

‘A World of Darkness’¹: Polarisation of Prisoners

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Introduction

Imprisonment, which results in the exclusive removal off an offender from the outside world, is afflictive by the very fact of taking from the person the right of autonomy by depriving him of his liberty. This denial of an individual’s freedom is one of the most oppressive infringements of liberation. Secured from the community and populated predominantly with poor, uneducated, and politically powerless people, prisons tend to remain hidden sites of human rights abuses. Prisoners are one of the most vulnerable groups of people in society. The incarceration of offenders can be regarded as a binary of polarisation. Firstly, prisoners are ostracized from society, and secondly they are marginalized in society *if* and *when* they are released from prison. Many prisoners are released into the community with no homes or family to return to. They have no choice but to remain on the streets, thereby exposing them to further crime in order to survive. This lack of reintegration of the offender into society results in the increased rate of recidivism.

The mere fact that offenders have transgressed the law, often results in the belief that they do not deserve to have their rights protected. As a consequence every aspect of their lives is controlled by prison officials. While conditions of confinement differ from country to country and from one correctional facility to another, standards in most countries are appallingly low. With the public principally concerned about keeping

¹ View on prison life expressed during an interview with an offender on parole, 19 September 2005.

prisoners locked rather than the environment in which they are confined, not much has been done to ease the human rights abuses. In numerous countries the soaring level of official secrecy has resulted in the effective cutting off of information about even the most egregious prison abuses. This article examines the South African prison system, with the specific intention of trying to ascertain how the dynamics of life in prison contributes towards the exploitation, polarization and abuse of one of the most polarized sections of society; viz. prisoners. Prisoners most often come from disadvantaged and marginalized social groups, such as the urban poor, ethnic minorities, new immigrants and substance abusers. Thus the escalation and spread of contagious diseases, becomes rife and the breeding ground for an extensive range of infections, such as tuberculosis (TB), bronchitis and HIV/AIDS. These may be airborne or sexual'y transmitted, as is often allegedly the case among prison populations in South Africa. Of special concern in this paper is the epidemic of HIV/AIDS, which is being increasingly referenced by policy makers, academics and NGOs. Poverty was and still is the basis for the high levels of crime among South Africa's indigent communities, which in turn impacted on the size of prison populations in the country. Overcrowding in South African prisons has therefore become one of the major challenges that officials in the prison service have to confront. Interviews with Correctional Services officials inevitably drew upon the perennial problem of space and capacity in the prisons that they managed.

In this research the researcher explores the abuses that go beyond the basic incarceration of offenders and the reality behind 'closed gates'. Prison life from the viewpoint not only of the officials but also that of the prisoner, how demoralized they are and to what extent the rights they are denied in relation to those enshrined in our legislation is being oppressed, are focused on. The question arises: 'Is there a discrepancy between the rights enshrined in the legislation and the reality in which prison officials react to prisoners?' One of the ideologies of incarceration is retribution viz. 'the guilty deserve to suffer'. This dictum may be a justification for prison officials to have carte blanche in imposing cruel and unfair punishment to inmates within the penal institution. This research also investigates the extent to which prisoners are placed in life threatening situations by the virtue of the refusal of prison officials and Government to recognize the existence of sexual relations within prison walls. Prisoners are exposed to the spread of sexually

transmitted diseases for example HIV/AIDS.

Human Rights Legislation

A criminal justice system which is strong, effective, and enshrines the norms and values set out in international human rights instruments is a cornerstone in any democracy. The protection of the human rights of citizens, particularly law abiding citizens, is the single most important role of a democratic state and to this end this protection is entrenched in our Constitution and the Bill of Rights. This is of paramount importance in South Africa for society endeavours to build a popular culture of human rights in lieu of a historically rooted culture of violence and intolerance. According to the South African Human Rights Commission (1998:4) there are three essential principles covered by the Standard Minimum Rules for the Treatment of Prisoners. First, all prisoners shall be treated with respect due to their inherent dignity and value as human beings; second, there shall be no discrimination on the grounds of, inter alia, race, sex, religion, ethnic origin; and third, 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. It further forbids torture and draconian, inhumane, or degrading forms of treatment and provides the right to be free from all forms of violence.

Almost six years after the April 1994 election the Judicial Inspectorate of Prisons, the independent office which oversees the treatment of prisoners mainly through the Independent Prison Visitors (IPVs) it appoints, found that conditions in prisons fell far short of the stated aims with regards to basic human rights. Most offenders are eventually released from prison into the community. Often an individual entering prison to await trial for a minor offence might return to the community as a 'hardened criminal' (more aggressive and prone to violence and crime), having been affected by the violence associated with gang rule in prison. It is often said that South African prisons are a breeding ground for criminals because of the inhumane conditions and violence rife in prisons (Flanders-Thomas et al 2002:2). Therefore, over the last decade, prisons have become more difficult places in which to adjust and survive. There is a view held by some that incarceration is designed to accomplish a long term impact to the extent that

the offender may hesitate to revert to criminal behaviour. However, their images of a newfound respect for authority, greater self-control, and resolve to remain law-abiding often conflict with reality (Stinchcomb & Fox 1999: 362-363). The result of lengthy confinement often causes a deep sense of frustration, isolation, and embitterment-hardly feelings that are conducive to effective reintegration into society.

The gross overcrowding in the South African prisons does not support the promotion and protection of the basic human rights of prisoners. According to the Department of Correctional Services (2002:1) overcrowding in prisons has its own effects. It impacts negatively on the rendering of effective rehabilitation programmes, and also on the effective safe custody of prisoners. Prisoners are incarcerated in inhumane conditions. It creates an unsafe working environment for Department of Correctional Service officials. Furthermore it negatively impacts on the maintenance of prison facilities. In order to understand the violations of human rights, as a consequence of imprisonment, human rights, as well as the rights of prisoners as embodied in the legislation will be examined in this article.

Studies in the lives of prisoners require approaches that must conform to official positions and to security issues that are necessary to ensure the sanctity of an institution that is intended to keep criminals apart from the normal civilian population. For this reason any approach that is used to research such a target group must either be unique or must be an adaptation of an accepted framework that has earned a reputation for generating reliable data.

Fieldwork

Fieldwork for this paper began after the arduous task of completing a PhD on overcrowding and related problems in South African prisons. One of the major factors that recurred in the literature surveys and interviews with people from across a range of backgrounds was the alleged prevalence of HIV/AIDS and the abuse of offenders within the penal institution. The regularity of this issue urged me towards wanting to understand this phenomenon in greater depth. The Judicial Inspectorate of Prisons (JIP) Annual Report (2004/2005:10) lists a total of 350 611 complaints handled by the Independent Prison Visitors (IPVs). Of this total there were: assaults-

3722 (member on inmate); assaults-4047 (inmate on inmate); transfers-45031; appeals-23652; communication with families- 33822; conditions-15904; food-13439; health care 26262; inhumane treatment-6056. Thus the most common complaint from prisoners for 2004 was about transfers, followed by communication with families, healthcare and appeals.

Department of Correctional Services employees chosen for interviews included prison officials, social workers and psychologists. Visits to the different sections, (Durban Medium A, Medium B, Juvenile Centre and Female), of the Durban Westville Prison, was initially met with a resistance from officials to respond to my questions, but who eventually agreed provided their identities were not revealed. Although prison overcrowding is no new phenomenon and a universal problem within penal institutions, frequent visits to the Westville Prison revealed a very serious overcrowding problem. This was evident in the improvised arrangements to accommodate large numbers of prisoners into the cells. Prisoners complained of the lack of basic necessities like beds, blankets, sheets and toiletries, of being assaulted and treated like 'animals'².

While overcrowding was a glaring reality in the prison, talk about the prevalence of HIV/AIDS within it was cautious among the prisoners but more direct by officials who felt an urge to speak about its existence. It was clear that overcrowded prison conditions could easily contribute towards the spread of HIV/AIDS if allegations of persistent sexual activity among prison inmates are true. An earlier research task focused, only through a literature survey on HIV/AIDS, overcrowding, gangsterism and high risk sexual behaviour in prisons. After its completion in 2004 the researcher decided to transcend the boundary by extending my research within an actual prison. This urge was stimulated by a Ministry of Health figure of 6.5 million people infected with HIV, released in July 2004, making South Africa one of the most profoundly affected countries in the world - with one in seven people being a victim of this pandemic. The researcher focused on post-released offenders with the explicit intention of acquiring at least a cursory understanding of conditions in prisons.

A three page questionnaire formed part of the exercise to learn about

² Visit to the Durban Westville Prison with Criminology 3 students doing the module Corrections in 2004 and 2005.

the offender's criminal history, sexual behaviour, drug use, personal situations prior to incarceration and their knowledge of HIV/AIDS. Semi-structured interviews were conducted with the intention of allowing the interviewee to answer open-ended questions. This allowed me to gain additional insight into their experiences and the conditions that they were subjected to within prison. Every interviewee was promised confidentiality prior to the commencement of the interview. The use of the case-study method often serves as an important instrument in acquiring such data. Individual case studies also reflect upon how individuals respond to wider societal expectations and pressures (Somekh & Lewin 2005: 33). The data for this paper was derived from an attempt to engage data gathering to present a description of the social life and the understanding of the prison environment and its impact on prisoners in the biggest prison that serves the Durban metropolitan area. Their personal histories, family backgrounds, community surroundings, approaches to life and world views provide a widely encompassing framework for intensive and extensive research on relevant issues. Observations and interviews were done on several occasions after arrangements were made with the prison officials. Although secondary sources were also utilized, the researcher is aware that these are indirect forms of information and there is no guarantee of their reliability.

What are Human Rights?

Human Rights have been defined as 'generally accepted principles of fairness and justice' or 'moral rights that belong equally to all people simply because they are human beings' (Oliver & McQuoid-Mason 1998:2). Human rights belong to all people and these rights deal with fairness, justice and equality and therefore have to be protected and promoted. These rights are applicable to prisoners as well.

The Rights of Prisoners

The concept of 'prisoners rights' was not often spoken of in the past as prisoners under the oppressive apartheid system were subjected to gross violations of human rights such as, hard labour for both common and political prisoners.

The perceptions at the time were based not on rehabilitation, but on punishment of offenders (based on the notion of retribution) who had offended society and were justified to be objects of mistreatment (Morodi 2003:1). In South Africa prisons are administered by the Department of Correctional Services. The Constitution of the Republic of South Africa 1996, (Act 108 of 1996) as amended is also applicable to prisoners.

The recognition of a human rights and prisoner rights ethic in the legal system and correctional system is not a new phenomenon. Kollapen (1995:74) points out that as far back as 1912, in the case of Wittaker and Morant vs Roos and Batemen (1912 AD 92 on 122), the Honourable Justice Innes said: 'True, the plaintiffs' freedom has been impaired by the legal process of imprisonment, but they were entitled to demand respect for what remained'. The fact that their liberty has been legally curtailed could have no excuse for a further illegal encroachment upon it. Gordon (1996:19) postulates that the most acceptable definition of prisoner rights is the principle of the South African Bench: 'A prisoner continues to enjoy all the civil rights of a person, save those that are taken away or interfered with by his lawfully having been sentenced to imprisonment'

Prisoner rights are facilities to which they are entitled according to the law and which are necessary to maintain a minimum subsistence level, for example, the rights to protection of life, food, clothing, accommodation, medical services and legal representation are essential needs (Neser 1993:305). These rights are embodied in the Correctional Services Act No.8 of 1959, the new Correctional Services Act 111 of 1998, protected by the Constitution of the Republic of South Africa Act 108 of 1996 and enforceable in a court of law.

There are varying views and differing perceptions of the actual purpose of imprisonment and whether prisoners can, in fact, claim any rights. Some members of society may regard the prisoner as an offender who should have no rights and should be punished. There are factors in prison that still violate prisoners' rights, for example the severe overcrowding in prisons. The Constitution of the Republic of South Africa 1996 (Act 108 of 1996) as amended on the 11 October 1996, perceives prisoners' as people constituting part of society and are also entitled to certain fundamental rights as legal entities, even though they are in prison. Although the Constitution

and Correctional Services Act 111 of 1998 guarantees certain basic human rights and prisoner rights, this guarantee is by no means absolute.

The Bill of Rights incorporates the all-important Standard Minimum Rules for the Treatment of Prisoners, adopted in 1957. Some examples of rights contained in the Bill of Rights that are relevant to Correctional Services are:

The right to equality and quality before the law (section 9)

The right to dignity (section 10)

The right to freedom and security of the person (section 12)

The right to privacy (section 14)

The right to a healthy environment (section 24)

The right to health care, food, water and social security (section 27)

The right to conditions of detention that is consistent with human dignity (section 35) (Oliver & McQuoid-Mason 1998:17).

Although these rights are stipulated in the Bill of Rights in theory, the reality in penal institutions is a contravention of the law as will be illustrated below. The infringement of these rights is compounded by the rapidly increasing prisoner population and makes the implementation of the Correctional Services Act (Act No 111 of 1998), that guarantees the rights and treatment of those detained in prison, a daunting task for the Department of Correctional Services.

The Right to Equality and Non-Discrimination

Section 9 of the Constitution (Act 108 of 1996) states that everybody has the right to equality and non-discrimination, which includes the following:

Everyone, including the prisoner, is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect categories of persons, disadvantaged by unfair discrimination, may be taken. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status,

ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

The right to equality and non-discrimination is one of the most fundamental rights. A person's right to be treated equally and not to be discriminated against should not be limited or affected if they are imprisoned (Oliver & McQuoid-Mason 1998:31). The scale of sexual activity in prisons is complex to establish because studies must rely on self-reporting. Giffard (1999: 36) points out that in a Lawyers' for Human Rights survey, it was estimated that 65% of inmates in South African prisons participate in homosexual activity. Sexual activities occur through homosexual interaction-creating an unrelenting social stigma to it. My research revealed that inmates are discriminated against because of their sexual orientation. Offenders are beaten and sexually assaulted.

The Right to Human Dignity

One important aspect of the Correctional Services legislative requirements is Section 35 (2)(e) of the constitution, which states 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, of adequate accommodation, nutrition, reading material, and medical treatment.

However, the students' as well as my exposure to these conditions was interesting. Each prison cell accommodated three times the number of prisoners for which they were designed. There were up to 60 inmates in cells that were designed for only 20 prisoners. Three beds were placed bunk-style one on top of the other, with only a few inches separating them laterally. Prisoners were unlocked at 7am and are locked again at 3 pm – keeping them confined to their cells for up to 16 hours of the day with the use of only one toilet and one shower per cell. This was a gross violation of the right to inherent dignity and the right to have their dignity respected and protected. Whatever the purpose or reason for the imprisonment of an offender, the

maintenance of the prisoner's right to dignity is essential if there is to be any meaningful application of human rights in the prison context. It is an international principle that the negative effects of imprisonment should be minimised as far as possible. A fine balance has to be struck between the prisoner's rights and the right of society to demand punishment of the offender, and moreover that such punishment must be visibly implemented. Living conditions in prison are important for a prisoner's sense of worth and dignity. Standards of accommodation, personal hygiene, bedding and clothing play an important role in influencing the prisoner's mental and physical well-being (Oliver & McQuoid-Mason 1998:34).

The researcher's findings were in keeping with that of The Jali Commission Hearings³ which revealed that inhumane conditions were being experienced at the St Albans Prison outside Port Elizabeth. Shocking evidence emerged on how prisoners, as a result of overcrowding, were locked in ablution blocks. Manager of St Albans Prison Mr Richard Marcus (SABC 2000:1) stated that gangsterism, which resulted in many assaults of both prison officials and prisoners, was rife. These assaults were difficult to prove and police investigation never resulted in anything. It was also found by the SAHRC (1998:13) that although the Constitution guarantees prisoners the right to conditions of detention that are consistent with human dignity, the conditions in most of the prisons in their view, fall short of this constitutional obligation. They also stated that majority of the prisons were severely overcrowded and in a serious state of disrepair, not only did they pose a health hazard but also contributed to the high rate of escapes. These inhumane conditions in which prisoners are accommodated contribute, to a very large extent, to the criminality found in the majority of prisons.

Although there has been an international pressure on the treatment of prisoners and progressive steps taken in the South African Constitution Act 108 of 1996, there is a continuous trend for prisoners to suffer cruel and inhumane treatment, even death in prison. The South African Prisoners' Organisation for Human Rights (SAPOHR) maintains that conditions in prisons are inhumane and undermined human dignity as enshrined in South

³ The Jali Commission is a Commission of Inquiry was appointed on 8 August 2001, headed by Judge Thabani Jali to investigate corruption and conditions at South Africa's prisons.

Africa's Constitution Act 108 of 1996 (iafrica.com 2003:1-2). Those in free society might argue that by stripping the offender of human dignity, imprisonment will make the type of lasting, negative impression that will serve as a strong deterrent to recidivism. On the contrary, instead of making them determined to avoid another prison term, incarceration may leave many inmates accustomed to prison life and resigned to the inevitability of returning to it (Stinchcomb & Fox 1999:363).

The Right to Freedom and Security of the Person

According to section 12 (1) of the Constitution (Act 108 of 1996), everyone has the right to freedom, and security which includes the right: Not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhumane or degrading way.

Interviews with post released prisoners revealed that prisoners, especially the awaiting-trial section (Medium A of the Durban Westville Prison) are subjected to gross human rights violations; for example, all awaiting-trial prisoners returning from court are subjected to being searched naked in full view of everyone. Within a period of seven months one offender was subjected to this humiliation for 32 times. Upon their return from court offenders were required to remain in a cell, referred to as 'a box' that accommodated 180 offenders. Offenders have to stand or sit until the following day due to the lack of space. These conditions deprived them of sleep and exposed them to individuals who appeared to have had a penchant for mocking, belittling and robbing others of everything they had.

Prison officials beat, kicked, punched assaulted prisoners with batons, fists and pistols during a search for weapons. One interviewee stated: 'the entire cell was punished. I was injured in the knee. We were not treated as human beings, but like animals. Wardens do not care about inmates'.

The Amnesty International Annual Report (1998:3), reports that the statutory Human Rights Commission investigated a number of serious incidents of torture and ill treatment of prisoners. The security measures to which offenders and detainees are subject should be the minimum that is needed to ensure their secure custody, and the safety of other prisoners.

South African prisons have a history of harsh and brutal punishments in comparison to international standards. Punishment cells with minimal facilities, prohibition of access to reading material, arbitrary removal of 'privileges', collective punishment for group misbehaviour, isolation cells and straitjackets are used as punishment for a range of offences. There is often an unacceptable level of discretion exercised by prison guards in determining the living conditions of prisoners under their supervision (Oliver & McQuoid-Mason 1998:41).

According to the Constitution Act 108 of 1996, the freedom and security of the person, includes the right to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhumane or degrading way; but in the context of serious overcrowding, these freedoms are very difficult to secure for offenders (DCS Draft Green Paper 2003). Although the Department is obliged to ensure that the prisoner is safe from violation of these rights in reality this is far from being realised.

The Right to Privacy

According to section 14 of the Constitution (Act 108 of 1996), everyone has the right to privacy, which includes the right not to have: Their person or home searched; their property searched; their possessions seized; or the privacy of their communications infringed.

The very nature of imprisonment is that it severely restricts a person's right to privacy through having to share a cell, conditions of overcrowding, constant supervision and searches by prison authorities. Furthermore prisoners are forced to live communally with people not of their choosing, and live their lives in accordance with a strict prison administration (Oliver & McQuoid-Mason 1998:46).

It was further stated by McQuoid-Mason and Dada (1999:71) that:

People detained by the police or prison authorities in prisons, police lock-ups or any other place, retain their basic Common Law and Constitutional personality rights except for their right to liberty and a qualified right to privacy. These rights include the right to bodily security, reputation, liberty and privacy. A prisoner or detainee may

not be deprived of sleep, exercise, clothing and the right to wash or go to the toilet. Furthermore, prisoners and detainees may not be assaulted or tortured.

On the one hand, it is contended by Nxumalo (1997:234), that a convicted person is considered by the courts to have a limited expectation of privacy when incarcerated.

Right to Healthcare, Food, Water and Social Security

Section 27 (1) of the Constitution (Act 108 of 1996), everyone (including the prisoner) has the right to have access to healthcare services; sufficient food and water; and social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The Department of Correctional Services is obliged to provide health care to prisoners. This implies that the health care should be consistent with that provided by the state to other citizens. The provision of food, water and basic healthcare is thus the basic minimum that the State is compelled to provide to inmates.

Overcrowding in South African prisons has become one of the major challenges that officials in the prison service have to confront. Interviews with Correctional Services officials inevitably drew upon the perennial problem of space and capacity in the prisons that they managed⁴. Early twenty-first century figures on capacity in South African prisons is estimated at 113 825, while the actual prison population at the time of research was 187446. In the prison that was targeted for this research, its capacity was 4500 but the actual prison population in May 2005 when the research began was 12 000. This constituted a near 300% over-crowding, making it an inadequate facility for a region that is still characterized by high levels of crime and very high levels of HIV/AIDS infections. An initial visit and overview of the prison revealed expected inappropriate living conditions, especially with inadequate hygiene and ventilation, overcrowding in cells

⁴ On the 28 September 2005 the researcher conducted interviews with prison officials at Westville Medium B Prison. On the 12 October 2005 semi-structured interviews with prison official at Westville Prison was conducted.

and frequent references by officials to high risk sexual behaviour, violence, gang activity and corruption within the prison walls. Sodomy, rape, sexual intercourse and sexual assaults have been reported as regular and normative occurrences in the prisons.

Overcrowded conditions in the South African prisons facilitate an easy spread of communicable diseases among inmates, of which HIV/AIDS has become the most tempestuous and problematic. Reaction to these conditions has been firm, assertive and widespread. For instance, Jacobs (2003:1) suggests that

... the debate on the prevalence of HIV/AIDS not only provides gruesome statistics regarding the scourge in prisons but also seems to imply a criminal dereliction of duty by Correctional Services with grave consequences for society in the medium to long term.

There is a Correctional Services policy on HIV/AIDS to render an effective and efficient HIV/AIDS and Sexually Transmitted Infections health care service to prisoners and to release them back into the community with minimal risk to society. However the policy is not always effectively managed or understood due to the lack of human and financial resources. Although prisoners living with HIV/AIDS are not isolated and in some prisons receive counseling, there is no uniformity regarding the application of Department of Correctional Service's policy. Interviews with post-released prisoners revealed that 'in their world of darkness sex in prison is an every day, every night experience'. Only the strong and daringly brave youngsters have the ability to ward off such advances and often have to do so through dangerously fighting against bigger, tougher and more experienced prisoners. The social stigma of 'a punk' carries with it an image that is fractious and demoralizing to younger and inexperienced prisoners. It sets them apart from those who are able to enjoy hard earned privileges that are sought through brute strength and precludes them from being treated as equals among their inmates. An inability to fight back almost inevitably turns the weaker prisoners into fair game for the prisoners with a predator mentality.

Interviewees revealed that it was not uncommon for prisoners to 'sell their bodies' for sex or bribe kitchen workers with money for better

food. The lack of prison personnel is also a contributing factor to sexual exploitation of weaker and younger inmates. For instance, at night only one prison official is required to guard approximately four hundred prisoners from a single observation post. This is in keeping with the findings of the SAHRC (1998:14), in that the most common complaint of prisoners was that the food ranged from poorly prepared or inedible, to too little or rotten. They also complained that dinner is normally served at 14h00 and no provision is made for evenings by which time everyone is hungry again. One interviewee stated: 'the food is bad; we smoke dagga to keep away the hunger pangs'. South Africa is a country in which socio-economic conditions in certain areas give rise to a high prevalence of communicable diseases, both in the sense of a majority of the population that has a lower than desirable nutrition level and hence is vulnerable to infection, and also in the sense of cramped and inadequate living conditions that tend to fester communicable diseases (DCS Draft Green Paper 2003). This document further states that the crime patterns in South Africa indicate that a large proportion of the prison population come from these very communities. Thus the rate of infection with communicable diseases of prisoners entering the Department is higher than the national average. Overcrowding coupled with the inadequate quantity and/or quality of proper nutritional food level in prisons exacerbates this situation. The Statement from the Heads of Government at the 4th Baltic Sea States Summit on the Threat of Communicable Diseases, issued at St Petersburg on the 10 June 2002, states that overcrowded prisons with infected inmates and with poor hygiene and sanitation are a dominant threat in the field of communicable diseases in the region. Prison health must be a priority (DCS Draft Green Paper 2003). In reality this is far from being realized.

It was found by the Human Rights Commission (Pityana 1998:3): that prisoners had genuine grievances about their conditions. There were insufficient warders to handle the number of prisoners. The poor conditions were a contributing factor in causing prisoners to become increasingly aggressive and abusive towards warders. Furthermore, rehabilitation programmes were non-existent in most of the prisons in the country. This explains the high rate of criminal activities such as gangsterism, availability of weapons, drugs and other illegal substances. 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 of juveniles from adult prisoners is not always conformed to. The increase in the number of awaiting-trial prisoners has led to serious overcrowding. Many juveniles complained that their section was overcrowded, dark and dirty (SAHRC 1998:31-33).

Thus by being placed in these atrocious, life threatening conditions, one could say that prisoners are given a death sentence as their punishment. In addition, it can be postulated that the environment in which inmates are secluded from the outside, subservient to the staff, restrained by the rules, subjected to the power of other prisoners, socialized into the prison subculture, exposed to diseases and silenced by the lack of public concern, all create conditions of hopelessness, dissatisfaction, estrangement which are considered as fertile breeding grounds. Although all of the above predisposing conditions are contributing factors to the problems and challenges that face penal institutions, the researcher is of the opinion that the severe overcrowding of these institutions not only disrupts the rehabilitation efforts of the system but also threatens the control of prison institutions, thereby burdening the system. As stated previously, problems, which exist in conventional society, are mirrored and often magnified inside prison.

Resumé

The discussion in this paper postulates that according to the Bill of Rights everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity. Thus although the Constitution of the Republic of South Africa Act 108 of 1996 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 within majority of prisons fall short of this constitutional obligation (SAHRC 1998:13). Numerous prisons in South Africa are overcrowded and in a serious state of disrepair that they not only pose a health hazard but also contribute to a high rate of escapes.

Closer analysis of the various judgments of the Constitutional Court and the Supreme Court of Appeal on laws that impact on prison overcrowding indicates however, that the courts have not drawn the link

between these laws and the unsatisfactory prison conditions they produce (Van Zyl Smit in Dixon & van der Spuy 2004). To some extent, this 'wearing-down' process of imprisonment affects everyone. South Africa is a country in which socio-economic conditions give rise to a high prevalence of communicable disease, both in the sense that majority of the population has a lower than desirable nutrition level and hence is vulnerable to infection, but also in the sense of cramped and inadequate living conditions that tend to fester communicable diseases (DCS Draft Green Paper 2003).

The conditions inside prison can contribute, in varying degrees, to the risk for HIV transmission, the progression of HIV, and the deterioration in health of a person with full-blown AIDS. While overcrowding, gangs, drugs, and violence are realities of prison life in every country, specific aspects of these issues as they are manifested in South African prisons will have different impacts on prisoners already infected or at risk for contracting HIV/AIDS (Goyer 2003:33). Those with HIV infection are appearing more frequently within institutional populations. Due to the spread of AIDS throughout society, the spread of AIDS is on the increase among inmates, particularly since those convicted of drug offences are likely to be sentenced to prison or jail terms.

It can be postulated that some of the worst human rights abuses stems from the problems associated with overcrowding, and overcrowding can be regarded as one of the main challenges facing the Department of Correctional Services. The various ways to strengthen the criminal justice system and to make it more effective in preventing crime are attained by increasing the access to justice and involving more people in the criminal justice process. Offenders are human beings and ought to be treated in a humane manner. Upon release, the offenders have to re-integrate into society as 'normal' citizens. Therefore, if the offender were treated inhumanely then this would affect his rehabilitation and consequently may lead to recidivism. The imposition of draconian, inhumane or degrading punishment which involves housing inmates in a dark prison cell(s) as a mechanism for discipline or internal offences committed constitutes a serious crime against humanity (Morodi 2003:8). The South African Prisoners' Organisation for Human Rights (SAPOHR) stated that (iafrica.com 2003:1) it would take the government to court for violating prisoners' rights unless it urgently addressed overcrowded prison conditions.

Steps should be taken to develop a different caliber of prison system that would be consistent with the new Constitution and with international norms and standards.

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