retrenchment packages.

In almost all the prisons we visited, senior white officials such as the commanders and heads of prisons had opted for retrenchment packages and were due to leave. Arrangements for advertisement of posts had not taken place. There was much confusion and apprehension regarding the filling of vacant positions.

The majority of members complained of a communication breakdown between head office and prisons on this issue.

## **Recommendations**

We hope that the uncertainty and job insecurity expressed to us during the course of the project is becoming a thing of the past. It is, however, necessary for the new management teams to start functioning together in accordance with the mission and vision of the Department. We recommend that these management units be given the full support of the DCS as we sensed in many areas that people felt cut off from the national office. With regard to affirmative action, the figures in respect of staffing are certainly impressive. Implementation, must, however, be accompanied by proper procedures and open and transparent dialogue between member groups.



## **I) PRISON MEMBERS AND WORKING CONDITIONS**

There are a number of identifiable problems with respect to the working culture of members. One area of conflict occurs around the racial divisions within recognised member trade unions. These are still divided on racial lines: the Correctional Officers Union of South Africa (COUSA), which is a 'white' union; Police and Prisons Civil Rights Union (POPCRU), which is a 'black' union, and the Public Servants Association (PSA), which has been traditionally 'white'.

Unions were also criticised for, where applicable, not implementing affirmative action and for serious management problems. There is a perception among representatives of unions that management is reluctant to take action against members who commit misconduct. Management, it was said, only takes action if pressure is brought by unions. In most instances, it is the unions that take action against their members by suspending them from the union for a period of time. But if unions do not do so, management allegedly takes no action. Thus there is a perception of a serious lack of will on the part of management to discipline its own members. There were in fact a number of disciplinary measures being taken against members, but many of these cases were still pending due to lack of senior management to attend to them.

A problem levelled by prison staff against the unions was that they were not playing any role in motivating the members. Both black and white union members felt that management never took any initiatives and they had to be pushed into dialogue or activity relating to the work environment. A need was articulated for new, more progressive and inclusive staff codes, fully discussed and agreed between parties. The present grievance procedure, for example was termed 'outdated'.

Members also complained of racial tensions, lack of affirmative action, long working hours, no overtime pay and no danger allowances. POPCRU and PSA members have applied for voluntary severance packages because of disillusionment and are waiting for the outcome of their applications. POPCRU members felt that blacks in lower ranks will not benefit from affirmative action because although they have experience, they do not possess the academic qualification required for senior positions.

*The general perceptions by heads of prisons concerning the members were:*

- lack of a working culture
- staff not taking responsibility for their conduct or those of prisoners
- misuse of sick-leave
- late-coming
- low morale
- disgruntlement with working conditions
- alcohol abuse and general absenteeism

Many of these problems were attributed to the restructuring of the prisons, which, as we have noted, has created a lot of uncertainty among members. This anxiety, together with coping with other negative conditions such as the shortage of staff and the overcrowding of the prisons, needs some strong management initiatives to resolve.

Members emphasised that the shortage of staff was a serious problem, especially when they have to escort prisoners to court. They reported several cases of stress-related ailments amongst themselves that are exacerbated by the lack of professional counselling available to them.

While some members saw some positive aspects in the demilitarisation of the prisons, the abolition of former military ranks, according to some members, has introduced a lack of discipline within the prison

system. They feel that there is no longer any respect by prisoners for junior staff members. Potchefstroom Prison management admitted that members assault prisoners as a way of enforcing discipline. There is a register of all assault cases reported to the police.

## **GRIEVANCE PROCEDURES**

### **SMR. [P.1] Information to and complaints by prisoners**

- Upon admission, prisoners shall be informed of the regulations they are to live by and of the authorized channels for seeking information and making complaints.
- Prisoners are to have the right to make complaints to the director of the institution, as well as to the central prison administration and the judicial authority, in the proper form but without censorship as to substance, and they are to have the opportunity to speak directly to an inspector of prisoners outside the presence of institutional staff members.
- Unless evidently frivolous, each complaint shall be replied to promptly.

The disciplinary measures associated with particular offences were largely unclear to prisoners and members alike. There are grievance procedures in prisons, which should facilitate a process of recording and investigating complaints, but prisoners complain that their complaints are sometimes lost or not attended to at all. In other instances allegations were levelled at management in that complainants are sometimes victimised by the downgrading of their privilege categories.

At Christiana for example, prisoners complained that their grievances are not attended to and prisoners are forced to sign the complaint book as proof that their grievances have been addressed, even if they were not.

At Pietersburg Prison there are numerous complaints about assaults by members but these do not seem to make their way into the grievance and complaints system of the prison. Those assaulted, on questioning, appeared to be reluctant to lodge formal complaints either with the SAPS or the prison authorities for fear of reprisals.

The complaints and requests registers from six sections of Brandvlei Maximum Prison were inspected. The overwhelming majority of complaints related to “familie probleme” or “persoonlike probleme”, after which the complaint was recorded as a request by the prisoner to see a social worker. However, virtually no complaint relating to prison conditions or treatment of the prisoners by the members were recorded in the complaints registers. Prisoners, asked about the prisoners’ complaints procedure, alleged that if a prisoner complained, they were later punished or intimidated. The punishment or intimidation would take the form of the denial of privileges, removal from communal cells to single cells, and even assault.

The most striking observation made during the visit to Pollsmoor Maximum Prison was that, despite the critical problem of overcrowding, there was a general atmosphere of co-operation between members and prisoners. The willingness of the members to negotiate problems was in striking contrast with the attitude displayed by prison authorities at other prisons visited. The policy of the prison was to place a senior correctional officer on each floor, responsible for addressing problems raised by prisoners. In spite of this some prisoners still alleged that their problems were never dealt with.

Some members still complained of discipline problems and claimed that the new constitution meant that their conventional means of maintaining discipline ie “dieet straf” (dietary punishment) and “lyfstraf” (corporal punishment) had been removed. The senior members also alleged that the recent demilitarisation of the department of Correctional Services has resulted in a breakdown in discipline amongst the members, which in turn has led to increased difficulties in maintaining the discipline amongst the prisoners, partly attributed to the low warder to prisoner ratio.

## **Analysis**

In the majority of prisons management complained of lack of discipline among members, largely blamed on the demilitarisation of the prison authority structures. Common problems experienced included the high rate of alcoholism, absenteeism and low morale amongst members. This was also attributed to the members' poor working conditions and uncertainties created by overall restructuring. Our impression was that demilitarisation was introduced by the department without much guidance to prisons on how to deal with issues of ill discipline and lack of respect for authority among members. Grievance procedures appear to be arbitrarily observed, subject to levels of intimidation or only partially adhered to depending on the prison and its management effectiveness.

Management seemed to be intimidated by the trade unions to the point where we thought they abrogated their responsibilities in so far as disciplining members is concerned. Members of the trade unions on the other hand, blamed management for lack of initiative. There was confusion as to which grievance procedure was applicable in cases of misconduct. It is hoped that the new grievance procedure, which complies with the Bill of Rights and the new Labour Relations Act, is now in place.

## **Recommendations**

The low morale and breakdown in discipline we found in many of the prisons was a cause for concern. We recommend that when breaches or violations of conditions of employment takes place, they be followed by firm and decisive action on the part of management. We also recommend to the unions involved that in the context of protecting the rights and expectations of members, regard is always had to the role and vision of the DCS and the critical role its expected to play as an important component of the National Crime Prevention Strategy. A commensurate degree of commitment and professionalism needs to be displayed by members at all times. Labour and other workplace disputes need to be resolved in a manner that does not undermine the effective functioning of the institution.

New management teams must seriously address the grievance procedures for both prisoners and members. Guidelines are needed on administrative systems, building the security and confidence of the complainant, and establishing belief and trust that the grievance will be heard and treated fairly.

## **m) SECURITY AND CONTROL**

### **SMR. [P.1]: Discipline and punishment**

- Discipline shall be no more restrictive than what is necessary to ensure custody and order, and no prisoner shall be employed in a disciplinary capacity.
- The types of conduct to be considered offences and punishments for them shall be set by law or regulation, and prisoners are to be allowed to defend themselves against charges.
- Cruel, inhuman and/or degrading punishments, including corporal punishment and restrictions to a dark cell, shall be prohibited.
- The medical officer is to be consulted before implementing any punishment that may be prejudicial to the physical or mental health of a prisoner.

### SMR. [P.2]: Privileges

- Systems of privileges appropriate to different classes of prisoners shall be established to encourage proper conduct and secure the co-operation of prisoners in their treatment.

**Table 22: Reported incidents of assault**

Prisoner on prisoner	3 050
Personnel on prisoner	1 193
Prisoner on personnel	40

*Department of Correctional Services Statistics: 1997 Annual Report*

There were a number of accusations that corruption is rife and members are to be blamed for the lack of control over illegal activities. It is believed that there is staff co-operation with gangs smuggling material into prisons.

At Mdantsane it is alleged that the Head of Prison intimidates prisoners by withdrawing their privileges if complaints are made.

There are allegations at Rooigrond that members are corrupt; that they steal prisoners' belongings such as clothes and jewellery and are drunk on duty. Prisoners are allegedly forced to withdraw charges against members or else they are threatened with bodily harm.

Klerksdorp members are alleged to be corrupt, accept bribes from prisoners, sell food and medicines, hold meetings with gangsters, steal belongings and are drunk on duty.

There is no clear policy on withdrawal of privileges at Brandfort Prison, but it is alleged that privileges are withdrawn frequently and arbitrarily.

At Senekal Prison it is alleged that members have vested business interests in the supply of foodstuffs to the prison.

At Pollsmoor Maximum, prison authorities were asked about their policy on members assaulting prisoners. They said that their policy was to take a strong line against such action. Such cases were immediately handed over to the police, and if not resolved by the police, internal disciplinary action against the member implicated was instituted. This attitude represents a contrast with that which exists at other prisons.

At Newcastle Prison some staff indicated that prisoners' complaints against staff are not adequately dealt with by management and that due to intimidation, heads of prisons are afraid to take up, or follow through, on complaints by prisoners against staff.

Racial tension continues to undermine stability in prisons. Prisoners complain that prisoners who reside in Brits and white prisoners, are allowed long visitation periods and an unlimited number of visitors. It is alleged that white prisoners are allowed food from outside whilst black prisoners are not.

Christiana prisoners also complained of preferential treatment of white prisoners who are allowed food and blankets from their visitors, long and unlimited number of contact visits and the use of cellular phones. Black prisoners on the other hand are allegedly not allowed the same privileges and can only speak to their visitors through a window.

Similarly, at Barberton, there were a number of complaints about preferential treatment for white offenders, in particular around the allocation of single cells and tasks allocated, for example, hard labour for blacks and soft jobs for whites.

At Christiana violence among prisoners is minimal. Most assaults on prisoners are by members, especially when they are drunk. It was reported, however, that there is a general lack of discipline from both staff and prisoners and a lack of accountability. It was alleged that some staff members come to work drunk and behave very unprofessionally.

Empangeni prisoners were reported to have complained that searches violate their rights as there is no private room for body searches. Staff felt that discipline is declining due to transitional problems. Teamwork was not good and some staff members have to work extra hard to cover-up for the lack of discipline among other staff members. There is a lack of clarity regarding the application of the numerous codes and regulations.

Mafikeng members reported incidents of corruption, theft, coming to work under the influence of alcohol and intimidation of prisoners who want to lay criminal charges. They also complained that they work under very difficult conditions with no offices in each section where they can do their administrative work. There are no telephones or separate toilets for members.

At Thohoyandou Prison, it is alleged that non-Venda speaking prisoners are the victims of discrimination, especially in terms of harsh treatment (assaults) and denial of benefits and privileges.

Prisoners complained bitterly of racist assaults by members at Brandfort Prison.

At Brandvlei Maximum Prison prisoners complained that members frequently assaulted them and despite their complaints to the authorities, no steps are ever taken against the members implicated. There were a number of incidents reported of collective punishment meted out to prisoners. This allegedly often took the form of the teargassing of a cell by members.

## **Analysis**

The problem of assault of prisoners by members remains a serious concern in most prisons. Our impression was that prisoners were assaulted indiscriminately, in many prisons on a daily basis, and that no action was taken against offending members. In almost all prisons we were informed that cases of assault and other criminal activities committed by members against prisoners were reported to the South African Police Services, yet we could not be shown a single case where the investigation of such criminal cases was completed. This creates an impression on the part of prisoners that members have been given licence to assault them. Prison officials on the other hand, seemed keen to pursue criminal charges laid by members against prisoners.

In all the prisons we visited prisoners complained of corruption among members and these allegations were, in some prisons, confirmed by management who seemed to be confused as to how to deal with them. Because of serious overcrowding and lack of supervision, smuggling of weapons and drugs into the prisons continues to be a problem that exacerbates existing tensions.

**Recommendations**

There is no effective oversight body that can receive and investigate complaints of assault. It is hoped that the appointment of the Inspecting Judge for Prisons will alleviate this problem.

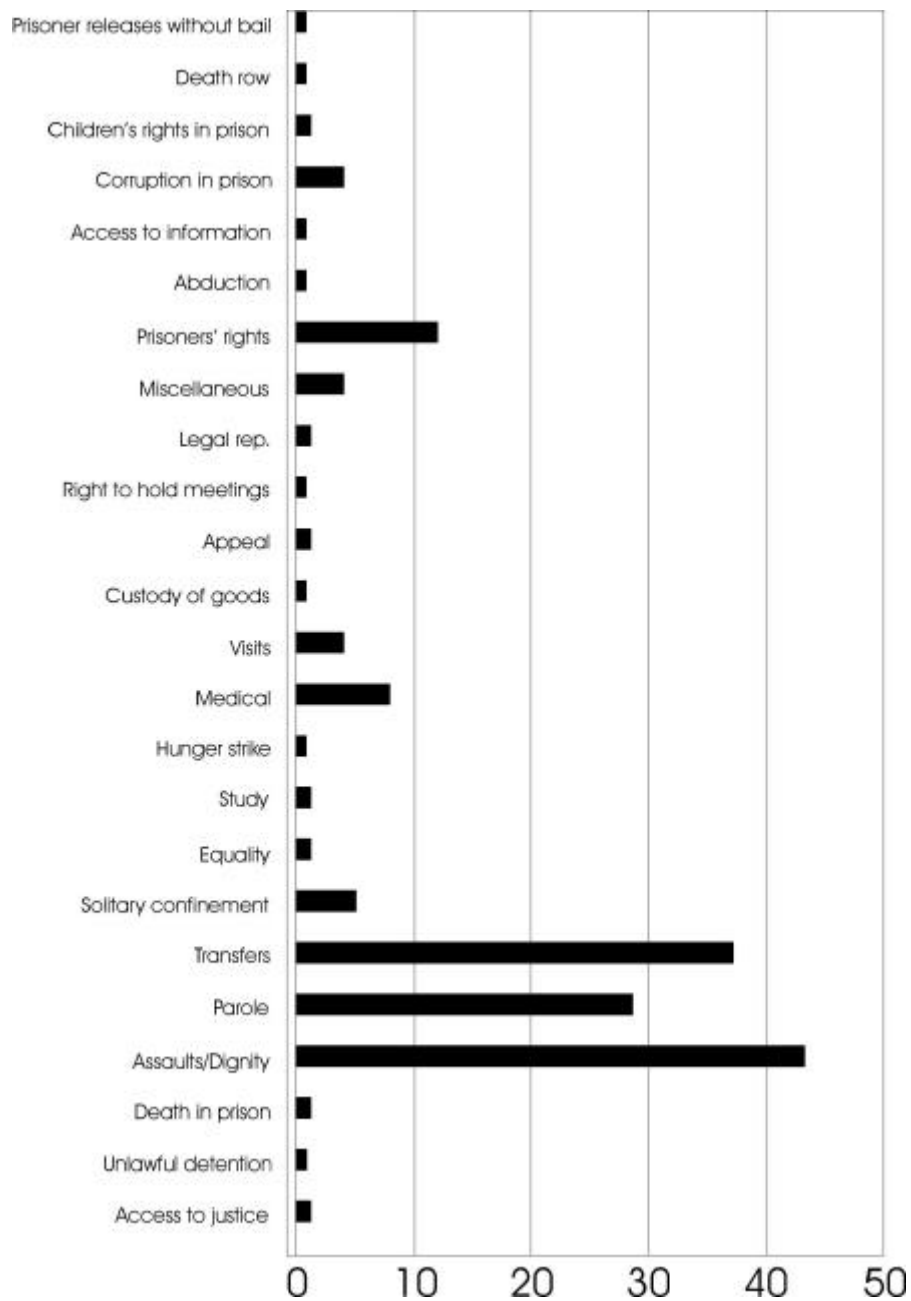
Consideration should be given to having an agency similar to the Independent Complaints Directorate (ICD), to investigate corruption, misconduct and or criminal activity on the part of members.

The continued isolation of prisons has perpetuated the culture of impunity that has always existed. Effective oversight through a properly resourced judicial inspectorate and perhaps a lay visitors' scheme is required.

### Section 3

## COMPLAINTS FROM PRISONERS: TABLE OF TRENDS

### Accepted complaints from prisoners, SAHRC 1997



## Section 4

### SUMMARY OF RECOMMENDATIONS

#### **Physical conditions: problems of built environment**

- Old and dilapidated prison buildings need renovating.
  - More corrective facilities needed to diminish overcrowding in cells; more facilities for juveniles and awaiting trialists needed outside of existing prisons.
  - Faulty plumbing needs renovation and new sanitary installations are needed.
  - Minimum standards must be maintained with respect sufficient beds, bedding and blankets in cells.
- 

#### **Kitchens and food**

- Procedures for food quality control need to be instigated.
  - Hygiene inspections should be regularly carried out in kitchens.
  - Meal times should be regulated to more 'normal' hours.
  - Regulations *vis a vis* receipt of food from visitors need holistic implementation.
  - Respect for dietary and religious observance required.
  - Usage of private catering contractors should be considered.
  - Nutritious items such as fruit should be available in prison shops.
- 

#### **Visiting rights and communications**

- Discriminatory application of rights between different groups of prisoners must be seen to be a human rights violation; education needed on principles of equality and anti-racism.
  - Acceptable and accountable methods of censorship of letters needed.
  - Standardised procedures must be implemented for contact visits and telephone contact.
- 

#### **Hospital and medical services**

- Medical facilities appropriate to the size of a particular prison must be established, together with authorisation for provision of sufficient medical personnel.
  - Guidelines on care and counselling to be afforded to HIV/AIDS patients.
  - There should be free, non-judgemental access to condoms.
  - Policy on traditional healers and their access to prisons should be developed.
- 

#### **Educational facilities**

- Physical availability of space for learning must be maximised in every prison.
- Educators must be appointed to approved posts.
- Resource agents for educational materials, e.g. private sector, business, community, should be approached for assistance.
- Clashes of interest between prison labour and study options could be minimised.
- Volunteers to teach prisoners should be recruited.



- The educational needs of prisoners could be established through consultative processes with volunteers.
  - Role of national and provincial education departments in education provision could be enhanced.
- 

### **Prison labour and industry**

- Strategic thinking needed re provision of labour opportunities in prisons.
  - Legislation should reflect whether prison labour is compulsory or not.
  - Prison labour should not be demeaning or harmful to health.
  - Gender bias in allocation of labour opportunities should be investigated and redressed.
  - Research should be conducted as to where how and training fails to meet standards required for external work opportunities.
  - Health and safety regulations need to be adhered to.
  - Consultative processes could be established to gather information on skills training and types of labour popular amongst prisoners.
  - Links between rehabilitation and skills acquisition should be researched.
  - Seek resources, funding from external sources.
  - Publicise methods and achievements to other prisons.
- 

### **Recreation**

- Provision of televisions needs to follow national guidelines and not be sole means of recreation.
  - Fundraising or allocations from budgets needed to acquire more sporting and recreational resources.
  - Space within prisons should be identified for recreational activity.
  - Psychological benefits of exercise and mental stimulation need to be recognised.
- 

### **Counselling and Rehabilitation Services**

- Programmes for counselling of prisoners should be extended and formalised.
  - Rehabilitation programmes should be instituted throughout the prisons system, and should link with social services, education and recreational facilities.
  - The private sector should be approached with proposals for resources and skills training programmes.
  - Vacancies for social workers need to be filled.
- 

### **Juveniles**

- Rehabilitative and educational programmes need to be extended.
  - Provision of specialist facilities and trained personnel needs to be planned and implemented.
  - Alternative sentencing strategies needed for first-time and juvenile offenders.
- 

### **Awaiting trialists**

- Strategies needed for alleviating the pressure on the prison population by non-sentenced detainees; e.g reductions in bail payments; separate detention areas.
  - Faster processing of cases through justice system needed.
-

### **Women prisoners and women prisoners with small children**

- Labour and skills training opportunities need to be broader in their scope and not confined to traditionally 'female' areas.
  - Educational and recreational facilities should be standardised across prison system.
  - Counselling services are essential for mothers in prison.
  - Adequate medical care and provision of decent clothing should be standard for purposes of health and human dignity.
- 

### **Gangs**

- Effective disciplinary procedures are urgently required throughout the prison system.
  - Corruption Unit of DCS should undertake investigative research into conditions that encourage gangsterism and propose mechanisms for reducing the incidence of gang-related criminality; e.g. camera surveillance, reporting of offences, reporting of collusion; prosecution of illegal acts by members or prisoners; witness protection schemes.
- 

### **Personnel and management**

- Matters relating to organisational development need a more structured approach.
  - New management teams appear to require training in order to effectively deliver responsibilities.
  - Affirmative action policy should not give rise to unfair treatment; procedures should be open and transparent and involve all staff members.
- 

### **Prison members and working conditions**

- Reasons for low morale and breakdown in discipline require investigation and action.
  - More co-operative liaison between the DCS and the unions would help to build bridges between management and members.
  - Grievance procedures must be implemented by management in a manner that encourages trust and confidence in a system that operates efficiently and fairly.
- 

### **Security and control**

- A task team should be set up investigate the various forms of misconduct, criminality and corruption occurring in prisons. Its findings and recommendations could then be acted upon by the DCS.
  - It is to be hoped that the appointment of an Inspecting Judge for Prisons will result in a more authoritative monitoring system of assaults in prisons, but support structures are also needed.
- 

## **CONCLUSION**

The challenge of developing a human rights culture is a formidable one facing our society. In responding to such a challenge we cannot exclude any constituency from enjoying and laying claim to the protections and benefits that our Constitution has to offer. Inevitably there will be instances when rights come into

conflict with each other and this will require the interpretation of when it is appropriate to limit rights. The Bill of Rights must be the primary guide for the justification of any limitation.

The correctional system has an important role to play in contributing to 'maintaining and protecting a just, peaceful and safe society'. This report has attempted to give a broad overview of the existing conditions within the penal system. It has highlighted, the national and international standards we should set as our benchmarks, and has put forward a set of recommendations, which, if implemented, could help to ensure that our correctional system meets the challenges of the new millennium.

In this regard we support the objectives set out in the draft Correctional Bill. In particular we align ourselves with the stated purpose of the Correctional System in:-

- a. enforcing sentences of the courts
- b. detaining all prisoners in safe custody whilst ensuring their human dignity, and
- c. promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

Finally the Commission would like to thank all of those who contributed to this report including the Department of Correctional Services, individual members and prisoners who made submissions and the management at each of the prisons we visited.

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## Appendices

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### **VOORBERG MEDIUM B PRISON** **Porterville, Western Cape** **4<sup>th</sup> September 1997**

**SAHRC Representatives:**                    **Rhoda Kadalie** (Human rights Commission)  
   **Faranaaz Veriava** (Legal Officer)  
   **Representatives of the Porterville**  
   **Community:** Adrian Marcus, and two other members  
   **Oswald Krieling** (local magistrate)

#### **PRISON OFFICIALS INTERVIEWED:**

**Mr Afrika, Head of Voorberg Medium B**, telephone 02623 – 2163.  
**Mr September, Assistant Director**

#### **INTRODUCTION**

The visit was conducted in response to several complaints from prisoners at Voorberg alleging assaults by prison warders. They allege the following:

- Mr Fransman (our ref: WC/97/135) alleges that on the 24<sup>th</sup> March 1997, as a result of being found in possession of a knife, he was hit with a baton by warder and attacked by guard dogs. He claims that he was forced to hold the knife by another prisoner;
- Mr Kolwe (our ref: WC/97/135) alleges on the 25<sup>th</sup> March 1997 he, along with other prisoners, was forced naked into a washing room where assaulted one by one by warders;
- Mr Mbatini, in his complaint (our ref: WC/97/654) alleges that he witnessed the assault by warders of nine prisoners on three separate occasions: 25 May, 10 July and 11 July 1997. (The names of the prisoners are listed in Mr Mbatini's enclosed letter). He gives a list of the warders names, alleging that Messrs Steyn, Kruger, Hendricks and Mabura were involved in the assaults;
- Mr Pietersen (our ref: WC/97/658) alleges that he was one of nine prisoners assaulted by the Voorberg warders mentioned above; and
- In another case, Mr Samuel Thomas also alleges assault by warders.

In all cases the prisoners claim that their attempts to report the assaults have not been taken seriously by the prison authorities. The attorney-General is currently investigating Messrs Fransman and Kolwe's allegations of assault.

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When we arrived, we found that a prisoner, on whom the head of prison had found seven bags of dagga, was being interrogated for allegedly smuggling dagga into the prison. The prisoner is a long-term prisoner who is in charge of cleaning outside due to the trust placed in him. By smuggling in dagga it was felt that he was abusing the trust the prison authorities had placed in him, and that he would be dealt

with accordingly by the prison authorities. Somehow the whole event seemed a bit stage-managed and the whole situation smacked of dubiousness as the prisoner seemed very compliant and unfazed by the event.

## **DEMOGRAPHICS**

**Voorberg is a brand new prison of approximately 6 months.**

The total number of prisoners in Medium B = 1 008 (includes 78 awaiting trials); Medium A 429 (no awaiting trials).

The prison can comfortably occupy 1200 prisoners.

These prisons serve the districts of Ceres, Portville, and Tulbagh. According to Mr Africa there were no juveniles in detention but upon inspection we discovered about 20 youths in one communal cell.

**Staff:** Medium B = 204 : can do with an extra 100 staff members

Medium A = 106 : 100% occupation

The total staff complement of both prisons, including cleaning staff is 425.

## **DAILY SCHEDULE**

Breakfast	8h00
Lunch	12h00
Supper	14h00
Lock up	15h00 and roll call

**Shifts:** the day is divided into three shifts; from 7h00 to 16h00; from 16h00 to 24h00; from 24h00 to 7h00.

**Exercise** most part of the day.

**Recreation** includes rugby, soccer, and each section has a courtyard.

When we were there the prisoners and warders were celebrating

Masakhane week playing soccer against each other.

**Work opportunities:** cleaning the prison.

**Education:** treatment centre – social work and library two educators – adult education and literacy classes

## **HEALTH**

Condoms are available upon request.

There was one AIDS prisoner, who complained that he did not like the daily schedule and that his last meal is given to him at 14h30, making it very difficult to follow a prescribed diet. He usually gets desperately hungry by nightfall. I addressed this matter with the matron in charge and hope that they will address the matter.

The doctor arrives every Tuesday because there is no permanent doctor on duty. There are two qualifying nursing sisters and some medical orderlies.

## **GANG ACTIVITIES**

Gangsterism exists as Voorberg is a catchment prison for Victor Verster, Brandvlei and Helderstroom. The 26s, 27s, and 28s are operative in the prison, and Mr Africa feels that it is better to keep them together than apart. Accordingly to Mr Africa, gangsterism is under control.

## **DISCIPLINARY MEASURES**

Gangsterism exists, but poses no real threat to management. The 28s, 26s, and 27s are not separated from each other, but are placed in communal cells. Chains are never used as a disciplinary measure. A Disciplinary Committee exists consisting of a chairperson, a clerk and the complainant. I suggested that it be made more representative, and that prisoner participation should be included. The head of prison informed that when prisoners are included in disciplinary procedures they are often subjected to severe intimidation.

## **PROBLEMS**

The main problems experienced at the prison are requests for transferrals to prisons close to their families, complaints about the distances between Voorberg and the city areas, and that contact visits were not allowed.

Mr Afrika reassured me that everything was under control, but while we were there an uprising occurred in section H, from which we were consciously diverted. We witnessed a number of warders running with their butons to quell the unrest. Strangely, while all the sections seemed to be peaceful and under control, section H was extremely tense. After several interviews with the inmates from section H, it was clear that prisoners were assaulted on a regular basis. When the head of prison showed his disapproval about assaults and that force is allegedly being used regularly, he was openly undermined by the warders, some of whom openly uttered their disdain for human rights, blaming the new constitution for their disciplinary problems.

## **AFFIRMATIVE ACTION**

The prison staff is fairly representative as far as race is concerned. Top management is predominantly black; they are striving for a ratio of 70:30 and hope to achieve that in the near future.

**Report of the inquiry of the SAHRC into incidents of violence at  
LEEUEWKOP MAXIMUM PRISON  
during the period 1<sup>st</sup> to 3<sup>rd</sup> November 1996**

**BACKGROUND**

During the period 1<sup>st</sup> to 3<sup>rd</sup> November 1996 violence erupted at the Leeuwkop Maximum Prison resulting in injuries to more than 30 prisoners, some of a serious nature. Following visits to the prison by staff and a member of the Commission and a preliminary assessment of the situation, it was decided to conduct an investigation as envisaged in terms of subsection 116(3) of Act 200 of 1993 read with subsection 9 of Act 54 of 1994.

Due notice of the investigation was given and during the course of the investigation the Commission:

- (a) Head oral testimony on the 15 and 16 November 1996, 11 and 12 December 1996 and 14 December 1996 from prisoners, management and union representatives.
- (b) Conducted an inspection in loco of the prison.
- (c) Received and considered the report of an internal investigation conducted by the Provincial Commissioner of Correctional Services: Gauteng into the violence of the 1<sup>st</sup> to the 3<sup>rd</sup> November 1996
- (d) Received and considered written submissions from the Legal Department of the Commission as well as the office of the State Attorney who represented the Department of Correctional Services as well as certain individual warders and members of management.
- (e) The panel of the Commission that presided over the inquiry was chaired by the chairperson of the Commission, Dr B Pityana and other members of the panel were Commissioners Mabusela, Suzman, Routier, Tlakula, and Kollapen.
- (f) Mr Manny and Adv. L Zondo the CEO of the Commission led the evidence on behalf of the Commission, while Mrs Roskin of the office of the State Attorney represented the Department of Correctional Services and certain individual members. Mr Maela acted as interpreter.
- (g) The procedure relating to the inquiry was published in Government Notice No. 1599 of 1996.

**MATTERS CONSIDERED**

The terms of the reference of the investigation encompassed the following:

1. The prevalence and extent of the prevalence of gangsters in the prison
2. The cause of violence and injury of prisoners and/or other persons in the prison during this period.
3. Measures taken in view of the violence.
4. The general conditions and its relevance to the observance of respect for and promotion of fundamental rights in the prison.

## **PRELIMINARY ISSUES**

- (a) Miss Roskin of the State Attorney's office raised a point **in limine** with regard to the scope of the testimony arguing in essence that the testimony being considered exceeded the terms of reference of the investigation. The point **in limine** was not upheld and written reasons for the ruling were handed down.
- (b) Members of DCS requested and were granted an extension of time on the 15<sup>th</sup> November 1996 to prepare their testimony. It is noted however that no officials of the DCS or their legal representatives were present when evidence was heard on the 15<sup>th</sup> and 16<sup>th</sup> November.
- (c) As will appear from the notice of the investigation, the objective of the investigation was to examine the events of the 1<sup>st</sup> to the 3<sup>rd</sup> and the underlying causes. This was not an investigation aimed primarily at the conduct of certain individuals or the Department.

The manner in which the investigation was conducted speaks for itself. In particular the Commission ensured that members who were in any manner implicated by testimony that the Commission heard, received copies of the transcripts of such evidence and were allowed sufficient opportunity for preparation. We believe it necessary to record this in order to dispel any perceptions to the contrary.

## **THE EVENTS OF THE 1<sup>ST</sup> TO THE 3<sup>RD</sup> NOVEMBER 1996 AT LEEUWKOP MAXIMUM PRISON**

Leeuwkop prison is situated North of Johannesburg and consists of 4 prisons including a Youth Centre. The maximum section of the prison housed, during the period in question, approximately 750 prisoners. The approved accommodation is 763. Most of the inmates have been convicted of offenses of a serious nature and the average prisoner is serving a sentence in excess of 15 years

On the 1<sup>st</sup> November 1996, Simon Phakathi, a self confessed trader in dagga and a member of the Airforce 3 gang, was robbed of a quantity of dagga by members of the 28 Gang in the A Section of the prison. Members of the 28 Gang set out to confront the AF3's and to regain the dagga. In the ensuing confrontation, the details of which are rather sketchy, violence broke out leading to the injury of a number of prisoners. Knives and other sharpened objects were used as weapons.

During the next 2 days retaliatory and counter retaliatory attacks led to further violence and injuries. Members of the DCS were involved in some measures to stop the violence (we will deal with the adequacy or otherwise of these measures later) and such measures as were taken involved the use of batons and buckshot in further injuries to prisoners as well as some damage to property. No member of the DCS was injured during the events of the 1<sup>st</sup> to the 3<sup>rd</sup>.

By the 4<sup>th</sup> November 1996, the situation had by and large normalised although a fair amount of tension was still evident within the prison.

## **ISSUES THAT EMERGED**

In considering the testimony and other evidence before us many diverse issues emerged. In addition allegations and counter allegations were frequently exchanged. Some were directly relevant to the inquiry, others not. We will not, and simply cannot deal with the detail of every such issue and allegation



that emerged and the evidence relevant to it. We will rather focus on certain substantive issues of relevance which cumulatively encompass all of the matters following within the terms of references of the inquiry. We now proceed to identify and deal with those issues and make findings relevant to them:

## **FINDINGS**

### **(a) The immediate cause of the violence**

The robbery of the dagga in the possession of Simon Phakathi and the steps taken to recover it by his gang was the immediate cause of the violence which erupted on the 1<sup>st</sup> November 1996. The violence of the subsequent 2 days did not have separate origins but was inextricably linked to the events of the 1<sup>st</sup> and could generally be seen as retaliatory and counter retaliatory measures by the gangs involved, the AF3's and the 28 gang.

### **(b) The availability of knives and other weapons**

The evidence proved the widespread availability of knives and other sharpened weapons. These find their way into the prison either through work teams, visitors and possibly warders. The system of searching and confiscation of weapons is clearly not effective. A cursory perusal of the search registers indicate the physical searches of the cells rarely turn up anything of significance. In addition the infrequency with which these searches take place renders them rather ineffectual. On the other hand a real lack of person power and the ingenuity of prisoners in devising new hiding places compounds the problem.

The availability of the knives (of the traditional kind) which come from the outside raises concerns about the efficacy of searches and preventative measures taken at the gate at the entrance to the prison. It is that the system of searching is either inadequate or that warders collude in the smuggling of weapons and other prohibited articles into the prison. The suggestion of warder collusion is a serious one to make but having regard to all that we have seen and heard it is indeed difficult to avoid this conclusion. This is certainly not to suggest that all or a substantial number of warders are involved. It only requires the collusion of a few to render smuggling possible and this may well be the case. The fact that knives that were confiscated re-emerged, as it were reinforces the strong suggestion of warder collusion. A special committee to deal with the destruction of knives that were confiscated had to be established

### **(c) Dagga**

Dagga is an important commodity within the prison world. Its use is widespread and there is a vibrant and seemingly lucrative trade being conducted in dagga. It is also the cornerstone of power relations and gang activities as control within the prison means that prisoners will be willing to engage in battle over it. It is accordingly also the source of violence within the system.

The general availability of dagga again raises concerns about search methods and warder collusion as in the case of weapons dealt with above. The clear impression that was created from the testimony (including management and warders) was that of the use of dagga was widespread and almost institutionalised and that hardly any proactive measures were taken to deal with its influx into the system. Nor did we get the sense that it (dagga) was seen as a major problem. To date there was no follow up regarding the possession of dagga by Simon Phakathi, either of a possible prosecution or an investigation to attempt to uncover the source of his supplies.

Interestingly some of the evidence strongly suggested that the consumption of dagga as such, was not problematic as it in itself did not lead to aggression, violence or anti-social conduct. We were told in clear terms that the non-availability of dagga could well lead to tension and possibly violence, as dagga had a calming effect on the user. This aspect will be given further attention later in this report under “Recommendations”

(d) **Gangs their influence etc**

Gangs have always been part of the culture of prison life. Within this prison three gangs were fully operational and reasonably well organised, namely the AF3, AF4 and the 26<sup>th</sup>. They have developed expertise in different areas e.g. escapes, dealing in dagga, sodomy and are generally distinguished from each other by nature of their activities.

There appears to be a rigid system of discipline within most gangs and ordinary prisoners would have great difficulty in resisting recruitment into one or other gang.

Given their power and influence there is little doubt that they exercise “control” over various aspects of prison such as allocation of jobs, recreation, control of the dagga trade etc. They enjoy the de facto recognition of management and form part of the culture of the prison. During times of unrest or violence management holds talks with the leaders of gangs which only contributes to the recognition and institutionalisation of gangs. This is not acceptable.

Their eradication is easier said than done and the concern of the commission is the impact gangs and gang activity have on the lives and importantly the human rights of prisoners. Our conclusion is that gang activity within this is highly prejudicial to good order as well as the enjoyment of basic human rights by the prison population.

(e) **Measures taken to control the violence and the use of force**

At the outset it is relevant to note that members of the DCS received training within a military culture where safe custody was the objective underpinning their training. Important aspects such as rehabilitation, human rights, conflict resolution and mediation do not appear to have featured sufficiently or at all, in their training.

Within Leeuwkop Prison no system or plan exists which would enable management to firstly become privy to situations which may result in violence and secondly when violence does occur there again appears to be no organised plan to deal with it. Evidence indicated that members often arrived at the scene after the violence had erupted, waited for it to exact its toll and then only entered the cell to disarm prisoners. Simple measures such as restricting access to different sections of the prisons were not taken effectively or at all. On occasions buckshot was fired in order to stop ensuing battles. Medical records which form part of the internal inquiry indicate that at least 50% of the injuries sustained during the period under investigation were injuries inflicted by members. This supports the testimony (including that of some members of management) that brute force is the most common response to problems and that the force used was in certain instances not warranted e.g. after prisoners were disarmed, or totally excessive in other instances e.g. random firing of buckshot without warning shots being fired. It also appears that members used broomstick handles as weapons – clearly an unacceptable practise. In addition it would appear that staff shortage during weekends and holidays are of such a nature that members are left in a position where virtually **nothing** can be done to prevent or contain violence that erupts. This is an unsatisfactory situation and raises valid questions about the effective ‘control and management’ of

the institution – a matter we will deal with later. In our opinion no effective security system exists in the sense of an overall well thought out and resourced security plan that would comprehensively deal with all aspects of security.

In conclusion we are of the view that measures taken to prevent the violence were virtually non-existent, while measures taken to contain it were characterised by the use of excessive force often not concomitant with the requirements of the situation. Even as the Commission was hearing testimony we were informed that if violence broke out then and there, little could be done to prevent or control it. We are “freedom and security of the person” virtually meaningless to the ordinary prisoner.

(f) **The involvement of warders and other staff in the supply of dagga and knives**

Numerous allegations were made about the role and involvement of warders in the supply of dagga and knives. As indicated earlier in this report the widespread availability of both these commodities indicated either gross inefficiency in conducting searches or warder collusion.

While warder collusion in illegal activities is a serious charge to make it is difficult to avoid such a conclusion, particularly with regard to the availability of dagga. Many prisoners specifically testified to this effect, while senior management conceded that staff may well be involved in the supply of dagga and weapons.

In fairness to warders no specific finding against any individual will be made as in our opinion sufficient evidence exists in this regard. However the evidence viewed as a whole certainly supports the widely held belief of warder involvement. This is a matter which requires further investigation so that those involved can be exposed and dealt with.

At this juncture it is perhaps appropriate to mention that the type of action taken by the authorities to investigate the availability of dagga and knives is certainly inadequate. There are no pro-active measures in place and when on occasion a member was suspected of being involved in the supply of dagga, he was promptly warned about the fact that he was under suspicion. Given that he was the person under suspicion one would have thought that the monitoring of such an individual may well have been more appropriate to warning him and thereby excluding forever the possibility of determining his involvement or not in the supply of dagga.

(g) **Effective management**

Given the problems that exist at Leeuwkop Maximum, one of the obvious issues that arise is how effective is the system of management?

Once again it is difficult to escape the conclusion that there are indeed serious problems in managing the prison. In this regard the following needs to be noted:

- (1) Knives and other dangerous instruments are widely available
- (2) Dagga is widely available and its trade seems to continue unabated.
- (3) There was a serious breach of procedure related to the trip to Krugersdorp, yet no disciplinary measures have yet been taken against any of the persons involved. In this regard prisoners were removed from the precincts of the prison (on two separate

occasions) either without proper authority, or if there was such authority given, the fact of their removal was not properly documented.

- (4) The relationship between management and POPCRU is in our opinion strained and does not augur well for efficient, co-ordinated management.

Effective control of the prison is accordingly not firmly located with management. There is a serious situation of ungovernability which if allowed to continue will make further inroads into an efficient prison administration this in turn will have negative consequences for prisoners, their treatment and their rehabilitation.

The fact is that the Head of the Prison does not make regular visits to the various sections of the prison in order to appraise himself personally of the problems that exist, concerns of prisoners et cetera. This type of management by 'remote control' is unacceptable. In addition the Commander does not, with respect, seem to have a 'hands on' approach to what transpires in Maximum prison. He rarely visits the prison and appears to rely on reports presented to him by others rather than actual visits to the prison to acquaint himself with the problems and difficulties that exist.

An aspect which appears to be inextricably linked to effective management is the question of affirmative action and transformation of the Department of Correctional services. This report does not wish to seize itself with the detail of that issue except to make two observations:

- (i) Transformation and affirmative action needs to be seen in action for rank and file members of the Department to be convinced that it is being implemented.
- (ii) Within Leeuwkop Prison, the complaint that both the command structure of the Prison and the management structure of Leeuwkop Maximum was still substantially if not entirely in White hands appeared to be accurate. Both these aspects are important in addressing the improvement of relations between management and warders at the prison. Urgent measures to address them, if not already in place, need to be put in place.

Notwithstanding the concern we have expressed about the implementation of affirmative action we do not believe that it is appropriate for unions, particularly POPCRU, to use it as an excuse to undermine present management. It is important that effective management takes place and insubordination, (e.g. the refusal to lock a section by a section head) must be dealt with firmly.

(h) **George Koka's allegations regarding the "plot" to kill POPCRU members**

We believe this issue, given both the wide media coverage it has received as well as the implications it has to the reputation and integrity of those involved, requires to be dealt with separately. The allegations by prisoner Koka that he was requested by Messrs Jacobs, Pieterse etc. to kill certain POPCRU members was categorically denied by Jacobs and the others. The Commission found no other evidence to corroborate the existence or otherwise of the alleged plot. It is also so that no mention of the 'plot' was made by Koka to his fellow gang members or to the intended victims (Masinya and others) with whom, on the evidence before us, he enjoyed a good relationship.

On the probabilities therefore we find no evidence of the existence of such a 'plot' and Koka's evidence in this regard must accordingly be rejected.

(i) ***Living conditions, recreations, study prison industry***

Leeuwkop Prison, like most other South Africa prisons, is affected by the common problems of overcrowding, a lack of sufficient educational and recreational opportunities and insufficient incentives for work. People living under such crowded conditions with little opportunity for a constructive engagement of their time make ideal targets for recruitment into gangs and involvement in illegal activities. The absence of a mess hall where prisoners can enjoy their meals in a dignified manner contributes to the negativity most prisoners feel about harm than good in any attempt at rehabilitation.

The lack of sufficient work and training opportunities especially amongst long term prisoners condemns them to an idle and unproductive existence with all the negative consequences that go with it.

- (j) While management contended that there was an effective complaints and grievances system in place there was little evidence, if any, of its actual use and efficacy. Most prisoners, it appears did not use it as they did not have confidence in the system considering their complaints and responding effectively there to. Some prisoners held the firm view complaints against warders would not be properly investigated and it was therefore a waste of time to lodge a complaint. It is essential that whatever system is in place, it enjoys the confidence of those it is intended to serve and effectively responds to and addresses legitimate complaints. We will return to this matter under the “Recommendations”

(k) **Procedures with regard to transfer of prisoners**

During the testimony of George Koka, the issue of the procedure relating to transfer of prisoners arose. It does appear that at present the decision to transfer is taken by management, prisoners are not given an opportunity to respond to or be part of the decision making process and in certain instances prisoners were lied to as to the reason for the proposed transfer in order “to make things easy and prevent resistance”. This is unacceptable.

While the need to transfer troublesome prisoners in order to promote orderly prison life may be necessary from time to time, it is imperative that proper procedures are followed and documented so as allow the prisoner to make his/her views known and important to prevent the use of the transfer system as a means of victimisation. Many prisoners also indicated that they were not made aware, upon admission into the prison, of the rules and regulations that applied. This was denied by management and we will deal with this further under ‘Recommendations

## **RECOMMENDATIONS**

In making the recommendations that follow, the Commission is mindful of the fact that resources, both human and financial are limited and that the various demands on the fiscus need to be prioritised and balanced. At the same time and importantly the rights enshrined in our Constitution must become real and meaningful for all South Africans. In the context of prisoners it must include “the right to conditions of detention that are consistent with human dignity...”

It is also so that the conditions and problems that we have found to exist at Leeuwkop Prison probably exist in similar form in other parts of the penal system and to that extent the recommendation may have value for the penal system as a whole. Some of the recommendations require time and resources to implement while others are capable of being implemented more speedily. Whatever the case may be, we would urge the Department to give serious attention to these recommendations.

We recommend:

- a. In order to radically change the culture and the identity of our prisons it is necessary to effect far reaching changes to the structure and layout of the buildings so that prisoners could be held under conditions consonant with human dignity where provision could be made for effective training, education and rehabilitation. Only this could lead to effective and early rehabilitation. While this is an initiative that will carry with it considerable costs it is the only realistic chance we have of ensuring that we convert our prisons into centres of rehabilitation. If this aspect is not addressed then the problems, that occurred in this prison and which occur virtually on a daily basis throughout the penal system, will continue unabated. We are aware that the department is presently examining the implementation of the unit management system and does seem that it may well provide the basis for a restructuring of our prisons

Increased opportunity for market related prison industry is matter that requires further attention. Not only will it contribute towards balancing the budget but will also create opportunities for the development and transfer of skills and will allow prisoners to earn an income which may assist them upon their release.

Rehabilitation must continue to remain a prime goal within the prison regime. There is great scope for community involvement in this area and the development of appropriate programmes must attempt to involve the wider community in a more substantial way

- b. **Gangs and gang activities**

It would be naïve to believe that any short recommendation could eradicate the problems of gangs from our penal system. This system itself creates the room within which the gangs thrive and accordingly only long term changes are those we discussed above and in addition on a more short term basis, the removal and isolation of gang leaders, the removal of opportunities around which gangs organise for example allocation of resources within the prison, the opportunity for smuggling in dagga, knives and other commodities. Negotiating with gangs increases their standing and status within the system. This should be avoided. The system of attempting to obtain the co-operation of gangs by co-operating them into some decision making or conflict resolution process has not worked and may well have led to management undermining itself. In addition the economic power of gangs needs to be carefully examined and the source of the economic power and wealth must be checked in order to remove their power-base. Only a committed and loyal team can hope to achieve this and as long as the problems relating to management and personnel have not been addressed there is little hope of making any inroads into dealing with the problems of gangs. The practice of negotiating with or holding talks with gang leaders must cease

- c. **Training**

It was clear that most members were inadequately equipped to handle the violence that erupted and it is our recommendation that given the shift of the focus of the department from a “safe custody” to “rehabilitation”, that members be retrained. Training should include human rights, conflict and resolution, mediation so that members are able to identify potential problems and conflict before they flare up into violence. Secondly they should take proactive measures to attempt to diffuse tensions which exist. We recommend that warders as well as management be the recipients of such training. In addition prisoners, perhaps separately, should acquire such skills. Many of them are called upon quite regularly to play such roles and it may well be something worth considering. NGO’s who do work in this field may be willing to assist.

The process of recruiting potential members of the Department must recognise the need to properly understand the profile of the prisoner you are dealing with and to develop appropriate strategies and programmes. It is thus essential that the correct type of correctional officer is recruited if we are to successfully advance the efficient management of our prisons.

d. **Complaints and Grievances – Outside supervision**

It is clear that complaints and grievance procedure does not always work effectively and our recommendation in this regard is for greater outside supervision and oversight of the penal system. We are aware that the present draft Correctional Bill makes provision for the establishment of an Independent Inspectorate as well as a Lay Visitor scheme. We support both these initiatives. It is our view that greater outside intervention not only creates the space for prisoners and the staff to articulate their problems, but also creates the mechanism (through an independent and hopefully trustworthy third person) within which problems could be resolved. There is no deadlock breaking mechanism at the level of prisoner to prisoner, prisoner to warder, warder to warder, or management to warder. In an institution where conflict and tensions are so widespread there is an urgent need for such mechanisms. The structures we have referred to may well assist, but there is the need for something to be done in the short term.

e. **Knives and other dangerous weapons**

We recommend that urgent measures be put in place to tighten up the system of searches for weapons both within cells as well as at the entrance of the prison. We recommend that urgent attention be given to utilising soft plastic cutlery alternatively disposable cutlery, to prevent the manufacture of home-made knives.

f. **Dagga trade and possession**

Dagga (it's value as a commodity ) is the cause of many of the problems within this prison. There was some evidence suggesting that it's actual use did not cause behavioural problems but rather that trade and dealing in dagga it was the underlying cause of many problems. We certainly did not hear enough evidence on this matter to allow us to express a view on the decriminalisation or otherwise of dagga. We are aware of the debate within society regarding this matter and believe that the S.A. Law Commission would be the most appropriate structure to take this debate further.

g. **Affirmative Action**

Notwithstanding a commitment to implement affirmative action, we are concerned at the pace of it's implementation. We recommend that urgent steps be taken by the Department to ensure affirmative action is applied more speedily and that the changes in the policy are in fact reflected by changes on the ground. The tensions that come with change need to be managed effectively. The legitimate aspirations of those who were historically excluded need to be given proper attention, while at the same time the insecurity that may arise on the part of others need to be addressed. We are of the view that a speeding up of this process will lead to adiffusion of the tension which presently exists between management and Popcru. We recommend that interim and urgent measures be taken by the Department to intervene in the crisis which in our opinion exists between the management and Popcru and in this regard the services of the skilled mediator may well prove to be a worthy investment. We are concerned that any delay in dealing with this matter would lead to a further breakdown in the management system in the Leeuwkop Prison – something

that needs to be avoided at all costs. The Commission is willing to assist as mediator in this regard if the parties so desire.

There is little doubt that demilitarisation, led to a drop in authority and difficulties in enforcing discipline amongst members. This has affected proper management and is something that requires attention in the training and re-training programmes for members.

**h. Transfers and Administration of Justice**

We recommend that all management, decisions which impact on the rights and of privileges of prisons comply with the provisions of the Constitution in so far as they relate to just administrative action so as to ensure that any action that is taken is lawful, reasonable and procedurally fair. This in our opinion would also contribute to better relations between staff and prisoners and provide a basis for decision making.

**i. Recreation, education etc**

We welcome some of the measures taken by management taken including the use of the private sector. There are probably many institutions within society who would willingly donate books, library material and other resources. The school must be reopened. It's closure certainly had a negative effect on the morale of many prisoners.

j. A copy of the Rules and Regulations of the institution should be given to each prisoner upon administration upon admission (in one of the official languages the prisoner understands) and explained so as to ensure the prisoner understands it.

k. In addition the policy and practice relating to the release of prisoners on parole must be publicized in a clear manner so that every prisoner is aware of the procedure and the criteria that is taken into account in considering release on parole.

**CONCLUSION**

Implementation of these recommendations may assist in dealing with the problems that exist not only at Leeuwkop Maximum Prison, but also at other prisons within the penal system. We trust that these recommendations will be implemented by DCS.

The Commission would like to thank all those who cooperated in this inquiry including members of the Department, the management of Leeuwkop, Popcru and the Public Service Association, the offices of the State Attorney and the Legal department as well as the Administrative Department of the Commission



## **WORCESTER PRISON REPORT**

### **10th January 1997**

#### **INTRODUCTION**

1. The visit was organised in response to a telephonic complaint received by the Cape Town office of the Human Rights Commission from Clara Daniels, a woman prisoner at the Worcester Prison. In addition to investigation her complaint, the visit was of a general nature, in order to inspect the prison, and determine conditions there.
2. The complaint received from Clara Daniels involved an incident which took place on New Year's day, during which a group of female prisoners were teargassed in their cells.

#### **PRISON VISIT**

3. On arriving at the prison, we introduced ourselves to the Dean of the Prison, who directed us to the Womans's prison. There we were met by correctional officials Ms Marais and Ms Macneil, and we discussed various issues with them before inspecting the prison.
  - 3.1 The incident about which Clara Daniels had complained was discussed. Ms Marais advised that a group of prisoners had become unruly when asked to move from a cell, and the use of teargas had been necessary.
  - 3.2 We were provided with information regarding the number of prisoners and personnel at the prison, the facilities and services available to the prisoners, and the daily-routine in the prison:
    - 3.2.1 There are 165 prisoners, 32 day staff, and 2 night staff;
    - 3.2.2 Prisoners have access to a doctor once a week, a psychologist and social worker, if required, a nursing sister, and the prison is visited regularly by ministers of various religions;
    - 3.2.3 Prisoners receive regular exercise, during the day and on weekends;
    - 3.2.4 In response to a specific query, we were advised that the prisoners receive regular education about AIDS, and are kept informed regarding their parole rights;
    - 3.2.5 On weekends, the day staff come on duty at 7h00; a short religious ceremony is held, after which Ms Marais takes complaints from the prisoners; breakfast is at 8h00, consisting of porridge and coffee, after breakfast the prisoner break into workgroups until lunch from 12h00 – 13h00, consisting of four slices of bread with a spread, and cooldrink; work resumes until 16h00, after which supper is served, being a cooked meal; thereafter the prisoners are confined to their cells until the next morning;
    - 3.2.6 During weekends, various activities are planned including the screening of videos, netball practices and matches, and choir practices.

- 3.3 Accommodation varies from cell to cell; apart from the solitary confinement cells; the largest cell holds 29 prisoners, and the smallest 4 prisoners.
- 3.4 The prisoners receive wages for their work, and can use the money at the tuckshop in the prison to buy food or provisions; some of the prisoners receive additional money from families or friends.
- 3.5 We were advised that the biggest problems in the prison was the use of drugs (dagga), which was smuggled into prison, and lesbian relations.
- 3.6 After the discussions we were given a tour of the prison by Ms Marais and Ms Macneil, where we were shown the various cells, the hospitals and the workshops, During the visit, we requested to be left alone with the prisoners in ordered to discuss matters with them. We were given an opportunity to address the prisoners in a group, without the presence of the warders. During this session, various complaints and queries arose, which are itemised below.
- 3.7 After the visit, we advised that we would return to the prison to address the staff (as requested by Ms Marais), and also to give feedback to the prisoners regarding their grievances and queries.

## **COMPLAINTS AND QUERIES**

### ***COMPLAINTS***

- 4. *The following complaints were received, during visits to the cell, and in the group discussion:*
  - 4.1 Prison officials use bad language, and subject the prisoners to verbal abuse; in addition, the officials display a patronising and condescending attitude;
  - 4.2 Male warders enter the cells while prisoners are naked, and remain in attendance while they dress;
  - 4.3 The quality of the food is bad; it is tasteless badly prepared and insufficient; fruit is rarely served, despite requests; in particular, attention was drawn to the bad quality of Halaal food;
  - 4.4 Dietary requirements, for medical purposes as prescribed by doctors, were implemented at other prisons, but were not observed at Worcester;
  - 4.5 The tuckshop did not stock any fresh foods, and very rarely has fruit for sale;
  - 4.6 Food sent by family and friends to prisoners was returned, and prisoners were informed that they were not able to receive food from outside of the prison; in addition gifts, in any form, sent to prisoners from outside of the prison were returned to the sender;
  - 4.7 A fully month's wage is forfeited should one day of work be missed without a medical certificate;

- 4.8 Wages should be paid on the 10<sup>th</sup> of the month, but prisoners had been advised that morning that the wages would not be paid for administrative reasons;
- 4.9 Female prisoners were subjected to intrusive body searches, and were advised that they were being searched for dagga;
- 4.10 The public telephone may only be used in the presence of a correctional official, and the officials do not make themselves available to supervise telephone calls;
- 4.11 Prisoners who have children outside of prison have insufficient contact with the Department of Welfare regarding the placement of their children in foster homes;
- 4.12 A system of privileges had been instituted, and certain prisoners indicated that they believed all of the prisoners should be treated equally;
- 4.13 Women prisoners were given one roll of toilet paper and one tube of toothpaste for a two month period, and this was too little;
- 4.14 Visiting conditions were too strict, and prisoners advised that the male prisoners received more liberal visiting rights;
- 4.15 Two mothers in the prison had infants, and were accommodated in a small cell, together with two expectant mother, and indicated that the conditions were too cramped; one mother had been advised that her child would be taken away from her when it was three months old, unlike Pollsmoor prison, where children are fully integrated;
- 4.16 The mothers were not allowed contact visits with the father of their children;
- 4.17 The mothers complained that they had to pay for provisions for their children with their own money, and the prison did not provide even the most basic of provisions;
- 4.18 The hospital files of the prisoners are not kept confidential, and Sister Carolus discusses cases with other prisoners; in addition, prisoners are forced to speak in public with the doctor regarding their physical problems, rather than consulting in private;
- 4.19 The correctional officials discuss the prisoners amongst themselves and with other prisoners;
- 4.20 The social-worker is ineffective, and does not listen to the prisoners; no real attempt at rehabilitation is made, and resources and programmes aimed at rehabilitation are under-developed;
- 4.21 Prisoners are allowed insufficient time to exercise, as their time during the day is spent working, and they confined in their cell from the afternoon until the next morning;
- 4.22 Black prisoners speak English to the officials, and are advised by the officials that they cannot understand English, and only speak Afrikaans, and refuse to communicate further;
- 4.23 Only one incident of physical abuse was reported, being an incident when Sister Carolus allegedly slapped a prisoner; the incident was confirmed by other prisoners;

- 4.24 When complaints were made to correctional Officials regarding food, or other issues, they were not taken seriously, and prisoners were told that they were being “too clever”;
- 4.25 Prisoners were not made sufficiently aware of their rights, especially in terms of the new Bill of Rights;
- 4.26 The complaint received from Ms Clara Daniels, was raised again by her.

## **QUERIES**

- 5. The following queries were received during visits to the cells and during the group discussions
  - 5.1 Whether lesbian relationships between consenting adults are allowed;
  - 5.2 Whether it is necessary for all correspondence to be censored by the Correctional Officials, and whether they are entitled to prohibit or limit the writing of letters by prisoners to persons outside the prison;
  - 5.3 Whether letters may be exchange between prisoners in the female section of the prison and prisoners in the male section;
  - 5.4 What privileges or facilities are allocated to prisoners who are studying;
  - 5.5 Clarity was requested by the prisoners on when, and in what circumstances , they could be placed in solitary confinement;
  - 5.6 One of the mothers has been advised that she is not allowed to keep her infant with her, and that it will be placed in foster care when it reaches the age of three months; she understood that she was entitled to keep the child with her until it was two years of age;
  - 5.7 Whether it was possible for the wages of a prisoner to be placed in a banking account held in her name;
  - 5.8 When and under what circumstances a prisoner is able to apply to be transferred to another prison, and what is taken into account in an application for a transfer.

## **RESPONSES**

- 6. Subsequent to the visit, a programme of response has been proposed:
  - 6.1 To research and investigate the law and practice regarding prisons and prison practice;
  - 6.2 To forward a list of the complaints and queries to the Correctional Officials at Worcester Prison for their comment and response;
  - 6.3 To organise a return visit to Worcester Prison in order to:
    - 6.3.1 Provide feedback to the prisoners regarding their queries and complaints;
    - 6.3.2 Provide feedback to the Correctional Officials regarding the visit;

- 6.4 To consider developing and preparing a workshop for the personnel at Worcester Prison regarding the Bill of Rights, and its impact on prisoners;
  - 6.5 To provide relevant media and literature in the form of posters and pamphlets (to be obtained from head office as far as possible) to the prison for the use of the prisoners;
  - 6.6 To draw up a roster for visits to other womens' prisons in the Western Cape, Free State, and Northern Cape, which visits will be followed by the same feedback;
  - 6.7 To repeat the process, simultaneously, for male prisons in the same areas.
7. In order to facilitate the research an investigation component of the response, we have, in addition to the relevant legislation, obtained a copy of **Prison Law and Practice**, by Dirk Van Zyl Smit; in addition we have had various telephonic discussions with the Correctional Officials at Worcester Prison, and are in the process of preparing an amended report for their consideration and comment.

Victoria Mayer

**Legislation Monitor**

Findings of the investigation into an alleged incident on  
**Thursday, 13 February 1997 at**  
**HELDERSTROOM MAXIMUM PRISON**

**IN BRIEF**

Prisoners at the Helderstroom maximum security prison, outside Celedon, alleged that between 50 and 70 inmates were assaulted by warders in a mass beating on Thursday, 13 February 1997. The alleged incident happened during an operation by the authorities to move a group of 70 prisoners from their communal cells to the single cell section of the prison.

The South African Human Rights Commission (SAHRC) received a complaint on 14 February that a mass assault of prisoners had occurred and immediately launched an investigation into the allegations. The scope of this investigation was subsequently broadened to include the following:

- 1. Allegations of assault by warders of prisoners during the move on 13 February 1997;**
- 2. Conditions of the prisoners;**
- 3. Complaints by the warders and prison management about problems that they experience.**

The findings of the investigation and recommendation flowing therefore are set out below.

**INVESTIGATION**

**The prison was inspected on Saturday; on 15 February 1997 by Commissioner Rhoda and legal officer for the Commission, Ron Paschke and Victoria Mayer, SAHRC legislation monitor. On these occasions interviews were conducted with the following people:**

- 1. Mr Damons, the Provincial Commissioner of the Department of Correctional Services for the Western Cape.**
- 2. Mr van der Westhuisen, Acting Director of the prison.**
- 3. Mr Jansen, Head of the prison.**
- 4. Mr Umans, Assistant Head of the prison.**
- 5. Mr Swart, Senior Correctional Officer, and former Assistant Head of the prison.**
- 6. Mr Rabe, leader of the “taakmag” which was responsible for the move of the “belhamels”.**
- 7. Mr Breedenkamp, Senior Shop Steward of one of the warders’ trade unions, POPCRU.**
- 8. Three warders accused of by the prisoners of assault.**
- 9. Other warders,**
- 10. 25 prisoners in D, E and F sections (including the “belhamels”).**

**11. Two representative of the prisoners from their negotiating team.**

**12. Four spokespersons of the “Franse” prisoners in B section.**

The reception of the SAHRC by the prison authorities was cordial and the Commission is grateful for the co-operation of all the people who participated in the investigation.

## **BACKGROUND**

Helderstroom prison is in an isolated setting near Caledon about 120 km East of Cape Town. It consists of a medium and a maximum security prison. The maximum security section contains approximately 826 inmates which is 181% of its capacity. This problem of overcrowding is exacerbated by the staff shortages. While the ratio of staff to prisoners should be 1,8, it is in the vicinity of 1:34 at Helderstroom maximum.

## **GANGS**

The view of the prison authorities is that a major contribution factor to the incident on 13 February 1997 was an increase in gang activities in the last six months. Three gangs exist at Helderstroom, the “26’s”, the “27’s” and the “28’s”. Their activities allegedly include robbery, intimidation, drug-dealing, gunrunning and assaults by prisoners on both prisoners and warder. The commission investigation team was shown a large variety of home made knives, a home made key moulded out of molten plastic which apparently could open most of the doors in the prison, and a collection of what appeared to be dagga and mandrax. These items were allegedly confiscated from prisoners and were held out to be evidence of gang activity.

Prisoners freely admitted to belonging to gangs. They said that the reason that they were gang members was because of the protection offered by the gang system. Some prisoners were of the view that gangs, in themselves, were not a problem and that the prison authorities use the notion of gang activity as an excuse for, or to cover up, “Kragdadige” actions by warders.

Prison authorities readily concede the possibility that some warders may be involved in the smuggling of drugs into the prison.

Prisoners who choose not to belong to a gang are known as the “Franse”. They reported abuse at the hands of gang members, including rape and robbery.

## **WARDER’S FRUSTRATION AND FEAR**

The warders expressed frustration at growing discipline problems with prisoners. Prison Head, Mr Jansen said that the problem lay with the power balance between prisoners and warders. He said that the prisoners wanted to control the prison, and that warders could no longer maintain control.

One warder said that “effective disciplinary measures were taken away from members (warders)” and that they were prevented by new rules from using force to control prisoners. Another warder said that they were tired of being subjected to criticism by people “from outside” who did not understand the difficult conditions in which they have to work; this uninformed criticism made their jobs more difficult.

While the Commission was visiting the prison, members of its investigation team noted the brazen verbal abuse of warders by some of the inmates. In the presence of the Commission staff the warders appeared to handle the situation with the diplomacy, but their frustration and mounting anger was apparent. It

should be noted that the prisoners were upset by the incident on 13 February, two days before. However, warders claim that this verbal abuse was typical of the treatment that they get at the hands of prisoners everyday.

Warders claim that they had been attacked in the past and that some had been assaulted with knives. In the time leading up to 13 February, warders had become increasingly nervous about working in the prison and some feared for their lives. Absenteeism was high and many warders complained of depression because of their work conditions.

Warders described the situation at the prison before the 13 February as “extremely tense” and said that if a warder was assaulted by a prisoner then that prisoner would be killed by the warders. Warders also said that the prison had been a state of crisis for some time.

## **PRISON CONDITIONS**

The prisoners complain of poor conditions at the prison. Some of the problems identified by prisoners are the following:

Rehabilitation. The prison allegedly does not have an adequate rehabilitation programme. The prisoners feel that there is no serious attempt to offer opportunities for the prisoners to correct themselves, They say that Helderstroom is exclusively a punishment centre, with little attempt at reform of its inmates.

Exercise. The “normal” exercise which prisoners were allowed was one hour per day. This meant that the prisoners are locked up in their cells for 23 hours per day. With increased tension at the prison this exercise was further reduced. Accordingly to Mr Umans prisoners in sections D and E were allowed 30 minutes exercise per day while section B and C had 20 minutes per day. Some prisoners say that their exercise time was closer to 10 to 15 minutes per day.

After bringing these facts to the attention of the Acting Director, he conveyed an assurance to the Commission that all prisoners are now receiving an hour or more exercise daily.

Toilets. Some single cell toilets do not flush. The result is that a prisoner has to live, sleep and eat close to the entire day in solitary confinement with a toilet bowl containing allegedly a number of days of faeces and urine. The cell is no bigger than an average bathroom.

The commission is informed by the acting Director that the size of cells is 2.6m x2.95m and that this complies with international standards. Prison authorities admit that there are problems with the flushing of toilets but say that prisoners have other sources of water available to flush their toilets.

Emergency buttons. The emergency buttons in communal cells allegedly do not work. Between 16:00 and 07:00 the next morning there is one warder for every 250 prisoners. The prisoners who get raped, assaulted or suffer medical emergencies during this time often have no way of summoning help.

Privacy of correspondence. Prisoners complain that letters in and out of the prison are opened and read and their contents censored.

Sport. *Since an escape on 25 January 1997 sport on the sport fields has been stopped, according to the authorities, for security reasons. Prisoners complain that this is unfair.*



## **EVENTS LEADING UP TO 13 FEBRUARY 1997**

*A chronology of events relating to the incident on 13 February 1997 is set out in appendix 1.*

On Saturday, 25 January four prisoners escaped from the prison while a group of prisoners were on the sports field. During the escape two warders were held hostage and were abducted but later released. Since the escape sporting privileges have been withdrawn. On the same day, the prisoners stormed a control gate and the warders were not able to manage the situation. The escape, the gate storming and the subsequent withdrawal of sporting privileges increased tensions.

On Thursday, 6 Friday, the prisoners used a home made key to open all the cells and they moved into and occupied the inner courtyard of the prison. They refused to end their “sitsaanking” until the prison authorities commenced negotiation about the conditions in the prison.

The following day, Friday, 7 February, Mr Pepler, the Head of the Prison resigned. Mr Jansen was appointed as Head of Prison. Soon thereafter, the Acting Head was also changed and Mr Umans was appointed to the position.

It appears that the management change in the prison was brought about by pressure from warders. They alleged that the previous management did not deal not effectively with the discipline problem in the prison. The warders insisted that stronger measures be taken to “restore the power balance” in the prison and to “win back control” of the prison.

On Monday, 10 February negotiations continued then under chairpersonship of Mr Jansen. Negotiations broke down when talks deadlock.

These events led to an escalation of tensions in the prison. It reached a breaking point on the morning of Thursday, 13 February 1997. The warders arrived at work that morning but refused to go into the prison unless the prisoners who they had identified as the trouble makers were removed from the communal cells and isolated in the single cells. According to the observations of the warders, the trouble makers were the gang leaders who they referred to as “belhamels”

## **THE INCIDENT ON 13 FEBRUARY 1997**

On Thursday, 13 February, the new Head, Mr Jansen gave he order that a list of 50 identified “belhamels” should be moved. But in total 70 to 80 prisoners were eventually moved.

The order given by Mr Jansen was that only members of a specially selected “taakmag” were allowed to physically move the prisoners. Other warders would only be involved in order to point out prisoners on the list and to open and close doors. The reason for this order, according to warders, was to minimise violence because warders were generally very tense.

A “taakmag” of 15 warders was assembled and were equipped with helmets, bullet proof vests, riot shields and batons or “pype” The “taakmag” members intercepted the “belhamels” as they made their way to breakfast. The prisoners who were moved, and witnesses to the escort, report that warders other than those in the “taakmag” were involved in the move. They alleged that in total there were between 40 and 50 warders who were involved.

The leader of the “taakmag”, Mr Rabe in a telephone conversation with the Commission’s legal officer, Mr Paschke, said that during the move, warders other than those in taakmag, became involved in the operation and beat the prisoners with batons. He confirmed that this was contrary to their orders. Mr

Rabe alleged to Mr Paschke that he had personally reported to Mr Jansen the fact that warders, other than those in the “taakmag”, had used batons during the move.

In a follow up conversation, Mr Jansen said that he was not aware of any warders other than those in the “taakmag” using batons. When confronted with the allegation that Mr Rabe had earlier reported otherwise to him, he said that Mr Rabe was strong.

Mr Jansen said that all that was reported to him was that one warder, Mr McNeal was “present” during the operation contrary to his instructions, but that Mr McNeal did not assault any body. He said that he accepted Mr McNeal’s explanation that Mr McNeal had not properly understood his orders and he let Mr McNeal go with a reprimand.

During the transfer, the “belhamels” were led away with each prisoner being taken by two to three warders. This is confirmed by the leader of the taakmag and other warders involved in the move.

The prisoners allege that during the move they were beaten with the batons, punched with fists, thrown to the ground and tramped on, thrown against the walls and cell doors, and sprayed in their faces with tear gas. Prisoners locked in cells along the path that the “belhamels” were led, corroborate these allegations and claim to have witnessed some of the beatings. A prisoner who had to clean up the corridors afterwards reported large pools of blood on the floors and blood covered walls. Later 49 prisoners complained of assault.

Prison warders, when asked to explain the injuries sustained by the prisoners during the move, claimed that they had used minimum force required because of resistance by the prisoners. When asked how many prisoners had resisted, one member of the “taakmag” said that two or three had resisted. He said he did not know of more than five or six injuries. Other warders either said that they could not approximate how many prisoners had resisted or said that they did not know of any problems during the move. One warder said that it was a “normal day” in the prison. A member of the “taakmag” said that before they touched the prisoners, they were already injured.

Prisoners denied that they had resisted the move or that they had acted in a way that justified the use of violence. The actions of the warders were described by the prisoners as “brutal” and “cruel” (“wreedardig”).

Mr Jansen, the Head of the prison claimed not to have been present during the operation to move the “belhamels”. Yet, Mr Jansen categorically denied that any warders assaulted prisoners. He said that only necessary force was used. These conclusions were drawn by him before the Departmental investigation had even begun.

One prisoner reportedly asked a senior prison warder why they were hitting people. The warder’s reply allegedly was. “It is because the warders are taking their frustrations out.”

Mr Rabe described the operation in the following way: “The prisoners controlled the institution and we took control back.”

The widespread perception of prisoners is that the “belhamels” were beaten by the warders as a punishment and to show them who is “boss”

## **ORDER GIVEN**

Some prisoners suspect that an order was given that the assault should happen. Mr Jansen denied this. He said that the order he gave was for the purpose of restoring the power balance in the prison. He conceded that it was widely known and had in fact been demanded by the warders that this action be taken for the purpose of restoring the power balance. Given this context, he conceded that the message that was received by warders might have been that violence was justified not to move the prisoners but to restore the balance of power.

When asked what he could have done differently, Mr Jansen said that he could have done two things. Firstly he could have ensured that his order was better understood by the warders and secondly he could have insisted that his Assistant Head was present during the move. He said that neither himself nor the Assistant Head could be present because they had to attend a meeting.

## **NO HEARING GIVEN TO PRISONERS BEFORE THE MOVE**

The “belhamels” were not told before hand that they were to be moved. According to the prisoners that were interviewed by the SAHRC, they were not asked to accompany the warders nor were they told where they were being taken.

The authorities said that the reason that the prisoners were not given a hearing or told of the move beforehand was that they suspected that this might have incited violence. In order to minimise anticipated violence from the prisoners, it was decided to move them without a hearing.

## **INJURIES**

Twelve prisoners were later treated at the prison hospital for their injuries. Some injuries required stitches. At least one man, Victor Vloetman, was treated at the Caledon Provincial Hospital. He was diagnosed as having a fracture right hand. Mr Vloetman says that he covered his head with his hands in an attempt to protect his head from the baton blows. According to him, his hand was broken by the baton or batons that were used to beat him.

In a possibly separated incident at the same prison a prisoner had his jaw broken by a warder. Commissioner Kadalie and Mr Paschke by chance encountered the prisoner in the corridor during investigation inside the prison on 15 February 1997. They attempted to speak to the prisoner but he was semi-conscious and incoherent apparently because of “an injection by the doctors”. His right lower jaw was swollen towards appeared about to return the man to his cell but at the insistence of the Commissioner and Mr Paschke, an ambulance was summoned. He was however left to lie in his own vomit for some time before being taken away. Prison authorities allege that Booyesen’s injuries were sustained on Friday, 14 February and were unrelated to the previous day’s incident. There is some uncertainty as to when Booyesen was injured.

The prison authorities initially reported to the ASHRC on 14 and 15 February that only 12 prisoners sustained “light injuries” and supplied a list these people. However many other prisoners showed members of the Commission’s investigation team recent bruises, cuts and swellings allegedly as a result of assaults received during the move. Some of them claim that they complained about their injuries and had requested to see a doctor but were ignored by the prison officials.

## **COMPLAINT'S REGISTERS**

The prison complaints registers and incident books were inspected by the SAHRC at approximately 18:00 on 15 February 1997 (three days after the incident ).However, not a single complaint by the prisoners relating to their injuries was recorded. Mr Umans and Mr Damons admitted that this was a breach of procedure but denied that the omission was part of an attempt to cover up the incident. The failure to record the complaints could not be explained.

Only after the Commission identified the breach was an order given that the complaints be recorded. The was then done on 16 February 1997. A total of 49 prisoners complained of assault during the move.

## **UNDERTAKINGS OF NON-REPRISAL**

Some prisoners expressed a fear of reprisals or intimidation as a result of their discussion with the SAHRC. Mr Umans and Mr Damons gave an undertaking that none of the people that we interviewed would be intimidated, assaulted or transferred out the prison against their will. Mr Umans promised to instruct the members of his staff to comply with this undertaking.

## **FINDINGS**

The poor conditions at Helderstroom maximum appeared to have a part in causing the prisoners to become increasingly aggressive and abusive towards warders. It is clear that the warders felt threatened and frustrated and placed pressure on management to take dramatic measures. Matters came to a head on Thursday 13 December when the new Head of the prison decided to “restore the balance of power” and “regain control of the prison”. He gave an order that a group identified as the “belhamels” be moved from their communal cells to the single cells and be detained their in isolation.

The prisoners made two complaints to the SAHRC relating to the move. The first that they felt that the decision to move them was unfair. Secondly, they complained about the injuries that were sustained during the move.

## **DECISION TO MOVE THE “BELHAMELS”**

The decision to move the “belhamels” was taken without consulting the prisoners or giving individual prisoners affected by the move a hearing. The prison authorities have the discretion to detain separately in a single cell a prisoner or a class of prisoners for the discipline, good order or security in a prison. This power is given to them in Correctional Services Act No.8 of 1959.

It is another question as to whether the prison authorities may decide to isolate a prisoner or class of prisoners without a hearing.

The SAHRC took into account the constitutional guarantees of just administrative action and the right to a hearing prior to a decision being taken. This right was weighed up against the need for the authorities to act in a way that minimised the risk of violence. The prison management decided not to inform or consult with the “belhamels” before the move because, given the tense situation at the time, they felt that this might result in violence from the side of the prisoners. Taking all these factors into account the SAHRC finds that the failure to give the “belhamels” a hearing before the move did not constitute a violation of their human rights.

It must be made clear that this findings is reached in the light of the extraordinary situation that existed in Helderstroom at the time when the decision to move the “belhamels” was made. Under more normal conditions such a failure to give a hearing may constitute a violation of the prisoner’s rights.

It should also be noted that the findings that the absence of a hearing before the move was not a human rights violation does not mean that the SAHRC supports or endorses the decision to move the “belhamels”.

### **INJURIES DURING THE MOVE**

The prison authorities initially attempted to downplay the injuries suffered by the prisoners as a result of the move. They also failed to comply with their own procedural requirements of recording complaints in a complaint register. The warder’s explanation that some of the prisoners had their injuries before the move is an implausible account of the extent of the injuries. The prison authorities other explanation for the injury was that they were sustained as a result of necessary violence used against those prisoners that resisted the move. However, prisoners were each moved by two to three heavily equipped warders. The prisoners denial of resistance is corroborated by witnesses and the warders contradicted each other in describing the number of prisoners that resisted and the type of resistance used.

The prisoner’s allegation that warders other than those in the “taakmag” were involved in beating prisoners with batons was corroborated by the leader of the “taakmag”. This involvement by the warders was contrary to their orders.

On a balance of probabilities the SAHRC therefore finds that violence in excess of that which was necessary to move the prisoners was used by the warders, Violence was used as a means of “re establishing the power balance” and to beat possible resistance out of the prisoners. It was also a form of collective punishment for the group identified as the “belhamels”.

Accordingly the SAHRC finds that there was a serious violation of the prisoners’ constitutional right to freedom and security of the person.

This violation was not an isolated incident but is a symptom of structural problems at Helderstroom. These problems relate to the conditions in the prison, the warder to prisoner ratio, relational problems and gang activity.

### **PRISON CONDITIONS**

The prisoners have genuine grievances about their conditions, in particular, the amount of exercise the prisoners were allowed fell short of international standards. These grievances are acknowledged by the authorities.

### **PRISONER TO WARDER RATIO**

There are insufficient warders to handle the number of prisoners.

### **RELATIONAL PROBLEMS**

There has been a breakdown in an orderly relationship between the prison authorities and the prisoners. There is a lack of mutual respect between the warders and prisoners. This is manifested in the type of violence displayed in the incident on 13 February. Warders allege that they in turn are assaulted by prisoners. This incident has destroyed negotiations between prisoners and the authorities over the real grievances that prisoners have. Violence may have resulted in a temporary “victory” for the warders but

may have exacerbated the situation in the long term. Unless the fundamental problems are dealt with, Helderstroom will remain an institution in crisis.

## **GANG ACTIVITY**

**Gang activity does occur at the prison. The problem is not the existence of gangs per se but rather the extent that the activity of the gangs has affected the orderly operation of the institution. The solution to these problems in the institution. The prison must develop a coherent strategy of dealing with gangs, other than the temporary isolation of their leaders.**

## **HEAD OF THE PRISON**

Mr Jansen's categorical defence of the warders working under him in the face of serious allegations raises a significant concern over his impartiality and fairness when dealing with prisoner's allegations that implicate warders. It was unacceptable for him to pre-empt his own Departmental enquiry by concluding that only necessary violence was used in the move before the outcome of the investigation.

Mr Jansen did not take sufficient steps to ensure that prisoners were not assaulted by warders during the move.

Mr Jansen's role as the Head of the prison is a dual one. He has to ensure that order and discipline in his institution is maintained. But he also has a duty to protect prisoners in his custody, and he cannot allow prisoner's constitutional rights to be violated in the name of maintaining discipline. This may be a difficult balancing task, but it is an essential one. It was one in which Mr Jansen failed.

## **ALLEGED COVER UP**

The prison authorities failed to officially record prisoners complaints of assault three days after the incident. They also under-reported the extent of the injuries to the SAHRC by saying that only 12 people had "light injuries" whereas in fact many more than 12 were injured. In addition, some injuries were not "light". The Prison Head, Mr Jansen only decided to initiate an official Departmental inquiry on Monday, 17 February, for days after the incident and on the second visit to the Prison by the SAHRC.

On the basis of these of these facts alone, it cannot be concluded that there was a deliberate attempt at a cover up of the incident. However a strong suspicion is justified that were it not for the rapid investigation launched by the Commission, the incident on 13 February may never have come to light.

## **RECOMMENDATIONS**

**The SAHRC has the following recommendations:**

1. The Provincial Commission of the South African Police Services should appoint a special team to investigate the criminal charges relating to the events on 13 February 1997.
2. A Departmental (Correctional Services) enquiry urgently needs to assess whether and against whom disciplinary measures should be instituted, on an urgent basis.
3. The Departmental enquiry should focus, inter alia, on whether Mr Jansen was aware of assaults by warders or that warders were present at the move contrary to orders and whether despite such knowledge he failed to institute disciplinary against them.

4. The National Commissioner of the Department of Correctional Services must take steps to address the staff shortage at the person.
5. The prison authorities must ensure that the basic minimum conditions are complied with. In particular the prison Head must give an understanding that all prisoners will receive at least one hour of exercise per day.
6. The prison authorities must ensure that all complaints by prisoners are in future recorded in the official complaint register as soon as reasonably possible.
7. The prison authorities must ensure that prisoners who are in need of medical treatment are given such treatment as soon as reasonably possible. In the event of serious or life threatening illness or injury such treatment must be given immediately. The medical treatment must be given by suitably qualified personnel.
8. The prison authorities must set up mechanisms to address grievances of the prisoners relating to their conditions. This may include re-starting negotiations or the creation of a forum where the prisoners can collectively bring their problems to the attention of the authorities.
9. An external facilitator, who is acceptable to both the prisoners and the warders should be brought into the prison to assist in relationship building between the two sides. Many of the other problems that exist could be addressed through this approach.
10. The National Commission must take responsibility for ensuring that these recommendations are implemented

***Rhoda Kadalie***  
**Human Rights Commissioner**

***Ron Paschke***  
**Legal & Educational Officer**

**24 February 1997**

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**APPENDIX 1: CHRONOLOGY OF EVENTS  
(ALL DATES REFER TO 1997)**

- Saturday, 25 January: Four prisoners escaped from the prison while a group of prisoners were on the sports field. During the escape two warders were held hostage and were abducted but later released. Since the escape sporting privileges have been withdrawn.
- The prisoners stormed a control gate and the warders were not able to manage the situation. The escape, the gate storming and the subsequent withdrawal of sporting privileges increased tensions.
- Thursday, 6 February: The prisoners used a home made key to open all the cells and they moved into and occupied the inner courtyard of the prison. They refused to end their “sitstaaking” until the prison authorities negotiated about their conditions.
- Friday, 7 February: Mr Pepler, the Head of the Prison resigned allegedly under pressure from warders for not dealing effectively with the discipline problem in the prison. Mr Jansen was appointed as Head of Prison.
- Monday, 10 February: Negotiations continued under the chairpersonship of Mr Jansen but broke down when talks deadlocked.
- Thursday, 13 February: Mr Jansen gave the order that the “belhamels” should be moved from the communal cells to the single cells.
- The alleged assault of prisoners occurred.
- Friday, 14 February: Mr Umans appointed as Assistant Head of the Prison
- SAHRC received a complaint from a prisoner that prisoners were assaulted during a move.
- SAHRC obtained telephonic reports from Mr van der Westhuisen and Mr Umans about the events on 13 February
- Saturday, 15 February: Commissioner Rhoda Kadalie and SAHRC legal officer, Mr Ron Paschke visited Helderstroom maximum prison and started an investigation.
- Sunday, 16 February: Complaint from prisoners of assaults entered into prison complaint register for the first time at the omsistence of the SAHRC.
- Monday, 17 February: Decision made by prison head, Mr Jansen to initiate an internal investigation.
- Follow up visit of the prison by SAHRC to Helderstroom by Mr Paschke and legislation monitor, Ms Victoria Mayer.
- Tuesday, 18 February: Finalisation of SAHRC investigation.
- Monday, 24 February: SAHRC investigation findings released.