

# **CHAPTER TEN**

## **PRISONERS' RIGHTS**

### **PART A: OVERVIEW**

#### **1 INTRODUCTION**

The South African prison system formed part of the state apparatus of a minority government based on racial discrimination. The 'pass laws' required Africans to carry passes at all times and failure to do so meant a jail sentence. As a result South Africa had one of the highest prison populations in the world and prisons were often overcrowded.

The focus on the living conditions of prisoners was brought about by an outcry in the manner in which prisoners were being treated upon incarceration. Detained persons were subjected to human rights abuses in South African prisons during the apartheid era. Detention without trial and torture were the order of the day.

Most prisons are still overcrowded, and this has resulted in many other problems such as the increased burden on infrastructure and the provision of toilets, showers and beds. The safety and security of prisoners have also been compromised. Adding to this is the outbreak of the AIDS epidemic, which requires costly medical intervention.

The chapter will begin by outlining the constitutional provisions relating to prisoners' rights which will be discussed in the light of relevant international instruments.

#### **2 CONSTITUTIONAL OBLIGATIONS**

The procedural and substantive rights of detained, arrested and accused persons are compatible with the essence and spirit of the post 1994 liberal democracy and a constitution of liberty.<sup>1</sup> Section 35(2)(e) of the South African Constitution provides for the right to conditions of detention that are consistent with human dignity.<sup>2</sup> Section 35(2)(e) of the South African Constitution provides that 'everyone who is detained, including every sentenced prisoner has the right to conditions of detention that are consistent with human dignity; including at least exercise and the provision, at state expense, adequate accommodation, nutrition, reading material and medical treatment. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the treatment with humanity and with respect for the inherent dignity of the human person. The rights of prisoners are also specifically provided for at the international level under certain rules and principles. The United Nations

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<sup>1</sup> G E Devenish *A Commentary on the South African Bill of Rights* (1999) 512

<sup>2</sup> The Constitution of the Republic of South Africa Act 106 of 1996

Standard Minimum Rules for the Treatment of Prisoners (SMR) provides for the separation of categories in prisons. The different categories of prisoners must be kept in separate institutions or parts of institutions taking into consideration their gender, age, criminal record, legal reason for their detention and the necessities of their treatment.<sup>3</sup>

### *Accommodation*

The constitutional provision for adequate accommodation is in line with the SMR which sets out what is generally accepted as being good principle and practice in the accommodation of prisoners. Rule nine of the SMR stipulates that all accommodation provided for the use of prisoners shall meet all the requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. The rules recognise the problem of overcrowding in prisons and therefore call for alternative forms of imprisonment to alleviate the problem of overcrowding. The careful selection of prisoners accommodated in the same cells is crucial to protect vulnerable prisoners from gang and sexual abuse.<sup>4</sup>

### *Nutrition*

Prisoners are accorded the right to nutrition in the Constitution. The SMR provides for the right to food that is of nutritional value, adequate for health and well-being, food of wholesome quality and that is well prepared.<sup>5</sup>

### *Reading material*

The provision of reading material is also catered for under the Basic Principles on the Treatment of Prisoners and it states that all prisoners shall have the right to take part in cultural activities and education that is aimed at the full development of the human personality.<sup>6</sup> The SMR provide for the right to books, education and recreation. In terms of s 35(2)(e) of the Constitution there is provision for the right to reading material, and paragraph 40 of the SMR states that every institution shall have a library. The library must be used by all categories of prisoners and should be adequately stocked with both recreational and instructional books.

As far as the right to education is concerned, prisoners are also included within the context of s 29 of the South African Constitution in that the right is afforded to everyone. The SMR provides for the right to further education for all prisoners and compulsory basic education for illiterates and young prisoners.<sup>7</sup> As far as practicable the education of prisoners

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<sup>3</sup> Para. 8 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1957

<sup>4</sup> *Ibid.* para 9 (2).

<sup>5</sup> Note 3 above para 20 (1).

<sup>6</sup> Principle Number 6 of the Basic Principles on the Treatment of Prisoners, 1990

<sup>7</sup> Note 3 above, para 77(1)

shall be integrated into the educational system of the country. This would ensure that prisoners are able to continue with their education even after their release from prison.<sup>8</sup>

### *Medical treatment*

With regard to the provision of medical treatment, the SMR states that where hospital facilities are provided in an institution, equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners. There is a duty on the part of the state to ensure that conditions in prison do not negatively affect the maintenance of health. The obligation is to ensure effective preventative measures as well as conventional health care. The SMR provides for the segregation of prisoners suspected of having infectious diseases or contagious conditions.<sup>9</sup> However the World Health Organisation's Guidelines on HIV/AIDS in Prisons has recommended that infected prisoners should not be segregated from the general community as this amounts to discrimination. Adequate toilet facilities and the provision of bathing or shower facilities are required.

The rights of detainees in terms of s (35) of the Constitution relate to awaiting trial prisoners who are presumed innocent until proven otherwise by a court of law. This section is designed to ensure the physical, mental and psychological well-being of detainees and prisoners.

As far as children are concerned s 28(1)(g) of the Constitution provides that every child has the right not to be detained except as a measure of last resort. In addition to the rights a child enjoys under ss (12) and (35), a child may be detained only for the shortest period of time, and has the right to be kept separately from detained persons over the age of 18 years. The child must be treated in a humane manner, and kept in conditions that take account of the child's age. The best interests of the child should be of paramount importance. The Convention on the Rights of the Child (CRC) establishes rules regarding children's fundamental rights. Article 37(c) states that juveniles should receive treatment in a manner consistent with the promotion of the child's sense of dignity and worth. This helps in promoting the child's reintegration and assuming a constructive role in society.

The rights of child prisoners are provided for in the Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) which define the treatment of juvenile detainees.<sup>10</sup> This instrument urges states to adopt measures relating to care, guidance,

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<sup>8</sup> Ibid, para 77(2)

<sup>9</sup> Note 3 above para 24.

<sup>10</sup> The United Nations Assembly General in its Resolution 40\33 of November 1985 adopted the Beijing Rules.

supervision, educational and vocational training to ensure the well being of juveniles.

The SMR states that correctional institutions for women should be provided with special accommodation for all necessary pre-natal and post-natal care and treatment. Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery where the infants shall be placed when they are not in the care of their mothers.<sup>11</sup>

### **3 KEY DEVELOPMENTS FOR THE YEAR UNDER REVIEW**

#### **3.1 Policy and legislative measures**

There were no new legislative or policy developments during the reporting period to advance prisoner's rights. The Department of Correctional Services (DCS) continues to implement the provisions of the Correctional Services Act 111 of 1998.

#### **3.2 The Budget**

The budget for the 1999/2000 financial year increased by 2.09 percent compared to the 1998/1999 financial year. The per capita costs per prisoner per day also increased from R72.99 in 1998/1999 to R80.82 in 1999/2000.

#### **3.3 Outcomes**

By December 1999, prisoner population had increased by 11.18 percent. Out of a total of 162 638 prisoners, 58 231 were unsentenced. Male juveniles accounted for 13 882 and females juveniles for 248 of the total number of prisoners. By December 1999, available cell accommodation capacity had been exceeded by 62.9 percent.

Education and training programmes were presented at 81 prisons nationally by qualified educationists, who were assisted by selected and trained functional personnel, study leaders, temporary personnel and volunteers. There were approximately 318 educationists, 157 temporary educationists, and 427 study leaders.

### **4 CONCLUSION**

Although the above-mentioned developments were positive, overcrowding in prisons will place a greater burden on the facilities provided for prisoners, unless alternatives are found. The budget allocation is also insufficient for the provision of medical treatment, adequate nutrition, education and training programmes. For instance the DCS stated that only a limited number of rehabilitation programmes could be provided due to lack of resources. Even if budgetary allocation were to increase,

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<sup>11</sup> Note 3 above para 23 (1) (2).

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overcrowding would still result in the living conditions of prisoners not being consistent with the SMR. The provision of proper prisoner conditions in South Africa remains a challenge to the DCS.

## **PART B: ANALYSIS OF RESPONSES BY ORGANS OF STATE**

### **1 POLICY MEASURES**

The Department of Correctional Services reported that it was still in the process of implementing existing policies and that no new policy measures were instituted during the year under review.

#### ***Accommodation***

The DCS reported that it had not instituted any new policy or programmes during the reporting period but indicated changes to comply with the SMR. The DCS attempted to adhere to the rules in terms of the provision of Mother and Child Units for the child's proper development. The report also indicated that special considerations were made to accommodate the needs of different categories of prisoners.

The DCS applied the provisions of rules nine and fourteen of the SMR to items such as floor space, cubic content of air, ventilation, natural and artificial light, ablution and sanitary facilities. These also complied with local health regulations and by-laws.

The DCS reported that the measures in place were reasonable and effective in respecting, protecting, promoting and fulfilling the right of prisoners to adequate accommodation. Mother and Child Units had been created in correctional facilities which enabled mothers to exercise their parental responsibilities. Facilities for proper childcare had been created and provision had been made for the child's proper development. Where a correctional centre did not provide for Mother and Child Units, satisfactory arrangements have been made to accommodate a mother and her child in a humane environment, which was also private.

#### ***Reading material***

In response to the question on what policy measures and programmes had been instituted to realise the right of prisoners to adequate reading material, the DCS reported that according to rule thirteen of the Correctional Services Regulations, a properly organised library containing literature of constructive and educational value must be established in every prison. The Department stated that reading material may also be received in accordance with regulation 13(2). A prisoner may receive reading material from outside and is also allowed to have religious literature. The DCS stated that it had complied with its constitutional obligations.

#### ***Nutrition***

No new information was provided by the DCS on policy measures instituted for the provision of adequate nutrition. The Department reported that in co-operation with the health authorities it provided food as

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prescribed by the World Health Organisation and the American Nutritional Council.

### ***Medical treatment***

There were no new reported policy measures instituted during the reporting period. The information provided was similar to that presented for the 1998/99 reporting period.

### ***Vulnerable groups***

With regard to special considerations given to vulnerable groups, the DCS reported that it had established a sub-directorate on special categories of persons in prison. Some of these categories of prisoners include mothers with babies, young children, prisoners with disabilities and aged prisoners. The motivation for delineating these categories was to provide more humane conditions of custody and in compliance with promoting a human rights culture. It also stated that according to the Correctional Services Regulations, prisoners classified as belonging to any of the special categories must be held in conditions appropriate to that category. For instance, female prisoners with children were kept in separate Mother and Child Units within the prison where the surroundings and facilities were conducive to their physical, social and mental development. In so doing, the DCS pointed out that it was protecting the rights of the child. Pregnant women, who had no complications arising from their condition, were accommodated, at night, from the sixth month of pregnancy onward, in the hospital section of the prison. This was done as a precautionary measure. If however, complications arose, before the sixth month of pregnancy, the same rule was applied. Where no hospital facilities were available, the pregnant mother was transferred to a nearby prison with a hospital section.

It was noted that HIV-positive inmates were not separated as a special category because of their status.

Female offenders with children, lactating mothers and pregnant women who had special dietary needs were catered for through the provision of special diets as prescribed by a medical doctor. Special diets, high in protein and kilojoules, were provided for infants. Necessary arrangements were made to ensure that infants received their food after hours.

The DCS also reported that it was in the process of implementing a revised and amended ration scale for female offenders so as to increase their portion size. Although no specific policies existed for persons with disabilities, their needs were catered for in the same manner as those of other prisoners.

### ***Problems experienced in implementing the measures***

The DCS reported that one of the problems experienced, while discharging their constitutional obligations relating to the right of prisoners to adequate accommodation, was the fact that children awaiting trial were referred back to prisons. The other problem was that children were remanded into custody for periods exceeding six weeks while awaiting referral to places of safety. These children therefore ended up spending a long time in prison. The Department indicated that the Eastern Cape had the highest number of such children.

## **1.2 Critique**

### ***Accommodation***

The DCS did not supply adequate information on how overcrowding affected the provision of resources and facilities for prisoners. Although there were some measures in place for children awaiting trial, they were not adequate, since children ended up spending a long time in jail before being moved to places of safety where they could be separated from older prisoners. The DCS failed to outline the measures that were in place and how they were implemented.

### ***Education***

The DCS provided brief, inadequate responses for a full understanding of prisoners' right to education. A reading of its Annual Report revealed that the DCS provides education and training programmes in accordance with national legislation and policies of education. The DCS also provided education and training for skills development in order to rehabilitate offenders and to contribute towards affecting behavioural changes.<sup>12</sup> All offenders were given the opportunity to participate in the formal and informal education programmes offered by educationists, social workers, psychologists, and religious care workers. The education and training programmes were provided in partnership with the national and provincial Departments of Education, relevant NGOs, CBOs and tertiary institutions. The following formal and informal programmes were offered to equip prisoners with skills, values and knowledge:

#### ***Formal Education Programmes***

The DCS offered formal education for general, further and higher education and training levels. The general education level comprises adult basic education (ABET) and training programmes, which include literacy programmes from level 1-4. The fourth level is the exit level and is equivalent to grade nine.

For prisoners who aspire to study beyond the general education level the DCS offers education for grades 10-12, and N1-N3. Teaching for the further education level occurs in various fields of learning on a full-time basis by educationists, functional staff and volunteers. Higher education courses

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<sup>12</sup> Department of Correctional Services *Annual Report 1999/2000* (2000) 16.

are offered through distance education with the relevant tertiary institutions. The provincial education departments, accrediting bodies and tertiary education institutions are responsible for the assessment, evaluation and accreditation of learners.<sup>13</sup>

### ***Informal Education Programmes***

Informal education programmes consist mainly of courses that require technical training. Technical training is categorised into vocational training, occupational skills and computer-based training. ABET also forms part of this training for a balanced and integrated approach. The training is provided in conjunction with NGOs and CBOs and the Department of Labour. Recognised accreditation bodies are responsible for the accreditation of these courses.

Although the DCS reported that 81 prisons benefited from its education programmes, it is not clear exactly what percentage of prisons this figure represents and just how many prisoners were enrolled. The fact that 302 qualified educationists and trained personnel were employed means that there are clearly insufficient educators to accommodate the needs of prisoners. In instances where there were no qualified educationist the DCS used temporary personnel as well as volunteers to present supportive educational and training programmes. During the year under review, the DCS also used the services of prisoners with academic or technical qualifications as tutors. Although the DCS is endeavouring to implement prisoners' right to education it is clear that personnel and material constraints are a major impediment to the realisation of the right.

The DCS appears to be offering good educational and training programmes, which have the potential to respect, protect, promote and fulfil the right to education. However, at the present time, the programmes are not being accessed by a large group of offenders. This was deduced from the fact that the DCS stated in other reports that it aimed at increasing the involvement of child prisoners in education programmes to 90 percent, and those of adults to 45 percent of prisoners serving two years or less.<sup>14</sup> These figures suggest that not enough child and adult offenders are accessing education. Only 20 000 prisoners out of a total of 162 638 are accessing education programmes. The children of female offenders should be accessing early childhood development programmes and the DCS makes no mention of this.

### ***Nutrition***

The Department's response was brief and failed to outline new measures which had been put in place. Other sources indicated that for the year under review, a revised manual for food handlers was developed to serve as an internal training tool. This was meant to empower prisoners working

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<sup>13</sup> Ibid.

<sup>14</sup> Note 12 above, 17

in prison kitchens with the necessary skills and knowledge, and to also assist in the improvement of services and hygiene in prison kitchens. The manual further prepared prisoners for other internal and external training.<sup>15</sup>

Intimidation in overcrowded prisons results in some prisoners not getting enough to eat. The DCS does not seem to have short-term solutions for addressing this problem especially where children are concerned.

### 1.3 Recommendations

Prisons are places where people are at risk of contracting HIV/ AIDS due to prison rapes and sexual abuse. The DCS needs to develop a clear policy on HIV/AIDS in prisons so as to reduce the risk of other prisoners being infected.

The DCS also needs to indicate the procedure involved in dealing with juveniles awaiting trial.

The DCS should develop measures that will ensure that child prisoners of school going age have access to basic education. The DCS should work together with the Department of Education to provide early childhood development to children below the age of seven.

Better food distribution methods need to be developed to eliminate theft amongst prisoners and address issues such as intimidation to enable all prisoners to enjoy the right to food.

## 2. LEGISLATIVE MEASURES

There were no new legislative measures instituted during the reporting period. The DCS reported that it was implementing the Correctional Services Act 111 of 1998.

## 3 BUDGETARY MEASURES

The DCS reported that budget allocations had increased substantially to overcome the problems the Department was facing, particularly overcrowding in prisons.

Table 1 Total Budgetary Allocation of the Department

YEAR	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
1998 – 1999	4 345 494 000	4 515 581 000	4 480 478 000
1999 – 2000	4 502 010 000	4 610 361 000	4 569 327 000
2000 – 2001	5 206 427 000	5 320 553 000	2 895 449 000

<sup>15</sup> See note 12 above.

The Table above shows that there has been a nominal increase in the budget allocation of the DCS since the previous financial year. The nominal increase will continue for the year 2000/2001. Actual expenditure shows a trend of over-spending for the year 1999/2000.

**Table 2 Budgetary Allocation for Accommodation**

YEAR	TOTAL ALLOCATION IN RAN DS	PER CAPITA ALLOCATION IN RAN DS AFTER INFLATION ADJUSTMENT	PROJECTED EXPENDITURE IN RAN DS	ACTUAL EXPENDITURE IN RAN DS
1998- 1999	759 206 000	13 330	602 423 000	602 423 000
1999- 2000	463 717 000	8 820	614 335 000	625 428 000
2000- 2001	581 111 000	10 610	606 197 000	-

The DCS reported that the variance in budgetary allocation had been as a result of an increase in the prisoner population. In response to the question on special considerations given to special categories of prisoners, the DCS stated that the budget made provision for all categories of offenders, including children, females, pregnant women, the disabled, juveniles, awaiting trial prisoners and members of the previously disadvantaged 'racial' groups including indigenous peoples.

**Table 3 Budget allocation for Education and Nutrition**

	YEAR	TOTAL ALLOCATION IN RAN DS	PER CAPITA ALLOCATION IN RAN DS AFTER INFLATION ADJUSTMENT	ACTUAL EXPENDITURE IN RAN DS
Education	1998-1999	59 252 000	1 040	58 109 000
	1999-2000	57 534 000	1 090	65 454 000
	2000-2001	81 792 000	1 490	32 465 000
Nutrition	1998-1999	289 002 000	5 070	256 049 000
	1999-2000	285 175 000	5 420	278 476 000
	2000-2001	295 248 000	5 390	129 434 000

The Department reported that variances in the allocation for education were due to annual increases in the budget. The allocations were insufficient for the provision of education, because only 20 000 offenders could be involved in education and training programmes. The lack of funds created a shortage of instructors, limited capacity building and limited the number of offenders that could be involved in the programmes.

In response to the variance in the budget allocation for nutrition over the three-year period, the DCS reported that the variance was due to an increase in the prison population. The Department further reported that the budget was adequate because of the implementation of the amended dietary scale for female offenders.

**Table 4 Budgetary Allocations for Medical Treatment**

YEAR	TOTAL ALLOCATION IN RANDBS	PER CAPITA ALLOCATION IN RANDBS AFTER INFLATION ADJUSTMENT	ACTUAL EXPENDITURE IN RANDBS
1998 – 1999	181 886 000	3 190	163 222 000
1999 – 2000	185 702 000	3 530	152 179 000
2000 – 2001	208 223 000	3 800	-

Budgetary allocations towards medical care rose from R181 886 000 during the 1998/1999 financial year, to R185 702 000 during the reporting period, and was expected to increase further to R208 223 000 during the 2000/2001 financial year. However, there was significant under-spending during both the 1998/1999 and 1999/2000 financial years. In response to the question on variances, the Department stated that variances were accounted for by an increase in the number of prisoners. In the view of the Department, the budgeted amounts were adequate. The Department singled out prisoners with HIV/AIDS for special consideration although no details were provided. For the other categories of vulnerable groups the Department simply stated that it did make provisions for all of them.

### **3.1 Critique**

The DCS indicated that it had spent R625 428 000 for accommodation, whilst it was allocated R463 717 000 during the reporting period. No reasons were provided as to where the additional funds came from, and how over-spending affected allocations for the following year.

For the year 1999/2000, the DCS over-spent for education, and under-spent for the provision of adequate nutrition. The DCS stated that the budget allocation was not sufficient for providing education and training programmes to a majority of prisoners. However the Department failed to indicate what measures were being taken to address the situation. The per capita allocation for education was insufficient for providing education and training for the prison population. Basic education including adult basic education, general education and training as well as further education and training. These were offered gratis, while only higher education and training was provided at the prisoner's own expense. The information provided by the Department did not clearly indicate whether the budget allocation for reading material was also included in the allocation for educational programmes.

### **3.2 Recommendations**

More funds for educational programmes are required since education is an important contributory factor towards the rehabilitation of offenders.

The high incidence of HIV/AIDS amongst offenders requires the State to provide access to anti-retroviral drugs and food of sufficient quality and quantity to promote health.

Due to overcrowding in prisons, the United Nations has sought to alleviate the problem by reducing the size of the prisoner population by recommending alternatives to imprisonment. The DCS should consider alternatives to imprisonment for petty crimes. To alleviate overcrowding, methods of expediting trials of awaiting trial prisoners should be considered.

#### **4. OUTCOMES**

The Department of Correctional Services was requested to provide information on indicators relating to education, medical treatment, nutrition and accommodation. The information submitted by the Department is outlined in the tables below.

**Table 5 Indicators - Prisoner Population**

<b>Category</b>	<b>Total</b>	<b>% of Total</b>	<b>Child-offenders</b>	<b>Female offenders</b>
Offender population	171 462	N/A	6 678	4 416
Convicted offenders	104 407	63.29	2 407	2 905
Awaiting trial offenders in custody	62 952	36.71	4 271	1 511
Offenders above 60 years of age	259	-	-	-
Disabled offenders	163	-	-	-

- Information not provided

The prison population has increased over the past few years and now exceeds the available accommodation capacity. The total daily average prisoner population for 1999 was 154 576 with 160 368 males, 4 416 females and 6 678 child offenders. Cell accommodation and utilisation showed a 62.9 percent overcrowding.

#### ***Medical treatment***

The Department provided several indicators on medical care for female prisoners. There were 565 health care personnel within the prison system. However, the Department did not provide vital information on the ratio of health care service provider:prisoner. The Department further reported that there were

3, 463 hospital beds for ill prisoners. The average number of clinics per prison was one. The number of prisons with access to essential drugs was 236.

In terms of HIV/AIDS infection, it was reported that there were 3 427 prisoners infected, which amounted to 2 percent of the prison population. No information was available on the percentage of prisoners with sexually transmitted diseases. In terms of tuberculosis infection, the Department reported that 1.1 percent of the prison population were affected. No information was made available with regard to the number of prisoners suffering from malnutrition and iron deficiency.

#### ***Education***

The DCS was requested to provide information on the educational level of the prisoners, and those involved in the different education and training programmes. The information provided is outlined in the Table below:

**Table 6 Indicators - Education**

	Total	% of prison population (unsentenced included)
The literacy rate	63%	-
Number of prisoners enrolled for Basic Education, including Adult Basic Education	6 936	4.7
Number of prisoners enrolled for Vocational Education	912	.61
Number of prisoners enrolled for Occupational Skills Training	7 339	4.8

-Information not provided

### **Nutrition**

The DCS reported that the standard minimum calories provided per prisoner per day is 2 000 k/cal for adult females, 2 500 k/cal for adult males and 2 800 k/cal for children. To determine the quality of food in terms of its nutritional status a medical official or any other delegated official tastes the cooked food on a daily basis for palatability. Offenders living with HIV/AIDS, pregnant and lactating offenders are given a high protein and kilojoule diet as prescribed by a doctor.

#### **4.1 Critique**

Whilst the DCS is unable to regulate the number of prisoners accommodated, the DCS has an obligation to ensure protection of prisoners' rights. Although the DCS has built new prisons and upgraded or extended existing facilities to alleviate overcrowding, these are not sufficient to cater for the number of prisoners. Two prisons in KwaZulu-Natal were under construction and would accommodate a prison population of about 2 832.<sup>16</sup>

The cause of overcrowding in South African prisons is the growth in the number of unsentenced prisoners. Whilst the sentenced prisoner population increased by 26.2 percent, the number of unsentenced prisoners has increased to 16 percent. The number of awaiting trial offenders was 16.19 percent for male child offenders, female child offenders constitute 0.29 percent and adult females constitute 2.12 percent.<sup>17</sup> Overcrowding results in the violation of prisoner's rights to adequate accommodation, sanitation, food, education and health care.

The duration of stay of unsentenced prisoners places a financial burden on the State. It cost R88, 00 per prisoner/per day. This amounts to approximately R5, 4 million per day to the taxpayer to keep awaiting trial

<sup>16</sup> Note 12 above, 7.

<sup>17</sup> D Burger (ed.) *South Africa Yearbook 2000/01* (2001) 394.

prisoners in prison.<sup>18</sup> Therefore even the increases in budgetary allocations would not alleviate the plight of overcrowded prisons. Practices within the DCS indicate that there is a need for more policy redevelopment to realise prisoners' rights.

The illiteracy rate for prisoners has not changed since the financial year 1998/1999. It still stands at 37 percent, which is more than the national average. Although the Department seems to be committed to the well being of the prisoners, the budget allocation and indicators do not reflect that commitment of ensuring access to education and training.

Information provided on nutrition was insufficient to make a proper analysis on the provision of adequate nutrition in prisons.

Prisons have a high concentration of persons living with HIV/AIDS and individuals are at great risk of acquiring HIV via injecting drugs and sexual activity. There is an assumed prevalence rate of between ten and thirty percent prisoners infected with HIV/AIDS in South Africa's prisons.<sup>19</sup> By 31 December 1999 there were 2 600 registered cases of HIV and 136 cases of AIDS. There were 1 360 cases of tuberculosis.<sup>20</sup> The response from the DCS reported that there were about 3 427 cases within the reporting period which means that from 31 December 1999 to 31 March 2000, there has been an increase of 691 cases in HIV/AIDS infections.

#### **4.2 Recommendations**

The problem of overcrowding in prisons has been identified and the DCS should find alternatives especially in relation to children and awaiting trial prisoners. HIV/AIDS has reached pandemic proportions in South Africa and offenders infected with the virus should be treated so as to avoid the spread of the virus in the prison population. Creative solutions to the problem need to be found. It remains a challenge to design and implement a comprehensive HIV prevention programmes for the detained population. HIV prevention efforts require financial and organisational investment on the part of the DCS. In the long term, this may save money by minimising the number of HIV positive prisoners. Research indicates that sexual activity, tattooing, body piercing (prisoners may use the same pin to create tattoos on multiple prisoners), and drug use by injection are the most prevalent HIV risk related activities among incarcerated men.<sup>21</sup> In addition to the minimisation of the number of HIV positive prisoners, it is recommended that the promotion of condom use not be the only

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<sup>18</sup> Correctional Services "A Collective Social Responsibility" Report of the Proceedings of the 1<sup>st</sup> National Symposium of Correctional Services 2000," (2001) 33.

<sup>19</sup> M Heywood "The HIV/AIDS Problem in our Prisons" in Correctional Services: "A Collective Social Responsibility" Report of the Proceedings of the 1<sup>st</sup> National Symposium of Correctional Services (2001) 44.

<sup>20</sup> See Note 12 above, 19.

<sup>21</sup> The Body: AIDS Action, Policy Facts, Incarcerated Populations and HIV/AIDS at <http://www.thebody.com/aac/brochures/incarcerated.html>

preventative method advocated in dealing with the epidemic. Education, life skills training and changing behaviour patterns are also recommended.

Young offenders should be kept in places of safety, instead of being imprisoned whilst awaiting trial.

## **5 MONITORING SYSTEMS**

The DCS reported that there were three levels of monitoring and assessing mechanisms, which were located at the national, provincial and local prison levels. However, it only reported on the monitoring of the provision of health and nutritional services.

Statistics were collected by the DCS and captured on a computerised system on a daily basis. Approved accommodation of prisoners as well as the lockup totals (offender population figures), per prison, were monitored on a monthly basis, at the National Head Office. These statistics were available to heads of prisons on a daily basis.

## **PART C: CONCLUSION**

The provision of conditions consistent with human dignity including adequate accommodation, nutrition, education and medical treatment still remains a challenge to prison authorities. Despite the fact that there were no new policies and legislation instituted during the reporting period, the DCS should be commended for attempting to implement the provisions of existing policies and legislation. However, the main problem of overcrowding seems to be ongoing with no solutions on the horizon. The challenge is now on reducing the number of unsentenced prisoners, since they cost the State millions of Rands and deprives sentenced prisoners of adequate facilities and the right to humane conditions of detention. Although most prisons are overcrowded, the solution is not to build more prisons, but to actually look at finding alternative forms of imprisonment. Although the DCS made no mention in its report about probation services, other sources indicated that such services are being provided. The challenge is to increase the provision of such services and expand the early intervention work of the Department.

Information on HIV/AIDS education is essential for offenders to help prevent the spread of the disease and decrease the mortality rate. Prisoners should also be provided with adequate medical care.

As mentioned in the National Action Plan, many challenges remain for the Departments of Correctional Services, Justice, Social Development, and Safety and Security and include reducing the crime rate, reducing the number of those awaiting trial in prisoners, to find alternatives to incarceration, and to continue improving conditions in prisons. The unacceptable levels of overcrowding, physical and sexual assaults, lack of reading material and inadequate medical treatment are also areas of concern.<sup>22</sup> Other challenges include protecting child offenders from being physically or sexually assaulted when detained in police cells or prisons. Also ensuring that child offenders do not await trial in police cells or prisons, but in secure care programmes.

Although, significant progress has been made in the prison system, more changes are required to ensure the human development of prisoners and their integration into the community as productive and law abiding citizens.

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<sup>22</sup> *National Action Plan for the Promotion and Protection of Human Rights* (1998) 90.

## ABBREVIATIONS

- ABET** - Adult Basic Education  
**CRC** - Convention on the Rights of the Child  
**DCS** - Department of Correctional Services  
**ICESCR** - International Covenant on Economic, Social and Cultural Rights  
**SMR** - United Nations Standard Minimum Rules for the Treatment of Prisoners

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